

**T'UF SHUR BIEN
PRESERVATION TRUST AREA ACT**

JOINT HEARING
BEFORE THE
**COMMITTEE ON
ENERGY AND NATURAL RESOURCES**
AND THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION

S. 2018

TO ESTABLISH THE TUF SHUR BIEN PRESERVATION TRUST AREA
WITHIN THE CIBOLA NATIONAL FOREST IN THE STATE OF NEW MEX-
ICO TO RESOLVE A LAND CLAIM INVOLVING THE SANDIA MOUNTAIN
WILDERNESS AND FOR OTHER PURPOSES

APRIL 24, 2002



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and the Committee on Indian Affairs

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TʻUF SHUR BIEN PRESERVATION TRUST AREA ACT

WEDNESDAY, APRIL 24, 2002

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committees met, pursuant to notice, at 2:35 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Daniel K. Inouye, Chairman of the Committee on Indian Affairs, presiding.

OPENING STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

Chairman INOUE. We gather this afternoon to receive testimony on S. 2018, a bill to establish the Tʻuf Shur Bien Preservation Trust Area within the Cibola National Forest in the State of New Mexico, to resolve a land claim involving the Sandia Mountain Wilderness, and for other purposes.

The chairman of the Energy Committee, Senator Bingaman, is presently actively involved in a debate in the Senate chamber, so he is unable to be with us and he has asked me to convene the session.

As you know, this is not the first erroneous boundary service or the first inaccurate interpretation of the words used in a statement of boundaries that has come before the Congress. We have had need to address similar circumstances in several other States and so we are accustomed to the issues that are before the committees today.

In reading the testimony of the witnesses last evening, I was particularly impressed with the thoughtful statements of the Pueblo of Sandia. It is clear to me that not only has this area always had special cultural and spiritual significance to the current members of the Pueblo and many generations of their ancestors, but that the Pueblo is committed to preserving the values of the wilderness designation that was brought about under the stewardship of the senior Senator from New Mexico, my good friend Pete Domenici.

If one knows a little bit about the Pueblo, one might have an even better understanding of the commitment the Pueblo has to maintaining the status quo in this area. For those of you who may not know, the Pueblo of Sandia is one of the Nation's leaders in environmental protection and management. For example, in 1997 the Pueblo was the first tribal recipient of the U.S. Environmental Protection Agency's Partnership for Environmental Excellence Award,

for the Pueblo's outstanding success in developing an environmental management program to protect and manage tribal resources.

Two years later, the John F. Kennedy School of Government at Harvard University recognized the Pueblo of Sandia with a \$10,000 high honor award for excellence in tribal self-governance in the field of environmental protection. Of the 556 federally recognized tribes in the Nation, the Pueblo of Sandia was one of only eight tribal governments in the Nation to receive this prestigious honor.

It is clearly a further testament to the Pueblo's concern for the environment that they maintain an environmental department whose number of personnel is equal to 4 percent of the total tribal citizenry. So as we receive testimony on S. 2018 today, I believe it is important that we keep in mind the context in which we are considering the terms of the settlement agreement.

The Federal court has ruled that an earlier Interior Department Solicitor's opinion could not stand because it did not accurately take into account the circumstances surrounding the Pueblo's land grant. Should the Congress fail to act before the terms of the settlement agreement expire in November, should this matter then proceed to be a subject of further litigation, in all likelihood the claims of the Pueblo will prevail.

The fact that the Pueblo has come to the table with other interested parties and has agreed to preserve the status quo on lands to which they could otherwise assert exclusive use demonstrates not only a measure of utmost good faith, but of desire on the part of the Pueblo to assure that good relations among neighbors will be the hallmark for the path to be followed by future generations.

So I commend the parties for all that they have done to bring us to this point and I hope that we can bring this matter to a swift resolution and avoid the specter of further time-intensive and costly litigation.

May I now call upon my co-chairman, Senator Nighthorse Campbell.

**STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL,
U.S. SENATOR FROM COLORADO**

Senator CAMPBELL. I thank you, Mr. Chairman. Just very briefly, I thank you for convening this hearing. I think that when we have a chance for all the affected parties to come to Congress and be respectful of each other's views, it is certainly a step in the right direction.

It is my understanding that the exact location of the eastern boundary of the Sandia Pueblo has been an issue for decades. It is not unusual for those boundaries, as you mentioned, to be of some dispute since the methods of measuring in the days when it was negotiated were certainly not a clear science, often done just by where a tree stood or a rock stood or by what was called lengths of chains. Clearly, the method of transferring the land itself was suspect in many cases, some done by negotiation, some done at gunpoint, as everyone knows.

But we simply cannot turn the clock back and in my opinion, when we have two different opinions by two predecessor Solicitor's opinions, when they have the opposite conclusion, that leaves us

with the difficult task of trying to find some kind of a compromise and some kind of an agreement to avoid costly and expensive litigation that will in my view, as yours, probably hold in favor of the Pueblo and thereby jeopardize the lives of the non-Indian people who have homes in that area, who invested their life in that area. I do not think that is particularly good, either.

There is at least one part of Solicitor Leshy's opinion that seems helpful. He found that a new survey was necessary, but postponed the implementation of his opinion in the hope that the parties could reach an agreement that would make such a survey unnecessary. The question I would have answered from each witness is whether you agree that we should continue to try to reach a settlement or we should continue to allow each new Solicitor, Interior Solicitor, to take his best shot at it and reach an opinion that might be overturned by a court.

Finally, because of the possibility that this bill may be used as a model or a template for many other similar controversies, I trust that the Indian Affairs Committee, on which I serve with you and Senator Domenici, too, will have an opportunity to formally review any bill that we move forward with and consider changes which address the concerns.

Thank you, Mr. Chairman.

Chairman INOUE. Thank you very much.

May I now recognize the senior Senator from New Mexico, Senator Domenici.

**STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR
FROM NEW MEXICO**

Senator DOMENICI. Thank you very much, Mr. Chairman.

Since a large number of the people in the audience are from my State, might I say welcome to all the New Mexicans, most of whose faces I recognize. Those that I do not, we welcome you nonetheless.

My opening statement, Mr. Chairman, is rather long and I will do the best I can to state it quickly. But it is my way of laying this entire matter before the people in my State, who are genuinely interested.

I want to thank the Energy and Natural Resources Committee and the Indian Affairs Committee for holding this joint hearing. I also welcome the witnesses. We have a pretty good array of witnesses and in 2 or 3 hours we surely ought to get a good flavor and a lot of questions answered.

I would like to speak briefly about this land, its history and its importance to our State. Much of the area in question has for the past quarter century been congressionally mandated wilderness area, the highest level of protection for publicly owned lands that Congress can bestow. I worked on the creation of that Sandia Wilderness in 1978 during my first term here in the Congress.

We were able to pass the wilderness designation giving this land the wilderness protection even though it is easily accessible by a very short walk from the city limits of Albuquerque. The proximity demanded wilderness designation because this land was facing potentially severe degradation. I consider designation of this wilderness area one of the most important legacies that I will leave as a Senator from New Mexico.

More than 1 million visitors use this land each year and a significant commercial interest exists on the land already. You can see why it is important as to how we go about transferring this land in light of just that little bit of background.

The stewardship of these 10,000 acres has been good, even in the face of dramatic increases in use and population increases. I believe all parties to this issue want this good stewardship to continue and the land preserved for posterity. Governor Paisano has told me that personally, as have homeowners and city and county officials.

Three significant interests seem relevant here: first, the interest of the Pueblo of Sandia, whose members have used the land before any of the other parties in this matter; second, the interest of the private landowners in the area, who find themselves in some potential jeopardy as far as full use and access to their property; and third, an often forgotten interest, that of the American public that uses this unique urban-wilderness interface in ever-increasing numbers. They are the public that we must serve.

The specific question that has haunted this land since legal proceedings began in 1980 is simple: Was a serious error made in surveying the original grant of land to the Pueblo of Sandia or was the original survey accurate to the best of our ability to determine? Our search for the truth in this matter faces serious historical challenges. The origin of the dispute began more than 200 years ago and has spanned several different governments, territorial, colonial, pueblo, and Federal. The original documents are written in an archaic Spanish not widely used today, even in our State.

This property's confusing historical record is now further complicated with a wide diversity of current interests on the land, which I have just stated in my opening remarks.

I am pleased that among the witnesses we will hear from today is one of the very few persons alive who has personally reviewed this specific question.

The bill's main problems: we are here today to review a bill proposed by my colleague Senator Bingaman. I have several concerns with the bill's general approach as well as its substantive effect. First, the bill fails to resolve or even address the core question which has led to these 20 years of litigation. Senator Bingaman's bill instead takes the approach of attempting to embody in legislation the basic points of a settlement agreement entered into last year by only some of the parties involved in this litigation.

Senator Bingaman's bill thus departs from the normal avenues established by Congress to deal specifically with claims such as these, the so-called Indian Claims Commission Act, ICCA, that is used quite often in similar cases in our State and throughout Indian country; or the use of conservation easements to ensure that historical use be retained, but that management of public lands be left in the hands of the public agencies. That is two approaches.

Secondly, Senator Bingaman's bill operates to effectively give the Pueblo veto power over all future uses of this land. This situation, while at first blush it might appear to be appropriate, could lead to disastrous consequences. Let me give you just one example.

The management plan for the area that would become law if S. 2018 is passed requires the development of a comprehensive fire

management plan. The legislation requires that the Pueblo of Sandia and the counties must agree with all new uses in this area. To the extent that the fire management plan fails to meet the needs of either the Pueblo or the county, there will be a conflict. If these conflicts are not resolved up front, when fire occurs I am concerned that fire crews will not be able to implement suppression efforts in a timely and effective manner. This should be determined in advance or in a manner better than prescribed in the Senate bill.

I also suspect that private land owners will likely have a different goal for the fire plan. They will likely want immediate and complete suppression of fires, while Forest Service and perhaps the Pueblo may support the introduction of more prescribed burns and let-burn policies for the forests. Given our experience in the Los Alamos fires of 2000, I for one would like to know about what the fire plan for this area might be before we legislate.

Finally, the bill operates to legislatively ratify a new management plan for the area that has not enjoyed the benefit of a formalized public review. The management plan as some read it is not subject to review under the National Environmental Policy Act. In fact, the plan has not been reviewed under any of the relevant statutes that Congress has passed and various presidents have signed into law.

Now, it may very well be that it is the position of some, that this is immune from those laws. We hear so much from Americans that we cannot have any kind of transaction that is even close to a major Federal action without those laws. I just raise it here today.

While it is true that any future amendments to this proposed management plan might be subject to some public and agency review, the underlying plan S. 2018 ratifies, if it is ratified, is exempt, I repeat exempt, from such review. This strikes me as a significant departure from the entire environmental regime imposed on the resources of the West during the past 25 years.

I have made it clear to Senator Bingaman, my good friend, and others that I have other problems with S. 2018, the underlying settlement agreement and the management plan it proposes to ratify. I will include those concerns with my formal statement.

Before I conclude, I understand that the Pueblo of Sandia supports most of the Bingaman legislation. The Pueblo will speak for itself this afternoon and it will be helpful to know, if they don't, what they don't. I am told that some of Bernalillo County's concerns and those of the city of Albuquerque also have been addressed. That would mean, if it is only some, that there are some that are not. We will hear from the county and home owners later.

I understand that many points of clarification remain. The devil is always in the details. We will hear these details today. I know that home owners and the county have spent hundreds of thousands of dollars on this issue and, to quote one of them, they are about "bled dry." Yet in this country we try to find justice, not on the basis of who has the most money, but who has the most facts.

With that, I welcome today's hearing and look forward to the witnesses' testimony. There are two other issues that I would quickly raise. They are addendums to my statement. One is veto power. I believe that we have to look at that carefully. The Federal Govern-

ment must—there is another issue. If in fact any laws are changed or management affecting the area is changed by the Federal Government, the Federal Government must compensate the Pueblo as if they own the land in fee, full compensation in that event.

Tribal law precedent raises another interesting issue and there are two others, but I will just ask that they be inserted in the record as if I had stated them.

Thank you, Mr. Chairman.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR
FROM NEW MEXICO

INTRO

First, I want to thank the Energy and Natural Resources Committee and the Indian Affairs Committee for holding this joint hearing. As a long-time member of both committees, I believe that the important subject before us today merits such an unusual joint hearing. I also welcome the witnesses, especially those New Mexicans who have traveled a long way to testify today. The large number of other New Mexicans present at this hearing dramatizes the interest that many of my neighbors in Albuquerque and the surrounding region have in this matter.

HISTORY

Before I comment directly on the bill that is the subject of today's hearing, I would like to speak briefly about this land, its history and importance to our state.

Much of the area in question has for the past quarter of a century been a Congressionally mandated Wilderness Area, the highest level of protection for publicly-owned land the Congress can bestow. Before most of the members of these two committees were Senators, I worked on the creation of the Sandia Wilderness Area. In 1978, during my first term, we were able to pass the wilderness designation, giving this land wilderness protection even though it is easily accessible by a very short walk from the city limits of Albuquerque. Indeed, its proximity demanded wilderness designation and without it, this land was facing potentially severe degradation. I consider designation of this wilderness area one of the most important legacies I will leave as a Senator from New Mexico.

Although the land is a protected wilderness area, more than 1 million visitors use it each year, and significant commercial interests exist on the land. Apparently the stewardship of these 10,000 acres has been good, even in the face of dramatic increases in use. I believe that all parties to this issue want this good stewardship to continue and this land preserved for posterity. Governor Paisano has told me that personally, as have homeowners and city and county officials.

Three significant interests seem relevant here: first, the interest of the Pueblo of Sandia, whose members have used the land before any of the other parties in this matter; second, the interests of the private landowners in the area, who find themselves in some potential jeopardy as far as full use and access to their property; and, third, an often forgotten interest, that of the American public that uses this unique urban-wilderness interface in ever-increasing numbers.

The specific question that has haunted this land since legal proceedings began in the 1980s is simple: "Was a serious error made in surveying the original grant of land to the Pueblo of Sandia, or was the original survey accurate to the best of our ability to determine?"

Our search for the truth in this matter faces serious historical challenges. The origin of the dispute began more than 200 years ago and has spanned several different governments—Territorial, Colonial, Pueblo, and Federal. The original documents are written in an archaic Spanish not widely used today in our hemisphere. But this property's confusing historical record is now further complicated with a wide diversity of current interests in this land.

I am pleased that among the witnesses we will hear from today is one of the very few persons alive who has personally reviewed this specific question.

THE BILL'S MAIN PROBLEMS

We are here today to review a bill proposed by my colleague, Senator Bingaman. I have several concerns with the bill's general approach, as well as its substantive effect.

First, the bill fails to resolve, or even address the core question which has led to these 20 years of litigation. Sen. Bingaman's bill, instead, takes the approach of attempting to embody in legislation the basic points of a settlement agreement entered into last year by only some of the parties involved in this litigation. Sen. Bingaman's bill thus departs from the normal avenues established by Congress to deal specifically with claims such as these: the Indian Claims Commission Act ("ICCA"), used quite often in similar cases in our state and throughout the nation; or, the use of conservation easements to insure that historical uses be retained, but that management of public lands be left in the hands of public agencies.

Secondly, Sen. Bingaman's bill operates to effectively give the Pueblo veto power over all future uses of the land. This situation, while at first blush may appear appropriate, could lead to disastrous consequences.

Let me give you an example. The Management Plan for this Area (that would become law if S. 2018 is passed) requires the development of a comprehensive fire management plan. The legislation also requires that the Pueblo of Sandia and the Counties must agree with all new uses in this area. To the extent that the fire management plan fails to meet the needs of either the Pueblo or the County there will be a conflict. If these conflicts are not resolved up front, and a fire occurs, I am concerned that fire crews will not be allowed to implement suppression efforts in a timely and effective manner. I also suspect the private landowners will likely have a very different goal for the fire plan, (i.e. they will likely want immediate and complete suppression of fires), while the Forest Service and perhaps the Pueblo may support the introduction of more prescribed burns and a let-burn policy for natural fires. Given our experience in Los Alamos and the fires of 2000, I for one would like to know about what the fire plan for this Area might be, before we legislate.

Finally, the bill operates to legislatively ratify a new management plan for the area that has not enjoyed the benefit of a formalized public review. This management plan, as some read it, is not subject to review under the National Environmental Policy Act. In fact, the management plan in S. 2018 has not been reviewed under any of the relevant statutes Congress has passed and various President's have signed into law. While it is true that any future amendments to this proposed management plan might be subject to some public and agency review, the underlying plan that S. 2018 ratifies is exempt, I repeat, exempt from such review. This strikes me as a significant departure from the entire environmental regime imposed on the resources of the West during the past 25 years.

I have made it clear to Sen. Bingaman and others that I have other problems with S. 2018 and the underlying settlement agreement and management plan it proposes to ratify. I will include those concerns with my formal statement today as part of the record.

Before I conclude, I understand that the Pueblo of Sandia supports most of the Bingaman legislation and the Pueblo will speak for itself later this afternoon. I am told that some of Bernalillo County's concerns, and those of the City of Albuquerque, have also been addressed. We will hear from the County and homeowners later, also. I understand the many points of clarification remain, and that the devil is always in the details. We will hear those details today. I know that the homeowners and the County have spent hundreds of thousands of dollars on this issue and, to quote one of them, "are about bled dry." Yet, in this country, we try to find justice not on the basis of who has the most money, but who has the most facts.

With that, I welcome today's hearing and I look forward to the witnesses' testimony.

ADDENDUM

Here are some of my specific other concerns with this legislation:

1. "Veto Power"

- while this legislation gives greater control to local parties over land use, it arguable contradicts public and environmental protections such as those under NEPA. Specifically, two local counties and the Pueblo are given an exclusive "right to consent" to new uses in the area. The public is left out of any management decisions.
- If Congress or the Forest Service ever changes laws or management effecting the area, the federal government must compensate the Pueblo as if they owned the land in fee. This opens the federal government up to millions in potential claims.
- This assumes that the Pueblo has what is tantamount to a right in fee title. That has not been shown. To date, no court of law has heard the merits of this claim based on a presentation of evidence. The only finding that the claim is

meritorious is an opinion of one Interior Solicitor which is diametrically opposed to a previous Solicitor's opinion. There are clearly differences of opinion on the law and facts that could be decided one way or the other.

2. Tribal Law Precedent

- There is no precedent for any Indian tribe having exclusive criminal and civil jurisdiction over a tract of public land. This confuses the traditional distinction between tribal land and non-tribal land.
- As written, this area could be the exclusive hunting and fishing domain of the Pueblo ostensibly for religious and cultural purposes. This will inevitably result in conflicts with non-Indian users of the area as well as the adjacent land-owners.
- Congress intended to settle all outstanding tribal land claims under the Indian Claims Commission Act ("ICCA"). If the legislation were to pass, the question becomes this: Could tribes that either failed to bring claims before the ICCA or tribes that received monetary compensation under the ICCA, now look for an administrative boundary adjustment for additional land?
- Based on former Solicitor Leshy's opinion, tribes and others may consider appealing to the Department of the Interior for boundary adjustments, since Mr. Leshy held that Interior can administratively remove Congressionally designated land from the Forest Service.
- S. 2018 purports to give trust status to certain lands acquired by the Pueblo within the area. This gives the Pueblo exclusive jurisdiction over these small islands of trust land contained within a National Forest. For the general public, this raises the specter of Interior and the Pueblo making different rules and regulations for small inholdings. Thus, could an inadvertent trespass by an innocent hiker land that person before a tribal court?
- The jurisdiction given to the Sandia Pueblo under the bill is representative of "Indian Country"—that of tribal trust land, while purporting to be maintained as National Forest land. Therefore, will all tribal trust rights and responsibilities also apply?

3. Wilderness Issues

- The bill eliminates section 4(d)(4) of the Wilderness Act, which gives the President authority for establishment of facilities for the general public interest. Not only does this pick and choose the applicability of sections of the Wilderness Act, but it could potentially effect needed emergency response activities such as for fire.
- If modifications of the Wilderness "nature" of the area—which is a vague characterization—occur, the government will be responsible for millions of dollars in damages to the Pueblo.
- Finally, the bill "freezes" current land status and management in the year 2002. At the same time, S. 2018 exempts this area from some existing laws and exempts the area from all future laws unless Congress specifically applies those laws to the area.
- The Pueblo has claimed it seeks protection of the area, and wishes only free and unrestricted access to the area for traditional and cultural uses. Therefore, does S. 2018 imply that: federal Wilderness designation is NOT protective enough; and current federal laws to preserve and protect cultural and religious resources, such as the American Indian Religious Freedom Act, will not be adequate?

4. Bad Precedent

- I am concerned, in addition, about the precedent this sets for similar disputes in my home state and in other states. In this time of unprecedented national litigation over land and water, I believe we have to be very careful. I worry about the impact our actions might have on other historically-based claims, not just from American Indians, but from other parties who believe that their land has been withheld from them unjustly. When we are in an area of great uncertainty, our public responsibility is to move with great care.

Chairman INOUE. Without objection.

Now it is my pleasure to recognize a member of the Energy Committee, Senator Craig.

**STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR
FROM IDAHO**

Senator CRAIG. Mr. Chairman, let me first ask unanimous consent that the testimony of Senator Frank Murkowski, the ranking member of that committee, become a part of the record.

Chairman INOUE. Without objection, so ordered.

Senator CRAIG. I think as we know, he is on the floor with the chairman this afternoon as we move to try to finalize the energy bill.

I have a lengthy statement and I will ask unanimous consent that it become a part of the record and I will shorten it for the sake of those witnesses who are sitting out there diligently waiting to be heard by this committee. But I will tell you that a lot of what I have to say is reflective of many of the comments of the senior Senator from the State of New Mexico.

While I understand these issues oftentimes take on a local importance and a local character as it relates to the need to settle, when we are dealing with public lands in our Nation there are processes and rules that we all play by and we must play by for the sake of the public. Without question, Pueblo Sandia and the tram company, the Forest Service, the Department of the Interior, as well as all of the affected parties who did not sign the agreement, deserve to be heard. I would hope, as I think my colleague from New Mexico has already stated, we can make an effort to resolve this issue.

You know, claims stemming from 1859 or earlier that were not resolved by the Indian Claims Commission between 1946 and 1978, well, I guess they ultimately make their way here. As a result of that, we have got to resolve them. At the same time, following those time frames and especially starting in the mid-seventies, we developed some processes of transparency in decisionmaking that are critical to the public interest, whether it is FLPMA, the Federal Land Planning Management Act, or whether it is the National Forest Management Act.

We are talking about what, 10,000 plus acres of I think critical importance to all parties involved, and a public interest that has to be addressed here. What it appears might be happening—and I say this with some trepidation—is that this legislation would convert the area into a super-wilderness, one where the ability of a President to approve water development, transmission lines, and possible roads and overriding public needs are taken away.

Now, clearly in a wilderness area I can understand that to a point of degree, but at the same time provisions under the Wilderness Act and the Clean Water Act and other environmental protections we would not want to ignore, and I think they have to be resolved as we move forward.

I am worried about the ability of the Forest Service to deal with the very real problems that were, again, spoken to by my colleague as it relates to wildfires. New Mexico last I checked was still burning and probably will be this summer. Arizona is now on fire. Somehow we have grown to believe that fire left alone is a natural way of taking care of the landscape. Under normal settings, certainly not pre-Pueblo but pre-European man, that might be argued as a valuable and important tool.

Post-European man's presence on the soil would suggest that we change the environment in a way for some of that management to control these fires and manage them accordingly. The fuel loading is critical. I believe that is an important issue here.

Also, the plague or, if you will, I think it is pronounced "HANTAS" virus, is an issue that I think all of us are a bit concerned about.

Mr. Chairman, let me ask you to move on with the hearing. At the same time, I think that a thorough review in the public arena of this issue and a settlement where all parties were not—I should say may have been at the table, but did not agree, that is still in conflict. While public policy does conflict resolve sometimes, it also creates new conflict. We would like to hope that in the process we could resolve all of that.

Thank you.

[The prepared statements of Senator Craig and Senator Murkowski follow:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Chairman Bingaman and Chairman Inouye, I appreciate the opportunity to come together in a joint hearing and learn more about this land claim, it's Settlement Agreement, the Management Plan and S. 2018. I look forward to hearing from the various witnesses who have been invited to help us better understand the intricacies of this legislation.

Normally, legislation such as this, to resolve a local land dispute, would draw very little attention. Given the relatively unique solutions proposed in this legislation and its potential to both help resolve other federal land disputes, as well as perhaps solicit new land disputes, expect this hearing will be the beginning of a discussion that will be interesting and at times challenging.

I think that all parties to this dispute, the Pueblo of Sandia, the Tram Company, the Forest Service and the Department of the Interior, as well as those affected parties who did not sign the Settlement Agreement, and Congress are all going to have to be flexible and stretch to find a solution that is fair and equitable to all involved.

I am interested in learning how it is that a claim stemming from 1859, or earlier, was not resolved by The Indian Claims Commission between 1946 and 1978. I understand that several of the witnesses here today can help us better understand that. I am also quite frankly concerned about the number of tribes that lost claims in the Indian Claims Commission process might react to this legislation.

Like several other Senators here today, I have concerns about some of the process questions. I am curious how the elimination of FLPMA and NFMA in this 10,000 acre area meets the commitments Congress made to the American Public to empower them to help shape federal land management and policy.

While I understand how difficult it is to gain settlement agreements, I think we have a fundamental responsibility to ensure all potentially affected parties to these agreements are protected. I am told we have a number of witnesses here today that did not sign the agreement and I am sure they will help us understand why, as well as what we need to do in this legislation to protect their rights.

I am troubled by the inconsistencies between the proposed Management Plan and the Settlement Agreement for this area, both of which will be tiered to the legislation. I wonder if we wouldn't be better off simply writing the important provisions of these documents into a longer bill to eliminate some of the inconsistencies.

I also note, with some trepidation, that this legislation would convert this Area into a "super-wilderness", one where the ability of the President to approve water development, transmission lines, and possibly roads for an overriding public need has been taken away. If we are willing to legislate changes to the Wilderness Act in S. 2018, what other provisions of the Wilderness Act, the Clean Water Act, or other environmental protections will we want to ignore to help resolve other local land management issues?

I worry about the ability of the Forest Service to deal with the very real problems such as wildfire or endemic diseases such as the Plague and the Hantavirus in relation to some of the limitations in this legislation. For instance, S. 2018 includes a provision in the management plan that indicates that a fire management plan must

be developed, but provides the Pueblo of Sandia the ability to veto new activities—is this a conflict?

Likewise, the documents suggest the existence of both the Plague and the Hantavirus, but include provisions that require the agency to allow the Pueblo of Sandia a full right of access to the area to carry-out both cultural and traditional activities. In the event of an outbreak of either of these deadly endemic diseases will federal land managers have the ability to enforce a full closure of the area to keep all people out of the area until the problem subsides? If not and the Pueblo insist on exercising their valid right of access—will the Federal Government be liable if a Tribal member contracts either of these diseases?

Finally, Mr. Chairman, I need to know more about the provisions that give the Pueblo of Sandia a right of claim, as if they held the title to this land, to demand payment from the Federal Government if Congress, the Forest Service, or others change the management of this area in the future? How much is that liability? And how do we defend encumbering the generations who follow us when we have no idea what the future issues and problems might be in this area?

I apologize for the length of this statement, Mr. Chairman, but I hope you understand that this is not a simple land claim, and S. 2018 is not a simple solution. I trust each of our witnesses today will provide us testimony that helps us understand the issues and provides us with suggestions that will help us resolve this claim in the most fair and equitable means possible.

PREPARED STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR
FROM ALASKA

Chairman Bingaman and Chairman Inouye, I am pleased that you have called this hearing. As a member of both the Indian Affairs Committee and the Energy and Natural Resource Committee this legislation is both interesting, innovative, and I might add perhaps a bit controversial.

To the extent that we can find a resolution to this land claim that satisfies both the Pueblo of Sandia and the legitimate needs of the American Public, I am interested in working with you on this legislation.

I am quite interested in the provisions that provide a direct role for tribal and community leaders federal land management. In Alaska we have a strong desire to help our people have more of a say in how federal land management is carried out. I see potential opportunity to use some of the provisions in S. 2018 as a model to help resolve other potential Native claims and concerns with federal land management in Alaska.

Having said that, I am troubled by a number of issues related to this legislation. For example, the back and forth history of Solicitor's Opinions from the Department of the Interior and the fact that Solicitor Leshy's opinion was signed during the 23rd hour and 59th minute of the Clinton Administration. I hope he will help us understand both the content and the timing of his January 19, 2001 opinion.

I am also troubled by tiering a Settlement Agreement and Management Plan that was developed outside the normal NMFA and NEPA processes. I am concerned because it was not signed by all affected and interested parties to this dispute and legislation. I am told we will hear from several of those parties today and I look forward to hearing their testimony.

I also wonder about doing away with the 4(d)(4) provision of the Wilderness Act in this area and if this will open a floodgate of other proposals from which to pick and choose which provisions of which laws to live by on other National Forests.

Finally, I believe we must carefully consider the provision of this proposal that would convey a property right, compensable by the Federal Government, to the Pueblo of Sandia if some future Congress or Administration changes the management of this area.

I do not want to foreclose any of these options, because a great many of my constituents in Alaska would have benefitted had the federal government been forced to deal with them. I particularly mindful of how Congress ignored the effect on local industries and people in restricting the use of the Tongass. We now have the curious situation that there is more firewood harvested in New York than all the harvesting on the Tongass.

Many of the native villages and corporations would like to have a larger say in the absentee management of other federal lands in Alaska. So there is much fodder in this proposal and this may be a useful vehicle to improve the management situation in Alaska.

Thank you Mr. Chairman. I look forward to the testimony.

Chairman INOUE. Thank you very much.

Mr. Chairman, it is all yours.

Chairman BINGAMAN. Well, how far have you gotten here, Mr. Chairman?

Chairman INOUE. Just the opening remarks.

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR
FROM NEW MEXICO**

Chairman BINGAMAN. I just parachuted in.

Let me say a couple of things. First, thank you for agreeing to do the joint hearing with us. This is a very important issue in our State. I know we have various witnesses here from New Mexico and I very much appreciate them coming all this distance.

I want to also quickly thank the Forest Service, employees of the Forest Service out in our State, for the hard work that they put into trying to move this process forward. I think probably others have commented on the fact that this is a very complicated set of issues and there is not an easy resolution to it. If there were, I am sure we would have found it long ago and put the issue to rest.

I introduced S. 2018 hoping that we could find a legislative solution so that the litigation could stop. That was my hope. I do not know if that will be possible or not, but my thought was that I was taught when I was practicing law that sometimes a settlement is better than proceeding with more and more litigation all the time. It seemed to me that a lot of good work had gone into trying to come up with a settlement, not that all parties had agreed to it, but that a lot of good work had gone into that and we should take that and try to build on it, improve upon it, and get as many people to sign onto it as possible.

So that was the effort behind this legislation. I hope that that is the effect it has. I think we all are well aware of the Senate schedule and the schedule of the Congress. We are hurtling through this second year of this session or this Congress, and if we are not able to get agreement on something to move ahead here in the near future it is going to be impossible to get anything enacted through the House and Senate before the Congress adjourns this fall.

I believe in November it would be expected at that point that litigation would commence again if nothing has been done by the Congress.

I also should thank Solicitor Myers for going to New Mexico as he did this last week. I know he spent a couple days out there talking to the various parties. I very much appreciate all the effort he has put into it. My own staff has worked hard on the issue as well and I appreciate that very much.

So thank you and I will sit and listen to some of the testimony. Thank you.

[The prepared statement of Senator Bingaman follows:]

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR
FROM NEW MEXICO

We are here today to receive testimony on a bill I recently introduced, S. 2018—the T'uf Shur Bien Preservation Trust Area Act.

I would like to welcome the witnesses from New Mexico who have traveled a long way to be here today: Governor Paisano; Bernalillo County Commissioner Cummins; Edward Sullivan; Guy Riordan; Walter Stern; Anita Miller; and Dr. Stanley Hordes.

Let me take a moment to thank employees of the Forest Service, particularly those working in New Mexico. I think the Forest Service has worked hard to help this process move forward. They have been accommodating to a great many different points of view. I also would like to thank Solicitor Myers for visiting the area last week and taking the time to meet with several of my constituents who are involved in this matter.

To state the obvious, this is a very complicated situation. The matter has been litigated for a number of years and I assume that if Congress does not act during this session, it will continue to be litigated for the foreseeable future.

I introduced S. 2018 and scheduled this hearing in order to seek a solution acceptable to the parties rather than one imposed by the courts. Here, all parties have the same overall objective—namely, to preserve the land at issue in an undeveloped state and continue public access in perpetuity. Therefore, it certainly seems possible that a solution should be within reach.

However, I believe we all need to be realistic as to what may or may not be possible prior to the expiration date of the Settlement Agreement. Given that very few days remain in this Session of Congress, it will be challenging enough to enact a bill that all parties and the delegation support. Opposition will make enactment impossible.

S. 2018 relies on a settlement as the basis for resolving the Pueblo's land claim. I believe this is not only the appropriate way to resolve this matter, but also the only realistic way by which it will be resolved. I recognize, though, that concerns about the settlement were expressed by parties who did not participate in the final stages of the negotiations. I worked with those parties to address their concerns while still maintaining the benefits secured by the parties in the Settlement Agreement.

I know that some are interested in pursuing new approaches for resolving this claim. It seems to me, however, that any significant new approach will be difficult to assemble with requisite support during the time that remains this Session. Thus, I hope that those suggesting alternative approaches will be able to provide realistic proposals for resolving the claim. I am open to changes to the bill so long as they are widely supported and help bring this matter to a close.

I look forward to all of the witnesses' testimony and hope that through an active dialogue, we can help alleviate any remaining concerns with the general approach taken in the settlement and S. 2018.

Chairman INOUE. Do you want to take over?

Chairman BINGAMAN. Why don't you go ahead, Mr. Chairman. You are doing such a good job.

Chairman INOUE. Well, we are honored to have with us the Solicitor of the Department of the Interior, the Honorable William Myers III.

Mr. Solicitor.

**STATEMENT OF WILLIAM G. MYERS III, SOLICITOR,
DEPARTMENT OF THE INTERIOR**

Mr. MYERS. Thank you, Mr. Chairman and Mr. Chairman. It is a pleasure to be here before the committees today to testify on S. 2018. I will make a few remarks. I ask that my full statement be entered into the record.

Chairman INOUE. Without objection, so ordered.

Mr. MYERS. I will be very quick so that you can hear from my colleagues at the table and ask us any questions you might have. But as has been noted, S. 2018 would implement with some modifications the agreement of compromise and settlement that was signed by the Pueblo, the Sandia Peak Tram Company, and the United States on behalf of the Departments of Justice, Agriculture, and Interior.

The bill and the land dispute both affect approximately 10,000 acres of the Cibola National Forest. The administration supports a legislative solution and is willing to work with the New Mexico delegation and members of the committee to that end.

I say in my testimony that I did, as Chairman Bingaman mentioned, have the opportunity to travel to the site last week after doing some of my homework at my desk on this issue. I do not pretend to suggest that I know all there is to know about this. I am learning a great deal even today.

But I did go out. I talked to various interested parties in my office in Albuquerque. That included the Forest Service, the tram company, the city of Albuquerque, Bernalillo County council members, the Sandia Mountain Coalition, members of the Sandia Heights Home Owners Association, and of course the Pueblo of Sandia itself.

I also took the opportunity to go by myself up to the Pueblo and walk the Pueblo, get a view of the crest and of the western slopes ahead of the crest, and also to go into some of the subdivisions that are, as depicted on the diorama that you have, hidden between what is the current boundary of the Pueblo and the crest of the Sandia Mountain. I did that because I wanted to see it for myself, to see what perhaps Mr. Clements the surveyor saw many, many decades ago, and to get a sense of the landscape and of the issues. It was a very educational process for me.

Out of that I came away with a distinct impression that all of the parties are tired of litigation, either because of the time or the expense or both, that they would like to resolve this problem and go about living on and enjoying the land that we are discussing, and that they have little confidence, I suppose I should say, in the administrative process, and I expect that is a result of the fact that there was an opinion by one of my predecessors, Solicitor Tarr, in 1988; there was a second opinion by another predecessor, Solicitor Leshy. Those two opinions did not, obviously, agree, and now I hold the office and if I am called upon to make an opinion I suspect I will have a third opinion that will fall somewhere in the parameters of those two, but will not be the same as either of them.

So the parties are wary of the administrative process. They have already spent time and money in the judicial process. That leaves one branch of government, which of course is yours. So it makes sense that we are here today to discuss with you and for you to hear from other interested parties the issues that revolve around these matters.

I think I will simply stop there. My testimony provides some specific instances in which I think the legislation could be changed to clarify comments that I heard while I was in New Mexico and points that I came up with in my own review of the legislation as to where changes could be made. I will let those comments stand and speak for themselves. They are in the record now.

I think, Mr. Chairman, with your indulgence, I will stop here and you may hear from my colleagues, or if you would like you could ask me questions.

[The prepared statement of Mr. Myers follows:]

PREPARED STATEMENT OF WILLIAM G. MYERS III, SOLICITOR,
DEPARTMENT OF THE INTERIOR

INTRODUCTION

Mr. Chairman and members of the Committees, I appreciate the opportunity to be here today. I am William G. Myers III, Solicitor for the Department of the Interior. It is my pleasure to be here today to testify on behalf of the Department on S. 2018, a bill to create the Tuf Shur Bien Preservation Trust Area ("Area") within the Cibola National Forest. S. 2018 would implement, with some modifications, the Agreement of Compromise and Settlement signed by the Pueblo of Sandia ("Pueblo"), the Sandia Peak Tram Company, and the United States on behalf of the Departments of Agriculture, Justice, and the Interior on April 4, 2000. The questions of ownership and use of approximately 10,000 acres in the Cibola National Forest have been the subject of debate for nearly 20 years in both the judicial and executive branches of government and among the affected parties. The Administration supports a legislative solution and is willing to work with the New Mexico delegation and members of the Committees to that end.

I have reviewed relevant portions of the record in both the Executive Branch and the Judicial Branch. I have recently taken the opportunity to look at the Area from both the ground and in the air and I have talked to representatives of the parties most affected by the legislative proposal. I quickly concluded what is perhaps obvious to the Committees; all sides are tired of litigating this matter and the non-federal parties are concerned about the uncertainty of the administrative process should the settlement agreement lapse in November 2002. I found broad support for a legislative solution. The following comments are offered in a spirit of reasonable compromise toward finality of the dispute.

BACKGROUND

The Pueblo of Sandia claims the western face of Sandia Mountain, which is part of the Sandia Mountain Wilderness to the northeast from Albuquerque, New Mexico. The Pueblo of Sandia's claim is based on a 1748 land grant from Spain to the Pueblo and an 1858 Act of Congress that confirmed the grant. The 1858 Act directed that a survey of the grant be made and a patent issued to the Pueblo. The survey was conducted in 1859 and a patent was issued in 1864. The Pueblo claims that approximately 10,000 acres were mistakenly excluded from the grant due to a survey error. This area is now part of the Cibola National Forest and the Sandia Mountain Wilderness and extends generally from the foothills to the crest of the main ridge of the Sandia Mountains.

In 1983, the Pueblo first approached the Department requesting a resurvey of their Spanish land grant and the issuance of a new patent claiming the eastern boundary of the grant had been incorrectly surveyed in 1859. In 1988, Solicitor Ralph Tarr issued an Opinion which found that no resurvey was warranted.

In 1994, the Pueblo sued the Department of the Interior and the Department of Agriculture, claiming that the Department of the Interior's refusal to resurvey the grant was arbitrary and capricious. The United States District Court for the District of Columbia vacated the Tarr Opinion and remanded the issue to the Department in 1998. An appeal was filed, but proceedings were stayed for over a year pending mediation efforts among the Pueblo, the Sandia Peak Tram Company, the United States, the City of Albuquerque, the County of Bernalillo, and the Sandia Mountain Coalition. These mediation efforts resulted in the April 2000 Agreement of Compromise and Settlement, which was signed by the Pueblo, the Sandia Peak Tram Company, and the United States (represented by the Departments of Agriculture, Interior, and Justice). In November 2000 the Court of Appeals of the District of Columbia dismissed the appeal on the grounds that it lacked jurisdiction because the District Court's decision was not a final decision.

On January 19, 2001, Solicitor John Leshy issued a new opinion which concluded that the 1859 survey of the Pueblo of Sandia's grant was erroneous. Mr. Leshy determined that a resurvey was warranted, but recommended that the Department conduct a resurvey of the grant only if the April 2000 Agreement of Compromise and Settlement was not ratified by Congress. The Agreement binds the parties until November 15, 2002, and will become permanent only through the enactment of legislation.

S. 2018

Pursuant to the terms of S. 2018, Congress would authorize the establishment of the Area within the Cibola National Forest and the Sandia Mountain Wilderness. Title to the Area would remain in the United States while granting unrestricted ac-

cess to the Area to the members of the Pueblo or the members of any other federally recognized Indian tribe authorized by the Pueblo to enter the Area for traditional and cultural uses. In addition, the Sandia Mountain Wilderness would be preserved in perpetuity as part of the Cibola National Forest and continue to be administered by the Secretary of Agriculture through the Forest Service. Gaming, mineral, or timber production in the Area would be prohibited under the bill.

Under S. 2018, the Pueblo, as well as Bernalillo and Sandoval Counties, would have the right to give consent or withhold consent to new uses of the Area. The Pueblo would also be given the right to consultation regarding modified uses and would have exclusive authority to administer access to the Area for traditional and cultural uses by its members or the members of any other federally recognized Indian tribe.

The legislation would also extinguish the Pueblo's claim of title to the Area and would therefore clear the titles of private landowners in the Area. S. 2018 would grant the Pueblo the right to compensation, as if it were an owner in fee, if a subsequent act of Congress were to diminish the wilderness and National Forest character of the Area.

S. 2018 grants irrevocable rights of way in perpetuity to the County of Bernalillo for roads in the Sandia Heights South Subdivision and Juan Tabo Canyon and the Crest Spur Trail (which crosses the La Luz tract). Modification or expansion of the rights of way for those roads would be subject to the Pueblo's written consent. The Secretary of the Interior would be required to grant irrevocable rights of way in perpetuity across Pueblo lands in existing utility corridors for utilities providing services to the private landowners in the subdivisions on Sandia Mountain.

The aerial tramway, along with the crest facilities on Sandia Mountain, are excluded from the Area under the bill. Thus, the Pueblo would not have any civil, criminal, or administrative jurisdiction over the Area. However, the La Luz tract, which is owned by the Pueblo, would be transferred to the United States and held in trust for the Pueblo, subject to all limitations on use pertaining to the Area.

The bill would not provide for the United States to take into trust the property owned by the Pueblo in the Evergreen Hills subdivision, but instead directs the Secretary of Agriculture to convey NFS land within the subdivision to the Pueblo.

CONCLUSION

The United States, including the Department of the Interior, is bound by the existing Settlement Agreement until November 2002. It is the Department's view that the best way, and possibly the only way, to resolve this longstanding dispute is through legislation. To that end, I have attached some detailed comments to my testimony.

The Department looks forward to working with you, Mr. Chairman, the New Mexico delegation, and the other members of the Committees on this legislation. This concludes my testimony. I would be happy to answer any questions the Committees may have.

ATTACHMENT

In addition to our testimony, we are providing the following detailed comments:

Section 4(c)(3)

Bernalillo and Sandoval Counties are provided the right to consent or withhold consent to new uses in the Area. This provision parallels the right given to the Pueblo in Section 5(a)(3)(i). The Administration supports local governmental involvement in federal land management decisions. It is not clear, however, that either of the two counties would exercise this authority if given to them. If the authority to veto new uses remains in the bill, those uses should be defined with particularity in the legislation so that both the federal agency and the party exercising the right have some direction from Congress as to what is intended. A definition of new uses is contained in the Management Plan which is an attachment to the Settlement Agreement, and this would be a good place to start.

Section 12

The confusion and concern arising out of the lack of a definition of new uses, as discussed above, illustrate the concerns generally with Section 12. That section ratifies and confirms the Settlement Agreement and Management Plan. The Administration believes that it would be better to legislate all necessary provisions of the Settlement Agreement and the Management Plan and forego incorporating these documents by reference. Otherwise, the potential for protracted litigation could arise after good-faith efforts to reconcile the law, the Agreement, and the Plan fail.

Section 4(g)

The last sentence of this section could be clarified if rewritten to read, "Establishment of the Area does not in any way modify the existing boundary of the Pueblo grant as depicted on the map defined at Section 3(g)." This will eliminate any confusion as to the definition of the "boundary" which has been at the heart of the dispute for nearly twenty years.

Section 7(b)(3)(B)

This section is one of several sections that uses the phrase "traditional and cultural." Further definition of this phrase would be useful.

Section 14(d)

The first sentence regarding land acquisition is ambiguous because it could be read to encompass, for example, the La Luz tract, as "any other privately held lands within the Area." Under Section 8(e), the La Luz tract cannot be acquired by the Secretary of Agriculture because this tract is transferred to the United States to be held in trust for the Pueblo and to be administered by the Secretary of the Interior.

Other Comments

The Committee should consider a new section that would state that, except as provided by Section 5(c)(1), nothing shall be construed in this Act as a legislative exercise of the power of eminent domain.

Some parties have indicated that use of the term "Trust" in the title of the bill raises the question of whether the entire Area is to be held in trust by the United States, similar to the La Luz tract in Section 8(e). This clearly is not the intent, as explained in the Chairman's remarks at page S1940 of the March 14, 2002, *Congressional Record*. However, to address any concerns in this regard, either "Trust" should be removed from the title and similar references in the bill or the Chairman's explanation should be incorporated into the bill.

Chairman INOUE. Thank you very much, Mr. Solicitor.

Now we are pleased to have the Honorable Tom Sansonetti, the Assistant Attorney General.

Mr. Sansonetti.

STATEMENT OF THOMAS L. SANSONETTI, ASSISTANT ATTORNEY GENERAL FOR ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF JUSTICE

Mr. SANSONETTI. Mr. Chairman, other members of the committees: Thank you for the invitation today. I think I too will just simply ask that my entire statement as submitted to the committee be entered into the record.

Chairman INOUE. Without objection, it is so ordered.

Mr. SANSONETTI. I think I want to go ahead and just focus my comments here on the involvement of the Department of Justice in the process to date. The Pueblo first contacted the Department of the Interior in 1983, contending that the 1859 survey had mistakenly set the wrong boundary, excluding about 10,000 acres, and that the 1864 patent was therefore erroneous. The Pueblo requested a resurvey of their land grant and the issuance of a new patent designating the true eastern boundary as the crest of the mountain.

In December 1988, the Department of the Interior Solicitor Ralph Tarr issued an opinion, in which Secretary Donald Hodel concurred, denying the Pueblo's claim that the eastern boundary of the grant should be resurveyed and located along the crest of the Sandia Mountain. It was at that time the Department of Justice got involved because in 1994 the Pueblo filed an action against the Secretaries of the Interior and Agriculture in the U.S. District Court for the District of Columbia. The Pueblo sought an injunction requiring the Department of the Interior to correct the allegedly er-

roneous boundary. Of course, the Department of Justice defended the Secretaries of the Interior and Agriculture.

I will not go through all the details of the litigation. They are discussed in my written testimony. But I will note that, in addition to the United States and the Pueblo, other parties to the litigation included an association of land owners living in subdivisions within the boundaries of the national forest, and the county of Bernalillo, the city of Albuquerque, and Sandia Peak Tram Company were also involved as *amicus curiae*.

In 1998, the parties in the case decided to try to resolve it without further litigation. Negotiations ensued and 2 years ago, April 2000, a settlement agreement was signed by the predecessors of the three individuals that are here today: the Assistant Attorney General at Justice, the Solicitor at Interior, and the General Counsel at the Department of Agriculture. It was also entered into by the Pueblo of Sandia and the Sandia Peak Tram Company. The other parties did not sign the settlement agreement.

Now, this agreement, the settlement agreement, would settle the Pueblo's land claim suit upon ratification by an act of Congress. The settlement addresses many other important issues pertaining to the management of relevant portions of the Cibola National Forest, as well as questions of access across Pueblo lands to privately owned areas in the vicinity of the claim area itself.

So at the present time the Department of Justice is on the sideline. There is no litigation ongoing. The appeals taken from the adverse district court action to the Circuit Court of Appeals were eventually dismissed. The settlement agreement is now in place, and obviously if S. 2018 becomes law then that would settle the claims of the Pueblo.

If not, and I believe the date is November 15, 2002, that the settlement agreement by its own terms expires, then the settlement agreement goes poof into thin air and the action goes back to the Department of the Interior, at which point the question as to the resurvey of the boundary would have to be undertaken.

That is the role of the Department of Justice as it is maintained at this time. I look forward to any questions that you may have.

[The prepared statement of Mr. Sansonetti follows:]

PREPARED STATEMENT OF THOMAS SANSONETTI, ASSISTANT ATTORNEY GENERAL FOR ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Committee, I am Tom Sansonetti, Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. Thank for you for the opportunity to testify before you today on S. 2018, Senator Bingaman's bill that would create the T'uf Shur Bien Preservation Trust Area within the Cibola National Forest and attempt to effectuate the settlement agreement entered into by the Pueblo of Sandia, the United States, and the Sandia Peak Tram Company on April 4, 2000. This matter is of great importance to the Pueblo of Sandia, the people of the State of New Mexico, and the federal government. In my testimony today, I would like to give you some background on the history of the Pueblo's land claim and briefly discuss the settlement agreement.

BACKGROUND

The underlying dispute giving rise to the settlement agreement and S. 2018 addresses the Pueblo's claim to a 10,000 acre tract of land, now administered by the U.S. Forest Service as part of the Sandia Mountain Wilderness and Cibola National Forest. The Pueblo believes this tract of land was erroneously excluded from the

government's recognition of the Pueblo's ancient Spanish land grant due to an inaccurate survey conducted by the Department of the Interior in 1859.

The Pueblo is located on the east side of the Rio Grande north of Albuquerque, New Mexico. In 1748, the Spanish colonial government granted a parcel of land to the Pueblo. An 1858 Act of Congress confirmed the grant and directed the Commissioner of the Land Office to conduct a survey to designate the exact boundaries of the parcel. An 1859 survey of the Pueblo Grant, known as the Clements survey, showed the eastern boundary along the top of a foothill on the western slope of Sandia Mountain, rather than on the crest of the mountain. In 1864, President Abraham Lincoln issued a patent to the Pueblo which adopted the metes-and-bounds description of the 1859 survey.

The Pueblo first contacted the Department of the Interior in 1983, contending that the 1859 survey had mistakenly set the wrong boundary, excluding about 10,000 acres, and that the 1864 patent was therefore erroneous. The Pueblo requested a resurvey of their land grant and the issuance of a new patent designating the true eastern boundary as the crest of the mountain. In December 1988, the Department of the Interior Solicitor Ralph Tarr issued an Opinion, in which Secretary Donald Hodel concurred, denying the Pueblo's claim that the eastern boundary of the grant should be resurveyed and located along the crest of the Sandia Mountain.

In 1994, the Pueblo filed an action against the Secretaries of the Interior and Agriculture in the U.S. District Court for the District of Columbia. The Pueblo sought an injunction requiring the Department of the Interior to correct the allegedly erroneous boundary.

In January 1995, several individual landowners and the Sandia Mountain Coalition, an unincorporated association of landowners living in subdivisions within the boundaries of the National Forest, moved for and were granted status as intervenor-defendants in the case. Two months later, the Pueblo amended its complaint to expressly disclaim any right, title, or interest in land held in private ownership within the disputed tract. The County of Bernalillo was also granted intervenor-defendant status, and the City of Albuquerque and the Sandia Peak Tram Company became involved as *amicus curiae*.

In July 1998, the district court issued an Opinion and Order setting aside the Tarr Opinion and remanding the matter to the Department of the Interior for further proceedings. The court found that the Department's decision not to resurvey the grant boundary was arbitrary and capricious because it accorded insufficient weight to the canon of construction that ambiguities should be construed in favor of Indians and because it over-emphasized the presumption of survey regularity.

Thereafter, in August and September 1998, the United States and the intervenor-defendants filed notices of appeal from the district court's decision with the D.C. Circuit. However, after the appeals were filed, all of the parties involved in the litigation decided to engage in a cooperative effort to resolve the case without further litigation. In October 1998, the D.C. Circuit granted a motion to hold the appeals in abeyance pending these settlement negotiations.

Negotiations began in earnest in December 1998, when the federal agencies, and the Pueblo, County, Coalition, City, and Tram representatives inaugurated a formal mediation process with the assistance of a third-party mediator in New Mexico. Despite progress being made by the named parties in the lawsuit over the course of several months, in August 1999 the intervenor-defendants and the City of Albuquerque withdrew from the mediation process. Nonetheless, the named parties in the litigation—the Pueblo and the federal agencies—along with the Tram Company, continued the negotiation process which eventually produced a settlement agreement signed by the parties on April 4, 2000. In November of that year, the appeal was dismissed by the U.S. Court of Appeals for the District of Columbia Circuit for lack of appellate jurisdiction. This decision granted a conditional motion by the United States to dismiss its appeal, contingent upon the D.C. Circuit actually ruling that jurisdiction would not exist over an appeal being pressed solely by the intervenor-defendants.

Also in November 2000, the Pueblo renewed its petition to resurvey the boundary along the crest of the mountain, reiterating their lack of interest in the inholdings. In addition, the County of Bernalillo and the Sandia Mountain Coalition contended that the Clements survey was erroneous in that the top of the foothill on the western slope of Sandia Mountain created too large of an area for the Pueblo. In response to these requests, Interior Solicitor John Leshy conducted another review, and on January 19, 2001, issued a new opinion that reconsidered the Tarr Opinion's conclusion. Solicitor Leshy concluded that the evidence showed that the Clements survey of the eastern boundary of the Pueblo's land grant was erroneous and should be set aside and, if necessary, a resurvey should be conducted. The Opinion acknowledged the settlement of the Pueblo's claim, which would obviate the need for

a resurvey, and put in abeyance any implementation of the Opinion unless and until the Congress failed to pass legislation ratifying the settlement by November 15, 2002.

SETTLEMENT AGREEMENT

The Agreement of Compromise and Settlement among the Pueblo of Sandia, the Sandia Peak Tram Company, and the United States on behalf of the Departments of the Interior and Agriculture, would settle the Pueblo's land claim suit upon ratification by an Act of Congress. The Settlement addresses many other important issues pertaining to the management of relevant portions of the Cibola National Forest, as well as questions of access across Pueblo lands to privately owned areas in the vicinity of the claim area.

Some of the highlights of the settlement are as follows:

Creation of the Tuf Shur Bien Preservation Trust Area

- The claim area would be renamed the Tuf Shur Bien (a Tiwa term meaning "Green Reed Mountain") Preservation Trust Area and would remain part of the Sandia Mountain Wilderness and the Cibola National Forest.
- The United States would retain title to the Area.
- The Area would be established for the following purposes: to recognize and protect the Pueblo's rights and interests in and to the Area; to preserve in perpetuity the wilderness and National Forest character of the Area; and to respect and assure the public's use and enjoyment of the Area.

Administration of the Area by the Forest Service

- The Secretary of Agriculture would continue to administer the Area as wilderness and National Forest under the Wilderness Act, most federal wildlife-protection laws (including the Endangered Species Act), other laws applicable to the National Forest System, and an Area-specific management plan.
- Statutes (including their associated regulations) administered by the Forest Service, other than the Wilderness Act and applicable federal wildlife protection laws, do not apply to Pueblo traditional and cultural uses.

Pueblo Rights

- The Pueblo's right of access to the Area for traditional and cultural uses, except for regulation by the Wilderness Act and applicable federal wildlife protection laws, as described above, would be compensable if violated.
- The Pueblo would have a compensable interest in the perpetual preservation of the wilderness and National Forest character of the Area. If Congress ever impaired this interest by authorizing uses, such as commercial mineral or timber production, that are banned from the Area by the ratifying legislation, the Pueblo again would be compensated as though it held a fee-title interest in the affected portion of the Area.
- The Pueblo would have specified, non-compensable rights to participate in the management of the Area under the management plan.
- The Pueblo would have exclusive authority to administer access to the Area by other tribes for traditional and cultural uses.

Rights of Way

- The private landowners, the general public, and the Forest Service must cross Pueblo land to reach the subdivisions and the claim area. As part of the settlement, the Pueblo would grant perpetual rights of way to the County and the Forest Service for roads, trails, and utilities across Pueblo lands adjacent to the Area.

Jurisdiction

- The ratifying legislation would provide a scheme for the exercise of governmental jurisdiction over the Area, recognizing roles for the United States, the State of New Mexico, and the Pueblo.

Extinguishment of Claims

- The settlement would provide for the comprehensive and permanent extinguishment of the Pueblo's claims to: (a) lands within the Area; (b) the subdivisions and other privately owned tracts; (c) the lands described in the Tram's special use permit; and (d) all crest facilities and developments such as the electronic site. The ratifying legislation would clear all titles, both of the United States and the homeowners.

Withdrawal Option

- The settlement provides that either the Pueblo or the United States may withdraw from the Settlement Agreement if either House of Congress passes ratifying legislation that is deemed inconsistent with the terms of the Settlement Agreement in a manner that materially prejudices their individual interests.

CONCLUSION

The parties in this matter expended a great deal of time and effort to reach agreement and to produce a document which resolves many complex issues. The Administration supports a legislative solution and is willing to work with the New Mexico delegation and the members of the Committees to achieve that end.

This concludes my testimony. Mr. Chairman, I look forward to working with you and other members of the Committees on this legislation and would be pleased to answer any questions you may have.

Chairman INOUE. I thank you very much, Mr. Sansonetti.

Now may I please call upon the General Counsel of the Department of Agriculture, the Honorable Nancy Bryson.

**STATEMENT OF NANCY BRYSON, GENERAL COUNSEL,
DEPARTMENT OF AGRICULTURE**

Ms. BRYSON. Thank you, Mr. Chairman. Thank you for the opportunity to testify today on S. 2018. This bill, as we have heard, proposes to resolve the longstanding land title dispute of the Pueblo of Sandia with the Federal Government concerning rights arising under a 1748 land grant from the King of Spain, subsequently recognized by Congress.

The administration supports the legislative solution and is willing to work with the New Mexico delegation and members of the committee to achieve that end. I have submitted a statement and I would request that it be incorporated in the record.

Chairman INOUE. Without objection.

Ms. BRYSON. Briefly, our position at USDA is that with some modifications S. 2018 essentially implements the 2000 settlement agreement. We have noted in your testimony several areas where we think it goes beyond the settlement agreement, where the provisions of the bill are unclear to us, or where S. 2018 could improve on the efforts made to date.

For purposes here, I will just note the three areas in the bill which we think go beyond the settlement agreement. First, there is a provision for a mandated land exchange within a certain time. The settlement agreement doesn't include such a provision and we do not think one is necessary because there are existing land exchange mechanisms which can be used.

Second, the bill adds management rights for Sandoval and Bernalillo Counties. We do not disagree with this. The Department of Agriculture strongly supports involving tribal, State, and local governments in land management decisions that affect them. However, we think if this change is in the final legislation there will be some changes that are necessary in the management plan and the settlement agreement.

In addition, the bill requires the Department to do a survey of the boundary area within 12 months. This is a new responsibility. It creates significant issues for the Department and we would like to work with the committee on those.

I would just like to repeat in closing that the Department of Agriculture would very much like to work with the committee to fi-

nally resolve this matter. We would like to find a resolution that addresses the identified concerns, maintains the character and beauty of the Sandia Mountain wilderness, and protects and preserves the cultural and religious values of the area.

That concludes my statement. I would be happy to answer any questions.

[The prepared statement of Ms. Bryson follows:]

PREPARED STATEMENT OF NANCY BRYSON, GENERAL COUNSEL,
DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committees: My name is Nancy Bryson, General Counsel, Department of Agriculture. Thank you for the opportunity to testify today on S. 2018, the "Tuf Shur Bien Preservation Trust Area Act." This bill proposes to resolve the longstanding land title dispute of the Pueblo of Sandia with the Federal Government concerning rights arising under a 1748 land grant from the King of Spain and subsequently recognized by Congress. The Administration supports a legislative solution and is willing to work with the New Mexico delegation, and Members of the Committees to achieve that end.

The Tuf Shur Bien Preservation Trust Area, as designated by S. 2018, would consist of approximately 10,000 acres within the Cibola National Forest. Located a few miles northeast of Albuquerque, the claim area lies within both Bernalillo and Sandoval Counties. Much of the claim area also is within the Sandia Mountain Wilderness designated by the Congress in the Endangered American Wilderness Act of 1978 (P.L. 95-237). The area is one of natural beauty and solitude, and provides significant opportunities for public recreation. It also is an area of religious and cultural significance for Native Americans and others.

This title dispute has been ongoing for almost two decades during which time there have been opinions regarding title to the land by the General Counsel of the Department of Agriculture and the Solicitor of the Department of the Interior, as well as litigation in U.S. District Court. A decision remanding the matter to the Department of the Interior was appealed to the D.C. Circuit by the government on jurisdictional grounds.

Between 1998 and 2000, while the case was pending in the D.C. Circuit, a mediated effort to settle the Sandia land claim was undertaken among all parties to the litigation including the Pueblo, the Federal Government, a coalition of private landowners and recreation groups, the Sandia Peak Tram Company, Bernalillo County and the City of Albuquerque. All the parties worked hard in a good faith effort to resolve this matter, and we commend those efforts. Ultimately, a Settlement Agreement was reached in April 2000, but only among the Pueblo, the Sandia Peak Tram Company and the Federal Government. The City, the County, and the coalition had withdrawn from the negotiations.

With some modifications, S. 2018 essentially implements the 2000 Settlement Agreement. I will concentrate my remarks primarily in those areas where S. 2018 goes beyond the Settlement Agreement, where the provisions of the bill are unclear to us, or where S. 2018 can improve on the efforts made to date to resolve this dispute.

We see at least three areas in which the bill goes beyond the settlement based on our review to date. First, there is a provision for a mandated land exchange within a certain time. The Settlement Agreement does not include such a provision and we do not think one is appropriate as existing land exchange mechanisms are available. Second, the bill adds management rights for Sandoval and Bernalillo Counties. We do not disagree with this. The Department of Agriculture strongly supports involving tribal, state, and local governments in land management decisions that affect them. However, we think the change does require an expansion of both the Settlement Agreement and the Management Plan.

In addition, the bill requires the Department to do a survey of the boundary area within 12 months. This new responsibility creates significant issues for the Department on which we would like to work with the Committee.

Our second comment is that it would be very helpful to have the legislative language expressly incorporate the Settlement Agreement and Management Plan rather than by reference. Although the United States generally supports incorporation of such settlements by reference, such incorporation creates the potential for conflict in this case where the language of the bill and the Settlement Agreement and Management Plan conflict. For example, the bill provides that the area will be managed under laws and regulations applicable to the National Forest System. These include

the National Forest Management Act. The Settlement Agreement, however, specifically exempts the Tuf Shur Bien Preservation Trust area from the National Forest Management Act. This area will not be subject to NFMA, but rather to the procedural and substantive requirements established in the Settlement Agreement and Management Plan. The legislation needs to set forth these provisions very clearly, particularly given the potential for confusing, overlapping and sometimes conflicting management. The parties have all expressed their interest in limiting future litigation. We think the likelihood of this can be enhanced by resolving potential ambiguities in the legislation itself.

Finally, we believe the language in section 10(c) of the bill, clarifying that this Act is uniquely suited to resolve the Pueblo's claim, is a crucial element of any legislative resolution. This agreement, however, should not be considered precedent for any other situation involving National Forest System lands.

Although this bill, if enacted, will resolve this particular dispute, it is important to emphasize that all settlements of Indian claims, including settlements that involve federal lands, must be ratified by Congress [pursuant to 25 U.S.C. 177]. Should Congress decide to delegate settlement authority regarding such claims to administration officials, however, the land management agency with jurisdiction over the land should have primary authority in determining whether the agency's lands would be conveyed as part of the settlement. We believe that with respect to National Forest System lands, responsibility should reside in the Department of Agriculture.

The Department of Agriculture would like to work with the Committee to finally resolve this matter. We would like to find a resolution that addresses the identified concerns, maintains the character and beauty of the Sandia Mountain Wilderness, and protects and preserves the cultural and religious values of the area.

This concludes my statement. I would be happy to answer any questions.

Chairman INOUE. Thank you very much, Ms. Bryson.

May I begin the questions, if I may. For Solicitor MYERS. In your view, does this bill create an undesirable precedent for the resolution of other Indian land claims or land management situations?

Mr. MYERS. Mr. Chairman, it creates a precedent in one sense, in that any time you take action you have created a precedent because it is something that has gone on before, by definition. That is a precedent. At the same time, this particular area and this particular dispute are unique as far as I can tell. In my brief time in my office, there is no other like it and I think if there were I would perhaps have heard about it.

Because of the history of this dispute, going back, if you will, to 1748 and the grant from the King of Spain forward, because of the interplay of the parties to date, including of course the Pueblo, the citizens of the State, and the public at large that use the area, and the State and local jurisdictions that have overlapping jurisdiction in the area, because of the multiple uses that are there, and then overlay on top of that the wilderness area and the inholdings, you have quite a mix of cross currents.

So to the extent that you legislate a fix to this and to the extent that that legislation is very specific—and I would encourage you to make it very specific—I think that the precedential value in a legal sense is reduced. I do appreciate those who are concerned about other pueblos or other tribes or other non-Indian parties attempting to change administrative boundaries to effect whatever purpose and goal they might have in mind, and I think that's a legitimate concern.

But to put a point on it, to the extent that the Congress in detail specifies the land uses and management of this land I think that does limit the precedential value.

Chairman INOUE. If I may ask Mr. Sansonetti. Although the Pueblo of Sandia did not bring any claim under the Indian Claims

Commission Act, would this legislation reopen cases that were finally adjudicated under that statute?

Mr. SANSONETTI. I think not, in the sense that those Indian tribes that did appear in front of the ICCA received a final settlement. We have to remember that that commission was set up for tribes to appeal for a money award, not for the return of land. In this particular case, obviously the Pueblo are interested in the land as opposed to applying for a money award.

I would think that the answer is no for those that have settled under the ICCA.

Senator DOMENICI. Mr. Chairman, could I clarify that? Mr. Sansonetti, if you do not choose remuneration, but had a right to remuneration, do you still have a right to land?

Mr. SANSONETTI. That very question is before the Solicitor General's office and is being discussed within the Department of Justice. There has not been a final—there are those that feel, there are some that feel, that the ICCA was an opportunity between the years of 1946 and 1978 to make your claims if you felt that anything was out of sorts boundarywise and the like, and consequently that was your opportunity. If you missed that time, then you were out of luck.

There are those that say, well, to the degree that you were looking for money that is true, but to the degree that you were looking for the return of dirt, that was not the purpose of the ICCA, that was the granting of money. So those that were looking for dirt still have an opportunity to file a claim.

That particular issue is consequently one that would have to be resolved by Justice.

Senator DOMENICI. Thank you, Mr. Chairman.

Chairman INOUE. Thank you.

If I may ask the General Counsel of the Department of Agriculture: The settlement agreement avoids conflict with an electronics site located on the top of Sandia Mountain because the Pueblo has agreed to disclaim any interest in this area. This site is the subject of 55 special use permits, including a permit to DOD for a critical communications site that serves the Kirkland Air Force Base.

If this settlement agreement and management plan are not ratified by Congress, what effect could that have on this electronics site?

Ms. BRYSON. Our understanding is that the electronics site is outside of the claim area and therefore would not be affected one way or the other.

Chairman INOUE. If the legislation passes and the management plan is ratified, why is it necessary to specifically exempt the Tuf Shur Bien Preservation Trust Area from the National Forest Management Act and other forest planning statutes and regulations?

Ms. BRYSON. I was not a party to the settlement. We may need to supplement the answer I am going to give you on that, Mr. Chairman. My understanding is that in the definition of the laws that apply, the agreement of the parties is that the National Forest Management Act would not apply because the management plan that was adopted pursuant to the settlement agreement differs in

certain respects from the type of plan that would be developed under that statute.

Chairman INOUE. Do you believe that this measure would create a dangerous precedent of any sort?

Ms. BRYSON. One of the points that we make in our full testimony is the importance to us of the provision in the bill which says this does not create a precedent for any other—for resolution of any other land disputes. We do believe this is unique and that the settlement agreement that was crafted pertains to this site and this site alone.

Chairman INOUE. Thank you very much.

Senator Bingaman.

Chairman BINGAMAN. Thank you.

Let me just ask one question here. It is my understanding the U.S. Forest Service has entered into several arrangements with Indian tribes concerning the management of national forest lands, particularly in situations in which the lands contain Native American sacred sites. Among those I am aware of, there are agreements with the Grand Ronde Tribe in Oregon, the Washoe Tribe in Nevada, the Hamas Pueblo in New Mexico under the act creating the Hamas National Recreation Area.

Isn't the management role provided to Sandia Pueblo under this proposed legislation just an extension of existing practice? I do not know which of you would want to comment on that. I guess, Ms. Bryson, maybe you are the right one to comment.

Ms. BRYSON. I may be, and with your permission could we respond to that question in writing?

Chairman BINGAMAN. That would be fine.

Ms. BRYSON. We are not prepared right now.

Chairman BINGAMAN. Okay.

Let me stop with that, Mr. Chairman. I know there are other Senators here wishing to ask questions.

Chairman INOUE. Senator Campbell.

Senator CAMPBELL. Thank you, Mr. Chairman.

I am not an attorney, but I want to do the right thing. But I see some similarities in other areas. As I understand it, this bill is unique, unique circumstances. Is it your opinion, anybody on the panel there, that S. 2018, this is the first one of its kind, the first bill that reaches a settlement?

Mr. Myers.

Mr. MYERS. Senator Campbell, only to the extent that I previously mentioned that I know of no other pending dispute within the Department of the Interior, even historically, that is exactly on the four corners of this dispute. So as far as I know it is the only one like it.

Senator CAMPBELL. I see. Well, most people I think believe in negotiated settlements. It is pretty hard to turn the clock back, but most people also believe in negotiated settlements as long as they get the best of the bargaining. That just has to be human nature.

Several Senators asked about if it sets a precedent. We could probably put language in the bill that says that it does not, but I do not know if that limits a people's right in the future to go to court anyway. So I am not sure how good that is.

But Senator Domenici brought up a couple of points and reminded me of the question we had some years ago about the return of the Black Hills to the Oglala. That Black Hills area was taken by force during World War Two and partly used for a bombing range. The courts have said that the Lakota have every right to get that land back and yet they do not have it because, even though they were offered a repayment for it, many of them refused the money, they refused the remuneration, as you remember if you followed that.

So they refused the money, but they did not get the land back, either. I do not know if that has any bearing on this particular one, but I think we have dealt with some things that are very similar in the past.

Just let me ask a couple of little simple ones here. Does the Federal Government have the authority to correct a survey error or a boundary error in the past along the Pueblo's eastern boundary? I do not know who the expert would be on that.

Mr. MYERS. The District Court in this case said that the Secretary of the Interior had the authority to correct the survey.

Senator CAMPBELL. But they did not go forward with that survey, is that correct?

Mr. MYERS. That is correct.

Senator CAMPBELL. Is there a plan, do you know of, to go forward with the survey?

Mr. MYERS. Right now the plan is to see what Congress does, Senator.

Senator CAMPBELL. We do not know what to do. That is what this bill is all about.

Well, okay. Thank you, Mr. Chairman. I will save any further questions for the next round.

Chairman INOUE. Senator Domenici.

Senator DOMENICI. Thank you very much.

Senator Bingaman, we are sorry that you are so busy on the floor. Are you going to have to go back before we finish?

Chairman BINGAMAN. I think we are in recess until 4:15, so I am hoping that by then we have heard from a lot of the witnesses.

Senator DOMENICI. We will be halfway there, maybe.

Let me first state for the record, Senator Bingaman used the Hamas as an example. There is a very big difference, Senator. The Hamas has no veto power on the part of anyone. The Forest Service maintains the management prerogatives and they do it together. This has a veto in it, as you remember.

But let me just talk about applicable laws. How does the criminal and civil jurisdiction given to the Pueblo under this legislation compare to that of tribal jurisdiction on their own Pueblo? Either one of you. I assume it is you, Mr. Myers.

Mr. MYERS. Senator, I am not confident in my answer to your question. I would have to respond to you, I think.

Senator DOMENICI. Will you get us an answer?

Mr. MYERS. I would be happy to, yes, sir.

Senator DOMENICI. Has it changed in any way because of this agreement or is it the same as they have on their own land?

Mr. MYERS. One of the areas that I noticed in my review of this is the cross-section between the tribe's jurisdiction and the hunting

and trapping laws with the State of New Mexico. That is the area that I would focus on probably first in answering your question. But I would like to go back to my office and give you a full answer.

Senator DOMENICI. We will not be finished anytime within the next 10 days or so. So you can get it done.

Mr. MYERS. All right.

Senator DOMENICI. Let me ask you just two or three more questions. First, our Indian people who lay claim to this property talk about using it for religious and cultural affairs, which we respect, and we respect it even though it is obvious that overwhelmingly, nobody sees it or participates in it but the Indian people.

There is a statute with reference to our public domain that gives the Indian people the right to conduct their religious and cultural activities on forest land. Are you familiar with that?

Mr. MYERS. Just generally, sir.

Senator DOMENICI. I would like to know there also, if you will go back and check, we believe they do not need this settlement in this manner to have cultural and religious rights that are almost as exclusive as these, if not the same. I just would like to know that. If you would check that out, it would be appreciated.

Mr. MYERS. I will do that, and that ties into a comment that I made as an attachment to my written testimony, which is a suggestion that perhaps the phrase "traditional and cultural" as it is used in the bill in several sections be further defined, so that we better understand what Congress would mean by "traditional and cultural uses" in this legislation.

Perhaps the answer to that is a cross-reference to the statutory provisions already provided by Congress.

Senator DOMENICI. I would also like to propose, as I stated in my opening statement, some queries I had. I would like you to tell us whether NEPA has any application to this. Has there been or will there be any major Federal action as this moves through that would require a NEPA statement?

Mr. MYERS. We will also give you that answer.

Senator DOMENICI. Will you check that one out for us?

Mr. MYERS. Yes, Senator.

Senator DOMENICI. There is also in this proposed legislation, once the deal is made, no use changes are made unless they are agreed to by both parties. You have alluded to that.

Mr. MYERS. Yes, sir.

Senator DOMENICI. That is a very big concession on the part of each. If the Indian people claim they own it, that is a big concession. If the Government owns it for the people, that is a big concession. As much as you can give us some background on that would be helpful and I would appreciate that.

Lastly, last but not least, if you went up and saw this property you will note that there are trees and shrubs that are close to buildings and close to houses that are part of this acreage.

Mr. MYERS. Yes, sir.

Senator DOMENICI. We are already living from day to day in New Mexico with reference to a drought that might bring forest fires to any part of our State. Forest plans have to be made, and in the last few years we have provided substantial resources for forest plans to be made by the appropriate entity, Ag or Interior.

As part of producing that, plans are developed that have some kind of authority vested in them wherein houses and other things are preserved somewhat from the closeness, the proximity of rage, of the rage of fire. I am concerned that once this became law there would be no right to modify that kind of plan if either side decided that they were not as interested in fire burning something as the other side.

I wonder how we would get those kind of plans done under this agreement if they were required to be done from time to time. I assume your answer is going to be what mine is: both sides will have to agree. If that is it, I would like to know that.

Mr. MYERS. If that constituted a new use under the definition of a new use in the bill, then yes, any party given veto authority would have to agree to a new use before that use actually was implemented on the ground.

Senator DOMENICI. I have some others that I am going to submit to you, but in the interest of getting to our New Mexicans I am going to stop at this.

Thank you, Mr. Chairman.

Chairman INOUE. Thank you very much.

Senator Craig.

Senator CRAIG. Thank you, Mr. Chairman. I will be brief, a couple of questions here. There are many and I will submit them for the record for all three of you.

Nancy, on pages 3 and 4 of your testimony you suggest a serious issue related to the Leshy opinion and its assumption that the Department of the Interior would be responsible for the resurvey. Would you explain exactly what those significant issues are in the eyes of the Department of Agriculture?

Ms. BRYSON. The responsibility to do the survey; the time frame, the 12 months, seems rather quick to us; and resources to do it.

Senator CRAIG. Understanding the provisions in 10.C of the bill, that this is a unique situation and should not set legislative precedents, are there other situations that you know of or could imagine where you would support legislation that eliminates the underlying forest management or environmental laws needed to manage the lands entrusted to the Federal Government?

Ms. BRYSON. We think the settlement reached in this case is based on the facts that were presented in this case, the history that you have heard about, the desire of all the parties to avoid litigation. It is all those things combined that produced the settlement agreement that is being discussed here for incorporation into the bill.

Senator CRAIG. My friend from Colorado asked a question of you, Bill, and I want to re-ask it, but add something to it as it relates to, do you know of any tribes that currently have proposals to have other different lands, national parks, or national forests returned to them or to be managed by them? I am referencing specifically Secretary Norton's recent announcement related to Klamath Tribe and the Winema National Forest in Oregon.

Is there a relationship here? Is that in itself a precedent, or are we establishing now the right or what would appear to be at least the legitimacy of coming forward to claim additional lands?

Mr. MYERS. Well, as you know, Senator Craig, there are dozens upon dozens of federally recognized tribes, each with its own interest in its land base. Whether those specific examples that you have just cited might be watching this legislation with an eye toward duplicating it, I cannot say. I think it is worth looking into and we would be happy to do that and determine as best we can whether there is some precedent that might be established by this legislation that would impact the requests of those tribes that you referenced.

Senator CRAIG. Mr. Chairman, thank you.

Gentlemen, Nancy, thank you very much.

Chairman INOUE. I would like to thank the panel very much. We appreciate it.

Our next panel: The president of HMS Associates, Incorporated, a consulting firm in Santa Fe, New Mexico, Dr. Stanley M. Hordes; and from the University of California Hastings College of Law in San Francisco, Professor John Leshy.

Dr. Hordes.

**STATEMENT OF STANLEY M. HORDES, Ph.D., PRESIDENT,
HMS ASSOCIATES, INC.**

Dr. HORDES. Thank you. Mr. Chairman, members of the committee: My name is Stanley Hordes. I am an historical research consultant and former State Historian for the State of New Mexico. I hold a Ph.D. in colonial Mexican history from Tulane University and I have conducted research into the history of Mexico and the Spanish borderlands for over 27 years. I have performed expert research and testimony in dozens of cases involving the history of land and water in the Southwest over the past 17 years. I also hold the position of adjunct research professor at the Latin American and Iberian Institute at the University of New Mexico.

In 1995, I was asked by the U.S. Forest Service to conduct research into the history of the boundaries of the Pueblo of Sandia. I made it clear at the outset to the Forest Service that I did not view my role as adversarial, that I did not see my position as one of trying to find historical facts to support a particular position. The Forest Service not only agreed with this approach, but insisted upon it.

On March 1, 1996, I submitted my report entitled "History of the Boundaries of the Pueblo of Sandia, 1748 to 1860," which was based on research conducted in New Mexico, Washington, and Mexico City. I would like to request that a copy of this report as well as my resume be entered as part of the official record of the testimony.

Chairman INOUE. Without objection.

Dr. HORDES. On the basis of my research, I offer the following conclusions: One, in 1748 the Governor of New Mexico, in the name of the King of Spain, issued a grant of land to a mixed population of Hopi and Southern Tigua Indians. This land was located on the site of the old Pueblo of Sandia, which had been abandoned approximately 68 years earlier.

Secondly, the Governor of New Mexico considered the newly constituted Pueblo of Sandia as a "formal pueblo," "pueblo formal," receiving, like other Indian pueblos in New Mexico, a grant of land

comprising four square leagues or 2.6 miles measured from the center of the Pueblo in each of the cardinal directions.

In the case of Sandia, due to the shortfall of land to the west, the Pueblo was compensated with additional lands to the north and to the south. The eastern boundary was not affected by this adjustment and thus extended only 2.6 miles, one league, toward the “sierra madre,” or mountain range, called Sandia, which served as a designated landmark on the east.

Three, after the U.S. takeover of New Mexico in 1848 the U.S. Office of Surveyor General began the process of authenticating and surveying all land grants issued by Spanish and Mexican authorities. During the investigation into the boundaries of the Pueblo of Sandia, the official translator, David V. Whiting, engaged in an apparently deliberate mistranslation of the 1748 grant documents, mistranslating the term “sierra madre” and adding boundary calls that never appeared in the original record. By means of this translation, the boundaries of the Pueblo were actually extended to the east and to the south, giving the Pueblo approximately 7,000 additional acres more than that originally granted in 1748.

Four, the term “sierra madre” clearly does not mean “main ridge” either through direct translation or within the context of the grant documents. “Sierra madre” simply means “mountain range” and, taken with the geographical maps, can clearly be seen as abutting the eastern boundary of the Pueblo.

Fifth, I found no documentation that would indicate that the eastern boundary was ever considered as the summit of the Sandia Mountains by Spanish authorities.

In deriving these conclusions, I find no ambiguity in the documentation to support the claim that the eastern boundary of the Pueblo was ever recognized as the summit by Spanish authorities. To the contrary, an objective analysis of the record leads to an unambiguous conclusion that the placement of the eastern boundary of the Pueblo at the crest of the Sandia Mountains is inconsistent with historical fact.

I reviewed the opinion issued on January 19, 2001, by the Solicitor of the Department of the Interior relating to the Sandia claim. I believe that the Interior opinion made significant errors regarding issues of historical interpretation and historical fact and misrepresented the material contained in my 1996 report. The Interior opinion apparently relied upon sources that were not authoritative or whose theories were found to be unsubstantiated.

Specifically, the Interior opinion, number one, misrepresented the significance of the northern and southern boundary calls in the 1748 granting document, documents which clearly place the grant in a downhill setting, the boundary in a downhill setting.

Second, mistakenly and uncritically it assumed the incorrect translation of “sierra madre” as “main ridge,” failing to address the etymological analysis that was contained in my 1996 report.

Three, I found the opinion misconstrued the nature of the alterations to the boundaries of the Pueblo, which resulted from the mistranslation of the U.S. translator in the 1850s.

Four, I believe the Interior opinion misconstrued the nature of pueblo grants under Spanish law by failing to recognize that the lands in dispute were unallocated royal lands, held in common for

all residents of the area, including the Pueblo, to secure necessary timber and firewood. Thus, the Pueblo did not need to own these lands in order to gain access to these resources.

Fifth, I found the Interior opinion misconstrued the concept of the area granted to each Indian pueblo in colonial New Mexico, which was four square leagues or approximately 17,000 acres, and misrepresented the analysis of this question that I offered in my report.

After the U.S. takeover of New Mexico, the Federal Government recognized the grants of 14 pueblos as originally comprising four square leagues. The higher acreages assigned by the Government to seven other pueblos were due to additional lands that were either granted or purchased by them at a later time or, on the other hand, due to fraudulent information provided to the U.S. authorities.

Six, I believe the Interior opinion misrepresented other grants as analogous to that of Sandia, specifically the adjacent Elena Gallegos Grant, which was not granted to a pueblo, but rather to a non-Indian, and thus was governed by different criteria under Spanish law and Spanish custom.

Seven, I believe that the opinion ill-advisedly relied for its conclusions on the work of the late Dr. Myra Ellen Jenkins, many of whose opinions regarding this issue were not substantiated by the documentary record. Had Dr. Jenkins thoroughly examined the 1748 grant documents as I had done, I believe Dr. Jenkins would have realized the impact of the gross errors of the Whiting mistranslation on the expansion of the Pueblo's eastern boundary in the 1850's and 1860's.

I thank the committee for the opportunity to offer testimony on this most important issue and stand ready to respond to any questions you might have.

[The prepared statement of Dr. Hordes follows:]

PREPARED STATEMENT OF STANLEY M. HORDES, PH.D., PRESIDENT,
HMS ASSOCIATES, INC.

Mr. Chairman and Members of the Committee: It is an honor to appear before the Committee this afternoon to share with you the results of my research into the history of the eastern boundary of the Pueblo of Sandia.

My name is Stanley Hordes, President of HMS Associates, Inc., a historical research consulting firm, based in Santa Fe, NM. I hold a Ph.D. in Colonial Mexican History from Tulane University in New Orleans. I have conducted research into the history of Mexico and the Spanish Borderlands for over twenty-seven years, and served as the State Historian for the State of New Mexico. I have performed expert research and testimony in dozens of cases involving the history of land and water in the Southwest over the past seventeen years. I also hold the position of Adjunct Research Professor at the Latin American and Iberian Institute at the University of New Mexico. I would like to request that my complete resume be entered as part of the official record of my testimony.

In 1995, I was asked by the U.S. Forest Service to conduct research into the history of the boundaries of the Pueblo of Sandia, with specific reference to the geographical extent of the Pueblo's eastern boundary from the establishment of the Pueblo's grant from the King of Spain in 1748. I made it clear to the Forest Service that I did not view my role as adversarial, that I did not see my position as one of trying to find historical facts to support a particular position. I told the Forest Service that I would conduct the most objective professional job possible. The Forest Service not only agreed with this approach, but insisted upon it.

On March 1, 1996, I submitted my report, entitled, "History of the Boundaries of the Pueblo of Sandia, 1748-1860," which was based on research conducted in New

Mexico, Washington, DC, and Mexico City. I would like to request that a copy of this report be entered as part of the official record of my testimony.

On the basis of my research, I offer the following conclusions:

(1) In 1748, the governor of New Mexico, in the name of the king of Spain, issued a grant of land to a mixed population of Hopi and Southern Tigua Indians. The land was located on the site of the old Pueblo of Sandia, which had been abandoned 68 years earlier.

(2) The governor of New Mexico considered the newly constituted Pueblo of Sandia as a "formal pueblo," receiving, like other Indian pueblos in New Mexico, a grant of land comprising four square leagues—or one league (2.6 miles) measured from the center of the pueblo in each cardinal direction. In the case of Sandia, due to a shortfall of land to the west, the Pueblo was compensated with additional lands to the north and south. The eastern boundary of the Pueblo was not affected by this adjustment, and thus extended only 1 league, or 2.6 miles, toward the "*sierra madre* [mountain range] called Sandia," which served as the designated landmark on the east.

(3) After the U.S. takeover of New Mexico in 1848, the U.S. Office of Surveyor General began the process of authenticating and surveying all land grants issued by Spanish and Mexican authorities. During the investigation into the boundaries of the Pueblo of Sandia, the official translator, David V. Whiting, engaged in an apparently deliberate mistranslation of the 1748 grant documents, mistranslating the term, "*sierra madre*," and adding boundary calls that never appeared in the original record. By means of this mistranslation, the boundaries of the pueblo were extended to the east and south, giving the Pueblo approximately 7,000 additional acres more than originally granted by the king of Spain in 1748.

(4) The term "*sierra madre*" clearly does not mean "main ridge," either through direct translation, or within the context of the grant documents. *Sierra madre* simply means "mountain range," and, taken in its geographical mass, can be clearly be seen as abutting the eastern boundary of the Pueblo.

(5) From the establishment of the Pueblo of Sandia in 1748, until the assumption of sovereignty by the United States in 1846, Spanish and Mexican authorities recognized the eastern boundary of the Pueblo of Sandia as a north-south line, extending 1 league (5,000 varas, ca. 2.6 miles) east from the center of the pueblo. At no time was the eastern boundary considered as the summit of the Sandia Mountains.

In deriving these conclusions, I found no ambiguity in the documentation that would lead to the deduction that the eastern boundary of the Pueblo of Sandia was ever recognized as the summit of the Sandia Mountains by Spanish or Mexican authorities. To the contrary, an objective analysis of the record, I believe, leads to an unambiguous conclusion that the placement of the eastern boundary of the Pueblo of Sandia at the crest of the Sandia Mountain is inconsistent with historical fact.

Subsequent to the completion of my 1996 report, I had the opportunity to review the Opinion issued on January 19, 2001 by the Solicitor of the Department of the Interior relating to placement of the eastern boundary of the Pueblo of Sandia. The Interior Opinion made significant errors regarding issues of historical interpretation and historical fact. In developing its historical arguments, the Interior Opinion misrepresented the material contained in my report, and appears to have relied for its conclusions upon sources that were not authoritative, or whose theories were found to be unsubstantiated.

Specifically, the Interior Opinion:

(1) Misrepresented the significance of the northern and southern boundary calls of the Pueblo in the 1748 granting document, which clearly placed the grant in a downhill setting. One must be geographically below the mountain in order to "face" the two cañadas noted in the document.

(2) Mistakenly and uncritically assumed the incorrect translation of *sierra madre* as "main ridge," failing to address the etymological analysis in my Report.

(3) Misconstrued the nature of the alterations to the boundaries of the Pueblo, which resulted from the mistranslation of the U.S. translator in the 1850s.

(4) Misconstrued the nature of Pueblo grants under Spanish law by failing to recognize that the lands in question were *tierras realengas*, or unallocated royal lands, held in common for all residents in the area, including the Pueblo, to secure timber and firewood. Thus, the Pueblo did not need to own these lands in order to gain access to these resources.

(5) Misconstrued the concept of the area granted to each Indian Pueblo in Colonial New Mexico, which was four square leagues, or approximately 17,000

acres, and misrepresented the analysis of this question in my Report. After the U.S. takeover of New Mexico, the federal government recognized the grants of 14 Pueblos as originally comprising only four square leagues. The higher acreages assigned by the government to the seven other Pueblos were due to additional lands either granted or purchased at a later time, or to fraudulent information provided to the U.S. authorities.

(6) Misinterpreted other grants as analogous to that of Sandia, specifically the adjacent Elena Gallegos Grant, which was not granted to a Pueblo, but to a non-Indian, and thus was governed by different criteria under Spanish law and custom.

(7) Ill-advisedly relied for its conclusions on the work of the late Dr. Myra Ellen Jenkins, many of whose opinions regarding this issue were not substantiated by the documentary record. Had she thoroughly examined the original 1748 grant documents, as I had done, Dr. Jenkins would have realized the impact of the gross errors of the Whiting mistranslation on the expansion of the Pueblo's eastern boundary in the 1850s and 60s.

I thank the Committee for the opportunity to offer testimony on this most important issue, and stand ready to respond to questions.

EXECUTIVE SUMMARY; HISTORY OF THE BOUNDARIES OF THE PUEBLO OF SANDIA,
1748-1860

BY STANLEY M. HORDES, Ph.D., HMS ASSOCIATES, INC.

January 26, 1996

This executive summary is designed to summarize a comprehensive report submitted to the Southwest Region of the U.S. Forest Service, entitled, *History of the Boundaries of the Pueblo of Sandia*. The purpose of this report is threefold: (1) to analyze the boundaries of the Pueblo of Sandia, as articulated and interpreted by Spanish, Mexican and U.S. Territorial authorities from the establishment of Sandia Pueblo in 1748 until the marking of the boundaries by the Office of Surveyor General in 1860; (2) to define the term, *sierra madre* in its proper historical context; and (3) to ascertain whether in 1748 Sandia Pueblo was populated by descendants of the original Sandia Pueblo people who had migrated to the Hopi country after the Pueblo Revolt of 1680, or, on the other hand, the pueblo was settled by other Tigua and Hopi Indians.

I. HISTORICAL EVOLUTION OF BOUNDARIES, 1748-1860

On April 5, 1748, the Spanish governor of New Mexico signed a decree approving the resettlement of the Pueblo of Sandia by Indians brought from the Moqui (Hopi) country located some 200 miles to the west. The governor's signature on this document represented the triumph of a six-year effort by Franciscan friars to remove a mixed population of recently converted Moquis and descendants of Southern Tiguas, who had fled their homes after the 1680 Pueblo Revolt, from their overcrowded quarters, and bring them to the Rio Grande Valley. By means of the official Act of Possession, the pueblo received a tract of land similar to that which was granted to other pueblos, comprising a little over 17,000 acres. Normally, this piece of land would have measured one league (2.6) miles in each direction from the center of the pueblo, but because of the proximity of Sandia to the Rio Grande, and the fact that the pueblo's lands were reduced to the west, Sandia received additional lands to the north and south.

Thus, under the terms of the 1748 royal grant, the Pueblo of Sandia received a tract of land measuring 7.06 miles north to south, and 3.35 miles east to west. To the east, the lands extended one league, or 2.6 miles from the center of the pueblo, reaching toward the foothills of the Sandia Mountains, a feature that was designated as the eastern boundary. The southern boundary extended 3.53 miles from the center of the pueblo.

These limits were generally acknowledged by the Spanish and Mexican authorities, the pueblo and its non-Indian neighbors, from 1748 until the conquest of New Mexico by the United States a century later.

After the U.S. takeover in 1846, Congress established the Office of Surveyor General, whose responsibilities included the authentication and survey of all grants issued by the Spanish and Mexican governments in New Mexico in accordance with the terms of the 1848 Treaty of Guadalupe Hidalgo. During the course of the Surveyor General's investigation into the nature and extent of the lands pertaining to the Pueblo of Sandia, the official translator, David V. Whiting, engaged in an apparently deliberate mistranslation of the 1748 grant documents, adding boundary calls

that never appeared in the original record. By means of this mistranslation, the boundaries of the pueblo were extended to the east and south. The official surveys conducted by the Surveyor General reflected these extensions, resulting in the increase of pueblo lands from about 17,000 acres to over 24,000 acres.

II. DEFINITION OF SIERRA MADRE IN ITS PROPER HISTORICAL CONTEXT

Among the inaccuracies in the translation by Whiting of the original Sandia Pueblo grant documents, was the mistranslation of the term *Sierra Madre de Sandia*, which served as one of the eastern boundary calls. Whiting represented *sierra madre* to mean, "main ridge". An examination of archival documentation, as well as historical and modern Spanish language and etymological dictionaries, however, reveals that this term is defined, not as a "main ridge", but rather as a mountain range.

The citation of the eastern boundary of the Pueblo of Sandia as the *Sierra Madre de Sandia* should be understood in its proper historical context only as a general point of geographical reference. Considering that the specific measurement of the eastern boundary in 1748 was one league (2.6 miles) from the center of the pueblo, the appropriate identification of *Sierra Madre de Sandia* in this sense should be the foothills, and not the crest of the mountain.

III. ETHNIC COMPOSITION OF THE INDIANS WHO RESETTLED THE PUEBLO OF SANDIA IN 1748

A controversy surrounds the question of whether the resettlement of Sandia Pueblo represented a return of the descendants of Sandia Pueblo people after a sixty-eight year sojourn in Hopi country, or, on the other hand, the 1748 immigrants to Sandia were composed of other Native American groups.

Based largely on interviews with Sandia Pueblo people, one of the few ethnographical studies to address this topic asserts the pueblo belief that those who resettled the pueblo in 1748 were descendants of the original Sandias. As such, the pueblo today claims religious sites in the mountains to the east. This study also relates that the pueblo claims that it holds the foothills as within its boundaries, and that part of the foothills were sold to the U.S. government early in the twentieth century.

But eighteenth-century archival sources, as well as modern historical scholarship, indicate that the Indians who settled the pueblo in 1748 represented a mix of descendants of Southern Tigua refugees who had fled the Pueblo Revolt of 1680, and Moquis. No evidence can be found in the documentary record indicating that the establishment of the mission at Nuestra Senora de los Dolores y San Antonio de Sandia in 1748 represented an ethnic re-formation of the earlier Pueblo of Sandia, which had been abandoned after the Pueblo Revolt of 1680.

Nor can any record be found in the records of the U.S. Forest Service that Sandia Pueblo ever owned lands in the foothills outside its current boundaries, or sold such lands to the USFS. Moreover, an examination of plats of the pueblo show no diminution of its lands on the eastern boundary from 1860 to the present.

Chairman INOUE. Thank you very much.
Professor Leshy.

STATEMENT OF JOHN D. LESHY, FORMER SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. LESHY. Thank you very much, Mr. Chairman, members of the committees. I am happy to be back.

I am appearing today solely as a private citizen expressing my own views. I am not representing anyone else interest in this matter. In the interest of time, I would ask my statement be included in the record.

Chairman INOUE. Without objection.

Mr. LESHY. I will just summarize and try to make three quick points and then we can move on to questions.

First of all, I want to comment on the views of my fellow panelist Dr. Hordes. I think everyone who has looked at this matter understands that, as with many of the Spanish land grants in New Mexico, the historical record here is somewhat unclear. But let me em-

phasize, this is not a dispute between John Leshy and Dr. Hordes. This is a dispute between Dr. Hordes and a number of other historians. There have been many, many qualified historians who have looked at this issue over the years and have drawn somewhat different inferences from the record.

While Dr. Hordes has his own view, there are a number of other historians who have different views. In carefully examining the record and the views of those various experts offered over the years, I reached the result I did, and I remain convinced that it is the correct conclusion, a fair reading of the record, and I have every confidence that the conclusion I reached, if it got to the courts on the merits, would be sustained.

I should also add that at least one Federal judge has looked at this matter and has concluded that, contrary to Dr. Hordes' assertion that there is no ambiguity here, there is only one conclusion you can draw. Judge Harold Greene here in the Federal district court, specifically, in rejecting the opinion of my predecessor, said that experts hold vastly different opinions about the proper interpretation of the historical record here.

That has been, of course, the basic problem all along. There just are good faith disagreements about what this record means. As I said, in my judgment the best view of the record is that the intention of the Spanish land grant was that the eastern boundary of the Pueblo be drawn at the mountain crest, and I wrote 15 or 20 pages in my opinion to explain that, carefully documenting and going over the views of the various historians on this matter.

My second main point is to address a question that Senator Campbell asked earlier, which is is there a need for Congress to act. In my judgment there is a very urgent need for Congress to act. We have a settlement here that I think from just about every perspective is a fair, balanced, reasonable settlement of this problem. That settlement, as General Sansonetti said, goes up in a puff of smoke by November 15, on November 15, unless Congress acts.

If that settlement does go up in smoke, I think it would be a very serious setback for a resolution of this problem. What could happen then? There are a number of things that could happen then. None of them are in my judgment nearly as preferable as moving forward with ratification of this settlement.

Each of them, whether they go back to court and have prolonged litigation or whether the Department does a resurvey and essentially quiets title to the disputed area in the Pueblo, each of those solutions I think would be far worse than the settlement that is now before you.

Most specifically, the settlement addresses a number of issues that cannot be answered by the courts in the litigation. The access to those subdivisions, for example, is not involved in the claim area. The settlement agreement essentially permanently grants access to the inholdings. The courts can never do that.

If there is no settlement and if the Pueblo—whether or not the Pueblo gains title to that disputed area, that access question is going to be outstanding. And I think that the goodwill that has been generated in getting to the settlement—if the settlement falls apart, that goodwill may fall apart as well, and I think we could

have some real serious problems up there if we do not move forward with the settlement.

Third and my last point, I want to address Senator Inouye's question about the precedent that this settlement might set. I have been practicing and teaching different land law and Indian law for several decades. In my judgment, the concern about what kind of precedent this sets or does not set really should not be an issue here.

There is precedent in settling Indian claims for giving Indian tribes outright title. Congress did this at the Blue Lake Taos 20 years ago. There is precedent for giving Indians in disputed claims some sort of joint management responsibility. Congress did that with the Havasupi Indians in the Grand Canyon in 1975. Congress did that 2 years ago with the Timbashaw Indians in Death Valley National Park.

There are also many precedents—I can think of at least a dozen; there are probably many more—for giving Indians in areas that they have an ancient and serious tie to some consultative and procedural rights and access rights for ceremonial uses, that sort of thing.

So that has all happened a number of times before. So I think there are many examples of arrangements that are in law already where the U.S. Congress has acknowledged Indian rights and interests in how Federal lands are managed. I do not really see anything in this bill or this settlement that would create an undesirable precedent.

I think, frankly, Congress has a golden opportunity before it to resolve a long-festering issue in a wholly satisfactory way, and I think it would be a terrible shame if this opportunity were lost. So I strongly urge the Congress to move forward.

Thank you very much.

[The prepared statement of Mr. Leshy follows:]

PREPARED STATEMENT OF JOHN D. LESHY, FORMER SOLICITOR,
DEPARTMENT OF THE INTERIOR

I appreciate the invitation to testify here today. I am appearing today solely as a private citizen, expressing my own views. I am not representing anyone else in this matter, and am not speaking for my current employer, the University of California Hastings College of the Law, where I am currently a Distinguished Visiting Professor.

I strongly urge the Congress to enact legislation to ratify the April 2000 Settlement Agreement reached by the Pueblo of Sandia, the federal agencies, and the Sandia Peak Tram Company. The Agreement is a fair, carefully crafted resolution to the long-festering question of the location of the eastern boundary of the Pueblo of Sandia. S. 2018 substantially tracks its provisions.

I first want to comment on the views of my fellow panelist, Dr. Stanley Hordes. As was the case with many of the Spanish land grants in New Mexico, the historical record here is not a paragon of clarity. People can and have argued about many things in that record. In preparing my January 2001 legal opinion, I carefully examined Dr. Hordes' report, along with the views of other historians. My Opinion concludes that the historical record, and the collective judgment of historians who have examined the issues involved, strongly supports the Pueblo's position, rather than Dr. Hordes' position, as to the location of the eastern boundary. I continue to believe that is a correct conclusion, and a fair reading of the voluminous record. I further believe that this conclusion will be upheld by the courts if they have occasion to review it.

As that Opinion indicates, Dr. Hordes makes various assumptions and draws various inferences from the record. (Among these are the meaning of the reference to "sierra madre" in the Act of Possession, the degree to which the formal pueblo idea

was followed by the Spanish in making land grants, and the relevance of the fact that the eastern boundary of nearby grants was determined to be at the mountain crest.) The Opinion points out that, in many cases, Dr. Hordes' assumptions and inferences are not shared by others who have examined such matters. Indeed, others who have examined the matter believe the record supports a conclusion opposite of that reached by Dr. Hordes. Furthermore, some of the matters Dr. Hordes addresses—such as the disputes about the northern and southern boundaries—are at most only remotely relevant to the location of the eastern boundary.

Dr. Hordes' conclusions are essentially the same as those in the 1988 so-called Tarr Opinion. When I was Solicitor of the Department of the Interior, the United States defended the Tarr Opinion in court, with my concurrence, even though I harbored serious doubts that it was a correct reading of the law. A very well-respected federal judge (who had been on the bench for more than two decades, and is now deceased) reviewed all the evidence and arguments, including arguments along the lines of those offered by Dr. Hordes, and ruled in July 1998 that the Tarr Opinion was defective. The judge explained that the Opinion failed to give sufficient weight to the Pueblo's arguments, and specifically had not applied a controlling interpretive principle (one which dates back in American law nearly two hundred years) for construing ambiguities in documents relating to Indians. Let me quote the key point of the judge's ruling:

[T]he circumstances surrounding the Pueblo land grant are ambiguous. Experts . . . hold vastly differing opinions as to the proper interpretation of the Spanish land grant. The Tarr Opinion . . . myopically fails to find ambiguity. The Court finds that this error led to another error, the failure to apply the [and here the court quoted a modern U.S. Supreme Court decision] "eminently sound and vital canon . . . that statutes passed for the benefit of . . . Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians." Therefore, the decision of the Department of the Interior cannot stand.

The judge vacated the Tarr Opinion and sent the matter back to the Interior Department with a directive to take action consistent with the judge's ruling.

After the district court vacated the Opinion in 1998, we decided to see if the matter could be settled by negotiations in a way that satisfied the major concerns of all parties. Anyone who spends much time in litigation knows that settlements are often, even usually, preferable to litigation to the bitter end. In this particular case, settlement looked like an eminently attractive alternative. Why? For essentially two reasons.

First, all our study and conversations with the various interests convinced me and the other federal parties—which included the Forest Service and other officials in the Department of Agriculture and the Department of Justice—that the disputants were actually in very substantial agreement about how the land in the dispute area ought to be managed. Everyone basically wanted the land to remain no more developed than it is now, to be kept in an essentially natural state, and to be open to public recreational access under reasonable supervision.

This general agreement about what ought to happen on the ground was very different from most other litigation in which I've been involved. As this Committee is well aware, typically a wide gulf divides the parties in these kinds of matters. One side wants to mine or log or otherwise develop or intensively use the land, and the other side wants it left alone. Here, by contrast, everyone agreed the land should be left undeveloped. Moreover, the other land use objectives of the key interests were so strikingly similar that the makings of an agreement were practically staring us in the face.

There was a second and equally important reason why settlement looked attractive. Continued litigation over the Pueblo's eastern boundary simply could not resolve many of outstanding issues involving the inholders (the private landowners in the area) as well as the Tram Company, the Counties, the Forest Service, and the holders of special use permits for communications sites at the top of the Mountain, some of which are in the claim area.

Even if the Pueblo ultimately lost in court, for example, some very important on-the-ground management questions would remain. For example, what would happen to the inholders' road and utility access to their inholdings, if the Pueblo wanted to restrict access across Pueblo land (outside the claimed area)? Some of the current access is merely subject to a lease granted by the Pueblo which will expire in a few years. One of the main access roads that crosses Pueblo land outside the disputed area is actually in trespass because it is not supported by an existing lease.

Or if the Pueblo ultimately succeeded in the courts, would it choose to continue to allow access to inholders, recreationists, special use permit holders, and others? What would be the scope of its regulatory authority and jurisdiction over the area?

A negotiated settlement could address these important matters. Continued litigation over the boundary could not. The logic favoring settlement let, after strenuous, conscientious efforts, to the Settlement Agreement that brings us here today.

In my judgment, although one can always quibble over details, the settlement is a win-win. It protects all parties' key interests. It reflects agreement on all important issues of on-the-ground management, including those that could not be resolved by continued litigation. It sets out a clear path for future management of this area. It honors and respects existing uses, and it quiets title.

There is, of course, an important catch. The Settlement Agreement remains in effect only until November 15, 2002. This brings me to my second main point: There is an urgent need for prompt congressional action. If Congress does not act by then, several different things could happen. None is nearly as good as ratifying the Settlement Agreement. Each would, in various degrees, prolong uncertainty, delay ultimate resolution, lead to additional expense and, in the worst case, drive apart the various interests who have come together to produce this landmark accord.

If Congress does not act by November 15, the Secretary of the Interior may simply proceed to implement the legal opinion I signed as Solicitor in January 2001, and to conduct a resurvey of the Pueblo of Sandia's eastern boundary. Upon secretarial approval of the resurvey at the crest of the Sandia mountain, the land in the claimed area would become vested in trust for the Pueblo. If that happened, none of the various safeguards for the interests of the Tram Company, the inholders, special use permit holders, recreational users of the lands, and the Forest Service that are included in S. 2018 would apply. It would take an Act of Congress to install such safeguards, and even if Congress passed such legislation, the Pueblo would likely have to be compensated for the resulting restrictions on its property rights.

Alternatively, the Secretary could ask the Solicitor to revisit my legal opinion. If my successor did so, and resurrected something along the lines of the Tarr Opinion, the federal courts would almost certainly be asked once again to intervene. Because the court has already rejected the reasoning of the Tarr Opinion, the United States would have a steep uphill battle in trying to convince the courts otherwise. Litigation is expensive, time-consuming, and divisive. Moreover, the only answer it can give in this kind of case is a simplistic, yes-or-no, zero-sum answer. That is, the courts simply cannot address many of the access and management questions that the agreement and S. 2018 address sensibly and in great detail.

If Congress does not act by November 15, the Settlement Agreement's guarantee of continued, permanent access to inholders, special use permit holders, the Forest Service, and recreational users across Pueblo lands would disappear. It is a risky to assume that the Pueblo will be willing to continue to support such a guarantee if the current settlement falls apart.

Finally, I have heard it said that the approach of this legislation is unprecedented, and troublesome because it gives the Pueblo a veto over new proposed uses in the claim area, and also recognizes the Pueblo's right of access for traditional and cultural uses. It is my firm opinion, based on decades of practicing and teaching federal land law and Indian law, that this concern about precedent is totally unfounded.

For one thing, the area will remain designated wilderness under the terms of the settlement. This, and the rugged terrain, make it very unlikely significant new uses would ever be proposed in this area. (Experience in the nearly quarter of a century since the wilderness was designated bears this out.)

For another, Congress has often devised innovative arrangements for managing federal lands which depart from convention when peculiar local conditions require it. A prominent recent example was the approach fashioned by New Mexico's congressional delegation in the Baca Ranch acquisition and management legislation, enacted into law less than two years ago.

Most important, there are many examples in the long history of arrangements between the United States and Indian tribes where Congress has acknowledged Indian rights and interests in how particular areas of federal land are managed. A number of treaties and statutes recognize rights of particular Indian tribes—most notably in the Pacific Northwest and in the Great Lakes region—to hunt, fish and gather resources on federal lands (and in some cases, nonfederal lands). At least one prominent unit of the national park system, Canyon de Chelly National Monument in northeastern Arizona, is actually on Navajo tribal trust land, and the National Park Service administers the area under an operating agreement with the Navajo Nation.

A couple of other modern examples from the southwest are especially apt. In 1975 Congress accorded the Havasupai Indians certain statutory rights with respect to certain lands in the Grand Canyon National Park. Less than two years ago, Congress enacted a statute recognizing rights of the Timbisha Indians in certain lands in Death Valley National Park.

In short, there is ample precedent for acknowledging the right of the Pueblo of Sandia to have a say, recognized in federal law, regarding how this area will be managed. Almost everyone agrees that the Pueblo has close and ancient ties to this area. Moreover, the Pueblo has a very credible legal claim to this area. This means that the alternative to ratifying this settlement may not be that the Pueblo has no voice in how this land is managed; instead, it may be that the Pueblo has essentially the only voice in how this land is to be managed.

The Settlement Agreement that S. 2018 substantially tracks was carefully drawn during extended negotiations. Like all settlements, it reflects compromises on all sides, but I firmly believe it resolves the Pueblo's claims, and many other issues that further litigation would not resolve, in a way that is fair, comprehensive, and permanent.

Congress now has before it a golden opportunity to resolve this long-festering set of issues in a wholly satisfactory way. It would be a terrible shame if this opportunity were lost.

Chairman INOUE. Thank you very much.

Professor Leshy, does the Federal trust responsibility to Indian tribes and the Government to Government relationship that the United States has with the tribes permit these types of cooperative management arrangements on public lands in which tribes have a legal, historical, or cultural interest?

Mr. LESHY. Yes, Senator, I believe that the idea of cooperative arrangements and collaborative management responsibilities in these select areas where tribes have these ancestral, strong ancestral ties, is an entirely appropriate expression of and implementation of the trust responsibility.

Chairman INOUE. Does the U.S. Government have the same unique legal relationship with non-Indians as it does with Indian tribes that would form the basis for this type of arrangement?

Mr. LESHY. Well, the United States has a special responsibility to Indian tribes. It is a firmly embedded principle in American law that goes back 200 years. The United States obviously also has responsibilities toward non-Indians. I would not characterize them as the same, but clearly non-Indians who use Federal lands clearly have rights.

I think, frankly, the beautiful thing about the settlement that is before you is that it carefully and I think appropriately balances the rights and expectations of non-Indians as well as the Pueblo.

Chairman INOUE. Now, when you were Solicitor why did you decide to issue an opinion on January 19 rather than leave the resolution of this matter to the incoming administration?

Mr. LESHY. Let me, Senator, put this in context. One of the very first things that hit me when I became Solicitor in 1993 was this Pueblo of Sandia matter. The Pueblo came to see me. They were dissatisfied with the *Tarr* opinion. They asked me to review it. I looked at it. I had serious doubts about it, but I thought, well, the Government has taken this position, the Government ought to defend it in court. So we did for several years defend the *Tarr* opinion in court, even though I privately harbored serious doubts about the accuracy of it.

Then the Federal judge threw out the *Tarr* opinion, for reasons that I indicated, said that it did not fairly represent an accurate view of the law. The intervenors—then we started working on the

settlement. The intervenors took that court decision to the Court of Appeals. The Court of Appeals dismissed their appeal because the settlement had been reached in November.

Four days later, the Sandia Mountain Coalition and the county of Bernalillo asked me to move forward with a correct resurvey. The Pueblo asked me to move forward. At that point I had been grappling with this issue for 8 years. I had dozens of meetings about it inside and outside of my office, with Department of Agriculture attorneys and officials, with Department of Justice officials, and with all the interest groups.

In my 8 years as Solicitor, I have dealt with thousands of legal questions. I frankly do not think I have devoted more study to any single discrete legal issue, more time, than I did to the Sandia question. I was at least as familiar with it as probably anybody in the Federal Government.

I could have simply left office and left this matter unresolved. But the judge had thrown out the *Tarr* opinion and directed the Department of the Interior to take action in conformity to his opinion. I was very uncomfortable about leaving office not following the judge's direction. When we had a tentative settlement in hand, that was good, but, as I said earlier, that settlement would go up in smoke if Congress did not approve it and then we would be back in court.

Given all those circumstances, I thought then and I still firmly believe that it would have been irresponsible for me to walk out of office without following the court's direction and resolving this matter by opinion. I think if I had walked out and not done it, it would have delayed ultimate resolution perhaps for a very long time. It would have made renewed litigation more likely, not less likely, and I think renewed litigation frankly would be the absolute worst thing to happen here for the people of Albuquerque, the counties involved, the affected land owners, the recreationists, the Forest Service, and the Pueblo.

So I decided to move forward at that point and, after consulting again with Agriculture and Justice, with the reevaluation that the court had called for, I reopened the record. I asked for more comments and arguments from all the parties. I got those, I read those, and I considered them. I believe the opinion, as I said, I reached in January was the right result, reached for the right reasons, and was the right thing to do under the circumstances and will, if it comes to that, be upheld by the courts.

But I continue to hope and urge that Congress ratifies the settlement agreement and brings this matter to a close. Thank you.

Chairman INOUE. Thank you.

Dr. Hordes, I gather that you disagree with Solicitor Leshy's opinion of January 19?

Dr. HORDES. Yes, sir, that is correct.

Chairman INOUE. Would you like to elaborate on that?

Dr. HORDES. Oh, I can reiterate what I indicated before, but it was fairly well included in the, I think seven or eight points that I made in my testimony.

Chairman INOUE. Thank you very much.

Dr. HORDES. Yes, sir.

Chairman INOUE. Senator Bingaman.

Chairman BINGAMAN. Mr. Chairman, I appreciate very much both of the witnesses being here. I do think it is useful testimony. Obviously, what we are trying to do or what I have been trying to do in the proposed legislation is not to once again get into the validity of the claim. I mean, I think that that is an interesting issue, but frankly it is the subject—it has been the subject of much litigation, may be the subject of more litigation.

The hope is to get a resolution that all parties could live with. So I appreciate the testimony and I know that particularly John Leshy has spent a lot of time on this and I appreciate him coming to the committee today to follow up on the work he has done before.

Chairman INOUE. Senator Campbell.

Senator CAMPBELL. Well, Mr. Chairman, I almost do not know where to start. Certainly Mr. Leshy and Mr. Hordes know a lot more about it than I do and their reputation is well known. Few other people in the audience probably have their expertise, maybe with the exception of Reed Chambers back there, who has been a wonderful source of information for our committee, the Indian Affairs Committee.

But I just sit here listening about the laws and the rights of the Spanish land claims and the U.S. Government and literally everybody else, including the people who have homes in that area, and I would like to know a little bit more about what I would call aboriginal rights. That is, the Sandia Pueblo, the Indian people. Because I have friends that are Pueblo people, but I do not know a lot about their history. Maybe you can tell me.

Were they in that area—I mean, how long have they been in that area? Have they been there before New Mexico was a State?

Senator DOMENICI. 600 years.

Senator CAMPBELL. 600 years. So they were there before New Mexico was a State, before Albuquerque was a city, before the U.S. Government was a government, before Spanish rule, before Columbus—a long time.

Where I live up by Mesa Verde in Colorado, it is said that the Anasazi, the “Ancient Ones,” became the Pueblo Indians, that when they droughted out over a period of years around the 11th or 12th century, they then moved down the river and that is when they became Pueblos. I do not know how true that is. I guess some historian or some anthropologist, somebody could probably tell me.

But it seems to me that, you know, they did not have a written language, did not have all kinds of documentation that we have in modern society, but certainly they have got some kind of aboriginal claims just having been there that long. Since there were in those days, there was no fences or lines or borders or so on, that area where they have lived for 600 years, as Senator Domenici has said—

Senator DOMENICI. They used it.

Senator CAMPBELL. They have used that for that amount of time.

Whatever land that they lost, like this disputed land here, how did they lose it? They did not lose it?

Dr. HORDES. May I respond, Senator Campbell?

Senator CAMPBELL. Yes, please. I am interested in knowing.

Dr. HORDES. First of all, we are dealing with a situation that is unique among the pueblos. Certainly there was a Pueblo of Sandia in the approximate area of the present Pueblo before the coming of the Spanish. After the Pueblo Revolt of 1680, the Pueblo was abandoned in about 1680, 1681, and they had left to go west toward the Hopi country in western New Mexico and eastern Arizona.

It was not until about 68 years later in the 1740's that the Franciscans were desirous of bringing some of the descendants as well as some of the Hopi Indians, the descendants of the general refugees from the Rio Grande Valley, back to the Rio Grande Valley and settling them on a mission on the abandoned site of the Pueblo of Sandia.

So what we see in 1748 is the creation of a new settlement. We are not dealing with individuals whose roots go back on that site beyond 1748. There may have been some of the descendants of the Pueblo among them, but for the most part it was a re-formation of a mixed group of Indian people on the site in 1748, and the rights that they have, that the United States recognizes, stems from the rights that were granted by the Governor of New Mexico speaking for the King of Spain, continued by the Republic of Mexico, and under the terms of the Treaty of Guadalupe-Hidalgo of 1848 my understanding is the United States must recognize the rights that were granted by the previous sovereigns, that is to say the King of Spain and the Republic of Mexico.

Senator CAMPBELL. In the treaty of 1848, the Hidalgo Treaty, did the Native peoples have any voice at all in that treaty?

Dr. HORDES. Well—

Senator CAMPBELL. In California what happened when the Franciscan missionaries moved people around, Native peoples, after a number of years they became known as "mission Indians." They almost lost their identity and were pretty much indentured servants, and that is how all those missions in California got built, as you probably know.

Dr. HORDES. Yes, sir.

Senator CAMPBELL. You can still go to some of those old missions in Monterey and San Juan Capistrano and so on and look underneath the tiles of the roof and find the skin imprints of Indians, where they bent the tiles, the wet tiles, over their legs to make those tiles. They were not paid for it, by the way, except in slop.

Mr. LESHY. Senator, if I could just add one thing to what Dr. Hordes said. There is another element here. The key issue is what was intended by the Spanish land grant in 1748. But in 1858, 10 years after the treaty, Congress confirmed that grant by statute. So the Pueblo actually has a very credible argument that that congressional confirmation in 1858 of the 1748 grant really cements their title to this area.

Senator CAMPBELL. Well, that is great. Between the missionaries and the U.S. Congress, the Indians have sure fared very well in the history of this country, I will tell you that.

Thank you, Mr. Chairman.

Dr. HORDES. Senator Campbell, may I respond to your question about who negotiated the Treaty of Guadalupe-Hidalgo? It was negotiated between the representatives of the United States and the

representatives of the Republic of Mexico after the defeat of the Mexican armies during the Mexican War of 1846.

Senator CAMPBELL. Nevertheless, there was no voice of the Native peoples involved in that, was there?

Dr. HORDES. Nor any of the Hispanic people in New Mexico, either.

Senator CAMPBELL. Thank you, Mr. Chairman.

Chairman INOUE. Senator Domenici.

Senator DOMENICI. Senator Campbell, I think you will find that the Pueblo Indians in our State all have land. The question is—and they have claimed the land and had it validated to them for decades. The question is do they own some more land beyond that. That is the situation here. The situation here is this 10,000 acres, which you see every time you come to Albuquerque. You just do not have it pointed out to you.

Senator CAMPBELL. I know where it is. It is up by the tramway, so I can see it from the highway.

Senator DOMENICI. This committee here in this room adopted a piece of legislation making it a wilderness, calling it property of the United States of America, creating it as a wilderness for everybody, the Indian people—and there are trails up there and it is used by about a million people a year.

This issue now is, after a significant amount of time, the Indian people claim that they own most of that mountain. That has never been adjudicated in court, although some preliminary findings have been made in court. Now the effort is being made to resolve the differences between the Indians' claim and what obviously was a very substantial, if not ownership, claim of the United States when we turned it into a wilderness area.

So that is what we are now talking about. This particular group of Indian people have lands beyond this, have a very major casino on a road that does not go all the way up there, but is in that area. They are attempting to round out what they perceive to be their holdings. They have had an opportunity to go through the Claims Court and get money. I would assume—I do not remember, but I assume they might have even done that. They do have lands that have been perfected to them, and I think they are very, very responsible people and we are going to all try to work this out one way or another.

I do want to say, Mr. Leshy—and I will try to be brief—you finally issued that Solicitor's opinion as you went out the door on the 19th day of January, leaving the administration and taking on your new chore of being a lawyer and whatever you do; is that not right?

Mr. LESHY. Yes.

Senator DOMENICI. I mean, I am not insinuating anything, although it sounds strange to me, with all the time you have had, that it took you until the 19th day of January, when the 20th day of January you had no more authority. But you have explained that to us, so thank you.

Now, Mr. Leshy, you talk a lot about all these other areas in America where we have these joint uses. I have not looked them up, but I think it behooves us to look at the agreement in this joint use because it is very, very different from what my staff tells me than others.

You see, both of these giants, the United States of America and the Indian Pueblo, both want ownership. The problem is how do we—we cannot have two ownerships. So we have tried to create indicia of ownership and given some to one and some to others, and hope that when we are finished they can live in harmony and peace and all these wonderful uses that have been occurring can continue forever, with nobody changing anything.

The Governor contends that we are better off having them because we change our minds and he contends, I imagine, that his people will never change their mind. I wonder about that. I will ask him when he gets up here.

In any event, let me say the other issue is exclusive right. There is a veto over any changes to be made. They are to have, the Indians are to have, exclusive tribal hunting, not New Mexico Fish and Game; jurisdiction over nontribal lands that are within the periphery. Even though we will be clearing the roads and the like, this agreement I believe has jurisdiction over non-Indian lands. That is not illegal, it is not preposterous, but it is certainly not very usual that, if you did not have it, you would settle that in an agreement. Normally it goes the other way.

There are parcels in this that are put in trust that are inholdings, that I think could create some problems that would not exist in a clean-cut situation.

So we do have a little bit to discuss, and I think if you look at it from the standpoint of how we take different indicia of ownership applied to our commonsense usage and the like and fix this correctly for both—I think that is what we are really trying to do.

My last question of you has to do with, do you have any thoughts on whether or not Federal environmental laws should have been complied with or do you have a way of explaining that they are not applicable in this instance?

Mr. LESHY. Well, I think the way that provision that you have referred to should be understood is this. The thing that made this agreement possible, I think, and frankly the reason I think it is such a good deal, is that the parties basically, especially the Forest Service and the Pueblo and the recreationists and the land owners, all essentially want the same thing to happen here: that is, no development. They do not want houses there, they do not want roads there. They want it to be left alone.

So what you are really talking about, when you are talking about how this area is going to be managed and who is going to have what say over management, you are talking about a very narrow range of management choices because the basic choice has been made. This area is going to remain essentially undisturbed.

So if you look at it in that context and say, well, we are going to move forward with this essentially undisturbed kind of management of this area, then whether the environmental laws apply or not seems to me to be not nearly as important as in most other situations, when you are really making fundamental decisions of a different character.

So I think that is why one could justify not applying at the initial stage, as I understand this agreement does, the normal environmental processes.

Senator DOMENICI. Mr. Chairman, I have questions, I will submit them to the Pueblo in due course, three or four.

Chairman INOUYE. All right, sir.

May I ask another question for clarification, Dr. Hordes?

Dr. HORDES. Yes, sir.

Chairman INOUYE. You stated that the Pueblos left that area after the Pueblo Revolt and went to Hopi Land?

Dr. HORDES. Yes, sir.

Chairman INOUYE. I did not want to give the impression that they left voluntarily.

Dr. HORDES. No, no. There was, I guess the State Department would call it, a frank exchange of views between the Spanish who were retreating after the Pueblo Revolt and on their way down—there was some hostilities between the Spanish and the Indians.

Senator CAMPBELL. “Frank exchange of views” sometimes means at gunpoint, I think, Mr. Chairman.

Dr. HORDES. I beg your pardon?

Senator CAMPBELL. I think “frank exchange of views” sometimes means at gunpoint.

Dr. HORDES. Yes, yes. There was hostilities initiated by the Spanish against the Pueblo of Sandia, which did indeed result in the abandonment.

Chairman INOUYE. Did they not have many bloody battles and massacres?

Dr. HORDES. Well, there were certainly hostilities on the part of both Pueblo against Spanish and Spanish against Pueblo during that period of the Pueblo Revolt of 1680. We can be here for a couple of hours to discuss the causes of the Pueblo Revolt, but there was an alliance of northern and southern Pueblos that coalesced to attack some of the Spanish settlements, as well as the capital at Santa Fe, which stimulated the migration to the south, and there was the attack on the part of the Spanish against the Pueblo of Sandia on their way south that did indeed result in the migration of the Pueblo to the west.

Chairman INOUYE. Well, I am not an historian, obviously, but what little I have read of the Pueblo Revolt leads me to believe that before the coming of the Spaniards the Pueblos were very peaceful people. They hardly had any arms for fighting.

But may I, on behalf of the committee, thank you, Dr. Hordes and Professor Leshy.

Dr. HORDES. Thank you.

Senator CAMPBELL. May I ask one more question, Mr. Chairman? You said the Pueblo Revolt was 1680?

Dr. HORDES. Yes, sir.

Senator CAMPBELL. Did that happen in several pueblos or one pueblo? They threw some priests off a cliff at one of the pueblos during that revolt?

Dr. HORDES. I am not aware of that specific incident, Senator Campbell.

But if I may, I was ruminating on a question you had asked me, Senator Inouye, and if I might respond, if I had any additional comments on what Professor Leshy had said. If I may just take a moment to comment on his observation about ambiguity, there is not an event in human history that historians do not have some

kind of disagreement about. The fact that historians disagree about something that happened in the past is very common.

That does not mean that every event in human history is ambiguous. I think that situation is very true here. My reading of the documentation, the primary documentation, is one where we see a very unambiguous account of what happened with the granting and the recognition of the Pueblo's boundaries. The fact that historians disagree with it I do not think interferes with that status where it is not ambiguous.

The other comment I would like to make is with Professor Leshy's comment that I am kind of a Lone Ranger on this issue. With the exception of one or two affidavits on particular issues, I have yet to see a formal, documented, expert historical report responding to the conclusions that I reached in 1996.

With regard to the notion that I am the only one that has researched, reached these conclusions, I would refer you, Senator, to the report of William Morgan, the report of Dr. Frank Wosniak, the work of Professor Michael Meyer from the University of Arizona, and even the work of Dr. Ward Allen Menge, who has worked on behalf of the Pueblo. Dr. Menge came to many of the same conclusions that I has as well. I would just like the record to show that I am by no means the only one what has come to this conclusion, Senator.

Thank you.

Chairman INOUE. On documentation that you speak of, there must be Spaniard documentation or missionary documentation. Were there any Pueblo documentations?

Dr. HORDES. The only records that remained were the ones that were recorded by the government of the King of Spain. To be certain, Pueblos had certain rights where they could sue and be sued, they could petition the King, petition the Governor, and there are copious, copious documentation to reflect advocates for the Pueblo as well as the Pueblo representatives themselves coming before Spanish colonial authorities to plead their case. On many, many occasions the Spanish colonial authorities indeed did rule in their favor.

Chairman INOUE. Thank you very much, sir.

Dr. HORDES. Thank you.

Senator CAMPBELL. Mr. Chairman, the gentleman said that historians disagree and that is absolutely true, but it has always been in my view that they rarely take into consideration tribal historians because they did not have a written language. But I do not think they are any less valid, frankly.

Senator DOMENICI. Mr. Chairman, I would like just to take one minute here. I did get John Leshy to acknowledge that he filed a Solicitor's opinion on the 19th and I forgot to ask him or state that that opinion overrode an opinion of the previous Solicitor. So there is a Solicitor's opinion by Solicitor Tarr—this is it—that said the opposite. As he left office, he issued an opinion that overruled *Tarr*, thus making his the last opinion, which I assume everybody now assumes we ought to buy, although there has been at least three of these that have happened where they overturn each other while they are in office, which seems to me to mean that there is a little bit of political input into these solicitors' opinions.

Thank you, Mr. Chairman.

Mr. LESHY. If I could, excuse me, just add one thing here. There was an intervening event between the *Tarr* opinion and my opinion and that was the decision of Judge Greene in the district court. Remember, the United States defended the *Tarr* opinion in the Clinton administration. We defended it for 5 years.

Judge Greene threw it out and said take another look, which is why I wrote my opinion.

Chairman INOUE. Thank you very much.

Dr. HORDES. Thank you for the opportunity.

Chairman INOUE. May I now call upon the Governor of the Pueblo of Sandia, Sandia Tribal Council of New Mexico, the Honorable Stewart Paisano. Governor Paisano, it is a pleasure to have you here with us.

STATEMENT OF STUART PAISANO, GOVERNOR, PUEBLO OF SANDIA, SANDIA TRIBAL COUNCIL, BERNALILLO, NM

Mr. PAISANO. Thank you, Mr. Chairman. Good afternoon, Chairman Bingaman; Chairman Inouye; ranking members Murkowski, Campbell; Senator Domenici, and members of the committee. On behalf of the Pueblo of Sandia, I appreciate the opportunity to testify today in order to encourage this committee to implement a fair and just resolution to the Sandia Mountain issue. I have a brief statement and request that my written statements be admitted into the record.

Chairman INOUE. Without objection, so ordered.

Mr. PAISANO. To our people, no issue is more important than the protection of Sandia Mountain. For the Pueblo, it is a matter of centuries-old religion and cultural traditions. It is central to our beliefs, practices, and prayers. The mountain is the only source for certain resources that we need for our religious ceremonies. Our spiritual leaders routinely make pilgrimages to the shrines on the mountain and leave offerings. These shrines are located on the mountain from the foothills all the way up to the crest.

Because of its significance to our religious and cultural traditions, our people have always and will always believe the mountain should remain wild and undeveloped. That is why we are so grateful to Senator Domenici for his efforts to protect and to preserve the mountain. His leadership in establishing the Sandia Mountain Wilderness helped to ensure that the mountain is not further developed, at least in the short term, by commercial interests.

Chairman Bingaman, we want to thank you for your leadership in introducing legislation that has brought us to this hearing.

We have made a number of painful concessions to resolve the controversy. Despite confirmation of our Spanish land grant by the U.S. Congress in 1858, we agreed in the settlement agreement to: extinguish our title to the mountain, continue the Forest Service administration of the mountain, permanent easements over existing lands for public and private access, disclaim any title to privately owned lands on the mountain.

We continue to adhere to these concessions in the agreement even though the Federal Court of Appeals ruled in our favor and the Interior Department Solicitor ruled that we hold title to this mountain.

We believe that the settlement agreement in S. 2018 provided some major benefits to all interested parties. First, the mountain will be preserved and protected forever. The Pueblo is absolutely committed to protecting the mountain and we agree that the preservation of the wilderness system is a national priority.

We have agreed that all commercial uses, including gaming, mineral, timber production, would forever be prohibited. Our concern is that national policy may change direction, as often happens when Native Americans are involved. We feel strongly that the perpetual preservation of the wilderness will be best served by giving the Pueblo the right to consent to all new uses of the mountain should the Forest Service ever consider permitting new uses.

Second, the agreement and legislation both recognize the Pueblo's rights and interests in the mountain. Over 200 years ago, the King of Spain memorialized our ownership of the mountain in a written grant. This grant was confirmed by the U.S. Congress in 1858. The grant set our eastern boundary at the main ridge called Sandia. No subsequent act of Congress has ever extinguished our rights to the mountain.

The mountain settlement and S. 2018 both codify the public's right to use of the mountain and continue our centuries-old traditions. This simple acknowledgment, confirmed by the U.S. Department of the Interior as recently as last year, is essential to a legislative solution.

Third, the agreement and legislation will protect and enhance access to the mountain for the Pueblo and for the public. We realize that Sandia Mountain is not only important to the Pueblo, but also to the public at large. The settlement agreement and S. 2018 both enhance access for the public by granting permanent rights of way over existing lands to trailheads, picnic areas, and other public places.

The agreement and legislation will finally allow us to stop litigating over the mountain and to focus on preserving and enjoying it.

There is only one certain way to avoid future litigation. That is for Congress to pass ratifying legislation before the settlement agreement terminates on November 15. We are here today precisely because we want to work with you, Chairman Bingaman, Senator Domenici, and members of the committees, to achieve that goal.

We do not mean to disparage our friends' and neighbors' interests by preserving the mountain, but not only might the public's sentiment to protect the mountain change over time, their interests simply cannot be compared to the obligation that we feel after centuries of religious and traditional practice, nor does it equate to our ownership rights to the mountain.

S. 2018 makes a number of significant changes in the settlement the Pueblo agreed to, none of which are favorable to our interests. We believe the settlement agreement should be enacted as written. If it is not and if we are forced to accept modifications that are detrimental to our interests, we believe that it is only fair and just that the Pueblo should receive benefits in return.

In our written testimony we have discussed a number of changes we would like to see adopted. Mr. Chairman, we have heard some people criticize the settlement agreement as dangerous precedent.

This is not so. We know of no other present situation where a national forest has been mistakenly established on lands owned by an Indian tribe, where the original grant to the tribe had been confirmed by an act of Congress, and where courts have always read this very language to convey title to a tribe.

Before concluding, I would like the members here to know that we are willing to work with the committees and all parties in good faith to resolve the mountain issue. We want a solution. We cannot accept, however, or support, any solution. We simply cannot abandon our deeply-held beliefs or fail in our sacred responsibilities to generations past, to generations to come. We are committed to finding a resolution that provides fairness and justice to the Pueblo.

Thank you for the opportunity to share our views and I will be happy to try to answer any questions that the committee may have.

[The prepared statement of Mr. Paisano follows:]

PREPARED STATEMENT OF STUART PAISANO, GOVERNOR, PUEBLO OF SANDIA,
SANDIA TRIBAL COUNCIL, BERNALILLO, NM

Good afternoon, Chairmen Bingaman and Inouye, Ranking Members Murkowski and Campbell, Senator Domenici and Members of the Committees. On behalf of the Pueblo of Sandia, I appreciate the opportunity to testify today in order to encourage this Committee to implement a fair and just resolution to the Sandia Mountain issue.

To our people, no issue before these Committees or this Congress could ever be more important than the protection of Sandia Mountain. For the Pueblo, it is not a matter of dollars and cents; rather, it is a matter of our centuries-old religious and cultural traditions.

Our people have been living on and using the Mountain for at least 600 years. It is central to our beliefs, practices, and prayers. The Mountain is the only source for certain resources we need for our religious ceremonies. Our spiritual leaders routinely make pilgrimages to the shrines on the Mountain and leave offerings. These shrines are located on the Mountain, from the foothills all the way to the crest.

To say that the Mountain is special or sacred to our people does not do it justice. Everyone at the Pueblo of Sandia, all those who came before us, and all who will follow us, will always hold this Mountain central in our hearts.

The United States Congress in an 1858 statute confirmed our Spanish land grant as extending to "the main ridge of Sandia Mountain." From a legal standpoint, these words refer to the Mountain's summit. The Supreme Court read these same words in an 1855 treaty concluded just three years earlier with the Yakima Tribe to mean a mountain's summit. *Northern Pacific Ry. Co. v. United States*, 227 U.S. 355 (1913). The federal courts have read similar language in grants just to our south—to private landowners and the Isleta Pueblo—as conveying title to all lands to the summit of a mountain.

Because of its vital and irreplaceable significance to our religious and cultural traditions, the Pueblo of Sandia has always believed that the Mountain should remain wild and undeveloped. That is why we are so grateful to Senator Domenici for his efforts to preserve the Mountain. His leadership in establishing the Sandia Mountain Wilderness has helped to ensure that the Mountain is not further developed, at least in the short term, by commercial interests.

Chairman Bingaman, we want particularly to thank you for your leadership in introducing S. 2018 that has brought us to this hearing. If we are going to protect Sandia Mountain, we need to act now to work out any differences before the settlement agreement we reached two years ago with the United States expires on November 15.

This settlement agreement was reached after extensive negotiations between the Pueblo, the Sandia Peak Tram Company, and the Departments of Justice, the Interior and Agriculture. Representatives of Bernalillo County, the City of Albuquerque and a coalition of homeowners and users of the Mountain participated for nearly a year in these negotiations, but withdrew prior to their conclusion to pursue further litigation, and refused to sign the agreement.

We made a number of painful concessions to resolve the controversy. The other parties made concessions as well. Despite confirmation of our Spanish land grant by Congress, we agreed in the settlement agreement to:

1. United States title and continued Forest Service administration of the Mountain;
2. Continued public access to the Mountain;
3. Extinguishment of our title to the Mountain, subject to recognition of our rights and interests as set forth in the settlement agreement;
4. Easements over our existing lands for roads and trails to the Forest Service facilities and two of the private subdivisions on the Mountain, and also to a utility corridor to the subdivisions;
5. Disclaim—as we have always done—any title to privately-owned lands on the Mountain.

We continue to adhere to these concessions and to the agreement, even though since we signed it, the federal court of appeals ruled in our favor and the Interior Department Solicitor has determined that we hold title to the Mountain.

We believe S. 2018 should be amended to more closely track the settlement agreement. First, however, I would like to highlight some of the major benefits the settlement and S. 2018 provide for everyone.

THE MOUNTAIN WILL BE PRESERVED AND PROTECTED FOREVER

The Pueblo is steadfastly and absolutely committed to protecting the Mountain. And we agree that preservation of the wilderness system is a national priority. For that reason, the Pueblo has committed to perpetual maintenance of the wilderness portions of the Mountain as wilderness—with strict adherence to the wilderness laws as they exist today. We have agreed that all commercial uses, including of course gaming, as well as mineral and timber production, would be forever prohibited on all parts of the Mountain. We fear existing laws protecting wilderness could change. Our concern is that policy may change direction, as has often occurred when Native Americans are involved. We want to protect the Mountain not for just the next 25, 50, or even 100 years; we want to protect it forever. We therefore feel very strongly that perpetual preservation of the wilderness will be best served by giving the Pueblo a right to consent to all new uses of the Mountain should the Forest Service ever consider permitting new uses (which we hope they would not). We are committed to protecting this consent power, which is included in both the settlement agreement and S. 2018.

THE AGREEMENT AND LEGISLATION BOTH RECOGNIZE THE PUEBLO'S RIGHTS AND INTERESTS IN THE MOUNTAIN

As noted in the settlement agreement, over 250 years ago the King of Spain memorialized our ownership of the Mountain in a written grant. This grant was confirmed by the United States Congress in 1858. The grant set our eastern boundary as the “main ridge called Sandia.” No subsequent Act of Congress has ever extinguished our rights in the Mountain.

The settlement and S. 2018 both codify the Pueblo's right to use the Mountain to continue our centuries-old traditions. This simple acknowledgment, confirmed by the U.S. Department of the Interior as recently as last year, is essential to any settlement legislation we could support.

THE AGREEMENT AND LEGISLATION WILL PROTECT AND ENHANCE ACCESS TO THE MOUNTAIN FOR THE PUEBLO AND THE PUBLIC

We realize, Mr. Chairman, that Sandia Mountain is not only important to the Pueblo, but also to the public at large. We have no desire to prevent the public from enjoying the Mountain's beauty and serenity. Like the settlement agreement, S. 2018 allows public access to all parts of the Mountain. Thus, if S. 2018 passes, hikers, hang-gliders, and all sorts of other recreation-seekers will be able to continue to enjoy the Mountain with the same freedom they do today. In fact, the settlement agreement and S. 2018 both enhance access for the public by granting permanent rights-of-way over our existing lands to trail heads, picnic areas, and the like. This grant of permanent and secure access was a major concession made by the Pueblo and cannot be achieved through continued litigation.

We have heard some people criticize the settlement as a dangerous precedent. This is not so. We know of no other present situation where a National Forest has been mistakenly established on lands owned by an Indian tribe, confirmed by an Act of Congress, and where courts have recurrently read this very language to convey title to a tribe. Under the settlement agreement and S. 2018, the Forest Service

would continue to administer the Mountain and its wilderness, as it does today, notwithstanding our land grant.

THE AGREEMENT AND LEGISLATION BOTH CONFER SPECIFIC RIGHTS ON THE PARTIES INVOLVED AND, AS A RESULT, WILL FINALLY ALLOW US TO STOP LITIGATING OVER THE MOUNTAIN AND TO FOCUS ON PRESERVING AND ENJOYING IT

Like most area residents who enjoy the Mountain, we want to put a long period of litigation and disharmony behind us. We have heard and read critics of the settlement agreement complain that the agreement is vague and will lead to future litigation. This charge—made by some of the same individuals and groups that withdrew from the settlement discussions—is simply untrue. There is only one certain way to avoid further litigation; that is for Congress to pass ratifying legislation by November 15 of this year, when the settlement agreement terminates. We are here today precisely because we want to work with you—Chairman Bingaman, Senator Domenici, and Members of the Committees—to achieve that goal.

Before S. 2018 is enacted, however, there are several amendments we would like to see adopted. These changes would help to make the bill more closely reflect the settlement agreement we worked so hard to reach with the Government and Tram Company.

First, we oppose the provision, Sec. 4(c)(3), which gives Sandoval and Bernalillo Counties the authority to consent or to withhold consent for new uses in the area. It appears that this provision is designed to level the playing field since the Pueblo was granted an identical consent authority in the settlement agreement and in the bill. Despite the superficial appearance of equality, this grant of authority to the counties is not justified.

Unlike the Pueblo, the counties do not have property interests in the Mountain. Also in contrast to the Pueblo, the counties do not feel any sacred responsibility to protect the Mountain. We do not mean to disparage our friends' and neighbors' interest in preserving the Mountain for public enjoyment. But not only might public sentiment to protect the Mountain change over time—their interest simply cannot be compared to the obligation that we feel after centuries of religious and traditional practice, nor does it equate to our ownership rights to the Mountain.

More generally, S. 2018 makes a number of other significant changes in the settlement the Pueblo agreed to, none of which are favorable to our interests. For example, the settlement recognized the Pueblo's exclusive authority to regulate hunting by our members on lands within the Area owned by the United States, and would have taken into trust lands we purchased in the Evergreen Hills subdivision, using several million dollars of our own funds. S. 2018 removes these provisions, and makes other changes unfavorable for us. We believe the settlement agreement should be enacted. If it is not, and if we are forced to accept these and other changes S. 2018 makes to the settlement, the Pueblo should receive commensurate benefits in return.

One possibility would be to add a specific land exchange provision to S. 2018, building on the concept in Section 14(c). We have discussed this approach with Committee staff and a number of parties. Last week, the Commissioners of Sandoval County voted unanimously in favor of an exchange involving all federal wilderness lands within the Sandoval County portion of the claim area. We are willing to consider this and other similar land exchange proposals so long as they preserve and do not diminish our interests in the Area.

Finally, I attach a number of other, more technical amendments.

Before concluding, I would like the Members here to know that we are willing to work with the Committees and all parties in good faith to fairly and justly resolve the Mountain issue. The years of litigation, the settlement negotiations, the legislative efforts to date—all have been time-consuming and costly. We want a solution. We cannot, however, support any solution. We simply cannot abandon our deeply-held beliefs or shirk our sacred responsibilities to generations past and generations to come. We are committed to finding a solution that provides fairness and justice to the Pueblo. Although it is not our preference—as our involvement in the settlement makes clear if acceptable legislation cannot be adopted by November 15, we will first explore further options for settlement in good faith with the federal agencies and Tram Company. If that fails, we will then seek implementation of the Solicitor's opinion confirming our title. If we are compelled to do so, we will not hesitate to return to the courts, where we have been very successful so far.

Thank you again for calling this hearing and for giving all of the affected parties this opportunity to explore a legislative solution. I appreciate the opportunity to testify on behalf of the Pueblo of Sandia. I would be happy to try to answer any questions the Committee might have.

APPENDIX

Section 3(b) should be amended to specify the 100 feet is "linear feet" and not feet above mean sea level, so that there is no possible ambiguity.

In Section 4(c), a new Section 4(c)(4) should be added reading as follows:

"Administration of the Area shall not be subject to the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476), as amended by the National Forest Management Act, 16 U.S.C. §§1600-1614, or to the Forest Service planning regulations at 36 C.F.R. §219, or to amendments to these acts and regulations. The Area shall continue to be administered by and remain a part of the Cibola National Forest, but it shall not be subject to the Cibola National Forest Land and Resource Management Plan."

The Pueblo needs to be certain the Management Plan is not foreclosed by any of these authorities.

In Section 4(d), the words "of the Senate" should be added at the end of the second sentence.

Section 4(e) should be preceded with the language "Except as provided in Section 14 of this Act."

At the end of Sections 4(g), add the words "except as provided in Section 14 of this Act."

In Sections 5(a)(5) and 9(a), add "and section 14."

Section 6(a)(1) should be preceded by the words "Except as provided in Section 14 of this Act."

In Section 6(b), substitute "section 5(a)" for "section 5(a)(4)."

In Section 7(b)(2)(C), insert "of" after "use."

In Section 9(a), add "and 14" after "8."

In Section 10(d), substitute "within" for "with."

Chairman INOUE. Thank you very much, Governor Paisano.

In this settlement, Governor, you are giving up your property interest in Sandia Mountain and you have also disclaimed any interest in the private land and homes that have been built in this area, is that not so?

Mr. PAISANO. Yes, sir.

Chairman INOUE. What are benefits that this agreement will give you or your tribe?

Mr. PAISANO. Mr. Chairman, some of the benefits that the Pueblo of Sandia and my community would be able to get from the settlement is the name recognition in our native language; it would give us a consent for new uses only if the Forest Service were ever able to come to the Pueblo and ask us for new services. That is so important to my community because we have seen what has happened when areas of cultural significance and traditional places are threatened by development.

Chairman INOUE. That is why you want the right to consent to new uses?

Mr. PAISANO. That is correct, sir.

Chairman INOUE. Have you received any interest in new uses that concern you?

Mr. PAISANO. No, sir. I believe that the Forest Service, and not speaking on behalf of them, but has not received over the past 25 years any applications for new uses. From the Pueblo of Sandia's behalf, we do not intend to ask for any new use services that we would like to see in the mountain range. We want to protect and preserve it as it exists today.

Chairman INOUE. If by some decision here the committee decided not to make any changes, would that make you against this measure?

Mr. PAISANO. Mr. Chairman, I do not believe so.

Chairman INOUE. You can live with no change?

Mr. PAISANO. Well, during the settlement, when we initially started off this quest, our Pueblo had to take a stance and take a look at what we actually wanted and what our goals were. Our goal was to protect and preserve this mountain. That is the reason why we entered into the settlement agreement, in light of some of the things that we had in our back pocket that were afforded to us, whether it is a Solicitor's opinion or whether it is a court's opinion.

As common people and Native American people, it is our obligation to protect and preserve what has been rightfully ours for centuries and a language, a culture, and a tradition that we followed for centuries. That is so important to us as a people so that we can continue in existence for future generations.

Chairman INOUE. I thank you very much, Governor.

Senator CAMPBELL.

Senator CAMPBELL. I was wondering, what is the English translation of what you call that land?

Mr. PAISANO. Green Reed Mountain.

Senator CAMPBELL. One last question, alluding to some of the things you already asked, Mr. Chairman. Are there any non-negotiable issues for the Sandia Pueblo in this negotiated agreement?

Mr. PAISANO. I believe in Senator Bingaman's bill, S. 2018, there are provisions in there that the Pueblo has been asked to concede a little bit more, in light of bringing aboard some of the other interested parties with regard to the mountain claim. The Pueblo is willing to listen to some of those concerns, but when we first started out in the settlement agreement, Senator, we started out like this [indicating], and gradually we have gone like this [indicating].

Senator CAMPBELL. So the comment that Senator Domenici made a while ago about the Pueblo having veto power over any use, that to you is one of the non-negotiable areas?

Mr. PAISANO. Yes, because our goal is to protect and preserve it.

Senator CAMPBELL. I see.

Thank you, Mr. Chairman.

Chairman INOUE. Senator Domenici.

Senator DOMENICI. Governor, it is good to see you up here. I am hopeful that this issue will be resolved in the not too distant future and you will have less frowns on your forehead. I have not been to your new facilities. Who knows, I may find my way up there one of these evenings—

Mr. PAISANO. We will be happy to have you, sir.

Senator DOMENICI [continuing]. When we get this resolved.

There are a couple of things that are bothering outside groups. Tell me how you understand the hunting rights in terms of what you have agreed to, and who is complaining and what is their complaint, if you know?

Mr. PAISANO. Senator Domenici, I am not an attorney and I do not intend to be one. Let me speak from layman's terms, I guess. With regards to hunting, hunting is very important to the Pueblo of Sandia. Hunting is not a sport to us. Hunting is part of our culture and our tradition.

We have asked for hunting rights to be allowed for our members and our community because it bears fruit for us. It bears a source of food and a sense of healing. It is my understanding that hunting has been allowed by the United States, by the Forest Service, in

this particular area that falls underneath the jurisdiction of the State of New Mexico under Game and Fish. We have asked the Game and Fish Department to allow our members to hunt in this particular area.

It is my understanding in the settlement and talking with the State Game and Fish, they do not have a problem with allowing the Pueblo to hunt for traditional cultural purposes. They would like to define an area that is not a gray area. They want to protect their jurisdictional issues and their police powers, they would like a fine line drawn as to where the Pueblo members would be allowed to hunt and where they would not be allowed to hunt. We believe that we—

Senator DOMENICI. As to the rest, the New Mexico Game and Fish rules and regulations would govern?

Mr. PAISANO. That is correct.

Senator DOMENICI. That is what is being discussed now?

Mr. PAISANO. As we speak, sir.

Senator DOMENICI. Okay. Do you know how it is in 2018? Is that the way it is, Counsel? or Senator Bingaman?

[Pause.]

Senator DOMENICI. Well, we will look at it. Senator Bingaman's expert says it is pretty close to that.

Senator CAMPBELL. If I might ask, Senator, that means they could hunt but not guide non-Indian hunters or something of that sort?

Mr. PAISANO. That is correct.

Senator CAMPBELL. This is only for tribal members.

Mr. PAISANO. Only for tribal members, sir.

Senator DOMENICI. Yet there would be hunting for others, but that would be totally governed by Fish and Game, New Mexico Fish and Wildlife. I assume on that latter, Fish and Game would have the jurisdiction to determine whether there is sufficient game to be hunted? Sometimes they close areas and the like. You recognize that authority with reference to the lands that they would be in control of?

Mr. PAISANO. Absolutely, sir.

Senator DOMENICI. I have no further questions. I may send two or three of them to you, to be answered in due course.

Chairman INOUE. Governor, we thank you very much, sir.

Mr. PAISANO. Mr. Chairman, Senator Domenici, we look forward to working with each and every one of you once again, because this is the most important thing to my community and we would like some type of resolution so that we can continue living in good peace and harmony in the State of New Mexico.

Thank you.

Senator DOMENICI. Thank you.

Chairman INOUE. Our last panel consists of the following: the county commissioner of Bernalillo County, of Albuquerque, Mr. E. Tim Cummins; Ms. Anita P. Miller, Esquire, Sandia Mountain Coalition of Albuquerque; Mr. Walter E. Stern, Esquire, representing Sandia Tram Company, of Albuquerque, New Mexico; Mr. Edward Sullivan, executive director, New Mexico Wilderness Alliance, of Albuquerque; and Mr. Guy Riordan, owner, Piedra Lisa Tract, of Albuquerque.

Commissioner Cummins, welcome, sir.

**STATEMENT OF E. TIM CUMMINS, COUNTY COMMISSIONER,
BERNALILLO COUNTY, ALBUQUERQUE, NM**

Mr. CUMMINS. Thank you, Mr. Chairman. Mr. Chairman and Senators, Senator as the case may be, as they have left: We are deeply grateful for the opportunity you have given the county of Bernalillo to appear before this joint committee on an issue that is so vitally important to the residents of all our community.

The area claimed by the Sandia Pueblo sits on the east edge of the county of Bernalillo, which lies adjacent to the city of Albuquerque, the largest city in the State of New Mexico. The claim area runs from the east edge of the County of Bernalillo at the 5,000-foot elevation all the way to the top of the Sandia Mountain at a 10,000-foot elevation. The area claimed by the Sandia Pueblo has been used by Native American and non-Native Americans as a place for spiritual solace, residential living, recreation, and many other uses for many years.

The county of Bernalillo, the Sandia Mountain Coalition, the Pueblo all agree that there should be the preservation of the land, access by the Pueblo for traditional and cultural purposes, no new commercial development of the national forest lands within the claim area, permanence of the agreements, an end to litigation, and presentation of these shared goals to you.

The county itself has consistently fought—sought, I am sorry—final settlement of the Sandia Pueblo claims to the title area, be they past, present, or future, equal rights to public access, recreational use and management of the forest, maintenance of the character of the area, confirmation in perpetuity of public right of way, roads easements, including access easements to accommodate future utility and communications technology, a guarantee of clear title to the subdivision home owners and subdivision land owners, and recognition of county authority over subdivisions within the area, such as zoning, public safety, including police and fire services, environmental issues, including water, waste water, and taxation.

However, the county of Bernalillo and the Pueblo of Sandia differ on the means to the end and differ on the language to be used in the documents to effect these goals. With regard to S. 2018, the county of Bernalillo recognizes it as an attempt to further close the gap that still exists between the county and the Sandia Pueblo with regard to total settlement of the issues regarding equitable use of the claim area by all parties.

This issue has been discussed and debated since 1988. We now have the opportunity to settle these issues with permanence. Although S. 2018 contains many items the county of Bernalillo has requested and agreed to, there are still some issues we feel are necessary to make the legislation work with permanence. By permanence, we mean without resort to the courts.

One, the veto power over uses by the county of Bernalillo unilaterally, the county of Sandoval unilaterally, or Sandia Pueblo unilaterally is of great concern to us. Any of these three parties can veto a new use by themselves. There is no further discussion or appeal process provided for in the veto power.

Several questions come to mind. What is a new use? We have certainly talked with Senator Bingaman's staff and Senator Domenici's staff about how important it is to define what new uses are so that we know exactly what the veto rights might pertain to. Is providing handicapped access to a parking area considered a new use or not? Is providing handicapped access to existing trails new uses or not? We have questions regarding what new uses are, and right now there is no limitation to that.

Two, the county of Bernalillo feels strongly that this settlement agreement and the management act be decoupled from the legislation. Let me explain this. Whenever the county of Bernalillo, the city of Albuquerque, or the Sandia Mountain Coalition and the Pueblo sat together in the final days of the mediation effort, we all agreed on the issues. We all agreed verbally and we have agreed many times since then. However, when the agreed-to resolutions of the issues were placed on paper the parties could not agree on the language due to obvious ambiguities that still existed.

We in effect would be turning over the claim area in fee simple to the Pueblo of Sandia in future years with the language that was in the settlement agreement. The Pueblo would not change any of the language, which left us no alternative but to leave the mediation. That language still has not changed in the settlement agreement or the management act.

We think the legislation presented here should be the controlling document. Some examples are: the word "trust" in the title and within the document, without definition. Although some of the language has changed in the legislation, there are still places where language is still not parallel for the public and for the Pueblo of Sandia. We cite some in my testimony.

As everyone who has spoken today, I would certainly hope that our written comments would be incorporated into the record as well as my oral comments.

[The prepared statement of Mr. Cummins follows:]

PREPARED STATEMENT OF E. TIM CUMMINS, COUNTY COMMISSIONER,
BERNALILLO COUNTY, ALBUQUERQUE, NM

Chairman Bingaman and Senators: We are deeply grateful for the opportunity you have given the County of Bernalillo to appear before this Senate Committee on an issue that is so vitally important to all residents of our community. The area claimed by the Sandia Pueblo sits on the east edge of the County of Bernalillo within which lies the City of Albuquerque, the largest city in the State of New Mexico. The Claim Area runs from the east edge of the County of Bernalillo at a 5000-foot elevation all the way to the top of the Sandia Mountain at a 10,000-foot elevation.

The area claimed by the Sandia Pueblo has been used by Native American and non-Native Americans as a place for spiritual solace, residential living, recreation, and many other uses for many years. The County of Bernalillo, the Sandia Mountain Coalition, and the Pueblo agree that there should be preservation of the land, access by the Pueblo for traditional and cultural purposes, no new commercial development of National Forest lands within the Claim Area, permanence of the agreements, an end to litigation, and presentation of these shared goals to you.

The County itself has consistently sought final settlement of the Sandia Pueblo claims to title of the area, be they past, present or future; equal rights to the public for access, recreational use and management of the forest; maintenance of the character of the area; confirmation in perpetuity of public right-of-way, roads and easements, including access easements to accommodate future utility and communication technology; a guarantee of clear title to subdivision homeowners and subdivision landowners, and recognition of County authority over subdivisions within the area such as zoning, public safety including police and fire services, environmental issues including water and wastewater, and taxation.

However, the County of Bernalillo and the Pueblo of Sandia differ on the means to the end and differ on the language to be used in the documents to affect these goals.

With regard to Senate Bill 2018, the County of Bernalillo recognizes it as an attempt to further close the gap that still exists between the County and Sandia Pueblo with regard to total settlement of the issues regarding equitable use of the Claim Area by all parties. This issue has been discussed and debated since 1988 and we now have the opportunity to settle the issues with permanence.

Although Senate Bill 2018 contains many items that the County of Bernalillo has requested and agreed to, there are still some issues that we feel are necessary to make the legislation work with permanence. By permanence, we mean without resort to the courts:

1. The veto power over new uses by the County of Bernalillo unilaterally, the County of Sandoval unilaterally, or Sandia Pueblo unilaterally is of great concern to us. Any of these three (3) parties can veto a new use by themselves. There is no further discussion or appeal process. Is a handicapped ramp a new use? Is a new trail a "new" use? (p. 7, Sec. 5(a)(3)).

2. The County of Bernalillo feels strongly that the Settlement Agreement and the Management Act be "decoupled" from the legislation. Let me explain this.

Whenever the County of Bernalillo, the City of Albuquerque, the Sandia Mountain Coalition, and the Pueblo sat together in the final days of our mediation efforts, we all agreed on the issues. However, when the agreed-to resolutions of issues were placed on paper, the County of Bernalillo, the City of Albuquerque, and the Sandia Coalition could not agree to the language due to obvious ambiguities in the language that still existed. We, in effect, would just be turning over the Claim Area in fee simple to the Pueblo of Sandia in future years with that language. The Pueblo would not change any of the language which left us no alternative but to leave the mediation. That language still has not changed in the Settlement Agreement and the Management Act. We think the legislation presented here should control.

Some examples of this are:

a) The use of the word "Trust" without definition. (Define "Trust" on page 4, Section 3 (o.))

b) Although some of the language has been changed in this legislation, there are still places where language is still not "parallel" for the public and the Sandia Pueblo. Section 4(a)(1) and 4(a)(3) on page 6 should state that we recognize and protect in perpetuity the Pueblo's rights, interests and uses in and to the Area. Section (a)(3) should also read we recognize and protect in perpetuity the public's longstanding rights, interests, and uses in and to the Area.

3. The Act states there is no exemption from applicable federal wildlife protection laws but an exemption to that exemption does not allow prosecution if a person exercises traditional and cultural use rights. For safety and other purposes, particularly sport hunting, how broad is this? (p. 11, Sec. 6, lines 11-25)

4. There is always complexity involved when discussing and setting criminal and civil jurisdiction. Certainly this places unwary residents in a very difficult position. The County thinks the present system of criminal jurisdiction would work best. The Sandia Pueblo should only have jurisdiction over crimes classified as misdemeanors. The Sandia Pueblo should have no jurisdiction over crimes committed by non-Native Americans. (p. 12, Sec. 7)

The County of Bernalillo, again for safety of all residents, has concerns regarding jurisdiction over sport and recreation hunting. We think that the Pueblo's regulations being "substantially similar" to those of New Mexico State Game and Fish is going to be problematic. Who will enforce these "substantially similar" regulations? (p. 14, Sec. 7(b)(3)(B)) This sport and recreational hunting Section may have to have its own separate civil and criminal jurisdiction "spelled out."

5. I believe all parties should have their attorneys fees reimbursed for working on these issues that have benefited the general public. I understand there is past precedent to do this with these types of issues.

There are other issues such as the non-applicability of new federal laws or amendments to existing federal laws that will not apply to the Claim Area (p. 7 and p. 9); the payment of money to the Pueblo should Congress ever diminish the wilderness of the Claim Area (p. 10, lines 17-25); and the withdrawal of the Leshy opinion and the vacation of Judge Greene's opinion.

It is very disturbing to the County of Bernalillo that we have been led to a resolution of these very important issues based on court decisions that were never the result of any hearing on the merits of the claim.

However, in the spirit of cooperation, we merely ask that this legislation be developed in a manner that will allow all residents of Bernalillo County, the City of Albu-

querque, the Pueblo of Sandia, and other jurisdictions, permanent and equal access to the Claim Area for each of their legitimate purposes. This will allow all of us to live in harmony as we have for so many years.

Chairman INOUYE. You may be assured that all of your prepared statements are made part of the record.

Mr. CUMMINS. Thank you very much.

But there are differences in the settlement agreement where interests and uses in and to the property "pertain" to one party, and for the other party they are "recognize and protect in perpetuity."

There are differences in the language that caused us concern and that certainly we think can be resolved by letting the legislation be the controlling act.

The act states there are no exemptions from applicable Federal wildlife protection laws, but an exemption to that exemption does not allow for prosecution if a person exercises traditional cultural use rights. For this, safety, and other purposes, particularly sport hunting, how broad is this?

The issue which has been questioned here today is that of concurrent jurisdiction. Our reading and understanding of the legislation is that it certainly provides for concurrent jurisdiction, and there are always some complexities of that. Who has jurisdiction? We are talking about for specifically misdemeanors, as Federal felonies are all matters of district court. But for misdemeanors, do tribal police have authority over other nontribal Indian tribe members or members of non-Indian tribes altogether? There are those issues that revolve around concurrent jurisdiction.

The county of Bernalillo, again for the safety of all residents, has concerns over jurisdiction for sport and recreational hunting. We think that the Pueblo's regulations being substantially similar to those of New Mexico State Game and Fish is going to be problematic. Who will enforce "substantially similar" regulations? We think that is a difficult term. The sport and recreational hunting section may have to have its own separate civil and criminal jurisdiction spelled out.

In terms of compensation, and there are several precedents that I think some of the parties will speak about, I would hope that all the parties have their attorneys' fees reimbursed for working on these issues that have benefited the general public. I understand there is past precedent to these issues.

There are other issues, such as the nonapplicability of new Federal laws or amendments to existing Federal laws that will not apply to the claim area; the payment of money to the Pueblo should Congress ever diminish the wilderness of the claim area; and the withdrawal of the Leshy opinion and vacation of Judge Greene's opinion.

I guess in wrapping up our position, there is the past, the present, and the future. As far as the past is concerned, I appreciate Senator Bingaman's comments. There is not much we can do about the past, but our only concern is that this case has never been heard on the merits.

I think in the present, in the spirit of cooperation, we ask the legislation be developed in a manner that will allow all the residents of the city of Albuquerque, the Pueblo of Sandia, and other

jurisdictions permanent and equal access to the claim area, and we believe it is important that this issue be resolved legislatively.

In closing, I would like to comment. I believe that—and I know that in hearings and in situations everyone focuses on the differences that we have, but I think it is important to realize that we have agreed on probably 90 percent of the issue. I think this issue can be very close to being resolved. We certainly do appreciate the Pueblo's efforts and the concessions they have made, and they have made genuine concessions on the issue. I hope that we can move forward and close the remaining gap of what our concerns are.

Thank you, Mr. Chairman.

Chairman INOUE. I thank you very much, Mr. Commissioner.

May I now recognize Ms. Miller.

**STATEMENT OF ANITA P. MILLER, CO-CHAIR, SANDIA
MOUNTAIN COALITION, ALBUQUERQUE, NM**

Ms. MILLER. Thank you, Mr. Chairman. Senator Inouye, Senator Domenici, and representatives of the other Senators present: We are very grateful for the opportunity to appear today on behalf of the Sandia Mountain Coalition on this issue of major importance to our members, to Bernalillo County, and all of those who enjoy the Sandia Mountain and its wilderness.

I would like to introduce Bill Kiley, who is my co-chair of the Sandia Mountain Coalition who has come with me today.

We have always sought a fair legislative settlement that respects the Pueblo's reverence for the mountain, its cultural use of the mountain, and its fears of overdevelopment, which are all interests which we share as well. We do not want to see a settlement or legislation go down at the expense of private property rights or the public interest.

Our goals have always been to make sure that the title to private property is cleared. It is now under a cloud. We want road and utility access. It is not now guaranteed. We would like to have our own access and the access of the general public guaranteed forever. We want permanent settlement of these issues.

I want to thank Senator Bingaman for addressing these issues. Three out of the four we believe have been resolved. The fourth issue is the issue of permanence and that is what I am going to speak to today.

Who are we? We are an unincorporated association of property owners whose land is within the exterior boundaries of the Sandia claim area. You can see on the model there, the little squares are where we are. Sandia Heights North subdivision and Tierra Monte are in Bernalillo County, represented by Commissioner Cummins. The Evergreen Hills subdivision is a subdivision that is largely unoccupied. It is in Sandoval County and has no utilities, although it does have access.

Other members are residents of Bernalillo County who are recreational users of the forest, and of course we also represent to some extent Mr. Riordan who will be testifying later, but only as a general policy owner.

We have been under a cloud since the claim was first asserted formally in 1988. It takes us longer to sell our homes than other

homes which are similarly situated. We are getting less money for our homes. We are 16 years older. We want this settled so that we can go on with our lives.

We have been considered mere intervenors in the legislation by the Justice Department. That we did not sign the settlement agreement is considered to be irrelevant. But we know—as a lawyer, I know—that all parties to litigation have to sign a settlement to make it relevant.

We live there. We want no ambiguity. We want permanence. We have supported Dr. Hordes' opinion on the merits. However, he has gone into that quite well. I will not go into that right now.

We also cannot believe that Congress intended that the Secretary of the Interior pursuant to FLPMA could correct a boundary in an Indian claim when the remedies for such claims have been established under the Indian Claims Commission Act quite specifically to extend also to title issues where compensation was not desired, as well as to compensation issues.

We have one other question. We would like to know why the Pueblo of Sandia did not make known its claim to the area at the time the subdivisions were created back in the 1960's and 1970's. They facilitated the very development that brought us there in the first place. If they had said, this is our land, your title is faulty even though it came from a Federal homestead, this is our land, we would not be here today. I sure would not be here today. And I would have hoped that at that point they would have raised that issue. They had representation at that time by attorneys and it really would have helped an awful lot if they had said, this is really our land, we are not going to give you access, utility access, or water or land on which to put a water system.

Okay, that is the past. Here is the present and the future. As for S. 2018, we would have preferred a land readjustment partition, which is in the record of the materials that I submitted to you. We would have preferred something in the line of what happened with Santa Clara in the Vayez Caldera, some kind of conservation easement, some kind of land exchange scheme that has been done before with other tribes and pueblos.

However, that is not on the table today. So let me go on from there. We generally support S. 2018. Like Commissioner Cummins, we still have concerns, however. We would like a definition of the word "trust" as appears in the title to distinguish it from the use of "trust" later in the act when various lands acquired by the Pueblo in fee are to be placed into trust.

We have problems with the consent to new uses, as does Senator Domenici, based on the fact that these new uses are not necessarily defined. Define those new uses and I think we will be fine, such as the fire breaks, perhaps handicapped trails, a corral for diseased animals could be things that very, very well could come up in the near future. Are they new uses? Are they modifications? Are they exempt? That is the sort of definitions we would like.

We too would like to have separated from the legislation the old settlement. We do not want to see that or the management agreement incorporated. We got here because of ambiguities. To incorporate immediately into a piece of legislation documents which are from their very beginning inconsistent would be creating the oppor-

tunity for years and years of discussion as to what is consistent and what is not. Pass the bill, then rework the settlement agreement and the management agreement to reflect that.

We too would like to have reimbursement of the costs that have been spent by both parties. Senator Domenici, you are right, we have been bled dry. We would like very, very much to have our people reimbursed.

We would also like to see Judge Greene's opinion vacated as well as the Court of Appeals decision vacated and, if possible, although I do not know if it is possible, we would like to see Solicitor Leshy's opinion vacated as well.

We have lots of other issues that concern us. They are not particularly our issue. We do have concern with the overlapping jurisdiction and the fact that the tribe in a precedential situation would be having jurisdiction over both non-Indians and non-members of the Sandia Pueblo. But that is not necessarily my major issue.

What do we like? We like the efforts to get more parallel language. We like the fact that there is now a map included in the bill that we could point to whenever there is a boundary description. We like the limitation of hunting and trapping to religious and cultural uses and not to sport and recreational uses. We like the possibility of a land exchange to consolidate holdings. That is something we have always advocated.

In conclusion, the Sandia Mountain Coalition seeks a permanent legislative solution for the Sandia claim which recognizes the rights and the interests of all of the parties. We hope that you will take our concerns into consideration to resolve this matter so that all of us can go on with our lives and enjoy Sandia Mountain, which we believe belongs to all of us.

Thank you so much for the opportunity to talk to you.

[The prepared statement of Ms. Miller follows:]

PREPARED STATEMENT OF ANITA P. MILLER, CO-CHAIR, SANDIA MOUNTAIN
COALITION, ALBUQUERQUE, NM

Mr. Chairman, Senator Bingaman, Senator Domenici, Senators: We are deeply grateful for the opportunity which you have given the Sandia Mountain Coalition to appear before these Senate Committees on an issue that is so vitally important to our members and all residents of Bernalillo County and the City of Albuquerque, New Mexico. We hope that our testimony on S. 2018 will assist you in formulating a permanent solution to the Sandia Pueblo Claim.

INTRODUCTION

The Sandia Mountain Coalition (hereinafter "SMC") has always sought a fair settlement of the claim of the Pueblo of Sandia to land on the West face of Sandia Mountain. Its members share the Pueblo's reverence for the mountain, and its fears that its Wilderness will be overused and overdeveloped. It continues to believe that the Sandia claim is without merit, but is willing to make compromises in order to resolve a controversy which has existed for 16 years, creating uncertainty and animosity and exhausting financial resources.

The SMC will accept a settlement which includes the following:

- Clear title for all private property within the exterior boundaries of the claim;
- Dedicated access to Bernalillo County for roads and both present and future roads and utilities;
- Guaranteed public access to the Forest and Wilderness within the claim area;
- Permanence.

The Coalition continues to work closely with Bernalillo County in achieving its settlement goals. It has been represented by the same attorneys, and has submitted joint analyses of proposed settlement documents and legislation.

The SMC and Bernalillo County generally support S. 2018, introduced by Senator Jeff Bingaman. The comments which they have submitted reflect their opinion that there are still remaining ambiguities in the bill which may lead to future litigation and controversy, thwarting their goal of achieving a permanent settlement. They have always looked beyond their immediate interests in their concern that a settlement also address the public interest and not create precedents which might have negative impacts on public and private land throughout New Mexico and the United States.

I. What Is the Sandia Mountain Coalition?

The Sandia Mountain Coalition (hereinafter "SMC") is an unincorporated association of property owners whose land is within the external boundaries of the claim of the Pueblo of Sandia to approximately 10,000 acres of land in the Cibola National Forest, which includes 8,900 acres in the Sandia Mountain Wilderness. The claim originally also included 655 acres of private land, but the Pueblo has excluded the private property from its claim in the litigation which it filed and in the settlement which it signed with the United States Departments of the Justice, Interior and Agriculture and the Sandia Peak Tram Company.

The subdivisions of Sandia Heights North and Tierra Monte, in Bernalillo County, and Evergreen Hills, in Sandoval County, are within the external boundaries of the claim. About 85% of the property owners in these subdivisions are members of the Coalition. Evergreen Hills Subdivision is located to the North of Tierra Monte, over the Sandoval County line. It has no utilities, and the few houses on its lots are served by on site water and power and cellular telephones. The SMC represents the general interests of Evergreen Hills property owners; it does not represent them in efforts to attain an extension of utilities to their properties.

There is one remaining large inholding in Sandoval County, the Piedra Lisa Tract, which is now owned by Guy Riordan. The also represents Mr. Riordan concerning his general interests as an inholder within the Claim; it does not represent him concerning his efforts to attain road and utility access to his property. The SMC's membership also includes recreational users of the public land at issue in the claim and Albuquerque area citizens.

Property owners in the subdivisions represented by the Coalition have had difficulty selling their homes and/or vacant property. They have had to accept lower sales prices than those received by owners of comparable property in Sandia Heights South, outside the exterior boundaries of the claim. The owners are aging and would like flexibility concerning the disposition of their property which they will not completely enjoy until all clouds are removed from their land in a permanent settlement of this controversy.

II. Legislative Initiatives and S. 2018

The SMC and Bernalillo County support many of the amendments made to the original settlement reached in mediation, as reflected in S. 2018, but still has concerns about some of its provisions.

The SMC urged the New Mexico Congressional Delegation to introduce legislation to settle the Sandia claim once and for all. The SMC continues to believe that the claim is without merit, but believes that the Pueblo's longstanding cultural use of the claim area should be recognized. On December 11, 2001, it informed former Regional Forester of the Southwest Region of the United States Forest Service, Eleanor Townes, and a member of New Mexico Senator Pete Domenici's staff, in a meeting held to try to resolve the outstanding settlement issues, that it preferred a settlement which might effect a "land readjustment" or "partition" the claim area, providing for a purchase or exchange in which the Pueblo might acquire additional acreage from the Forest Service adjacent to its existing boundaries.

It also has advocated that the Pueblo might acquire a property interest in the nature of a "conservation easement" in the entire Claim Area, which could limit future development of the Area, similar to that acquired by the Santa Clara Pueblo in the Baca Location No. 1, now part of the recently created Valles Caldera National Monument in New Mexico.

Anita Miller also briefly summarized this memorandum in a meeting with Senator Bingaman a few weeks later which was held to introduce Senator Bingaman's original draft of what is now S. 2018, and presented it to his staff at that meeting. A copy of the memorandum is attached to this Testimony as Appendix 1.*

The SMC would also support giving the Pueblo of Sandia the opportunity to assert its claim in the U.S. Claims Court, through a "reopening" of the ICCA, and receive compensation in the event that it is successful. Congress enacted a law which en-

*The appendixes have been retained in committee files.

ables the Pueblo of Isleta to follow this procedure. These options are not currently on the table, however.

In January, 2002, New Mexico Senator Jeff Bingaman contacted the SMC and invited its representatives to meet with him to review a bill which he had drafted. The bill reflected the settlement legislation which was drafted during the mediation. The SMC was asked to comment on the bill. Many of its suggestions are reflected in S. 2018, introduced by Senator Bingaman in March. We generally support the bill.

- We are gratified that the bill now will incorporate a map, which will be referred to whenever a specific reference is made to property within the T'uf Shur Bien Preservation Trust Area.
- We are glad that the specific rights-of-way which will be dedicated by the Pueblo to Bernalillo County and to the Forest Service are specifically described in the bill.
- We appreciate the addition of “parallel” language in Section 4 (a), which “recognizes and protects in perpetuity” the Pueblo’s rights and interests in and to the Area, and the public’s longstanding use and enjoyment of the Area, although we would have preferred that the public’s “rights and interests in and to” the Area would have been recognized as well.
- We are pleased that the provisions regarding the criminal and civil jurisdiction of the Pueblo have been clarified, although still have some concerns with the extent of this jurisdiction and the precedents it might set.
- We are relieved that the Pueblo’s jurisdiction over hunting and trapping has been reduced and will have more oversight by the New Mexico Game and Fish Department.
- We particularly like the provision which authorizes an exchange of private land acquired by the Pueblo for other Forest land, in order to eliminate “pockets” of Indian trust land within the Forest and Wilderness.

We continue to have the following major concerns about S. 2018:

- We would like a definition of the word “trust” as used in the Title of the Act and the Title of the Area, distinguishing it from the usual meaning of trust as it applies to the relationship between the Department of the Interior and Indian tribes.
- We would prefer that the Pueblo did not have a “veto power” (right to “withhold consent”) over new uses in the Area. Giving Bernalillo and Sandoval Counties veto powers which have never been requested does not resolve that issue. We would accept a definition of what constitutes “new uses” and what “new uses” might be exceptions from the veto power, e.g. Is a handicapped trail a “new use?”
- Would the construction of a corral in order to quarantine diseased deer by a “new use?”
- We would like to see the Settlement Agreement and Management Agreement, which are now incorporated into the bill, be “decoupled”. The bill should be passed first; then the other documents can be amended to be made consistent. It is alleged “ambiguities” in Pueblo Grant documents which resulted in this controversy in the first place; to incorporate inconsistent documents in settlement legislation would create new ambiguities before the settlement even got off the ground.
- We would like to see all parties reimbursed for the expenses incurred during the pendency of this matter, including attorneys fees. There is precedent for such reimbursement in the matter which involved the claim of the Santa Domingo Pueblo against public land and private land owned by the Dunagan family. The Dunagans were reimbursed.
- We would like to see the bill specifically vacate the District and Court of Appeals Opinions in the Sandia Claim litigation and the withdrawal of the Leshy Opinion.

In the comments which we submitted to Senator Domenici, which are included with this testimony as Appendix 2, there are other suggestions for improving the bill, some of which are of greater concern to others who will offer testimony before the Senate Committees. We hope that S. 2018, with at least some of our additional suggested amendments, will be passed by Congress, and that a final settlement of the Sandia Claim will be achieved.

III. Institutional History of the Claim, from Anita Miller’s Perspective

I am one of a few residents of Sandia Heights North Subdivision who has been actively involved in the claim issue since it was first made public in 1986. I have outlasted two other co-chairs of the SMC, two other Bernalillo County Commis-

sioners, at least two Secretaries of Agriculture, Regional Foresters, two Cibola National Forest Rangers, two Secretaries and Solicitors of the Department of the Interior, two United States Representatives, and at least three Governors of the Pueblo of Sandia who have been actively involved in the case over the years.

My husband and I purchased our lot in Sandia Heights North, at 223 Spring Creek Lane, in the late 1970's, exchanging a lot which we had purchased in 1975 in Sandia Heights South for the lot in Sandia Heights North. We completed building our home in 1981. We received title insurance for our lot. We recognized that we had to access our lot over the existing Sandia Pueblo Reservation, and that our water supply came from a well located on the Reservation, as well.

We were not aware that our road and utility access was covered in a "business lease" between the Pueblo, and was not a recorded easement. We were also not aware that the Forest Service had never acquired an easement over a portion of the Pueblo of Sandia which accessed the neighboring Tierra Monte and Evergreen Hills Subdivisions, the Juan Tabo and La Cueva Picnic Areas, and the La Luz and Piedra Lisa Trails. At no time were we told that the Pueblo of Sandia claimed land in Sandia Heights North.

It is particularly relevant, in the context of the discussion below of the Pueblo's failure to assert its claim prior to 1983, that the Pueblo, by giving the Sandia Peak Tram Company access over existing Pueblo land and a lease to construct a well on Pueblo land to provide water to the Sandia Heights subdivisions, actually enabled development to occur. Had it asserted its claim to that land in a timely manner, the subdivision would never have been built, and I and other members of the SMC would not have had to become involved in this matter.

Similarly, the Pueblo enabled the development of Tierra Monte Subdivisions by granting an easement to local electric and telephone utilities through Pueblo land. It never has given permission to extend this easement to serve Evergreen Hills, however. The Pueblo certainly had "notice" that something was going on which was inconsistent with any historic entitlement it might have had to the land being developed within the claim area.

In the early 1980's, the Tram Company attempted to trade land which it owned in the foothills of the City of Albuquerque, south of Sandia Heights, for land in the Cibola National Forest, known as "La Cueva," to the West of Sandia Heights North. This trade would have provided more convenient access to Sandia Heights North, Units 2 and 3, and would also have opened contiguous land to development. The Sierra Club and other environmental groups opposed the exchange and the development which would have resulted. It contacted the Pueblo of Sandia and urged its opposition to the exchange, as well. The rest is history.

The Pueblo then sought assistance from the Department of the Interior, and retained historians and anthropologists who concluded that the Pueblo not only should have received the La Cueva tract when it received its patent from the United States, but the additional acreage it subsequently claimed on the west face of Sandia Mountain, including the private inholdings.

A draft opinion, written by an Assistant Solicitor in the Washington office of the DOI, Tim Vollmann, concluded that the Pueblo's patent from the United States should have included the land claimed was sent to the Forest Service for review. The draft opinion concluded that the Secretary of the Interior should correct the Pueblo's patent to include the area claimed. The Forest Service circulated the report to all property owners within the claim area, among other affected parties.

The property owners within the three subdivisions organized the SMC, and proceeded to hire historian Frank Wozniak and Anthropologist Matthew Schmader (now anthropologist for the City of Albuquerque) to research the historic basis for the Pueblo claim, as well as to physically inspect the landmarks noted in the historical documents reviewed. They concluded that the claim was without merit. The SMC retained Attorney Carol Dinkins, former Deputy U.S. Attorney General for Natural Resources, of the Houston firm of Vinson and Elkins, to represent it, and was joined by Bernalillo County in its opposition to the claim. Bernalillo County was concerned with the impact which the claim, if successful, would have on County jurisdiction, revenues and services, and on County citizens who would find themselves in "Indian Country."

New Mexico Senator Pete Domenici and then-Congressman Manuel Lujan also opposed the claim. The Forest Service had done its own historic research and concluded that the claim was without merit.

In 1987, representatives of the SMC and Bernalillo County, along with members of Senator Domenici and Representative Lujan's staff, met with then Secretary of the Interior Donald Hodel in Washington. Solicitor Leshy, as well as representative of the BIA were in attendance. The SMC and County made a presentation and submitted historic and anthropological reports.

On December 14, 1988, then-Solicitor Ralph Tarr issued an Opinion concluding that the Sandia Claim was without merit. We were told that Solicitor Tarr conducted his own historical research and wrote the opinion himself, but cannot substantiate this.

IV. The Tarr Opinion

The SMC and Bernalillo County supported the Tarr Opinion, which it believed correctly addressed the merits of the Pueblo of Sandia's claim and jurisdictional issues involving the failure of the Pueblo to assert the claim in a timely manner. It believed that this Opinion would end the controversy.

The Tarr Opinion cited the Pueblo's original Spanish grant documents, still in the Pueblo's possession, as well as documents describing the survey of the Pueblo's boundaries by the United States in 1859 and concluded that the eastern boundary of the Pueblo was basically correct and should not be changed. It refuted the Pueblo's evidence to the contrary, finding it inconclusive in the context of all of the documents comprising the Sandia Pueblo Grant.

Solicitor Tarr also reviewed the Pueblo's failure to assert its claim to the west face of Sandia Mountain before the Pueblo Lands Board, as well as before the Indian Claims Commission, created by Congress for the settlement of outstanding Indian claims. He stated that the Pueblo had been on notice about federal and private actions taken with respect to the land claimed, such as the reservation of the land for a national forest, the actual forest designation, the designation of the Sandia National Wilderness in 1979 and the development of the subdivisions, but had failed to assert its claim.

Solicitor Tarr concluded that the claim was barred by the Quiet Title Act, 28 U.S.C. Section 409, since it had not been brought within the 12 year period, after notice of the claim, for bringing asserting claims against the United States involving real property. He particularly cited *Navajo Tribe v. State of New Mexico*, 809 F. 2d 1455 (10th Cir. 1987) in concluding that the claim was barred since the Pueblo had not asserted it under the Indian Claims Commission Act, 25 U.S.C. Section 70. ("ICCA") He stressed that the ICCA was intended to dispose of Indian claims which existed before 1946 once and for all, including claims before administrative agencies. The sole remedy available to tribes was monetary damages. Although the Pueblo's counsel had justified the Pueblo's failure to assert a claim under the ICCA by alleging that money couldn't compensate the Pueblo for the loss of its land, the Tarr Opinion concluded that the Pueblo had no other remedy.

Tarr also concluded that the Secretary of the Interior's authority under the Federal Land Policy and Management Act, ("FLPMA"), 43 U.S.C. Section 1746, passed in 1976, to "correct patents or documents of conveyance relating to the disposal of public lands where necessary in order to eliminate errors" could *not be used . . . to revive stale historical claims which Congress has expressly barred by Section 12 of the ICCA.* (emphasis added). The authority to correct errors also did not extend to a claimed misreading of the scope of a grant, which was the issue before Interior in the Sandia Pueblo Claim.

V. Litigation

In 1994, during the first Clinton Administration, the Pueblo requested that Secretary of the Interior Bruce Babbitt withdraw the Tarr Opinion. Solicitor Leshy studied the matter and recommended that it not be withdrawn. The Pueblo sued the Department of the Interior seeking to compel the Department of the Interior to correct its patent, and to restrain the Department of Agriculture from interfering with the "correction" of the Pueblo's boundaries. *Pueblo of Sandia v. Bruce H. Babbitt, et al.*, Civ. No. 94-2624, July 20, 1998. The Pueblo included the private inholdings, including the subdivisions, in the map depicting the claim area which was included with the complaint. When the SMC and Bernalillo County successfully moved to intervene in the case, the Pueblo amended its complaint to exclude the private land from its claim.

VI. The Hordes Report

The SMC and Bernalillo County continue to believe that the historic analysis of the Pueblo's claim by Stanley Hordes, Ph.D. is correct.

To reinforce its position in the litigation that the Pueblo's claim was without merit, the Department of Agriculture retained historian Stanley Hordes, Ph.D., who had formerly been the New Mexico State Historian, to do additional research. Dr. Hordes did exhaustive research finding additional documents from the Spanish Colonial Period which supported his conclusion that the Pueblo was granted a "formal" Pueblo of four square leagues, and that the northern and southern boundaries of the Pueblo were extended to make up for an abbreviated western boundary, estab-

lished at the Rio Grande to avoid conflicts with grants to Spanish settler on the other side of the river.

Dr. Hordes noted that “sierra madre” referred to a mountain range, rather than the crest of a mountain, in the context of the language of the colonial period. He also noted that the translator for the United States after the acquisition of the Mexican Territory by the United States, David Whiting, in his translation of the original grant documents in the possession of the Pueblo, substituted totally different boundary landmarks than those described in the Spanish grant documents, actually ripping words out of the original documents. He used the term “main ridge,” rather than “sierra madre” in the description of the eastern boundary of the Pueblo.

While not going into detail on the conclusions of the Hordes Report, suffice it to say that he states that the Pueblo’s claim is based on taking the Whiting mistranslation out of context. While all other boundary calls refer to points which are “facing” specific landmarks, the translation states . . . and on the East the main ridge of the crest of the mountain, rather than the Sierra Madre the mountain range. The original documents had also omitted the word “facing” from the Eastern boundary, although Dr. Hordes concludes that in the context of both the grant document and the “Act of Possession”, through which the Pueblo took possession of its grant, the Eastern boundary was intended to be one league from the center of the Pueblo’s church, which would be in the Sandia foothills, rather than at the crest of the mountain.

Dr. Hordes also concluded that the errors in both the Whiting mistranslation of the original Pueblo of Sandia grant documents as well as the Clemens survey resulted in the Pueblo receiving about 2,500 acres more than it was supposed to receive, rather than too little land!

VII. Judge Greene’s Opinion

On July 20, 1998, Judge Harold Greene (deceased) of the United States District Court for the District of Columbia cited the trust responsibility of the Department of the Interior for Indian Tribes, and found sufficient ambiguity in the original grant documents to invoke the Canon of Indian Law which holds that ambiguities in documents must be decided in favor of the tribes. He vacated the Tarr Opinion pursuant to the Administrative Procedure Act, 5 U.S.C. Section 551, et seq., and remanded the case to the Department of the Interior for “agency action consistent with this Opinion”. The SMC and Bernalillo County filed a Notice of Appeal in the Court of Appeals for the District of Columbia. The City of Albuquerque successfully moved to file an appeal as amicus curiae. The Department of Justice, representing both the Departments of the Interior and Agriculture, filed a “protective appeal”.

The Court of Appeals then ordered that the parties mediate the case.

VIII. Mediation and Settlement Agreement

The SMC, Bernalillo County and the City of Albuquerque were gratified that mediation resulted in an the achievement of three of its four goals. Private title and present and future utility access was guaranteed, as was public access to the forest and wilderness areas. The issue of permanence continues to divide the SMC, the County and the City from the other parties, however.

The Department of Justice convened a mediation process in late 1998, to include representatives of the Departments of Justice, Agriculture (specifically Forest Service officials at the Regional and Cibola National Forest level) and Interior, (specifically, BIA officials and Tim Vollmann, who authored the original draft Opinion that set this entire matter in motion, who was now the Regional Solicitor in New Mexico), the Sandia Peak Tram Company, the SMC, Bernalillo County, and the City of Albuquerque. A mediator who had experience in Indian issues was selected with the concurrence of all of the parties.

The parties to the mediation all agreed that the Pueblo’s access to the claim area for ceremonial and cultural purposes should not be impeded by burdensome Forest Service regulations and permitting procedures. All parties also agreed that the claim area should not be developed any further, considering its heavy recreational use as “Albuquerque’s back yard.” As the mediation progressed, the parties also participated in the drafting of a Management Agreement, which would govern the management of the claim area if a settlement were approved by the parties. Concepts which the SMC thought had been agreed to by all parties during discussions would look a little different when they were actually written in settlement drafts.

As negotiations proceeded and the Justice Department produced a draft Settlement Agreement and a draft of legislation to implement the settlement, the SMC, Bernalillo County and the City of Albuquerque concluded that the wording of these documents gave the Pueblo far greater authority over the Claim Area than was war-

ranted, considering that they continued to believe that the Pueblo's claim to the Area was without merit.

The Pueblo insisted on a "sense of ownership" of the Area, which was reflected by language granting the Pueblo "rights" "in and to" the Area, while merely "respecting and assuring public use" of the Area. The drafts gave the Pueblo a veto power over new uses proposed in the Area by the Forest Service, which could not be appealed by the public. It would be compensated as if it owned the Area in fee simple, if the United States were to violate the Settlement Agreement.

The Pueblo was given unprecedented and confusing civil and criminal jurisdiction over members of other Indian tribes, as well as jurisdiction over "recreational and sport hunting and trapping," in this heavily used area near private homes, by all Native Americans in the Area, not merely ceremonial and cultural hunting and trapping by its own members.

The SMC, Bernalillo County and Albuquerque left the mediation in frustration in July, 1999 when their suggested amendments to draft documents were ignored. It appeared to us that the documents "tilted" ownership of the Area excessively in favor of the Pueblo. It appeared to us that Tim Vollmann was representing the Pueblo, rather than the Department of the Interior. It appeared to us that there was political influence at play, given the involvement of a "political" advisor to the Secretary of Agriculture.

The remaining parties executed a Settlement Agreement and Management Agreement. A draft Bill reflecting the settlement was also circulated. The SMC, County and City commented on the documents, in submittals to the Department of Justice and in the press and local media. They have continued to oppose the original Settlement Agreement terms.

The SMC and County have been repeatedly criticized for refusing to accept the original Settlement, since private property rights and county jurisdictional issues were addressed in the settlement documents. As stated above, they have not accepted the original documents because they believe that some of the provisions and wording of the documents can lead to ambiguities, which may lead to future litigation, thwarting a permanent settlement. Their specific comments are included with this presentation.

IX. The Court of Appeals Remand

The SMC, Bernalillo County and Albuquerque continued their appeal in the D.C. Circuit, which, on November 17, 2000, remanded the case to the Department of the Interior, finding that Judge Greene's remand to the Department of the Interior was not a "final order" and that it therefore did not have jurisdiction to decide the case until a "final" decision was made by the Department of the Interior which could then be appealed first in the District Court.

The Court of Appeals Opinion ordered the Department of the Interior, on remand, to "reconsider" the facts in the record and also reconsider the Tarr Opinion position that it lacked legal authority to issue a corrected survey. It allowed Interior to reopen the record and solicit additional evidence from the public. It did not comment on the merits of the case; it merely stated that "if Interior does issue a corrected boundary, it must commission a survey to determine where the 'main ridge' of the Sandia Mountain lies."

X. The Leshy Opinion

The SMC and Bernalillo County do not believe that the Opinion of former Solicitor of the Department of the Interior, John Leshy, is a correct analysis of the history of the Pueblo and of the statutes and cases governing Indian claims. We do not believe that his "review" of the record should have concluded that the "main ridge" of Sandia Mountain constituted the Pueblo's eastern boundary, continuing to believe that the original Sandia Pueblo grant documents intended that the eastern boundary be one league to the east of the Pueblo church, "facing" the "Sierra Madre", or Sandia Mountain Range.

We also do not believe that Congress intended that the "general authority" of the Secretary of the Interior to resurvey boundaries should offer Indian tribes an "end run" around the Indian Claims Commission Act and Quiet Title Act, allowing the assertion of time-barred claims against the United States. We cannot accept Solicitor Leshy's apparent conclusion that a resurvey by the Department of the Interior could change the boundaries of a National Forest and National Wilderness created by an Act of Congress.

The Department of the Interior gave all parties a few weeks after the announcement of the Court of Appeals decision to make additional submittals. The SMC, Bernalillo County and Albuquerque asked for additional time to add to the record,

On January 19th, 2001, however, as Secretary of the Interior Babbitt was leaving office, a new Opinion, written by Solicitor Leshy was released.

On December 5, 2001, Solicitor Leshy had issued an opinion in an unrelated boundary dispute between the Santa Ana and San Felipe Pueblos, stating withdrawing Solicitor Tarr's Opinion as it related to both the Quiet Title Act and the ICCA as bars to the authority of the Secretary of the Interior to resurvey boundaries and correct "mistakes of the past." He relied on *Pueblo of Taos v. Andrus*, 475 F. Supp. 359 (D.D.C. 1979) which upheld the exercise of the Secretary's authority, in the context of a post 1946 Pueblo claim. He discounted the *Navajo Tribe* case, stating that it had nothing to do with correction of surveys by the Department of the Interior, and therefore was not on point.

It should be noted that the United States Supreme Court recently denied certiorari in *Spirit Lake Tribe v. State of South Dakota, et al.*, 262 F. 3d 732 (8th Cir. 2001). The Eighth Circuit held that Indian claims against the United States for land which would extend reservation boundaries had to be brought within the time limitations of the Quiet Title Act, with the time beginning to run when the tribe first had notice of the claim. Solicitor Leshy could lead us to conclude that the Spirit Lake Tribe should have sought a "boundary correction" from the Secretary of the Interior, rather than bringing a quiet title action against the State of North Dakota, private parties and the United States, in order to avoid the Quiet Title Act.

In the January 19 Opinion, Solicitor Leshy withdrew the rest of the Tarr Opinion, stating that there is no clear evidence that Pueblos were to be four square leagues, while never refuting evidence which Dr. Hordes had presented that the formal Pueblo was the "rule", and that Indian Pueblos which were larger than four square leagues, unlike the Pueblo of Sandia, did not have their original grant documents, and had established their boundaries by parol evidence and other means.

Solicitor Leshy concluded that Congress intended the Eastern boundary of the Pueblo to be the "main ridge" of Sandia Mountain when it confirmed the Whiting survey. He blames the current "erroneous" boundaries on the incompetence of the surveyor, Clements. He neglects to mention that Whiting, himself, signed off on that survey!

Solicitor Leshy does not mention the *Navajo Tribe* case in reference to the specific facts of the Sandia claim, but once again states that the ICCA does not specifically address the authority of the Secretary of the Interior to correct surveys, including those involving Indian boundaries. He gets around the fact that a correction of this survey would impact the boundaries of federally designated wilderness by saying that because of the survey error, the Pueblo never received what Congress intended, and the land in question never really went into the National Forest or Wilderness.

Secretary Babbitt, in his cover letter to the Leshy Opinion, states that the resurvey called for by the Leshy Opinion will be delayed until November 15, 2002, which is the date which the Settlement Agreement, which we did not sign, goes into effect. He hopes we'll sign the Agreement.

The Leshy Opinion, if it were to remain in effect, could reopen every stale Indian claim in the United States. Requests by tribes to change their boundaries with national forests and wilderness areas could disrupt the entire statutory scheme concerning for the creation and management of public land. It should be withdrawn.

CONCLUSION

The Sandia Mountain Coalition seeks a permanent legislative settlement of the Sandia Pueblo Claim which will recognize the legitimate rights and interests of all parties who are concerned with the claim. We hope that our testimony will receive serious consideration by the Committees as they review S. 2018. We would like to get on with our lives, and to enjoy Sandia Mountain with the members of the Pueblo of Sandia as friends and neighbors, rather than as adversaries.

Thank you for the opportunity to present our position.

Senator DOMENICI [presiding]. The Senator will return shortly.
Mr. Stern.

STATEMENT OF WALTER E. STERN, ESQ., MODRALL, SPERLING, ROEHL, HARRIS AND SISK, REPRESENTING SANDIA TRAM COMPANY

Mr. STERN. Thank you, Senator Domenici.

I am here today on behalf of the Sandia Peak Tram Company. Present with me in the hearing room today are Mr. Louis Abruzzo,

president of the Tram Company, and Mark Gonzalez of my office, the Modrall Spering firm in Albuquerque, New Mexico.

I want to thank Senator Domenici and the rest of the committees for the honor of testifying this afternoon concerning and in general support of S. 2018, sponsored by Senator Bingaman of New Mexico. I would ask that my written remarks be made part of the record of this hearing.

Senator DOMENICI. Without objection.

Mr. STERN. Thank you.

The Sandia Peak Tram Company owns and operates one of the premier tourist attractions in the State of New Mexico, serving over 300,000 visitors a year on its 2.7-mile aerial tramway which runs from the base of the Sandia Mountains to their crest. The tram company has been involved in this matter for a number of reasons, not the least of which are that the tram line traverses the area that is the subject of the Pueblo's land claim, and tram customers, or the public at large, use the tram to access the Sandia Mountain Wilderness Area.

Because of its property interests and related concerns in and near the area that is the subject of the Pueblo's claim, the tram company participated in the mediated settlement negotiations to seek to resolve this matter. The roughly 15-month long mediation effort resulted in the execution of a settlement agreement, as we have heard previously today, between the United States, the Pueblo, and the tram company in April 2000.

The tram company believes the settlement agreement is a fair, reasonable, and permanent resolution of a complex set of issues and we continue to support that agreement.

S. 2018 seeks to work within the basic framework of that settlement agreement and represents a thoughtful vehicle through which to resolve permanently the Pueblo's claim. S. 2018 in large measure represents the fruits of that mediation labor, with several modifications that have been designed to address some of the concerns that have been expressed by the city of Albuquerque, Bernalillo County, and the Sandia Mountain Coalition, and we laud the bill's efforts to bring other interested parties back into the discussion.

The bill follows a tradition of finely tuned congressional acts that have served to provide for the permanent resolution of tribal land claims. History has shown that complex issues like those with which we are faced here deserve narrowly tailored legislative solutions that work best for the areas and communities affected. This bill accomplishes a great deal, most of which is wholly without controversy, as we have heard from other witnesses today.

Among other things, the bill provides for continued Federal ownership of the Federal lands at issue, continued administration of the area by the U.S. Forest Service, and continued preservation of the wilderness and national forest character of the area. The bill also preserves public access to those public lands, it clearly and unambiguously extinguishes the Pueblo's claims as to the area, and clears title to the private lands, subdivisions and lands subject to the tram company's special use permit, and clearly provides that the Pueblo does not have taxing or regulatory powers or any other jurisdictional authority over those private lands and interests. And

the bill provides for the permanent access, permanent grant of permanent rights of way through road and utility easements across existing Pueblo lands to the Sandia Heights North subdivisions and others.

There is a need for legislation, and for this legislation in this Congress in this session. Without a legislative solution, parties would be thrown back potentially into another endless round of administrative and judicial proceedings that could potentially last for years and, even when finished, those matters, those judicial proceedings, would not address and resolve all of the matters that we seek to address in S. 2018.

Without a legislative solution, the prospect looms that the area involved would be placed within Pueblo boundaries and the Pueblo, as with the remainder of its Spanish grant, would have the power, even if it chose not to exercise it, would have the power to exclude non-members of the Pueblo from those lands. Without a prompt legislative solution, the existing window of opportunity that so many people have worked so hard to open may close.

Some legitimate questions have been raised about this legislation from the standpoint of national precedent. Over the years it is my belief that Congress has engaged in a fine tradition of seeking to resolve tribal land claims with unique and narrowly tailored legislative solutions crafted to fit the historic circumstances and the needs of the local communities. That is precisely what S. 2018 seeks to do and as to many of its details there is other precedent for what S. 2018 seeks to achieve and how it seeks to achieve it.

My written testimony provides additional thoughts and information concerning the precedent that this great body has deemed appropriate to enact and I will leave to your reading those matters.

In conclusion, we urge the committee to consider the settlement agreement as the proper guide for the enactment of settlement legislation and we laud the effort to propose legislation that seeks to address the concerns of other interested parties while seeking to preserve the essence of the settlement agreement. We urge prompt action. Without a legislative solution in hand by November 15, 2002, this matter will be back in the courts and administrative agencies, likely for years, and those forums do not have the flexibility that this forum does to resolve the matter thoughtfully.

The tram company stands ready to work with the New Mexico delegation and these committees to advance legislation to successful passage to resolve not only the land claim, but also those related matters that are so important to the local community.

Thank you for your attention.

[The prepared statement of Mr. Stern follows:]

PREPARED STATEMENT OF WALTER E. STERN, ESQ., MODRALL, SPERLING, ROEHL,
HARRIS & SISK, REPRESENTING SANDIA TRAM COMPANY

Good afternoon, Mr. Chairmen and Honorable Committee Members. My name is Walter E. Stern; I am a lawyer with the New Mexico law firm of Modrall Sperling, and am here today on behalf of the Sandia Peak Tram and Ski Company ("Tram Company"). I have been actively involved since 1994 in the dispute and settlement efforts leading to the bill presently before the Committee. I want to thank the Chairmen and the rest of these Committees for the honor of testifying this afternoon concerning—and in general support of—Senate Bill No. 2018, sponsored by Senator Bingaman of New Mexico.

PRACTICE BACKGROUND AND PERSPECTIVE

Since 1982, my law practice has been significantly devoted to the representation of non-Indian interests in Indian land claim cases, rights-of-way validity challenges, jurisdictional disputes, and related litigated matters, and to public land management matters. I also have been involved in a number of Indian lands transactions where the keys to success (both in the negotiation and the execution of the contract or other documentation) are clarity and fairness for all parties.

We believe we achieved these elements in the April 4, 2000 Settlement Agreement between the United States, the Pueblo of Sandia, and the Tram Company, which is a precursor to Senate Bill No. 2018. Of course, as with any collaborative document, we might have drawn some provisions differently than what was the product of the negotiation. But, our goal was to provide an agreement that would stand the test of time, be clear, and provide a fair and permanent resolution of the matters at issue.

SANDIA PEAK TRAM COMPANY BACKGROUND

The Sandia Peak Tram Company owns and operates one of the premier tourist attractions in New Mexico, serving over 300,000 visitors a year on its 2.7 mile aerial tramway, which runs from the base of the Sandia Mountains to the crest. The Tram Company has been involved in this matter for several reasons, not the least of which are that (1) the tramway line—the principal asset of the Company—traverses the area that is the subject of the Pueblo of Sandia's land claim, and (2) tram customers use the tram to access the Sandia Wilderness Area. The Tram Company developed the aerial tramway on the west face of the Sandia Mountains adjacent to the City of Albuquerque in 1965, with the cooperation of the United States Forest Service and the Pueblo of Sandia. Since that time, the Company has had business relationships with the Pueblo and the Forest Service.

Presently, the Company holds a Special Use Permit issued by the Forest Service for the aerial tramway and an adjacent ski area on the east (or back) side of the Sandia Mountains. And, the Company, together with affiliated corporations, holds a business lease and certain rights-of-way located on lands long understood to be Pueblo of Sandia lands. Among other things, those limited duration rights-of-way provide road access to the Sandia Heights North subdivisions that lie adjacent to the area claimed by the Pueblo in the judicial and administrative proceedings that led to the introduction of Senate Bill No. 2018. In addition, the Tram Company and its affiliates played a role in the development of the Sandia Heights North subdivisions over the years, and still owns commercial parcels adjacent to the base of the Tram within the Sandia Heights North subdivisions.

THE MEDIATION AND GOING FORWARD

Because of its property interests in (and adjacent to) the area that is the subject of the Pueblo's land claim, the Tram Company participated from the outset in the mediated settlement negotiations that involved the Pueblo, the United States Departments of Justice, Interior and Agriculture, the City of Albuquerque, Bernalillo County, and the Sandia Mountain Coalition, a small group of property owners and recreational users. In the mediation, the Tram Company sought to protect the jurisdictional status quo with respect to the tramway line and to protect the Tram Company's other property interests—goals not dissimilar from the goals of homeowners in the Sandia Heights area.

The roughly 15 month long mediation effort resulted in the execution of a Settlement Agreement between the United States, the Pueblo and the Tram Company in April 2000. That agreement reflects significant concessions by the Pueblo and includes clear and unambiguous language protecting private property rights and providing for perpetual road and utility easements across Pueblo lands to the principal subdivisions adjacent to the area. Nonetheless, the City of Albuquerque, Bernalillo County and the Sandia Mountain Coalition withdrew from the mediation, despite substantial agreement between all interested parties to many of the core elements of the agreement. The Tram Company believes the Settlement Agreement was and is a fair, reasonable and permanent resolution of a complex set of disputes and land management issues. We continue to support that agreement.

Senate Bill No. 2018 seeks to work within the basic framework of the settlement agreement, and represents a thoughtful vehicle through which to resolve permanently the Pueblo of Sandia's land claim. Senate Bill No. 2018, in large measure, represents the fruits of the mediation labors with several modifications designed to address certain concerns expressed by the City, County and Coalition as they withdrew, and after they had withdrawn, from the mediation. We laud the bill's effort

to bring other interested parties back into the discussion. While the original settlement is fair and reasonable to all parties in my judgment, I also believe that Senate Bill No. 2018 addresses the key concerns expressed by other parties in New Mexico.

The Tram Company is very appreciative of the efforts to help bridge the narrow gap between the final results of the mediation effort, which resulted in the execution of an agreement between the United States, the Pueblo and the Tram Company, and the positions asserted by the County, the City and the Sandia Mountain Coalition. I would add that the “gap” between the settling parties (the Tram, the United States and the Pueblo) and the non-settling parties (the City, County and Coalition) was never very large—in my view. In any event, it would appear that the revisions to the basic terms of the settlement that have been crafted in S. 2018 may promote bringing the range of diverse interests involved here together.

As the Chairman of the Energy and Natural Resources Committee has said, “this legislation does not give any party everything it sought, but it protects the interests of the Pueblo, the public, and the affected landowners. . . .” In many respects, that is the measure of a good compromise. In addition, the bill includes carefully tailored provisions that provide solutions largely unavailable to the federal courts were the dispute left to judicial resolution.

Recently, one of the lead representatives of the Sandia Mountain Coalition, Mr. Bill Kiely, recently commented on a public radio talk show that “we [presumably the Sandia Mountain Coalition] are very favorably dispose[d] to Senator Bingaman’s current version” of the settlement legislation. See Transcript of March 7, 2002 KUNM Call-In Show. Thus, it would appear that many of the parties in New Mexico interested in this matter may be drawing together in a consensus in support of Senate Bill No. 2018.

THE BILL: S. 2018

Like Indian land settlement legislation before this, S. 2018 is narrowly tailored to address and permanently resolve a unique set of circumstances arising in New Mexico following the acts of two (if not three) sovereigns, beginning with a Spanish land grant in 1748, running through the era when Mexico ruled the region, and then the period following the 1848 Treaty of Guadalupe Hidalgo until now, when the region was part of the United States. This legislation follows a tradition of finely tuned congressional acts that have served to provide for the permanent resolution of Indian or tribal land claims throughout our great country. History has shown that complex issues like those with which we are faced here deserve narrowly tailored solutions that work best for the areas and communities affected. In this tradition, S. 2018 wisely and expressly disclaims that it serves as any precedent for other legislation.

The Tram Company believes that this bill is the best vehicle to resolve the Pueblo of Sandia land claim. Like the settlement agreement, the bill provides a permanent solution to a complex set of problems, and addresses issues and subjects relating to the land claim that would not be resolved by the applicable federal agencies or the judiciary in the event the administrative and court proceedings continued to their conclusion. Without this legislative solution, the parties interested in this matter would be thrown back into another round of administrative and judicial proceedings that would last years and years, and even when finished would not address and resolve all the matters addressed in Senate Bill No. 2018. Without this legislative solution, the prospect looms that the area involved would be placed within the Pueblo boundaries and the Pueblo—as with the remainder of its Grant—would have the power to exclude (if it so chooses) non-members of the Pueblo from those lands. Without a legislative solution now, the existing window of opportunity so many have worked so diligently to open, may close.

This bill accomplishes a great deal, most of which is wholly without controversy:

- The bill provides for continued federal ownership of the federal lands at issue, for the continued administration of the area—including the lands subject to the Tram Company’s Special Use Permit—by the United States Forest Service, and for the continued preservation of the wilderness and National Forest character of the area. The provisions accomplishing these things also serve to provide further assurances that there will be no further development of the National Forest and Wilderness lands in the area;
- Using other legislation as a guide, this bill provides a limited management role for the Pueblo of Sandia in the area, while disclaiming in Section 10(c) that the Act would serve as precedent for any subsequent land claim settlement legislation;
- This bill clearly and unambiguously extinguishes the Pueblo’s land claims, thereby clearing title to the private lands, subdivisions, and lands subject to the

Tram Company's Special Use Permit on which the aerial tramway and associated facilities sit. While the tramway line is located on Forest Service lands, the Tram's Special Use Permit (encompassing the tram line and associated facilities) will not be subject to the special land management regime established under the Bill;

- The bill provides clearly and expressly what the jurisdictional regime will be for the area, and for the private lands and property interests adjacent to the area clearly preserving the jurisdictional status quo for the adjacent private lands and for the Tram Company's Special Use Permit so that the Pueblo is recognized not to have any taxing or regulatory powers or any other jurisdictional or governmental authority over those private lands and interests;
- The bill provides for the grant of permanent access, through road and other rights-of-way, across existing Pueblo lands to the Sandia Heights North subdivisions, among others; presently, the Tram Company and its affiliates hold rights-of-way and other interests that provide access for finite periods of time, but the legislation provides permanent rights-of-way for certain roads. It is important to note that in the absence of federal legislation, these matters will not be resolved in any ongoing litigation or administrative proceedings relating to the land claim. The Tram Company and its affiliates hold other interests within those road rights-of-way grants and other agreements, and the grants of permanent rights-of-way for roads shall be subject to those interests. To the extent that the Tram Company and affiliated companies hold other interests within those rights-of-way, those companies will be able to exercise their remaining rights.
- The bill provides for a permanent right-of-way across existing Pueblo lands for a road that currently provides access to key recreational use areas and trailheads into the Sandia Wilderness Area and to the Tierra Monte subdivision, but which road is unpermitted (or to state it another way, is in trespass on Pueblo lands). Under similar circumstances, other Tribes have closed such roads. As a measure of its good faith and honorable dealing, the Pueblo has not taken such provocative action.
- Finally, the bill ratifies the Settlement Agreement reached between the United States, the Pueblo and the Tram Company, as modified by the legislation. Fair questions have been raised about the relationship between the settlement agreement and the legislation and how the two would be interpreted in relation to one another. We understand also that consideration has been given to doing away with the settlement as part of the overall resolution of this matter. While that may be workable, consideration should be given to the fact that the Pueblo's execution of the settlement agreement represents an act of the Pueblo, and its proposed commitments and actions in that agreement, including its disclaimer of any right, title, claim or interest in the subdivisions and other lands, constitute significant benefits to the other interested parties.

PRECEDENT FOR SENATE BILL NO. 2018

Some legitimate questions have been raised about this legislation from the viewpoint of national precedent. Respectfully, as suggested previously, over the years, Congress has engaged in a fine tradition of seeking to resolve tribal land claims with unique and narrowly tailored legislative solutions, crafted to fit the circumstances and the needs of the local community. That is precisely what this bill is and does. There is precedent for much, if not all, of what Senate Bill No. 2018 seeks to achieve and how it seeks to achieve it.

In the 103rd Congress, for example, the Crow Boundary Settlement Act of 1994 was enacted, resolving a reservation boundary dispute in the State of Montana. There, an 1889-1891 survey resulted in the erroneous exclusion of an approximately 36,000 acre strip of land from the Crow Reservation. Notwithstanding the lengthy passage of time, Congress passed settlement legislation thoughtfully and narrowly crafted to redress the survey error. See 25 U.S.C. §§ 1776-1776k, Public Law No. 103-444, 108 Stat. 4632. Recognizing the Crow Tribe's claim and the survey error, the Act provided the Tribe with certain attributes of beneficial ownership in the disputed area. And, that Act also ratified a settlement agreement, "to the extent that such Settlement Agreement does not conflict with this subchapter." 25 U.S.C. § 776(b). Thus, there is precedent for resolving an old survey dispute involving Indian lands boundaries, and there is precedent for providing the involved tribe with indicia (or benefits) of ownership in the process.

More recently, to settle a land claim in northern California, Congress completely redrew a boundary between the Six Rivers National Forest and the Hoopa Valley Reservation resulting in the reduction of the National Forest and the addition of

over 2600 acres to the Hoopa Valley Reservation. This legislation arose from a land claim in which the Hoopa Valley Tribe asserted that there was an “error in establishing the boundaries of the Hoopa Valley Reservation.” See Hoopa Valley Reservation South Boundary Adjustment Act, Public Law No. 105-79, S. 2018, although addressing a tract of land about four times larger than the Hoopa Valley tract, provides for far more modest jurisdictional and beneficial ownership changes to the lands involved in contrast to the complete transfer of beneficial title to the Hoopa Valley Tribe. S. 2018 is more narrowly tailored. First, it does not grant the Pueblo the power to exclude and make all management decisions. Second, title remains in the United States and the Forest Service retains the principal management role.

Also, recently, Congress has determined to provide a federal land management role for Indian tribes in the resolution of tribal land claims. For example, the Valles Caldera Preservation Act, enacted in the last Congress, provides that the Trust, which is to administer the lands subject to the Act, to consult and cooperate with Indian tribes and Pueblos in New Mexico, including the Pueblo of Santa Clara, on management practices that affect those tribes and Pueblos. And, in the Steens Mountain Cooperative Management and Protection Act of 2002, also enacted during the 106th Congress, Congress provided that the Secretary of the Interior shall adopt a management plan for federal public lands in the great State of Oregon that “shall provide for coordination with—the Burns Paiute Tribe.” See Section 111(b)(3). Thus, existing public laws provide an express management role for tribes.

Similarly, in Public Law No. 105-313, the Miccosukee Reserved Area Act, Congress provided for the permanent residence of Miccosukee Indians in the congressionally established Florida Everglades National Park without the need for those people to seek and obtain a special use permit from the land management agency. That Act provided that the lands within the previously established Park would be subject to Miccosukee Tribe’s “exclusive right” to use the lands designated “in perpetuity”, that the Tribe would have the power to make its own laws and be governed by them, and that the lands would be considered “Indian Country” for jurisdictional purposes.

In addition, in the Timbisha Shoshone Homeland Act of 2000, Public Law No. 106-423, involving both National Park Service and BLM lands in Nevada and California, Congress recognized certain rights and interests of the Timbisha Shoshone in the Park and on BLM lands, including access to those lands for traditional, cultural and religious purposes. Moreover, the Timbisha Shoshone Homeland Act also requires the Park Service and the BLM to close certain lands when requested by the Tribe “in order to protect the privacy of tribal members engaging in traditional cultural and religious activities. . . .” See Section 5(e)(5)(E)(i) of Public Law No. 106-423. Senate Bill No. 2018, which provides special use rights on federal public lands for the members of the Pueblo of Sandia, without seeking a permit, therefore, is not without precedent.

Thus, there is precedent for much, if not all, of the key elements of Senate Bill No. 2018. There is even precedent for Section 10(c), which states that the Act is not to be considered precedent. See Miccosukee Reserved Area Act, §8(c). But, even if precise precedent does not exist for every element of the bill, there is precedent in this august body’s work to resolve Indian land claims with legislation narrowly tailored to address the unique circumstances and history presented.

CONCLUSION

We urge the Committee to consider the Settlement Agreement as the proper guide for the enactment of settlement legislation, and we laud the effort to propose legislation that seeks to address the concerns of other interested parties while seeking to preserve the essence of the Settlement Agreement. We urge prompt action. Without a legislative solution in hand by November 15, 2002, this matter will be back in the courts and administrative agencies—likely for years. And, despite some bullish predictions from some who have opposed settlement in the past, there is no certainty that the claim will be resolved satisfactorily for the non-Indian interests. In the event the Pueblo wins the litigation, it would have the power to exclude non-Indians (although it may not choose to exercise it), and access to a cherished public resource could be lost to those of us who are not Pueblo members. And, even if those who oppose the Pueblo succeed in the litigation and defeat the claim, those people may find that they no longer have the ability to travel on certain roads because there is no valid right-of-way. We stand ready to work with the Committee to advance this bill to successful passage.

Thank you for your attention.

Chairman INOUE [presiding]. Thank you very much, Mr. Stern.

May I now call upon Mr. Sullivan.

**STATEMENT OF EDWARD SULLIVAN, EXECUTIVE DIRECTOR,
NEW MEXICO WILDERNESS ALLIANCE, ALBUQUERQUE, NM**

Mr. SULLIVAN. Thank you, Mr. Chairman, Senator Domenici. My name is Edward Sullivan. I am the executive director of the New Mexico Wilderness Alliance and I thank you for the opportunity to testify today on S. 2018. I would also ask that my entire written testimony as amended be submitted into the record.

The New Mexico Wilderness Alliance is a community-based non-profit organization located in Albuquerque, with over 2,500 members throughout the State, many of whom live just minutes from the proposed Tuf Shur Bien Preservation Trust Area. A major thrust of our work is ensuring the permanent protection of designated wilderness areas within New Mexico from any harmful impacts.

While we pay close attention to each of our 23 wilderness areas, the Sandia Mountain Wilderness Area is of particular importance to the members of the New Mexico Wilderness Alliance. In addition, many of the founders of the New Mexico Wilderness Alliance and some of the current board members played crucial roles in working with Senator Domenici in attaining wilderness designation for Sandia Mountain.

Both the settlement agreement and S. 2018 ensure that the wilderness portion of the Tuf Shur Bien Preservation Trust Area will remain entirely under the protective umbrella of the Wilderness Act. In addition, although recognizing the Pueblo's right to access the area for traditional and cultural purposes, the agreement and S. 2018 limit those activities and access thereto to only those that are consistent with the Wilderness Act.

Importantly, the settlement agreement and S. 2018 provide additional protection for the non-wilderness portion of the preservation trust area as well. The agreement and S. 2018 expressly prohibit resource extraction of any type and commercial enterprise such as gaming from occurring anywhere.

Senator DOMENICI. Such as what?

Mr. SULLIVAN. I'm sorry?

Senator DOMENICI. Such as what?

Mr. SULLIVAN. Such as logging or mining or any type of extractive use.

Senator DOMENICI. No, I did not get the word. You said such as mining? What was the word?

Mr. SULLIVAN. Gaming, pardon me.

Senator DOMENICI. Gaming?

Mr. SULLIVAN. Yes, sir.

In addition to the expressly stated protections for specific activities, the settlement agreement and S. 2018 also offer additional layers of protection through the provisions providing for Pueblo consent. As indicated previously, despite the Forest Service's recent approach of protective management, the Service has allowed a number of activities over the years to occur in the area that have had a deleterious effect on the wilderness values of the area. The settlement agreement and S. 2018 eliminate the potential for au-

thorization of these types of activities by providing the Pueblo with what is essentially a veto power for new uses in the area.

In short, the New Mexico Wilderness Alliance believes that the protective measures contained in both the settlement agreement and S. 2018 provide more than adequate protection to not only the Sandia Mountain Wilderness Area, but also the remaining portions of the Cibola National Forest that lie within the proposed trust area. Therefore we are pleased to express our unequivocal support for these provisions.

We believe that both the settlement agreement and S. 2018 provide clear and unequivocal protection of continued public access to the area. We believe there is no argument on this issue. Both documents provide for protection in perpetuity to the public's longstanding use and enjoyment of the area. Similarly, the Pueblo has provided every assurance that under no circumstances does it have an interest in attempting to curb public access in the future.

For the most part, we believe that the settlement agreement, S. 2018, and the incorporated T'uf Shur Bien Preservation Area management plan do an adequate job of recognizing and protecting the interests of the public and adequately provide for input in the overall management of the area. The management plan in section 3.F expressly creates a public participation in the process with respect to amendments to the management plan indicated to ensure full public involvement in future management decisions. In addition, the settlement agreement, S. 2018 and the management plan each expressly provide that the National Environmental Policy Act is fully applicable to the area, providing not only protection for important environmental concerns, but also preserving public input through the NEPA process.

Significantly, the incorporated management plan in section 2.B.4 provides the public with important opportunities to challenge questionable Forest Service decisions on the part of—I am sorry—questionable Forest Service decisions pertaining to authorization of new uses, regardless of whether the Pueblo has consented to those uses.

Additionally and very importantly, the plan in section 2.D.2 sets out a process through which the public has input with respect to what constitutes a traditional or cultural use on the part of the Pueblo and provides a cause of action in Federal courts to challenge decisions regarding traditional and cultural uses that the public believes are not in accordance with applicable laws.

There is, however, a discrepancy between the settlement agreement and the management plan that we would like to see addressed in any legislation authorizing settlement of this matter. This is in regard to the blanket exemption from certain Federal laws applicable to Forest Service lands. S. 2018 attempts to resolve this issue. However, S. 2018 still leaves uncertainties as to precisely what laws do remain fully applicable to the preservation trust area.

Any legislation authorizing the settlement agreement must include a clear and express statement of precisely what laws remain applicable to management of the area.

Given the Federal district court opinion vacating the opinion of former Solicitor Tarr regarding the Pueblo's claim and the subsequent compelling and persuasive opinion of former Interior Sec-

retary Leshy regarding the legitimacy of the Pueblo of Sandia's claim, we acknowledge that the Pueblo of Sandia's claim is unique. Therefore, we believe it is especially important that any legislation settling this contentious issue must be respectful of the Pueblo's historic and legal rights and interests in the area and likewise must protect the Pueblo's traditional and cultural uses in the area while also clearly indicating that this is a unique situation which would not serve as precedent of any similar claims that may potentially arise in the future. We feel that the original settlement agreement provides this respect and recognition.

The issue of Indian land claims and county consent provisions raises other issues with respect to creating dangerous precedents for future public lands decisions, of which we are also deeply concerned. Indian land claims are a concern for many throughout the United States, especially those of us in the conservation community. We feel strongly each place and situation where Native Americans may seek ownership, better access, or stronger management role in public lands is different. Therefore, we strongly feel that each situation must be handled individually based on the specific facts of the particular case as well as the legal, political, cultural, and environmental conditions of the time.

No one case or situation should be ever used as a precedent for creating an opportunity or an avenue for tribes to circumvent the already established process through which tribes are required to assert land claims.

Of equal, if not greater, importance to the New Mexico Wilderness Alliance regarding precedential issues is the issue of county consent. We believe this provision has serious implications with respect to the management of Federal public lands. The counties are given consent powers equivalent to those of the Pueblo. The counties are given this authority despite having absolutely no legal claim to these lands, not even an arguable claim on which they may prevail, such as the Pueblo has in this instance.

There is no precedent that we can identify either in statutory or Federal case law that supports this provision. This matter is of critical importance to the New Mexico Wilderness Alliance as well as other national conservation organizations. While in initial consideration we were concerned about the implications of this provision, we did not view it as something that would preclude our support for the legislation.

Upon further consideration, however, and after many discussions with local and national organizations, we must now take a much stronger position and strongly urge that this provision be removed from the current legislation. This provision sets a precedent with respect to unsupportable county rights that we simply cannot live with. Therefore, if this provision is not removed from S. 2018 we will be forced to actively oppose this legislation. In addition, we would be forced to engage our national coalition partners in the conservation community and organize the greater community to oppose the legislation as well.

Finally, I want to clearly state that the New Mexico Wilderness Alliance would never support the loss of any portion of land currently included within the national wilderness preservation system, nor would we support any legislation that would set a precedent

having the effect of diminishing the integrity of the national wilderness preservation system.

Our support for the settlement of this dispute is entirely contingent upon the area remaining under the Federal Government's ownership, management, and control. It is only because of the unique situation presented by this particular case that we could ever consider agreeing to the management scheme established under the settlement agreement, S. 2018, and the management plan. Any attempt to remove the area from the national wilderness preservation system or from outright government ownership would cause us to seriously reconsider our support.

In closing, I would like to once again thank you, Mr. Chairman and Senator Domenici, for the opportunity to come before you today and provide the views of the New Mexico Wilderness Alliance with respect to this important issue. It is quite an honor and privilege to be seated where I am right now, and, with the exception of the changes I have suggested with respect to clarification of applicable laws and regulations, and especially the county consent provision, I would be happy to express the support of the New Mexico Wilderness Alliance for S. 2018.

Thank you.

[The prepared statement of Mr. Sullivan follows:]

PREPARED STATEMENT OF EDWARD SULLIVAN, EXECUTIVE DIRECTOR, NEW MEXICO WILDERNESS ALLIANCE, ALBUQUERQUE, NM

Mr. Chairman and members of the respective committees, my name is Edward Sullivan and I am the Executive Director of the New Mexico Wilderness Alliance. I thank you for the opportunity to testify today on S. 2018.

The New Mexico Wilderness Alliance is a community based non-profit organization located in Albuquerque, with over 2,500 members throughout the state, many of whom live just minutes from the proposed T'uf Shur Bien Preservation Trust Area. The Alliance is an organization dedicated to the protection, restoration, and continued enjoyment of New Mexico's wildlands and Wilderness Areas.

A major thrust of our work is ensuring the permanent protection of designated Wilderness Areas within New Mexico from any harmful impacts. While we pay close attention to each of our 23 Wilderness Areas, the Sandia Mountain Wilderness Area is of particular importance to the members of the New Mexico Wilderness Alliance. In addition, many of the founders of the New Mexico Wilderness Alliance, and some of the current members of our Board of Directors played crucial roles in working with Senator Pete Domenici in attaining Wilderness Designation for Sandia Mountain.

Accordingly, we have spent many hours, and considerable energy scrutinizing the issues concerning the Pueblo of Sandia Land Claim, the original proposed settlement agreement, as well as Senator Bingaman's S. 2018. I am pleased to come before you today and express the Alliance's support for the majority of the provisions of S. 2018 and Senator Bingaman's attempt to bring this contentious matter to a lasting conclusion.

When we first began reviewing this issue we had two primary concerns; (1) enduring protection of the Sandia Mountain wilderness through continued application of the Wilderness Act; and (2) protection of all existing public rights in the area. It is also extremely important to us that the resolution of this dispute lead to a settlement that protects the Pueblo's traditional and cultural uses in the disputed area. This is especially important, we believe, considering the Pueblo's continued willingness to compromise its position in an attempt to address the concerns of all the stakeholders. We believe that the original settlement agreement, negotiated by the Pueblo, the Forest Service, the Department of the Interior, the Department of Justice, and the Sandia Peak Tram Company, addressed those concerns. We believe that with minor changes S. 2018 will also adequately address these concerns.

PROTECTION OF WILDERNESS VALUES

Although today the Forest Service strongly advocates for protection of the Sandia Mountains, the agency has not always had the Mountain's best interest at heart, as evidenced by their opposition to its original Wilderness designation. Over the years, the Forest Service allowed a number of projects to occur in the Sandias which has deteriorated the Mountain's wild character. These included the construction of a number of access roads, permanent developments at the crest, and a large aerial tramway. We are grateful for the turn towards protection as a first priority in the Forest Service's approach to managing the Sandia Mountain Wilderness. However, changes in the agency's priorities and policies provide little assurance that the government will stay the course of staunchly defending the Wilderness Area. We believe the Settlement Agreement and S. 2018 provide additional guarantees of permanence to the protection of the wilderness values in the area.

Both the Settlement Agreement and S. 2018 ensure that the Wilderness portion of the Tuf Shur Bien Preservation Trust Area will remain entirely under the protective umbrella of the Wilderness Act. In addition, although recognizing the Pueblo's right to access the Area for traditional and cultural purposes, the Agreement and S. 2018 limit those activities, and access thereto, to only those that are consistent with the Wilderness Act. Meaning, no one, not even members of the Pueblo, can undertake any activity, or gain access to the area, that would currently be prohibited in the Wilderness Area. Importantly, the Settlement Agreement and the S. 2018 provide additional protection for the non-Wilderness portion of the Preservation Trust Area, as well. The Agreement and S. 2018, expressly prohibit resource extraction and any type of commercial enterprise such as gaming from occurring anywhere in the Trust Area.

Under the express terms of the Settlement Agreement and S. 2018 the protective provision just referenced apply not only to forest service lands but also are fully applicable to trust and fee lands that the Pueblo has purchased in the past as well as any lands in the Area the Pueblo may acquire in the future. This is entirely consistent with the Pueblo's stated purpose of providing permanent protection to the entirety of the Area. We feel that by accepting restrictions on the use of this Pueblo owned property, restrictions I would add that otherwise would be inapplicable to this property, that the Pueblo has shown its good faith intention to fulfill the promise to protect and preserve the Area's natural and wild character. Therefore, quite simply put, we believe that the Settlement Agreement and S. 2018 provide excellent protection for the natural wilderness character of the Mountain and we strongly support the protective provisions of both documents.

In addition to the expressly stated protections from specific activities, the Settlement Agreement and S. 2018 also offer additional layers of protection through the provisions providing for Pueblo Consent. One of the Pueblo's stated purposes for pursuing the land claim is to provide enduring protection to the wilderness and natural character of the Area. We believe the terms of the Settlement Agreement confirm the integrity of that claimed purpose. As indicated previously, despite the Forest Service's recent approach of protective management, the Service has allowed a number of activities to occur in the Area that have had a deleterious effect on the wilderness values of the Area. The Settlement Agreement and S. 2018 eliminate the potential for authorization of these types of activities by providing the Pueblo with what is essentially a veto power for "new" uses in the Area. Therefore, if the Forest Service or some other entity proposed an activity in the Area that would negatively impact the wilderness or natural quality of the Area the Pueblo, through the consent provisions, has the authority to prevent that activity and protect the Area from harm. Considering the stated purpose of protecting the naturalness of the Area, expressed by all the parties to this dispute, we strongly support the provision providing for Pueblo Consent.

In short, the New Mexico Wilderness Alliance believes that the protective measures contained in both the Settlement Agreement and S. 2018 provide more than adequate protection to not only the Sandia Mountain Wilderness Area but also the remaining portions of the Cibola National Forest that lie within the proposed Trust Area. Therefore, we are pleased to express our unequivocal support for these provisions.

PROTECTION OF EXISTING PUBLIC RIGHTS AND INTERESTS

Because the area in question serves as the premier open space refuge to a population of over 700,000 people in the Albuquerque metro area, it is critical that any settlement protect not only public access to the Area but also the public voice in how the Area is managed and protected. We believe that the Settlement Agreement and S. 2018 do an adequate job of protecting those interests.

We believe that both the Settlement Agreement and S. 2018 provide clear and unequivocal protection of continued public access to the area. We believe that there is no argument on this issue; both documents provide for protection, in perpetuity, to the public's longstanding use and enjoyment of the Area. Similarly, the Pueblo has provided every assurance that under no circumstances does it have an interest in attempting to curb public access in the future.

Public participation in the management of the Area, especially when it comes to the land use planning process, raises some interesting issues for the New Mexico Wilderness Alliance. Public participation in this process is critical for sound management of any special use area. Therefore, we pay extremely close attention to any proposals that may change or alter this process.

For the most part, we believe that the Settlement Agreement, S. 2018, and the incorporated T'uf Shur Bien Preservation Trust Area Management Plan, do an adequate job of recognizing, and protecting interests of the public and adequately provide for input in the overall management of the Area. The Management Plan, in Section III F, expressly creates a public participation and input process, with respect to amendments to the Management Plan intended to ensure full public involvement in future management decisions. In addition, the Settlement Agreement, S. 2018 and the Management Plan each expressly provide that the National Environmental Policy Act is fully applicable to the Area providing not only protection for important environmental concerns but also preserving public input through the NEPA process.

Significantly, the incorporated Management Plan, in Section IIB(4), provides the public with important opportunities to challenge questionable Forest Service decisions on the part of the Forest Service pertaining to authorization of "new" uses, regardless of whether the Pueblo has consented to those uses. Additionally, and very importantly, the Plan, in Section IID(2), sets out a process through which the public has input with respect to what constitutes a traditional or cultural use on the part of the Pueblo and provides a cause of action in federal courts to challenge decisions regarding traditional and cultural uses that the public believes are not in accordance with applicable laws.

The one point of contention that we have with the existing management plan, is that we would have preferred that the public been invited to participate in its development. The current, incorporated, Management Plan was developed by the parties to the litigation concerning the land dispute, without public participation. While we believe that our public lands should always be managed with the maximum amount of public input and participation possible, we recognize and respect that the Settlement Agreement, and S. 2018 as well as the initial Management Plan, attempt to settle litigation to which the public at large was not a party. Therefore, we understand that this is a unique situation in which inclusion of every potential stakeholder may very well have precluded any potential for settlement of this troubling situation.

It is important to note, that in our review of issues concerning public interest in the Area we looked at the original Settlement Agreement and Management Plan together, as essentially a single document. Taken as a whole, therefore, we believe that the Settlement Agreement, or S. 2018 and the Management Plan provide adequate protection of the public's interest in participating in process of making future management decisions concerning the proposed Preservation Trust Area. There is however, a discrepancy between the Settlement Agreement and the Management Plan that we would like to see addressed in any legislation authorizing the settlement of this matter.

As it stands currently the original Settlement Agreement contain blanket exemptions from the Forest and Rangeland Renewable Resources Planning Act, as amended by the National Forest Management Act as well as the Forest Service planning regulations implementing these acts. Senator Bingaman's draft bill, dated February 25, 2002 contained a similar exemption. The Management Plan, however, expressly provides that a number of provisions of those planning regulations remain applicable to the Area. Specifically, the Plan provides for application of the appeal process regarding Forest Service project decisions, set out at 36 C.F.R. 215 to apply to management decisions in the Area. Similarly, the Plan provides that the public appeal process regarding Plan amendment decisions, set out at 36 C.F.R. 217, or subsequent amendments, apply to any administrative appeal of the Forest Supervisor's decision regarding amendment of the Plan. Therefore, the terms of the Settlement Agreement are inconsistent with the terms of the Management Plan. This is especially important considering that the appeal provisions regarding Plan amendments in 36 C.F.R. 217 have been amended and incorporated into planning regulations set out at 36 C.F.R. 219.

While there appears to be a conflict here in the language of the Settlement Agreement and the Management Plan, it has been our understanding all along that the

parties fully intended the terms of the Management Plan to be fully applicable and enforceable. Therefore, we do not believe that this was an intentional attempt to create ambiguity in the Plan or the Settlement Agreement. Obviously, however, this discrepancy is important and needs to be addressed. S. 2018 attempts to remove this discrepancy by simply removing this blanket exemption and retaining only the introductory language stating that “other laws and regulations applicable to the National Forest System, and the Management Plan (which is incorporated herein by reference)” shall apply to the administration of the Area. This change, although an improvement on the Settlement Agreement and the Draft Bill, it does not fully resolve the problem. This new language still leaves doubt as to precisely what laws and regulations remain in full force and effect.

Congress, through this legislation has the opportunity to eliminate this confusion and make clear the relationship between the Act, the Settlement Agreement, and the Management Plan as well as the process for public participation that will attach to the Area. Any legislation authorizing the Settlement Agreement must include a clear and express statement of precisely what laws remain applicable to management of the Area.

RESPECT AND PROTECTION FOR THE INTEGRITY OF THE PUEBLO RIGHTS AND INTERESTS IN THE AREA

Given the federal district court opinion vacating the opinion of former Solicitor Tarr regarding the Pueblo's claim, and the subsequent, compelling and persuasive opinion of former Interior Solicitor Leshy regarding the legitimacy of the Pueblo of Sandia's claim we acknowledge that the Pueblo of Sandia's claim is unique. Therefore, we believe it is especially important that any legislation settling this contentious issue must be respectful to the Pueblo's historic and legal rights and interests in the area and likewise must protect the Pueblo's traditional and cultural uses in the area while also and clearly indicating that this is a unique situation which should not serve as precedent of any similar claims that may potentially arise in the future.

We feel that the original Settlement Agreement provides this respect and recognition. Similarly, we feel that S. 2018 does a respectable job in this area. However, there is one provision in particular in S. 2018 that has the appearance and the effect of denigrating the integrity of the Pueblo's interest and provides rights to other parties that are inconsistent with the need for and the purpose of this legislation.

I am speaking of the provision set out in Section 4(b)(4) of S. 2018. This provision provides both Sandoval and Bernalillo Counties with Consent rights equivalent to those of the Pueblo. We feel this provision is unnecessary. It provides the counties, who were not parties to this dispute, with rights that they otherwise would not have and for which there is no legal precedent, of which we are aware. In addition, we feel that raising the level of authority of the two counties to that of the Pueblo is disrespectful of the Pueblo's legitimate historic and legal interest in the Area.

POTENTIAL NATIONAL PRECEDENTIAL ISSUES

The issue of Indian land claims and County Consent provisions raise other issues with respect to creating dangerous precedents for future public lands decisions of which we are also deeply concerned.

Indian land claims are a concern for many throughout the United States, especially those of us in the conservation community. We feel strongly each place and situation where Native Americans may seek ownership, better access to or a stronger management role in public lands is different. Therefore, we feel strongly that, each situation must be handled individually based on the specific facts of the particular case as well as the legal, political, cultural, and environmental conditions of the time. No one case, or situation should ever be used a precedent for creating an opportunity or avenue for tribes to circumvent the already established process through which Tribes are required to assert land claims. Were it not for our sincere belief that this particular instance presents a unique situation in which the Pueblo's claim has had strong support from Interior Department officials and the federal district court, it is possible that we would be in front of you today taking an entirely different position. However, that is not the case. Because of our belief in the strength of the Pueblo of Sandia's claim and our desire to have the local interests, who have the most at stake in this matter, rather than a federal judge, bring this matter to a conclusion, we are pleased to offer our support today for the majority of the provisions of S. 2018.

Of equal, if not greater, importance to the New Mexico Wilderness Alliance, regarding precedential issues is the issue of County Consent included in S. 2018. As stated above, we believe this provision has implications regarding respect for the

Pueblo's historic and legal rights in the Area. More importantly, it has serious implications with respect to the management of federal public lands. This provision, as far as we have been able to determine, creates the first instance in which a County, a subdivision of State government, has the authority to dictate how federal lands are used and managed. The counties are given this authority despite having absolutely no legal claim to these lands, not even an arguable claim on which they may prevail such as the Pueblo has in this instance. In addition there is absolutely no precedent that we can identify, either in statutory or federal case law, that supports this new delegation of authority.

This matter is of critical importance to the New Mexico Wilderness Alliance as well as other national conservation organizations. While in initial consideration we were concerned about the implications of this provision we did not view it something that would preclude our support for the legislation. Upon further consideration, however, and after many discussions with local and national organization we must now take a much stronger position and strongly urge that this provision be removed from the current legislation. This provision sets a precedent with respect to unsupportable County rights that we simply cannot live with. Therefore, if this provision is not removed from S. 2018 we will be forced to actively oppose this legislation. In addition we will be forced to engage our national coalition partners in the conservation community and organize the greater community to oppose this legislation as well.

Finally, I want to clearly state the New Mexico Wilderness Alliance would never support the loss of any portion of land currently included within the National Wilderness Preservation System. Nor would we support any legislation that would set a precedent having the effect of diminishing the integrity of the National Wilderness Preservation System. Our support for the settlement of this dispute is entirely contingent upon the Area remaining under the federal government's ownership, management, and control. It is only because of the unique situation presented by this particular case that we could ever consider agreeing to the management scheme established under the Settlement Agreement, S. 2018 and the Management Plan. Any attempt to remove the Area from the National Wilderness Preservation System, or from outright government ownership, would cause us to seriously reconsider our support.

In closing, I would like to, once again, thank you Mr. Chairman and the members of the respective committees for the opportunity to come before you today and provide the views of the New Mexico Wilderness Alliance with respect to this important issue. It is an honor and a privilege to be seated where I am right now. With the exception of the changes I have suggested with respect clarification of applicable laws and regulations, and removing County consent provision, I would be happy to express the support of the New Mexico Wilderness Alliance for S. 2018.

Chairman INOUE. Thank you very much, Mr. Sullivan.

**STATEMENT OF GUY RIORDAN, OWNER, PIEDRA LISA TRACT,
ALBUQUERQUE, NM**

Mr. RIORDAN. Thank you, Mr. Chairman, Senator Domenici. I would like to also thank Mr. Mike Connor from Senator Bingaman's office for allowing me to come up here and testify today.

My name is Guy Riordan. I am the owner of a 160-acre private property tract known as the Piedra Lisa Tract or as the Caulkins Estate or sometimes known as the Canyon del Agua Estate. This property is located within Sandoval County, New Mexico, and surrounded by the proposed Tuf Shur Bien Preservation Trust Area Act.

This piece of property was originally homesteaded in 1890 by a Mr. Francisco Duran. In 1914 the Manzano National Forest was created. The national forest surrounded this property, but access was continued through the forest by the original homesteader and his successors—prior existing use. In approximately 1978 the surrounding national forest was added as wilderness. Our access to our property is continuing to this date.

This Piedra Lisa Tract is very unique. It is the most beautiful property on the mountain. It has spectacular views, a year-round

running stream, one of only a few within the entire area, ponderosa pine trees, an abundant amount of deer, turkey, bear, mountain lions. It is also surrounded by the Sandia State Game Refuge and Management Area.

Because of this uniqueness, the "Caulkins Tract," as the Federal Government has called it, as it been referred to by the Forest Service, was and has been on their priority acquisition list even prior to my owning the property. The Forest Service has been trying to acquire funds to purchase this property. After I purchased the property, the Forest Service continued to place my property on their high priority acquisition list.

Recently, the Forest Service has tried to deny vehicular access to my property, even though I have a prior existing use dating back to the original homestead. Because of the recent stand by the Forest Service, I filed suit in the Federal court asking for a declaratory judgment on my private property rights.

In addition to the Forest Service attempting to acquire the Piedra Lisa Tract, the Sandia Pueblo has made numerous offers and inquiries as to purchase of this property.

S. 2018 has been specifically designed to legislate around my private property rights and my due process in Federal court and any and all remedies that may be authorized through the administrative process within the Forest Service. Senator Bingaman, I know that you are trying to resolve this dispute in an honorable fashion, but some of the parties involved have not been.

I have never been involved in any initial discussions with the Forest Service, Sandia Pueblo, or your staff in regards to the protection of my property rights under S. 2018. My property is mentioned numerous times as to its disposition if the Forest Service acquires it or if Sandia Pueblo acquires the property. It also allows Sandia Pueblo to veto, as well as Sandoval County, which the Pueblo has great influence over, any new uses of national forest lands, which may affect my private property rights and diminish the value of my property, for their own self interest.

Another major concern is section 14, subsection C of this bill. It allows the Pueblo to exchange lands owned within the private subdivisions for national forest lands within Sandoval County. This could allow the Pueblo to own all lands surrounding my property. The Pueblo has purchased numerous properties in the exclusive subdivisions over the years. The high value of these properties on a dollar basis exchange would allow the Pueblo to purchase or exchange thousands of acres of wilderness land, thus possibly entering into trust and out of public use.

I find it remarkable that I own the largest single private tract of land addressed in this bill, but have not been guaranteed rights of access or rights of way, have not had any mention of utilities, cables, etcetera, rights of way, but every other road, trail, and private property right and all other subdivisions are specifically exempted from Pueblo jurisdiction.

I respectfully request that all rights to my due process be guaranteed and that all my property rights and interests be protected.

Thank you.

Chairman INOUE. Thank you very much, Mr. Riordan.

Mr. Cummins, if this agreement is not ratified, would the home owners in Tierra Monte and Sandia Heights subdivisions lose any rights to rights of way and utility easements to their homes?

Mr. CUMMINS. I think generally speaking, yes, Mr. Chairman. Certainly the issues that Anita Miller and I think—and respectfully, I would suggest that Anita Miller would be better to answer your question. She has been involved and is a lawyer. But certainly the access over the triangular piece of the existing Pueblo lands is critical to the access to particularly Tierra Monte and some portions of North Sandia Heights.

Chairman INOUYE. Now, this agreement would provide for the rights of way, will it not?

Mr. CUMMINS. That is correct.

Chairman INOUYE. So if you do not have this legislation, the rights of way are gone?

Mr. CUMMINS. Yes, sir. In New Mexico we consider that being in deep guacamole.

Chairman INOUYE. Ms. Miller, I am sorry I had to step out while you were testifying, but would you favor this committee by providing it with legislative language covering your suggestions?

Ms. MILLER. Senator, I would be delighted to. I already did include a definition of trust for the purpose of the statute. As far as new uses, I would like to work with Senator Domenici's staff on that as well as with my membership on new uses. I think that I would be delighted if you would be interested in receiving that.

Chairman INOUYE. I would request that it be submitted as soon as possible so the committee can study that.

Ms. MILLER. Thank you.

Chairman INOUYE. I appreciate it.

I gather, Mr. Stern, that you do support the measure?

Mr. STERN. Generally speaking we do, Mr. Chairman. If I might follow up to supplement Mr. Cummins' answer concerning the question of rights of way, the tram company does have a particular interest in the rights of way in the triangle area to the south of the map over here in the hearing room. But those rights of way that the tram company holds are for a finite period of time. They are not permanent rights of way, and so this S. 2018 and the settlement agreement would provide for permanent rights of way for those roads.

In addition, the settlement and S. 2018 also provide for permanent utility rights of way to the Sandia Heights North subdivisions, which has been a matter of some concern as I understand it to the home owners in that area for many years.

Chairman INOUYE. Mr. Sullivan, with the exception of the two items that you pointed out, you support this measure?

Mr. SULLIVAN. Yes, Mr. Chairman, we are very much in support of settling this matter.

Chairman INOUYE. But do you have any questions on the right to consent to new uses?

Mr. SULLIVAN. On behalf of the Pueblo?

Chairman INOUYE. Yes.

Mr. SULLIVAN. No, we actually support that right, very much so. We think it is an extra layer of protection. I was somewhat inter-

ested in Senator Craig's concept of super-wilderness that he mentioned earlier.

Chairman INOUE. Mr. Riordan, listening to your testimony, I had the staff look into section 10.B of the bill. Have you seen that section? It was added to ensure that your private property rights would not be affected. I think it covers your concern.

Senator DOMENICI. This is Mr. Riordan you are talking to?

Chairman INOUE. Yes.

Mr. RIORDAN. Yes, sir. On section 10, subsection B: "Existing rights extend to any valid property rights that exist within the area that are not otherwise addressed in this act or in the settlement agreement. Such rights are not modified or otherwise affected by this act."

The problem I had with this bill, sir, is it was specifically excluding my piece of property in any definition of rights of ways, abilities to go ahead, and you have special use permits authorized by the national forest, and other rights that I feel that I may or may not have. The problem I had once again is that this has been a situation where my property is surrounded by the national forest and the wilderness, and I think that people have been trying to diminish my rights and access to the administrative process as well as the Federal courts for their own personal purchase of the property.

I have been included in this bill, I think, two or three times as to the disposition of my property, without ever being consulted on it. In this bill it is stated what will happen if the Pueblo of Sandia purchases my property, what will happen if the Federal Government purchases my property. I feel that there is not sufficient language in this bill to protect my rights and I would like to see something included that protects my rights for access as well as any other use that we may have getting back and forth to our property, sir.

Chairman INOUE. Thank you.

Mr. Cummins, if I may ask one more question. In citing your concern about new uses, you cited the right of handicapped access and handicapped parking.

Mr. CUMMINS. Yes, sir.

Chairman INOUE. Does not the Federal law, the Americans With Disabilities Act, cover that?

Mr. CUMMINS. We would hope so, but our concern is that in establishing a veto over new uses, as with some of the other questions on other Federal law, we do not know what would take precedence. So we would just like that clarified that either other Federal laws, including the wilderness acts and everything else, apply or do not. I think there have been several questions.

Chairman INOUE. I would think it would be rather difficult for you to veto a Federal law, but we will look into that.

Mr. CUMMINS. I would hope so, sir. Thank you.

Chairman INOUE. Senator Domenici.

Senator DOMENICI. Thank you very much.

Mr. Riordan, my staff tells me that there is a State game refuge which surrounds your property?

Mr. RIORDAN. Yes, sir, there is.

Senator DOMENICI. There is no mention of that in your testimony today. Would that have any effect, would this legislation have any effect on that refuge as well as your property?

Mr. RIORDAN. Senator Domenici, that Sandia Game Refuge and Sandia Management Area is once again another very unique area, and there is tremendous amounts of deer, bear, turkey, mountain lion on that property.

Senator DOMENICI. How big is it?

Mr. RIORDAN. It covers this entire T'uf Shur Bien area.

Senator DOMENICI. Do you happen to know how many acres it is?

Mr. RIORDAN. Sir, I would say it has got to be over 30,000 acres, this entire portion. This T'uf Shur Bien area totally is encompassed within that Sandia National—excuse me—Sandia State Game Refuge and Management Area.

Senator DOMENICI. Your property, how many acres is it?

Mr. RIORDAN. I have 160 acres, sir.

Senator DOMENICI. Inside of the 10,000?

Mr. RIORDAN. Yes, sir.

Senator DOMENICI. Is it currently accessible?

Mr. RIORDAN. Yes, sir, it is.

Senator DOMENICI. Over Indian land?

Mr. RIORDAN. No, sir. Over national forest and through the wilderness area.

Senator DOMENICI. And the forest?

Mr. RIORDAN. Yes, sir.

Senator DOMENICI. So the question you are asking is, will it remain such when we are finished here, whatever the effect of the joint management agreement?

Mr. RIORDAN. Yes, sir.

Senator DOMENICI. And obviously we have got to check into that.

Mr. RIORDAN. Yes, sir. We would like clarification. We would like to be assured access to our property.

Senator DOMENICI. I do not think anybody—our Indian people's approach has been in exchange for all this, they are going to grant the rights of way across our property as we obtain a property right interest. So I would assume you would have that right, if it does exist, and we will just have to look at it.

Mr. RIORDAN. I would like clarification on it, yes, sir.

Senator DOMENICI. Do you have somebody that can write us language that you think makes it clear? We would like it so we do not have to go back and forth.

Mr. RIORDAN. Yes, sir, I can have my attorney do that.

Senator DOMENICI. Tim, any language that you want clarified? I know you have gone to an inordinate amount of expenditures at the county level, but can you through your lawyer get clarification language that you might need?

Mr. CUMMINS. Yes, sir.

Senator DOMENICI. I think what we are going to have to do is, we all have sessions when we go around and round and we come close, but we do not finish it. I think we are asking you—you are asking us for some things today, but we need your help, if you can, on what will satisfy you with reference to specifics.

Anita, can you do the same thing on definitions? If we do not have them, will you get them to us?

Ms. MILLER. Yes.

Senator DOMENICI. I assume we will redo them, but at least we will be one step ahead. We will have your thoughts. Your thoughts as written may not be acceptable legally, but we will have something cooking.

You had no problems of that type, did you, Mr. Stern?

Mr. STERN. No, Senator. But I did want to simply reiterate that the tram company does stand ready to offer whatever assistance is appropriate to the committee and the other parties in moving this forward.

Senator DOMENICI. Now, Mr. Sullivan, you offered some very, very interesting observations. At one point near the end you were talking rather firmly of the kind of problem that is going to be created if something is done, that it would bring you out of the bushes along with all the other groups that you work with.

Mr. SULLIVAN. We spend a lot of time in the bushes.

Senator DOMENICI. Yes, you do. That was a mistake, that I used that, but on second thought it fits all right.

[Laughter.]

Senator DOMENICI. Would you repeat rather quickly what it is you are talking about with reference to lands, the laws that are applicable, and the fact that you have to have assurance that this is going to remain wilderness? I did not get that when you talked about it. Would you repeat it?

Mr. SULLIVAN. Yes, sir. We are solely concerned that the discrepancy between the settlement agreement and the management plan regarding planning for the area be resolved. We would be happy to get in touch with your staff or Senator Bingaman's staff with specific language regarding that.

Also, we had a concern with the consent provision, the county consent provision.

Senator DOMENICI. Yes.

Mr. SULLIVAN. We feel that is unprecedented and we are very concerned that a county would have jurisdiction or increased authority in a wilderness area or on any public lands. We think that is a dangerous trend that many folks are trying to move us towards.

Senator DOMENICI. Were there not some Federal laws that you thought ought to apply that are not enumerated, that you wanted to see enumerated or that we should act upon them? Or did I miss something?

Mr. SULLIVAN. I do not believe so, sir.

Senator DOMENICI. Okay.

Mr. SULLIVAN. If I may add one comment, I would just want to make a comment on Mr. Riordan's testimony, in that to my knowledge access to this tract, the Piedra Lisa Tract, has only been by foot travel. There is no historic vehicular access. I would be remiss to not bring that up in front of the committee because we believe legislating vehicular access across a wilderness area would again be a dangerous precedent to set.

Senator DOMENICI. Well, I think his position would be that that was already there.

Mr. SULLIVAN. Right. That is actually something that is being currently adjudicated in a court in Albuquerque, to which we are a party with Mr. Riordan.

Senator DOMENICI. Mr. Chairman, might I, since we still have a lot of our New Mexicans and I believe we are finished with the hearings—are we not?

Chairman INOUE. I have just got to vote, that is all.

Senator DOMENICI. But I mean—downstairs, you are going to vote?

Chairman INOUE. We have still got about 10 minutes.

Senator DOMENICI. What I was going to say, I am finished, but I just wanted to wrap it up if I could.

Chairman INOUE. Please.

Senator DOMENICI. First of all, I want to personally, on behalf of our people, thank you for coming. You obviously are a totally neutral party and you work very hard on Indian issues, and it was good that you and your good staff worked its way in getting you here and having you a participant, and I thank you for that.

You know, now that we have finished the hearing, it has dawned on me that this could have been accomplished in a number of ways. But the Forest Service—and they have good people, no question—they got started in trying to resolve a dispute where the Sandians were claiming this property and the Forest Service was claiming it and was managing it and people were using it, and litigation was going to take place, and a Leshy opinion, even though it has never been confirmed by a court and the facts were never found by a court, the litigation was going to take place.

I think the Forest Service in their typical way started to resolve this by resolving management issues and trying to have both the Forest Service and Sandia have equal power and control over this property, so that there would be almost an imaginary line between the ownership and the rights of the Indian people, so that we even got it so close to being fee simple title to the Indian people that we said if anything is ever changed there, the Forest Service said, if anything is ever changed, the Indians can claim recompense for the whole tract, not for half the tract, as if it were theirs.

I am not sure when you take a piece of property that has the mixed uses that we had here and impose on it a wilderness area, subdivisions, a tram, and you attempt now to settle a dispute of a land claim of ownership by distributing management and other things—I can see where it turns into a very difficult situation.

I do not know whether they tried more conventional approaches. The conventional approaches are conservation easements. If you have one party that owns and one party that does not quite own, they can have a lot left, but they have a conservation easement that judges how it is used. There are other joint management agreements that are a long way from being as complicated as this that are entered into. We have done some here with the Indians at Hamas and probably some others that I do not recall.

But I think that we are going to work from what we are dealt with. Those people here who have heard the testimony and have participated and have made some contention that something ought to happen or they would like to see this or that, I think the best thing we can do is ask you to submit it. There is no use us follow-

ing through here. You know where we are at. We are pretty accessible, even though we are in Washington. We have our offices. You all know how to get our staff. You ought to send them to us.

If you are going to talk about fees, attorneys' fees, I do not think you ought to be bashful. You ought to go ahead and say it. I do not know that you can get it, but I think you can say that is one thing you feel this whole dispute precipitated out, and you would like to make that submission.

We will hear from you on conservation issues. Mr. Riordan, you will give us more information if you intend to be protected there. Obviously, the Forest Service will be contacted, so that we are doing the same thing.

Mr. RIORDAN. Thank you, sir.

Senator DOMENICI. I am finished. Again, I want to thank you. It is a pleasure working with you. And I thank you, all of you New Mexicans. We will see you very soon.

Chairman INOUE. Well, to accommodate the serious concerns of my good friend Senator Domenici, the record of this hearing will be kept open until close of business May 8. That is Wednesday. I think it should give all of us sufficient time to work out suggested language, legislative language.

May I also recommend, because of the recent anthrax scare, if you should mail in your suggestions it will not get to us for about a month. So would you fax it to us? Otherwise—I am still receiving mail from Hawaii dated October last year.

Mr. STERN. Mr. Chairman, may I make a suggestion?

Chairman INOUE. Yes, sir.

Mr. STERN. With all due respect, given the collaborative effort we are engaging in to seek a resolution that is comfortable for everyone, particularly the Senate, I would encourage the parties, if I might use my opportunity at the microphone, to exchange their views amongst one another in addition to submitting them to the committee. I may be speaking out of turn when I suggest that.

Chairman INOUE. You are a good mediator. Thank you very much.

With that, I thank all of you for your testimony. It has been very helpful. The hearing is adjourned.

[Whereupon, at 5:22 p.m., the hearing were adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

Albuquerque, NM, May 3, 2002.

Senator JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Attention: Michael Connor, Kira Finkler, Malini Sekhar

Re: Supplemental Testimony and Suggested Amendments to S. 2018

DEAR SENATOR BINGAMAN: Thank you for the opportunity to appear before the Committees on Energy and Natural Resources and Indian Affairs on April 24. I was thrilled to participate and present the views of the Sandia Mountain Coalition to the Committee concerning S. 2018, which we urgently hope will be adopted by Congress, with our amendments included.

I am enclosing the answers to the questions sent to me by the Republican members of the Committee, which includes a draft of an amendment defining of "New Uses" as requested by Senator Inouye at the hearing. I hope that staff will add any appropriate citations that are missing from the draft concerning statutory mandates which should be excluded from the right given to the Pueblo in Section 5 of S 2018 to "consent to new uses".

I will try to fax the amendment directly to Senator Inouye's office, but would appreciate it if your office provided it to him as well, along with the cover letter to him which I am also enclosing.

Thank you for your initiative in trying to resolve this controversy.

Very truly yours,

ANITA P. MILLER.

Co-Chair, Sandia Mountain Coalition.

SUPPLEMENTAL ANSWERS TO QUESTIONS FROM REPUBLICAN COMMITTEE MEMBERS BY ANITA MILLER

1. I suggest the following definition of "trust", as used in the Title of the Act and name of the Area:

(a) TRUST: "trust" as used in the title of this Act and in the name of the Area does not confer upon the Area the customary attributes of ownership of territory by the United States to be held in trust for an Indian Tribe. As used in the title and name of the Area, "trust" connotes the Pueblo of Sandia's cultural interest in the Area. "Trust" as used in the title of this Act and in the name of the Area is also distinguishable from the word "trust" as used in Section 8(e) herein, as it refers to the La Luz Tract and subsequent acquisition by the Pueblo of private land within the Area.

2. () NEW USES AND ACTIVITIES

A definition of "New Uses and Activities" is attached hereto as Appendix 1. This definition is taken in part from the Management Agreement signed by the Pueblo of Sandia, the United States Departments of Justice, Agriculture and the Interior, and the Sandia Peak Tram Company, but not signed by Bernalillo County, the City of Albuquerque and the Sandia Mountain Coalition. We want the Management Agreement "decoupled" from S. 2018, as covered in our oral and written testimony.

We like the definitions of "existing uses and activities", "modified uses and activities" and "new uses and activities" in the Management Agreement, however, as supplemented in discussions this week with local Forest Service officials, and think that

they should be included in the Act for clarification, even though they will make the Act quite a bit longer. They will eliminate possible controversy over whether something proposed by the Forest Service is a “new use” subject to Pueblo consent, or a “new activity”, perhaps not subject to Pueblo consent. We have also added specific exceptions to the Pueblo’s right of consent.

() NATIONAL FOREST CHARACTER: “National Forest character” means the characteristics of natural, undeveloped wilderness attributed to National Forest land which enhance its spiritual and recreational use and enjoyment by all citizens.

3. I would like to see this legislation specifically withdraw or supersede the Leshy Opinion, if that is legally or politically feasible. I believe that the Leshy Opinion authorizes tribes which have not availed themselves of the Indian Claims Commission Act and Quiet Title Act to seek “resurveys” from the Secretary of the Interior, which in reality are stale claims which should have been asserted within the proper time limits for doing so. This “end run” will most likely result in new claims by other Native and ethnic groups in New Mexico.

As for the legislation, itself, it probably will encourage Pueblos in New Mexico and Indian Tribes nationally to make claims which may or may not have merit, and if they are denied, litigate them in hopes of obtaining a settlement gives them a “sense of ownership” and greater authority in the management of the land claimed, as S. 2018 will do for the Sandia Pueblo.

4. This claim differs from Spanish Land Grant claims in Northern New Mexico as follows:

(a) Spanish land grants for Indian Pueblos were made under different “rules” than land grants to Spanish individuals and “communities”. Spanish land grant communities were laid out according to the “Laws of the Indies”. The Church and Plaza were at the center of the grant, surrounded by private homes and gardens. The “outer” lands were for grazing in common by the community. After the United States acquired New Mexico, the “common lands”, which were not “owned” by individuals, were either appropriated into National Forests, or “stolen” by unscrupulous ranchers, who recorded deeds in their own names. In some cases, Anglo ranchers and merchants accepted deeds to individual parcels within land grants as security for loans given to land grant members during hard financial times.

The descendants of land grant communities are trying to get back the “common lands” which are now in National Forests. I believe that the New Mexico Congressional Delegation is now working on legislation to enable land grant heirs to reopen land grant claims against the United States.

(b) The Sandia Pueblo Claim is not based on allegations of expropriation of Pueblo land by the United States as are the Spanish Land Grant claims. The Sandia claim alleges that the survey done by Clements did not follow the proper Eastern Boundary, as set forth in the David Whiting translation confirmed in its patent issued in 1862. It believes that since the survey was incorrect, all that’s needed is to resurvey and “correct” the patent.

As you know, we believe that Whiting deliberately mistranslated the original Sandia Pueblo land grant documents, still in the possession of the Pueblo, by saying that the Eastern boundary of the Pueblo was the “main ridge”, rather than “[facing] the “Sierra Madre” and changing other boundary “calls” as well. Since Whiting actually confirmed the Clements survey, however, which more accurately reflects the “four square leagues” formal Pueblo, which the Grant documents specifically describe, we do not believe that the claim has merit.

I don’t believe that S. 2018 will specifically set a precedent for non-Indian Spanish Land Grant claims. I think, however, that Spanish Land Grant heirs will be encouraged by the success of the Sandias, who didn’t raise their claim for 250 years, to press forward with their claims, which they have asserted continuously since their land was placed in the public domain.

* * *

DRAFT AMENDMENTS “NEW USES OR ACTIVITIES”

AMENDMENT

Add a definition to Section 3. Definitions as follows:

(NEW MATERIAL)

() USES OR ACTIVITIES: “Uses or Activities” means those uses and activities on Federally owned land which are authorized by a special use authorization issued at the discretion of the Secretary. “Uses or Activities” also includes uses and activities within the statutory discretion granted to the United States Forest Service’s for management of National Forest and National Wilderness areas.

() **EXISTING USES OR ACTIVITIES.** “Existing Uses or Activities” means uses and activities occurring in the Area at the time the Act is enacted, or which have been authorized in the Area after 11/1/95. These uses and activities include, but are not limited to: National Forest System authorized trails, trailheads, roads, picnic areas, structures, parking lots and facilities; routine road and trail maintenance; all closure orders applicable to the Area; the recreation fee demonstration program; animal damage and disease control measures; access to Tram facilities outside the Area; and all recreational activities within the Area.

Existing recreational activities and uses include: the La Luz Run, running, jogging, hang gliding, parasailing, back-country camping, meditation, spiritual renewal, religious observances, picnicking, cross-country skiing, trapping, interpretation education, hiking, biking, rock climbing, bird watching, wildlife viewing, walking, dog walking, bow hunting, snow shoeing, driving, skating, sledding, horseback riding photography, painting, sketching, geo-caching, etc. Some recreational activities require special use authorizations and some do not. To the extent that the Sandia Peak Tram Company requires access to lands not described in the December 1, 1993 special Use Permit, but within the non-wilderness area adjacent to the tram line, for maintenance or equipment replacement, access to and use of those lands shall be deemed an “existing use or activity” for the purposes of this Act.

The Forest Service retains its authority to regulate all existing uses or activities, and, where appropriate, to modify, suspend or revoke all special use authorizations.

() **MODIFIED USES OR ACTIVITIES:** “Modified Uses or Activities” means existing uses or activities which are being modified or reconfigured, but which are not being significantly expanded. Examples include a trail or trailhead being modified, such as to accommodate handicapped access, or improved, a parking area being reconfigured though not expanded, or a special use authorization for a group recreation activity being authorized for a different use area or time period.

The Forest Service retains its authority to regulate modified or reconfigured uses or activities.

() **NEW USES OR ACTIVITIES:** “New Uses or Activities” means uses or activities not occurring in the Area at the time the Act is enacted and not listed in the list of existing uses, as well as existing uses or activities that are being modified such that they significantly expand or alter their previous scope, dimensions, or impacts on the land, water, air and/or wildlife resources of the Area. New uses or activities may include but are not limited to: a new trail, trailhead, road, picnic area, parking lot, or significant new structure or facility in support of these features; new recreation or other activities not occurring in the Area on, the date of enactment of the Act, but otherwise permissible in National Forest and wilderness areas; and new special use authorizations and new rights-of-way.

The requirements of Pueblo consent in Section 5.(a)(2)(A) do not apply to the following new uses or activities:

(1) new uses or activities that are categorically excluded as categorical exceptions from documentation in an EIS or EA (7 CFR 1.b.3 and FSH 31 1.a) or to activities undertaken to comply with the Endangered Species Act of 1973, Amended 1996 (ESA, 16 U.S.C. Chapter 35, Sections 1531–1244 (1973, 1996) relating to species and habitat preservation; or

(2) uses or activities that would lead to further physical development of the Piedra Lisa Tract, including but not limited to the right of reasonable access to the property, pursuant to (cite statute guaranteeing access to inholdings).

(3) uses or activities to authorize the operation and maintenance of the Sandia Peak Tram and associated facilities; or

(4) public occupancy and use for noncommercial recreational purposes; or

(5) any structure or activity deemed essential for the control of natural or human-caused forest fires and any rehabilitation required as a result of such fires to address damage to Forest and wilderness land, water wildlife and other resources, including but not limited to construction of fire watch towers and communication facilities, aerial and ground spraying of fire retardants, “burns” to control underbrush and construction of flood control structures; or

(6) any structure or activity deemed essential for the control of natural and human-caused disasters, including but not limited to flooding, landslides, avalanches, rock slides, poisoning of air, water or wildlife, and any rehabilitation required as a result of such disasters to address damage to Forest and wilderness land, water, wildlife and other resources, including but not limited to flood control structures, structures to control landslides, avalanches, rock slides or poison; or

(7) any structure or activity related to national security and defense, including but not limited to communications structures, placement of weapons and land and aerial reconnaissance; or

(8) any structure or activity deemed appropriate by the Forest Service for the control of infection and/or disease in humans, animals or plants, including but not limited to the construction of corrals or other structures for quarantine;

(9) proposed new uses which address compliance with or mandates required by the following Federal Statutes:

Statutes related to fire management, including but not limited to the National Environmental Policies Act (NEPA), 42 U.S.C. Sections 4321–4347 (1970)

Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Chapter 126, Sections 12101–12213 (1990)

Statutes mandating construction of communications or defense facilities in the area.

Statutes related to disease control

(10) Any proposed new or modified use or activity within the authorized management discretion of the United States Forest Service which minimally increases the gross physical development of the Area, including, but not limited to relocation of trails, picnic grounds and other facilities existing on the effective date of this Act, establishment of manned or automatic fee stations, kiosks or signposts for posting of notices to Area users;

(11) Emergency decisions within the management authority of the Forest Service and other Federal, State and local agencies which affect the immediate health, safety and welfare of the citizens of the United States and New Mexico.

AMENDMENT

SEC. 5. PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA

(a) GENERAL—The Pueblo shall have the following rights and interests in the Area:

(2) rights in the management of the Area specified in this Act which include

(A) the right to consent or withhold consent to new uses or activities as defined and limited in Section 3 herein.

RESPONSES BY TIM CUMMINS, BOARD OF COUNTY COMMISSIONERS, BERNALILLO COUNTY, NEW MEXICO TO SUPPLEMENTAL QUESTIONS FROM REPUBLICAN COMMITTEE MEMBERS

Question 1. I understand that the Sandia Mountain Coalition has stated it generally supports S. 2018, but would suggest some modifications. What specific changes would the Sandia Mountain Coalition like to see in this legislation please provide us specific legislative language to address your concerns?

Answer. Although the Sandia Mountain Coalition and Bernalillo County share concerns with S. 2018, the following response is from Bernalillo County.

The veto power over new uses by the County of Bernalillo unilaterally, the County of Sandoval unilaterally, or Sandia Pueblo unilaterally is of great concern to us. Any of these three (3) parties can veto a new use by themselves. There is no further discussion or appeal process. The County of Bernalillo strongly recommends the elimination of veto power for the County of Bernalillo, the County of Sandoval and the Sandia Pueblo. Is a handicapped ramp a new use? Is a new trail a “new” use? (p. 7, Sec. 5(a)(3)).

The addition of the following definitions would somewhat alleviate the problems we see with the veto powers.

USES OR ACTIVITIES: “Uses or Activities” means those uses and activities on Federally owned land which are authorized by a special use authorization issued at the discretion of the Secretary. “Uses or Activities” also includes uses and activities within the statutory discretion granted to the United States Forest Service’s for management of National Forest and National Wilderness areas.

EXISTING USES OR ACTIVITIES. “Existing Uses or Activities” means uses and activities occurring in the Area at the time the Act is enacted, or which have been authorized in the Area after 11/1/95. These uses and activities include, but are not limited to: National Forest System authorized trails, trailheads, roads, picnic areas, structures, parking lots and facilities; routine road and trail maintenance; all closure orders applicable to the Area; the recreation fee demonstration program; animal damage and disease control measures; access to Tram facilities outside the Area; and all recreational activities within the Area.

Existing recreational activities and uses include: the La Luz Run, running, jogging, hang gliding, parasailing, back-country camping, meditation, spiritual renewal, religious observances, picnicking, cross-country skiing, trapping, interpretation education, hiking, biking, rock climbing, bird watching, wildlife viewing, walking, dog

walking, bow hunting, snow shoeing, driving, skating, sledding, horseback riding photography, painting, sketching, and geo-caching. Some recreational activities require special use authorizations and some do not. To the extent that the Sandia Peak Tram Company requires access to lands not described in the December 1, 1993 special Use Permit, but within the nonwilderness area adjacent to the tram line, for maintenance or equipment replacement, access to and use of those lands shall be deemed an "existing use or activity" for the purposes of this Act.

The Forest Service retains its authority to regulate all existing uses or activities, and, where appropriate, to modify, suspend or revoke all special use authorizations.

MODIFIED USES OR ACTIVITIES: "Modified Uses or Activities" means existing uses or activities which are being modified or reconfigured, but which are not being significantly expanded. Examples include a trail or trailhead being modified, such as to accommodate handicapped access, or improved, a parking area being reconfigured though not expanded, or a special use authorization for a group recreation activity being authorized for a different use area or time period.

The Forest Service retains its authority to regulate modified or reconfigured uses or activities.

NEW USES OR ACTIVITIES: "New Uses or Activities" means uses or activities not occurring in the Area at the time the Act is enacted and not listed in the list of existing uses, as well as existing uses or activities that are being modified such that they significantly expand or alter their previous scope, dimensions, or impacts on the land, water, air and/or wildlife resources of the Area. New uses or activities may include but are not limited to: a new trail, trailhead, road, picnic area, parking lot, or significant new structure or facility in support of these features; new recreation or other activities not occurring in the Area on the date of enactment of the Act, but otherwise permissible in National Forest and wilderness areas; and new special use authorizations and new rights-of-way.

The requirements of Sandia Pueblo consent in Section 5.(a)(2)(A) do not apply to the following new uses or activities:

(1) new uses or activities that are categorically excluded as categorical exceptions from documentation in an EIS or EA (7 CFR 1.b.3 and FSH 31 1.a) or to activities undertaken to comply with the Endangered Species Act of 1973, Amended 1996 (ESA, 16 U.S.C. Chapter 35, Sections 1531–1244 (1973, 1996) relating to species and habitat preservation; or

(2) uses or activities that would lead to further physical development of the Piedra Lisa Tract, including but not limited to the right of reasonable access to the property, pursuant to (cite statute guaranteeing access to inholdings).

(3) uses or activities to authorize the operation and maintenance of the Sandia Peak Tram and associated facilities; or

(4) public occupancy and use for noncommercial recreational purposes; or

(5) any structure or activity deemed essential for the control of natural or human-caused forest fires and any rehabilitation required as a result of such fires to address damage to Forest and wilderness land, water wildlife and other resources, including but not limited to construction of fire watch towers and communication facilities, aerial and ground spraying of fire retardants, "burns" to control underbrush and construction of flood control structures; or

(6) any structure or activity deemed essential for the control of natural and human-caused disasters, including but not limited to flooding, landslides, avalanches, rock slides, poisoning of air, water or wildlife, and any rehabilitation required as a result of such disasters to address damage to Forest and wilderness land, water, wildlife and other resources, including but not limited to flood control structures, structures to control landslides, avalanches, rock slides or poison; or

(7) any structure or activity related to national security and defense, including but not limited to communications structures, placement of weapons and land and aerial reconnaissance; or

(8) any structure or activity deemed appropriate by the Forest Service for the control of infection and/or disease in humans, animals or plants, including but not limited to the construction of corrals or other structures for quarantine;

(9) proposed new uses which address compliance with or mandates required by the following Federal Statutes:

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Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Chapter 126, Sections 12101–12213 (1990).

Statutes mandating construction of communications or defense facilities in the area.

Statutes related to disease control.

(10) Any proposed new or modified use or activity within the authorized management discretion of the United States Forest Service which minimally increases the gross physical development of the Area, including, but not limited to relocation of trails, picnic grounds and other facilities existing on the effective date of this Act, establishment of manned or automatic fee stations, kiosks or signposts for posting of notices to Area users;

(11) Emergency decisions within the management authority of the Forest Service and other Federal, State and local agencies which affect the immediate health, safety and welfare of the citizens of the United States.

SEC. 5. PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA

(a) GENERAL—The Pueblo shall have the following rights and interests in the Area:

(2) rights in the management of the Area specified in this Act which include

(A) the right to consent or withhold consent to new uses or activities as defined and limited in Section 3 herein,

2) The County of Bernalillo feels strongly that the Settlement Agreement and the Management Act should be “de-coupled” from the legislation.

The County position is that the Legislation, S. 2018, should control independently and not compromise the Legislation with the ambiguous language of the Settlement Agreement or Management Act. Delete all references to the Settlement Agreement and Management Act.

In addition to the de-coupling, similar language problems culminating in ambiguities in the legislation can be corrected as follows:

a) Define “Trust” on page 4, Section 3 (o.) to be:

TRUST. “Trust” as used in the title of this Act and in the name of the Area does not confer upon the Area the customary attributes of ownership of territory by the United States to be held in trust for an Indian Tribe. As used in the title and name of the Area, “trust” connotes the Pueblo of Sandia’s cultural interest in the Area, “Trust” as used in the title of this Act and in the name of the Area is distinguishable from the word “trust” as used in Section 8(e) herein, as it refers to the La Luz Tract and subsequent acquisition by the Pueblo of private land within the Area.

b) Although some of the language has been changed in this legislation, there are still places where language is still not “parallel” for the public and the Sandia Pueblo. Section 4(a)(1) and 4(a)(3) on page 6 should state “to recognize and protect in perpetuity the Pueblo’s rights, interests and uses in and to the Area.” Section (a)(3) should also read “to recognize and protect in perpetuity the public’s longstanding, rights, interests, and uses in and to the Area.”

3) The Act states there is no exemption from applicable federal wildlife protection laws but an exemption to that exemption does not allow prosecution if a person exercises traditional and cultural use rights. For safety and other purposes, particularly sport hunting, how broad is this? (p. 11, Sec. 6, lines 11-25)

4) There is always complexity involved when discussing and setting criminal and civil jurisdiction. Certainly this places unwary residents in a very difficult position. The County thinks the present system of criminal jurisdiction would work best. The Sandia Pueblo should only have jurisdiction over crimes classified as misdemeanors. The Sandia Pueblo should have no jurisdiction over crimes committed by non-Native Americans. (p. 12, Sec. 7)

The County of Bernalillo, again for safety of all residents, has concerns regarding jurisdiction over sport and recreation hunting. The Pueblo’s regulations being “substantially similar” to those of New Mexico State Game and Fish is going to be problematic. Who will enforce these “substantially similar” regulations? (p. 14, Sec. 7(b)(3)(B)) This sport and recreational hunting Section may have to have its own separate civil and criminal jurisdiction “spelled out.”

Suggested amendments for criminal and civil jurisdiction are as follows:

a) Section 7(a)(5) would read, “The Pueblo shall not have criminal jurisdiction over any non-Indian.

b) Section 7(b)(4) between 7(b)(3) and 7(b)(4) add the language “The Pueblo shall not have regulatory, adjudicatory or taxation jurisdiction over any non-Indian.

c) Section 7(b)(5) would read “The Pueblo shall not have criminal jurisdiction over any non-member.

d) Section 7(b)(#) between 7(b)(3) and 7(b)(4) add the language “The Pueblo shall not have regulatory, adjudicatory or taxation jurisdiction over any nonmember.

There are numerous Indian law cases supporting these four amendments.

5) I believe all parties should have their attorneys fees reimbursed for working on these issues that have benefited the general public. I understand there is past precedent to do this with these types of issues. One such precedent is the dispute between private land owners and the Pueblo of Santo Domingo in New Mexico. Pub-

lic Law 101-556, Section 4, provided for payment to the affected landowners of approximately \$1.6 million.

A suggested amendment to provide for attorneys fees should follow the one existing sentence of Section 14(a) as follows: "The County of Bernalillo, the Sandia Pueblo, and any person who owns or has owned property within the disputed claim area referred to in this Legislation and who has incurred actual costs in participating in the administrative, legislative, or court proceedings related to this title dispute may apply for reimbursement of legal fees, costs and expenses. Any reimbursed expenses to any one party shall not exceed \$750,000.00."

There are other issues such as the non-applicability of new federal laws or amendments to existing federal laws that will not apply to the Claim Area (p. 7 and p. 9) which should be stricken: the payment of money to the Pueblo should Congress ever diminish the wilderness of the Claim Area (p. 10, lines 17-25); and the withdrawal of the Leshy opinion and the vacation of Judge. Greene's opinion that should occur in the legislation to the extent legally possible.

Question 2. On page 7 of your testimony you argue that this case has never been heard on the merits of the case, yet Mr. Leshy and Governor Paisano both act as if the case was won in the District of Columbia District Court of Appeals. Could you document your contention?

Answer. The U.S. District Court for the District of Columbia only dealt with cross-motions for Summary Judgment. Summary judgment is granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Judge Harold H. Greene stated that the rule of a court in reviewing final agency decisions is limited and Section 706 of the Administrative Procedures Act provides that a court may set aside an agency action only where it finds the action "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Judge Greene goes on to say the Tarr opinion favoring the lands of Pueblo was issued without relying on the law-standing policy of Indian favoring interpretations. In other words, there was "sufficient ambiguity" to trigger the Indian-favoring policy of interpretation in their favor. Judge Greene goes on to say, "The Court is perplexed that that Department dared claim lack of ambiguity in the present case." Using more detail, Judge Greene Goes on to say, "while the congressional intent to confirm the land that the Pueblo already owned may be quite clear, the question of exactly what land the Pueblo owned at the time of the 1858 statute is not clear at all." This is clearly an issue of material fact and summary judgment should not have been rendered for the Sandia Pueblo. There was no full trial before Judge Harold Greene.

With regard to the United States Court of Appeals, the three-judge panel heard the United States District Court's remand order and grant of Summary Judgment to Sandia Pueblo. It was not an appeal of a full trial on the merits. The United States Court of Appeals decided the Order from Judge Greene regarding remand to Interior and summary judgment in favor of Sandia Pueblo was not a final order and therefore the appeal was dismissed. The District Court's Order "neither entered a judgment declaring that the 1748 Spanish land grant—identifies and designates the true boundaries of the Pueblo nor directed Interior to issue a new survey." The court remanded the case to Interior for further proceedings stating the Department of the Interior should re-open the record to solicit additional comments. This case has still not had a full hearing on the merits. The case is presently remanded to the U.S. Department of the Interior District Court Opinion and U.S. Court of Appeals Opinion attached as Exhibit 1 and 2.

Question 3. As a signature (sic) to Settlement Agreement could you provide us with your understanding of what a new use is and your understanding of the term "preserve National Forest Characteristic"?

Answer. The County of Bernalillo did not sign the Settlement Agreement but would submit that almost any change "in the field" could be a new use. The definitions of uses suggested to clear major problems with the veto power in the legislation given unilaterally to the Sandia Pueblo, the County of Bernalillo, and the Pueblo of Sandia is presented in response to number 1 of this document.

Our interpretation of "preserving National Forest Characteristics" would be that the public land be left in its natural state open to all citizens (including future population growth) for their spiritual and recreational enjoyment.

Question 4. If we agree to S. 2018 are you comfortable that the fire protection that is needed by the citizens of your county will be provided?

Answer. We will be comfortable that the fire protection needed by our citizens is adequate if language in the bill makes it clear that the Forest Service has total discretion to provide for fire protection, prevention, suppression and rehabilitation. This would include making fire protection exempt from any designation as a new

use and certainly not subject to the consent of the Pueblo of Sandia, the County of Bernalillo, or the County of Sandoval.

Question 5. How will the citizens of your county feel if a five dollar per day recreation user fee is imposed to enter into this area? Under this legislative proposal, is it your understanding that you will have the right to object to a recreation user fee?

Answer. It is our experience that a recreation user fee or parking fee is presently being charged by the Forest Service and that an individual we believe to be a volunteer collects it. Some citizens may feel a \$5.00 [per vehicle] access fee is a restriction to access but for the most part, it would seem a user fee to maintain the area would be accepted. The County of Bernalillo never requested the veto power given to it in S. 2018. The County of Bernalillo would not intend to veto access fees but would certainly like to be consulted concerning any significant fee increases.

Question 6. Are you comfortable that your needs, and the needs of all private property owners in your county for rights-of-way are completely protected in this legislative package? How long do you think that the counties needs will be met under this agreement?

Answer. We are pleased that the private property owners have their rights of way reasonably protected in this legislative package. However, they will be completely protected if the Management Agreement and Settlement Agreement are de-coupled from the legislation and other language suggestions to eliminate ambiguities are adopted. This is the only way that our long sought goal of permanence can be achieved.

PUEBLO OF SANDIA,
Bernalillo, NM, May 8, 2002.

Hon. JEFF BINGAMAN,
Chairman, Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

Hon. DANIEL INOUE,
Chairman, Senate Committee on Indian Affairs, Hart Senate Office Building, Washington, DC.

Re: S. 2018—Answers to Supplemental Questions submitted following April 24, 2002, hearings before the Senate Energy and Natural Resources and Indian Affairs Committees

DEAR SENATORS BINGAMAN AND INOUE: On behalf of the Pueblo of Sandia, I want to express my sincere thanks to both of you for the opportunity to share the Pueblo's thoughts and concerns on S. 2018. I cannot emphasize enough how important this issue is to our people, and to the continuing vitality of our culture and traditions. Your efforts to address our concerns are sincerely appreciated, and I am pleased to submit the enclosed answers to supplemental questions posed to me to assist in further consideration of our position.

We look forward to working with the Committees toward a fair and just resolution of our claim to Sandia Mountain and, of course, would be pleased to provide you with any further information that you may require.

Sincerely,

STUART PAISANO,
Governor.

[Enclosure.]

GOVERNOR PAISANO'S ANSWERS TO SUPPLEMENTAL QUESTIONS

Question 1. Solicitor Myers testified that it would be better to legislate all necessary provisions of the settlement agreement and the management plan and forego incorporating these documents by reference. Would you support this?

Answer. Yes, so long as all substantive protections in the settlement agreement and management plan are placed in the legislation. The Pueblo would be pleased to work With the Committee to accomplish this.

Question 2. You recommended an amendment to the bill that exempts the Area from the National Forest Management Act and the Cibola National Forest Land and Resource Management Plan because you want to "be certain the Management Plan is not foreclosed by any of these authorities." Why do you believe such a broad exemption is necessary? What provisions of the Management Plan do you believe would be foreclosed by the NFMA and the forest plan?

Answer. These provisions were included in the Settlement Agreement to be certain that the benefits the Pueblo received under the Management Plan were not in conflict with these other statutes and regulations. The parties to the settlement negotiations, including the Department of Agriculture's representatives, all thought that this was necessary and appropriate, given the Area's unique and protected status. For example, because grazing, timber production, and mineral production are prohibited in the Area, laws such as the Forest and Rangeland Renewable Resources Planning Act of 1974 have no relevance or applicability to the management of the Area. Likewise, because the Area is to have its own Management Plan, the Area should not be subject to the Cibola National Forest Land and Resource Management Plan. Explicitly excluding these statutes, regulations, and management plan provides a measure of certainty and permanence that would not otherwise exist if the Area remained under the existing land management process or was subject to other laws which are inconsistent with the Settlement Agreement, the Management Plan, or ratifying legislation. The non-applicability of certain statutes, regulations, and management planning processes was also something that the Pueblo negotiated for as part of the consideration for resolving our title claim to help ensure that our management rights are protected.

If the benefits and substantive provisions contained in the Management Plan are specifically included in the legislation (see answer to Question 1), perhaps these exemptions would be unnecessary so long as the legislation clearly provides that in event of a conflict or inconsistency with other statutes, this Act controls.

Question 3. If section 5(c) of S. 2018 were amended to require the U.S. government to compensate you if the Forest Service approves any new uses in the Area (with exceptions for safety or emergency measures), would you support such an amendment in lieu of the right to consent or withhold consent to new uses?

Answer. No. An essential part of the settlement for the Pueblo is absolute and perpetual protection against further development of our sacred Mountain as a result of administrative decisions by the Forest Service. Despite the current commitment of the Forest Service to avoid new development, the history of the Forest Service's administrative of the Mountain counsels in favor of the Pueblo consent provision so as to avoid further development in the long run. Congress obviously retains the authority to approve new uses and S. 2018 should be amended to provide that if Congress does so, the Pueblo would be entitled to compensation. The purpose of such an amendment would simply be to provide a disincentive for such Congressional action, as no amount of money could adequately compensate the Pueblo for future incursions on the Mountain.

Question 4. Governor, this legislation gives the Pueblo of Sandia complete authority over the traditional and cultural uses in this area, including the religious activities of other Native Americans. Given the long history of Hispanic American habitation in the area, in your opinion would your Tribe also have authority over non-native Americans who may want to visit the area to participate in religious activities that comply with the Wilderness Act?

Answer. No. The bill does not confer any authority on the Pueblo over non-Indians, and the Pueblo does not seek such authority.

Question 5. Governor, you've heard Mr. William Myers state that the Tram right-of-way is not part of the Area covered in the Settlement Agreement. Mr. Walter Stern's testimony, on page 7, suggest that S. 2018 "clears title to private lands, subdivisions and lands subject to the Tram Company's Special Use Permit (encompassing the tram line and associated facilities) will not be subject to the special land management regime established under this Bill." Do you agree with both Mr. Myers and Stern's interpretation of the Settlement Agreement and this Senate Bill 2018?

Answer. Yes. Section 8(d) of S. 2018 so provides, and also states that if any lands dedicated to the Tram facilities should in the future be excluded from the Tram's special use permit through expiration, termination or amendment, those lands would then be included in the Area and subject to the special land management regime established in S. 2018.

Question 6. You have stated that you feel Pueblo consent to new uses will "best serve" the "perpetual preservation of the wilderness," and that you disagree the counties should have the same rights to consent. Please explain why you feel the counties' right to consent, or the current federal processes involving public input into federal land use, does not adequately serve to protect the area?

Answer. Although the Pueblo believes its legal ownership of the Mountain is clearly established by the 1858 Act of Congress confirming our eastern boundary as the main ridge of Sandia Mountain, we agreed to extinguishment of that title, continued Forest Service management and public access to these lands, so long as we could be assured that there would be no additional incursions or development on our sacred Mountain. Our Pueblo has been one with the Mountain since before re-

corded time and will be forever. We need assurance that this Mountain will be preserved and protected forever (see answer to Question No. 3). Federal policies, such as wilderness protection, could change. Policy changes often have happened to the detriment of Native American rights.

We oppose the Counties' having consent authority comparable to ours because they have no ownership interest in the Mountain like we do, nor will they necessarily be perpetually committed to its preservation 25 or 50 years from now, as we will be. Also, unlike the Pueblo, they did not contribute any property interests (road and trail easements) that are essential to the public's continued use of the Area. In addition, we understand neither Sandoval nor Bernalillo County sought this consent authority.

Finally, we submit that the interests of the public are adequately represented as to new uses and other management issues by the Forest Service.

Question 7. You have stated that you support S. 2018 because it will "codify the Pueblo's right to use the Mountain to continue [your] centuries-old traditions." Do you believe that you currently do not have these statutory rights?

Answer. Yes, I do. Our traditions do not simply require access to the Mountain, though this has been infringed in the past by the Forest Service. Our traditions and indeed our very way of life require us to preserve and protect the Mountain as its stewards. S. 2018 ensures this. I am aware of no existing statute that provides this protection.

Question 8. Why will you not support this legislation unless it contains, for example, exclusive authority to the Pueblo for hunting regulation?

Answer. As I explained in my testimony (and also in answering Question 6), the Pueblo made a number of very painful concessions in the settlement agreement in order to resolve this controversy. Despite our strong claim to legal ownership of the Mountain, we agreed to extinguishment of our title (subject to the rights and interests recognized in the settlement agreement), United States title and Forest Service Management of the Mountain, continued unrestricted public access to the Mountain, confirmation of all private titles, and road and utility easements for the Forest Service and subdivisions.

The Pueblo stands by and fully supports the settlement agreement as a package. But given the strength of our legal claim and the strong commitment of the Pueblo to preserving the Mountain, we cannot fairly be expected to make additional concessions. The rights and interests we retained in the settlement agreement include exclusive authority to regulate hunting by our members and members of other tribes we authorize to use the Mountain for traditional and cultural purposes.

Hunting is a very important traditional use of the Mountain for Pueblo members. However, game is not nearly as plentiful as it used to be, and we originally sought exclusive hunting rights in the Area as a way of reducing hunting pressure on the Area's wildlife and ensuring the continuation of this traditional activity. But once again we were forced to compromise. Under S. 2018 the Pueblo has authority to regulate hunting; and trapping by our own members or members of other federally recognized tribes we authorize to use the Mountain for traditional and cultural purposes. We would not regulate any non-Indians. We are also willing to enact and enforce regulations substantially similar to those of the State and Forest Service concerning seasons, game management, types of weapons, proximity of hunting and trapping to trails and residences, and comparable safety restrictions. We hope these concepts will be acceptable to the Congress.

Question 9. You indicate in your testimony that you will not support the changes in S. 2018 unless the Pueblo "receives commensurate benefits in return." You suggest a land exchange of all wilderness land within Sandoval County. Will you please expand on this proposal? And would such a proposal satisfy your claims to the remainder of the area, or satisfy you in lieu of this legislation?

Answer. As I stated in my answer to Question 8, the Pueblo supports the settlement agreement as a whole. While S. 2018 is patterned on the settlement we agreed to, it does not reduce or eliminate some critical elements in that agreement that benefited the Pueblo. If the Committee decides to make the changes to the settlement agreement included in S. 2018, the Pueblo believes Congress should also increase the benefits the Pueblo receives. In my testimony, I suggested a land transfer of Mountain lands in Sandoval County to the Pueblo, in exchange for lands we have purchased in the Evergreen Hills and La Luz tracts. These lands in Sandoval County are virtually all undeveloped, except for the Piedra Lisa trail, for which we would grant a permanent easement to the Forest Service, and the 160-acre Piedra Lisa tract currently owned by Mr. Riordan and others, which would be exempt from the provisions of S. 2018. The only activities in this pristine and steep mountainous area are hiking and rock-climbing, which would continue even if the lands were

transferred to us. All wilderness and other special restrictions on use of these lands contained in the bill would also be imposed on the transferred lands.

If this transfer is included in the bill, the Pueblo could accept the more limited provisions in S. 2018 in the south half of the Area (such as more limited authority over hunting and trapping by our members in that part of the Mountain). The Pueblo would be pleased to work with the Committee on specific language or on comparable benefits in exchange for supporting the changes S. 2018 makes to the settlement agreement—except for the County consent provision, which is unacceptable to us.

I want to emphasize that this land transfer I propose would not be sufficient to satisfy our interests in the rest of the area, nor would we support it in lieu of the settlement legislation. Our proposal is that the provisions of S. 2018 (except the County consent provision) would apply intact to the rest of the publicly owned lands in the area, and the wilderness protections and limitations on use would also apply both throughout the entire area and to the lands transferred to the Pueblo.

Question 10. Mr. Riordan testified that the federal government has been attempting to eliminate his right of access. Would you be willing to agree to a transportation right-of-way to the Piedra Lisa tract if that would help move this legislation forward?

Answer. No. The Pueblo strongly opposes any new vehicular right-of-way on the Mountain. S. 2018 preserves any rights Mr. Riordan and his partners presently have. The Pueblo would support a provision in the bill providing Mr. Riordan's group with compensation from the United States for any access rights they may be able to prove under existing law.

San Francisco, CA, May 8, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Re: Pueblo of Sandia Land Claim

DEAR SENATOR BINGAMAN: What follows are my answers to the follow-up questions from Republican Committee Members submitted after the hearing on April 24.

Question 1. In the case of all re-surveys, isn't it the custom and practice to utilize past survey notes to reestablish the land lines?

Answer. I cannot speak knowledgeably about such customs and practices.

Question 2. If the Settlement Agreement sunsets and there is a need for re-surveying. If that happened what survey notes would the Department of Interiors [sic] surveyors utilize to undertake the survey? Would the BLM surveyors utilize the Clements survey notes or would they utilize the Bustamante notes? Since neither of these sets of notes seem to establish the eastern boundary on the crest of the Sandia, what notes could the BLM use to establish the eastern boundary at the summit of Sandia Peak?

Answer. My January 2001 Opinion speaks for itself on the intention of the government of Spain regarding the eastern boundary of the Pueblo of Sandia. In general, I believe that surveyors of grants should attempt to carry out the intention of the grantor.

Question 3. You indicated during your testimony that you felt a strong need to respond to Judge Greens [sic] decision after the Settlement Agreement was signed in April of 2000, could you tell us why it took you and your staff until January 19, 2001 to complete your opinion?

Answer. As I testified, I had long harbored doubts about the correctness of the Tarr Opinion. I had decided, however, not to disturb it until a court had had the opportunity to review it. In 1998, the district court rejected the Opinion and sent the matter back to the Department for further action. The Department and the intervenors appealed this ruling to the court of appeals. After the settlement was reached in April 2000, the Department (and the Tram Company, I believe) moved to dismiss their appeals. But other intervenors continued with their own appeals of the district court decision, so there remained the possibility that the court of appeals would rule on the merits of the appeal. The court of appeals dismissed the appeal in November 2000, on the basis that the next step was for the Department to move forward with the reexamination of the Tarr Opinion that had been directed by the district court. Because of that, and because the settlement essentially expires on November 15, 2002 unless Congress has taken action, I decided it was appropriate to move forward with the reexamination of the Opinion in compliance with the court's direction.

Question 4. During your testimony you indicated that you relied on several historians other than Mr. Hordes in preparation of your January 19, 2001 Solicitors Opinion. Would you provide us with a list of both the documents and historians you relied upon to develop your Opinion?

The January 19, 2001 Opinion contains numerous references to the work of other experts. See, e.g., pp. 5-15. The lengthy administrative record in this matter contains many historical analyses and studies and references to published historical works. Eight attorneys in the Solicitor's Office (who are identified at the end of the Opinion) worked with me in preparing this Opinion. While I relied extensively upon their research, I believe I examined some parts of the record myself in the course of preparing the Opinion, and in grappling with this issue over the years since 1993. As I testified, I have confidence that the conclusions of the Opinion on the matter of historical interpretation are sound and would be upheld by the courts.

Question 5. When did you begin work on your January 19, 2001 Opinion on this issue?

Answer. As I testified, I began examining the eastern boundary question in the spring or summer of 1993, when the Pueblo asked me to reexamine the Tarr Opinion. Over the next seven and one-half years, I read and thought about this matter, and had numerous meetings and discussions about it with attorneys in my office and with officials of the Departments of Justice and Agriculture (as well as the Interior). As I indicated in response to question #3, although I had done a lot of work on this issue, I did not make a final decision to go forward with an Opinion until shortly after the Court of Appeals dismissed the appeal in November 2000. It was then that, along with the other identified members of the Solicitor's office, I began the actual process of drafting, the Opinion, building on all our previous work on the subject.

Question 6. Was your opinion made publically available on January 19, 2001 or on a later date?

Answer. I believe I directed my staff to distribute the Opinion in the usual way that we disseminated such legal opinions, but I do not have any specific recollection about when or how it was made publicly available.

Question 7. At what point in your tenure did you begin to consider the preparation of your January 19, 2001 Opinion?

Answer. See responses to question #3 and 5 above.

Question 8. What was your involvement in the development of the T'uf Shur Bien Preservation Trust Area management Plan and the Agreement of Compromise and Settlement? Did you review these documents prior to there [sic] being agreed to by the Department of the Interior?

Answer. To the best of my recollection, I did not participate directly in these negotiations. The negotiators for the United States (attorneys in the Solicitor's Office and the Departments of Justice and Agriculture and other officials of these Departments) kept me generally apprised of the progress of the negotiations. I was briefed on the terms of the settlement before final agreement was reached. I do not recall whether, prior to final approval, I reviewed the settlement documents or made any suggestions or recommendations for change.

Question 9. Did you review these documents for potential conflicts, if so, did you make any recommendations for changes?

Answer. See answer to question #8.

I appreciate the opportunity to testify and submit these answers. Please let me know if I can be of any other assistance.

Sincerely,

JOHN D. LESHY.

THE SIMONS FIRM, LLP,
Santa Fe, NM, May 8, 2002.

U.S. SENATE,
Committee on Energy and Natural Resources, Democratic Staff, Washington, DC.

Re: Hearing on S. 2018—The T'uf Shur Bien Preservation Trust Area

COMMITTEE MEMBERS: Pursuant to your instructions of May 1, 2002, enclosed please find Mr. Riordan's comments to the extra questions to be submitted for the record concerning S. 2018—The T'uf Shur Bien Preservation Trust Area.

Regards,

THOMAS A. SIMONS, IV.

RESPONSES TO QUESTIONS FROM SENATOR BINGAMAN

Question. You indicated in your statement that you are currently in litigation with the United States concerning the extent and scope of your private property rights associated with the Piedra Lisa. Section 10(b) was added to the bill to ensure that those private property rights, whatever they are, would not be affected by the Act. Can you explain why this provision does not address the concerns expressed in your statement?

Answer. Section 10(b) does not adequately protect my private property rights in several ways. Before listing some of the specifics concerning its inadequacies, please note that I am the owner of an inholding, a property surrounded by Cibola National Forest. Therefore, it is not just protecting my rights on my 160 acres, but also the pre-existing rights of ingress and egress to my property across the government land.

In that regard, the bill allows at least the Pueblo the right to limit the nature and scope of access to my inholding with an absolute veto vote on “new uses.” There are no due process or other legal and/or administrative protections afforded concerning a person or entity affected by this veto power. Coupled with this is the fact that “new use” is undefined in the bill, and therefore open to broad interpretation and debate. Therefore, a party holding the veto power could argue that an activity constitutes a “new use”, and then veto that use without ever providing an explanation or a remedy to a person aggrieved by the veto decision.

The Bill addresses these problems with every other parcel of private property in the affected area by specifically guaranteeing certain rights of way in the legislation that protect the rights of private property owners. I would like to see my rights protected in a similar fashion.

Once again, thank you for the opportunity to respond further.

SUPPLEMENTAL QUESTIONS FROM REPUBLICAN COMMITTEE MEMBERS

Question. If language were included in this legislation that guarantees vehicular access to the Piedra Lisa Tract will that satisfy your concerns with S. 2013? Would you provide us draft legislation language to provide you the protection you think is necessary?

Answer. If language were included in this legislation that guarantees vehicular access to the Piedra Lisa Tract it would satisfy my concerns with it, provided certain protections were included in the guarantee. The primary concern is that once vehicular access is guaranteed, we would desire that the legislation not include the ability of any person or entity to limit the actual implementation and placement of a paved road or other improvement to the access way to the Piedra Lisa Tract.

The draft legislative language would read something like:

Under section 8(h).

(3) Piedra Lisa Tract.

(A) Road Rights-of-Way.

In recognition of ingress and egress rights, a vehicular right-of-way for the Piedra Lisa Tract to the public roads located at Juan Tabo Canyon Road (Forest Road No. 333) and Forest Road 445 is granted to the Piedra Lisa Tract appurtenant thereto. The term of this right-of-way shall be irrevocable and in perpetuity. The width of said road right of way shall be 50 feet and may be broadened to meet any conditions imposed on said right of way. Any reviews imposed by law or regulation required by any entity for the construction of said road shall be undertaken by and completed at the expense of the entity requiring the review expeditiously. The road right-of-way may be paved, improved or otherwise modified and maintained without the Pueblo’s written consent.

(B) Utility Rights-of-Way to Piedra Lisa Tract

The Secretary of the Interior shall grant irrevocable utility rights-of-way in perpetuity across Pueblo lands to appropriate utility or other service providers serving Piedra Lisa Tract, including, but not limited to, rights-of-way for electricity, natural gas utility service and cable television service. Such rights-of-way shall be installed underground. To the extent that enlargement of this utility rights-of-way needs enlargement for technologically-advanced telecommunication, television, or utility services, the Pueblo shall not unreasonably withhold agreement to a reasonable enlargement of the easement described above.

Once again, thank you for the opportunity to respond further.

ANSWERS OF STANLEY M. HORDES TO QUESTIONS FROM
REPUBLICAN COMMITTEE MEMBERS

Question 1. The crux of this dispute is over the interpretation of the Spanish words, “sierra madre” in the Sandia Grant. How do you conclude that those words refer to the “mountain range” rather than the “main ridge,” and how do you distinguish this from other grants that included the main ridge?

Answer. As stated in my 1996 Report, an examination of Spanish language and etymological dictionaries from the eighteenth to the twentieth centuries shows a strong consensus among authorities that *sierra*, although deriving its roots from the Spanish word for the teeth of a saw, referred more widely to a mountain range. The 1737 *Diccionario de autoridades* defined *sierra* as “la cordillera de montes, o peñascos cortados, por lo que se semeja a los dientes de la sierra,” or “the range of mountains or large cut rocks, due to their singularity to the teeth of a saw”.¹ Similarly, the modern *Gran diccionario de la lengua castellana* offered the definition, “cordillera de montes o peñascos cortados,” or “a range of mountains or large cut rocks”.² Joan Corominas’ *Diccionario crítico etimológico de la lengua castellana* referred to the term as, “línea de montañas,” or “line of mountains”.³ In another etymological dictionary, Corominas explained:

En el sentido de ‘línea de montañas’, S. X, se trata de una comparación con el aspecto dentado del perfil de las cordilleras, denominación arraigada en toda la Península Ibérica, Sur de Francia y Norte de Italia hasta el rumano de Macedonia.⁴

(In the sense of a ‘line of mountains’ (10th century), it relates to a comparison with the dented character of the profile of the ranges, a customary denomination in the entire Iberian Peninsula, the south of France, the north of Italy to the Romanian border with Macedonia.)

One of the few etymological dictionaries to define the complete term, *sierra madre*, was Guido Gómez de Silva’s *Elsevier’s Concise Spanish Etymological Dictionary*:

‘Sierra Madre (mountain system, Mexico), literally ‘Mother Range’ (see *sierra, madre*); it is the major mountain system in Mexico and comprises three ranges—the *Sierra Madre Oriental* ‘Eastern Mother-Range’, the *Sierra Madre Occidental* ‘Western Mother-Range’, and the *Sierra Madre del Sur* ‘Mother Range of the South’.⁵

All of the authorities consulted discussed *sierra* and *sierra madre* in the context of a mountain range, or mountain system. None of the Spanish dictionaries, contemporary or modern, defined the words as “main ridge,” or presented any definition in terms of the crest of a mountain.

Neither did the primary archival documentation from the eighteenth and early nineteenth centuries present the terms *sierra* or *sierra madre* in any other than a general locational context. In his visitation of the Franciscan missions of New Mexico in 1776, Fray Francisco Athanasio Dominguez described the setting of the Pueblo of Sandia:

The mission is new, founded for the Indians of the province of Moqui who were reduced by Father Menchero in the year 1746. It stands in the middle of the plain on the same site as the old mission which was destroyed in the general uprising of this kingdom. To the east is a sierra called Sandia because there is a pueblo and mission of this name here. Although it does have a connection with the sierra of Santa Fe very high up (via some little hills and mounds), we cannot properly take it to be a continuation of the latter in view of the great distance and few indications; rather we shall call it a Sierra Madre, since it spreads down for a long way with the characteristics of a mother range. [*sino que la llamaremos Sierra Me., por quanto para abajo se dilata mui mucho*]

¹*Diccionario de Autoridades: Diccionario de la lengua castellana en que se explica el verdadero sentido de las voces, su naturaleza y calidad, con las frases o modos de hablar, los proverbios o refranes, y otras cosas convenientes al uso de la lengua . . . compuesto por la Real Academia Española*, (Madrid: Editorial Gredos, 1737), Tomo 5, p. 109.

²Aniceto de Pages, *Gran diccionario de la lengua castellana* (Barcelona: Fomento Comercial del Libro, [nd]), Vol. 5, p. 195.

³J. Corominas, *Diccionario crítico etimológico de la lengua castellana* (Berne: Editorial Francke, 1954), p. 221.

⁴Joan Corominas, *Breve diccionario etimológico de la lengua castellana* (Madrid: Editorial Gredos), p. 372.

⁵Guido Gómez de Silva, *Elsevier’s Concise Spanish Etymological Dictionary* (Amsterdam, London and Tokyo: Elsevier, 1985), p. 487.

con señas de madre.] The Rio del Norte is about half a league to the west among poplar groves (translation by Eleanor B. Adams and Fray Angelic Chavez in *The Missions of New Mexico, 1776*).⁶

Other documents of the period shed light on the contemporary concept of the *Sierra de Sandia* as the eastern boundary in the area around the Sandia Pueblo. In 1763 representatives of the Pueblo of Santa Ana petitioned the Spanish authorities for permission to relocate from their ancestral home on the Rio Jemez, to an area north of the Town of Bernalillo, on the east bank of the Rio Grande. The property that the pueblo wished to purchase extended on the west to the Rio Grande, and on the east “al pie de la Sierra de Zandia” (“to the foot of the Sierra de Sandia”).⁷ Such a specific designation of “the foot” might well provide an indication of the popular understanding of the boundary placement of the *sierra*.

A more concrete example of how New Mexicans regarded the *Sierra de Sandia* can be seen in a land transfer document at the close of the Mexican Period. On March 30, 1846, Lorenzo Perea sold to José Leandro Perea a tract of land in Bernalillo, whose western boundary extended to “la tapia que esta contra el arenal” (“the wall that is against the sandy beach”) and whose eastern boundary was described as “la sierra de Sandia”. The same document included a precise measurement of the east-west extent of the property, which ran only forty-eight varas, or about 132 feet, from the Rio Grande to the *Sierra de Sandia*.⁸

Nowhere in the contemporary documentation could citation be found to the *sierra madre* or *Sierra de Sandia* as the crest of the mountain, or the “main ridge”. Rather, evidence from Spanish dictionaries and the archival record leads to the conclusion that these terms were used as general points of geographic reference. The fact that the eastern boundary of the Pueblo of Sandia was articulated in the Act of Possession of 1748 as both one league to the east, as well as the “Sierra Madre de Sandia” should not be seen as inconsistent. Indeed, the authorities deliberately laid out the boundaries, as much as possible, according to those of a “*pueblo formal*”, with the eastern boundary extending one league from the center of the pueblo, reaching just about to the foothills. As an additional general reference point, Lieutenant General Bustamante pointed to the mountain range of the “Sierra Madre de Sandia” as lying to the east, suggesting that the Spanish authorities interpreted the boundary of the *sierra* as the foothills of the mountains, which represented the beginning of the mountain range.

With regard to distinguishing the grant made to the Pueblo of Sandia in 1748 from other grants that may have included a feature designated as a “main ridge,” one has to understand that Spanish royal law and custom maintained different provisions for Indians and Spanish settlers. In New Mexico this difference manifested itself in the manner by which grants of land were given by the governor of the province to each group. As will be discussed in my answer to Question 2, below, Pueblos were granted four square leagues of land, or one league (2.6 miles) in each direction from the center of the Pueblo. Hence, any topographical reference contained in the boundary descriptions of land grants to Pueblos were of secondary importance, serving as descriptors to indicate features that were in the general location of the

⁶Eleanor B. Adams and Fray Angelico Chávez, *The Missions of New Mexico, 1776* (Albuquerque: University of New Mexico Press, 1956), p. 138; the original account of Fray Dominguez from which the Spanish excerpt derives is curated at the Biblioteca Nacional (Mexico), Legajo 10, no. 43.

⁷New Mexico Records Center and Archives (hereafter cited as NMRCA), Spanish Archives of New Mexico (hereafter cited as SANM), Series I, No. 1349, “Proceedings over a purchase of lands by the pueblo of Santa Ana at the Paraje de Bernalillo,” July 5, 1763.

⁸NMRCA, Yrrisari Family Papers, Folder No. 5, Conveyance of land, Lorenzo Perea to José Leandro Perea, Bernalillo, March 30, 1846, “un pedaso de tierra de pan llevar que se compone de la casa para la sierra de treinta varas poco mas o menos y de la sitada casa para el Rio de dias y ocho varas contigua a dicha tierra la casa de su morada del sitado Lorenzo Perea la misma que bendio juntamente con la sitada derra y todo to demas de plantillos que en ella se containen dicha tierra la ubo el bendedor por ercnsia de su finado padre y por compra que yso a su finada madre Maria Petra Chaves y son sus linderos por el norte y sur con tierras del mesmo comprador por el oriente la sierra de Sandia y por el poruiente la tapia que esta contra el arenal y se las dio por el presio y cantidad de dosientos y beinte pesos en dinero de buena moneda . . .”; “a piece of cultivated land that measures from the house toward the mountain 30 varas, more or less, and from the said house toward the River, 18 varas. Contiguous with the said lands is the house occupied by Lorenzo Perea, the same that had been sold with the said land, and all the other outbuildings [?] that were contained on the said land, inherited by the seller from his deceased father, and purchased from his deceased mother, Maria Petra Chaves. The boundaries are on the north and south the lands of the said purchaser, on the east the sierra de Sandia, and on the west the wall that is against the arenal, and it was transferred for the price of 220 pesos cash. . . .”

boundaries formed by the four square leagues.⁹ Grants to Spanish settlers, in contrast, were not standardized, and often included geographical features, as well as boundaries of other land grants. The attached plats, photocopied from the National Archives, illustrate the differences between the grants issued to Spanish settlers, which were irregularly shaped, and whose borders generally corresponded to natural features, and those issued to Pueblos, which comprised four square leagues, or a little over 17,000 acres, and whose boundaries did not correspond to such topographical features.¹⁰

In the late nineteenth century U.S. authorities recognized that certain of the land grants originally issued to Spanish settlers featured boundaries that represented the summit of mountains and of other promontories. In many, of not most, instances the language of the granting documents contained specific references to the identification of these boundaries as points higher in altitude than the surrounding terrain, such as “ridges,” “brows,” and “summits,” as opposed to more general features, such as “mountains,” or “bills.” The 1815 grant to the settlers of Arroyo Hondo, near Taos, for example, identified the eastern boundary as “la cuchilla del cerro,” later translated by the U.S. officials as “the ridge of the mountain,” and further elaborated on as the “top of the divide where the waters run on the other side.”¹¹ In 1808 the governor of New Mexico issued a grant to Spanish colonists at the Canon de Chama, on the upper reaches of the Chama River. The western boundary was described as “la sejita blanca,” or “the little white brow.” Testimony in the 1870s taken by officials of the U.S. Office of Surveyor General described this brow as the “*bordo* [divide] of the rivers San Juan and Chama.”¹² The 1742 grant near Taos that ended up in the hands of Antoine Leroux included as its eastern boundary, “por la parte de la sierra, asta la cumbre,” or, “on the part of the mountains, to the summit.” The Commissioner of the U.S. General Land Office, in a letter to the Surveyor General of New Mexico in 1880, in establishing the eastern boundary of the grant, indicated that “the tract was to extend East ‘towards the mountain (*sierra*) to its summit,’ thus giving a fixed and definite boundary on the east.”¹³ The Juan de Gabaldón grant, issued in 1752, used the term, “cuchilla,” to refer to both its northern and southern boundaries. Over a century later, the U.S. officials translated this term as “ridge,” which constituted the watershed between two valleys.¹⁴ The 1795 grant of Rancho del Rio Grande included as its southern boundary, “la cuchilla de la sierra del [de la] osa,” and as its northern boundary, “la cuchilla de la sierra del Rio de D[on] Fernando.” These features were later translated by U.S. officials as, “the ridge of Bear Mountain,” and “the ridge of the mountain of the river of Don Fernando,” respectively. A witness in 1878 explained that each ridge served as the watershed between two rivers. Official instructions issued to the surveyor who was assigned to this grant cited both the southern and northern boundaries as “ridges.”¹⁵

In each of these cases, where the language of the original Spanish land grant made specific reference to a ridge or summit of a mountain or other promontory, the U.S. authorities recognized the boundaries as including the main ridges of these features. The attached plats show clearly how the government surveyors took these

⁹The exception was the reference to the Rio Grande as the western boundary of the Pueblo of Sandia. Because lands on the west side of the Rio Grande were already spoken for, and the assigned league of the Pueblo was not able to be extended its full extent to the west, the Pueblo was allotted additional lands to the north and south. See my 1996 Report, pp. 6-7.

¹⁰National Archives and Records Administration (hereafter cited as NARA), College Park, MD, Record Group (hereafter cited as RG) 49, New Mexico Private Land Claims (hereafter cited as NMPLC), Plat Book 1, no. 25; Plat Book 2, nos. 10, 21; Plat Book 3, no. 28; Plat Book 4, no. 10; Plat Book 6, no. 27; Plat Book 5, nos. 34, 35; Plat Book 6, nos. 3, 4, 11, 12, 14.

¹¹NMRCRA, Records of the Office of Surveyor General (hereafter cited as SG), Report 159, Reel 29, fr. 204, act of possession, April 10, 1815; fr. 321, instructions to surveyor, fr. 373, testimony, April 7, 1896.

¹²NMRCRA, SG, Report 71, Canon de Chama, Reel 20, fr. 579, act of possession, March 1, 1808; fr. 626, testimony of Ricardo Martinez, May 13, 1878.

¹³NMRCRA, SG Report 47, Antoine Leroux, Reel 17, fr. 1013, grant document, August 9, 1742; fr. 1050, letter of Commissioner of General Land Office to Surveyor General of New Mexico, June 4, 1880.

¹⁴NMRCRA, SG Report 65, Juan de Gabaldon, Reel 19, fr. 1280-1281, act of possession, June 13, 1752; fr. 1325-1326, notice of survey of grant, March 12, 1896; fr. 1334-1370, survey notes, April 9, 1901.

¹⁵NMRCRA, SG, Report 58, Rancho del Rio Grande, Reel 19, fr. 57, act of possession, April 9, 1795; fr. 69-70, translation of act of possession; fr. 124, deposition of Juan B. Coca, September 9, 1878; fr. 136-137, instructions to surveyor, August 15, 1894.

specific features from the land grant documents, and applied them on the ground to encompass the main ridges within the grants.¹⁶

Question 2. You claim the original Spanish grant to Sandia was for a “formal” pueblo of four square leagues. Some argue that the four square leagues of about 17,000 acres is a minimum and others, such as yourself, have argued that it is a norm. The Sandia had about 24,000 acres patented to it in 1864. If you add another 10,000 acres of the claim based on a reinterpretation of the grant, Sandia’s holdings would be about 34,000 acres—about double that of a “regular” pueblo.

Why do you believe the Spanish governor intended for Sandia to have a “regular” pueblo, and how do you account for the fact that there are other Pueblos with land areas in excess of 17,000 acres?

Answer. As stated in my 1996 Report, in Governor Codallos y Rabal’s Decree granting lands to the Pueblo of Sandia, he clearly expressed his intention that the new entity be considered as a *pueblo formal de indios*, or a formal Indian pueblo,¹⁷ with boundaries similar to those allotted to other pueblos in New Mexico decades earlier. Accordingly, he issued instructions to his Lieutenant General, Bernardo Antonio de Bustamante Tagle, to give royal possession of lands to the new arrivals:

. . . I give commission as full and sufficient as is necessary in such cases to Lieutenant General Don Bernardo de Bustamante, so that with ten soldiers from this Royal Presidio, and with the intervention of the said Very Reverend Father Delegate Commisary, that he pass to the place of Sandia, and there conduct an inspection, calculation and reconnaissance of the said site, executing a distribution of the lands, waters, pasture and watering places that correspond to a formal Indian pueblo, according to the prescription of the Royal law . . .¹⁸.

On May 16, Bustamante carried out his assignment. Accompanied by the settlers of the pueblo and their priest, Bustamante led them in the formal Act of Possession, by which all assembled threw stones, tore up grass, “and in a loud voice shouted ‘Long Live the King, Our Lord,’ many times.” He then proceeded to measure out the boundaries of the pueblo.

Reflecting a clear recognition of the standard measurement of four square leagues allocated to each pueblo in New Mexico, Bustamante stated that “the conceded leagues were measured for the formal pueblo,¹⁹” indicating that, 5,000 varas were to be surveyed in each direction from the center of the settlement. He began to mark off the 5,000 varas that would have comprised the league measurement extending to the west, but after only 1,440 varas his path was impeded by the Rio Grande. In order to compensate the pueblo for the shortfall of 3,560 varas, Bustamante decided to add lands to both the north and south boundary equally, so as not to cause prejudice to either one of the neighboring Spanish settlements of Bernalillo and Alameda.²⁰

Thus, on the basis of Bustamante’s description, the boundaries of Sandia Pueblo extended 1,440 varas (75 miles) to the west; 6,780 varas (3.53 miles) to the north; 6,780 varas (3.53 miles) to the south; and 5,000 varas (2.6 miles) to the east.²¹ The Lieutenant General ordered in the Act of Possession that boundary markers be placed “on the north facing the point of the Canada commonly known as del Agua; and on the south facing the mouth of the Canada de Juan Tabovo, and on the east the Sierra Madre called Sandia, within whose limits are the advantages of pasture, woods, waters and watering places for livestock, in abundance to maintain cattle, sheep and horses . . .”²²

¹⁶ NARA, College Park, MD, RG 49, NMPLC, Plat Book 1, no. 25; Plat Book 2, nos. 10, 21; Plat Book 3, no. 28; Plat Book 4, no. 10; Plat Book 6 no. 27.

¹⁷ Each of the pueblos in New Mexico were granted by the Spanish crown a tract of land measuring four square leagues, or one league (2.6 miles) extending to each of the cardinal directions from the center of the pueblo.

¹⁸ NMRCAs, SANM I, No. 848, Decree of Governor Codallos y Rabal, “. . . Doy comision quan amplia y bastante se necesita en tales casos al theniente Gral. Don Bernardo de Bustamante, para que con diez soldados de este Real Presidio, y con ynterbencion el dho. M.R.P. Comisario Delegdo, pase al puesto de Sandia, y alli se haga vista el ojos, tauteos, y reconocimiento del silo referido, ejecutando el repartimiento de tierras, aguas, pastos, y abrebaderos que corresponden a un Pueblo formal de Yndios segun preescriben las Reales disposiciones . . .”.

¹⁹ NMRCAs, SANM I, No. 848, Act of Possession, May 16, 1748, “Se midieron las Leguas consedidas a un pueblo formal.”

²⁰ NMRCAs, SANM I, No. 848, Act of Possession, May 16, 1748.

²¹ Calculations based on the length of a vara equaling 33 inches, and a league measuring 2.6 miles.

²² NMRCAs, SANM I, No. 848, Act of Possession, “por el Norte afrontada con la Punta de la Canada que conunumente Haman del Agua; y por el Sur afrontada a la voca de la Canada de Juan Tabovo, y por el Oriente la Zierra Madre llamada de Sandia en cellos tenninos ay las

Subsequent documentation from the eighteenth and early nineteenth centuries reinforces the notion that the lands owned by the Pueblo of Sandia were confined to a four-square-league area, as measured by Lieutenant General Bustamante in May of 1748.

After the assumption of sovereignty by the United States, thirteen of nineteen Pueblo land grants (Sandia Pueblo excluded) were confirmed by the U.S. government, recognizing an extent of four square leagues, which was the amount of land granted to each Pueblo by the king of Spain, through his governor in New Mexico. During the investigations conducted by the U.S. Surveyor General, several of the Pueblos, when questioned as to the extent of their Spanish grants, confirmed this historical fact. The leaders of the Pueblo of Santa Clara, when asked about the four-square-league area, responded that, "The grants made to all the Pueblos called for the same amount of land, and contain the same amount that the other Pueblos contain".²³ The heads of the Pueblo of San Ildefonso reported that their grant "called for one league from the church towards the four cardinal points. *We claim the same amount of land as the other pueblos have*".²⁴ Those of the Pueblo of Pojoaque responded in a similar manner, "We claim one league from the corner of the church toward the four cardinal points and are *entitled to the same amount of land granted to the other Pueblos*."²⁵

Of the six remaining grants, where the U.S. government patented a considerably larger amount of land, five presented fraudulent documents, purporting to have been issued in 1689, but in reality were manufactured in the 1850s, containing descriptions far in excess of their original grant from the king of Spain (Acoma, San Felipe, Cochiti, Santo Domingo, Laguna). One Pueblo, Isleta, when questioned by the U.S. Surveyor General, greatly exaggerated the extent of its land grant, claiming boundaries far beyond its four-square-league grant to the east and west.

Extensive research conducted in Spanish colonial records shows that the standard measure of land grants to Indian pueblos in New Mexico was four-square leagues. Some received additional grants, while others were able to purchase lands from Spanish settlers. Each of these grants and transactions were documented by Spanish authorities. Additionally, in the late nineteenth and mid-twentieth centuries, the U.S. government set aside lands for certain of the Pueblos as reservations. Absent these special circumstances, however, each Pueblo comprised four-square leagues, and no more (sometimes less).²⁶

Question 3. How do you respond to the allegations that you're a minority among scholars in your historical conclusions and that other reputable scholars disagree with you?

Answer. To the contrary, I submit that other reputable scholars who have studied this issue have developed conclusions consistent with my own. I would refer you to the reports of William Morgan, "And on the East . . ." *The Sandia Eastern Boundary Issue and the Land Policies of Three Nations* (1988), and of Dr. Frank Wozniak, "An Analysis of the Location of the Eastern Boundary of the Sandia Pueblo Grant" (1988), as well as the research of Dr. Michael Meyer, of the University of Arizona, all of whom came independently to the same conclusion, i.e. that there is no documentation that would justify the historic claim placing the eastern boundary at the crest of the Sandia Mountains.

Moreover, one of the Pueblo's own experts, Dr. Ward Alan Minge, produced a report, "The Pueblo of Sandia Grant Boundary: Issues and Encroachments" (ca. 1983), which, while replete with internal contradictions, corroborated two of my key points: (1) the term *sierra madre* should be translated as "mountain range," rather than "main ridge," and (2) the King of Spain recognized that the Pueblo of Sandia, like all the other Pueblos, owned an area of land comprising four square leagues.

With regard to the translation of *sierra madre*, Minge made no reference a "main ridge." Rather, he believed that the term referred to the mountain range in its totality, stating, "The Sierra Madre de Sandia was the name given to the entire moun-

comodidades de Pastos, Montes, Aguas, y Abrebaderos en abundancia para mantener Ganados mayores, y menores, y Caballada . . ."

²³ NMRC A, SG, Report K.

²⁴ NMRC A, SG, Report M.

²⁵ NMRC A, SG, Report N.

²⁶ Historian Myra Ellen Jenkins, upon whom Interior Solicitor Lashy relied heavily for his 2001 Opinion, repeatedly asserted that the four-square-league area represented only a minimum, and that the Spanish colonial officials recognized a much greater extent of Pueblo holdings. This assertion was not supported by any primary documentation, and when asked in deposition to provide archival references to substantiate this theory, Jenkins conceded that site could not do so (See *State of New Mexico, ex rel., S E. Reynolds, State Engineer, et al. v. Eduardo Abeyta, et al.*, CV No. 7896 C & No. 7939 C (cons.) (Rio Pueblo de Taos & Rio Hondo), Deposition of Myra Ellen Jenkins, April 4 and 19, 1990, pp. 72-75).

tain east of Sandia Pueblo, and ‘we shall call it a Sierra Madre, since it spreads down for a long way. with the characteristics of a mother range,’”²⁷ and, “As to the eastern boundary, I have used the original ‘Sierra Madre called Sandia’ which could only translate into the mountain itself.”²⁸ If Minge intended for the term to be translated as “main ridge,” he certainly would have so indicated here. Minge included as part of his report an appendix called, “Definitions and Illustrations in Dictionaries and Contemporary Documents Showing ‘Sierra Madre’ to Mean Mountain Range or Main or Mother Range,” in which he cited the definitions of the term developed by fifteen English and Spanish authorities. None of them refer to *sierra madre* as “main ridge,” or any Spanish equivalent.²⁹

Minge also expressed the belief that “The league, a grant of four leagues square, gradually became the accepted size for Indian Pueblos of New Mexico,” and that “Spanish officials and settlers appeared to recognize the Pueblo ‘leagues’ and had surveys made after controversies arose. . . .”³⁰ With specific reference to the Pueblo of Sandia, Minge indicated that the four-square-league area represented all the land to which they were entitled. Commenting on the 1859 survey conducted by the Surveyor General he stated, “In place of a block of land, *more or less based on the Spanish leagues*, Sandia’s survey . . . ended with wiggles, jags and other distortions.” [emphasis added]³¹

With the exception of one or two affidavits on particular issues, I am not aware of the existence of any documented expert historical report countering the conclusions that I reached in my 1996 Report. Interior Solicitor Leshy, in his 2001 Opinion, relied on the work of only one scholarly report, prepared in 1983 by Dr. Myra Ellen Jenkins, most of whose conclusions could not be substantiated by primary documentation. The only other relevant citations referenced by the Solicitor comprised an unfootnoted op-ed piece in an Albuquerque newspaper by Malcolm Ebright, and one statement taken out of context by William Morgan.

Question 4. A major point made by proponents of the Sandia claim is that the Spanish grant area to the south, known as the Elena Gallegos Grant, which does go to the crest of the Sandia Mountains, is precedent for the same conclusion being made for the Sandia Grant. Are the Sandia and Elena Gallegos Grants comparable?

Answer. As discussed in my 1996 Report, the treatment of the eastern boundary of the Elena Gallegos Grant has been cited by some as relevant to the placement of the eastern boundary of the Pueblo of Sandia. However, such a comparison is misplaced, despite the geographical proximity of the two grants. The Sandia Grant and the Elena Gallegos Grant differ in two fundamental respects. First, the language of the grants are significantly different with respect to the specificity of the boundary calls. Second, the nature of the pueblo grant was distinct from grants to non-Indians. Sandia represented a formal pueblo grant, which adhered to the limitation of a four-square-league area, as opposed to Elena Gallegos, which had no such express limitation.

The importance of the differences in language between the two grants becomes apparent in an examination of a critical court case involving the interpretation of the boundaries of the Elena Gallegos Grant in the late nineteenth century. In the 1890s the question of the translation of the *Sierra* arose in relation to the eastern boundary of the Elena Gallegos Grant, located just to the south of the Pueblo of Sandia. In a case before the U.S. Court of Private Land Claims, the descendants of the original grantees claimed as the eastern limit of their holdings the *summit* of the Sandia Mountains, based on the wording of their 1716 grant document, which specified the boundary as the *Sierra de Sandia*. After hearing the evidence presented by both the descendants and the U.S. Attorney, who asserted that the *Sierra* referred to the foothills, and not the crest, Associate Justice Wilbur F. Stone issued his opinion in favor of the former, ruling that the eastern boundary of the grant should extend to the crest.³²

²⁷ Ward Alan Minge, “The Pueblo of Sandia Grant Boundary: Issues and Encroachments” (1983?), p. 19, referring to the 1776 observations of Fray Francisco Athanasio Doñinguez, discussed above.

²⁸ Minge, “The Pueblo of Sandia Grant Boundary,” pp. 15-16.

²⁹ Minge, “The Pueblo of Sandia Grant Boundary, Appendix F, pp. 175-177.

³⁰ Minge, “The Pueblo of Sandia Grant Boundary,” pp. 28-29.

³¹ Minge, “The Pueblo of Sandia Grant Boundary,” p. 37, Inexplicably, Minge proceeded to conclude that the Sandia mountain comprised part of the grant to the Pueblo, despite his reference to this four-square-league block of land.

³² NMRC, Court of Private Land Claims (hereafter cited as CPLC), No. 51, Elena Gallegos Grant, Reel 38, fr. 832-833, Opinion of Associate Justice Wilbur Stone, Newspaper article from *The Daily New Mexican*, December 6, 1893, signed by Justice Stone, and filed by Clerk of Court (hereafter cited as Opinion).

In view of the foregoing discussion with regard to the translation of *sierra madre*, Justice Stone's opinion is a curious one, and warrants detailed examination as it relates to the case of the Pueblo of Sandia. In certain respects, the decision with regard to the extent of land granted to the residents of the Elena Gallegos Grant related uniquely to the tract in question, and did not apply to the case of Sandia.

With regard to this question, Justice Stone's opinion raised some interesting concerns. One such issue surrounds the differences in the designation of the eastern boundary for each grant. The text of Justice Stone's opinion pointed out the contrast between the terms, *sierra madre* and *sierra*:

As applied to mountains its [*sierra's*] figurative, general meaning is a range; as '*La Sierra Madre*,' '*La Sierra Nevada*,' the mother range and the Snowy range of the Rocky mountains. *In a special application of the term to a single mountain, or mountains not properly constituting a range, the word sierra especially refers to and denotes the serrated crest, comb, ridge or summit.* The term may be applied, in common parlance, to entire mountains, smoothly rounded, as to those with rugged ridges, but when employed in relation to a boundary point or line, there can be no room for doubt that the '*cumbres*,' apex or summit is intended as the true and precise definition of the land-mark [emphasis added].³³

Justice Stone thus drew the distinction between *sierra madre*, or mother range, referring in general terms to the mountains, on the one hand, and *sierra*, or serrated crest, on the other. Whether one concurs with this difference or not, it is clear that Justice Stone based his decision to place the eastern boundary of the Elena Gallegos Grant at the crest, on the basis of the existence of the term, *sierra*, and not *sierra madre*, in the granting document. In the case of the 1748 grant to the Pueblo of Sandia, the wording of the reference point to the east was the *Sierra Madre de Sandia*, and thus would not have been defined by the judge as the crest of the mountain.

Another area where Justice Stone's opinion in the Elena Gallegos Grant did not apply to the case of the Pueblo of Sandia surrounds the element of uncertainty of boundary markers:

An authoritative rule of construction is that, where a deed is uncertain or ambiguous in description, the construction given to it by the parties themselves, is to be deemed the true one, unless the contrary is clearly established . . .³⁴.

If the eastern boundary of the Elena Gallegos Grant was uncertain, then there was no doubt concerning the placement of that of the Pueblo of Sandia. As discussed at length in my response to Question 2, the May 16, 1748 Act of Possession conducted by Lieutenant General Bustamante specified the measurement of one league toward the east, and designated the northeast and southeast corners as "facing the point of the Cañada commonly known as del Agua," and "facing the mouth of the Cañada de Juan Tabovo," respectively. In the context of these specific descriptions, Justice Stone's criteria of uncertainty and ambiguity would not have been met.

Moreover, the very nature of the Sandia grant as a "formal pueblo" renders any comparison with the Elena Gallegos boundary decision irrelevant. By their very nature, grants to the pueblos were limited to an area of four square leagues. Although the boundaries of the Pueblo of Sandia were slightly altered to the west, north and south, no changes were made to the eastern boundary. Thus, where Justice Stone might have expressed uncertainty over the limits of a non-Indian grant, there could have been no question as to the boundary of a "formal pueblo."

Thus, despite the decision of the Court of Private Land Claims to interpret the eastern boundary of the Elena Gallegos Land Grant as the crest of the Sandia Mountains, no such extension can be made to the eastern limit of the Pueblo of Sandia. The two grants are not comparable.

³³NMRCA, CPLC, No. 51, Elena Gallegos Grant, Opinion.

³⁴NMRCA, CPLC, No. 51, Elena Gallegos Grant, Opinion.

APPENDIX II

Additional Material Submitted for Record

SANDOVAL COUNTY ADMINISTRATIVE OFFICES,
BOARD OF COUNTY COMMISSIONERS,
Bernalillo, NM, April 22, 2002.

Hon. JEFF BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: At its regular meeting on Thursday, April 18, 2002, the Sandoval County Commission voted unanimously to support the legislation you are sponsoring to settle the Sandia Mountain land claim. The Commission did, in fact, support the original Settlement agreement and believed that it fairly addressed all pertinent issues.

It is our understanding that the Pueblo of Sandia supports the legislation if it is amended to allow for the exchange of claim area lands, already purchased by the Pueblo, for the claim area Forest Service lands within Sandoval County. Said land would be assigned trust status. Despite a loss in Payment-in-Lieu of Taxes (PILT) revenue, Sandoval County supports placing this property into trust, as long as public access, existing uses, and easements are ensured in perpetuity. While the County supports the Settlement, regardless of PILT losses, we would like to take this opportunity to reiterate our request that the PILT legislation be amended to require that all lands taken into trust through purchase, thereby removing that land from the tax rolls, continue to be included in the formula for PILT calculations.

Unfortunately, there has been a great deal of misinformation perpetuated about this land claim settlement; however, when the facts are analyzed and presented accurately, support for the settlement is overwhelming. There is seldom an opportunity to settle a dispute of this magnitude so that no one loses—but that is the case with the proposed settlement. The Sandias have demonstrated that they have two basic goals: unrestricted access to land, which is rightfully theirs, and maintaining the wilderness state of the property in perpetuity. As long as these two goals are assured, the public's current use of the property will not be restricted, homeowners in the affected area will have their titles cleared, certain roadways will have their easements formally dedicated and, most important to the big picture, the east face of the mountain will never be traded or taken out of wilderness status. The settling of this issue is long overdue and has already cost far too much in litigation costs on both sides of the argument. Please do not spend more time and money when an equitable solution is available.

Sincerely,

ELIZABETH C. JOHNSON,
Chair.

STATE OF NEW MEXICO,
HOUSE OF REPRESENTATIVES,
SANTA FE, NM, APRIL 22, 2002.

Hon. JEFF BINGAMAN,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: I write this letter to express my support for the Sandia Mountain Settlement Agreement. I strongly believe the natural beauty of Sandia Mountain must be preserved for today's enjoyment, and for future generations. Access to the unspoiled mountain offers a great deal to the people of New Mexico, not just for its recreation use and aesthetic beauty, but also as an historical and cultural link to this area's past. Especially for the people of Sandia Pueblo, the Sandia Mountain remains a sacred place for their religious and cultural practices.

The Agreement resolves the Pueblo's claim, protects their religious and traditional use rights, ensures the Mountain's future protection, and guarantees continued public access. It also resolves a host of issues that further litigation could never resolve. I understand that the primary element of concern to the State of New Mexico relates to the regulation of hunting within the Claim Area. However, I have been told that the Pueblo and the State Department of Game & Fish are working cooperatively to reach a mutually acceptable compromise on that issue. Further, I will continue to encourage them to resolve this issue and reach an agreement that would benefit the best interests of all concerned.

I believe the Settlement Agreement provides the most balanced and reasonable solution for everyone. I humbly request that you support legislative ratification of the Settlement Agreement. Thank you for your time and consideration.

Sincerely,

BEN LUJAN,
Speaker of the House.
Albuquerque, NM, May 8, 2002.

To: United States Senate Committee on Energy and Natural Resources
 From: Jim Clark. Evergreen Hills Landowner
 In Reference To: SB 2018

I am the current owner of 18 lots in the Evergreen Hills subdivision and I am deeply distressed that the subject bill as it is currently written does not address my property rights and rights established as a result of the Evergreen Hills subdivision being a homestead most probably prior to the establishment of the USFS in the area surrounding the private property. The subdivision is currently an inholding and should at a minimum have rights and protection spelled out in the bill identical to those provided to Tierra Monte and Sandia Heights North. Tierra Monte is an inholding virtually identical to Evergreen, with the exception of being in a different county and less than a mile or so from Evergreen Hills. Additionally, as a subdivision, filed in accordance with the laws of the State of New Mexico, our rights to power and all utilities and other subdivision rights have not been adequately addressed. This is despite repeated requests to be involved in the process and having filed and been granted status as an intervenor during the lawsuit. I am greatly dismayed that I have not been allowed to testify nor have I been notified or contacted of the process or dates that testimony was to be given. I learned of today's deadline through discussions with another interested party at approximately 4:30 PM MST. Why have Evergreen Hills and I been singled out and ignored?

I have not been given fair and equal access to the historic mediation and settlement process in spite of my being an intervenor in the original lawsuit and repeated letters and requests to the New Mexico delegation and the USES.

Accordingly, I request the bill address the following specific elements:

- I request that power and other utilities be provided to the Evergreen Hills subdivision boundary and that our subdivision not be singled out or solely excluded from receiving power and utilities. This is consistent with access through a special use permit and I have previously requested an extension to the expired permit that was granted from the USFS.
- I personally own the utility lot in Evergreen Hills and have requested through a letter that a permit for power be permanently established to allow future use of the lot in providing power to adjacent subdivisions. The bill as it is currently written does not have a provision that will allow this.
- Access to the subdivision should be through a dedicated easement to the subdivision boundary and the gate currently at the Piedra Lisa parking area should be moved to the subdivision boundary. The private road permit as written by the USFS places excessive liability onto private landowners in Evergreen Hills.
- Evergreen landowners are given no alternatives to accepting the proposed one-sided legislation. Such alternatives as a partial compensation, trade, buyout; etc., should be offered and considered.
- The language of the legislation is internally contradictory and damaging to the Evergreen Hills in that the Government is granting Pueblo rights to reject uses of USFS land, which surround the Evergreen subdivision. The veto rights are adverse to the subdivision and my personal past and future interests. The language is tantamount to improper condemnation or a taking of property without due process.
- The bill needs to protect the Landowner rights of Evergreen Hills equally and equitably to those of Tierra Monte and Sandia Heights North as the easements

that will be established for both of these subdivisions are the same easements and rights of way that will apply to Evergreen Hills.

- USFS transfer of property from the Evergreen Hills subdivision into Pueblo ownership is prejudicial and adverse to subdivision interests and covenants. I also have a deed that contradicts USFS ownership of one of two lots under section 8.f(2) in the subdivision.

I respectfully request that the above issues be addressed and that S. 2018 be amended to address the Evergreen Hills subdivision adequately.

Very respectfully,

JAMES L. CLARK.

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