

Union Calendar No. 89

109TH CONGRESS
1ST SESSION

H. R. 362

[Report No. 109-149]

To designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 2005

Mr. UDALL of New Mexico (for himself and Mrs. WILSON of New Mexico) introduced the following bill; which was referred to the Committee on Resources

JUNE 23, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on January 25, 2005]

A BILL

To designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Ojito Wilderness Act”.*

3 **SEC. 2. DEFINITIONS.**

4 *In this Act:*

5 (1) *MAP.*—*The term “map” means the map enti-*
6 *itled “Ojito Wilderness Act” and dated October 1,*
7 *2004.*

8 (2) *PUEBLO.*—*The term “Pueblo” means the*
9 *Pueblo of Zia.*

10 (3) *SECRETARY.*—*The term “Secretary” means*
11 *the Secretary of the Interior.*

12 (4) *STATE.*—*The term “State” means the State*
13 *of New Mexico.*

14 **SEC. 3. DESIGNATION OF THE OJITO WILDERNESS.**

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

23 (b) *MAP AND LEGAL DESCRIPTION.*—*The map and a*
24 *legal description of the wilderness area designated by this*
25 *Act shall—*

1 (1) *be filed by the Secretary with the Committee*
2 *on Energy and Natural Resources of the Senate and*
3 *the Committee on Resources of the House of Rep-*
4 *resentatives as soon as practicable after the date of*
5 *enactment of this Act;*

6 (2) *have the same force and effect as if included*
7 *in this Act, except that the Secretary may correct*
8 *clerical and typographical errors in the legal descrip-*
9 *tion and map; and*

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

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

21 (d) *MANAGEMENT OF NEWLY ACQUIRED LAND.*—*If ac-*
22 *quired by the United States, the following land shall become*
23 *part of the wilderness area designated by this Act and shall*
24 *be managed in accordance with this Act and other applica-*
25 *ble law:*

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

3 (2) *Any land within the boundaries of the wil-*
4 *derness area designated by this Act.*

5 (e) *MANAGEMENT OF LANDS TO BE ADDED.—The*
6 *lands generally depicted on the map as “Lands to be*
7 *Added” shall become part of the wilderness area designated*
8 *by this Act if the United States acquires, or alternative ade-*
9 *quate access is available to, section 12 of township 15 north,*
10 *range 01 west, New Mexico Principal Meridian.*

11 (f) *RELEASE.—The Congress hereby finds and directs*
12 *that the lands generally depicted on the map as “Lands*
13 *to be Released” have been adequately studied for wilderness*
14 *designation pursuant to section 603 of the Federal Land*
15 *Policy and Management Act of 1976 (43 U.S.C. 1782) and*
16 *no longer are subject to the requirement of section 603(c)*
17 *of such Act (43 U.S.C. 1782(c)) pertaining to the manage-*
18 *ment of wilderness study areas in a manner that does not*
19 *impair the suitability of such areas for preservation as wil-*
20 *derness.*

21 (g) *GRAZING.—Grazing of livestock in the wilderness*
22 *area designated by this Act, where established before the*
23 *date of enactment of this Act, shall be administered in ac-*
24 *cordance with the provisions of section 4(d)(4) of the Wil-*
25 *derness Act (16 U.S.C. 1133(d)(4)) and the guidelines set*

1 *forth in Appendix A of the Report of the Committee on Inte-*
2 *rior and Insular Affairs to accompany H.R. 2570 of the*
3 *One Hundred First Congress (H. Rept. 101-405).*

4 (h) *FISH AND WILDLIFE.*—As provided in section
5 4(d)(7) of the *Wilderness Act (16 U.S.C. 1133(d)(7))*, *noth-*
6 *ing in this section shall be construed as affecting the juris-*
7 *diction or responsibilities of the State with respect to fish*
8 *and wildlife in the State.*

9 (i) *WATER RIGHTS.*—

10 (1) *FINDINGS.*—Congress finds that—

11 (A) *the land designated as wilderness by*
12 *this Act is arid in nature and is generally not*
13 *suitable for use or development of new water re-*
14 *source facilities; and*

15 (B) *because of the unique nature and hy-*
16 *drology of the desert land designated as wilder-*
17 *ness by this Act, it is possible to provide for*
18 *proper management and protection of the wilder-*
19 *ness and other values of lands in ways different*
20 *from those used in other legislation.*

21 (2) *STATUTORY CONSTRUCTION.*—Nothing in this
22 *Act—*

23 (A) *shall constitute or be construed to con-*
24 *stitute either an express or implied reservation*
25 *by the United States of any water or water*

1 *rights with respect to the land designated as wil-*
2 *derness by this Act;*

3 *(B) shall affect any water rights in the*
4 *State existing on the date of enactment of this*
5 *Act, including any water rights held by the*
6 *United States;*

7 *(C) shall be construed as establishing a*
8 *precedent with regard to any future wilderness*
9 *designations;*

10 *(D) shall affect the interpretation of, or any*
11 *designation made pursuant to, any other Act; or*

12 *(E) shall be construed as limiting, altering,*
13 *modifying, or amending any of the interstate*
14 *compacts or equitable apportionment decrees that*
15 *apportion water among and between the State*
16 *and other States.*

17 (3) *STATE WATER LAW.—The Secretary shall fol-*
18 *low the procedural and substantive requirements of*
19 *the law of the State in order to obtain and hold any*
20 *water rights not in existence on the date of enactment*
21 *of this Act with respect to the wilderness area des-*
22 *ignated by this Act.*

23 (4) *NEW PROJECTS.—*

1 (A) *WATER RESOURCE FACILITY.*—As used
2 in this subsection, the term “water resource facil-
3 ity”—

4 (i) means irrigation and pumping fa-
5 cilities, reservoirs, water conservation
6 works, aqueducts, canals, ditches, pipelines,
7 wells, hydropower projects, and trans-
8 mission and other ancillary facilities, and
9 other water diversion, storage, and carriage
10 structures; and

11 (ii) does not include wildlife guzzlers.

12 (B) *RESTRICTION ON NEW WATER RE-*
13 *SOURCE FACILITIES.*—Except as otherwise pro-
14 vided in this Act, on and after the date of enact-
15 ment of this Act, neither the President nor any
16 other officer, employee, or agent of the United
17 States shall fund, assist, authorize, or issue a li-
18 cense or permit for the development of any new
19 water resource facility within the wilderness
20 area designated by this Act.

21 (j) *WITHDRAWAL.*—Subject to valid existing rights, the
22 wilderness area designated by this Act, the lands to be
23 added under subsection (e), and lands identified on the map
24 as the “BLM Lands Authorized to be Acquired by the Pueb-
25 lo of Zia” are withdrawn from—

1 (1) *all forms of entry, appropriation, and dis-*
2 *posal under the public land laws;*

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

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

7 (k) *EXCHANGE.*—*Not later than 3 years after the date*
8 *of enactment of this Act, the Secretary shall seek to complete*
9 *an exchange for State land within the boundaries of the*
10 *wilderness area designated by this Act.*

11 **SEC. 4. LAND HELD IN TRUST.**

12 (a) *IN GENERAL.*—*Subject to valid existing rights and*
13 *the conditions under subsection (d), all right, title, and in-*
14 *terest of the United States in and to the lands (including*
15 *improvements, appurtenances, and mineral rights to the*
16 *lands) generally depicted on the map as “BLM Lands Au-*
17 *thorized to be Acquired by the Pueblo of Zia” shall, on re-*
18 *ceipt of consideration under subsection (c) and adoption*
19 *and approval of regulations under subsection (d), be de-*
20 *clared by the Secretary to be held in trust by the United*
21 *States for the Pueblo and shall be part of the Pueblo’s Res-*
22 *ervation.*

23 (b) *DESCRIPTION OF LANDS.*—*The boundary of the*
24 *lands authorized by this section for acquisition by the Pueb-*
25 *lo where generally depicted on the map as immediately ad-*

1 *adjacent to CR906, CR923, and Cucho Arroyo Road shall be*
2 *100 feet from the center line of the road.*

3 *(c) CONSIDERATION.—*

4 *(1) IN GENERAL.—In consideration for the con-*
5 *veyance authorized under subsection (a), the Pueblo*
6 *shall pay to the Secretary the amount that is equal*
7 *to the fair market value of the land conveyed, as sub-*
8 *ject to the terms and conditions in subsection (d), as*
9 *determined by an independent appraisal.*

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

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

21 *(d) PUBLIC ACCESS.—*

22 *(1) IN GENERAL.—Subject to paragraph (2), the*
23 *declaration of trust and conveyance under subsection*
24 *(a) shall be subject to the continuing right of the pub-*
25 *lic to access the land for recreational, scenic, sci-*

1 *entific, educational, paleontological, and conservation*
2 *uses, subject to any regulations for land management*
3 *and the preservation, protection, and enjoyment of the*
4 *natural characteristics of the land that are adopted*
5 *by the Pueblo and approved by the Secretary; Pro-*
6 *vided, that the Secretary shall ensure that the rights*
7 *provided for in this paragraph are protected and that*
8 *a process for resolving any complaints by an ag-*
9 *grieved party is established.*

10 (2) *CONDITIONS.—Except as provided in sub-*
11 *section (e)—*

12 (A) *the land conveyed under subsection (a)*
13 *shall be maintained as open space and the nat-*
14 *ural characteristics of the land shall be preserved*
15 *in perpetuity; and*

16 (B) *the use of motorized vehicles (except on*
17 *existing roads or as is necessary for the mainte-*
18 *nance and repair of facilities used in connection*
19 *with grazing operations), mineral extraction,*
20 *housing, gaming, and other commercial enter-*
21 *prises shall be prohibited within the boundaries*
22 *of the land conveyed under subsection (a).*

23 (e) *RIGHTS OF WAY.—*

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

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

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

7 (2) *NEW RIGHTS OF WAY AND RENEWALS.*—

8 (A) *IN GENERAL.*—*The Pueblo shall grant*
9 *any reasonable request for rights-of-way for utili-*
10 *ties and pipelines over the land acquired under*
11 *subsection (a) that is designated as the “Rights-*
12 *of-Way corridor #1” in the Rio Puerco Resource*
13 *Management Plan that is in effect on the date of*
14 *the grant.*

15 (B) *ADMINISTRATION.*—*Any right-of-way*
16 *issued or renewed after the date of enactment of*
17 *this Act located on land authorized to be ac-*
18 *quired under this section shall be administered*
19 *in accordance with the rules, regulations, and fee*
20 *payment schedules of the Department of the Inte-*
21 *rior, including the Rio Puerco Resources Man-*
22 *agement Plan that is in effect on the date of*
23 *issuance or renewal of the right-of-way.*

24 (f) *JUDICIAL RELIEF.*—

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

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

8 (3) *EFFECT.*—*Nothing in this section—*

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

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

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