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PECOS NATIONAL HISTORICAL PARK LAND EXCHANGE ACT OF 2004

SEPTEMBER 28, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 2622]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2622) to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pecos National Historical Park Land Exchange Act of 2004”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **FEDERAL LAND.**—The term “Federal land” means the approximately 160 acres of Federal land within the Santa Fe National Forest in the State, as depicted on the map.

(2) **LANDOWNER.**—The term “landowner” means the 1 or more owners of the non-Federal land.

(3) **MAP.**—The term “map” means the map entitled “Proposed Land Exchange for Pecos National Historical Park”, numbered 430/80,054, dated November 19, 1999, and revised September 18, 2000.

(4) **NON-FEDERAL LAND.**—The term “non-Federal land” means the approximately 154 acres of non-Federal land in the Park, as depicted on the map.

(5) **PARK.**—The term “Park” means the Pecos National Historical Park in the State.

(6) **SECRETARIES.**—The term “Secretaries” means the Secretary of the Interior and the Secretary of Agriculture, acting jointly.

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

SEC. 3. LAND EXCHANGE.

(a) **IN GENERAL.**—On conveyance by the landowner to the Secretary of the Interior of the non-Federal land, title to which is acceptable to the Secretary of the Interior—

- (1) the Secretary of Agriculture shall, subject to the conditions of this Act, convey to the landowner the Federal land; and
- (2) the Secretary of the Interior shall, subject to the conditions of this Act, grant to the landowner the easement described in subsection (b).

(b) EASEMENT.—

(1) **IN GENERAL.**—The easement referred to in subsection (a)(2) is an easement (including an easement for service access) for water pipelines to 2 well sites located in the Park, as generally depicted on the map.

(2) **ROUTE.**—The Secretary of the Interior, in consultation with the landowner, shall determine the appropriate route of the easement through the Park.

(3) **TERMS AND CONDITIONS.**—The easement shall include such terms and conditions relating to the use of, and access to, the well sites and pipeline, as the Secretary of the Interior, in consultation with the landowner, determines to be appropriate.

(4) **APPLICABLE LAW.**—The easement shall be established, operated, and maintained in compliance with applicable Federal law.

(c) VALUATION, APPRAISALS, AND EQUALIZATION.—

(1) **IN GENERAL.**—The value of the Federal land and non-Federal land—

- (A) shall be equal, as determined by appraisals conducted in accordance with paragraph (2); or
- (B) if the value is not equal, shall be equalized in accordance with paragraph (3).

(2) APPRAISALS.—

(A) **IN GENERAL.**—The Federal land and non-Federal land shall be appraised by an independent appraiser selected by the Secretaries.

(B) **REQUIREMENTS.**—An appraisal conducted under subparagraph (A) shall be conducted in accordance with—

- (i) the Uniform Appraisal Standards for Federal Land Acquisition; and
- (ii) the Uniform Standards of Professional Appraisal Practice.

(C) **APPROVAL.**—The appraisals conducted under this paragraph shall be submitted to the Secretaries for approval.

(3) EQUALIZATION OF VALUES.—

(A) **IN GENERAL.**—If the values of the non-Federal land and the Federal land are not equal, the values may be equalized by—

- (i) the Secretary of the Interior making a cash equalization payment to the landowner;
- (ii) the landowner making a cash equalization payment to the Secretary of Agriculture; or
- (iii) reducing the acreage of the non-Federal land or the Federal land, as appropriate.

(B) **CASH EQUALIZATION PAYMENTS.**—Any amounts received by the Secretary of Agriculture as a cash equalization payment under section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) shall—

- (i) be deposited in the fund established by Public Law 90–171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a); and
- (ii) be available for expenditure, without further appropriation, for the acquisition of land and interests in land in the State.

(d) **COSTS.**—Before the completion of the exchange under this section, the Secretaries and the landowner shall enter into an agreement that allocates the costs of the exchange among the Secretaries and the landowner.

(e) **APPLICABLE LAW.**—Except as otherwise provided in this Act, the exchange of land and interests in land under this Act shall be in accordance with—

- (1) section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716); and
- (2) other applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(f) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretaries may require, in addition to any requirements under this Act, such terms and conditions relating to the exchange of Federal land and non-Federal land and the granting of easements under this Act as the Secretaries determine to be appropriate to protect the interests of the United States.

(g) **COMPLETION OF THE EXCHANGE.**—

(1) IN GENERAL.—The exchange of Federal land and non-Federal land shall be completed not later than 180 days after the later of—

(A) the date on which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met;

(B) the date on which the Secretary of the Interior approves the appraisals under subsection (c)(2)(C); or

(C) the date on which the Secretaries and the landowner agree on the costs of the exchange and any other terms and conditions of the exchange under this section.

(2) NOTICE.—The Secretaries shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives notice of the completion of the exchange of Federal land and non-Federal land under this Act.

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The Secretary of the Interior shall administer the non-Federal land acquired under this Act in accordance with the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the “National Park Service Organic Act”) (16 U.S.C. 1 et seq.).

(b) MAPS.—

(1) IN GENERAL.—The map shall be on file and available for public inspection in the appropriate offices of the Secretaries.

(2) TRANSMITTAL OF REVISED MAP TO CONGRESS.—Not later than 180 days after completion of the exchange, the Secretaries shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a revised map that depicts—

(A) the Federal land and non-Federal land exchanged under this Act; and

(B) the easement described in section 3(b).

PURPOSE OF THE MEASURE

The purpose of S. 2622 is to provide for a land exchange among the Pecos National Historical Park, the Santa Fe National Forest, and a private landowner in New Mexico.

BACKGROUND AND NEED

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

S. 2622 proposes an equal-value exchange whereby the National Park Service would acquire a private inholding identified for purchase in the July 1993 Land Protection Plan. The private landowner would acquire a parcel of land from the Santa Fe National Forest that adjoins other lands owned by the private party. The National Forest land to be acquired by the private landowner is identified in the Santa Fe National Forest Land and Resource Management Plan as suitable for exchange and is largely surrounded by the private landowner’s lands. Because of the multi-agency nature of the exchange, there is no existing administrative authority for the exchange.

LEGISLATIVE HISTORY

S. 2622 was introduced by Senator Bingaman for himself and Senator Domenici on July 8, 2004. The Subcommittee on Public Lands and Forests held a hearing on S. 2622 on July 21, 2004. A

similar bill, S. 2848, was passed by the Energy and Natural Resource Committee in the 106th Congress (S. Rept. 106–429).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on September 15, 2004, by a voice vote of a quorum present, recommends that the Senate pass S. 511, if amended as described herein.

COMMITTEE AMENDMENT

The amendment adopted by the Committee made technical and clarifying changes to the legislation that clarify that the Secretary of the Interior, the Secretary of Agriculture, and the private landowner must all agree on the allocation of which party or parties will pay for the cost of the exchange and any other terms and conditions of the exchange.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 defines key terms.

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

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

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

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

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

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

COST AND BUDGETARY CONSIDERATIONS

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

S. 2622—Pecos National Historical Park Land Exchange Act of 2004

CBO estimates that implementing S. 2622 would not significantly affect the federal budget. The bill could affect direct spending (including offsetting receipts), but we estimate that any such effects would total less than \$200,000. S. 2622 contains no inter-governmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

S. 2622 would authorize a land exchange among the Forest Service, the National Park Service (NPS), and a private landowner. In exchange for conveying to the Secretary of the Interior 154 acres of privately owned land within the Pecos National Historical Park in New Mexico, S. 2622 would direct the Forest Service to convey to the private landowner 160 acres of land that lies within the boundary of the Santa Fe National Forest. As part of the exchange, the Secretary of the Interior would grant the private landowner an easement to access two existing water wells within the boundaries of the park. Based on information from the Forest Service and the NPS, CBO estimates that federal administrative costs to complete the exchange would total less than \$100,000 over the 2005–2006 period, assuming the availability of appropriated funds. We also estimate that federal costs for land management would not change significantly under S. 2622.

S. 2622 specifies that the properties to be exchanged must be equal in value and, if differences in value are found, would authorize cash equalization payments between the federal government and the private landowner. Under the bill, the Secretary of Agriculture could retain and spend, without further appropriation, receipts from any such payments received from the private landowner. However, based on information from the agencies about the estimated value of the properties to be exchanged, CBO estimates that any cash equalization payments are not likely to exceed \$200,000.

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

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2622.

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

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

Little, if any, additional paperwork would result from the enactment of S. 2622.

EXECUTIVE COMMUNICATIONS

On July 21, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the Department of Agriculture, and the Office of Management and Budget setting forth Executive agency recommendations on S. 2622. These reports had not been received when this report

was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Subcommittee hearing on S. 2622 follows:

STATEMENT OF MARK REY, NATIONAL FOREST SYSTEM,
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

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

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

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

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

Although not specifically stated, the exchange would be subject to the National Historic Preservation Act of 1966 (NHPA). The National Forest System lands have not been surveyed for cultural resources. If, after survey, resources are found, the exchange would be subject to Sec. 110(b) of NHPA, which would require that data recovery precede conveyance. The legislation should identify who would be responsible for the data recovery costs in the event resources are found.

Appraisals would be submitted only to the Secretary of the Interior for approval. We recommend an amendment to the legislation that requires joint approval by both the Secretaries of the Interior and Agriculture. If there is mutual valuation approval, we recommend the USDA and USDOJ jointly and mutually secure a title policy, select an appraiser agreeable to both agencies, jointly develop appraisal instructions and jointly review and approve the appraisal. We look forward to working with the Subcommittee, the sponsors, and the National Park Service on amendments to this bill to ensure that the final bill language reflects the needs and interests of all parties to the exchange.

STATEMENT OF CHAD CALVERT, ASSISTANT SECRETARY FOR
LANDS AND MINERALS MANAGEMENT, U.S. DEPARTMENT
OF THE INTERIOR

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

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

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

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

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

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

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

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

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

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

Proposed amendment: Page 6, line 3, strike all after "COSTS.—" and insert "Before the completion of the exchange under this section, the Secretaries and the landowner shall enter into an agreement that states that the landowner shall pay the cost of the appraisals and associated environmental compliance documents. Additional costs of the exchange will be allocated in the agreement between the Secretaries and the landowner."

I would be happy to answer any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2622 as ordered reported.