

STATEMENT OF
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Concerning
S. 2018, the T'uf Shur Bien Preservation Trust Area Act

Before the
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

April 24, 2002

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 "T'uf 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 T'uf 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 T'uf 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.