

**TESTIMONY OF
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BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
AND THE
SENATE COMMITTEE ON INDIAN AFFAIRS
APRIL 24, 2002**

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 T'uf Shur Bien Preservation Trust Area

- ! The claim area would be renamed the "T'uf 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.