

House Subcommittee on Indian, Insular and Alaska Native Affairs

Don Young, Chairman

Hearing Memo

July 13, 2015

To: Natural Resources Committee Members

From: Majority Staff, Subcommittee on Indian, Insular, and Alaska Native Affairs

Subject: Legislative hearing on H.R. 1028 (Rep. Stevan Pearce), the “*Return of Certain Lands At Fort Wingate to The Original Inhabitants Act*”

The Subcommittee will hold a Legislative Hearing on H.R. 1028, the “*Return of Certain Land At Fort Wingate to The Original Inhabitants Act*” on **Wednesday, July 15, 2015, at 2:00 p.m. in 1324 Longworth HOB.**

Summary of the bill

H.R. 1028 was introduced by Rep. Stevan Pearce (NM-2) on March 16, 2015. The bill would divide approximately 20,700 acres (divided into 22 parcels) of land and infrastructure at Fort Wingate, a former Army munitions depot, and distribute them, without consideration, to the Zuni Pueblo and Navajo Nation to be held in trust by the United States or in a special restricted status for the benefit of the tribes. The divisions of the lands, which reflect negotiations conducted between the two tribes, are represented on a map described in the bill titled: “Fort Wingate Depot Activity Negotiated Property Divisions July 2013,” which is attached to this memorandum. The Army would retain certain parcels for continued military uses (including environmental cleanup), with requisite easements for military access.

Fort Wingate contains sites of cultural importance to the Zuni Pueblo and Navajo Nation as well as significant transportation and energy infrastructure constructed and used by the United States Army which, upon transfer to the tribes, could facilitate business development to improve the tribes’ economies.

Cosponsors

Rep. Don Young

Witnesses:

Mr. Michael Smith, Deputy Director,
Bureau of Indian Affairs,
U.S. Department of the Interior,
Washington, D.C.

Mr. Lorenzo Bates, Speaker, Navajo Nation Council
Navajo Nation
Window Rock, AZ

The Honorable Val Panteah, Governor
Pueblo of Zuni
Zuni, NM

Background

The Navajo Nation and Zuni Pueblo are federally recognized tribes with land holdings in New Mexico. The Navajo Nation is the largest tribe in the U.S. with a 17 million acre reservation in Arizona, Utah, and New Mexico, including satellite reservations located near Fort Wingate. The Pueblo of Zuni is a smaller tribe whose 588,000 acre reservation is located in a remote area of New Mexico.

Fort Wingate is located east of Gallup, New Mexico, in close proximity to the Zuni and Navajo Reservations. The property was withdrawn from the public domain for use by the military under Executive Orders issued in the late 19th century. During World War II, the facility was converted to a munitions depot and in 1993 it was closed under the Base Closure and Realignment Act (BRAC) process. Many parcels of land in Fort Wingate were contaminated by the storage, testing, and disposal of explosives and military munitions.

When the lands are cleaned up by the Army, the Secretary of the Interior must then determine whether the remediated parcels are ready to be returned to the public domain. Once the Interior Department has determined the parcels are suitable for return to the public domain, it may then transfer jurisdiction and management to the Bureau of Indian Affairs (BIA). The lands, however, may not be held in trust or restricted for Indians except by act of Congress. Several remediated parcels have been transferred to the BIA for potential addition to the reservations of the Zuni and Navajo; however, such lands have not been further transferred to the tribes.

Fort Wingate contains important infrastructure that would support major business development, including direct access to Interstate-40, rail access to a main cross-country rail line, natural gas and electricity supplies, water, and various other buildings.

For years the Zuni Pueblo and Navajo Nation have expressed interest in dividing Fort Wingate, subject to the completion of work by the Army to remove or mitigate contamination on any of the facility's lands to a level safe for the tribes to use. The tribes point to strong historical and cultural ties to the lands, ties that predate the establishment of Fort Wingate. Moreover, the tribes, especially the Zuni, seek to expand new business opportunities to create jobs for members and revenues for tribal governments. Absent an Act of Congress to make the lands part of the tribes' reservations, normal public land disposal laws would likely take effect under which non-Indian parties could potentially obtain conveyance or leasing rights to the property.

To achieve an agreement for the division of Fort Wingate the tribes have engaged in extensive negotiations. In the 112th Congress, Rep. Steven Pearce introduced H.R. 4187, the

“Return of Certain Lands at Fort Wingate to the Original Inhabitants Act.” The bill was intended to reflect an agreement struck by the Zuni Governor and the Navajo Nation President which would have distributed roughly equal portions of Fort Wingate properties no longer needed for military purposes to the two tribes; conveyance of the properties would have been subject to the completion of satisfactory environmental clean-up conducted by the Army. The Speaker of the Navajo Nation Council, however, opposed the bill because it did not reflect an agreement the Navajo Council had yet endorsed. One point of Navajo opposition was that parcels of the land would be remediated according to different timelines under which, in the view of the Navajo Speaker, the Navajo would obtain fewer lands in the near term than the Zuni.

Though a hearing was not held on H.R. 4187, on August 2, 2012, the Subcommittee on Indian and Alaska Native Affairs conducted an oversight hearing¹ on “Indian lands: exploring resolutions to disputes concerning Indian tribes, state and local governments, and private landowners over land use and development.” In this hearing, witnesses for the BIA, the Zuni Pueblo and the Navajo Nation testified regarding the history of Fort Wingate, the justification for adding the lands to the tribes’ reservation, and the status of negotiations to divide the property. Subsequent to the 2012 oversight hearing, the two tribes conducted additional negotiations facilitated by Chairman Young and Representatives Pearce (representing the Zuni Pueblo) and Lujan (representing Fort Wingate and portions of the Navajo Nation reservation).

H.R. 1028, introduced by Representatives Stevan Pearce and Don Young, is intended to reflect a revised 2013 agreement supported by the past tribal government administrations of the Zuni Pueblo and the Navajo President to provide for a fair distribution to the two tribes of Fort Wingate properties not needed by the military.

Analysis of H.R. 1028

H.R. 1028 authorizes the transfer of lands in Fort Wingate to the Zuni and Navajo tribes in roughly equal proportions under prescribed terms and conditions. Upon completion of the conveyances, each tribe will have added approximately 9,000 acres of land to its reservation, though this figure may vary depending on the completion of Interior Department surveys of the property. According to the Zuni (as Army testimony was not submitted in time for the preparation of this memorandum), the Army is expected to retain about 2,000 acres of land in a parcel where a missile site is located, and where highly contaminated lands exist.

Under the bill, lands to be divided between the tribes are depicted on a map titled “Fort Wingate Depot Activity Negotiated Property Division July 2013” (Map) prepared by the Army Corps of Engineers. Lands transferred from the Army to the Secretary of the Interior before the date of enactment of H.R. 1028 shall be immediately held in trust or in a special “restricted fee status” for each tribe, subject to valid existing rights and the reservation of easements necessary for the military to conduct clean-up and maintain a missile site.

After enactment of H.R. 1028, parcels of land cleaned up to the satisfaction of the New Mexico Environmental Department would be transferred from the Army to Interior, which must

¹ <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=304011>

then place the land in trust or restricted fee status. The bill provides that the Army shall retain liability for and the responsibility to clean up any contamination or hazardous substances later discovered on Fort Wingate lands transferred to the tribes. The tribes shall be held harmless from any liability arising from such contamination caused by military activity.

The transfer of parcels to the tribes is subject to easements the Secretary of the Army determines to be necessary for military access for administrative and environmental cleanup purposes. In addition, one specific parcel of land will be held in common by both tribes for shared cultural and religious access by members of the tribes.

Under H.R. 1028, each tribe may elect to have its Fort Wingate lands designated as trust land or as a special “restricted fee” land with unique benefits for the tribes.

For the purposes of H.R. 1028 only, if the Zuni or Navajo elect to accept “restricted fee” title to a parcel of Fort Wingate land, the land becomes part of the tribe’s reservation and it is granted the following privileges, immunities, and restrictions:

- It shall not be subject to any provision of law providing for the review or approval by the Secretary of the Interior before the tribe uses or leases its property
- It shall not be subject to taxation by any government other than the tribe
- It may not be sold by the tribe without the consent of Congress

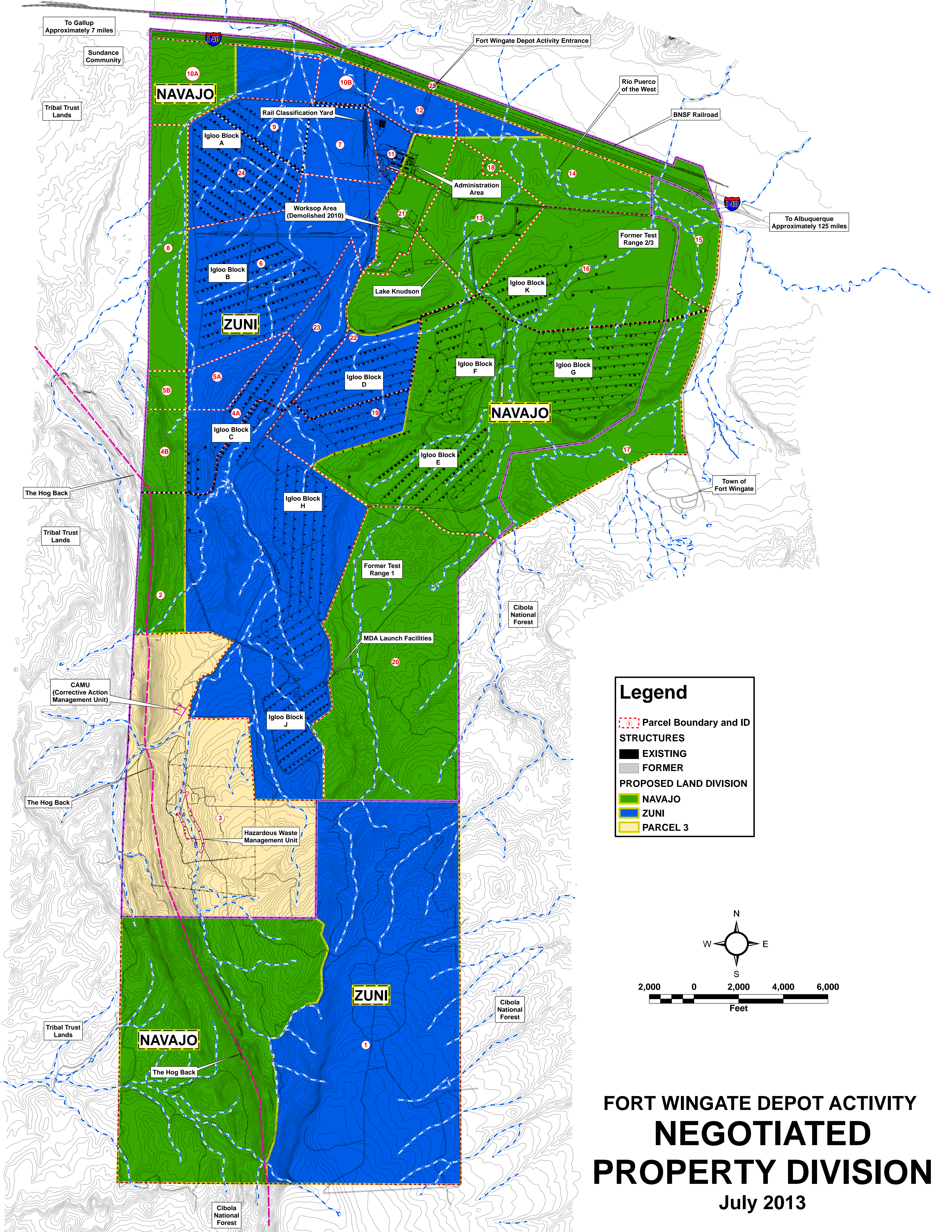
The “restricted fee” status for lands under this bill largely gives the tribes the right to develop and lease such lands without Interior’s approval. The bill is silent with respect to the conduct of gaming regulated under the Indian Gaming Regulatory Act.² The bill is also silent with respect to who incurs liability in the event a tribe or third party suffers a loss or injury through an act or omission stemming from the use or lease of restricted fee lands.

Several easements and rights-of-way used by non-tribal and non-Army entities traverse certain areas of Fort Wingate. These entities include the City of Gallup, which obtained 50-year rights of way from the United States in 1957 for much of its power supply over electric transmission lines operated by Tri-State Generation and Transmission Association, Inc. In 2014, the City of Gallup unanimously adopted Resolution R2014-27, “Requesting the Congress of the United States to Protect Long-Standing Utility Easements over Fort Wingate Property, Conveyed to the City of Gallup and Tri-State Generation and Transmission Association, Inc., by Making Provisions for Such Protection in the Fort Wingate Land Division Act of 2014 (H.R. 3822). (H.R. 3822 was the prior version of H.R. 1028 in the 113th Congress).

According to the City and Tri-State, the U.S. Army has failed to renew and extend these rights-of-way for the past six years. Currently, H.R. 1028 does not expressly make provisions for the renewal/extension of these rights-of-way as called for in Gallup’s Resolution and as requested by letter from Tri-State.³

² 25 U.S.C. 2701 et seq.

³ On file with the Subcommittee.



To Gallup
Approximately 7 miles

Sundance
Community

Tribal Trust
Lands

Fort Wingate Depot Activity Entrance

Rio Puerco
of the West

BNSF Railroad

NAVAJO

Igloo Block
A

Rail Classification Yard

Administration
Area

Workshop Area
(Demolished 2010)

Former Test
Range 2/3

To Albuquerque
Approximately 125 miles

ZUNI

Lake Knudson

NAVAJO

Town of
Fort Wingate

The Hog Back

Tribal Trust
Lands

Former Test
Range 1

Cibola
National
Forest

CAMU
(Corrective Action
Management Unit)

Igloo Block
J

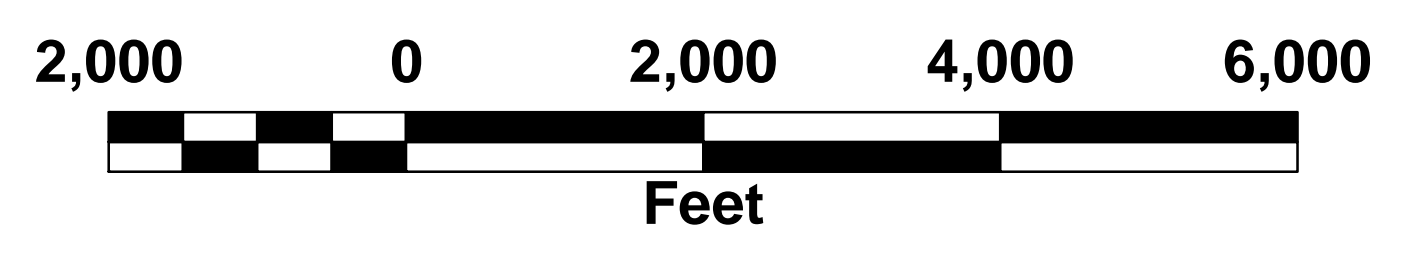
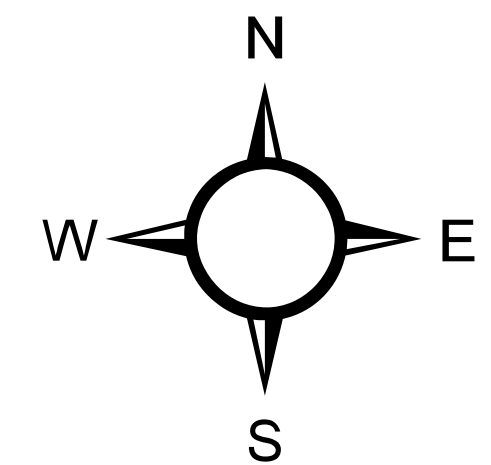
MDA Launch Facilities

Legend

- 3 Parcel Boundary and ID
- STRUCTURES**
- EXISTING
- FORMER
- PROPOSED LAND DIVISION**
- NAVAJO
- ZUNI
- PARCEL 3

The Hog Back

Hazardous Waste
Management Unit



Tribal Trust
Lands

NAVAJO

ZUNI

Cibola
National
Forest

The Hog Back

Cibola
National
Forest

**FORT WINGATE DEPOT ACTIVITY
NEGOTIATED
PROPERTY DIVISION
July 2013**