

TESTIMONY OF THE HONORABLE ARLEN QUETAWKI SR.
GOVERNOR, THE ZUNI PUEBLO OF NEW MEXICO
BEFORE THE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE
AFFAIRS;
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 27, 2014
ON
H.R. 3822 “THE FORT WINGATE LAND DIVISION ACT OF 2014”

Thank you for the opportunity to testify today as the representative of the Zuni people on H.R. 3822, **“THE FORT WINGATE LAND DIVISION ACT OF 2014”**. My name is Arlen Quetawki, Sr. I am the elected Governor of the Zuni Pueblo, a federally recognized tribe with approximately 12,000 members located in west-central New Mexico. I would like to begin by expressing my deep appreciation on behalf of the Zuni Tribal Council and the members of the Zuni Tribe to Chairman Young, Congressman Pearce and Congressman Lujan for all of the time and effort they devoted to this issue, a bipartisan effort that made H.R. 3822 and today’s hearing possible. Getting to this point has not been easy but thanks to your dedication we are here today to testify on a bill that will provide an equitable division between the Zuni Tribe and the Navajo Nation of the lands at the former Fort Wingate Army Depot (“Fort Wingate”) that are no longer needed by the Army. I am here today to express the Zuni Tribe’s strong support for H.R. 3822 and to urge the Congress to enact it into law as quickly as possible. Because H.R. 3822 is the product of extensive negotiation and deliberation among the Tribes and Congressmen Young, Pearce, and Lujan, it is essential that the bill be enacted with no significant changes that would alter the terms that enabled the parties to reach agreement on it. Attached to my testimony is a resolution from the Zuni Tribal Council endorsing the bill and urging its enactment.

In my testimony I will provide some history on Fort Wingate, review the steps that led us to this hearing, and then highlight key portions of the bill, explaining why their inclusion in the bill is so important for the parties.

The History of Fort Wingate Army Depot

The Zuni people have inhabited the area that is now the southwestern part of the United States since time immemorial. When the Spanish explorer Francisco Coronado came to the Southwest looking for the Seven Cities of Gold in 1507, he found us at our present location, inhabiting an area that included what is now Fort Wingate. Archeological

evidence shows that we were using the area that is now Fort Wingate, an area our ancestors named *Anshe K'yan'a*, for over 1000 years.

During World War II, Fort Wingate was converted into a munitions depot, where weapons, particularly, bombs and artillery shells, were built and tested. After the War, the Fort was used to decommission bombs and shells. Because of these uses, portions of the Fort became highly-contaminated from the chemicals used in the weapons' assembly and decommissioning process, while other portions were littered with unexploded ordinance. In the Base Closure and Realignment Act of 1988, (BRAC 1988), Congress directed that Fort Wingate be closed, except for limited uses by the Army, such as the missile launch facility it operates there. While it was recognized that the lands would need substantial remediation because of the contamination, it was also recognized that once they were cleaned up they would have tremendous potential for economic development since the Fort borders on an interstate highway, has rail access to the main cross-country rail line traversing the Southwest, has natural gas, industrial-level electricity supplies, and ample water.

Because the lands at Fort Wingate were originally part of the public domain, upon a determination by the Army that it no longer needed the lands, they would be returned to the public domain, which is managed by the Bureau of Land Management in the Department of the Interior. The various local, county and state governments all expressed an interest in obtaining the lands at Fort Wingate once the Army transferred to the Interior Department. However, the Department of the Interior believed that those lands at Fort Wingate that were no longer needed by the Army should be returned to their original owners, the Zuni Tribe and Navajo Nation, once they were remediated. As a result, the Secretary of the Interior and the Secretary of the Army agreed that upon remediation of the lands at Fort Wingate, they would be offered to the two Tribes, pursuant to a division of the lands that the two tribes would negotiate. The Interior Department subsequently informed the Tribes and the New Mexico Congressional Delegation that while it has the authority to take control of the lands from the Army, it lacks the legal authority to transfer the lands to the Tribes in trust or restricted fee status, such that it will require legislation before it may do so.

Importance of the Land at Fort Wingate to the Zuni Tribe

1. Economic Development Opportunities

The Zuni Tribe is proud of the way that we have retained our language and culture, such that a visitor coming to the Pueblo today will hear the same language and witness the same ceremonies as Coronado saw when he visited us over 600 years ago. However, the Zuni Reservation is located in a remote corner of New Mexico, away from major highways and rail lines. It has no natural gas pipelines and lacks the kind of electrical transmission and internet access that is required for commercial development in these times. By contrast, Fort Wingate has all of these assets. U.S. I-40, the major east-west Interstate in the Southwest passes along Fort Wingate's northern border and has a direct exit into the Fort. Burlington Northern, Santa Fe's major rail line also passes along Fort Wingate's northern border. There is a major natural gas pipeline into the Fort and major electric transmission lines.

For all of these reasons, the land at Fort Wingate offers the Zuni Tribe a window into economic opportunity that it presently lacks. It will make the difference between a vibrant Zuni economy and a continuation of the 65% unemployment rate we have suffered from all of these years. We are pleased that H.R. 3822 divides the lands along the northern border of Fort Wingate equally with the Navajo Nation so both tribes can benefit from these opportunities.

2. Cultural and Traditional Uses

Fort Wingate contains hundreds of important cultural and religious sites of the Zuni people. There are many ruins of old Zuni buildings, some going back 600 years. There are important prayer sites, and sites with medicinal plants and plants used in our age-old ceremonies. Fort Wingate is also crisscrossed with trails that our religious leaders use during ceremonies.

THE STATUS OF THE REMEDIATION OF THE LANDS AT FORT WINGATE AND THEIR TRANSFER TO THE DEPARTMENT OF THE INTERIOR

The remediation of the lands at Fort Wingate are under the jurisdiction and oversight of the New Mexico Environment Department (NMED). NMED imposed the highest standards on the Army's clean-up, requiring that the lands be remediated to the level that would allow them to be used for residential purposes. The Army divided the lands at Fort Wingate into 25 Reuse Parcels for purposes of the remediation. Seven of those parcels have already been certified as remediated by NMED. Of those, three have been transferred to the Interior Department, which in turn granted a 20 year permit for their use to the BIA. Presently, those lands are not being used for any purpose. The 20 year permit expires in 2020. The four other remediated parcels, including the parcels along the northern border that have the greatest economic potential, are in the process of being transferred by the Army to Interior. The Army has expedited the clean-up efforts and in its latest report indicates will remediate 17 of the remaining 18 parcels sequentially over the next 5 years and that it is receiving adequate funding to do so. The Army has already spent \$75 million on the remediation effort and estimates it will require an additional \$160 million to complete the job. (The 18th parcel is where the Army dumped and burned hazardous chemicals during the time it occupied Fort Wingate. Since that is the most heavily contaminated site, it may take an additional 15 years to remediate. That parcel is not included in the lands to be transferred to the tribe by H.R. 3822.)

H.R. 3822

As the Findings in H.R. 3822 state, the division of the parcels at Fort Wingate between the two tribes provided for in the bill emerged from a process developed and implemented by this Subcommittee, with the support and deep involvement of Congressmen Lujan and Pearce. At the end of a long day of negotiations, the parties emerged with a map of Fort Wingate showing which lands would go to the Navajo Nation and which to the Zuni Tribe. That map is the foundation of H.R. 3822. As is the case in all negotiations, neither party received everything it wanted. Notwithstanding that, the Zuni Tribe believes the negotiations produced an equitable resolution and fully supports it. The Tribe recognizes that any effort to revise that map will send the parties

back to the futile negotiations they engaged in for 15 years trying to reach agreement on how to divide the lands.

In addition to the provisions allocating the land to the two Tribes, H.R. 3822 contains a number of provisions that were also discussed during the negotiations and that are critical to the Zuni Tribe's ability to maximize the economic and cultural benefits it obtains from the lands it will receive under the bill. These are discussed below:

- a. **Ability to Take Lands in Restricted Fee Status** – Subsection 3 offers the Tribes the option of receiving the lands in either trust or restricted fee status. Several years ago, Chairman Young introduced legislation that would permit tribes to move their lands from trust to restricted fee status so they no longer needed to obtain BIA approval before using their lands. The Zuni Tribe supports that concept. Tribes have achieved self-determination in regard to the programs that formerly were administered by the BIA. It is now time for them to have the option of achieving self-determination in regard to control over the use of their lands, while still retaining protection against alienation and taxation of the lands. While the Zuni Tribe may not decide to take all of the lands it receives at Fort Wingate in restricted fee status, its ability under H.R. 3822 to take at least some of the lands in that status is very important to the Tribe and provides a pilot project for the approach Chairman Young proposed in his earlier draft legislation.
- b. **Making all Lands Part of the Tribes' Reservations and Subject to their Jurisdiction** -- Section 3(c)(E) provides that land taken in restricted fee status shall become part of the Tribes' reservations and subject to their jurisdiction. This language is appropriate since the lands at Fort Wingate were part of the Tribes' aboriginal territory. The language is needed to avoid costly and divisive lawsuits regarding jurisdiction over new lands obtained by tribes. The Zuni Tribe recommends that language be added to the bill to make it clear that lands taken in trust also become part of the respective tribe's reservation and are subject to its jurisdiction.
- c. **Sequential Transfer and Surveys** – Section 3(a), (b) and (c) provide that parcels are to be transferred to the tribes in trust or fee status as they are remediated and transferred by the Army to the Interior Department, rather than waiting until all parcels are remediated. Similarly, Section 3(d)(1) provides that the Secretary of the Interior is to survey the parcels and establish legal boundaries "...as the parcels are taken into trust or conveyed in restricted fee status". Section 3(d)(2) requires that the Secretary consult with the Tribes on their priorities for surveying of the parcels. These provisions recognize the importance of conveying individual parcels to the Tribes as soon as they are ready to be conveyed to the Interior Department. Also, recognizing that the Secretary may have limited funds available for surveying, these provisions, these provisions enable the tribes to prioritize the parcels they want surveyed, thereby allowing them to receive the parcels that are most important to them as quickly as possible.

- d. **Providing for a Single Environmental Clearance Process** -- To avoid unnecessary cost and duplication, Section 5(d) of the bill provides that once the New Mexico Environment Department (NMED) has certified that a parcel has been remediated, neither the Army nor the Interior Department shall conduct any further environmental reviews or evaluations before transferring the lands to the respective Tribes. This will speed up the transfer process and save money by eliminating redundant and costly environmental reviews without endangering the Tribes. NMED has required the Army to conduct an extremely thorough remediation process, estimated to cost several hundred million dollars when completed, a process that NMED is rigorously monitoring. Without Section 5(d), the Interior Department has determined it is obligated to conduct an environmental assessment on each parcel it receives from the Army and then a second one before it puts the land in trust. These assessments are superficial compared to the thorough review process established by NMED, and thus of no meaningful value, yet they are costly and have held up the transfer of parcels from the Army to Interior.
- e. **Access to Cultural Sites** – Section 4(b) of the bill provides that the Tribes will have access to each other’s cultural sites in that portion of Parcel 1 (the southern portion of Fort Wingate) that the bill allocates to the other Tribe. It also authorizes the Secretary to facilitate access to cultural sites located on all of the other parcels. The Zuni Tribe requests that the Committee expand this provision so it requires each Tribe to provide the other Tribe access to its cultural sites on all of the parcels conveyed to it by this Act. As indicated above, the Zuni Tribe has important historical and cultural sites throughout the property.
- f. **It is Interstate-40 Not Interstate 25** – Section 4(c) incorrectly identifies the highway along the northern border of Fort Wingate as I-25. In fact it is I-40.

Conclusion

In conclusion, I wish to again thank the Chairman, Congressman Pearce and Congressman Lujan for making today’s hearing a reality and assisting the Zuni Tribe move closer to its 20 year dream of reclaiming its ancestral lands at the Fort Wingate Army Depot. Attachment B to this testimony contains proposed language to implement the few minor changes I recommended in my testimony.



ZUNI TRIBAL COUNCIL

ZUNI, NEW MEXICO

February 14, 2014

RESOLUTION NO. M70-2014-Q 009

WHEREAS, the Zuni Tribal Council, consisting of the Governor, Lieutenant Governor, and six Tenientes is declared to be the legislative authority of the Pueblo of Zuni by Article V, Section 1, of the Constitution of the Zuni Tribe; and,

WHEREAS, the Zuni Tribal Council, Pursuant to Article VI, Section 1(d) of the Constitution of the Zuni Tribe to represent the tribe, act in all matters that concern the welfare of the tribe; and,

WHEREAS, the lands on which the former Fort Wingate Army Depot sits were inhabited by the Zuni people for over a 1,000 years; and,

WHEREAS, After the Army closed Fort Wingate in 1992, then- secretary of the Interior Bruce Babbitt announced that when the Army transferred the lands at Fort Wingate no longer needed by the Army, which were previously public domain lands, back to the Interior Department, the lands, after being remediated, would be given to the Zuni Tribe and the Navajo Nation pursuant to a division of those lands agreed to by the two tribes; and,

WHEREAS, For 16 futile years, the Zuni Tribe sought to negotiate an agreement for the division of the lands at Fort Wingate with the Navajo Nation under which the lands would be equally divided between the two tribes, but was unsuccessful because the Navajo Nation demanded that it received the vast majority of the lands; and,

WHEREAS, On July 8, 2013, at the negotiation session between the two tribes facilitated by Honorable Congressmen Steve Pearce (R) NM, Ben R. Lujan (D) NM, and Don Young (R) Alaska, an agreement was reached that provided for an equitable division of the lands at Fort Wingate between the two tribes, under which the Zuni Tribe would receive approximately half of the lands, including commercially valuable land along I-40 as well as lands containing the Zuni Tribe's most important cultural and sacred sites; and,

WHEREAS, On January 8, 2014, Honorable Congressmen Steve Pearce (R) NM and Ben R. Lujan (D) NM introduced H.R. 3822 "The Fort Wingate Land Division Act", the

provisions of which incorporated the agreement reached at the July 8, 2013 negotiations;
and,

THEREFORE NOW BE IT RESOLVED, The Zuni Tribal Council declares its support for H.R. 3822 and urges the United States Congress to enact it into law as expeditiously as possible; and,

BE IT FURTHER RESOLVED, The Zuni Tribal Council expresses its appreciation to Honorable Congressmen Steve Pearce (R) NM, Ben R. Lujan (D) NM and Don Young (R) Alaska for their hard work and commitment that led to the introduction of H.R. 3822.

ZUNI TRIBAL COUNCIL:

EXCUSED ABSENCE (TRAVEL SE. NM)
Arlen Quetawki, Sr., Governor

Steve K. Boone
Steve K. Boone, Lt. Governor

Hd. Councilman - Vacant
Loren L. Leekela
Loren L. Leekela, Councilman

Councilman - Vacant
Gerald Hooce, Sr.
Gerald Hooce, Sr., Councilman

Mark Martinez
Mark Martinez, Councilman

Birdena Sanchez
Birdena Sanchez, Councilwoman

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Zuni Tribal Council at a duly called meeting at Zuni, New Mexico at which a quorum was present and that the same was approved by a vote of 5 in favor and 0 opposed on Feb. 14, 2014.

Steve K. Boone
Steve K. Boone, Tribal Council Secretary
Pueblo of Zuni

APPROVED/DISAPPROVED:

Steve K. Boone 02-14-14
for: Arlen Quetawki, Sr., Governor Date

ATTACHMENT B – PROPOSED REVISIONS TO H.R. 3822

1. Section 3 (c)(3)A

After the word “trust” and before the “—“ add the following: “as part of the respective Tribe’s Reservation”.

2. Section 4(b)(1)

Strike the term “Parcel 1” in the heading so it reads “(1) Shared cultural and religious access.

Strike the term “ as Parcel 1” in the first sentence so it reads “In the case of the lands of Former Fort Wingate Depot Activity depicted on the Map...”

3. Section 4(b)(2) – Strike all of Section 4(b)(2) in its entirety.

4. Section 4(c)

Replace the term “I-25” with the term “I-40” and replace the term “Interstate 25” with the term “Interstate 40”.