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### PECOS NATIONAL HISTORICAL PARK LAND EXCHANGE ACT OF 2000

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SEPTEMBER 28 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

### REPORT

[To accompany S. 2848]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2848) to provide for a land exchange to benefit the Pecos National Historical Park in 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 2000.”

**SEC. 2. DEFINITIONS.**

As used in this Act—

(1) the term “Secretaries” means the Secretary of the Interior and the Secretary of Agriculture;

(2) the term “landowner” means Harold and Elisabeth Zuschlag, owners of land within the Pecos National Historical Park, and;

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

**SEC. 3. LAND EXCHANGE.**

(a) Upon the conveyance by the landowner to the Secretary of the Interior of the lands identified in subsection (b), the Secretary of Agriculture shall convey the following lands and interests to the landowner, subject to the provisions of this Act:

(1) approximately 160 acres of Federal lands and interests therein within the Santa Fe National Forest in the State of New Mexico, as generally depicted on the map; and

(2) the Secretary of the Interior shall convey an easement for water pipelines to two existing well sites, located within the Pecos National Historical Park, as provided in this paragraph.

(A) The Secretary of the Interior shall determine the appropriate route of the easement through Pecos National Historical Park and such route shall be a condition of the easement. The Secretary of the Interior may add such additional terms and conditions relating to the use of the well and pipeline granted under this easement as he deems appropriate.

(B) The easement shall be established, operated, and maintained in compliance with all Federal laws.

(b) The lands to be conveyed by the landowner to the Secretary of the Interior comprise approximately 154 acres within the Pecos National Historical Park as generally depicted on the map.

(c) The Secretary of Agriculture shall convey the lands and interests identified in subsection (a) only if the landowner conveys a deed of title to the United States, that is acceptable to and approved by the Secretary of the Interior.

(d) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Except as otherwise provided in this Act, the exchange of lands and interests pursuant to this Act shall be in accordance with the provisions of section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716) and other applicable laws including the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(2) VALUATION AND APPRAISALS.—The values of the lands and interests to be exchanged pursuant to this Act shall be equal, as determined by appraisals using nationally recognized appraisal standards including the Uniform Appraisal Standards for Federal Land Acquisition. The Secretaries shall obtain the appraisals and insure they are conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisition. The appraisals shall be paid for in accordance with the exchange agreement between the Secretaries and the landowner.

(3) COMPLETION OF THE EXCHANGE.—The exchange of lands and interests pursuant to this Act shall be completed not later than 180 days after National Environmental Policy Act requirements have been met and after the Secretary of the Interior approves the appraisals. The Secretaries shall report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives upon the successful completion of the exchange.

(4) ADDITIONAL TERMS AND CONDITIONS.—The Secretaries may require such additional terms and conditions in connection with the exchange of lands and interests pursuant to this Act as the Secretaries consider appropriate to protect the interests of the United States

(5) EQUALIZATION OF VALUES.—

(A) The Secretary of Agriculture shall equalize the values of Federal land conveyed under subsection (a) and the land conveyed to the Federal government under subsection (b)—

(i) by the payment of cash to the Secretary of Agriculture or the landowner, as appropriate, except that notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716 (b)), the Secretary of Agriculture may accept a cash equalization payment in excess of 25 percent of the value of the Federal land; or

(ii) if the value of the Federal land is greater than the land conveyed to the Federal government, by reducing the acreage of the Federal land conveyed.

(B) DISPOSITION OF FUNDS.—Any funds received by the Secretary of Agriculture as cash equalization payment from the exchange under this section shall be deposited into the fund established by Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a) and shall be available for expenditure, without further appropriation, for the acquisition of land and interests in the land in the State of New Mexico.

#### SEC. 4. BOUNDARY ADJUSTMENT AND MAPS.

(a) Upon acceptance of title by the Secretary of the Interior of the lands and interests conveyed to the United States pursuant to section 4 of this Act, the boundaries of the Pecos National Historical Park shall be adjusted to encompass such lands. The Secretary of the Interior shall administer such lands in accordance with the provisions of law generally applicable to units of the National Park System, including the Act entitled “An Act to establish a National Park Service, and for other purposes”, approved August 25, 1916 (16 U.S.C. 1, 2-4).

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

(c) Not later than 180 days after completion of the exchange described in section 3, the Secretaries shall transmit the map accurately depicting the lands and inter-

ests conveyed to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

#### PURPOSE OF THE MEASURE

The purpose of S. 2848 is to provide for a land exchange to benefit the Pecos National Historical Park in New Mexico.

#### BACKGROUND AND NEED

Pecos National Historical Park in New Mexico preserves 12,000 years of history, including the ancient pueblo of Pecos, two Spanish Colonial Missions, Santa Fe Trail sites, 20th century ranch history of the Forked Lightning Ranch, and the site of the Civil War Battle of Glorieta Pass. The park encompasses 6,600 acres.

The private owner of a 154-acre inholding within the park's Glorieta Unit desires to convey the property to the National Park Service in exchange for a 160-acre tract in the nearby Santa Fe National Forest.

S. 2848 authorizes the exchange of land, and in addition provides the landowner with an easement for water lines from two existing well sites within the park.

#### LEGISLATIVE HISTORY

S. 2848 was introduced by Senator Bingaman on July 11, 2000. The Subcommittee on National Parks, Historic Preservation and Recreation held a hearing on S. 2848 on July 27, 2000. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2848, as amended, favorably reported.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2848, if amended as described herein.

#### COMMITTEE AMENDMENT

During the consideration of S. 2848, the Committee adopted an amendment in the nature of a substitute. The amendment made several technical and clarifying changes. In addition, the amendment added a provision requiring the land exchange to comply with the National Environmental Policy Act, and authorized the Secretary of Agriculture to equalize the values of the conveyed lands by accepting cash or reducing the acreage of the Federal lands conveyed.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* designates the bill's short title.

*Section 2* provides definitions for key terms used in the bill.

*Section 3* authorizes an exchange of lands whereby the private landowner of a specified 154-acre parcel within Pecos National Historical Park would convey the land to the Secretary of the Interior in exchange for a specified 160-acre parcel of Federal land located in the Santa Fe National Forest. In addition, the private landowner

would receive an easement for water pipelines to two existing well sites within Pecos National Historical Park. The value of the exchanged lands and interests must be equal.

*Section 4* provides for adjustment of the boundaries of Pecos National Historical Park to encompass the conveyed lands and interests.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

#### 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. 2848. 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. 2848, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On September 15, 2000, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 2848. These reports had not been received at the time the report on S. 2848 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 National Park Service and the U.S. Forest Service at the Subcommittee hearing follows:

#### STATEMENT OF DENIS P. GALVIN, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, 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. 2848, a bill to provide for a land exchange at Pecos National Historical Park in New Mexico.

The Department supports this legislation with the amendments outlined in this testimony. 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.

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 that became a center of cultural change. This crossroads saw the effects of Spanish colonization from the south and the movement westward along the Santa Fe Trail by a variety of people and cultures.

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.

Pecos NHP not only protects a story and remnants of how this country changed and evolved, but also the resources in the natural environment needed by people throughout the 12,000 years of human occupation. Of foremost importance 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 in and of themselves as well as vital to the park's several and overlapping 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 three hundred acres, preserves sites of the Civil War action at Glorieta Pass. More than half of the land in these units is privately owned, making public access, preservation of resources, and protection of property rights difficult. The lands proposed for exchange in S. 2848 are in the Canoncito subunit, the westernmost portion of the park.

S. 2848 proposes an exchange among the U.S. Forest Service, National Park Service and a private landowner. The private land owner 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. No environmental analysis has been completed on this parcel.

Our recommended amendments are technical in nature, which we believe would simplify and clarify responsibilities for the various parts of the exchanges as well as meet deadlines to complete the process.

As presently worded, Section 3(a)(2) calls for the Secretary of Agriculture to convey an easement on land lo-

cated within Pecos NHP. We recommend this be changed to allow the Secretary of the Interior to convey the easement directly to the landowner. The easement would allow the landowner to withdraw water from two existing wells on the parcel that will be given to the National Park Service. We recommend that some parameters on the water used from these wells be added to the bill to ensure the adequate protection of park resources, such as limiting the number of gallons per hour that can be withdrawn with a total amount not to be exceeded in a given day, week, or month.

We recommend that Section 3(d)(1) be clarified to provide specifically for compliance with the National Environmental Policy Act.

Section 3(d)(2) requires the landowner to pay for the appraisals of the two parcels. We recommend that this portion of the bill be modified to state that while the landowner will pay for the appraisals, the Department of Interior will obtain the appraisals. This would assure that the appraisals are conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisition and allow quick acceptance of the property by the National Park Service during the exchange.

Section 3(d)(3) requires the exchange to be completed within 90 days. We believe that one year would be a more realistic time. Shorter time periods could frustrate the exchange proposal if all of the necessary work to conduct the exchange is not completed within the given time frame such as the completion of the analysis to comply with the National Environmental Policy Act. Also a longer time period would allow for an arbitrator to negotiate an agreement should the parties be unable to agree on the appraisal. We understand that the use of an arbitrator is required in 43 U.S.C. 1716(d).

We understand that the U.S. Forest Service has concerns relating to Section 3(d)(4) involving cash equalization or an adjustment of acres if the value of National Forest System land exceeds the value of the private lands exchanged, as well as the use of any funds received in a cash equalization payment. We defer to the Forest Service to provide you with their suggested language for this section.

We believe that the map referenced in the bill is insufficient for the purpose of this legislation. We are willing to work with the subcommittee and the U.S. Forest Service to provide the correct map.

We suggest that the bill include a provision for reporting back to this subcommittee on the successful completion of the exchange to help ensure that all parties have met and bargained in good faith, and that every effort to complete the exchange is completed in a timely manner.

S. 2848 does indeed benefit Pecos NHP. It 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.

We look forward to working with the subcommittee and Senator Bingaman. We will also continue to work with the U.S. Forest Service to ensure that the final bill language reflects the needs and interests of all parties to the exchange and completes that exchange in the most direct manner.

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

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STATEMENT OF THE U.S.D.A. FOREST SERVICE

Thank you for the opportunity to present our views on S. 2848, a bill to provide for a land exchange to benefit the Pecos National Historic Park, a unit of the National Park Service. The bill would direct the Secretary of Agriculture to convey approximately 160 acres located in the Santa Fe National Forest in New Mexico to Harold and Elizabeth Zuschlag in exchange for 154 acres owned by the Zuschlags 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 to the Zuschlags are located on top of Glorieta Mesa and have been identified as base and exchange in the Santa Fe National Forest land and resource management plan. The parcel is undeveloped and has relatively gentle topography. We are concerned with the loss of lands available as a land exchange base on the National Forest. The exchange base is effectively utilized to improve its land ownership pattern and protect important natural resources. As part of our land exchange procedures, we would complete an environmental analysis and public involvement process considering the proposal. Without lands available for exchange, the Forest is limited in its ability to complete priority land adjustments and must rely on appropriated funds to purchase lands.

The private properties to the west of these lands have been developed and we anticipate development will occur on the federal lands proposed in this exchange if transferred into private ownership. No resource analysis of the property has been completed so we are unable to determine if any critical habitat, threatened and endangered species, or cultural resources would be impacted. We are also concerned with the potential impact of providing road and utility access to the parcel once it is developed.

Using the discretion provided by the Secretaries of the Interior and Agriculture under Section 3(d)(4), additional terms and conditions in connection with the exchange of lands and interests may be added as considered appropriate. Therefore, the environmental conditions of the lands can be considered and the impacts of the exchange evaluated in compliance with the National Environmental Policy Act.

In addition to the amendments noted in the testimony of the National Park Service regarding S. 2848, the Depart-

ment of Agriculture would support the bill if section 3(d)(4) is amended by adding paragraph (5):

“(5)(A) EQUALIZATION OF VALUES.—The Secretary of Agriculture shall equalize the values of Federal land conveyed under subsection (a) and the land conveyed to the Federal government under subsection (b)—

“(i) by the payment of cash to the Secretary of Agriculture or the landowner, as appropriate, except that notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b), the Secretary of Agriculture may accept a cash equalization payment in excess of 25 percent of the value of the Federal land; or

“(ii) if the value of the Federal land is greater than the land conveyed to the Federal government, by reducing the acreage of the Federal land conveyed.

“(B) DISPOSITION OF FUNDS.—Any funds received by the Secretary of Agriculture as cash equalization payment from the exchange under this section shall be deposited into the fund established by Public Law 90–171 (commonly known as the “Sick Act”) (16 U.S.C. 484a) and shall be available for expenditure, without further appropriation, for the acquisition of land and interests in the land of in the State of New Mexico.

We look forward to working with the Subcommittee and Senator Bingaman on this bill. We will also continue to work with the National Park Service to ensure that the final bill language reflects the needs and interests of all parties to the exchange.

#### CHANGES IN EXISTING LAW

In compliance with paragraphs 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. 2848, as ordered reported.