

113TH CONGRESS
2D SESSION

H. R. 5428

To provide for the implementation of the negotiated property division regarding Former Fort Wingate Depot Activity in McKinley County, New Mexico, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 2014

Mr. PEARCE introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To provide for the implementation of the negotiated property division regarding Former Fort Wingate Depot Activity in McKinley County, New Mexico, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Return of Certain
5 Lands At Fort Wingate to The Original Inhabitants Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) In January 1993, the active mission of the
2 Fort Wingate Activity Depot located in McKinley
3 County, New Mexico (in this Act referred to as
4 “Former Fort Wingate Depot Activity”), ceased,
5 and the installation was closed pursuant to title II
6 of the Defense Authorization Amendments and Base
7 Closure and Realignment Act (Public Law 100–526;
8 10 U.S.C. 2687 note).

9 (2) The lands occupied by the Former Fort
10 Wingate Depot Activity were originally the ancestral
11 lands of both the Zuni Tribe and Navajo Nation, as
12 indicated by the ancestral history and large number
13 of archaeological and cultural sites identified on the
14 lands.

15 (3) The Secretary of the Interior, with the sup-
16 port of the Zuni Tribe, the Navajo Nation, and
17 other concerned parties, determined that upon com-
18 pletion of environmental remediation of Former Fort
19 Wingate Depot Activity, lands no longer needed by
20 the Department of the Army would be transferred to
21 the Secretary of the Interior and held in trust by the
22 United States for the benefit of the Zuni Tribe and
23 the Navajo Nation.

24 (4) On July 8, 2013, the Zuni Tribe and Nav-
25 ajo Nation, acting through the respective tribal lead-

1 ership, who received authority from their tribal gov-
2 ernments to enter into good faith discussions, and
3 through their respective legal representatives, met in
4 the Capitol office of Congressman Don Young, with
5 Congressman Ben Ray Luján and Congressman
6 Steve Pearce present, for final discussions to fairly
7 divide Former Fort Wingate Depot Activity.

8 (5) In the resulting discussions, the tribal lead-
9 ers informally agreed to the property divisions re-
10 flected in the map titled “Fort Wingate Depot Activ-
11 ity Negotiated Property Divisions July 2013” pre-
12 pared by the Army Corps of Engineers (in this Act
13 referred to as the “Map”), and the land division out-
14 lined in section 3 was created in consultation with
15 the Zuni Tribe and the Navajo Nation.

16 (6) This Act achieves the goal of fairly dividing
17 Former Fort Wingate Depot Activity for the benefit
18 of the Zuni Tribe and the Navajo Nation.

19 **SEC. 3. DIVISION AND TREATMENT OF LANDS OF FORMER**
20 **FORT WINGATE DEPOT ACTIVITY, NEW MEX-**
21 **ICO, TO BENEFIT THE ZUNI TRIBE AND NAV-**
22 **AJO NATION.**

23 (a) IMMEDIATE TRUST ON BEHALF OF ZUNI TRIBE;
24 EXCEPTION.—Subject to valid existing rights and to ease-
25 ments reserved pursuant to section 4, all right, title, and

1 interest of the United States in and to the lands of Former
2 Fort Wingate Depot Activity depicted in blue on the Map
3 and transferred to the Secretary of the Interior are to be
4 held in trust by the Secretary of the Interior for the Zuni
5 Tribe as part of the Zuni Reservation, unless the Zuni
6 Tribe otherwise elects under subparagraphs (B) and (C)
7 of subsection (c)(3) to have the parcel conveyed to it in
8 Restricted Fee Status.

9 (b) IMMEDIATE TRUST ON BEHALF OF THE NAVAJO
10 NATION; EXCEPTION.—Subject to valid existing rights
11 and to easements reserved pursuant to section 4, all right,
12 title, and interest of the United States in and to the lands
13 of Former Fort Wingate Depot Activity depicted in blue
14 on the Map and transferred to the Secretary of the Inte-
15 rior are to be held in trust by the Secretary of the Interior
16 for the Navajo Nation as part of the Navajo Reservation,
17 unless the Navajo Nation otherwise elects under sub-
18 section (c)(3) to have the parcel conveyed to it in Re-
19 stricted Fee Status.

20 (c) SUBSEQUENT TRANSFER AND TRUST; RE-
21 STRICTED FEE STATUS ALTERNATIVE.—

22 (1) TRANSFER UPON COMPLETION OF REMEDI-
23 ATION.—Not later than 60 days after the date on
24 which the New Mexico Environmental Department
25 certifies that remediation of a parcel of land of

1 Former Fort Wingate Depot Activity has been com-
2 pleted consistent with section 5, the Secretary of the
3 Army shall transfer administrative jurisdiction over
4 the parcel to the Secretary of the Interior.

5 (2) NOTIFICATION OF TRANSFER.—Not later
6 than 30 days after the date on which the Secretary
7 of the Interior assumes administrative jurisdiction
8 over a parcel of land of Former Fort Wingate Depot
9 Activity under paragraph (1), the Secretary of the
10 Interior shall notify the Zuni Tribe and Navajo Na-
11 tion of the transfer of administrative jurisdiction
12 over the parcel.

13 (3) TRUST OR RESTRICTED FEE STATUS.—

14 (A) TRUST.—Except as provided in sub-
15 paragraph (B), the Secretary of the Interior
16 shall hold each parcel of land of Former Fort
17 Wingate Depot Activity transferred under para-
18 graph (1) in trust—

19 (i) for the Zuni Tribe, in the case of
20 land depicted in blue on the Map; or

21 (ii) for the Navajo Nation, in the case
22 of land depicted in green on the Map.

23 (B) RESTRICTED FEE STATUS ALTER-
24 NATIVE.—In lieu of having a parcel of land held
25 in trust under subparagraph (A), the Zuni

1 Tribe, with respect to land depicted in blue on
2 the Map, and the Navajo Nation, with respect
3 to land depicted in green on the Map, may elect
4 to have the Secretary of the Interior convey the
5 parcel or any portion of the parcel to it in re-
6 stricted fee status.

7 (C) NOTIFICATION OF ELECTION.—Not
8 later than 45 days after the date on which the
9 Zuni Tribe or the Navajo Nation receives notice
10 under paragraph (2) of the transfer of adminis-
11 trative jurisdiction over a parcel of land of
12 Former Fort Wingate Depot Activity, the Zuni
13 Tribe or the Navajo Nation shall notify the Sec-
14 retary of the Interior of an election under sub-
15 paragraph (B) for conveyance of the parcel or
16 any portion of the parcel in restricted fee sta-
17 tus.

18 (D) CONVEYANCE.—As soon as practicable
19 after receipt of a notice from the Zuni Tribe or
20 the Navajo Nation under subparagraph (C), but
21 in no case later than 6 months after receipt of
22 the notice, the Secretary of the Interior shall
23 convey, in restricted fee status, the parcel of
24 land of Former Fort Wingate Depot Activity

1 covered by the notice to the Zuni Tribe or the
2 Navajo Nation, as the case may be.

3 (E) RESTRICTED FEE STATUS DEFINED.—

4 For purposes of this Act only, the term “re-
5 stricted fee status”, with respect to land con-
6 veyed under subparagraph (D), means that the
7 land so conveyed—

8 (i) shall be owned in fee by the Indian
9 tribe to whom the land is conveyed;

10 (ii) shall be part of the Indian tribe’s
11 Reservation and expressly made subject to
12 the jurisdiction of the Indian Tribe;

13 (iii) shall not be sold by the Indian
14 tribe without the consent of Congress;

15 (iv) shall not be subject to taxation by
16 any government other than the government
17 of the Indian tribe; and

18 (v) shall not be subject to any provi-
19 sion of law providing for the review or ap-
20 proval by the Secretary of the Interior be-
21 fore an Indian tribe may use the land for
22 any purpose, directly or through agreement
23 with another party.

24 (d) SURVEY AND BOUNDARY REQUIREMENTS.—

1 (1) IN GENERAL.—The Secretary of the Inte-
2 rior shall—

3 (A) provide for the survey of lands of
4 Former Fort Wingate Depot Activity taken into
5 trust for the Zuni Tribe or the Navajo Nation
6 or conveyed in restricted fee status for the Zuni
7 Tribe or the Navajo Nation under subsection
8 (a), (b), or (c); and

9 (B) establish legal boundaries based on the
10 Map as parcels are taken into trust or conveyed
11 in restricted fee status.

12 (2) CONSULTATION.—Not later than 90 days
13 after the date of the enactment of this Act, the Sec-
14 retary of the Interior shall consult with the Zuni
15 Tribe and the Navajo Nation to determine their pri-
16 orities regarding the order in which parcels should
17 be surveyed, and, to the greatest extent feasible, the
18 Secretary shall follow these priorities.

19 (e) RELATION TO CERTAIN REGULATIONS.—Part
20 151 of title 25, Code of Federal Regulations, shall not
21 apply to taking lands of Former Fort Wingate Depot Ac-
22 tivity into trust under subsection (a), (b), or (c).

1 **SEC. 4. RETENTION OF NECESSARY EASEMENTS AND AC-**
2 **CESS.**

3 (a) **EASEMENTS FOR CLEANUP AND REMEDI-**
4 **ATION.**—The lands of Former Fort Wingate Depot Activ-
5 ity held in trust or conveyed in restricted fee status pursu-
6 ant to section 3 shall be subject to reservation by the
7 United States of such easements as the Secretary of the
8 Army determines are reasonably required to permit access
9 to lands of Former Fort Wingate Depot Activity for ad-
10 ministrative, environmental cleanup, and environmental
11 remediation purposes. The Secretary of the Army shall
12 provide to the governments of the Zuni Tribe and the Nav-
13 ajo Nation written copies of all easements reserved under
14 this subsection.

15 (b) **SHARED ACCESS.**—

16 (1) **PARCEL 1 SHARED CULTURAL AND RELI-**
17 **GIOUS ACCESS.**—In the case of the lands of Former
18 Fort Wingate Depot Activity depicted as Parcel 1 on
19 the Map, the lands shall be held in trust subject to
20 a shared easement for cultural and religious pur-
21 poses only. Both the Zuni Tribe and the Navajo Na-
22 tion shall have unhindered access to their respective
23 cultural and religious sites within Parcel 1. Within
24 1 year after the date of the enactment of this Act,
25 the Zuni Tribe and the Navajo Nation shall ex-
26 change detailed information to document the exist-

1 ence of cultural and religious sites within Parcel 1
2 for the purpose of carrying out this paragraph. The
3 information shall also be provided to the Secretary
4 of the Interior.

5 (2) OTHER SHARED ACCESS.—Subject to the
6 written consent of both the Zuni Tribe and the Nav-
7 ajo Nation, the Secretary of the Interior may facili-
8 tate shared access to other lands held in trust or re-
9 stricted fee status pursuant to section 3, including,
10 but not limited to, religious and cultural sites.

11 (c) I-40 FRONTAGE ROAD ENTRANCE.—The access
12 road for the Former Fort Wingate Depot Activity, which
13 originates at the frontage road for Interstate 40 and leads
14 to the parcel of the Former Fort Wingate Depot Activity
15 depicted as “administration area” on the Map, shall be
16 held in common by the Zuni Tribe and Navajo Nation to
17 provide for equal access to Former Fort Wingate Depot
18 Activity.

19 (d) DEPARTMENT OF DEFENSE ACCESS TO MISSILE
20 DEFENSE AGENCY FACILITY.—Lands held in trust or
21 conveyed in Restricted Fee Status pursuant to section 3
22 shall be subject to easements reasonably required to per-
23 mit access to the Missile Defense Agency facility as needed
24 by the Department of Defense.

1 **SEC. 5. ENVIRONMENTAL REMEDIATION.**

2 (a) **RESPONSIBILITY FOR CLEANUP.**—Nothing in this
3 Act shall be construed as alleviating, altering, or affecting
4 the responsibility of the United States for cleanup and re-
5 mediation of Former Fort Wingate Depot Activity accord-
6 ing to the terms previously agreed to by the Secretary of
7 the Army and the New Mexico Environment Department.

8 (b) **LIABILITY.**—Neither the Zuni Tribe nor the Nav-
9 ajo Nation shall be liable for any damages resulting from
10 Department of the Army activities on Former Fort
11 Wingate Depot Activity or the use by the Department of
12 the Army of hazardous substances, toxic substances, heavy
13 metals, explosives, pollutants, contaminants, waste or pe-
14 troleum products, or any combination thereof, regardless
15 of when the contamination is discovered or where it has
16 spread.

17 (c) **TREATMENT OF CLAIMS AGAINST TRIBES.**—

18 (1) **IN GENERAL.**—The Zuni Tribe and the
19 Navajo Nation shall be held harmless from any
20 claim, suit, demand, judgment, cost, or fee arising
21 from Department of the Army activities on or off
22 the Former Fort Wingate Depot Activity site, or the
23 prior use of hazardous substances, toxic substances,
24 heavy metals, explosives, pollutants, contaminants,
25 waste or petroleum products, or any combination

1 thereof, regardless of when the contamination is dis-
2 covered or where it has spread.

3 (2) NOTIFICATION REQUIREMENT.—After a
4 parcel of land of Former Fort Wingate Depot Activ-
5 ity has been transferred or conveyed under section
6 3, the Zuni Tribe or the Navajo Nation shall notify
7 the Secretary of the Army of the existence or dis-
8 covery of any contamination or hazardous material
9 on the parcel.

10 (d) EFFECT OF ENVIRONMENTAL CERTIFICATION.—
11 Certification by the New Mexico Environment Department
12 that a parcel of land of Former Fort Wingate Depot Activ-
13 ity has been fully remediated shall satisfy all Federal envi-
14 ronmental requirements necessary for the Secretary of the
15 Army and the Secretary of the Interior to carry out their
16 responsibilities to transfer or convey the parcel under sec-
17 tion 3.

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