



New Mexico Wilderness Alliance

P.O. Box 25464 • Albuquerque, NM 87125 • 505-843-8696 • nmwa@nmwild.org

**Statement of Edward Sullivan
Executive Director of the New Mexico Wilderness Alliance
Before the Joint Committees of Energy and
Natural Resources and Indian Affairs
April 24, 2002**

Mr. Chairman and members of the respective committees, my name is Edward Sullivan and I am the Executive Director of the New Mexico Wilderness Alliance. I thank you for the opportunity to testify today on S. 2018.

The New Mexico Wilderness Alliance is a community based non-profit organization located in Albuquerque, with over 2,500 members throughout the state, many of whom live just minutes from the proposed T'uf Shur Bien Preservation Trust Area. The Alliance is an organization dedicated to the protection, restoration, and continued enjoyment of New Mexico's wildlands and Wilderness Areas.

A major thrust of our work is ensuring the permanent protection of designated Wilderness Areas within New Mexico from any harmful impacts. While we pay close attention to each of our 23 Wilderness Areas, the Sandia Mountain Wilderness Area is of particular importance to the members of the New Mexico Wilderness Alliance. In addition, many of the founders of the New Mexico Wilderness Alliance, and some of the current members of our Board of Directors played crucial roles in working with Senator Pete Domenici in attaining Wilderness Designation for Sandia Mountain.

Accordingly, we have spent many hours, and considerable energy scrutinizing the issues concerning the Pueblo of Sandia Land Claim, the original proposed settlement agreement, as well as Senator Bingaman's S.2018. I am pleased to come before you today and express the Alliance's support for the majority of the provisions of S.2018 and Senator Bingaman's attempt to bring this contentious matter to a lasting conclusion.

When we first began reviewing this issue we had two primary concerns; (1) enduring protection of the Sandia Mountain wilderness through continued application of the Wilderness Act; and (2) protection of all existing public rights in the area. It also extremely important to us that the resolution of this dispute lead to a settlement that protects the Pueblo's traditional and cultural uses in the disputed area. This is especially important, we believe, considering the Pueblo's continued willingness to compromise its position in an attempt to address the concerns of all the stakeholders. We believe that the original settlement agreement, negotiated by the Pueblo, the Forest Service, and the Sandia Peak Tram Company, addressed those concerns. We believe that with minor

changes S.2018 will also adequately address these concerns.

Protection of Wilderness Values.

Although today the Forest Service strongly advocates for protection of the Sandia Mountains, the agency has not always had the Mountain's best interest at heart, as evidenced by their opposition to its original Wilderness designation. Over the years, the Forest Service allowed a number of projects to occur in the Sandias which deteriorated their wild character. These included the construction of a number of access roads, permanent developments at the crest, and a large aerial tramway. We are grateful for the turn towards protection as a first priority in the Forest Service's approach to managing the Sandia Mountain Wilderness. However, changes in the agency's priorities and policies provide little assurance that the government will stay the course of staunchly defending the Wilderness Area. We believe the Settlement Agreement and S.2018 provide additional guarantees of permanence to the protection of the wilderness values in the area.

Both the Settlement Agreement and S.2018 ensure that the Wilderness portion of the T'uf Shur Bien Preservation Trust Area will remain entirely under the protective umbrella of the Wilderness Act. In addition, although recognizing the Pueblo's right to access the Area for traditional and cultural purposes, the Agreement and S.2018 limit those activities, and access thereto, to only those that are consistent with the Wilderness Act. Meaning, no one, not even members of the Pueblo, can undertake any activity, or gain access to the area, that would currently be prohibited in the Wilderness Area. Importantly, the Settlement Agreement and the S.2018 provide additional protection for the non-Wilderness portion of the Trust Area, as well. The Agreement and S.2018, expressly prohibit resource extraction and any type of commercial enterprise such as gaming from occurring anywhere in the Trust Area. Therefore, quite simply put, we believe that the Settlement Agreement and S.2018 provide excellent protection for the natural wilderness character of the Mountain and we strongly support the protective provisions of both documents.

In addition to the expressly stated protections from specific activities, the Settlement Agreement and S.2018 also offer additional layers of protection through the provisions providing for Pueblo Consent. One of the Pueblo's stated purposes for pursuing the land claim is to provide enduring protection to the wilderness and natural character of the Area. We believe the terms of the Settlement Agreement confirm the integrity of that claimed purpose. As indicated previously, despite the Forest Service's recent approach of protective management, the Service has allowed a number of activities to occur in the Area that have had a deleterious effect on the wilderness values of the Area. The Settlement Agreement and S.2018 eliminate the potential for authorization of these types of activities by providing the Pueblo with what is essentially a veto power for "new" uses in the Area. Therefore, if the Forest Service or some other entity proposed an activity in the Area that would negatively impact the wilderness or natural quality of the Area the Pueblo, through the consent provisions, has the authority to prevent that activity and protect the Area from harm. Considering the stated purpose of protecting the naturalness

of the Area, expressed by all the parties to this dispute, we strongly support the provision providing for Pueblo Consent.

In short, the New Mexico Wilderness Alliance believes that the protective measures contained in both the Settlement Agreement and S.2018 provide more than adequate protection to not only the Sandia Mountain Wilderness Area but also the remaining portions of the Cibola National Forest that lie within the proposed Trust Area. Therefore, we are pleased to express our unequivocal support for these provisions.

Protection of Existing Public Rights and Interests.

Because the area in question serves as the premier open space refuge to a population of over 700,000 people in the Albuquerque metro area, it is critical that any settlement protect not only public access to the Area but also the public voice in how the Area is managed and protected. We believe that the Settlement Agreement and S.2018 do an adequate job of protecting those interests.

We believe that both the Settlement Agreement and S.2018 provide clear and unequivocal protection of continued public access to the area. We believe that there is no argument on this issue; both documents provide for protection, in perpetuity, to the public's longstanding use and enjoyment of the Area. Similarly, the Pueblo has provided every assurance that under no circumstances does it have an interest in attempting to curb public access in the future.

Public participation in the management of the Area, especially when it comes to the land use planning process, raises some interesting issues for the New Mexico Wilderness Alliance. Public participation in this process is critical for sound management of any special use area. Therefore, we pay extremely close attention to any proposals that may change or alter this process.

For the most part, we believe that the Settlement Agreement, S.2018, and the incorporated T'uf Shur Bien Preservation Trust Area Management Plan, do an adequate job of recognizing, and protecting interests of the public and adequately provide for input in the overall management of the Area. The Management Plan, in Section IIIF, expressly creates a public participation and input process, with respect to amendments to the Management Plan intended to ensure full public involvement in future management decisions. In addition, the Settlement Agreement, S.2018 and the Management Plan each expressly provide that the National Environmental Policy Act is fully applicable to the Area providing not only protection for important environmental concerns but also preserving public input through the NEPA process.

Significantly, the incorporated Management Plan, in Section IIB(4), provides the public with important opportunities to challenge questionable Forest Service decisions on the part of the Forest Service pertaining to authorization of "new" uses, regardless of whether the Pueblo has consented to those uses. Additionally, and very importantly, the Plan, in Section IID(2), sets out a process through which the public has input with respect to what

constitutes a traditional or cultural use on the part of the Pueblo and provides a cause of action in federal courts to challenge decisions regarding traditional and cultural uses that the public believes are not in accordance with applicable laws.

The one point of contention that we have with the existing management plan, is that we would have preferred that the public been invited to participate in its development. The current, incorporated, Management Plan was developed by the parties to the litigation concerning the land dispute, without public participation. While believe that our public lands should always be managed with the maximum amount of public input and participation possible, we recognize and respect that the Settlement Agreement, and S.2018 as well as the initial Management Plan, attempt to settle litigation to which the public at large was not a party.

It is important to note, that in our review of issues concerning public interest in the Area we looked at the original Settlement Agreement and Management Plan together, as essentially a single document. Taken as a whole, therefore, we believe that the Settlement Agreement, or S.2018 and the Management Plan provide adequate protection of the public's interest in participating in process of making future management decisions concerning the proposed Preservation Trust Area. There is however, a discrepancy between the S.2018 and the Management Plan that we would like to see addressed in any legislation authorizing the settlement of this matter.

As it stands currently, both S.2018 and the original Settlement Agreement contain blanket exemptions from the Forest and Rangeland Renewable Resources Planning Act, as amended by the National Forest Management Act as well as the Forest Service planning regulations implementing these acts. The Management Plan, however, expressly provides that a number of provisions of those planning regulations remain applicable to the Area. Specifically, the Plan provides for application of the appeal process regarding Forest Service project decisions, set out at 36 C.F.R. 215 to apply to management decisions in the Area. Similarly, the Plan provides that the public appeal process regarding Plan amendment decisions, set out at 36 C.F.R. 217, or subsequent amendments, apply to any administrative appeal of the Forest Supervisor's decision regarding amendment of the Plan. Therefore, the terms of the Settlement Agreement and S.2018 are inconsistent with the terms of the Management Plan. This is especially important considering that the appeal provisions regarding Plan amendments in 36 C.F.R. 217 have been amended and incorporated into planning regulations set out at 36 C.F.R. 219.

While there appears to be a conflict here in the language of the proposed legislation and the Management Plan, it has been our understanding all along that the parties fully intended the terms of the Management Plan to be fully applicable and enforceable. Therefore, we do not believe that this was an intentional attempt to create ambiguity in the Plan or the Settlement Agreement. Obviously, however, this discrepancy is important and needs to be addressed. Congress, through this legislation has the opportunity to eliminate this concern and make clear the relationship between the Act, the Management Plan and the process for public participation that will attach to the Area. We feel there is

a fairly simple remedy to this situation. It is our suggestion that the language of Section 4(b)(3) of S.2018 be changed to read:

(3) administration of the Area shall not, except as expressly provided in the Management Plan, be subject to the Forest and Rangeland Renewable Resources Act of 1974 (88 Stat. 476), as amended by the National Forest Management Act, 16 U.S.C. §§ 1600-1614, or to the Forest Service planning regulations implementing these acts, or to amendments to these acts and regulations.

This simple change, we feel, will clear up unnecessary confusion and ambiguity while implementing the intent of the parties and providing clear protection, as set out in the Management Plan, of important public interests in participating in ongoing management decisions relative to the Area.

Respect and Protection for the Integrity of the Pueblo Rights and Interests in the Area.

Finally, given the compelling and persuasive opinion of former Interior Solicitor Leshy regarding the legitimacy of the Pueblo of Sandia's claim as well as the Pueblo's success in federal court, we acknowledge that the Pueblo of Sandia's claim is unique. Therefore, we believe it is especially important that any legislation settling this contentious issue must be respectful to the Pueblo's historic and legal rights and interests in the area and likewise must protect the Pueblo's traditional and cultural uses in the area.

We feel that the original Settlement Agreement provides this respect and recognition. Similarly, we feel that S.2018 does a respectable job in this area. However, there is one provision in particular in S.2018 that has the appearance and the effect of denigrating the integrity of the Pueblo's interest and provides rights to other parties that are inconsistent with the need for and the purpose of this legislation.

I am speaking of the provision set out in Section 4(b)(4) of S.2018. This provision provides both Sandoval and Bernalillo Counties with Consent rights equivalent to those of the Pueblo. We feel this provision is unnecessary. It provides the counties, who were not parties to this dispute, with rights that they otherwise would not have and for which there is no legal precedent. In addition, and just as importantly, we feel that raising the level of authority of the two counties to that of the Pueblo is disrespectful of the Pueblo's legitimate historic and legal interest in the Area.

Of course Indian land claims are a concern for many throughout the United States. Each place and situation where Native Americans may seek ownership, better access to or a stronger management role in public lands is different. Therefore, we feel strongly that, each situation must be handled individually based on the specific facts of the particular case as well as the legal, political, cultural, and environmental conditions of the time. Were it not for our sincere belief that this particular instance presents a unique situation in which the Pueblo's claim has had strong support from Interior Department officials

and the federal district court, it is possible that we would be in front of you today taking an entirely different position. However, that is not the case. Because of our belief in the strength of the Pueblo of Sandia's claim and our desire to have the local interests, who have the most at stake in this matter, rather than a federal judge, bring this matter to a conclusion, we are pleased to offer our support today for the majority of the provisions of S.2018.

In closing, I would like to, once again, thank Mr. Chairman and the members of the respective committee for the opportunity to come before you today and provide the views of the New Mexico Wilderness Alliance with respect to this important issue. It is an honor and a privilege to be seated where I am right now. With the exception of the changes I have suggested with respect to public input in the development of the initial Management Plan and the County consent provision, I am pleased to express the unequivocal support of the New Mexico Wilderness Alliance for S. 2018.