

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3822

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2014

Mr. BEN RAY LUJÁN of New Mexico (for himself and Mr. PEARCE) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To provide for the implementation of the 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 “Fort Wingate Land  
5 Division Act of 2014”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In January 1993, the active mission of the  
9 Fort Wingate Depot Activity, located in McKinley

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

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

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

22 (4) On July 8, 2013, the Zuni Tribe and Nav-  
23 ajo Nation, acting through their respective tribal  
24 leadership, who received authority from their tribal  
25 governments to enter into good faith discussions,

1 and through their respective legal representatives,  
2 met in the Capitol office of Congressman Don  
3 Young, with Congressman Ben Ray Luján and Con-  
4 gressman Steve Pearce present, for final discussions  
5 to fairly divide Former Fort Wingate Depot Activity.

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

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

17 **SEC. 3. DIVISION AND TREATMENT OF LANDS OF FORMER**  
18 **FORT WINGATE DEPOT ACTIVITY, NEW MEX-**  
19 **ICO, TO BENEFIT ZUNI TRIBE AND NAVAJO**  
20 **NATION.**

21 (a) IMMEDIATE TRUST ON BEHALF OF ZUNI TRIBE;  
22 EXCEPTION.—Subject to valid existing rights and to ease-  
23 ments reserved pursuant to section 4, all right, title, and  
24 interest of the United States in and to lands of Former  
25 Fort Wingate Depot Activity depicted in blue on the Map

1 and transferred to the Secretary of the Interior before the  
2 date of enactment of this Act are to be held in trust by  
3 the Secretary of the Interior for the Zuni Tribe of the  
4 Zuni Reservation as part of the Zuni Reservation, unless  
5 the Zuni Tribe elects under subparagraphs (B) and (C)  
6 of subsection (c)(3) to have specified parcels of the lands  
7 conveyed to the Zuni Tribe in Restricted Fee Status.

8 (b) IMMEDIATE TRUST ON BEHALF OF NAVAJO NA-  
9 TION; EXCEPTION.—Subject to valid existing rights and  
10 to easements reserved pursuant to section 4, all right,  
11 title, and interest of the United States in and to lands  
12 of Former Fort Wingate Depot Activity depicted in green  
13 on the Map and transferred to the Secretary of the Inte-  
14 rior before the date of enactment of this Act are to be  
15 held in trust by the Secretary of the Interior for the Nav-  
16 ajo Nation as part of the Navajo Reservation, unless the  
17 Navajo Nation elects under subsection (c)(3) to have spec-  
18 ified parcels of the lands conveyed to the Navajo Nation  
19 in restricted 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 Interior shall  
16 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 six months after receipt  
22 of 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 Interior shall consult with the Zuni Tribe  
15          and the Navajo Nation to determine their priorities  
16          regarding the order in which parcels should be sur-  
17          veyed, and, to the greatest extent feasible, the Sec-  
18          retary 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 one 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 Navajo  
7       Nation, the Secretary of the Interior may facilitate  
8       shared access to other lands held in trust or restricted  
9       fee status pursuant to section 3, including,  
10      but not limited to, religious and cultural sites.

11      (c) I-25 FRONTAGE ROAD ENTRANCE.—The entire  
12      access road for Former Fort Wingate Depot Activity,  
13      which originates at the frontage road for Interstate 25 and  
14      leads to the parcel of Former Fort Wingate Depot Activity  
15      depicted as “administration area” on the Map, shall be  
16      held in common by both the Zuni Tribe and the Navajo  
17      Nation to provide for equal access to Former Fort  
18      Wingate Depot 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 such easements as may be reasonably  
23      required to permit Department of Defense access to the  
24      Missile Defense Agency facility at Former Fort Wingate  
25      Depot Activity.

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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