

COPY

IN THE MATTER OF  
DRAFT EL MALPAIS NATIONAL CONSERVATION AREA PLAN AND  
ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Monday, July 26, 1999  
7:12 p.m.  
Grants High School  
500 Mountain Road  
Grants, New Mexico

REPORTED BY: YVONNE C. GONZALES, NM CCR #062  
500 Oak Street, N.E., Suite 102  
Albuquerque, New Mexico 87106

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A P P E A R A N C E S

MR. WILLIAM M. DALNESS  
Bureau of Land Management  
New Mexico State Office  
1474 Rodeo Road  
Post Office Box 27115  
Santa Fe, New Mexico 87502-0115

MR. EDWIN J. SINGLETON  
Bureau of Land Management  
Albuquerque Field Office Manager  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

MR. STEVE FISCHER  
Bureau of Land Management  
Albuquerque Field Office Watershed Team Leader  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

MR. KENT HAMILTON  
Bureau of Land Management  
El Malpais Plan Team Leader  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

\* \* \* \* \*

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\* \* \* \* \*

1                   MR. DALNESS: This public hearing will come  
2 to order. Good evening and welcome to this public hearing  
3 which has been convened by the Bureau of Land Management  
4 of the Department of the Interior. The purpose of this  
5 public hearing is to receive comments concerning the Draft  
6 El Malpais National Conservation Area Plan and  
7 Environmental Impact Statement prepared by the Bureau of  
8 Land Management Albuquerque Office in New Mexico.

9                   If approved, several proposals contained in  
10 the Draft Plan and Environmental Impact Statement would  
11 amend the Rio Puerco Resource Management Plan. The  
12 amendment would apply to four issues: recreation and  
13 visual resource management; access and transportation;  
14 wilderness suitability; and boundary and landownership  
15 adjustments.

16                   Let's hold for a minute.

17

18                   (A short recess was taken.)

19

20                   MR. DALNESS: We started the public hearing,  
21 and then we stopped. We're going to restart the public  
22 hearing for your benefit. This public hearing --

23                   MR. DeYOUNG: Couldn't find the place.  
24 Sorry.

25                   MR. DALNESS: Happy to have you. This

1 public hearing will come to order. The Draft Plan/EIS  
2 includes a Wilderness Suitability assessment for the Chain  
3 of Craters Wilderness Study Area located within the  
4 National Conservation Area, as well as recommendations to  
5 Congress regarding adjustments to the National  
6 Conservation Area and Cebolla Wilderness boundaries in  
7 Cibola and Catron Counties. A limited number of copies  
8 are available at the sign-in desk.

9 This public hearing in Grants is the first  
10 public hearing scheduled. Two other public hearings have  
11 been scheduled: one in Quemado, Tuesday, July 27; and one  
12 in Albuquerque, Wednesday, July 28.

13 Notice of the comment period for this Draft  
14 Plan/EIS was published in the Federal Register on June 11.  
15 Notification of the place and time of this public hearing  
16 is contained in the Plan/EIS and was distributed to local  
17 newspapers and media outlets.

18 My name is William Dalness. I'm with the  
19 BLM New Mexico State Office. I'll be the hearing officer  
20 this evening. I have a limited role in this process. I  
21 make no recommendations in connection with this proceeding  
22 or the El Malpais Plan/EIS. My role is to ensure that the  
23 hearings are conducted in a fair and orderly manner.

24 The follow representatives from the BLM are  
25 here to consider your comments. They are, to my left: Ed

1 Singleton, Albuquerque Field Office Manager; Steve Fisher,  
2 Albuquerque Field Office Watershed Team Leader; and Kent  
3 Hamilton, BLM El Malpais Plan Team Leader.

4           This hearing is an information-gathering  
5 event. It is not a forum for public debate or discussion.  
6 If you wish to speak, please register at the registration  
7 table first. Oral comments received in this hearing will  
8 provide the BLM with additional information for review in  
9 finalizing the Draft Plan/EIS.

10           Your oral statement must be relevant to the  
11 Draft Plan/EIS. The agency representatives may ask  
12 clarifying questions or seek additional information at the  
13 conclusion of the speaker's comments. Questions asked by  
14 one of the hearing panel do not indicate any predetermined  
15 position of the official or the BLM. They're intended  
16 only to clarify the information you provide in your  
17 comments.

18           To ensure a complete and accurate record of  
19 the hearing, only one person can speak at a time. Also,  
20 we request that everyone remain quiet. An official court  
21 reporter is here to record this hearing and to provide a  
22 verbatim transcript. She is seated to my right.

23           Written copies of comments are helpful. If  
24 you have an extra copy of your prepared remarks, please  
25 provide it to the court reporter after your presentation

1 and it will be marked as an exhibit and made part of the  
2 record. Your remarks, however, will be recorded whether  
3 or not you follow a prepared text.

4                   We have two hours this evening. During the  
5 two hours, we want to accommodate everyone who wishes to  
6 speak on the record and, if possible, after the hearing is  
7 adjourned, allow some time for informal discussions after  
8 the hearing.

9                   Because we apparently only have one speaker  
10 registered at this time, we will waive the time limitation  
11 on the speaker. Speakers will be called in the order in  
12 which their names appear. In the event that a speaker is  
13 not present, we will proceed with the next person on the  
14 list.

15                   If, after all registered speakers have  
16 completed their time and anybody else wishes to speak, we  
17 will allow them to do so. We will adjourn the hearing  
18 when it is apparent that there are no more speakers or at  
19 9 o'clock.

20                   Each person shall begin his or her remarks  
21 by providing your name, and if you represent an  
22 organization or group, the name of your organization or  
23 group. If you wish to ask questions, the questions should  
24 be read into the record during your presentation.

25                   The BLM is also accepting written comments

1 from parties who wish to provide them. Written comments  
2 must be postmarked no later than September 24, 1999. They  
3 should be addressed to: El Malpais Plan Team Leader, BLM  
4 Albuquerque Field Office, 435 Montano Road, Northeast,  
5 Albuquerque, New Mexico, 87107. For your convenience,  
6 this address appears on a handout when you signed in.

7 All comments timely received and postmarked  
8 no later than September 24 will be considered in  
9 developing the final plan. Copies of the transcript of  
10 this hearing may be obtained by making the necessary  
11 arrangements with the court reporter.

12 After all persons have spoken for the  
13 record, we will adjourn the public hearing. After which,  
14 panel members will be happy to respond to your questions  
15 if there's sufficient time to do so. Questions raised and  
16 statements made after the hearing will not be part of the  
17 record and will not be included as comments for response.

18 Again, I must emphasize that questions will  
19 be entertained only after the formal hearing has been  
20 adjourned and only if the time of adjournment is  
21 reasonable.

22 Are there any questions on the hearing's  
23 procedure? I have one registered speaker. I'd like to  
24 call Mr. Tim DeYoung. Please state your name and if you  
25 represent an organization. Thank you.

1 MR. DeYOUNG: Thank you, Mr. Dalness. My  
2 name is Tim DeYoung. I'm an attorney with the Modrall law  
3 firm in Albuquerque. I'm here tonight representing the  
4 York Ranch.

5 I think it's somewhat ironic that folks that  
6 fought your original FONSI, or Finding of No Significant  
7 Impact, are not here tonight and made you do all this  
8 work. I think you've done a really good job. We  
9 generally support the Draft/EIS.

10 The only comment I would like to make  
11 tonight -- and I should say that we will be submitting  
12 written comments. We've also -- and so you know -- hired  
13 as a consultant, Dr. Jerry Holechek, who's a professor of  
14 range science at New Mexico State. He's been helping us  
15 develop a range plan for our ranch and for the El Malpais  
16 allotment. It's the largest allotment in the El Malpais  
17 National Conservation Area.

18 Dr. Holechek intends to present written  
19 comments at the Albuquerque meeting. We will submit  
20 written comments later.

21 The purpose of my statements tonight are  
22 very simple. I just would like to remind you--all of some  
23 key historical facts about the legal requirements that  
24 Congress has announced with respect to the continued  
25 grazing.

1           As you know, Public Law 100-225 was enacted  
2 on December 31, 1987. With your permission, I would like  
3 to hand out copies of that act. I'd also like to make  
4 this act part of the record. I would recommend you-all  
5 attach this act, because this is the act that created both  
6 the monument and the National Conservation Area.

7           We have done fairly thorough research about  
8 the administrative record, the legislative history of this  
9 act, the hearings that went on both in New Mexico and in  
10 Washington, D.C. We talked to folks who were there.

11           During those hearings, what you'll find are  
12 some strong pro-grazing and anti-grazing sentiments. I  
13 think that's accurate. Some people didn't want any  
14 grazing at all. Some ranchers, such as my client, wanted  
15 continuation of grazing, which they had done for  
16 generations.

17           The law that was passed, we believe, was a  
18 reasonable compromise between those two competing  
19 interests. Within the monument -- the act provides that  
20 within the monument, grazing completely cease as of  
21 January 1, 1998. You know better than I, but it's our  
22 understanding that there is no grazing going on within the  
23 monument.

24           Outside of the monument, but within the  
25 National Conservation Area, Congress was very specific

1 with respect to the continuation of grazing. Let me refer  
2 you to what I have highlighted for you--all. That is, two  
3 sections. One, Section 302(d). It says, "Except as  
4 otherwise provided in Section 402(b)" -- which we'll get  
5 to in a minute --- "within the conservation area, the  
6 grazing of livestock shall be permitted to continue,  
7 pursuant to" -- it goes on -- "pursuant to applicable  
8 Federal law ... and subject to such reasonable  
9 regulations," and so forth.

10           One of the first things you learned in law  
11 school is that, when interpreting legislative history,  
12 when the legislature or Congress uses "shall be," that  
13 means something. It means that they're taking away your  
14 discretion as an agency and mandating that you allow the  
15 continuation of grazing. I think that's very important  
16 that Congress used such strong language.

17           If we would turn to the next page -- if you  
18 look at Section 402(b), this refers to what happens within  
19 the wilderness areas designated by this act. As you know  
20 within the National Conservation Area, there are certain  
21 wilderness areas. And within our allotment, as well, we  
22 have wilderness areas.

23           One thing I didn't highlight -- Section  
24 402(a) says that -- starts out with -- "Subject to valid  
25 existing rights." There is a lot of litigation about what

1 that means, but it basically says if you had preexisting  
2 rights, the creation of wilderness areas are subject to  
3 those valid existing rights.

4           Then it gets even more explicit in Paragraph  
5 B. It says, "Within the wilderness areas designated by  
6 this Act, the grazing of livestock, where established  
7 prior to the enactment of this Act, shall be permitted to  
8 continue subject to such" -- blah, blah. And the same  
9 language.

10           Once again, Congress is making it extremely  
11 clear that grazing shall be continued outside of the  
12 national monument.

13           I bring these comments to your attention for  
14 two reasons: one, there's at least two places in the  
15 Draft/EIS where I think the language used is not as  
16 explicit as the language used by Congress. It might lead  
17 to some misunderstanding.

18           Specifically at Page 2-75 -- and here I  
19 wholeheartedly concur with BLM's conclusion that you don't  
20 need to look at the no grazing alternative, which some  
21 people had advocated. But citing the law, 100-225, it  
22 says, grazing "is permitted". We think that language  
23 should be "shall be permitted." In other words, you  
24 should mirror exactly what Congress said.

25           Page 3-29 -- it's a little word that says,

1 "livestock grazing may continue." The word "may" connotes  
2 you may let it continue or you may not. I'm quibbling  
3 about some small words, but I just want to emphasize to  
4 you that in light of the act, "shall be" is the language  
5 we think you should use.

6 Now, these might be considered minor points,  
7 but I think -- as you know, the original decision by BLM  
8 to have a GMP rather than an RMP was challenged by the  
9 Wilderness Coalition. One of the reasons they thought you  
10 should do an EIS was because the GMP that you-all had done  
11 proposed a management plan for the support of grazing,  
12 which the Coalition argued required an RMP, which is a  
13 resource management plan -- which, as you know, the  
14 Interior Board of Land Appeals required you to do an EIS.  
15 So that was on their mind way back in the early '90s.  
16 It's still on the minds of some groups.

17 As you know, in October 1998 the Forest  
18 Guardians and TNE, Inc., filed a lawsuit against the BLM  
19 in federal court arguing that the BLM had violated NEPA by  
20 renewing grazing permits within the National Conservation  
21 Area, including our own, which, ironically, Congress had  
22 not enacted one.

23 That case is still pending. We sought to  
24 intervene. We have been granted partial intervention.  
25 That case is still pending. So I'm not going to comment

1 further about the case.

2 But as you know and as we know, a tax on  
3 grazing on public land continues. They continue here in  
4 the National Conservation Area. That's why I think it's  
5 -- underline the importance to recognize that Congress has  
6 addressed the issue. Congress has said grazing shall be  
7 allowed to continue.

8 You all are doing it. I think ou have a  
9 good plan. I think it's a valid plan. We stand ready to  
10 work with you. Thank you for the opportunity to present  
11 these comments. I'd be happy to answer any questions you  
12 might have.

13 MR. DALNESS: Thank you. Do we have any  
14 other registered speakers? There are no other registered  
15 speakers, so we will adjourn this public hearing. We'll  
16 stay around a little while and reconvene if necessary.  
17 The hearing is adjourned.

18

19 (A recess was taken from 7:29 p.m. to 7:40 p.m.)

20

21 (The Proceeding concluded at 7:40 p.m.)

22

23

24

25

C E R T I F I C A T E

I, Yvonne C. Gonzales, a Certified Court Reporter, do hereby certify that the Proceedings of the above-entitled cause were reported by me stenographically on July 26, 1999, and that the within transcript is a true and accurate transcription of my shorthand notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

\_\_\_\_\_  
Yvonne C. Gonzales, CCR  
Notary Public

My Commission expires:  
3-20-2001

UNITED STATES PUBLIC LAWS  
100th Congress - First Session  
Convening January 6, 1987

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DATA SUPPLIED BY THE U.S. DEPARTMENT OF JUSTICE. (SEE SCOPE)  
Additions and Deletions are not identified in this document.

PL 100-225 (HR 403)  
December 31, 1987

An Act to establish the El Malpais National Monument and the El Malpais National Conservation Area in the State of New Mexico, to authorize the Masau Trail, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States  
of America in Congress assembled,

TITLE I – EL MALPAIS NATIONAL MONUMENT  
ESTABLISHMENT OF MONUMENT

SEC. 101. (a) "16 USC 460uu" In order to preserve, for the benefit and enjoyment of present and future generations, that area in western New Mexico containing the nationally significant Grants Lava Flow, the Las Ventanas Chacoan Archeological Site, and other significant natural and cultural resources, there is hereby established the El Malpais National Monument (hereinafter referred to as the "monument"). The monument shall consist of approximately 114,000 acres as generally depicted on the map entitled "El Malpais National Monument and National Conservation Area" numbered NM-ELMA- 80,001-B and dated May 1987. The map shall be on file and available for public inspection in the offices of the Director of the National Park Service, Department of the Interior.

(b) As soon as practicable after the enactment of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall file a legal description of the monument with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in subsection (a). The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

TRANSFER

4 SEC. 102. "16 USC 460uu-1" Lands and waters and interests therein within the boundaries of the monument, which as of the day prior to the date of enactment of this Act were administered by the Forest Service, United States Department of Agriculture, are hereby transferred to the administrative jurisdiction of the Secretary to be managed as part of the monument in accordance with this Act. The boundaries of the Cibola National Forest shall be adjusted accordingly.

MANAGEMENT

SEC. 103. "16 USC 460uu-2" The Secretary, acting through the Director of the National Park Service, shall manage the monument in accordance with provisions of this Act, the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), and other provisions of law applicable to units of the National Park System. The Secretary shall protect, manage, and administer the monument for the purposes of preserving the scenery and the natural, historic, and cultural resources of the monument and providing for the public understanding and enjoyment of the same in such a manner as to perpetuate these qualities for future generations.

#### PERMITS

SEC. 104. "16 USC 460uu-3" Where any lands included within the boundary of the monument on the map referred to in subsection 101(a) are legally occupied or utilized on the date of enactment of this Act for grazing purposes, pursuant to a lease, permit, or license which is —

(a) for a fixed term of years issued or authorized by any department, establishment, or agency of the United States, and

(b) scheduled for termination before December 31, 1977,

the Secretary, notwithstanding any other provisions of law, shall allow the persons holding such grazing privileges (or their heirs) to retain such grazing privileges until December 31, 1997, subject to such limitations, conditions, or regulations as the Secretary may prescribe to insure proper range management. No grazing shall be permitted on lands within the boundaries of the monument on or after January 1, 1998.

#### TITLE II — MASAU TRAIL DESIGNATION OF TRAIL

SEC. 201. "16 USC 460uu-11" In order to provide for public appreciation, education, understanding, and enjoyment of certain nationally significant sites of antiquity in New Mexico and eastern Arizona which are accessible by public road, the Secretary, acting through the Director of the National Park Service, with the concurrence of the agency having jurisdiction over such roads, is authorized to designate, by publication of a description thereof in the Federal Register, a vehicular tour route along existing public roads linking prehistoric and historic cultural sites in New Mexico and eastern Arizona. Such a route shall be known as the Masau Trail (hereinafter referred to as the "trail").

#### AREAS INCLUDED

SEC. 202. "16 USC 460uu-12" The trail shall include public roads linking El Malpais National Monument as established pursuant to title I of this Act, El Morro National Monument, Chaco Cultural National Historical Park, Aztec Ruins National Monument, Canyon De Chelly National Monument, Pecos National Monument, and Gila Cliff Dwellings National Monument. The Secretary may, in the manner set forth in section 201, designate additional segments of the trail from time to time as appropriate to link the foregoing sites with other cultural sites or sites of national significance when such sites are designated and protected by Federal, State, or local governments, Indian tribes, or nonprofit entities.

#### INFORMATION AND INTERPRETATION

SEC. 203. "16 USC 460uu-13" With respect to sites linked by segments of the trail which are administered by other Federal, State, local, tribal, or nonprofit entities, the Secretary may, pursuant to cooperative agreements with such entities, provide technical assistance in the development of interpretive devices and materials in order to contribute to public appreciation of the natural and cultural resources of the sites along the trail. The Secretary, in cooperation with State and local governments, Indian tribes, and nonprofit entities, shall prepare and distribute informational material for the public appreciation of sites along the trail.

#### MARKERS

SEC. 204. "16 USC 460uu-14" The trail shall be marked with appropriate markers to guide the public. With the concurrence and assistance of the State or local entity having jurisdiction over the roads designated as part of the trail, the Secretary may erect thereon and maintain signs and other informational devices displaying the Masau Trail Marker. The Secretary is authorized to accept the donation of suitable signs and other informational devices for placement at appropriate locations.

#### TITLE III — EL MALPAIS NATIONAL CONSERVATION AREA

#### ESTABLISHMENT OF AREA

SEC. 301. "16 USC 460uu-21" (a) In order to protect for the benefit and enjoyment of future generations that area in western New Mexico containing the La Ventana Natural Arch and the other unique and nationally important geological, archeological, ecological, cultural, scenic, scientific, and wilderness resources of the public lands surrounding the Grants Lava Flows, there is hereby established the El Malpais National Conservation Area (hereinafter referred to as the "conservation area"). The conservation area shall consist of approximately 262,690 acres of federally owned land as generally depicted on a map entitled "El Malpais National Monument and National Conservation Area" numbered NM-ELMA-80,001-B and dated May 1987. The map shall be on file and available for inspection in the offices of the Director of the Bureau of Land Management of the Department of the Interior.

(b) As soon as practicable after the date of enactment of this Act, the Secretary shall file a legal description of the conservation area designated under this section with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description. The legal description shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

#### MANAGEMENT

SEC. 302. "16 USC 460uu-22" (a) The Secretary, acting through the Director of the Bureau of Land Management, shall manage the conservation area to protect the resources specified in section 301 and in accordance with this Act, the Federal Land Management and Policy Act of 1976 and other applicable provisions of law, including those provisions relating to grazing on public lands.

(b) The Secretary shall permit hunting and trapping within the conservation area in accordance with applicable laws and regulations of the United States and the State of New Mexico; except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may issue regulations designating zones where and establishing periods when no hunting or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

(c) Collection of green or dead wood for sale or other commercial purposes shall not be permitted in the conservation area.

(d) Except as otherwise provided in section 402(b), within the conservation area the grazing of livestock shall be permitted to continue, pursuant to applicable Federal law, including this Act, and subject to such reasonable regulations, policies, and practices as the Secretary deems necessary.

#### TITLE IV – WILDERNESS DESIGNATION OF WILDERNESS

SEC. 401. "16 USC 460uu-31" (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 131), there are hereby designated as wilderness, and, therefore, as components of the National Wilderness Preservation System, "16 USC 1132 note" the Cebolla Wilderness of approximately 60,000 acres, and the West Malpais Wilderness of approximately 38,210 acres, as each is generally depicted on the map entitled "El Malpais National Monument and National Conservation Area" numbered NM-ELMA-80,001-B and dated May 1987. The map shall be on file and available for inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

(b) As soon as practicable after the date of the enactment of this Act, the Secretary shall file a legal description of each wilderness area designated by this Act with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description. The legal description shall be on file and available for

public inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

#### MANAGEMENT

SEC. 402. "16 USC 460uu-32" (a) Subject to valid existing rights, each wilderness area designated under this Act shall be administered by the Secretary, through the Director of the Bureau of Land Management, in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(b) Within the wilderness areas designated by this Act, the grazing of livestock, where established prior to the enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secretary deems necessary, as long as such regulations, policies, and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act and section 108 of Public Law 96-560 (16 U.S.C. 1133 note).

#### TITLE V – GENERAL PROVISIONS MANAGEMENT PLANS

SEC. 501. "16 USC 460uu-41" (a) Within three full fiscal years following the fiscal year of enactment of this Act, the Secretary shall develop and transmit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, separate general management plans for the monument and the conservation area which shall describe the appropriate uses and development of the monument and the conservation area consistent with the purposes of this Act. The plans shall include but not be limited to each of the following:

(1) implementation plans for a continuing program of interpretation and public education about the resources and values of the monument and the conservation area;

(2) proposals for public facilities to be developed for the conservation area or the monument, including a visitors center in the vicinity of Bandera Crater and a multiagency orientation center, to be located in or near Grants, New Mexico, and adjacent to Interstate 40, to accommodate visitors to western New Mexico;

(3) natural and cultural resources management plans for the monument and the conservation area, with a particular emphasis on the preservation and long-term scientific use of archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 and the National Historic Preservation Act within the monument and the conservation area. The natural and cultural resources management plans shall be prepared in close consultation with the Advisory Council on Historic Preservation, the New Mexico State Historic Preservation Office, and the local Indian people and their traditional cultural and religious authorities; and such plans shall provide for long-term scientific use of archaeological resources in the monument and the conservation area, including the wilderness areas designated by this Act; and

(4) wildlife resources management plans for the monument and the conservation area prepared in close consultation with appropriate departments of the State of New Mexico and using previous studies of the area.

(b)(1) The general management plan for the conservation area shall review and recommend the suitability or nonsuitability for preservation as wilderness of those lands comprising approximately 17,468 acres, identified as "Wilderness Study Area" (hereafter in this title referred to as the "WSA") on the map referenced in section 101.

(2) Pending submission of a recommendation and until otherwise directed by an Act of Congress, the Secretary, acting through the Director of the Bureau of Land Management, shall manage the lands within the WSA so as to maintain their potential for inclusion within the National Wilderness Preservation System.

(c)(1) The general management plan for the monument shall review and recommend the suitability or nonsuitability

for preservation as wilderness of all roadless lands within the boundaries of the monument as established by this Act except those lands within the areas identified as "potential development areas" on the map referenced in section 101.

(2) Pending the submission of a recommendation and until otherwise directed by Act of Congress, the Secretary, through the Director of the National Park Service, shall manage all roadless lands within the boundaries of the monument so as to maintain their potential for inclusion in the National Wilderness Preservation System, except those lands within the areas identified as "potential development areas" on the map referenced in section 101.

#### ACQUISITIONS

SEC. 502. "16 USC 460uu-42" Within the monument and the conservation area, the Secretary is authorized to acquire lands and interests in lands by donation, purchase with donated or appropriated funds, exchange, or transfer from any other Federal agency, except that such lands or interests therein owned by the State of New Mexico or a political subdivision thereof may be acquired only by exchange. It is the sense of Congress that the Secretary is to complete the acquisition of non-Federal subsurface interests underlying the monument and the conservation area no later than three full fiscal years after the fiscal year of enactment of this Act.

#### STATE EXCHANGES

SEC. 503. "16 USC 460uu-43" (a) Upon the request of the State of New Mexico (hereinafter referred to as the "State") and pursuant to the provisions of this section, the Secretary shall exchange public lands or interests in lands elsewhere in the State of New Mexico, of approximately equal value and selected by the State, acting through its Commissioner of Public Lands, for any lands or interests therein owned by the State (hereinafter referred to as "State lands") located within the boundaries of the monument or the conservation area which the State wishes to exchange with the United States.

(b) Within six months after the date of enactment of this Act, the Secretary shall notify the New Mexico Commissioner of Public Lands what State lands are within the monument or the conservation area. The notice shall contain a listing of all public lands or interest therein within the boundaries of the State of New Mexico which have not been withdrawn from entry and which the Secretary, pursuant to the provisions of sections 202 and 206 of the Federal Land Policy and Management Act of 1976, has identified as appropriate for transfer to the State in exchange for State lands. Such listing shall be updated at least annually. If the New Mexico Commissioner of Public Lands gives notice to the Secretary of the State's desire to obtain public lands so listed, the Secretary shall notify the Commissioner in writing as to whether the Department of the Interior considers the State lands within the monument or conservation area to be of approximately equal value to the listed lands or interests in lands the Commissioner has indicated the State desires to obtain. It is the sense of the Congress that the exchange of lands and interests therein with the State pursuant to this section should be completed within two years after the date of enactment of this Act.

#### MINERAL EXCHANGES

SEC. 504. "16 USC 460uu-44" (a) The Secretary is authorized and directed to exchange the Federal mineral interests in the lands described in subsection (b) for the private mineral interests in the lands described in subsection (c), if –

(1) the owner of such private mineral interests has made available to the Secretary all information requested by the Secretary as to the respective values of the private and Federal mineral interests to be exchanged; and

(2) on the basis of information obtained pursuant to paragraph (1) and any other information available, the Secretary has determined that the mineral interests to be exchanged are of approximately equal value; and

(3) the Secretary has determined –

(A) that except insofar as otherwise provided in this section, the exchange is not inconsistent with the Federal Land Policy and Management Act of 1976; and

(B) that the exchange is in the public interest.

(b) The Federal mineral interests to be exchanged under this section underlie the lands, comprising approximately 15,008 acres, depicted as "Proposed for transfer to Santa Fe Pacific" on the map referenced in subsection (d).

(c) The private mineral interests to be exchanged pursuant to this section underlie the lands, comprising approximately 15,141 acres, depicted as "Proposed for transfer to U.S." on the map referenced in subsection (d).

(d)(1) The mineral interests identified in this section underlie those lands depicted as "Proposed for transfer to Santa Fe Pacific" and as "Proposed for transfer to U.S." on a map entitled "El Malpais Leg. Boundary, HR3684/S56", revised 5-8-87.

(2) As soon as practicable after the date of enactment of this Act, the Secretary shall file a legal description of the mineral interest areas designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description. The legal description shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

(e) It is the sense of the Congress that all exchanges pursuant to this section shall be completed no later than three years after the date of enactment of this Act.

#### ACOMA PUEBLO EXCHANGES

SEC. 505. "16 USC 460uu-45" (a)(1) Upon the request of the Pueblo of Acoma, the Secretary shall acquire by exchange any lands held in trust for the Pueblo of Acoma (hereinafter referred to as "trust lands") located within the boundary of the conservation area which the Pueblo wishes to exchange pursuant to this section. Such trust lands shall be exchanged either for —

(A) lands described in subsection (c) (with respect to trust lands west of New Mexico Highway 117); or

(B) public lands of approximately equal value located outside the monument and outside the conservation area but within the boundaries of the State of New Mexico which are selected by the Pueblo of Acoma, so long as such exchange is consistent with applicable law and Bureau of Land Management resource management plans developed pursuant to the Federal Land Policy and Management Act of 1976.

(2) All lands selected by and transferred to the Pueblo of Acoma at its request pursuant to this section shall thereafter be held in trust by the Secretary for the Pueblo of Acoma in the same manner as the lands for which they were exchanged.

(3) Any lands west of New Mexico Highway 117 which are acquired by the Secretary pursuant to this section shall be incorporated into the monument and managed accordingly, and section 104 and all other provisions of this Act and other law applicable to lands designated by this Act as part of the monument shall apply to such incorporated lands.

(b) For purposes of acquiring lands pursuant to subsection (a) of this section, the Secretary, consistent with applicable law and Bureau of Land Management resource management plans described in subsection (a), shall make public lands within the boundaries of the State of New Mexico available for exchange. Nothing in this Act shall be construed as authorizing or requiring revocation of any existing withdrawal or classification of public land except in a manner consistent with applicable law.

(c)(1) The Secretary shall make the lands within the areas identified as "Acoma Potential Exchange Areas" on the map referenced in section 301 available for transfer to the Pueblo of Acoma pursuant to this subsection.

(2) Upon a request of the Pueblo of Acoma submitted to the Secretary no later than one year after the date of

enactment of this Act, lands within the areas described in paragraph (1) shall be transferred to the Pueblo of Acoma in exchange for trust lands of approximately equal value within that portion of the conservation area west of New Mexico Highway 117. The Secretary may require exchanges of land under this subsection to be on the basis of compact and contiguous parcels.

(3) Any lands within the areas described in paragraph (1) not proposed for exchange by a request submitted to the Secretary by the Pueblo of Acoma within the period specified in paragraph (2), and any lands in such areas not ultimately transferred pursuant to this subsection, shall be incorporated within the conservation area and managed accordingly. In addition, any lands in that portion of the areas described in paragraph (1) lying in section 1, township 7N, range 9W, New Mexico Principal Meridian, not transferred to the Pueblo of Acoma pursuant to this subsection shall be added to and incorporated within the Cebolla Wilderness and managed accordingly.

#### EXCHANGES AND ACQUISITIONS GENERALLY; WITHDRAWAL

SEC. 506. "16 USC 460uu-46" (a) All exchanges pursuant to this Act shall be made in a manner consistent with applicable provisions of law, including this Act, and unless otherwise specified in this Act shall be on the basis of equal value; either party to an exchange may pay or accept cash in order to equalize the value of the property exchange, except that if the parties agree to an exchange and the Secretary determines it is in the public interest, such exchange may be made for other than equal value.

(b) For purposes of this Act, the term "public lands" shall have the same meaning as such term has when used in the Federal Land Policy and Management Act of 1976.

(c) Except as otherwise provided in section 505, any lands or interests therein within the boundaries of the monument or conservation area which after the date of enactment of this Act may be acquired by the United States shall be incorporated into the monument or conservation area, as the case may be, and managed accordingly, and all provisions of this Act and other laws applicable to the monument or the conservation area, as the case may be, shall apply to such incorporated lands.

(d)(1) Except as otherwise provided in this Act, no federally-owned lands located within the boundaries of the monument or the conservation area shall be transferred out of Federal ownership, or be placed in trust for any Indian tribe or group, by exchange or otherwise.

(2) Except as otherwise provided in this Act, and subject to valid existing rights, all Federal lands within the monument and the conservation area and all lands and interests therein which are hereafter acquired by the United States are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws and from location, entry and patent under the mining laws, and from operation of the mineral leasing and geothermal leasing laws and all amendments thereto.

(e) The acreages cited in this Act are approximate, and in the event of discrepancies between cited acreages and the lands depicted on referenced maps, the maps shall control.

(f) The Secretary is authorized to accept any lands contiguous to the boundaries of the Pecos National Monument (as such boundaries were established on the date of enactment of this Act) which may be proposed for donation to the United States. If acceptance of such lands proposed for donation would be in furtherance of the purposes for which the Pecos National Monument was established, the Secretary shall accept such lands, and upon such acceptance such lands shall be incorporated into such monument and managed accordingly.

(g)(1) "16 USC 431 note" Capulin Mountain National Monument is hereby redesignated as Capulin Volcano National Monument.

(2) Any reference in any record, map, or other document of the United States of America to Capulin Mountain National Monument shall hereafter be deemed to be a reference to Capulin Volcano National Monument.

(3) Section 1 of the Act of September 5, 1962 (76 Stat. 436) is hereby amended by striking the remaining portion of section 1 after "boundaries of the monument" and inserting "shall include the lands and interests in lands as generally depicted on the map entitled 'Capulin Volcano National Monument Boundary Map' which is numbered 125-80,014 and dated January 1987."

(4) Jurisdiction over federally-owned lands within the revised boundaries of the monument is hereby transferred to the National Park Service, without monetary consideration, for administration as part of the monument.

#### ACCESS

4 SEC. 507. "16 USC 460uu-47" (a) In recognition of the past use of portions of the monument and the conservation area by Indian people for traditional cultural and religious purposes, the Secretary shall assure nonexclusive access to the monument and the conservation area by Indian people for traditional cultural and religious purposes, including the harvesting of pine nuts. Such access shall be consistent with the purpose and intent of the American Indian Religious Freedom Act of August 11, 1978 (42 U.S.C. 1996), and (with respect to areas designated as wilderness) the Wilderness Act (78 Stat. 890; 16 U.S.C. 131).

(b) In preparing the plans for the monument and the conservation area pursuant to section 501, the Secretary shall request that the Governor of the Pueblo of Acoma and the chief executive officers of other appropriate Indian tribes make recommendations on methods of —

(1) assuring access pursuant to subsection (a) of this section;

(2) enhancing the privacy of traditional cultural and religious activities in the monument and the conservation area; and

(3) protecting traditional cultural and religious sites in the monument and the conservation area.

(c) In order to implement this section and in furtherance of the American Indian Religious Freedom Act, the Secretary, upon the request of an appropriate Indian tribe, may from time to time temporarily close to general public use one or more specific portions of the monument or the conservation area in order to protect the privacy of religious activities in such areas by Indian people. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes. Not later than seven days after the initiation of any such closure, the Secretary shall provide written notification of such action to the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the House of Representatives.

(d) The Secretary is authorized to establish an advisory committee to advise the Secretary concerning the implementation of this section. Any such advisory committee shall include representatives of the Pueblo of Acoma, the Pueblo of Zuni, other appropriate Indian tribes and other persons or groups interested in the implementation of this section.

#### COOPERATION

SEC. 508. "16 USC 460uu-48" In order to encourage unified and cost effective interpretation of prehistoric and historic civilizations in western New Mexico, the Secretary is authorized and encouraged to enter into cooperative agreements with other Federal, State and local public departments and agencies, Indian tribes, and nonprofit entities providing for the interpretation of prehistoric and historic civilizations in New Mexico and eastern Arizona. The Secretary may, pursuant to such agreements, cooperate in the development and operation of a multiagency orientation center and programs on lands and interests in lands inside and outside of the boundaries of the monument and the conservation area generally, with the concurrence of the owner or administrator thereof, and specifically in or near Grants, New Mexico, adjacent to Interstate 40 in accordance with the plan required pursuant to section 501.

#### WATER RIGHTS

SEC. 509. "16 USC 460uu-49" (a) Congress expressly reserves to the United States the minimum amount of water required to carry out the purposes for which the national monument, the conservation area, and the wilderness areas are designated under this Act. The priority date of such reserved rights shall be the date of enactment of this Act.

(b) Nothing in this section shall affect any existing valid or vested water right, or applications for water rights which are pending as of the date of enactment of this Act and which are subsequently granted: Provided, That nothing in this subsection shall be construed to require the National Park Service to allow the drilling of ground water wells within the boundaries of the national monument.

(c) Nothing in this section shall be construed as establishing a precedent with regard to any future designations, nor shall it affect the interpretation of any other Act or any designation made pursuant thereto.

#### AUTHORIZATION

SEC. 510. "16 USC 460uu-50" There is authorized to be appropriated \$16,500,000 for the purposes of this Act, of which \$10,000,000 shall be available for land acquisition in the national monument; \$1 million shall be available for development within the national monument; \$4 million shall be available for land acquisition within the conservation area; \$1 million shall be available for development within the conservation area; and \$500,000 shall be available for planning and development of the Masau Trail.

Approved December 31, 1987.

#### LEGISLATIVE HISTORY – H.R. 403:

HOUSE REPORTS: No. 100-116 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-100 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 133 (1987): June 1, considered and passed House. Dec. 17, considered and passed Senate, amended. Dec. 18, House concurred in Senate amendment.

PL 100-225, 1987 HR 403

END OF DOCUMENT

# COPY

IN THE MATTER OF  
DRAFT EL MALPAIS NATIONAL CONSERVATION AREA PLAN AND  
ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Tuesday, July 27, 1999  
7:11 p.m.  
Quemado High School  
Quemado, New Mexico

REPORTED BY: YVONNE C. GONZALES, NM CCR #062  
500 Oak Street, N.E., Suite 102  
Albuquerque, New Mexico 87106

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A P P E A R A N C E S

MR. WILLIAM M. DALNESS  
Bureau of Land Management  
New Mexico State Office  
1474 Rodeo Road  
Post Office Box 27115  
Santa Fe, New Mexico 87502-0115

MR. EDWIN J. SINGLETON  
Bureau of Land Management  
Albuquerque Field Office Manager  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

MR. STEVE FISCHER  
Bureau of Land Management  
Albuquerque Field Office Watershed Team Leader  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

MR. KENT HAMILTON  
Bureau of Land Management  
El Malpais Plan Team Leader  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

\* \* \* \* \*

I N D E X

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Reporter Certificate	8

\* \* \* \* \*

1                   MR. DALNESS: This public hearing will come  
2 to order. Good evening and welcome to this public hearing  
3 which has been convened by the Bureau of Land Management  
4 of the Department of Interior. The purpose of this public  
5 hearing is to receive coments concerning the Draft El  
6 Malpais National Conservation Area Plan and Environmental  
7 Impact Statement prepared by the Bureau of Land Management  
8 Albuquerque Field Office, New Mexico.

9                   If approved, several proposals contained in  
10 the Draft Plan/EIS would amend the Rio Puerco Resource  
11 Management Plan. The amendment would apply to four  
12 issues: recreation and visual resource management; access  
13 and transportation; wilderness suitability; and boundary  
14 and landownership adjustments.

15                   The Draft Plan/EIS includes a wilderness  
16 suitability assessment for the Chain of Craters Wilderness  
17 Study Area located within the National Conservation Area,  
18 as well as recommendations to Congress regarding  
19 adjustments to the National Conservation Area and Cebolla  
20 Wilderness boundaries in Cibola and Catron Counties. A  
21 limited number of copies of the Plan/EIS are available at  
22 the sign-in desk.

23                   This public hearing is one of three. There  
24 was one in Grants yesterday and there's one in Albuquerque  
25 tomorrow.

1 Notice of the comment period for this  
2 Plan/EIS was published in the Federal Register on June 11,  
3 1999. Notification of the meeting was made to local  
4 newspapers.

5 My name is William Dalness. I'm with the  
6 BLM New Mexico State Office. I'll be the hearing officer  
7 this evening. I have a limited role in this process. I  
8 make no recommendations in connection with this proceeding  
9 or the El Malpais Plan/EIS. My role is to ensure that the  
10 hearings are conducted in a fair and orderly manner.

11 The following representatives from the BLM  
12 are here to consider your comments. On my left, there's  
13 Ed Singleton, Albuquerque Field Office Manager; to his  
14 left, Steve Fisher, Albuquerque Field Office Watershed  
15 Team Leader; and Kent Hamilton, BLM El Malpais Plan Team  
16 Leader.

17 This hearing is an information-gathering  
18 event. It's not a forum for public debate or discussion.  
19 If you wish to speak, please register at the registration  
20 table first. Oral comments received at this hearing will  
21 provide the BLM with additional information for review in  
22 finalizing the Draft Plan/EIS.

23 Your oral statement must be relevant to the  
24 Draft Plan/EIS. The agency representatives may ask  
25 clarifying questions or seek additional information at the

1 conclusion of the speaker's comments. However, questions  
2 asked by one of the hearing panel do not indicate any  
3 predetermined position of the BLM.

4 To ensure a complete and accurate record of  
5 the hearing, only one person will speak at a time. The  
6 court reporter is here to record this hearing and provide  
7 a verbatim transcript. She's seated to my right.

8 Written copies of your comments are helpful,  
9 if you have one. Please provide it to the court reporter  
10 immediately following your presentation. It will be  
11 marked as an exhibit and made part of the record.

12 However, your remarks will be recorded whether or not you  
13 follow a prepared text.

14 We have two hours this evening. During the  
15 two hours, we want to accommodate everyone who wishes to  
16 speak. If possible, we will allow some time for informal  
17 discussions after the hearing.

18 We don't have any registered speakers at  
19 this time. If, after all registered speakers have  
20 completed their comments and there is sufficient time, we  
21 will ask if anybody else wishes to speak and allow them to  
22 do so. We will adjourn the hearing when it is apparent  
23 that there are no more speakers or at 9 o'clock.

24 When speaking, each person shall begin his  
25 or her remarks by providing his or her name and the

1 organization or group represented, if you represent an  
2 organization or group. If you wish to have questions  
3 considered, please make those part of the record when you  
4 speak.

5           The BLM will also accept written comments.  
6 Written comments must be postmarked no later than  
7 September 24, 1999. They should be addressed to the El  
8 Malpais Plan Team Leader, BLM Albuquerque Field Office,  
9 435 Montano Road, Northeast, Albuquerque, New Mexico,  
10 87107. This address is on a handout at the sign-in table.

11           All comments received and postmarked no  
12 later than September 24 will be considered in developing  
13 the Final Plan/EIS. Copies of the transcript of this may  
14 be obtained by making the necessary arrangements with the  
15 court reporter.

16           After all persons have spoken for the  
17 record, we will adjourn. After which, the panel members  
18 will be happy to respond to your questions. Questions  
19 raised and statements made after the hearing will not be  
20 part of the record and will not be included as comments  
21 for response in the Final Plan/EIS.

22           Again, I must emphasize that questions will  
23 be entertained only after the formal hearing has been  
24 adjourned and if we have reasonable amount of time.

25           Are are there any questions? Does anybody

1 wish to speak at this time? You're happy to do so. I  
2 have nobody that's registered to speak. We'll adjourn  
3 this hearing at this time. We'll stand around a couple of  
4 minutes to see if there's anybody else. We'll reconvene  
5 if we have to. Thank you.

6

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(The Proceeding concluded at 7:16 p.m.)

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C E R T I F I C A T E

I, Yvonne C. Gonzales, a Certified Court Reporter, do hereby certify that the Proceedings of the above-entitled cause were reported by me stenographically on July 27, 1999, and that the within transcript is a true and accurate transcription of my shorthand notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

\_\_\_\_\_  
Yvonne C. Gonzales, CCR  
Notary Public

My Commission expires:  
3-20-2001

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# COPY

IN THE MATTER OF  
DRAFT EL MALPAIS NATIONAL CONSERVATION AREA PLAN  
AND ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Wednesday, July 28, 1999  
7:08 p.m.  
Del Norte High School  
5323 Montgomery Boulevard, N.E.  
Albuquerque, New Mexico

REPORTED BY: ELIZABETH HURST-WAITZ, NM CCR #099, RMR  
500 Oak Street, N.E., Suite 102  
Albuquerque, New Mexico 87106

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A P P E A R A N C E S

MR. WILLIAM M. DALNESS, CHAIRPERSON  
Bureau of Land Management  
New Mexico State Office  
1474 Rodeo Road  
Post Office Box 27115  
Santa Fe, New Mexico 87502-0115

MR. EDWIN J. SINGLETON  
Bureau of Land Management  
Albuquerque Field Office Manager  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

MR. STEVE FISCHER  
Bureau of Land Management  
Albuquerque Field Office Watershed Team Leader  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

KENT HAMILTON  
Bureau of Land Management  
El Malpais Plan Team Leader  
435 Montano Road, N.E.  
Albuquerque, New Mexico 87107

\* \* \* \* \*

I N D E X

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By Dr. Jerry Holechek (Attachment 1)	9
By Mr. Phillip Kennicott	14
Reporter Certificate	16

\* \* \* \* \*

5-1-82

1 MR. DALNESS: This public hearing will come  
2 to order. Good evening, and welcome to this public  
3 hearing, which has been convened by the Bureau of Land  
4 Management, Department of Interior. The purpose of this  
5 public hearing is to receive comments concerning the Draft  
6 El Malpais National Conservation Area Plan and  
7 Environmental Impact Statement prepared by the Bureau of  
8 Land Management Albuquerque Field Office in New Mexico.

9 If approved, several proposals contained in  
10 the Draft Plan and Environmental Impact Statement would  
11 amend the Rio Puerco Resource Management Plan. The  
12 amendment would apply to four issues: recreation and  
13 visual resource management; access and transportation;  
14 wilderness suitability; and boundary and land ownership  
15 adjustments.

16 The Draft Plan/EIS includes a Wilderness  
17 Suitability assessment for the Chain of Craters Wilderness  
18 Study Area located within the National Conservation Area,  
19 as well as recommendations to Congress regarding  
20 adjustments to the National Conservation Area and Cebolla  
21 Wilderness boundaries in Cibola and Catron Counties. We  
22 have extra copies of the EIS plan available for you here.

23 This is the last of three public hearings.  
24 The other two were in Grants on Monday, September 26, and  
25 Quemado on Tuesday -- did I say September? They were in

1 Grants on Monday, July 26, and Quemado on Tuesday,  
2 July 27.

3 Notice of the comment period for this Draft  
4 Plan/EIS was published in the Federal Register on June 11,  
5 and notification of the place and time is in the EIS, and  
6 it was also distributed to local newspapers.

7 My name is William Dalness. I'm with the  
8 BLM New Mexico State Office, and I'll be the hearings  
9 officer this evening. I have a limited role in this  
10 process. I make no recommendations in connection with  
11 this proceeding or the Plan/EIS. My role is to ensure  
12 that the hearings are conducted in a fair and orderly  
13 manner.

14 The following representatives from the BLM  
15 are here to consider your comments. On my right is Ed  
16 Singleton, Albuquerque Field Office Manager; to his right,  
17 Steve Fischer, Albuquerque Field Office Watershed Team  
18 Leader; and to his right, Kent Hamilton, BLM El Malpais  
19 Plan Team Leader.

20 This hearing is an information-gathering  
21 event. It is not a forum for public debate or discussion.  
22 If you wish to speak, you must have registered first at  
23 the registration table. And oral comments received at  
24 this hearing will provide the BLM with additional  
25 information for review and finalizing the Draft Plan/EIS.

1           Your oral statement must be relevant to the  
2 Draft Plan/EIS. The agency representatives may ask  
3 clarifying questions or seek additional information at the  
4 conclusion of a speaker's remarks. However, those  
5 questions asked do not indicate any predetermined position  
6 of the official or the BLM.

7           To ensure a complete and accurate record of  
8 the hearing, only one person will be asked to speak at a  
9 time. An official court reporter is here to record this  
10 hearing and will provide a verbatim transcript. If you  
11 have an extra copy of your prepared remarks, provide it to  
12 the court reporter immediately after your presentation.  
13 It will be marked and made a part of the record of the  
14 hearing. Your remarks will be recorded whether you follow  
15 a prepared text or not.

16           We have two hours this evening, and during  
17 the two hours we want to accommodate everybody who wishes  
18 to speak on the record and, if possible, allow for  
19 additional time for informal discussions after the  
20 hearing. Because we have only two speakers, we will not  
21 impose a time limit. However, I reserve the right to  
22 limit the speaker's time if it's appropriate.

23           Speakers will be called in the order in  
24 which their names appear on the list. If, after all  
25 registered speakers have finished and you decide you want

1 to speak after all, you may come up and speak. We will  
2 adjourn this evening at 9:00 o'clock.

3           When you come up, please give your name, and  
4 if you represent an organization or a group, the name of  
5 that organization or group. If you have questions that  
6 you want considered, those questions should be asked into  
7 the record as part of your presentation.

8           The BLM is also accepting written comments,  
9 which must be postmarked no later than September 24, 1999.  
10 They should be addressed to the El Malpais Plan Team  
11 Leader, BLM Albuquerque Field Office, 435 Montano Road,  
12 Northeast, Albuquerque, 87107. This address appears on  
13 the handout at the sign-in table. All comments received  
14 and postmarked no later than September 24 will be  
15 considered in developing the final plan and EIS.

16           If you wish a transcript of this hearing,  
17 you must make your own arrangements with the court  
18 reporter.

19           After all persons have spoken for the  
20 record, we will adjourn the public hearing, after which  
21 the panel members will be happy to respond to your  
22 questions if we have sufficient time to do so. Questions  
23 raised and statements made after the hearing has been  
24 adjourned will not be included as comments for response in  
25 the Final Plan/EIS.

1                   Again, I must emphasize that questions will  
2 be entertained only after the formal hearing has been  
3 adjourned, and only if we have sufficient time to do so.

4                   Does anybody have any questions on the  
5 procedures?

6                   I have two people that have signed up to  
7 speak. The first person is Mr. Robert Norton.

8                   MR. ROBERT NORTON: Well, this is going to  
9 be short. Bob Norton from Edgewood, New Mexico. And  
10 though I didn't plan to speak this evening, but apparently  
11 we need some other folks to talk, so I will.

12                   I have some familiarity with the area  
13 involved, having gone over there and gone in the  
14 backcountry a little bit. There are some areas that I am  
15 not yet familiar with, so I can't speak on all portions of  
16 the draft plan at this time until I look at it further.

17                   But what I enjoy doing as a user of our  
18 public lands is exploring backcountry roads, getting into  
19 the backcountry and seeing areas that are off the main  
20 routes. For example, in the plan, the Tecolote Mesa is  
21 mentioned. I've been to that and driven up the road  
22 that's on that. It's actually a very well-defined  
23 four-wheel drive road and is included on the map over  
24 there.

25                   You know, that area really -- even though

1 it's nice, very special, a nice backcountry experience  
2 visiting that area, but it hardly meets wilderness  
3 criteria. So I would entertain that that road would  
4 remain open.

*Access*

5           Traveling back into that area, past a number  
6 of roads that are already currently closed -- and there  
7 didn't seem to be any good reason, in my opinion, that  
8 they should be closed. Of the four alternatives, well,  
9 D, of course, calls for closing 23 percent of the roads;  
10 C, 37 percent of the roads. Both Alternative A and B are  
11 between what? Negligible to five percent.

12           And I would believe that Alternative A and  
13 B, as regards to backcountry access, would be the  
14 preferred alternatives in that regard.

15           Again, some other areas that I've been to  
16 are no longer under the jurisdiction of BLM. The Cerro  
17 Bandera area, I guess, has been adopted by the National  
18 Parks, so another area that's really outside the scope of  
19 this.

20           But anyway, that's really what I wanted to  
21 say. You know, however primitive the backcountry road,  
22 you know, it's still enjoyable to take it. And, you know,  
23 with current management practices, four-wheel-drive  
24 access, OHV access, mountain bikers can also access those  
25 same roads. But if they're closed up as wilderness, even

1 the mountain bikers would be banned.

2           And I would entertain that areas that  
3 legitimately meet the wilderness criteria, by all means,  
4 let's protect them. But areas that see current -- current  
5 use -- and you know, I personally did not evidence any  
6 negligible -- well, what am I trying to say? I couldn't  
7 see where there was any significant damage that would be  
8 offered by continued use as it is now. Thank you.

9           MR. DALNESS: Thank you.

10           The next speaker is Dr. Jerry Holecek.

11           DR. JERRY HOLECHEK: I just wanted to say  
12 it's a pleasure to be here and provide a few comments on  
13 the plan. And it's a pretty detailed plan, and generally,  
14 I was pretty impressed with it.

15           MR. DALNESS: Could you tell us if you  
16 represent anybody, please?

17           DR. JERRY HOLECHEK: Yes. Right now I will.  
18 I do represent somebody. I'm a range science professor at  
19 New Mexico State University, and I serve as a consultant  
20 for FNF Properties, LLC, owners of the York Ranch.

21           And over the last several months, I have  
22 visited the El Malpais area and York Ranch repeatedly, and  
23 we've initiated vegetation surveys and monitoring on the  
24 York Ranch. And I am fairly familiar with some of the  
25 plans for livestock management on the York Ranch.

1           And one of the concerns that I had in  
2 reviewing the EIS is that it kind of emphasizes the  
3 importance of rest as a range improvement or range  
4 recovery tool. And I would acknowledge that rest can be  
5 appropriate as a range recovery tool under certain  
6 situations, particularly when land has been overgrazed and  
7 needs a period of generally, we think, three to four  
8 years, if it's been heavily overgrazed, for the vegetation  
9 to recover.

10           But after that, generally -- and we have  
11 quite a bit of research on that -- that rest has not been  
12 that effective in most cases. In other words, you reach a  
13 point of diminishing returns, in terms of facilitating  
14 further recovery.

15           And we have quite a bit of research from  
16 here in New Mexico, and also a great deal of research on  
17 the kind of rangeland, blue grama rangeland, that  
18 generally characterizes that area, that shows that the  
19 best management strategy has basically been to scatter the  
20 animals well over the area and stock the area at a  
21 conservative rate.

22           And we have technology that we've published  
23 and has been tested in several cases that allows us to set  
24 sustainable stocking rates that will allow further  
25 recovery and vigor and improvement in vegetation

1 composition. And this kind of a strategy involves  
2 scattering the animals and keeping them well distributed,  
3 using all the pastures.

4           Because actually, in studies in New Mexico  
5 and Arizona, both states -- and I might add, Colorado and  
6 Wyoming -- has actually given equally, and some of these  
7 studies, actually better results than schemes that involve  
8 a lot of rotation and rest periods.

9           And I would mention also, not only has the  
10 vegetation responded as well or better -- and here I would  
11 cite some of the studies I've been involved in on the  
12 College Ranch, but I would also mention studies in Arizona  
13 that were done by S. Clark Barton. In my comments, I've  
14 provided a summary of these studies, so anybody can go and  
15 obtain them and read them.

16           And so the essence of my comments is that we  
17 feel that these alternative strategies that are less  
18 intensive, involving conservative stocking and using as  
19 much -- most of the range every year, has generally been a  
20 sound strategy in this part of the world and should be  
21 considered as an alternative strategy to more intensive  
22 strategies that involve long deferment or rest periods,  
23 and the flip side of that, may involve heavier use of the  
24 pastures when the animals are in the pastures.

25           And so having made those comments -- sure?

1 MR. SINGLETON: I'd like to ask just a  
2 qualifying statement, Dr. Holechek. Is what you or your  
3 client is proposing more along the lines of a more  
4 traditional deferred system, where you use everything, you  
5 use it conservatively, and maybe change the patterns of  
6 use, so that it's not used, let's say, two or three  
7 consecutive years in a row, for example, during the hot  
8 growing season?

9 DR. JERRY HOLECHEK: Yes, I think that's a  
10 very good question. And I have really considered the  
11 literature on this and published a recent paper in a peer  
12 review journal on this subject area. And also, I'm a  
13 senior author on the standard text in range management.

14 And we've collected all the grazing studies  
15 in the world and really looked at them and really  
16 considered this. And the strategy that we feel has the  
17 highest certainty for success and has been the best  
18 evaluated has been a system developed by Leo Merrill in  
19 Texas, that involves use of four pastures.

20 It involves using three herds and rotating  
21 growing season nonuse among the pastures so the weakest  
22 pasture -- if there's a riparian consideration during the  
23 critical growing period, or if there are other critical  
24 periods -- that nonuse, four-month nonuse period, can be  
25 shifted around to accommodate whatever special concerns.

1                   And all ranches and rangelands are  
2 different. And what we like is the flexibility that this  
3 gives. Because it may be that in certain areas, that one  
4 pasture may be inordinately weak and you would want to  
5 maybe give it two years' growing season rest in a row,  
6 rather than just one. And you may have other pastures  
7 that are in real high condition that are very flat, where  
8 a nonuse period would be less appropriate.

9                   MR. SINGLETON: Sure. Okay. Thank you.

10                  DR. JERRY HOLECHEK: You bet.

11                  MR. DALNESS: Thank you. Did you give the  
12 reporter your --

13                  DR. JERRY HOLECHEK: Sure.

14                  MR. DALNESS: I assume that you do have an  
15 extra copy?

16                  DR. JERRY HOLECHEK: Yeah, I do have two  
17 copies.

18                  MR. DALNESS: Thank you.

19                         Okay, does anybody else wish to speak at  
20 this time? This is your last chance. Do you want to say  
21 something on the record?

22                  MR. PHILLIP KENNICOTT: I'd like to, if I  
23 may.

24                  MR. DALNESS: Please go forward and give  
25 your name and who you represent, if you represent

1 somebody.

2 MR. PHILLIP KENNICOTT: My name is Phillip  
3 Kennicott. I am representing myself for these remarks.  
4 I'd like to amplify something that Mr. Norton said:  
5 access to the backcountry. This is important, but when  
6 one reaches a period in one's life that I have reached,  
7 for example, that gets harder and harder. One can't go  
8 out on the trail and hike. I happen to have a broken  
9 foot, and I could probably make a mile or two miles, but  
10 that would be about the end of it.

11 I think it's extremely important that back  
12 roads remain open. The back roads are not going to  
13 disappear. We can pretend that they're not there, but  
14 there's a place in Rocky Mountain National Park. One  
15 drives down from the trail ridge road on the west side. I  
16 have been doing this for 25 years now, and you can still  
17 see where the old road is, despite the fact that the Park  
18 Service has tried to move it, planted trees where it used  
19 to be. Those trees are up about 10, 12 feet now. Those  
20 roads are not going to disappear.

21 That is not going to be wilderness country  
22 in areas where one tries to pretend the road does not  
23 exist. So my argument is, let's leave those roads open.  
24 Let's be careful how they're used. Find ways of managing  
25 them so we don't damage the environment. But let's don't

1 close them down. We would be closing a significant part  
2 of the population out of its public lands. Thank you.

3 MR. DALNESS: Thank you. Could you spell  
4 your last name, please?

5 MR. PHILLIP KENNICOTT: That's  
6 K-E-N-N-I-C-O-T-T.

7 MR. DALNESS: Thank you. Does anybody else  
8 wish to speak at this time? I see no other speakers. So  
9 we will adjourn this hearing, and thank you very much.  
10 And we'll stay here as long as we need to, up until 9:00,  
11 if you wish to ask some further questions. Thank you.

12 (The Public Meeting concluded at 7:27 p.m.)

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I, Elizabeth Hurst-Waitz, Registered Merit Reporter and New Mexico Certified Court Reporter #099, do hereby certify that the Proceedings of the above-entitled cause were reported by me stenographically on Wednesday, July 28, 1999, and that the within transcript is a true and accurate transcription of my shorthand notes.

I further certify that I am neither employed by nor related to nor contracted with (unless excepted by the rules) any of the parties or attorneys in this action, and that I have no interest in the final disposition of this action.

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July 22, 1999

Mr. Edwin J. Singleton  
Manager, Albuquerque Field Office  
Bureau of Land Management  
435 Montano Road NE  
Albuquerque, NM 87107-4935

Dear Mr. Singleton:

This letter provides comment on the "Draft El Malpais Plan and Environmental Impact Statement." Specifically, I will comment on Alternative D-Balanced Management (Preferred Alternative)-Vegetation and Rangeland Resources, p. 4-68.

I am a Range Science professor at New Mexico State University and serve as a consultant for FNF Properties LLC, owners of the York Ranch. Over the last several months I have visited the El Malpais area and York Ranch repeatedly, conducted vegetation surveys on the York Ranch, and met repeatedly with the Bureau of Land Management regarding livestock management on the York Ranch.

My concern centers around the recommended use of periodic rest from livestock grazing as a means of improving vegetation vigor and composition. While rest may be appropriate in certain situations, it is not the only approach that can be successful in range improvement (see Klipple and Bement 1961). Other approaches should be available to BLM. Rest has been defined by range managers as providing range units with a year or more of non-use of a period of non-use (see Society for Range Management, 1989, A Glossary of Terms Used in Range Management, Denver, CO). Although it is well established that rest periods can improve forage plant health, several studies reviewed by Vallentine (1990), Heady and Child (1994), and Holechek et al. (1998) cast doubt on the benefits of rest versus conservative grazing (removal of about 30-35% of annual forage production). A well conducted, long term study in the Chihuahuan Desert of New Mexico showed black grama actually maintained itself better under conservative grazing than protection (Paulsen and Ares 1962). Forage plants on conservatively or lightly grazed ranges have actually done better during and after drought than those on areas with no grazing (Paulsen and Ares 1962, Ganskopp and Bedell 1981).

In the southwestern United States several studies have shown forage plants grazed season-long or continuously at conservative levels have performed as well or better than those on pastures where rest periods were included in the grazing schedule (Martin and Cable 1974, Hughes 1982, Martin and Severson 1988, Pieper et al. 1991, White et al. 1991, Beck and McNeely 1993).

Recent well replicated, long term studies in the shortgrass prairie of Wyoming (Manley et al. 1997) and tallgrass prairie of Oklahoma (McCollum et al. 1999) have shown no differences in range trend or productivity when pastures grazed season long were compared to those grazed with various non-

use or rest periods. Grazing intensity was the primary factor that influenced forage plant productivity in these studies.

Heady and Child (1994) reviewed the long term (20 year) results of various grazing management practices applied on 95 different pastures on the Vale Oregon district, Bureau of Land Management. All seasonally grazed pastures started with moderate grazing and had increased forage production during the 20 years. Season of use made little difference. There was no evidence that rotational grazing schemes had any advantages over season long grazing in terms of improving range condition or forage production. The key factor in range improvement appeared to be the reductions in grazing intensities that were applied when the project was initiated in 1966.

In a comprehensive review of over 50 grazing studies from Africa, O'Reagain and Turner (1992) concluded that any differences in continuous and various rotation grazing schemes (short-duration grazing included) in terms of range trend and forage plant productivity were doubtful. Stocking rate or grazing intensity was the primary factor affecting long term grazing outcomes. Holechek et al. (1999) drew the same conclusion in a review of grazing studies from North America. A similar conclusion was reached by Wilson (1986) in a review of grazing research in Australia.

The Merrill 3 herd/ 4 pasture rotation system is an extensive grazing approach that has shown a definite advantage over continuous grazing from a vegetation standpoint in central Texas (Heitschmidt et al. 1990, Taylor et al. 1993). This strategy involves multiple herds and non-use of no more than 25% of the range at any time. All range units receive use every year. I believe this strategy is sound for most New Mexico rangelands, including the El Malpais area.

In closing, I recommend that alternative grazing management approaches, such as the Merrill system, involving conservative grazing, keeping livestock well distributed over the landscape, and making some use of all grazable pastures every year be carefully considered, and be available to BLM as a management option. Considerable science supports this range management approach for New Mexico rangelands from vegetation, wildlife, watershed, livestock, and financial stand points.

Thank you.

Sincerely,



Jerry Holechek, Ph. D.  
Professor, Range Science  
New Mexico State University

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