

the original appointment was made, and any trustee appointed to fill a vacancy shall serve for the remainder of that term for which his or her predecessor was appointed.

**(3) Limitations**

No appointed trustee may serve more than 8 years in consecutive terms.

**(d) Quorum**

A majority of trustees shall constitute a quorum of the Board for the conduct of business.

**(e) Organization and compensation**

**(1) In general**

The Board shall organize itself in such a manner as it deems most appropriate to effectively carry out the activities of the Trust.

**(2) Compensation of trustees**

Except as provided in paragraph (3), trustees shall serve without pay, but may be reimbursed from the funds of the Trust for the actual and necessary travel and subsistence expenses incurred by them in the performance of their duties.

**(3) Chair**

**(A) Selection**

Trustees shall select a chair from the membership of the Board.

**(B) Compensation**

On request of the chair, the chair may be compensated at a rate determined by the Board of Trustees, but not to exceed the daily equivalent of the annual rate of pay for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) in which the chair is engaged in the performance of duties of the Board of Trustees.

**(C) Maximum rate of pay**

The total amount of compensation paid to the chair for a fiscal year under subparagraph (B) shall not exceed 25 percent of the annual rate of pay for level IV of the Executive Schedule under section 5315 of title 5.

**(f) Liability of trustees**

Appointed trustees shall not be considered Federal employees by virtue of their membership on the Board, except for purposes of the Federal Tort Claims Act, the Ethics in Government Act, and the provisions of chapter 11 of title 18.

**(g) Meetings**

**(1) Location and timing of meetings**

The Board shall meet in sessions open to the public at least three times per year in New Mexico. Upon a majority vote made in open session, and a public statement of the reasons therefore, the Board may close any other meetings to the public: *Provided*, That any final decision of the Board to adopt or amend the comprehensive management program under section 698v-6(d) of this title or to approve any activity related to the management of the land or resources of the Preserve shall be made in open public session.

**(2) Public information**

In addition to other requirements of applicable law, the Board shall establish procedures

for providing appropriate public information and periodic opportunities for public comment regarding the management of the Preserve.

(Pub. L. 106-248, title I, §107, July 25, 2000, 114 Stat. 606; Pub. L. 109-132, §3, Dec. 20, 2005, 119 Stat. 2571.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (f), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931-934, 941-946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The Ethics in Government Act, referred to in subsec. (f), probably means the Ethics in Government Act of 1978, Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

AMENDMENTS

2005—Subsec. (e)(2). Pub. L. 109-132, §3(1), substituted “Except as provided in paragraph (3), trustees” for “Trustees”.

Subsec. (e)(3). Pub. L. 109-132, §3(2), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpars. (B) and (C).

COMPENSATION FOR TRUSTEES

Pub. L. 106-291, title II, Oct. 11, 2000, 114 Stat. 968, provided in part: “That notwithstanding the limitations of 107(e)(2) of the Valles Caldera Preservation Act (Public Law 106-248) [16 U.S.C. 698v-5(e)(2)], for fiscal years 2001 and 2002, the members of the Board of Trustees of the Valles Caldera Trust may receive, upon request, compensation for each day (including travel time) that they are engaged in the performance of the functions of the Board. Compensation shall not exceed the daily equivalent of the annual rate in effect for members of the Senior Executive Service at the ES-1 level, and shall be in addition to any reimbursement for travel, subsistence and other necessary expenses incurred by them in the performance of their duties. Members of the Board who are officers or employees of the United States shall not receive any additional compensation by reason of service on the Board”.

**§ 698v-6. Resource management**

**(a) Assumption of management**

The Trust shall assume all authority provided by sections 698v to 698v-10 of this title to manage the Preserve upon a determination by the Secretary, which to the maximum extent practicable shall be made within 60 days after the appointment of the Board, that—

(1) the Board is duly appointed, and able to conduct business; and

(2) provision has been made for essential management services.

**(b) Management responsibilities**

Upon assumption of management of the Preserve under subsection (a) of this section, the Trust shall manage the land and resources of the

Preserve and the use thereof including, but not limited to such activities as—

- (1) administration of the operations of the Preserve;
- (2) preservation and development of the land and resources of the Preserve;
- (3) interpretation of the Preserve and its history for the public;
- (4) management of public use and occupancy of the Preserve; and
- (5) maintenance, rehabilitation, repair, and improvement of property within the Preserve.

**(c) Authorities**

**(1) In general**

The Trust shall develop programs and activities at the Preserve, and shall have the authority to negotiate directly and enter into such agreements, leases, contracts and other arrangements with any person, firm, association, organization, corporation or governmental entity, including without limitation, entities of Federal, State, and local governments, and consultation with Indian tribes and Pueblos, as are necessary and appropriate to carry out its authorized activities or fulfill the purposes of sections 698v to 698v-10 of this title. Any such agreements may be entered into without regard to section 1302 of title 40.

**(2) Procedures**

The Trust shall establish procedures for entering into lease agreements and other agreements for the use and occupancy of facilities of the Preserve. The procedures shall ensure reasonable competition, and set guidelines for determining reasonable fees, terms, and conditions for such agreements.

**(3) Limitations**

**(A) In general**

The Trust may not dispose of any real property in, or convey any water rights appurtenant to the Preserve.

**(B) Maximum duration**

The Trust may not convey any easement, or enter into any contract, lease, or other agreement related to use and occupancy of property within the Preserve for a period greater than 10 years.

**(C) Termination**

The easement, contract, lease, or other agreement shall provide that, upon termination of the Trust, such easement, contract, lease or agreement is terminated.

**(D) Exclusions**

For the purposes of this paragraph, the disposal of real property does not include the sale or other disposal of forage, forest products, or marketable renewable resources.

**(4) Application of procurement laws**

**(A) In general**

Notwithstanding any other provision of law, Federal laws and regulations governing procurement by Federal agencies shall not apply to the Trust, with the exception of laws and regulations related to Federal Gov-

ernment contracts governing health and safety requirements, wage rates, and civil rights.

**(B) Procedures**

The Trust, in consultation with the Administrator of Federal Procurement Policy, Office of Management and Budget, shall establish and adopt procedures applicable to the Trust's procurement of goods and services, including the award of contracts on the basis of contractor qualifications, price, commercially reasonable buying practices, and reasonable competition.

**(d) Management program**

Within two years after assumption of management responsibilities for the Preserve, the Trust shall, in accordance with subsection (f) of this section, develop a comprehensive program for the management of lands, resources, and facilities within the Preserve to carry out the purposes under section 698v-3(b) of this title. To the extent consistent with such purposes, such program shall provide for—

(1) operation of the Preserve as a working ranch, consistent with paragraphs (2) through (4);

(2) the protection and preservation of the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural and recreational values of the Preserve;

(3) multiple use and sustained yield of renewable resources within the Preserve;

(4) public use of and access to the Preserve for recreation;

(5) renewable resource utilization and management alternatives that, to the extent practicable—

(A) benefit local communities and small businesses;

(B) enhance coordination of management objectives with those on surrounding National Forest System land; and

(C) provide cost savings to the Trust through the exchange of services, including but not limited to labor and maintenance of facilities, for resources or services provided by the Trust; and

(6) optimizing the generation of income based on existing market conditions, to the extent that it does not unreasonably diminish the long-term scenic and natural values of the area, or the multiple use and sustained yield capability of the land.

**(e) Public use and recreation**

**(1) In general**

The Trust shall give thorough consideration to the provision of appropriate opportunities for public use and recreation that are consistent with the other purposes under section 698v-3(b) of this title. The Trust is expressly authorized to construct and upgrade roads and bridges, and provide other facilities for activities including, but not limited to camping and picnicking, hiking, and cross country skiing. Roads, trails, bridges, and recreational facilities constructed within the Preserve shall meet public safety standards applicable to units of the National Forest System and the State of New Mexico.

**(2) Fees**

Notwithstanding any other provision of law, the Trust is authorized to assess reasonable fees for admission to, and the use and occupancy of, the Preserve: *Provided*, That admission fees and any fees assessed for recreational activities shall be implemented only after public notice and a period of not less than 60 days for public comment.

**(3) Public access**

Upon the acquisition of the Baca ranch under section 698v-2(a) of this title, and after an interim planning period of no more than two years, the public shall have reasonable access to the Preserve for recreation purposes. The Secretary, prior to assumption of management of the Preserve by the Trust, and the Trust thereafter, may reasonably limit the number and types of recreational admissions to the Preserve, or any part thereof, based on the capability of the land, resources, and facilities. The use of reservation or lottery systems is expressly authorized to implement this paragraph.

**(f) Applicable laws****(1) In general**

The Trust, and the Secretary in accordance with section 698v-7(b) of this title, shall administer the Preserve in conformity with sections 698v to 698v-10 of this title and all laws pertaining to the National Forest System, except the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600 et seq.).

**(2) Environmental laws**

The Trust shall be deemed a Federal agency for the purposes of compliance with Federal environmental laws.

**(3) Criminal laws**

All criminal laws relating to Federal property shall apply to the same extent as on adjacent units of the National Forest System.

**(4) Reports on applicable rules and regulations**

The Trust may submit to the Secretary and the Committees of Congress a compilation of applicable rules and regulations which in the view of the Trust are inappropriate, incompatible with sections 698v to 698v-10 of this title, or unduly burdensome.

**(5) Consultation with tribes and Pueblos**

The Trust is authorized and directed to cooperate and consult with Indian tribes and Pueblos on management policies and practices for the Preserve which may affect them. The Trust is authorized to allow the use of lands within the Preserve for religious and cultural uses by Native Americans and, in so doing, may set aside places and times of exclusive use consistent with the American Indian Religious Freedom Act [42 U.S.C. 1996, 1996a] and other applicable statutes.

**(6) No administrative appeal**

The administrative appeals regulations of the Secretary shall not apply to activities of the Trust and decisions of the Board.

**(g) Law enforcement and fire management****(1) Law enforcement****(A) In general**

The Secretary shall provide law enforcement services under a cooperative agreement with the Trust to the extent generally authorized in other units of the National Forest System.

**(B) Federal agency**

The Trust shall be deemed a Federal agency for purposes of the law enforcement authorities of the Secretary (within the meaning of section 559g of this title).

**(2)<sup>1</sup> Fire management****(A) Non-reimbursable services****(i) Development of plan**

The Secretary shall, in consultation with the Trust, develop a plan to carry out fire preparedness, suppression, and emergency rehabilitation services on the Preserve.

**(ii) Consistency with management program**

The plan shall be consistent with the management program developed pursuant to subsection (d) of this section.

**(iii) Cooperative agreement**

To the extent generally authorized at other units of the National Forest System, the Secretary shall provide the services to be carried out pursuant to the plan under a cooperative agreement entered into between the Secretary and the Trust.

**(B) Reimbursable services**

To the extent generally authorized at other units of the National Forest System, the Secretary may provide presuppression and nonemergency rehabilitation and restoration services for the Trust at any time on a reimbursable basis.

**(2)<sup>1</sup> Fire management****(A) Non-reimbursable services****(i) Development of plan**

Subject to the availability of appropriations under section 698v-9(a) of this title, the Secretary shall, in consultation with the Trust, develop a plan to carry out fire preparedness, suppression, and emergency rehabilitation services on the Preserve.

**(ii) Consistency with management program**

The plan shall be consistent with the management program developed pursuant to subsection (d) of this section.

**(iii) Cooperative agreement**

To the extent generally authorized at other units of the National Forest System, the Secretary shall provide the services to be carried out pursuant to the plan under a cooperative agreement entered into between the Secretary and the Trust.

**(B) Reimbursable services**

To the extent generally authorized at other units of the National Forest System

<sup>1</sup> So in original. Two pars. (2) have been enacted.

and subject to the availability of appropriations under section 698v-9(a) of this title, the Secretary shall provide presuppression and nonemergency rehabilitation and restoration services for the Trust at any time on a reimbursable basis.

(Pub. L. 106-248, title I, §108, July 25, 2000, 114 Stat. 607; Pub. L. 109-54, title IV, §432(a), Aug. 2, 2005, 119 Stat. 556; Pub. L. 109-132, §4, Dec. 20, 2005, 119 Stat. 2571.)

#### REFERENCES IN TEXT

The Forest and Rangeland Renewable Resources Planning Act of 1974, referred to in subsec. (f)(1), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, as amended, which is classified generally to subchapter I (§1600 et seq.) of chapter 36 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of this title and Tables.

The American Indian Religious Freedom Act, referred to in subsec. (f)(5), is Pub. L. 95-341, Aug. 11, 1978, 92 Stat. 469, as amended, which is classified to sections 1996 and 1996a of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of Title 42 and Tables.

#### CODIFICATION

“Section 1302 of title 40” substituted in subsec. (c)(1) for “section 321 of the Act of June 30, 1932 (40 U.S.C. 303b)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

#### AMENDMENTS

2005—Subsec. (c)(3). Pub. L. 109-132, §4(a), designated existing provisions as subpars. (A) to (C), inserted subpar. headings, in subpar. (C), substituted “The easement” for “Any such easement”, and added subpar. (D).

Subsec. (g). Pub. L. 109-54, §432(a)(3), and Pub. L. 109-132, §4(b)(3), which both directed amendment of subsec. (g) by substituting slightly different pars. (2) for “At the request of the Trust, the Secretary may provide fire presuppression, fire suppression, and rehabilitation services: *Provided*, That the Trust shall reimburse the Secretary for salaries and expenses of fire management personnel, commensurate with services provided.” at end, were executed by adding the par. (2) from Pub. L. 109-132 first and the par. (2) from Pub. L. 109-54 second.

Pub. L. 109-54, §432(a)(1), (2), and Pub. L. 109-132, §4(b)(1), (2), amended subsec. (g) identically inserting par. (1) designation and heading at beginning of subsec., subpar. (A) designation and heading at beginning of first sentence, and subpar. (B) designation and heading at beginning of second sentence.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-54, title IV, §432(b), Aug. 2, 2005, 119 Stat. 557, provided that: “The amendments made by subsection (a) [amending this section] take effect as of January 1, 2005.”

### § 698v-7. Authorities of the Secretary

#### (a) In general

Notwithstanding the assumption of management of the Preserve by the Trust, the Secretary is authorized to—

(1) issue any rights-of-way, as defined in the Federal Land Policy and Management Act of 1976 [43 U.S.C. 1701 et seq.], of over 10 years duration, in cooperation with the Trust, including, but not limited to, road and utility rights-of-way, and communication sites;

(2) issue orders under and enforce prohibitions generally applicable on other units of

the National Forest System, in cooperation with the Trust;

(3) exercise the authorities of the Secretary under the Wild and Scenic Rivers Act (16 U.S.C. 1278, et seq.) and the Federal Power Act (16 U.S.C. 797, et seq.), in cooperation with the Trust;

(4) acquire the mineral rights referred to in section 698v-2(e) of this title;

(5) provide law enforcement and fire management services under section 698v-6(g) of this title;

(6) at the request of the Trust, exchange land or interests in land within the Preserve under laws generally applicable to other units of the National Forest System, or otherwise dispose of land or interests in land within the Preserve under sections 521c through 521i of this title;

(7) in consultation with the Trust, refer civil and criminal cases pertaining to the Preserve to the Department of Justice for prosecution;

(8) retain title to and control over fossils and archaeological artifacts found within the Preserve;

(9) at the request of the Trust, construct and operate a visitors' center in or near the Preserve, subject to the availability of appropriated funds;

(10) conduct the assessment of the Trust's performance, and, if the Secretary determines it necessary, recommend to Congress the termination of the Trust, under section 698v-8(b)(2) of this title; and

(11) conduct such other activities for which express authorization is provided to the Secretary by sections 698v to 698v-10 of this title.

#### (b) Interim management

##### (1) In general

The Secretary shall manage the Preserve in accordance with sections 698v to 698v-10 of this title during the interim period from the date of acquisition of the Baca ranch under section 698v-2(a) of this title to the date of assumption of management of the Preserve by the Trust under section 698v-6 of this title. The Secretary may enter into any agreement, lease, contract, or other arrangement on the same basis as the Trust under section 698v-6(c)(1) of this title: *Provided*, That any agreement, lease, contract, or other arrangement entered into by the Secretary shall not exceed two years in duration unless expressly extended by the Trust upon its assumption of management of the Preserve.

##### (2) Use of the fund

All monies received by the Secretary from the management of the Preserve during the interim period under paragraph (1) shall be deposited into the “Valles Caldera Fund” established under section 698v-4(h)(2) of this title, and such monies in the fund shall be available to the Secretary, without further appropriation, for the purpose of managing the Preserve in accordance with the responsibilities and authorities provided to the Trust under section 698v-6 of this title.

#### (c) Secretarial authority

The Secretary retains the authority to suspend any decision of the Board with respect to