AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 439

108TH CONGRESS
2d Session

SENATE

REPORT
108–229

ALBUQUERQUE BIOLOGICAL PARK TITLE CLARIFICATION ACT

MARCH 9, 2004.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 213]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 213) to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Beginning on page 1, strike line 6 and all that follows through page 2, line 24, and insert the following:

"SEC. 2. PURPOSE.

"The purpose of this Act is to direct".

PURPOSE

The purpose of S. 213 is to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes.

BACKGROUND AND NEED

The bill directs the Secretary to issue a quitclaim deed conveying any right, title, and interest that the United States may have in the two properties to the city of Albuquerque for no additional consideration. These properties are key to the city's plans to develop a Biological Park to serve as an environmental education center for its citizens. In pursuit of the project, the city, in 1997, purchased two properties from the Middle Rio Grande Conservancy District (MRGCD) for $3,875,000. At the time, it was thought that the prop-

erties were only subject to an easement interest held by the U.S. Bureau of Reclamation.

In the year 2000, the city's plan was interrupted when the U.S. Bureau of Reclamation claimed it had actually acquired ownership of all of MRGCD's property that is associated with the Middle Rio Grande Project. Reclamation's assertion called into question the validity of the 1997 transaction between the city and MRGCD. Both MRGCD and the city dispute the United States' claim of ownership. This legislation would resolve the title dispute as it applies only to these two parcels of land. Reclamation has determined that the two properties are surplus to the needs of the Middle Rio Grande project.

LEGISLATIVE HISTORY

S. 213 was introduced on January 23, 2003 by Senators Bingaman and Domenici. The Water and Power Subcommittee held a hearing on S. 213 on September 23, 2003. S. Hrg. 108–211. At the business meeting on February 11, 2004, the Committee on Energy and Natural Resources ordered S. 213, with an amendment, favorably reported.

During the 107th Congress, a similar measure, S. 2696, was introduced by Senator Bingaman on June 27, 2002. The Subcommittee on Water and Power held a hearing on S. 2696 on July 31, 2002. S. Hrg. 107–853. S. 2696 was reported by the Committee and passed the Senate by unanimous consent on November 19, 2003.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on February 11, 2004, by a unanimous vote of a quorum present, recommends that the Senate pass S. 213, if amended, as described herein.

The rollcall vote on reporting the measure was 23 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Domenici	
Mr. Nickles	
Mr. Craig	
Mr. Campbell*	
Mr. Thomas	
Mr. Alexander	
Ms. Murkowski	
Mr. Talent	
Mr. Burns	
Mr. Smith*	
Mr. Bunning	
Mr. Kyl*	
Mr. Bingaman	
Mr. Akaka	
Mr. Dorgan*	
Mr. Graham*	
Mr. Wyden*	
Mr. Johnson*	
Ms. Landrieu*	
Mr. Bayh*	
Mrs. Feinstein*	
Mr. Schumer*	
Ms. Cantwell	

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During consideration of S. 213, the Committee adopted an amendment striking the findings section from the bill to address concerns raised by the Administration during the September 23, 2003 Water and Power Subcommittee hearing.

SECTION-BY-SECTION ANALYSIS

Section 1 states the short title.

Section 2 states the purpose of the bill.

Section 3 defines key terms used in the Act.

Section 4 (a) directs the Secretary of the Interior to issue a quitclaim deed to the two properties to the City of Albuquerque.

Subsection (b) states that the Secretary should convey title as soon as practicable after the date of enactment and in accordance with all applicable law.

Subsection (c) states that the city is not required to pay any additional costs to the United States for the value of the two properties.

Section 5 (a) states that nothing in this Act shall be construed to affect any right, title, or interest in and to any other land associated with the Middle Rio Grande Project.

Subsection (b) states that nothing in this Act shall be construed to affect or otherwise interfere with ongoing litigation, specifically No. CV 99–1320 JP/RLP–ACE, entitled *Rio Grande Silvery Minnow* v. *John W. Keys, III*.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 24, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 213, the Albuquerque Biological Park Title Clarification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 213—Albuquerque Biological Park Title Clarification Act

CBO estimates that implementing S. 213 would have no significant impact on the federal budget. This bill would direct the Secretary of the Interior to issue a quitclaim deed conveying all right, title, and interest of the federal government in two pieces of property in New Mexico, to the city of Albuquerque, New Mexico. The properties are known as Tingley Beach and San Gabriel Park.

The federal government currently does not generate any income from these two pieces of property, nor does it spend any funds to operate or maintain them. Tingley Beach and San Gabriel Park are part of a larger reclamation project called the Middle Rio Grande Project which is operated primarily by the Middle Rio Grande Conservancy District. The federal government and the district are currently involved in a lawsuit regarding title to all of the lands in the Middle Rio Grande Project. S. 213 would settle the title of the two pieces of property by conveying them to the city of Albuquerque. The government would not receive any compensation from the city for these lands.

Enacting S. 213 would not affect direct spending or revenues. This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Enacting this legislation would benefit the city of Albuquerque.

The CBO staff contact for this estimate is Julie Middleton. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 213. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 213, as ordered reported.

EXECUTIVE COMMUNICATIONS

The Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 213 on February 6, 2003. These reports had not been received at the time the report on S. 213 was filed. The testimony provided by the Department of the Interior at the subcommittee hearing follows:

STATEMENT OF MICHAEL GABALDON, DIRECTOR, POLICY, MANAGEMENT, AND TECHNICAL SERVICES, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF INTERIOR

My name is Michael Gabaldon, Director, Policy, Management, and Technical Services of the Bureau of Reclamation (Reclamation). I am pleased to be here today to present the views of the Department regarding S. 213, which would clear title to real property in New Mexico associated with the Middle Rio Grande Project and for other purposes.

The Department has several concerns with S. 213 as drafted, primarily that the dispute over ownership of the San Gabriel and Tingley Beach parcel currently implicates a lawsuit pending before the United States District Court for the District of New Mexico. In addition, the Department has concerns about how the transfer of property that would be effected by this legislation may affect other property rights in the litigation related to this matter.

The Department is not averse to transferring ownership to another entity, but all parties must agree on the venue and all applicable federal laws must be met in the process. The Department believes the prudent course of action is to allow the legal system to render its decision before instituting a legislative remedy. Therefore, the Department cannot support S. 213 at this time.

With respect to the City of Albuquerque's desires to make improvements on this property, Reclamation has provided a license to the City which allows the use of those lands as proposed in the City's improvement plans. In addition to the license, Reclamation has met directly with members of the City Planning Department to facilitate the review of the City's proposed improvements for Tingley Beach and worked with staff to assist them with State Historical Preservation Office review.

The Middle Rio Grande Conservancy district (District) was created by the Conservancy Act of 1923 to improve the economy of the Middle Valley by lowering the water table and providing flood protection and water for irrigation. In the 1940's, the District requested that Reclamation take over the operation of the District and retire its outstanding bonds. In September 1951, the District and Reclamation

entered into a 50-year repayment contract in the amount of $15,708,567. A key component of the contract is Article 29, which states:

"Title to all works constructed by the United States under this contract and to all such works as are conveyed to the United States by the provision hereof, shall as provided in Article 26, be and continue to be vested in the name of the United States until otherwise provided for by Congress, notwithstanding the transfer hereafter of any such works to the District for operation and maintenance."

Therefore, the Department is also concerned with some of the findings in Section 2. Contrary to the implication of Section 2(a)(3) of the bill, the U.S. did not claim title to Tingley Beach and San Gabriel Park for the first time in 2000. Rather, until recently, the U.S. and MRGCD had agreed for decades that title to all properties necessary for the Middle Rio Grande Project had been conveyed to the United States. For example, both the United States and MRGCD filed several briefs with the U.S. Supreme Court in the 1950's stating unequivocally that title had been transferred to the U.S., and in the 1970's MRGCD got a nuisance case involving all MRP ditches and canals in the Albuquerque Area dismissed on the basis that these properties had been conveyed to the United States.

Furthermore, in 1998 testimony before a committee of the New Mexico Legislature, the District acknowledged the need and desire to seek reconveyance after its debt was repaid.

Section 5 of the bill states that "nothing in this act shall be construed to affect or otherwise interfere with any position set forth by any party in the lawsuit . . ." It is unclear how the passage of this legislation could not affect the lawsuit given that the ownership of Middle Rio Grande Project properties is a central question in the quiet title claim of the litigation.

Despite this disagreement, the District has been a good partner on this project and has retired its debt to the United States. While we are always open to working with all interested parties to find acceptable solutions, we believe that it is best to wait on the court's decision on the quiet title claims.

Mr. Chairman, that concludes my remarks and I would be happy to respond to any questions the Committee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 213, as ordered reported.

○