

FOR THE RELIEF OF GLOBAL EXPLORATION AND DEVELOPMENT CORPORATION, KERR-MCGEE CORPORATION, AND KERR-MCGEE CHEMICAL CORPORATION

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JULY 31, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed  
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Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1211]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1211) for the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical Corporation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SATISFACTION OF CLAIMS AGAINST THE UNITED STATES.**

(a) PAYMENT OF CLAIMS.—The Secretary of the Treasury shall pay, out of money not otherwise appropriated—

(1) to the Global Exploration and Development Corporation, a Florida corporation incorporated in Delaware, \$9,500,000;

(2) to Kerr-McGee Corporation, an Oklahoma corporation incorporated in Delaware, \$10,000,000; and

(3) to Kerr-McGee Chemical Corporation, an Oklahoma corporation incorporated in Delaware, \$0.

(b) CONDITION OF PAYMENT.—(1) The payment authorized by subsection (a)(1) is in settlement and compromise of all claims of Global Exploration and Development Corporation, as described in the recommendations of the Court of Federal Claims set forth in 36 Fed. Cl. 776.

(2) The payments authorized by subsections (a)(2) and (a)(3) are in settlement and compromise of all claims of Kerr-McGee Corporation and Kerr-McGee Chemical Corporation, as described in the recommendations of the Court of Federal Claims set forth in 36 Fed. Cl. 776.

**SEC. 2. LIMITATION ON FEES.**

No more than 15 percent of the sums authorized to be paid by section 1 shall be paid to or received by any agent or attorney for services rendered in connection with the recovery of such sums. Any person violating this section shall be fined not more than \$1,000.

**PURPOSE AND SUMMARY**

This bill will pay \$10,000,000 and \$9,500,000, respectively, to Kerr-McGee Corporation and Global Exploration and Development Corporation based on the recommendation made by the Court of Claims as to the amounts equitably due those companies. This recommendation is made by the Court in response to a congressional reference case concerning a phosphate prospecting permit dispute in the 1960's.

**BACKGROUND AND NEED FOR THE LEGISLATION**

During the 98th Congress, legislation was enacted that prohibited the Secretary of the Interior from issuing phosphate mining leases for the Osceola National Forest unless a joint resolution allowing such a lease is approved by the Congress. Prior to the legislation enacted in the 98th Congress, the Secretary of the Interior has issued a number of prospecting permits between 1963 and 1968 under the provisions of the Mineral Leasing Act of 1920. Under the provisions of the Mineral Leasing Act, if a prospector for phosphate is successful he is entitled to a lease to mine the phosphate.

The claimants were among those who were successful in their prospecting efforts, but whose subsequent applications for mining leases were denied by the Secretary of the Interior.

In 1983, the Secretary of the Interior in denying the applications determined that the applicants for phosphate mining leases could not show a reasonable likelihood of success in developing a valuable mine since there was no technology currently licensed by the State of Florida that provided reasonably successful reclamation of the mined lands to the standards required by the Forest Service.

Over the next several years, the claimants were unsuccessful in obtaining relief from the Secretary's decision in the courts. The reason for their lack of success was the enactment in 1983 of the Florida Wilderness Act. That act stopped the issuance of phosphate mining leases in the Osceola National Forest. Thus, it also mooted the rights the claimants might have had to either force the Secretary to reopen his decision denying the leases or to demand compensation for erroneous denial of the leases.

On the premises that their "entitlement to preference right mining leases constitutes a property right" and the United States action "constitutes a taking of property", the claimants brought an action in the Claims Court under the Tucker Act. The U.S. argued that the Claims Court did not have jurisdiction to review the Secretary's decisions rejecting the existence of a property interest. As a result, the claimants were unable to state sufficient taking claims. Without deciding the matter, the Claims Court expressed doubt as to its jurisdiction, however it also expressed its view that equity required that a forum be provided in which the merits of the asserted claims could be tested.

In 1990, the parties filed a joint status report with the Claims Court agreeing that any action should be stayed pending the claim-

ants' request for congressional reference and that, upon such reference, the claimants' cases should be dismissed with prejudice.

In 1991, the Justice Department offered no objection to H. Res. 29 which referred H.R. 477, a bill to provide compensation to the claimants, to the Claims Court for a decision as to whether it was an equitable claim, if the resolution was "amended so that the referral becomes effective only upon the dismissal with prejudice of the Tucker Act cases currently pending before the Claims . . . These issues should appear before the Claims Court only once, not once on the merits of the takings issue and once pursuant to the congressional reference". The House passed the resolution which sent the case to the Claims Court.

Following the evidentiary hearing but before a decision by the Court, the claimants, the Department of Justice and the Department of the Interior presented a settlement agreement to the Court; the Court approved that settlement; and reported to the Congress that the amounts equitably due from the U.S. to Kerr-McGee and Global are, respectively \$10,000,000 and \$9,500,000. As part of the settlement, Kerr-McGee will return its \$10,000,000 to the government by paying it to the Hazardous Waste Superfund as a partial settlement of litigation involving a Superfund cleanup site in Louisiana.

An amendment was made to the bill at the request of the Department of Justice to clarify that the bill would implement the settlement of the disputed claims and would not be an admission of fault.

#### COMMITTEE CONSIDERATION

On June 3, 1997, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 1211, as amended, by voice vote, a quorum being present.

On July 23, 1997, the Committee on the Judiciary met in open session and ordered favorably reported the bill H.R. 1211, with amendment, by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI applies because this legislation does provide new budgetary authority or increased tax expenditures. See Congressional Budget Office letter.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1211, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 24, 1997.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1211, a bill for the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical Corporation, as ordered reported by the House Committee on the Judiciary on July 23, 1997. The bill would require the Secretary of the Treasury to make two payments totaling \$19.5 million. We expect these outlays would occur in fiscal year 1998. Because the bill would increase direct spending, pay-as-you-go procedures would apply.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in the First Amendment of the Constitution.

## AGENCY VIEWS

The comments of the Department of Justice on H.R. 1211 are as follows:

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
*Washington, DC, June 2, 1997.*

Hon. LAMAR S. SMITH,  
*Chairman, Subcommittee on Immigration and Claims, Committee  
on the Judiciary, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for the opportunity to comment on H.R. 1211, a bill "for the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical Corporation." We have no objection to the relief H.R. 1211 would provide if the bill is modified to reflect that it would implement the settlement of disputed claims and would not be an admission of fault.

H.R. 1211 is intended to resolve litigation between the Federal government and Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical Corporation. This litigation was based upon the corporations' allegations that

the United States improperly failed to grant or approve leases or to allow phosphate mining by Global and the Kerr-McGee corporations on the Osceola National Forest.

After a six-week trial before the Court of Federal Claims but before the court could issue its opinion, the parties agree to a joint stipulation of settlement and submitted this stipulation to the court. On November 18, 1996, the court published its recommendation to Congress that the disputes be settled for the amounts set forth in H.R. 1211. *See* 36 Fed. Cl. 776.

The court's recommendation to Congress was not based upon a finding of any wrongdoing by the United States in its dealings with Global or the Kerr-McGee Corporations. Rather, the court's recommendation was based upon and limited to a finding that an equitable claim against the United States existed and that, it was in the best interest of all parties to settle this claim for the amounts set forth in the bill.

While we generally have no objection to the bill, we believe that the language of subsection 1(b) could be interpreted as an admission or finding of liability on the part of the United States. Therefore, we recommend substituting the current language of subsection 1(b) with the following:

(b) CONDITION OF PAYMENT.—(1) The payment authorized by subsection (a)(1) shall be in settlement and compromise of all claims of Global Exploration and Development Corporation, as more fully discussed in the Court of Federal Claims' recommendation to Congress set forth in 36 Fed. Cl. 776.

(2) The payment authorized by subsection (a)(2) shall be in settlement and compromise of all claims of Kerr-McGee Corporation and Kerr-McGee Chemical Corporation, as more fully discussed in the Court of Federal Claims' recommendation to Congress as set forth in 36 Fed. Cl. 776.

Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ANDREW FOIS,  
*Assistant Attorney General.*

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