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### ALBUQUERQUE BIOLOGICAL PARK TITLE CLARIFICATION ACT

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JUNE 16, 2008.—Ordered to be printed

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

### R E P O R T

[To accompany S. 2370]

The Committee on Energy and Natural Resources, to which was referred the Act (S. 2370) 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 without amendment and recommends that the Act do pass.

#### PURPOSE OF THE MEASURE

The purpose of S. 2370 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 Albuquerque Biological Park project has been in the works since 1987 when the City began to develop an aquarium and botanic garden along the banks of the Rio Grande. 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 properties were only subject to an easement interest held by the U.S. Bureau of Reclamation. These properties are important to the city's plans to develop the Park which will serve as an environmental education center for its citizens.

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 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 to these two parcels of land, as well as other lands in the area. Reclamation has determined that the two primary properties at issue are surplus to the needs of the Middle Rio Grande project.

#### LEGISLATIVE HISTORY

S. 2370 was introduced by Senator Bingaman for himself and Senator Domenici on November 15, 2007, and referred to the Committee on Energy and Natural Resources. The Water and Power Subcommittee held a hearing on S. 2370 on February 28, 2008. At its business meeting on May 7, 2008, the Committee on Energy and Natural Resources ordered S. 2370 favorably reported.

A similar measure was reported by the Committee on Energy and Natural Resources and passed the Senate during the 107th, 108th, and 109th Congresses (S. 2696; S. 213; and S. 229 respectively).

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 7, 2008, by voice vote of a quorum present, recommends that the Senate pass S. 2370.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title of the Act.

*Section 2* states the purpose of the Act.

*Section 3* defines a number of key terms used in the Act.

*Section 4(a)* directs the Secretary of the Interior to issue a quitclaim deed to the City of Albuquerque for three sets of property.

*Section 4(b)* states that the Secretary should convey title as soon as practicable after the date of enactment and in accordance with all applicable law.

*Section 4(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 the Act shall be construed to affect any right, title, or interest in and to any other land associated with the Middle Rio Grande Project.

*Section 5(b)* states that nothing in this Act shall be construed to affect or otherwise interfere with the identified litigation.

#### COST AND BUDGETARY CONSIDERATIONS

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

##### *S. 2370—Albuquerque Biological Park Title Clarification Act*

S. 2370 would direct the Secretary of the Interior to issue a quitclaim deed conveying all right, title, and interest of the federal government in three properties to the city of Albuquerque, New Mexico. The properties are known as the BioPark parcels, Tingley Beach, and San Gabriel Park.

CBO estimates that implementing the legislation would have no significant impact on the federal budget. The federal government currently does not generate any income from these properties, nor

does it spend any funds to operate or maintain them. Further, the government would not receive any compensation from the city for these lands. The properties are part of a larger reclamation project called the Middle Rio Grande Project, which is operated primarily by the Middle Rio Grande Conservancy District. Enacting S. 2370 would not affect direct spending or revenues.

S. 2370 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 by giving it clear title to the land.

The CBO staff contact for this estimate is Tyler Kruzich. This estimate was approved by Theresa Gullo, 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. 2370. 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. 2370, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 2370, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined by rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources hearing on February 28, 2008 on S. 2370 follows:

#### STATEMENT OF ROBERT J. QUINT, DIRECTOR OF OPERATIONS, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Subcommittee, I am Robert J. Quint, Director of Operations, Bureau of Reclamation. Thank you for the opportunity to appear today to present the Administration's views on S. 2370, which would transfer title to real property in New Mexico associated with the Middle Rio Grande Project and for other purposes.

The Department is not opposed to the concept of transferring ownership of the lands described in this legislation to another entity. However, given current circumstances including ongoing litigation and lack of any excess-lands determination or appraisal of the lands identified for

transfer, the Department feels that this proposed legislation is premature.

A history of the ownership of this property will help explain the circumstances leading to the introduction of this bill. The Bureau of Reclamation acquired interests in Middle Rio Grande Project works through a conveyance document granted by the Middle Rio Grande Conservancy District (MRGCD) on November 24, 1953. The lands involved with the proposed legislation were included in that conveyance, and the United States has not relinquished its interest in those specific parcels. On November 25, 1997, MRGCD and the City of Albuquerque (City) entered into a real estate sales agreement through which the MRGCD sold the City approximately 65 acres of land associated with San Gabriel Park and Tingley Beach for \$3,875,000.

Article 7 of the sales agreement recognizes that the United States holds an interest in the properties, and MRGCD agreed to obtain a release of this interest from the United States. The sale was completed but the United States has never executed any release.

The Department has been a defendant in litigation that sought to quiet title to properties associated with the Middle Rio Grande Project. While the litigation did not specifically name the properties associated with Tingley Beach or San Gabriel Biological Park, the U.S. District Court for the District of New Mexico found in July 2005 that title to all Middle Rio Grande project properties is vested in the United States. This decision is now being considered on appeal to the 10th Circuit.

In light of the litigation and the uncertainty that surrounded the title question before the District court's recent decision, the City of Albuquerque initiated improvements on this property under a License Agreement with Reclamation. The City has developed and improved San Gabriel Park and has created fishing ponds, a snack bar and other recreational facilities at Tingley Beach. They have also installed a small train which runs between the Albuquerque Biological Park (BioPark) and Tingley Beach. The BioPark has been fully developed by the city into an aquarium, botanic garden, a small farm and a refugium for the endangered Rio Grande silvery minnow.

The City of Albuquerque developed the Park and associated properties for public uses that benefit Albuquerque's citizens. The manner in which the City of Albuquerque obtained the property from the Middle Rio Grande Conservancy District was inconsistent with established procedures for conveying title to federal property to another party. Nevertheless, the Department does not believe this was the result of carelessness or neglect on the part of the City of Albuquerque, nor does the Department believe this was an intentional encumbrance of federal property.

The Department is reluctant to support transfers of title to federal property when those transfers circumvent existing procedures provided by generally applicable legislation. Federal policy generally requires that adequate consider-

ation be paid to the United States before title is transferred.

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. 2370, as ordered reported.

