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SENATE

REPORT
108–272

LEASE LOT CONVEYANCE ACT OF 2002

MAY 20, 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. 1791]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1791) to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes, having considered the same, reports favorably thereon without an amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

S. 1791 would amend the Lease Lot Conveyance Act of 2002 (Public Law 107–335) to provide that the amounts received by the United States under that Act shall be deposited in the Reclamation Fund and made immediately available to the applicable irrigation districts as net profits.

BACKGROUND AND NEED

The Lease Lot Conveyance Act of 2002 directs the Secretary of Interior to convey property comprising 403 cabin sites (located along the western portion of the reservoirs in Elephant Butte State Park and Caballo State Park, New Mexico) under the administrative jurisdiction of the Bureau of Reclamation to the Elephant Butte/Caballo Leaseholders Association, Inc., for fair market value. The act is vague with regard to the disposition of proceeds collected from the sale of the lands. The purpose of S. 1791 is to amend the Act to direct the Secretary of the Interior to deposit such proceeds into the Reclamation Fund for the benefit of the Elephant Butte Ir-

rigation District and El Paso County Water Improvement District #1.

LEGISLATIVE HISTORY

S. 1791 was introduced by Senators Domenici and Bingaman on October 28, 2003 and was referred to the Energy and Natural Resources Committee on October 28, 2003. The Subcommittee on Water and Power held a hearing on S. 1791 on March 25, 2004. The Committee on Energy and Natural Resources ordered the bill favorably reported on April 28, 2004.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in an open business session on April 28, 2004, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 1791.

SECTION-BY-SECTION ANALYSIS

Section 1 of S. 1791 amends section 4(b) of the Lease Lot Conveyance Act of 2002 (Public Law 107–335; 116 Stat. 2879) to provide that amounts received by the United States under the Act shall be deposited by the Secretary of the Interior in the Reclamation Fund on behalf of the Rio Grande Project and that amounts deposited shall be made immediately available to the applicable irrigation districts in accordance with section 4(1) of the Act of December 5, 1924 (commonly known as the Fact Finder's Act; 43 U.S.C. 501).

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 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. 1791, a bill to amend the Lease Lot Conveyance Act of 2002 to provide that amounts received by the United States under the act shall be deposited in the reclamation fund, and for other purposes.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1791—A bill to amend the Lease Lot Conveyance Act of 2002 to provide that amounts received by the United States under the Act shall be deposited in the reclamation fund, and for other purposes

Summary: S. 1791 would authorize the Secretary of the Interior to make proceeds from the sale of 403 cabin sites located in the Elephant Butte and Caballo State Parks in New Mexico available to the Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1. Under this bill, the districts would be able to use the proceeds from cabin site sales for annual project repayment costs, for annual operations and maintenance costs, and for any other purpose.

Enacting this bill would authorize the expenditure of receipts from the sale of certain cabin sites. Based on information from the Bureau of Reclamation, CBO estimates that the additional direct spending would amount to $1 million annually over the 2005–2014 period. Enacting the bill would not affect federal revenues.

S. 1791 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Enacting this legislation would benefit the affected irrigation districts in New Mexico.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1791 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING											
Estimated Budget Authority	0	1	1	1	1	1	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1	1	1	1	1	1

Basis of estimate: For this estimate, CBO assumes that S. 1791 will be enacted near the end of fiscal year 2004. Under this bill, the proceeds from the sale of the 403 cabin sites at Elephant Butte and Caballo State Parks in New Mexico would be made available to the Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1. When the sales are complete, proceeds are expected to amount to about $15 million. The districts would be able to use the proceeds, first, as a credit toward the annual repayment contract with the federal government, second, as a credit toward annual operations and maintenance costs for the Rio Grande Project, and, finally, for any other project purpose. Under current law, the proceeds from the sale of the cabin sites would be deposited into the Reclamation Fund and would not be available to the districts.

Currently, the districts do not have any outstanding repayment contracts. Together, the districts pay a total of $540,000 annually for operations and maintenance costs associated with the Rio Grande Project. For this estimate, CBO assumes that the Bureau of Reclamation would apply the proceeds from the sale of the cabin sites to the districts' annual operations and maintenance obligations. Based on information from the bureau, CBO estimates that

enacting this bill would result in additional direct spending of about $1 million annually over the 2005–2014 period.

Intergovernmental and private-sector impact: S. 1791 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Enacting this legislation would benefit the affected irrigation districts in New Mexico.

Estimate prepared by: Federal Costs: Julie Middleton. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Patrice Gordon.

Estimate 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. 1791. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant 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. 1791.

EXECUTIVE COMMUNICATIONS

On April 30, 2004, 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 views on S. 1791. These reports had not been received at the time the report on S. 1791 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Committee hearing follows:

STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairman and Members of the Subcommittee, I am John W. Keys, III, Commissioner of the U.S. Bureau of Reclamation (Reclamation). I am pleased to be here today to present the views of the Department of the Interior on S. 1791, a bill to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that act shall be deposited in the Reclamation Fund.

On December 16, 2002, the President signed into law the Lease Lot Conveyance Act of 2002 (P.L. 107–335) which provides for the conveyance of 403 lease lots at Elephant Butte and Caballo Reservoirs to the Elephant Butte/Caballo Leaseholders Association, Inc. (Association). Reclamation has been working closely with the Association to carry out the objectives of P.L. 107–335.

Madam Chairman, the Department cannot support S. 1791. In previous testimony on H.R. 706, the Lease Lot Conveyance Act of 2002, I spoke in opposition to a similar provision in that legislation which would have required the proceeds derived from the sale of the lots to "*be deposited in the Reclamation Fund on behalf of the Rio Grande Project and made immediately available to the subject Irrigation Districts under subsection I of the Fact Finders Act*." The bill was subsequently amended, remaining silent on the issue and leaving in place existing law as to the general disposition of the funds derived from the sale of the leased lots.

Existing law provides that the proceeds from the sale of lands withdrawn from the public domain be deposited as a general credit to the Reclamation Fund and that proceeds from the sale of acquired lands be deposited into the Reclamation Fund as a credit to the project for which those lands were acquired.

The proposed amendment would direct all funds, from both acquired lands and withdrawn public lands, to be deposited in the Reclamation Fund as a credit to the project and immediately made available to the irrigation districts. The Department believes the proceeds from the sale of the leased lots should be disposed of consistent with existing law.

In continuing litigation during the past 13 years, Reclamation has contended that these revenues, as well as other similar project revenues, are not of the types of revenues covered by Subsection 4(i) of the Fact Finder's Act. The 10th Circuit Court of Appeals has ruled that Subsection 4(i), as amended by the Haden-O'Mahoney amendment (43 U.S.C. §§ 391a–1, 392a), provides credits for revenues derived from only two specific sources: leasing of project grazing and farm lands; and the sale or use of town sites. Revenue from the sale of these lots does not derive from either of these specific sources, insomuch as the lease lots are being sold not leased, and "town sites" is a legal term of art applying only to town sites which were created under the Town Sites and Power Development Act of 1906 (34 Stat. 116; 43 U.S.C. § 561, et seq.). The Districts are not currently entitled to receive Subsection 4(i) benefits from any sources other than those two specific sources listed above. In addition to amending the Conveyance Act, Section 1(2)(B) of the proposed bill would amend Subsection 4(i) of the Fact Finders Act to provide these Districts with a unique benefit. We are concerned that the amendment would set a precedent and encourage other districts to seek benefits under the Fact Finders Act that are otherwise not provided.

Also important to this case is that a small portion of the lease lots are located on public land that was withdrawn from the public domain for the project by Reclamation. As such, the Districts have never paid anything toward acquisition cost for these lands. The remainder of the lots are located on lands acquired out of private ownership by Rec-

lamation for construction of the Project. Originally, the Districts' cost of purchasing these lands was included in the Districts' repayment obligation. However, in 1937 the Districts were relieved of their obligation to repay any portion of the cost of these acquired lands and the cost of constructing Elephant Butte Dam and Reservoir. All payments made by the Districts prior to that time were returned to them as credits toward their remaining repayment obligation. All costs of constructing Caballo Dam and Reservoir were deemed non-reimbursable by the Districts and charged to flood control. In light of this history, the proposed amendment would make available to the respective irrigation districts funds from the sale of lands to which they have no legal right, and where the federal government has borne all the associated costs.

In summary, while the Department supported the original Lease Lot Conveyance Act of 2002 as it was passed and signed into law, we cannot support passage of S. 1791 for the reasons stated above.

That concludes my testimony, Madam Chairman. I would be happy to answer any questions the Subcommittee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1791, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed in shown in roman):

LEASE LOT CONVEYANCE ACT OF 2002

P.L. 107–335 (116 Stat. 2878)

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lease Lot Conveyance Act of 2002".

* * * * * * *

SEC. 4. CONVEYANCE OF PROPERTIES.

(a) IN GENERAL.—The Secretary shall convey to the Purchaser in accordance with this Act, subject to valid existing rights, all right, title, and interest of the United States in and to the Properties and all appurtenances thereto, including specifically easements for

(1) vehicular access to each Property;

(2) drainage; and

(3) access to and the use of all ramps, retaining walls, and other improvements for which access is provided under the leases that apply to the Properties as of the date of the enactment of this Act.

(b) CONSIDERATION.—[As consideration]

(1) IN GENERAL.—As consideration for any conveyance under this section, the Secretary shall require the Purchaser to pay to the United States fair market value of the Properties.

(2) USE.—Amounts received under paragraph (1) shall be—

(A) deposited by the Secretary, on behalf of the Rio Grande Project, in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391); and

(B) made immediately available to the Irrigation Districts, to be credited in accordance with section 4(I) of the Act of December 5, 1924 (43 U.S.C. 501).

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