Calendar No. 960

100TH CONGRESS 2d Session | SENATE | REPORT 100-525

SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

SEPTEMBER 22 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

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

REPORT

[To accompany S. 252]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 252) to establish the San Pedro Riparian National Conservation Area, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 6, strike "dated July 1986, comprising approximately 48,707 acres." and insert "numbered AZ-040-02, dated January 1988, and consisting of approximately 56,431 acres.".

2. On page 3, line 20, strike all of subsection (c), and redesignate subsection (d) as (c).

3. On page 4, after line 9 insert a new subsection to read as follows:

> (d) WATER RIGHTS.—Congress reserves for the purposes of this reservation, a quantity of water sufficient to fulfill the purposes of the San Pedro Riparian National Conservation Area created by this Act. The priority date of such reserved rights shall be the date of enactment of this Act. Such rights shall be perfected in the ongoing general stream adjudication now pending in the Superior Court of the State of Arizona and to which the United States has been joined pursuant to the McCarran Amendment (43 U.S.C. 466).

19-010

FCSPRNCA0130

PURPOSE OF THE MEASURE

The purpose of S. 252 is to establish the San Pedro Riparian National Conservation Area in the State of Arizona.

BACKGROUND AND NEED

S. 252 would establish the San Pedro Riparian National Conservation Area, to be managed by the Bureau of Land Management, in order to protect the riparian area of the San Pedro River in Cochise County, Arizona, and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the affected public lands.

The San Pedro River represents a uniquely long stretch of desert riparian habitat in good condition and contains other significant attributes which enhance its importance as a public resource. The river is frequented by an outstanding diversity of wildlife, including more than 20 bird species. It serves as a corridor for the entrance of many Mexican species into the area, including raptors such as the gray hawk, Harris hawk, zone-tailed hawk, black hawk, and aplomado falcon, which are only rarely seen in the United States.

This area also includes more than 120 archeological and historic sites. These include important 11,000 year-old Paleo-Indian sites, Native American sites dating from 7,000 years ago to historic times, the 18th-century Presidio of Santa Cruz de Terrenate, the site of the Mexican War's Battle of the Bulls, and several 19th-century ghost towns and mill sites. These sites provide unique opportunities for interpretation as well as for research.

In March 1986, the Bureau of Land Management of the Department of the Interior acquired this area through exchange. The purpose of the exchange was, as stated by the Bureau at that time, "to place in public ownership high-value natural resources" of the area. This bill is intended to provide a mandate for the protection and enhancement of these resources and the other values of the area.

LEGISLATIVE HISTORY

S. 252 was introduced on January 6, 1987. The House companion, H.R. 568 passed the House on March 25, 1987. The Subcommittee on Public Lands, National Parks and Forests held hearings on both measures on April 30, 1987.

At the business meeting on Thursday, September 15, 1988, the Senate Committee on Energy and Natural Resources ordered S. 252, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 15, 1988, by a majority vote of a quorum present, recommends that the Senate pass S. 252 if amended, as described herein.

The rollcall vote on reporting the measure was 17 yeas, 1 nay, as follows:

FCSPRNCA0131

YEAS	NAYS
Mr. Johnston	Mr. Bradley*
Mr. Bumpers	
Mr. Ford*	
Mr. Melcher	
Mr. Bingaman*	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski*	
Mr. Nickles*	
Mr. Hecht	
Mr. Evans	

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During consideration of S. 252, the Committee adopted three amendments.

Additional acreage

Since S. 252 was introduced, the Bureau of Land Management has acquired additional acreage in the area of the San Pedro River. The Committee therefore added approximately 8,000 acres to the original proposal, which would bring the total acreage of the proposed conservation area from 48,707 acres to 56,431 acres.

Grazing

The Committee deleted language in the bill as introduced that would have directed the Secretary not to permit grazing in the conservation area for a period of 15 years. However, the Committee notes that none of the conservation area is currently leased for livestock grazing. The prior owners had leased some of the lands in the conservation area for livestock grazing, but all of those leases have now expired and the BLM has not renewed any of them. The Committee believes that this is appropriate, and further believes that no new grazing leases should be issued in the conservation area.

The continued absence of livestock in this area would significantly add to the scientific value of the conservation area by providing a large riparian area, for study, evaluation, and monitoring of the natural conditions without the influence of grazing by domestic livestock.

Water rights

The Committee also added a new subsection to the bill which asserted a reservation of water sufficient to fulfill the purposes of the San Pedro Riparian National Conservation Area.

FCSPRNCA0132

In making a determination to include language expressly reserving water for the San Pedro Riparian Area, the Committee has taken into account the hydrologic circumstances and water regime of this area. The San Pedro River originates in Mexico and flows north into the United States eventually joining the Gila River. Currently there are no upstream appropriators of surface water after the river enters the United States. The BLM has acquired the water rights to some 31 groundwater irrigation wells in this riparian area. The BLM has also applied for an instream flow right pursuant to Arizona State law. However, while instream flow rights have been granted under Arizona State law, such rights have never been tested in the courts as to their validity or scope. In addition, the San Pedro River is currently part of a general stream adjudication to which the United States has been joined pursuant to the provisions of the McCarran Amendment (43 U.S.C. 466).

Because of the bill sponsors' desire to establish strong Federal protections for the water resources of this area, the Committee believes it is appropriate in this circumstance to create an express Federal reserved water right for the purposes of this unique riparian conservation area. The amount of water reserved is that quantity which will maintain flows, including periodic bank full discharge and periodic overbank discharge, through the riparian zone, as well as support fish and fish reproduction, birds and wildlife, and maintain the esthetic and recreational values of the Riparian Conservation Area. Prior to asserting its reserved right, the BLM shall make a determination regarding the extent to which hydrologically connected groundwater is necessary to maintain the flows described above. The priority date of the reserved water right shall be the date of this Act.

The statutory language approved by the Committee directs the Secretary to perfect the reserved right created by this legislation in the ongoing general stream adjudication pursuant to the McCarran Amendment. The Committee notes that this language is included because there is an ongoing adjudication. It is not intended as a precedent or to in any way undermine the ability of the Federal Government to obtain or perfect water rights in appropriate State proceedings other than general stream adjudications.

As noted previously, currently before the State of Arizona are applications to appropriate instream flows for the San Pedro River and its riparian area. The Bureau of Land Management is expected to pursue permits and a certificate of water right under these applications. If granted, the priority date of the State acquired right should be earlier than the reserved right. Additionally, the Bureau may dedicate any water rights, acquired in the process of additional land acquisitions, to satisfy the purposes of the conservation area. Any change in the BLM rights acquired under State law will be subject to State regulations for change of use or place of use.

SECTION-BY-SECTION ANALYSIS

Section 1 establishes a San Pedro Riparian National Conservation Area of approximately 56,431 acres in southern Arizona, as depicted on a referenced map.

Section 2 deals with management of the conservation area. It has five subsections, as follows:

Subsection (a) provides that the conservation area shall be managed by the Secretary of the Interior to conserve, protect, and enhance its resources. Management is to be guided by the bill and (where not inconsistent with the bill) by the Federal Land Policy and Management Act of 1976.

Subsection (b) allows only such uses of the conservation area as will further the purposes of the area, restrict motorized vehicle use to designated roads except for emergency and administrative purposes, and allows the Secretary to limit visitation and use of the area to protect resources.

Subsection (c) withdraws the conservation area from disposition or entry under the public land, mining, mineral leasing or geothermal leasing laws.

Subsection (d) reserves water sufficient to fulfill the purposes of the San Pedro National Conservation Area.

Subsection (e) provides penalties for violation of any provision of the bill after its enactment or of regulations promulgated to implement it.

Section 3 provides for completion of a management plan, developed with full public participation, in 2 years.

Section 4 provides for an advisory committee to advise the Secretary on development and implementation of the management plan.

Section 5 provides authority to acquire inholdings with the consent of the landowner, and precludes any condemnations.

Section 6 requires reports to the Congress from the Secretary on the implementation of this bill.

Section 7 authorizes the appropriation of such sums as may be necessary to carry out the bill's provisions.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

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. 252. 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 of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 252, as reported.

FCSPRNCA0134

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 252 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 6, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 252, a bill "To establish the San Pedro Riparian National Conservation Area," and H.R. 568, a bill "To establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes."

We can support these bills only if amended to better reflect the principles of multiple-use management as suggested herein.

S. 525 and H.R. 568 would establish the San Pedro Riparian Conservation Area in Cochise County, Arizona, consisting of approximately 48,707 acres of public lands depicted on a referenced map.

Section 2 would require the Secretary of the Interior to manage the conservation area in a manner that conserves, protects, and enhances the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area. Management would be guided by the provisions of S. 252 and H.R. 568 and, where not inconsistent with the bills, by the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA).

The Secretary could allow only such uses of the conservation areas he finds will further the primary purposes for which the area is established. Motorized vehicles would only be allowed on roads specifically designated for such use in the management plan required by section 3 of the bills, except for administrative and emergency purposes. Further, the Secretary could limit visitation to, and use of, the conservation area to protect its resources, require permits for public use, or close portions of the area to public use.

Section 2(c) of the bills would prohibit the Secretary, subject to valid existing contractual rights, from issuing any permit for livestock grazing on lands in the conservation area for 15 years from the date of enactment of S. 252 and H.R. 568. Section 2(d) would, subject to valid existing rights, withdraw all Federal lands within the conservation area from all forms of entry, appropriation, or disposal under the public land laws; from location, entry and patent under the U.S. mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing.

Any person who violates any provisions of S. 252 and H.R. 568 or any implementing regulations would be subject to a fine of up to $10,000 or imprisonment for up to one year, or both.

Section 3 would require the Secretary to develop a comprehensive plan for the long-range management and protection of the conservation area, within two years after enactment of this Act. The bills would require that the plan be developed with full opportunity for public participation and comment, and that it contain provisions to assure protection of the diverse values of the conservation area. In addition, the Secretary would be required, in the management plan, to develop recommendations to Congress as to whether additional lands should be included in the conservation area.

To better implement the management plan, section 3 would authorize the Secretary to enter into cooperative agreements with appropriate State and local agencies, pursuant to section 307(b) of FLPMA. Also the Secretary could authorize research on environmental, biological, hydrological, and cultural resources of the conservation area, pursuant to section 307(a) of FLPMA, in order to assist in the development of appropriate management strategies for the conservation area.

Section 4 would require the Secretary to establish a San Pedro Riparian National Conservation Area Advisory Committee to advise him on the preparation and implementation of the management plan required by the bills. The advisory committee would be composed of seven members appointed by the Secretary for three-year terms, except that for the first members appointed, two would be appointed for one-year terms, and three, for two-year terms. The Secretary would be required to appoint one member from nominations supplied by the Governor of Arizona, and one member from nominations supplied by the supervisors of Cochise County, Arizona. The other members would be required to be persons with recognized backgrounds in disciplines directly related to the primary purposes for which the conservation area was created.

Section 5 would authorize the Secretary to acquire lands or interests in lands within the conservation area by exchange, purchase or donation. The landowner's consent would be required for any purchase or exchange. Lands owned by the State or local government could be acquired only by donation or exchange.

Section 6 would require the Secretary to report to Congress five years after enactment of S. 252 and H.R. 568 and every 10 years thereafter on the implementation of the Act and to include in the report a detailed statement on the condition of the resources within the conservation area of the progress of the Bureau of Land Management (BLM) in achieving the purposes of the Act. The bills would authorize appropriations of such sums as may be necessary to carry out the provisions of the bills.

The area covered by this Act is about 30 miles long and two to three miles wide. It currently contains approximately 43,371 acres of land acquired by the BLM by deed dated March 6, 1986.

The San Pedro Area now includes 43,371 acres managed by the BLM for their many resource values under the broad mission given to the Bureau by the Federal Land Policy and Management Act of 1976 to manage land under principles of multiple use. Under these principles, appropriate attention is given to riparian values, wildlife habitat, soil, vegetation, watershed, historical, and cultural resources and recreational activities.

The area has a diverse wildlife population. Approximately 260 species of birds are thought to frequent the area, including about 20 raptor species. The most notable of these is the Gray Hawk. Big game species include mule and white-tailed deer and javelina. There are no known threatened or endangered species in the area.

The San Pedro area affords many opportunities for a variety of developed and diverse recreation activities. There are 122 known archeological sites within the area and numerous known sites adjacent to the area. There is a strong possibility that there are many more. The sites represent all stages of human occupation of the Southwest over an 11,000-year period. These provide a unique opportunity for interpretation.

There also are nine known vertebrate fossil sites, at least two of which are highly significant sites. There are numerous additional sites adjacent to the area. These paleontological sites provide an excellent opportunity for scientific research and development.

Currently grazing is permitted in the area.

The San Pedro area has many outstanding and varied resource values. Under S. 252 and H.R. 568 the BLM would have the responsibility of managing and protecting the area in a manner that will enhance public appreciation of the significant resources along the San Pedro River.

Proper management of the area, recognizing all the resource values found there, necessitates changes in the bills.

We do not favor the language in section 2(c) of the bills that would disallow new grazing permits for a period of 15 years. The preparation of the management plan will provide the opportunity for complete and thorough consideration of the impacts of livestock grazing. It is our belief that our professional managers on the ground with the guidance of the San Pedro Advisory Council can best make determinations for the wise management of this area.

We agree that the area should be closed to mining, as section 2(b) provides. However, we suggest that the section be amended to provide that the Secretary of the Interior may lease the lands under the Mineral Lands Leasing Act and the Geothermal Steam Act, and also that he may dispose of mineral materials under the Materials Act of 1947. These activities can be appropriately controlled through the land use planning process.

The bills would limit the use of motorized vehicles to roads specifically designated for such use as part of the management plan. We believe that this provision is too restrictive and that the use should be allowed on roads and areas designated as part of the plan. If, as part of the planning process, it is determined that areas as well as roads should be open, the bill would be too restrictive.

We believe that the most effective way to manage an area such as the San Pedro area is through the land use planning process which provides for a thorough examination and evaluation of an area, its resources, capabilities and potential and extensive public involvement. This is preferable to a legislative moratorium on specific activities that might, with proper management, be permitted in an area in a multiple use context. For instance, in Arizona BLM manages many riparian areas. In some, such as the San Simon watershed, mechanical means with dams and drop structures were utilized to recover the watershed and restore the riparian values;

in others, such as Burro Creek, intensive livestock grazing allotment management plans were implemented and have resulted in excellent recovery of the riparian zone. In still others, we have limited livestock grazing by providing water outside the narrow canyons. Each riparian zone has been addressed individually utilizing the professional expertise of our agency, and full participation by State agencies and the public. So, too, we believe that the uses either permitted or denied in the San Pedro tract can and should be addressed through these procedures. However, these management decisions should be arrived at through the planning process with full participation by the experts in BLM, technical committees, the public and advisory committees. While the planning is taking place, the area is closed to public use, and permits are required.

We find the reporting provision in S. 252 and H.R. 568 to be burdensome and unnecessary, and suggest that section 6 be deleted from the bill. Information concerning the area is always available to the Congress without the necessity for a formal statutory reporting requirement.

We are proceeding under State water appropriation laws for necessary water to carry out the provisions of S. 252 and H.R. 568. We believe the State appropriation process is the proper way for the Federal Government to secure necessary water rights, and recommend that the bills be amended to reflect this requirement.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JAMES E. CASON,
Acting Assistant Secretary.

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. 252, as reported.

O