

Calendar No. 100
House 100-325
SENATE
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).

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.