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RIO GRANDE NATURAL AREA ACT

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

R E P O R T

[To accompany S. 56]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 56) to establish the Rio Grande Natural Area in the State of Colorado, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 56 is to establish a 33-mile stretch of the Rio Grande River between the Alamosa Wildlife Refuge and the Colorado and New Mexico State line as a Natural Area, to be administered by the Bureau of Land Management, to promote the protection and restoration of the riparian zone of the Rio Grande.

BACKGROUND AND NEED

Federal, State, and local officials have looked for a way to restore and protect the riparian zone of the Rio Grande River in southern Colorado without creating a management structure that would conflict with the long-standing water uses upstream and the agricultural uses in the San Luis Valley. This group has worked together collaboratively to develop a proposal for Federal designation that protects the resources of concern and that protects property rights and existing uses. S. 56 will establish a 33-mile Natural Area along the river consistent with these goals.

39–010

LEGISLATIVE HISTORY

S. 56 was introduced by Senators Allard and Salazar on January 24, 2005. At the business meeting on February 16, 2005, the Committee on Energy and Natural Resources ordered S. 56 favorably reported. A similar bill (S. 1467) was introduced by Senator Campbell in the 108th Congress. The Subcommittee on Public Lands and Forests held a hearing on S. 1467 on November 18, 2003 (S. Hrg. 108–321). At the business meeting on June 16, 2004, the Committee on Energy and Natural Resources ordered S. 1467 favorably reported (S. Rept. 108–303). S. 1467 passed the Senate by unanimous consent, as amended, on September 15, 2004.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in an open business session on February 16, 2005, by a voice vote of a quorum present, recommends that the Senate pass S. 56.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the "Rio Grande Natural Area Act".

Section 2 provides definitions used in the bill.

Section 3 provides for the establishment of the Rio Grande Natural Area, defines its boundaries as including the river from the Alamosa National Wildlife Refuge to the Colorado-New Mexico State line and extending ¼ mile on either side of the river.

Section 4 establishes the Rio Grande Natural Area Commission, which is to be made up of 9 members, consisting of 2 officials of the Department of the Interior, 2 officials of the State of Colorado, 1 representative of the Rio Grande Water Conservation District, and 4 individuals representing the general public. The section also provides guidance on how the Commission will operate.

Section 5 establishes the powers and duties of the Commission.

Section 6 provides guidance on the preparation of management plans, one for the non-Federal lands within the Natural Area, prepared by the Commission, and one for the Federal lands within the Natural Area, prepared by the Secretary of the Interior. The section directs that the Secretary and the Commission are to cooperate to ensure that the two plans are consistent.

Section 7 provides self-explanatory direction for the administration of the Natural Area. Paragraph 7(a)(2)(D) prohibits the construction of water storage facilities in the Natural Area. This paragraph is not intended to preclude the continuing use and operation, repair, rehabilitation, expansion, or new construction of water supply facilities, water or wastewater treatment facilities, stormwater facilities, public utilities, or common carriers along the Rio Grande River and its tributaries upstream of the Natural Area.

Section 8 describes the effects on water rights, changes to stream flow, and private lands.

Section 9 authorizes appropriation of funds.

Section 10 directs the termination of the Commission after a period of 10 years.

COST AND BUDGETARY CONSIDERATIONS

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

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CBO estimates that S. 56 would not significantly affect the Federal budget. The bill could affect direct spending, but we estimate that any such effects would be negligible. Enacting S. 56 would not affect revenues. S. 56 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.

S. 56 would establish the Rio Grande Natural Area on roughly 10,000 acres of Federal and nonfederal land surrounding a 33.3-mile segment of the Rio Grande River in Colorado. The Bureau of Land Management (BLM) would manage Federal land within the proposed natural area. S. 56 would establish a commission to develop and implement a plan to manage nonfederal land within the proposed area. Based on information from BLM, CBO estimates that increased costs to operate that commission and manage Federal land within the area would total less than $500,000 annually, assuming the availability of appropriated funds.

The bill would withdraw Federal land within the proposed area from programs to develop natural resources. According to BLM, that land currently generates no significant receipts and is not expected to do so over the next 10 years. Therefore, we estimate that the proposed withdrawal could have a negligible effect on offsetting receipts (a credit against direct spending).

The CBO staff contacts for this estimate are Megan Carroll and Deborah Reis. This estimate was 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. 56.

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. 56, as ordered reported.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at a hearing on S. 1467 during the 108th Congress on November 18, 2003, as follows:

TESTIMONY OF JIM HUGHES, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 1467, the Rio Grande Outstanding Natural Area Act. The Administration supports the purposes and goals of S. 1467. The Administration could support the legislation with a number of modifications.

From its headwaters in Colorado's San Juan Mountains, the Rio Grande flows south through Colorado, bisecting New Mexico, then crossing into Texas where it forms the U.S./Mexico border until emptying into the Gulf of Mexico. At 1,885 miles long, the Rio Grande is the fifth longest river in North America (and among the 20 longest in the world). Its flowing waters have been essential to survival for prehistoric, historic, and present day populations.

North from the New Mexico border into Colorado is a 33-mile stretch of the Rio Grande River that is outstanding for many reasons. Natural and undeveloped, this free flowing river is home to extensive wildlife. Significant for its recreational, scientific and educational uses, the area is dominated by sweeping views and a long history. Through multiple land acquisitions from willing sellers, the BLM has acquired a continuous 20-mile stretch of lands along the western bank of the Rio Grande now designated as the Rio Grande Corridor Area of Critical Environmental Concern.

The people who live in the San Luis Valley have come together in a collaborative fashion to find ways to further protect and enhance this stretch of this historic river. Discussions about protection of the corridor began following completion of the BLM's 1991 San Luis Resource Management Plan. As part of the plan, BLM conducted a wild and scenic rivers eligibility and suitability analysis and ultimately recommended that stakeholders interested in the river create "some enduring form of protection." The legislation being considered today is a result of that stakeholder process.

S. 1467, the Rio Grande Outstanding Natural Area Act, was introduced on July 28th of this year. The bill's stated purpose is to conserve, restore, and protect this special resource. It does this by establishing the Rio Grande Outstanding Natural Area along a 33.3 mile segment of the Rio Grande from the New Mexico border north to the Alamosa National Wildlife Refuge in a corridor about ¼ mile wide on either side of the river. The overall area includes over 10,000 acres, approximately 35% of which is BLM-managed public land. The remainder is private land.

The bill establishes a commission whose purpose is to work with Federal, State and local authorities to develop an integrated resource management plan for the area. We support this type of collaborative effort. The Secretary's 4Cs envision just this type of endeavor. However, as currently drafted, we have concerns about the bill's use of a commission as a means of advising the Secretary on land management decisions affecting this area. Specifically, the bill does not address the funding source for the commission, does not make clear the nature of the commission's advisory role, or its impact on affected private property interests. Given these concerns, we believe an advisory council is a more appropriate vehicle for this collaboration.

Chartered under the Federal Advisory Committee Act (FACA), an advisory council would be able to fill many of the same roles as the proposed commission. The BLM currently works with 39 advisory councils. They range from our 23 Resource Advisory Councils (RACs), which provide advice on multiple use management of public lands within a state or region of a state, to area-specific advisory councils, such as the Steens Mountain Advisory Council or the Canyons of the Ancients National Monument Advisory Committee in southwestern Colorado. All recommendations by advisory councils are considered by the BLM's State/field offices and by the Washington office when making decisions about the management of public lands.

In addition, we would like to work on clarifications to this section to ensure that the BLM continues to have final responsibility for planning for the Federal lands. A single plan covering the entire river corridor is still viable, provided it is clear that the BLM has ultimate planning authority for the Federal lands. It is our understanding that the focus of this process would be restoration of the historic riparian community along the river. Specifically, issues of livestock movement through the largely unfenced river corridor, designation of vehicle access routes to minimize impact on riparian vegetation, and management of riparian habitat on BLM lands are likely to be addressed.

Undertaking a management plan is a time-consuming task requiring extensive resources and expertise. We believe the time deadlines and other specifics of the planning sections established in the bill may be overly optimistic. In order to ensure a fully cooperative, collaborative, and consultative process that is consistent with the National Environmental Protection Act (NEPA) and other laws and regulations, we would urge longer timeframes. We would be pleased to work with the sponsor and the Committee to address this concern.

While the southern Colorado stretch of the Rio Grande is truly outstanding, we would recommend that the sponsor of the bill consider whether a different designation for this area might be preferred. Currently, the BLM manages only one "Outstanding Natural Area" (ONA), the Yaquina Head ONA, located on the Oregon coast. Yaquina Head ONA is a tourist destination with an emphasis on visitation. Because visitation is not a stated goal in this area, we are concerned that using the same terminology could result in confusion. Possible alternatives would be a "cooperative management and protection area," such as exists in eastern Oregon in the Steens Mountains, or "cooperative river management area." We would be pleased to work with the sponsor and the Committee to resolve this concern.

There are additional technical issues we would like to work on as well. For example, we would like the opportunity to work with the sponsor and the Committee on an accurate map of the proposed area.

Additionally, Section 11(a) of the bill calls for the revocation of any existing reservations on the public lands within the area. There are two such reservations. The first is a 1949 administrative withdrawal of approximately 2,700 acres for the purpose of future hydroelectric development (this withdrawal covers lands both in southern Colorado and northern New Mexico.) The second is a 1939 Executive Order creating public water reserves for the purpose of livestock and domestic access. These reservations are no longer necessary, because in the former case, hydroelectric development has been rejected as a viable option for this section of the river and in the later case because access to the Rio Grande now exists due to subsequent BLM land acquisitions. As written, the language only revokes the portion of the reservation within the ¼ mile river corridor, and could result in unnecessary management confusion. As all of these reservations are river-based, we advocate a complete revocation of the reservations in lieu of a partial revocation.

Section 11(c) of the bill withdraws the public lands within the newly designated area from a host of public laws and provisions. To avoid confusion, we would recommend a standard withdrawal from location, entry, appropriation and/or patent under the public land laws and mining laws as well as from operations of the mineral leasing, mineral materials, and geothermal leasing laws. Such a standard withdrawal will foster clear understanding and, we believe, reflects the intent of the sponsor.

The Administration supports section 9(c), 13, and 14 regarding water rights. This language makes clear that the designations in this Act shall not be construed to constitute an express or implied water right.

Mr. Chairman, we believe the goals of this legislation are worthy and we support them wholeheartedly. The local support for this proposal is just the kind of effort that this Department and this Administration encourages. We believe that by working together cooperatively, this area of the Rio Grande can be a model for responsible stewardship of the land.

Thank you for the opportunity to testify, I would be happy to answer any questions.

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. 56, as ordered reported.

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