

Calendar No. 792

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 110-360

SIERRA VISTA SUBWATERSHED FEASIBILITY STUDY ACT

JUNE 16, 2008.—Ordered to be printed

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

R E P O R T

[To accompany S. 1929]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1929) to authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to conduct a feasibility study of water augmentation alternatives in the Sierra Vista Subwatershed, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 1929 is to authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to conduct a feasibility study of water augmentation alternatives in the Sierra Vista Subwatershed.

BACKGROUND AND NEED

S. 1929 would authorize the Secretary of the Interior to study alternatives to augment water supplies in Arizona's Sierra Vista Sub-watershed, which is home to the San Pedro Riparian National Conservation Area (SPRNCA), the Fort Huachuca Army base, and 76,000 residents. SPRNCA, which protects nearly 43 miles of the San Pedro River, serves as a principal passage for the migration of approximately 4 million birds annually. It also provides crucial habitat for 100 species of birds, 81 species of mammals, 43 species of reptiles and amphibians, and two threatened species of native fish.

Fort Huachuca, which is adjacent to SPRNCA, plays a critical role in this country's national security by training soldiers in military intelligence. It also is the largest employer in the area, con-

tributing greatly to the economy of Cochise County and the State of Arizona. In recent years, the Fort has implemented water conservation and recharge measures as part of its responsibilities under the Endangered Species Act. Since 1995, the Fort has reduced its groundwater pumping by more than 50 percent.

Water levels in certain areas of the regional aquifer in the Sierra Vista Sub-watershed are still declining due to natural causes and development near Sierra Vista. Because SPRNCA and the Fort could be negatively impacted by these declining water levels, a 2007 U.S. Bureau of Reclamation Appraisal level study concluded that augmenting the local water supply is necessary. To that end, Reclamation's study recommended several augmentation alternatives for further analysis, all of which are supported by the Upper San Pedro Partnership, a congressionally recognized consortium of 21 local, state, and Federal agencies and private organizations. The feasibility study authorized by S. 1929 is the next step in the process of determining how to best address the water challenges facing the Sierra Vista Sub-watershed.

LEGISLATIVE HISTORY

S. 1929 was introduced on August 1, 2007 by Senator Kyl for himself and Senator McCain, and referred to the Committee on Energy and Natural Resources. The Water and Power Subcommittee held a hearing on S. 1929 on February 28, 2008. At its business meeting on May 7, 2008, the Committee on Energy and Natural Resources ordered S. 1929 favorably reported.

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. 1929.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the Act.

Section 2 defines several terms used in the Act.

Section 3(a) authorizes the Secretary, through the Commissioner of Reclamation, to complete a feasibility study of alternatives to augment water supplies within the Sierra Vista subwatershed, and to include certain information and perform specified analysis.

Section 3(b) defines a maximum Federal cost-share of 45 percent, and authorizes the non-Federal cost-share to include in-kind services.

Section 3(c) provides a statement of congressional intent on the completion of the study.

Section 3(d) authorizes appropriations for the study.

Section 4 disclaims any effect of the Act on certain water rights.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1929—Sierra Vista Subwatershed Feasibility Study Act

S. 1929 would authorize the Secretary of the Interior to complete a feasibility study of alternatives to augment water supplies within

the Sierra Vista Subwatershed in Arizona. The legislation would authorize the appropriation of \$1.3 million for the study and stipulates that the federal share of the study's cost cannot exceed 45 percent of the total. Based on information from the department, CBO estimates that carrying out the study would cost the federal government \$1.3 million over the next three years, assuming availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues.

S. 1929 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.

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. 1929. 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. 1929, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

In accordance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

Section	Provision	Member
3(d)	Authorization of appropriations	Senator Kyl.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the Subcommittee hearing on February 28, 2008 on S. 1929 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. I am pleased to be here today to give the Department of the Interior's views on S. 1929 and H.R. 3328, the Sierra Vista Subwatershed Feasibility Act. The Department does not support the proposed legislation.

The legislation would authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to conduct a feasibility study of water augmentation alternatives in the Sierra Vista Subwatershed, located in south-

eastern Arizona, Cochise County, in the upper San Pedro watershed, near the City of Sierra Vista. It provides for Federal funding of \$1,260,000, with a local cost share of 55%, for a total estimated cost of \$2,800,000. In addition to local cost share for the study, a significant local effort will be required to resolve legal and institutional challenges in order to complete the study.

The preservation of two important Federal facilities, Fort Huachuca (Fort) and the San Pedro Riparian National Conservation Area (SPRNCA), requires augmentation of the local water supply. Fort activities and associated development near the City of Sierra Vista have resulted in a substantial groundwater overdraft that is expected to negatively impact the San Pedro River (River). A section of the River was protected by Congress as the SPRNCA. As the area's largest employer, the Fort greatly benefits southeast Arizona's (and the entire State's) economy. Despite conservation and recharge measures, groundwater overdraft continues to grow.

The Upper San Pedro Partnership (Partnership), a consortium of Federal, state, local and private groups, was established in 1988 to sustain the viability of the Fort and the River—Reclamation became a member in 2004. Also in 2004, Section 321 of the National Defense Authorization Act recognized the Partnership and directed it to prepare an annual report on progress toward the goal to “restore and maintain the sustainable yield of the regional aquifer by and after September 30, 2011.” The 2011 date has motivated the Partnership to aggressively pursue feasibility authorization which could lead to implementation of an augmentation project.

The Partnership hired a private consultant to investigate measures to offset groundwater mining, including conservation, recharge, and augmentation. Reclamation examined alternatives found in the report and identified data gaps; then helped the Partnership follow a process that characterized the augmentation portion of the problem, analyzed alternatives and screened them to identify viable solutions. Reclamation documented this process in an appraisal report completed in June 2007. A total of 14 augmentation alternatives were evaluated, resulting in the Partnership selecting three alternatives for further analysis: bringing Central Arizona Project (CAP) water to Sierra Vista, capturing and recharging stormwater, and reclamation and reuse of impaired mine water. A feasibility study would be the next logical step for the Partnership to secure Reclamation assistance with augmentation implementation. The appraisal report identifies significant legal and institutional issues that need to be addressed, by local stakeholders, in order to make progress. Only the CAP to Sierra Vista alternative completely addresses the Partnership's goal for augmentation.

The Partnership is not a traditional government entity in that its membership consists of representatives from Federal, state and local governments, as well as non-profit

organizations and local businesses. It has no legal authority to construct, operate, and repay capital costs. Because of this, Reclamation cannot legally contract with the Partnership.

Water management in the area is further complicated by the fact that all of the local water providers are private entities. Alternatives under consideration would need to be implemented by an entity other than the Partnership. In 2007, the State of Arizona passed legislation enabling the creation of an Upper San Pedro Water District. The legislation establishes a temporary board, which is subject to a vote by residents to make it permanent.

Reclamation recognizes issues of Federal concern in the Sierra Vista Subwatershed, including protected Federal lands in the SPRNCA, species listed under the Endangered Species Act, and the U.S. Army garrison at Fort Huachuca. A feasibility level study of water augmentation alternatives could help evaluate possible ways forward. Reclamation's appraisal report, however, identified water management challenges facing the basin, as well as legal issues associated with the alternatives. For instance, extending the CAP to Sierra Vista would entail not only the acquisition of a CAP water right, but the extension of the CAP service area. Extending the service area would require both modifications to State law and the CAP Master Repayment Contract.

To address these issues and develop an augmentation project in a timely manner, Reclamation described a two-stage process in the appraisal report. The first stage would involve development of the appropriate legal and institutional mechanisms required to implement a project, while a programmatic feasibility/National Environmental Policy Act study is conducted in which a preferred alternative or alternatives will be identified. The completion of the first stage would allow the Partnership the time to develop the necessary institutions with repayment ability while providing more detailed design and cost information needed to make informed decisions. The second stage of the process involves a detailed specific feasibility design and environmental impact study for an augmentation project. This process avoids the expense of performing detailed, and costly, design and environmental work in the case that a project partner is not created or if other significant legal issues are not resolved. We note that the Partnership has worked through the issue of institutional repayment ability in the past by using either the City of Sierra Vista or Cochise County as fiscal agents.

If issues could be resolved and a partner identified prior to feasibility authorization, consideration should be given to conducting a more detailed feasibility study in a one stage process that could move immediately to construction. Based on Reclamation's experience, the expected cost of conducting such a study would range from \$5 to \$10 million and take longer to complete than the programmatic first stage study. However, if a project is certain to move

to construction, the overall cost and time would be less than the proposed two stage process.

Again, while Reclamation does not support the legislation given outstanding questions about institutional capacity and has not requested appropriations for the study this bill would authorize, we understand the tremendous importance to local stakeholders, the state and the Federal government of the resources involved. We will continue to work with the Partnership on ways to deal with the groundwater overdraft that the Sierra Vista Subwatershed is facing.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to comment on S. 1929 and H.R. 3328. I would be happy to answer any questions at this time.

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. 1929, as ordered reported.

