

AMENDING THE WILD AND SCENIC RIVERS ACT

NOVEMBER 6, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 4864]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 4864) to amend the Wild and Scenic Rivers Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That the Wild and Scenic Rivers Act (82 Stat. 906), as amended (16 U.S.C. 1271-1287), is further amended as follows:

(a) Section 7 (b) (i) is amended by:

(i) deleting "five-year" and inserting in lieu thereof "ten-year".

(ii) deleting "publish" and inserting in lieu thereof "notify the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate in writing, including a copy of the study upon which his determination was made, at least 180 days while Congress is in session, prior to publishing".

(b) Section 15(c) is amended by deleting "scenic view from the river," and inserting in lieu thereof "scenic and natural qualities of a designated wild, scenic or recreational river area,".

(c) Section 16 is amended as follows:

(i) delete "\$17,000,000" and insert "\$37,600,000".

(ii) redesignate "Sec. 16." as "Sec. 16.(a)" and insert "(b) The authority to make the appropriations authorized in this section shall expire on June 30, 1978."

PURPOSE

The purpose of H.R. 4864,¹ as recommended by the Committee on Interior and Insular Affairs, is to amend the Wild and Scenic Rivers Act:

First, by extending the moratorium on the construction of any water resources projects which might adversely affect any rivers included in the study section of the Act for 5 additional years.

¹ H.R. 4864 was introduced by Representative John P. Saylor and co-sponsored by Representatives Dellenback, Sebelius, Regula, Towell, and Martin of North Carolina.

Second, by providing an opportunity for Congressional review before the moratorium is lifted, whenever the Secretary finds a study river to be unsuitable for inclusion in the System.

Third, by redefining the term "scenic easement" so that it is not limited strictly to those lands which are visible from a river.

Fourth, by authorizing the appropriation of an additional \$20.6 million for land acquisition at the existing units of the Wild and Scenic Rivers System over the next five years.

BACKGROUND AND NEED FOR LEGISLATION

The Wild and Scenic Rivers Act was approved by Congress in 1968. At that time, 8 rivers were included as initial components of the Wild and Scenic Rivers System (4 of which are administered by the Forest Service, 2 by the National Park Service, 1 by the Bureau of Land Management and 1 jointly by the Bureau of Land Management and the Forest Service). Land acquisition programs have gone forward on all except the Salmon of Idaho; however, the present \$17 million authorization ceiling has now been nearly exhausted so that no further progress can be made without additional legislation.

In addition to these rivers, 27 others were to be studied to determine the desirability and feasibility of including them in the System. Under the Act, rivers can be included only by specific Congressional authorization and additional studies must also be specifically authorized.

Considerable progress has been made on the studies authorized. One river—the Lower St. Croix—was added to the system during the 92nd Congress (P.L. 92-560). Two others—the Upper Iowa and the Chattooga—have been forwarded to the Congress for consideration. Studies are nearing completion on 6, are underway on 14, and are scheduled to begin on the remaining 4 in the near future.

Under the terms of the Act (Section 7), Federal agencies may not license, assist, or undertake directly or indirectly any activities that would have a direct and adverse effect on any rivers included in the system by Congress. In addition, until October 2, 1973, the Act restricted the authority of Federal agencies to license, assist directly, or engage in water resources projects which would adversely affect the values of any designated study rivers which might be included in the system by the Congress. It is this provision which H.R. 4864 proposes to extend. There is no legal restriction on water resource projects above or below a potential scenic river area, unless they would significantly affect the values of the scenic river area included for study.

As provided in the basic Act, if the Secretary of the Interior or the Secretary of Agriculture concludes that a designated study river does not qualify for inclusion in the system, he may, by publishing notice to that effect, remove it from the protections which are otherwise extended to such rivers while they are under review. If approved as recommended, H.R. 4864 would alter this procedure by requiring the Secretary to notify the authorizing Committees of the Congress of his findings and the reasons therefor at least 180 days prior to publishing any notice declaring a river to be unsuitable for inclusion in the system. By this mechanism, the Committee believes that an ample opportunity will be afforded the Congress to review the findings and consider

the facts before any adverse activities would be undertaken which might preclude a river from being included in the System. At the same time, the language recommended by the Committee will not cause unreasonable delay if a river does not, in fact, qualify for inclusion in the System.

At the present time, the Act limits the application of scenic easements to those lands which are visible from the stream. Obviously, many activities which directly affect the qualities of a wild, scenic, or recreational river may not be within the immediate view of the stream, but may still have considerable impact on it. For this reason, the Committee recommends an amendment to the Act to broaden the definition of "scenic easement" to include the scenic and natural qualities of a designated river. In so doing, the Committee recognizes that in any event, the Act limits the applicability of the authority to acquire lands, including scenic easements, to an average of 320 acres per mile.

With this detailed information, the Committee believes that it can adequately maintain its oversight responsibilities with respect to this program without specifically limiting the appropriations for each river. In any event, if the authorization is not implemented prior to the end of fiscal year 1978 it will expire and any additional funding needs will have to be specifically authorized by the Congress. By this mechanism, the Congress can make it clear that it intends to convert this authorization into a tangible program for the benefit of the American people.

SECTION-BY-SECTION ANALYSIS, AS RECOMMENDED

Subsection (a) of section 1 provides for a five year extension of the moratorium on the construction of any water resources projects which would directly or adversely affect any of the rivers designated for study in the Wild and Scenic Rivers Act. It also assures the Congress that it will have an opportunity to review any negative finding before the moratorium is terminated with respect to an authorized study river.

Subsection (b) redefines the term "scenic easement" as it relates to the river corridor areas.

Subsection (c) authorizes the appropriation of \$37.6 million—an increase of \$20.6 million—for the acquisition of lands and interests in lands at the original units of the Wild and Scenic Rivers System. This subsection also provides that if the authorization is not implemented by June 30, 1978, it will expire.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, in open session, by voice vote, ordered H.R. 4864 favorably reported in amended form to the House of Representatives.

EXECUTIVE COMMUNICATION

The recommendation of the Department of the Interior concerning this legislation was transmitted to the Speaker of the House of Repre-

sentatives by the Secretary of the Interior, the Honorable Rogers C. B. Morton on February 15, 1973. The text of the letter follows:

COST

Under the terms of the bill, the appropriations authorized for land acquisition would be increased from \$17 million to \$37.6 million for the existing units of the Wild and Scenic Rivers System—an increase of \$20.6 million. Including amounts heretofore appropriated, the amounts needed for each of the eight original components of the System are:

Clearwater, Middle Fork, Idaho, \$2,909,800;
 Eleven Point, Missouri, \$4,906,500;
 Feather, Middle Fork, California, \$3,935,700;
 Rio Grande, New Mexico, \$253,000;
 Rogue, Oregon, \$12,447,100;
 St. Croix, Minnesota and Wisconsin; \$11,768,556;
 Salmon, Middle Fork, Idaho, \$1,237,100; and
 Wolf, Wisconsin, \$142,144.

The Members of the Committee were persuaded that the request by the Administering agencies for a lump sum authorization ceiling should be accepted since that would allow a degree of flexibility in funding the land acquisition programs at the river areas involved. In complying with this request, the Committee intends to maintain careful oversight over the funding of these projects and it expects the Bureau of Outdoor Recreation, as the agency designated by law to co-ordinate the Land and Water Conservation Fund, to advise the Committee, in writing, of the following:

- (1) the amounts requested in the annual budget for each component of the Wild and Scenic Rivers System;
- (2) the progress made in the land acquisition program at each component during the prior year and the anticipated program for future years; and
- (3) the projected funding requirements in light of the needs estimated above for each component.

U.S. DEPARTMENT OF THE INTERIOR.

OFFICE OF THE SECRETARY,

Washington, D.C., February 15, 1973.

HON. CARL ALBERT.

*Speaker of the House of Representatives,
 Washington, D.C.*

DEAR MR. SPEAKER: Enclosed is a draft of a proposed bill "To amend the Wild and Scenic Rivers Act", to which the President refers in his Environment and Natural Resources State of the Union Message transmitted to you today.

We recommend that the bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The draft bill amends sections 7(b) and 16 of the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906, 914 and 918; 16 U.S.C. 1278(b) and 1287).

The enclosed draft bill would extend the 5-year moratorium contained in section 7(b) of the Act for an additional 5-year period, by

which time we expect to complete studies on all of the 27 river areas. Completion of these studies and implementation of resulting management plans would assure the wise use of these rivers and their immediate environments for this and future generations of Americans.

The enclosed draft bill also amends section 16 of the Wild and Scenic Rivers Act. Section 16 authorizes the appropriation of not more than \$17,000,000 for the acquisition of the initial components of the National Wild and Scenic Rivers System, of which some \$16.9 million have been appropriated. The draft bill would raise the appropriation authorization to \$37,600,000, the amount we estimate will be needed to complete acquisitions at the river areas.

Our experience with the initial authorization tends to confirm projections of the conferees on the original Act, who recognized that the ceiling imposed by section 16 might well be inadequate.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

A BILL To amend the Wild and Scenic Rivers Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Wild and Scenic Rivers Act (82 Stat. 906) is amended as follows:

(a) In section 7(b) (i) delete "five-year" and substitute "ten-year".

(b) In section 16 delete "\$17,000,000" and substitute "\$37,600,000".

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics*, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 2, 1968 (82 STAT. 906), AS AMENDED
(16 U.S.C. 1271-1287)

SEC. 7. (a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall

preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of approval of this Act. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(b) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval—

(i) during the **[five-year]** *ten-year* period following enactment of this Act unless, prior to the expiration of said period, the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, conclude that such river should not be included in the national wild and scenic rivers system and **[publish]** *notify the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate in writing, including a copy of the study upon which his determination was made, at least 180 days while Congress is in session, prior to publishing notice to that effect in the Federal Register, and*

(ii) during such additional period thereafter as, in the case of any river which is recommended to the President and the Congress for inclusion in the national wild and scenic rivers system, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section 2(a) (ii) of this Act, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of approval of this Act. No de-

partment or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior, and where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(c) The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 5, subsection (a), of this Act. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-5 et seq.).

* * * * *

SEC. 15. As used in this Act, the term—

(a) “River” means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks runs, kills, rills, and small lakes.

(b) “Free-flowing”, as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) “Scenic easement” means the right to control the use of land (including the air space above such land) for the purpose of protecting the [scenic view for the river.] *scenic and natural qualities of a designated wild, scenic or recreational river area*, but such control shall not affect, without the owner’s consent, any regular use exercised prior to the acquisition of the easement.

[SEC. 16.] *Sec. 16.* (a) There are hereby authorized to be appropriated such sums as may be necessary, but not more than [\$17,000,000] \$37,600,000, for the acquisition of lands and interests in land under the provisions of this Act.

(b) *The authority to make the appropriations authorized in this section shall expire on June 30, 1978.*