

## NATIONAL WILD AND SCENIC RIVERS SYSTEM

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

### REPORT

[To accompany S. 119]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 119) to reserve certain public lands for a National Wild Rivers System, to provide a procedure for adding additional public lands and other lands to the system, and for other purposes, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill as amended do pass.

#### PURPOSE

This bill, S. 119, will establish a National Wild and Scenic Rivers System and thereby preserve and protect some of America's unspoiled and free-flowing streams, or their segments, that symbolize this vanishing heritage of our original landscape.

#### NEED

Many of our remaining free-flowing rivers are under threat of dams, pollution, and other destructive assault. If some of them are to be saved or restored to their natural state, legislative action is urgent. That is the objective of S. 119, which sets out in its statement of policy the need to balance the national policy of dam building with a policy of preserving selected rivers or sections thereof that possess unique conservation, scenic, fish, wildlife, and outdoor recreation values. The bill prohibits the Federal Power Commission from licensing the construction of dams on a wild or scenic river except where such action might be specifically authorized by Congress.

It also establishes a moratorium on licensing dams during a 5-year period on certain rivers listed for study as possible future inclusions in the National Wild and Scenic Rivers System.

#### BACKGROUND

In 1962 the Outdoor Recreation Resources Review Commission, a bipartisan Commission established by the Congress to evaluate the outdoor recreation needs of the nation, recommended that:

Certain rivers of unusual scientific, esthetic, and recreational value should be allowed to remain in their free-flowing state and natural setting without manmade alterations.

The Secretary of the Interior and the Secretary of Agriculture, in 1963, initiated a "Wild Rivers Study." Their objective was to investigate further the need for conservation of a nationwide system of wild rivers, to develop and establish suitable criteria and methods for evaluating particular rivers or segments thereof, and to identify those rivers or streams having "wild river" qualities to an outstanding degree.

From more than 650 rivers, 67 were selected for preliminary field reconnaissance by special study teams. Based on this reconnaissance study, segments of 17 rivers and a number of their tributary streams were then selected for more detailed investigation. This detailed study was completed in 1964 and served as a basis for the recommendations contained in the initial wild rivers proposal.

The President, in his natural beauty message to the Congress, called for wild rivers preservation. He expressed the view that the time has come to identify and preserve free-flowing stretches of our great scenic rivers before growth and development make the beauty of the unspoiled waterway only a memory.

On this foundation of study and interest, Senator Church, for himself and 28 other Senators, submitted the wild rivers proposal to the Congress on March 3, 1965. It became S. 1446, 89th Congress.

Hearings by the full Interior and Insular Affairs Committee were conducted April 22 and 23, and a special task force of the committee conducted field hearings at Green River, Wyo., May 17, and at Boise, Idaho, May 18.

On September 15, the committee voted to favorably report the bill, with minority views (S. Rept. 792, to accompany S. 1446, 89th Cong.).

On January 19, 1966, the Senate passed the bill, with amendments, by a vote of 71 to 1.

However, the bill was not acted upon in the House prior to adjournment of the 89th Congress, and Senator Church reintroduced the measure as S. 119 on January 11, 1967, with 38 cosponsors.

Hearings were conducted on S. 119 and S. 1092, the administration bill to provide for a national system of scenic rivers, April 13 and 14. Following an executive session on July 26 that adopted an amendment in the nature of a substitute which included some of the provisions in the administration bill, S. 1092, the committee voted to favorably report the bill, S. 119, to establish a National Wild and Scenic Rivers System.

#### AMENDMENTS

The scope of the original bill which passed the Senate last year has been expanded to recognize and define two types of rivers, namely,

"wild" and "scenic" rivers. The definition of a wild river area was revised and the definition of a scenic river was added. Recognition of these two types of rivers means that the national system will be made up of both wild river areas and scenic river areas.

The Eleven Point River in Missouri was considered in last years' bill to be a wild river but in this measure is classified as a national scenic river. Recommended for immediate inclusion in the new national system is the St. Croix River in Wisconsin and Minnesota. A bill to create the St. Croix National Scenic Riverway passed the Senate in the last session, but because that river contains segments which fit the definitions of both wild and scenic river areas, it was decided to add it to this bill. The Illinois River in Oregon and the Wolf River in Wisconsin are new additions to the group of rivers recommended for immediate inclusion in the national system. Several new rivers are listed for study as to possible inclusion in the national system at a later date.

Provisions for planning new additions to the system were expanded to require local public hearings on any addition to the system and to allow the State legislatures to make their recommendations known if they so desire.

Provisions were added to encourage the development of State and local wild and scenic rivers and to protect the owners of improved property which may be acquired.

Therefore, in order to simplify consideration, the committee amended the bill by striking out all after the enacting clause and inserting the agreed upon language in the nature of a substitute.

#### RIVERS IN SYSTEM

A national wild river area, as defined by S. 119, is one located in a sparsely populated, natural, and rugged environment where the river is free flowing and unpolluted, or where the river should be restored to such condition, in order to promote sound water conservation, and promote the public use and enjoyment of the scenic, fish, wildlife, and outdoor recreation values.

Rivers or segments of rivers which would be designated as wild river areas for the initial system are the Middle Fork of the Salmon and the Middle Fork of the Clearwater in Idaho, the Rogue and Illinois in Oregon, the Rio Grande in New Mexico, the St. Croix in Minnesota and Wisconsin, and the Wolf in Wisconsin.

Some of these same rivers have segments which are also designated as scenic river areas, including the Rogue and Illinois in Oregon, and the St. Croix in Minnesota and Wisconsin. Other national scenic river areas would be on the Eleven Point in Missouri and the Namekagon in Wisconsin.

A national scenic river area as defined by the bill is a river area that is unpolluted and which should be left in its pastoral or scenic attractiveness, or that should be restored to such condition, in order to protect, develop, and make accessible its significant national outdoor recreational resources for public use and enjoyment.

Twenty-seven rivers or river segments are listed for study for possible future inclusion in the bill.

By agreement between the two Senators from Idaho, Mr. Church and Mr. Jordan, the main section of the Salmon in Idaho, from the

town of North Fork to its confluence with the Snake River, was placed in this list of rivers for study for possible future inclusion. The Middle Fork of the Salmon and the Middle Fork of the Clearwater (including its tributaries, the Lochsa and the Selway) remain, however, in the initial system as national wild river areas.

At the request of the two Senators from Wyoming, Mr. McGee and Mr. Hansen, the Green River in Wyoming was removed from the group of rivers for study.

The Jackson County (Oregon) Chapter of the Izaak Walton League recommended the inclusion of the Illinois, a tributary of the Rogue River in Oregon, for inclusion in the initial system as a result of a series of public meetings in the Rogue River Basin. The segmentation of the Rogue and Illinois into specific "wild" and "scenic" areas also follows the chapter's recommendations.

#### ADMINISTRATION

Administration of the rivers in the system would be by either the Secretary of Interior or Agriculture, or the Secretaries jointly, based upon their administrative areas; or jointly with the States, or States and local governmental agencies, or by the States or local governmental agencies, exclusively. States would be encouraged to cooperate in the planning and administration of such areas where they include State-owned or county-owned lands. The Secretary of Interior is directed to provide technical assistance and advice and to cooperate with States, interstate agencies, political subdivisions, and nonprofit private organizations with respect to establishing wild and scenic river areas.

The bill has been referred to as an extension or corollary of the Wilderness Act, but its provisions are not nearly as restrictive. A national wild or scenic river area will be administered for its esthetic, scenic, historic, fish and wildlife, archeologic, scientific, and recreational features, based on the special attributes of the area. However, it will not prohibit the construction of roads or bridges, timber harvesting and livestock grazing, and other uses that do not substantially interfere with public use and enjoyment of these values. Mining will be allowed to continue, although claims located after the effective date of the act may be subject to regulation to conform to the system, particularly to prevent pollution.

Also, it is the legislative intent that nothing in this act shall interfere with or diminish the authority and right of State and local governmental entities to call upon and obtain the aid of Federal and other agencies in emergencies, such as, for example, floods or forest fires, in any national wild or scenic river area.

#### CONDEMNATION

Subsection 5(d) places a limitation on condemnation, by providing that where 50 percent or more of the acreage within the entire national wild or scenic river area is owned by Federal, State, or local governments, neither Secretary can condemn for acquisition of fee title but may condemn for scenic easements. The committee approved this limitation because it believed that rivers flowing through this amount of public land could amply provide bank-land areas for public access and facilities without the need for the fee acquisition of property. In

adopting this limitation, the committee wishes to stress that it is peculiar to the problems of the National Wild and Scenic Rivers System and should not be regarded as a precedent limiting condemnation in other cases where areas may be dedicated to public use and benefit.

Under subsection 5(d) wherever the power of condemnation is conferred, the Secretaries are limited to acquiring a maximum of 100 acres per mile on both sides of the stream, tributary, or river, in fee title. Section 5(a) sets the maximum acreage for boundaries of a national wild and scenic river area at 320 acres per mile on both sides of the stream, tributary, or river.

Subsection 5(f) provides that neither Secretary can condemn lands within any incorporated city, village, or borough as long as such entities have in force a duly, adopted valid zoning ordinance that is satisfactory to the appropriate Secretary.

It is the intention of the committee that both Secretaries shall encourage local units of government to adopt zoning ordinances which are consistent with the purposes of this act and that where such valid zoning ordinances are in effect and where there is no need for further Federal acquisition that the appropriate Secretary will suspend acquisition of scenic easements and fee title. For example, it is intended that in that section of the St. Croix River described in section 3(b)(1) that acquisition will be limited to less than 1,000 acres to be used as access points and that the remainder of that segment will be primarily controlled by local zoning ordinances.

#### WATER RIGHTS

The language contained in subsection 6(f) is intended by the committee to preserve the status quo with respect to the law of water rights. No change is intended. The first sentence states that established principles of law will determine the Federal and State jurisdiction over the waters of a stream that is included in a wild river area. Those established principles of law are not modified. The third sentence states that with respect to possible exemption of the Federal Government from State water laws the act is neither a claim nor a denial of exemption. Any issue relating to exemption will be determined by established principles of law as provided in the first sentence. The second sentence would apply to this legislation the principle of compensation embraced by section 8 of the Reclamation Act of June 17, 1902 (32 Stat. 388, 390, found in 43 U.S.C. 383). This means that the Government must pay just compensation for a water right taken for wild river purposes if the water right is a vested property right under established principles of State or Federal law. See *U.S. v. Gerlach* (339 U.S.725).

Subsection 6(j) makes it clear that designation of a stream or its portion thereof is not to be considered a reservation of unappropriated waters other than for the purposes of this act—and in no greater quantities than are necessary for those purposes.

It should be made clear that it is the intention of the committee that the Federal Government may reserve only such unappropriated waters as may be required for the purposes specified in this act. The establishment of a National Wild and Scenic Rivers System is not intended to affect or impair any prior valid water right vested under State or Federal law.

## BALANCED DEVELOPMENT

In its selection of rivers to be included in the initial system of wild and scenic rivers, and in the study group of rivers for possible later inclusion in the system—with a 5-year moratorium on the licensing of dams on the latter—the committee is cognizant that there are many other rivers throughout the United States which may qualify for the system. The bill establishes procedures by which these may be added.

The committee did not review all the rivers of the United States in acting upon this bill. However, the committee did give particular attention to the middle Snake River watershed in Idaho and Oregon. The Middle Fork of the Clearwater and the Middle Fork of the Salmon, both part of the watershed, will become initial streams in the National Wild and Scenic Rivers System established by S. 119. The main Salmon River will be studied for possible future inclusion in the system.

The Middle Fork of the Snake, also an area of great beauty, contains the location of the proposed High Mountain Sheep Dam just above the confluence of the Snake and the Salmon. This is the last undeveloped site on the Snake River for a great storage dam. The committee took cognizance of this fact in not considering inclusion of the Middle Fork of the Snake in the National Wild and Scenic Rivers System. The committee believes that exclusion of this portion of the Snake River watershed is in keeping with a balanced natural resource program.

## COST

Total cost of land acquisition and development of the National Wild and Scenic Rivers System over the next 10 years has been estimated to be \$40 million, based on the initial rivers in the system.

## FUTURE BASIN PLANNING

In view of the congressional policy to protect wild and scenic river values throughout the Nation, the bill requires all Federal agencies that are engaged in water resources planning to include in their planning reports a discussion of any potential wild or scenic river areas that may be involved. In addition to this general requirement, the planning agencies are required to consider wild and scenic river values as a potential alternative use when making plans on rivers designated by the Secretaries of Interior or Agriculture. These requirements will assure proper consideration of potential wild and scenic river values during the planning process.

## COMMITTEE POSITION

The committee believes there is urgent need to establish a National Wild and Scenic Rivers System now, and strongly recommends the approval of S.119 as reported to the Senate.

## EXECUTIVE AGENCY REPORTS

The executive communication from the Assistant Secretary of the Department of Interior in submitting and recommending the administration's scenic river bill to the Congress, together with com-

ment on this and on S. 119, the wild rivers bill, by the Secretary of Interior, the Secretary of Agriculture, and the Bureau of the Budget, are set forth below.

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., February 18, 1967.*

HON. HUBERT H. HUMPHREY,  
*President of the Senate,*  
*Washington, D.C.*

DEAR MR. PRESIDENT: The President, in his January 30, 1967, message to the Congress on protecting our natural heritage renewed his recommendation for legislation to establish a nationwide system of scenic rivers similar to legislation the Department submitted to the 89th Congress. The need to act in order to preserve portions of our free-flowing rivers for the benefit of the American people is urgent. Unless we act promptly, growth and development will soon make the beauty of the unspoiled stretches of our scenic waterways merely a memory.

While riverflows have been harnessed to aid navigation, control floods, increase farm productivity, and hydroelectric power, too little attention has been given to the importance of protecting the very water we drink and the values of fish and wildlife, scenic, and outdoor recreation resources. These values, although often measureless in commercial terms, should be preserved by a program that will guarantee America her heritage of unspoiled, unpolluted, free-flowing rivers. Our belief is shared by a wide range of public and private authorities, and the time to act is now, before it is too late. ✓

In 1962, the Outdoor Recreation Resources Review Commission endorsed efforts to preserve certain rivers because of unique natural values they provide. Also in 1962, the President upon recommendation of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, and the Secretary of Health, Education, and Welfare, approved for application by them and by the Bureau of the Budget a policy statement concerning the use and development of water and related land resources. This policy statement provides, among other things, that in particular instances wild areas of rivers should be maintained and used for recreational purposes.

In 1963, this Department and the Department of Agriculture initiated a coordinated, broad-scale study of the need to preserve a nationwide system of scenic or wild rivers. This study revealed that of a total of approximately 100,000 miles of rivers and tributaries in the United States averaging a flow of at least 550 cubic feet per second, only a few of the rivers could still be classified as relatively unspoiled. In a strict sense, a pristine river is a rare thing today in the United States. There are, however, many free-flowing rivers, or segments thereof, which still retain enough of their original character to provide the distinctive type of enjoyment and inspiration that increasing numbers of people are seeking. The sheer natural beauty of such river areas is a source of physical and spiritual refreshment. ✓

The enclosed bill, which would establish a nationwide system of scenic rivers, is similar to the proposal which the Department submitted to the 89th Congress. We urge that it receive early considera-

tion. A detailed analysis of its provisions is set forth in an enclosure to this report.

Pertinent data with respect to the initial nine areas included by this bill in the system are enclosed.

The proposed legislation has been prepared in collaboration with the Secretary of Agriculture and has his approval.

The Bureau of the Budget has advised that this proposed legislation is in accord with the program of the President.

Sincerely yours,

HARRY R. ANDERSON,  
*Assistant Secretary of the Interior.*

A BILL To reserve certain public lands and other lands for a Nationwide System of Scenic Rivers, to provide a procedure for adding additional lands to the system, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

#### SHORT TITLE

SEC. 1. This Act may be cited as the "Scenic Rivers Act".

#### STATEMENT OF POLICY

SEC. 2. The Congress finds that some of the free-flowing rivers of the United States and related adjacent land areas possess outstanding scenic, fish, wildlife, and outdoor recreation values of present and potential benefit to the American people. The Congress also finds that our established national policy of dam and other construction on appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their natural and free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. It is the policy of Congress that selected parts of the Nation's diminishing resource of free-flowing rivers, and their related adjacent lands should be preserved, reclaimed, and appropriately developed for the benefit of all the American people. For this purpose there is hereby established a Nationwide System of Scenic Rivers to be composed of (a) the areas designated by this Act or subsequent Acts as "national scenic river areas", and (b) the State and local scenic river areas designated by the Secretary of the Interior as part of the System. Areas designated as "national scenic river areas" by subsequent Acts of Congress shall be administered in accordance with the provisions of this Act unless the subsequent Acts provide otherwise.

#### DEFINITION OF NATIONAL SCENIC RIVER AREA

SEC. 3. A national scenic river area eligible to be included in the System is a stream or any section of a stream, tributary, or river—and the related adjacent land area—that possesses outstanding scenic, fish, wildlife, and outdoor recreation values, that is essentially free-flowing and unpolluted, and that should be preserved in such condition, or restored thereto, in order to promote public use and enjoyment.