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SENATE

{ REPORT
106-266

WHITE CLAY CREEK WILD AND SCENIC RIVERS SYSTEM ACT

APRIL 12, 2000.—Ordered to be printed

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

REPORT

[To accompany S. 1849]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1849) to designate segments and tributaries of White Clay Creek, Delaware and Pennsylvania, as a component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “White Clay Creek Wild and Scenic Rivers System Act.”

SEC. 2. FINDINGS.

Congress finds that—

(1) Public Law 102-215 (105 Stat. 1664) directed the Secretary of the Interior, in cooperation and consultation with appropriate State and local governments and affected landowners, to conduct a study of the eligibility and suitability of White Clay Creek, Delaware and Pennsylvania, and the tributaries of the creek for inclusion in the National Wild and Scenic Rivers System;

(2) as a part of the study described in paragraph (1), the White Clay Creek Study Wild and Scenic Study Task Force and the National Park Service prepared a watershed management plan for the study area entitled “White Clay Creek and Its Tributaries Watershed Management Plan”, dated May 1998, that establishes goals and actions to ensure the long-term protection of the outstanding values of, and compatible management of land and water resources associated with, the watershed; and

(3) after completion of the study described in paragraph (1), Chester County, Pennsylvania, New Castle County, Delaware, Newark, Delaware, and 12 Penn-

sylvania municipalities located within the watershed boundaries passed resolutions that—

- (A) expressed support for the White Clay Creek Watershed Management Plan;
- (B) expressed agreement to take action to implement the goals of the Plan; and
- (C) endorsed the designation of the White Clay Creek and the tributaries of the creek for inclusion in the National Wild and Scenic Rivers System.

SEC. 3. DESIGNATION OF WHITE CLAY CREEK.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

“(161) WHITE CLAY CREEK, DELAWARE AND PENNSYLVANIA.—

“(A) SEGMENTS.—The 191 miles of river segments of White Clay Creek (including tributaries of the Creek and all second order tributaries of the designated segments) in the States of Delaware and Pennsylvania (referred to in this paragraph as the ‘Creek’), as depicted on the recommended designation and classification maps, as follows:

“(i) 30.8 miles of the east branch, including Trout Run, beginning at the headwaters within West Marlborough township downstream to a point that is 500 feet north of the Borough of Avondale wastewater treatment facility, as a recreational river.

“(ii) 15.0 miles of the east branch beginning at the southern boundary line of the Borough of Avondale to a point where the East Branch enters New Garden Township at the Franklin Township boundary line, including Walnut Run and Broad Run outside the boundaries of the White Clay Creek Preserve, as a recreational river.

“(iii) 4.0 miles of the east branch that flow through the boundaries of the White Clay Creek Preserve, Pennsylvania, beginning at the northern boundary line of London Britain township and downstream to the confluence of the middle and east branches, as a scenic river.

“(iv) 20.9 miles of the middle branch, beginning at the headwaters within Londonderry township downstream to the boundary of the White Clay Creek Preserve in London Britain township, as a recreational river.

“(v) 2.1 miles of the west branch that flow within the boundaries of the White Clay Creek Preserve in London Britain township, as a scenic river.

“(vi) 17.2 miles of the west branch, beginning at the headwaters within Penn township downstream to the confluence with the middle branch, as a recreational river.

“(vii) 12.7 miles of the main stem, excluding Lamborn Run, that flow through the boundaries of the White Clay Creek Preserve, Pennsylvania and Delaware, and White Clay Creek State Park, Delaware, beginning at the confluence of the east and middle branches in London Britain township, Pennsylvania, downstream to the northern boundary line of the city of Newark, Delaware, as a scenic river.

“(viii) 27.5 miles of the main stem (including all second order tributaries outside the boundaries of the White Clay Creek Preserve and White Clay Creek State Park), beginning at the confluence of the east and middle branches in London Britain township, Pennsylvania, downstream to the confluence of the White Clay Creek with the Christina River, as a recreational river.

“(ix) 1.3 miles of Middle Run outside the boundaries of the Middle Run Natural Area, as a recreational river.

“(x) 5.2 miles of Middle Run that flow within the boundaries of the Middle Run Natural Area, as a scenic river.

“(xi) 15.6 miles of Pike Creek, as a recreational river.

“(xii) 38.7 miles of Mill Creek, as a recreational river.

“(B) BOUNDARIES.—

“(i) IN GENERAL.—Except as provided in clause (ii), in lieu of the boundaries provided for in subsection (b), the boundaries of the segments shall be the greater of—

“(I) the 500-year floodplain; or

“(II) 250 feet as measured from the ordinary high water mark on both sides of the segment.

“(ii) EXCEPTIONS.—The boundary limitations described in clause (i) are inapplicable to—

“(I) the areas described in section 4(a) of the White Clay Creek Wild and Scenic Rivers Act; and

“(II) the properties, as generally depicted on the map entitled “White Clay Creek Wild and Scenic River Study Area Recommended Designated Area”, dated June 1999, on which are located the surface water intakes and water treatment and wastewater treatment facilities of—

“(aa) the City of Newark, Delaware;

“(bb) the corporation known as United Water Delaware; and

“(cc) the Borough of West Grove, Pennsylvania.

“(C) ADMINISTRATION.—

“(i) IN GENERAL.—The segments designated by subparagraph (A) shall be administered by the Secretary of the Interior, in cooperation with the White Clay Creek Watershed Management Committee as provided for in the plan prepared by the White Clay Creek Wild and Scenic Study Task Force and the National Park Service, entitled ‘White Clay and Its Tributaries Watershed Management Plan’ and dated May 1998.”

SEC. 4. SUBSEQUENT DESIGNATIONS.

(a) IN GENERAL.—Churchman’s Marsh, Lamborn Run, and the properties on which the intake structures and pipelines for the proposed Thompson’s Station Reservoir may be located shall be considered suitable for designation as components of the National Wild and Scenic Rivers System only at such time as those areas are removed from consideration as locations for the reservoir under the comprehensive plan of the Delaware River Basin Commission.

(b) ASSISTANCE FOR SUBSEQUENT DESIGNATIONS.—The Secretary of the Interior (hereinafter referred to as the “Secretary”) shall offer assistance to the State of Delaware and New Castle County, Delaware, if an area described in subsection (a) is designated a component of the National Wild and Scenic Rivers System.

SEC. 5 MANAGEMENT.

(a) IN GENERAL.—In order to provide for the long-term protection, preservation, and enhancement of White Clay Creek and its tributaries, the Secretary shall offer to enter into cooperative agreements pursuant to section 10(e) and section 11(b)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(e) and 16 U.S.C. 1282(b)(1)) with the White Clay Creek Watershed Management Committee as provided for in the plan entitled “White Clay Creek and its Tributaries Watershed Management Plan” and dated May, 1998 (hereinafter referred to as the “management plan”).

(b) FEDERAL ROLE.—(1) The Director of the National Park Service (or a designee) shall represent the Secretary in the implementation of the management plan and this paragraph (including the review, required under section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a)), of proposed Federally-assisted water resources projects that could have a direct and adverse effect on the values for which the segments were designated and authorized).

(2) To assist in the implementation of the management plan and to carry out this Act, the Secretary may provide technical assistance, staff support, and funding at a cost to the Federal Government in an amount, in the aggregate, of not to exceed \$150,000 for each fiscal year.

(c) COOPERATIVE AGREEMENTS.—Any cooperative agreement entered into under section 10(e) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(e)) relating to any of the segments designated by section 3—

(1) shall be consistent with the management plan; and

(2) may include provisions for financial or other assistance from the United States to facilitate the long-term protection, conservation, and enhancement of the segments.

(d) COMPREHENSIVE MANAGEMENT PLAN.—The management plan shall be deemed to satisfy the requirements for a comprehensive management plan under section 3(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)).

(e) STATE REQUIREMENTS.—State and local zoning laws and ordinances, as in effect on the date of enactment of this Act, shall be considered to satisfy the standards and requirements under section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)).

(f) NATIONAL PARK SYSTEM.—Notwithstanding section 10(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(c)), any portion of a segment designated by section 3 that is not in the National Park System as of the date of enactment of this Act shall not—

(1) be considered a part of the National Park System;

(2) be managed by the National Park Service; or

(3) be subject to laws (including regulations) that govern the National Park System.

(g) NO LAND ACQUISITION.—The Federal Government shall not acquire, by any means, any right or title in or to land, any easement, or any other interest for the purpose of carrying out this Act.

PURPOSE OF THE MEASURE

The purpose of S. 1849 is to designate segments and tributaries of White Clay Creek in the States of Delaware and Pennsylvania as a component of the National Wild and Scenic Rivers System.

BACKGROUND AND NEED

Public Law 102–215 amended the Wild and Scenic Rivers Act of 1968 to require a study of the White Clay Creek, including its headwaters, main branches, and tributaries to determine its eligibility and suitability for inclusion in the National Wild and Scenic Rivers System. Further, the legislation also directed the Secretary to develop a management plan for the area prior to designation of the river.

The study of the White Clay Creek culminated with the release of the National Park Service study report in September 1999. The study found that a total of 191 miles of the White Clay Creek were eligible and suitable for designation as a component of the National Wild and Scenic River System. All fifteen of the affected municipalities and counties have passed resolutions supporting the White Clay Creek Watershed Management Plan and the proposed designation.

LEGISLATIVE HISTORY

S. 1849 was introduced by Senators Biden and Roth on November 3, 1999. The Subcommittee on National Parks, Historic Preservation and Recreation held a hearing on S. 1849 on March 8, 2000.

At its business meeting on April 5, 2000, the Committee on Energy and Natural Resources ordered S. 1849 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on April 5, 2000, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1849, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1849, the Committee adopted an amendment in the nature of a substitute. As introduced, S. 1849 incorporated the specific management prescriptions for White Clay Creek and its tributaries into the Wild and Scenic Rivers Act; the amendment does not alter these provisions, but enacts them free-standing, rather than as an amendment to the Wild and Scenic Rivers Act. The Wild and Scenic Rivers Act is amended by adding the segments and tributaries of White Clay Creek. The amendment also clarifies the authority of the Secretary of the Interior to enter into cooperative agreements with the White Clay Creek Watershed

Management Committee, as well as making several technical corrections.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the bill's short title.

Section 2 contains congressional findings.

Section 3 amends section 3(a) of the Wild and Scenic Rivers Act (U.S.C. 1274(a)) by adding paragraph (161) to designate White Clay Creek, in Delaware and Pennsylvania. The designation includes 12 segments totaling 191 miles of White Clay Creek (including tributaries of the creek and all second order tributaries of the designated segments). Eight of the segments, totaling 167 miles are designated as a recreational river, and the remaining 4 segments totaling 24 miles are designated as a scenic river. In addition, this section also defines the boundaries of the segments, and directs that the river segments shall be administered by the Secretary of the Interior in cooperation with the White Clay Creek Watershed Management Committee. It further stipulates that the "White Clay Creek and its Tributaries Watershed Management Plan" dated May 1998 shall be considered to satisfy the requirements for a comprehensive management plan.

Section 4(a) directs that Churchman's Marsh, Lamborn Run and the other properties on which intake structures and pipelines for a proposed reservoir will be considered suitable for Wild and Scenic River designation only at such time as those areas are removed from consideration as locations for the reservoir.

Subsection (b) provides that the Secretary of the Interior shall offer assistance to the State of Delaware and New Castle County, Delaware, if an area described in subsection (a) is designated as a component of the National Wild and Scenic Rivers System.

Section 5 describes the management of the river segments.

Subsection (a) directs the Secretary of the Interior to offer to enter into cooperative agreements with the White Clay Creek Watershed Management Committee in order to provide for the long-term protection, preservation, and enhancement of the creek and its tributaries.

Subsection (b) provides that the Director of the National Park Service (or a designee) shall represent the Secretary of the Interior, and may assist in the implementation of the management plan by providing technical assistance, staff support, and funding not to exceed \$150,000 for each fiscal year.

Subsection (c) directs that any cooperative agreement entered into under section 10(e) of the Wild and Scenic Rivers Act shall be consistent with the management plan and may include provisions for financial assistance from the United States.

Subsection (d) provides that the plan entitled "White Clay Creek and its Tributaries Watershed Management Plan" and dated May 1998, is deemed to satisfy the requirements for a comprehensive management plan under section 3(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)).

Subsection (e) provides that State and local zoning ordinances in effect on the date of enactment of this Act shall be considered to satisfy the standards and requirements under section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)).

Subsection (f) provides that none of the river segments designated under section 3 shall be considered to be part of the National Park System, be managed by the National Park Service, or be subject to the laws and regulations that govern the National Park System.

Subsection (g) directs that there shall be no Federal land acquisition for the purposes of carrying out this Act.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

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. 1849. 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. 1849.

EXECUTIVE COMMUNICATIONS

The legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendation relating to the S. 1849 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, March 20, 2000.

Hon. FRANK MURKOWSKI,
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This letter presents the Department's views on S. 1849, a bill that amends the Wild and Scenic Rivers Act by designating segments and tributaries of the White Clay Creek in Delaware and Pennsylvania as a component of the National Wild and Scenic Rivers System.

The Department supports the intent of the bill, but not as currently drafted. In particular, given existing land ownership patterns, the Department supports designation of the White Clay Creek as a "private lands" river managed by a non-federal entity rather than by a federal agency.

S. 1849 provides that the administration of the designated river segments by the Secretary of the Interior is to be consistent with the cooperatively developed White Clay Creek Watershed Management Plan and to be undertaken in cooperation with federal, state, county and municipal governments. The bill also identifies addi-

tional segments that would be suitable for designation by the Secretary only at such time as those segments are removed from consideration as locations for reservoirs under the comprehensive plan of the Delaware River Basin Commission.

In December of 1991, Congress directed the National Park Service to undertake a study of the headwaters of the White Clay Creek in Pennsylvania to its confluence with the Christina River in Delaware. The study was to be done in cooperation and consultation with various federal, state, regional, and local governments and affected landowners. In addition, a river management plan was to be prepared that would provide recommendations as to the protection and management of the White Clay Creek and its tributaries.

In 1998, a watershed management plan was prepared that contained six goals for management of the White Clay Creek and its tributaries. The plan was done cooperatively and calls for a management framework for the White Clay Creek and its tributaries that relies heavily on local land use decisions and zoning as protection measures for the river. In 1999, the NPS issued the "White Clay Creek and Its Tributaries National Wild and Scenic River Study Draft Report." The majority of the river segments identified in the study report qualified for designation as a component of the Wild and Scenic River System and are reflected in S. 1849.

Because of land ownership patterns along the White Clay Creek and its tributaries, the NPS categorizes the White Clay Creek as a "private lands" river. There were five principles that involvement and consensus building in determining whether the river segments were suitable for designation and how they should be managed; (2) the river management plan would be prepared during the study rather than after designation and would be a collaborative effort of NPS, the study task force and state and local governments; (3) designation of river segments only would occur if strong local support for designation existed and was expressed through passage of support resolutions by the affected communities; (4) existing land use patterns would be maintained and local land use control and home rule would not be usurped; and (5) the laws and regulations that affect the White Clay Creek and its tributaries are complex involving two states, thirteen municipalities, two counties, the Delaware River Basin Commission, and several federal agencies.

The preferred alternative for designation and management recommends designation of 191 river miles of the White Clay Creek and its tributaries as a unit of the National Wild and Scenic Rivers System. Protection of the river's outstanding resources would be based upon private, state and local conservation measures and would not rely on federal land acquisition or direct federal management.

The Department believes that the management prescriptions that are specific to the White Clay Creek should not be enacted as an amendment to the Wild and Scenic Rivers Act, but should instead be included in free-standing legislation. When a river that is designated as part of the Wild and Scenic rivers System is to be managed differently than the management outlined in the Wild and Scenic Rivers Act, those particular management prescriptions have consistently been adopted as free-standing provisions of the designation legislation. This drafting technique allows the Wild

and Scenic Rivers Act to remain focused on designations and not the exceptions to the law. Separate legislation is effective in ensuring that the river is managed under an exception to the usual management prescriptions. Keeping the special management provisions separate also prevents confusion between generally appropriate management requirements that are contained in the Wild and Scenic Rivers Act and those that are provided in the independent legislation.

The amendment to the Wild and Scenic Rivers Act should provide for the designation of the White Clay Creek and its tributaries, as primarily found in the language on pages three through six of S. 1849. The bill also should provide a clear statement that the White Clay Creek will not be considered a unit of the National Park System or administered according to the laws and regulations of the National Park System. The language and the management prescriptions that are specific to the White Clay Creek should be embodied in separate legislation. The Department and the National Park Service would be happy to work with the committee to address our concerns.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DONALD BARRY,
*Assistant Secretary for Fish
and Wildlife and Parks.*

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1849, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3 OF THE WILD AND SCENIC RIVERS ACT

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) * * *

* * * * *
(161) *WHITE CLAY CREEK, DELAWARE AND PENNSYLVANIA.*—
(A) *SEGMENTS.*—*The 191 miles of river segments of White Clay Creek (including tributaries of the Creek and all second order tributaries of the designated segments) in the States of Delaware and Pennsylvania (referred to in this paragraph as the "Creek"), as depicted on the recommended designation and classification maps, as follows:*

(i) *30.8 miles of the east branch, including Trout Run, beginning at the headwaters within West Marlborough township downstream to a point that is 500 feet north of the Borough of Avondale wastewater treatment facility, as a recreational river.*

(ii) 15.0 miles of the east branch beginning at the southern boundary line of the Borough of Avondale to a point where the East Branch enters New Garden Township at the Franklin Township boundary line, including Walnut Run and Broad Run outside the boundaries of the White Creek Preserve, as a recreational river.

(iii) 4.0 miles of the east branch that flow through the boundaries of the White Creek Preserve, Pennsylvania, beginning at the northern boundary line of London Britain township and downstream to the confluence of the middle and east branches, as a scenic river.

(iv) 20.9 miles of the middle branch, beginning at the headwaters within Londonberry township downstream to the boundary of the White Clay Creek Preserve in London Britain township, as a recreational river.

(v) 2.1 miles of the west branch that flow within the boundaries of the White Clay Creek Preserve in London Britain township, as a scenic river.

(vi) 17.2 miles of the west branch, beginning at the headwaters within Penn township downstream to the confluence with the middle branch, as a recreational river.

(vii) 12.7 miles of the main stem, excluding Lamborn Run, that flow through the boundaries of the White Clay Creek Preserve, Pennsylvania and Delaware, and White Clay Creek State Park, Delaware, beginning at the confluence of the east and middle branches in London Britain township, Pennsylvania, downstream to the northern boundary line of the city of Newark, Delaware, as a scenic river.

(viii) 27.5 miles of the main stem (including all second order tributaries outside the boundaries of the White Clay Creek Preserve and White Clay Creek Preserve and White Clay Creek State Park), beginning at the confluence of the east and middle branches in London Britain township, Pennsylvania, downstream to the confluence of the White Clay Creek with the Christina River, as a recreational river.

(ix) 1.3 miles of Middle Run outside the boundaries of the Middle Run Natural Area, as a recreational river.

(x) 5.2 miles of Middle Run that flow within the boundaries of the Middle Run Natural Area, as a scenic river.

(xi) 15.6 miles of Pike Creek, as a recreational river.

(xii) 38.7 miles of Mill Creek, as a recreational river.

(B) BOUNDARIES.—

(i) *IN GENERAL.*—Except as provided in clause (ii), in lieu of the boundaries of the segments shall be the greater of—

(I) the 500-year floodplain; or

(II) 250 feet as measured from the ordinary high water mark on both sides of the segment.

(ii) *EXCEPTIONS.*—The boundary limitations described in clause (i) are applicable to—

(I) the areas described in section 4(a) of the White Clay Creek and Scenic Rivers Act; and

(II) the properties, as generally depicted on the map entitled “White Clay Creek Wild and Scenic River Study Area Recommended Designated Area”, dated June 1999, on which are located the surface water intakes and water treatment and wastewater treatment facilities of—

(aa) the City of Newark, Delaware;

(bb) the corporation known as United Water Delaware; and

(cc) the Borough of West Grove, Pennsylvania.

(C) *ADMINISTRATION.*—

(i) *IN GENERAL.*—The segments designated by subparagraph (A) shall be administered by the Secretary of the Interior, in cooperation with the White Clay Creek Watershed Management Committee as provided for in the plan prepared by the White Clay Creek Wild and Scenic Study Task Force and the National Park Service, entitled “White Clay and Its Tributaries Watershed Management Plan” and dated May 1998.

