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SENATE

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RESTORE THE APALACHICOLA RIVER ECOSYSTEM (RARE) ACT OF 2002

NOVEMBER 12, 2002.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

MINORITY VIEWS

[to accompany S. 2730]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 2730) to modify certain water resources projects for the Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

GENERAL STATEMENT, BACKGROUND, AND OBJECTIVES OF THE LEGISLATION

The bill amends the existing authorization for the project for navigation, Apalachicola, Chattahoochee, and Flint Rivers, located in Georgia, Florida, and Alabama, authorized by section 2 of the Act of March 2, 1945 (59 Stat. 17, chapter 19), and modified by the first section of the Act of July 24, 1946 (60 Stat. 635, chapter 595), and the project for the West Point Reservoir, Chattahoochee River, Georgia, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1182) to deauthorize the channel between the Gulf Intracoastal Waterway near Apalachicola, Florida to the Jim Woodruff Dam near Chattahoochee, Florida and to authorize the development of a restoration plan.

The Apalachicola River is located in northwest Florida. It is home to a bottomland hardwood forest, lakes, ponds, wetlands, and sloughs. These sloughs deliver fresh water to tupelo honey trees located in the river basin. The Apalachicola River provides key habitat for one endangered and two threatened species and a large sportfish population. Its waters empty into the Gulf of Mexico where oysters, Gulf shrimp, and blue crab can thrive on the brackish waters.

The statutes cited above authorize the Army Corps of Engineers to maintain a 9-foot deep channel for year-round navigational use of the Apalachicola River. The Corps has never been able to maintain a 9-foot channel for year-round navigational use. The Corps has turned instead to the use of a combination of dredging and water releases to provide navigation windows for barge traffic.

This approach has caused severe environmental damage to the Apalachicola River. Releases of large quantities of water for navigation windows has drastic effects on fish and wildlife, including one endangered species—the fat three-ridge mussel (*Amblema neislerii*)—and two threatened species the Gulf sturgeon (*Acipenser oxyrinchus desotoi*) and the purple bankclimber mussel (*Elliptoideus sloatianus*.) Water releases trigger spawning behavior for many fish species, leaving them stranded upstream in backwater areas when the water subsides, resulting in massive fish kills and the loss of future generations of fish. According to a letter dated June 7, 2000 from then-Assistant Secretary of the Army for Civil Works, Joseph Westphal, an April 2000 navigation window implemented by the Army Corps of Engineers resulted in an almost complete failure of sportfish spawn along the entire Apalachicola River and reservoirs upstream.

Dredging of the Apalachicola River has destroyed approximately one-quarter of the banks of the Apalachicola River, in some instances leaving giant walls of sand—one of which is known as Sand Mountain. In a letter to the Florida Department of Environmental Protection dated April 23, 2002 regarding Permit Modification No. 0129424-003, Permit No. 0129424-001-DF, Gulf and Liberty Counties, Site 40 Rejuvenation Modification, the Army Corps measures the height of this mountain at 60 feet, plus or minus 8 feet. The disposal of large amounts of sand in and around the river and its tributaries has choked sloughs, cutting off water supply to surrounding habitat.

The dredging of the Apalachicola River also threatens the local production of tupelo honey an industry that generates at least \$2.4 million dollars a year in the Florida economy, according to the Florida Department of Agriculture statistics (Sept. 2002.) The many sloughs in the Apalachicola River basin are the main transportation route for fresh water, which is critical to the health of the tupelo trees. Because these sloughs are serving as dredged material disposal sites, fresh water cannot move through the river basin, cutting off the tupelo trees from their only source of water.

Tupelo honey is not the only agricultural impact from the dredging of the Apalachicola River. Fresh water pulses from the Corps' water releases also affect the salinity of brackish water in Apalachicola Bay, which has been recognized by the State of Florida as an Outstanding Florida Water, by the Federal Government as a National Estuarine Reserve, and by the United Nations as an

International Biosphere Reserve. Changes in salinity threaten the largest oyster harvesting area in the Gulf of Mexico which produces 90 percent of Florida's oysters, one of the principal nurseries for Gulf shrimp and blue crabs, and major commercial fishing operations.

The combination of dredging and low commercial barge traffic makes the Apalachicola River the most expensive Corps river project in the south. The Congressional Budget Office, in its May 1992 report entitled, "Paying for Highways, Airways, and Waterways: How Can Users Be Charged?", estimated that the average cost per ton-mile from 1995–98 is 14.1 cents, almost 24 times more than the cost of the Upper Mississippi River (.597 cents.) The Corps estimates that there is a return of 40 cents for every Federal dollar invested in the river. These conclusions are based on the 97 barge movements that occurred in 1998. Since this CBO analysis and the Corps' estimate of 40 cents for every Federal dollar invested were completed, barge traffic has fallen to a low of 4 barges in 2001. This change is a 96 percent reduction in barge traffic between 1998 and 2001, which has resulted in an even higher cost per ton-mile than CBO estimated for the period 1995–1998.

The impacts to the environment and the low commercial use of the Apalachicola River led then-Secretary Westphal to describe the project in a letter of August 9, 2000 as not "economically justified or environmentally defensible." The Apalachicola River was named one of America's most endangered rivers by American Rivers in 2002. Various pieces of the ACF system have been listed as threatened or endangered by American Rivers since 1991. The ACF river project is listed as one of the nation's "Top Ten Most Wasteful Projects" in the report, "Troubled Waters," written by the National Wildlife Federation and Taxpayers for Common Sense in 2000. It was first listed as a project proposed for elimination in 2001 by the Green Scissors Report, written by Friends of the Earth, Taxpayers for Common Sense, the U.S. Public Interest Research Group, and others. In 2002, this report cited the project as a "Boondoggle for Barges."

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

The act may be cited as the "Restore the Apalachicola River Ecosystem Act" or the "RARE Act."

Sec. 2. Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama

SUMMARY AND DISCUSSION

This section modifies the project for navigation, Apalachicola, Chattahoochee, and Flint Rivers, located in Georgia, Florida, and Alabama, authorized by section 2 of the Act of March 2, 1945 (59 Stat. 17, chapter 19), and modified by the first section of the Act of July 24, 1946 (60 Stat. 635, chapter 595), and the project for the West Point Reservoir, Chattahoochee River, Georgia, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1182).

First, this section deauthorizes the 9-foot by 100-foot channel between the Gulf Intracoastal Waterway near Apalachicola, Florida, to Jim Woodruff Dam near Chattahoochee, Florida.

Second, this section authorizes the Secretary of the Army, in consultation with the State of Florida, to develop a restoration plan for the Apalachicola River. The Secretary is required to coordinate with the State of Florida, the United States Fish and Wildlife Service, and the United States Geological Survey in developing the plan. Upon completion, the Secretary shall submit the plan to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

This section also specifies requirements for the plan. The sole goal of the plan is the reestablishment of the ecological integrity of the Apalachicola River basin ecosystem (including restoration of bendways, interconnecting waterways, sloughs, watersheds, associated land areas, and fish and wildlife habitat.) The plan shall reestablish an ecosystem that supports and sustains a balanced, integrated, adaptive community of organisms having species composition, diversity, and functional organization comparable to those of the natural habitat of the Apalachicola River. The plan shall also include a method of monitoring and assessing the biota, habitats, and water quality of the Apalachicola River basin for use in assessing restoration activities and impacts of restoration activities.

This section authorizes funding for plan development of \$4,000,000. It also requires that the Secretary of the Army engage in significant public outreach while developing the plan.

This section also explicitly requires that activities conducted by the Army Corps under this section not interfere with water compact activities and negotiations being carried out as of the date of enactment of this Act with respect to the Apalachicola, Chattahoochee, and Flint Rivers, located in Georgia, Florida, and Alabama. This is a key element of S. 2730. The committee does not intend for this legislation to interfere with the development of the Apalachicola, Chattahoochee, and Flint River compact being developed by the States of Georgia, Florida, and Alabama.

Finally, this section includes a limitation, which states that nothing in this section limits the authority of any agency under any other provision of law to require compliance with any applicable statutory or regulatory requirement.

LEGISLATIVE HISTORY

Senator Graham (D-FL) introduced S. 2730 with Senator Nelson (D-FL) on July 16, 2002. It was referred to the Committee on Environment and Public Works. No hearing was held on the bill. The committee considered the bill in a business meeting on September 26, 2002 and ordered the bill reported to the Senate.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 2730 on September 26, 2002. The committee favorably reported the bill by voice vote. Senator Smith requested to be officially recorded as voting “yes, with enthusiasm.” Senators Inhofe, Bond, Chafee, and Specter requested to be recorded as voting “no.”

REGULATORY IMPACT STATEMENT

The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 2730 would impose no unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 25, 2002.

Hon. JAMES M. JEFFORDS, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2730, a bill to restore the Apalachicola River ecosystem.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

S. 2730, Restore the Apalachicola River Ecosystem Act, as ordered reported by the Senate Committee on Environment and Public Works on September 26, 2002

Summary

S. 2730 would deauthorize a U.S. Army Corps of Engineers' project for maintenance dredging of a 9-foot deep by 100-foot wide navigation channel along 107 miles of the Apalachicola River. This channel is part of the Apalachicola-Chatthoochee-Flint Rivers navigation project which spans the States of Florida, Georgia, and Alabama. In addition, this bill would authorize the Secretary of the Army, acting through the Corps, to work with the State of Florida to develop a restoration plan for the Apalachicola River.

Assuming appropriation action consistent with this legislation, CBO estimates that implementing S. 2730 would result in a net savings of about \$6 million over the 2003-2007 period. Enacting S. 2730 would not affect direct spending or revenues.

S. 2730 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on the budgets of State, local, or tribal governments.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 2730 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
End Apalachicola Maintenance Dredging:					
Estimated Authorization Level	0	-2	-2	-2	-2
Estimated Outlays	0	-2	-2	-2	-2
Apalachicola Restoration Plan:					
Estimated Authorization Level	2	0	0	0	0
Estimated Outlays	1	1	0	0	0
Total Changes:					
Estimated Authorization Level	2	-2	-2	-2	-2
Estimated Outlays	1	-1	-2	-2	-2

Basis of Estimate

For this estimate, CEO assumes that S. 2730 will be enacted in fiscal year 2003 and that amounts will be appropriated to complete the restoration plan. Based on information from the U.S. Army Corps of Engineers, CBO estimates that implementing S. 2730 would result in a net savings of about \$6 million over the 2003–2007 period.

S. 2730 would deauthorize an Army Corps project for maintenance dredging of a 9-foot deep by 100-foot wide navigation channel along 107 miles of the Apalachicola River. Currently, the Corps spends about \$2 million annually to dredge this navigation channel. According to the Corps, suspending maintenance dredging on the Apalachicola River may affect the Corps's ability to dredge the Chattahoochee River as well as perform operations and maintenance work, including work on some locks and darns, along the entire Apalachicola-Chattahoochee-Flint Rivers navigation project. It is uncertain, however, if and when other dredging and operations and maintenance work would be disrupted or discontinued. CBO estimates that implementing S. 2730 would save about \$2 million a year starting in fiscal year 2004; however, savings could increase as other maintenance costs are discontinued.

S. 2730 also would authorize the Corps to develop a restoration plan for the Apalachicola River in conjunction with the State of Florida at a total cost of \$4 million. Under current law, the Corps would be responsible for approximately one-half of the cost of the restoration plan.

CEO estimates that the Federal cost of the plan would be about \$2 million over fiscal years 2003 and 2004.

Intergovernmental and Private-Sector Impact

S. 2730 contains no intergovernmental or private-sector mandates as defined in TJMRA and would impose no costs on the budgets of State, local, or tribal governments.

Estimate Prepared By: Federal Costs: Julie Middleton (226–2860); Impact on State, Local, and Tribal Governments: Marjorie Miller

(225–3220); Impact on the Private Sector: Cecil McPherson (226–2949).

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget and Analysis.

Estimate Prepared By: Federal Costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Lauren Marks.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATORS BOND AND CRAPO

The legislation proposed would deauthorize an entire river system that affects three States, not simply Florida. Deauthorization of the Apalachicola-Chattahoochee-Flint River System is opposed by State and local governments, communities, as well as businesses and industries. Such an action would have a significant negative economic impact on the communities that depend on the river system.

There is a recognition by those opposed to deauthorization that there are a number of environmental concerns. To that end there has been an attempt in recent years to address those concerns. Most importantly, the FY2002 Energy and Water Appropriations bill included funding specifically for the Army Corps of Engineers to address “Sand Mountain” and the disposal of dredged spoils on the Apalachicola River which were mentioned during consideration of the legislation.

The amount of barge traffic that moves along the ACF was also raised. While opponents of deauthorization concede that barge traffic has dropped off significantly in recent years, they would point to the lack of available water for navigation windows due to a multiyear drought rather than a lack of interest along the river in utilizing barges.

Finally, any attempt to deauthorize the ACF would severely hamper already difficult on-going water compact negotiations among the three States. These negotiations have been under discussion for more than 3 years now and very recently almost collapsed due to the very delicate situation associated with water allocations.

It is our understanding that Senator Shelby has committed to working with Senator Graham and others to reach a reasonable solution for the ACF that would both protect the rivers’ ecosystem while maintaining a Corps presence for navigation. Additionally, he is investigating options that would increase the amount of water available to the river system, such as additional reservoirs.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.