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UPPER ELK RIVER WILD AND SCENIC STUDY ACT

MARCH 2, 2010.—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 H.R. 3113]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 3113) to amend the Wild and Scenic Rivers Act to designate a segment of the Elk River in the State of West Virginia for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 3113 is to amend the Wild and Scenic Rivers Act to designate a segment of the Elk River in the State of West Virginia for study for potential addition of the National Wild and Scenic Rivers System.

BACKGROUND AND NEED

The five-mile section of the Upper Elk River in West Virginia designated for study by H.R. 3113 flows through a small canyon alongside a non-operational railroad. The river corridor includes hardwood forests and large boulders with occasional views of the railroad tracks. The stream is popular with anglers and supports populations of wild brown, rainbow, and native brook trout.

This section of the river runs from the confluence of the Old Field Fork and the Big Spring Fork in Pocahontas County, West Virginia, to the Randolph County line. In February 2009, the Pocahontas County Commissioners requested that a wild and scenic river study be conducted on this portion of the river, which is known as the “Slaty” segment of the Elk River.

LEGISLATIVE HISTORY

H.R. 3113, introduced by Representative Rahall, passed the House of Representatives by voice vote on September 22, 2009.

The Subcommittee on National Parks held a hearing on the bill on November 4, 2009. At its business meeting on December 16, 2009, the Committee on Energy and Natural Resources ordered H.R. 3113 favorably reported without amendment.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on December 16, 2009, by a voice vote of a quorum present, recommends that the Senate pass H.R. 3113.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the “Upper Elk River Wild and Scenic Study Act”.

Section 2 amends Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) to designate a 5-mile segment of the Elk River in West Virginia, from the confluence of the Old Field Fork and the Big Spring Fork in Pocahontas County, to the Pocahontas and Randolph County, to be studied as a potential addition to the Wild and Scenic Rivers System.

Section 3 amends section 5(b) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(b)) to direct the Secretary of Agriculture to complete the study and submit to Congress a report containing the study’s results within three years after funds are made available.

Section 4 reaffirms Section 13 of the Wild and Scenic Rivers Act (16 U.S.C. 1284) to provide that the designation of the river segment in section 2 shall not be construed to affect access for recreational activities, including hunting, fishing, or trapping, otherwise allowed by law.

Subsection (b) clarifies, consistent with section 13 of the Wild and Scenic Rivers Act, the designation of the river segment in section 2 shall not be construed to affect the authority, jurisdiction, or responsibility of the relevant States to manage, control, or regulate fish and resident wildlife under State law or regulations.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 3113—Upper Elk River Wild and Scenic Study Act

H.R. 3113 would require the Secretary of Agriculture to study a 5-mile segment of the Elk River for potential addition to the Wild and Scenic Rivers System. The segment lies within the Monongahela National Forest in Virginia. Assuming the availability of appropriated funds, CBO estimates that preparing the study required by H.R. 3113 would cost about \$300,000 over the next three years. Enacting the legislation would not affect revenues or direct spending.

The act 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.

On September 11, 2009, CBO transmitted a cost estimate for H.R. 3113 as ordered reported by the House Committee on Natural Resources on September 9, 2009. The estimated costs of the two versions of the legislation are the same.

The CBO staff contact for this estimate is Deborah Reis. The 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 H.R. 3113.

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 H.R. 3113, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 3113, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the National Park Service at the November 4, 2009, Subcommittee hearing on H.R. 3113 follows:

STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR, CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to provide the Administration's views on H.R. 3113.

This bill amends section 5(a) of the Wild and Scenic Rivers Act, Public Law 90-542 (16 U.S.C. 1271-1287) to designate a segment of Elk River in Pocahontas County, West Virginia, for study as a potential addition to the National Wild and Scenic Rivers System. The segment that would be authorized for study lies entirely within the Monongahela National Forest, and is an approximate five-mile segment of the Elk River from the confluence of the Old Field Fork and the Big Spring Fork in Pocahontas County to the Pocahontas and Randolph County line.

The bill provides that the study determine if the river is qualified for designation and, if so determined, evaluate the potential benefits and consequences of its designation, including an assessment of whether its addition to the National Wild and Scenic Rivers System is the best method to protect river values.

This section of the Elk River flows through a small canyon with a parallel, non-operational railroad the only sign of human activity. The overall appearance of the river corridor from the stream is one of hardwood forests and large boulders with occasional views of the railroad. The river is dominated by many pools, separated by stretches of riffles. The stream is popular with anglers and supports populations of wild brown and rainbow trout; populations of native brook trout occur in the tributaries within one-quarter mile of the main channel. Karst limestone outcrops along the river bed create the conditions that cause the river to "sink", or go underground, during low flows.

Of the land contained within a quarter mile of each side of the river segment, two-thirds is in federal ownership all under the jurisdiction of the U.S. Forest Service, an agency of the Department of Agriculture, with the remaining acreage in private ownership for a total of approximately 1,500 acres. The bill provides that the study address both Federal and non-Federal lands.

The Administration supports this legislation as it provides an opportunity to work with interested parties including state and local governments and landowners to identify river values and thoughtfully evaluate whether and, if desirable, how these values should be protected.

This concludes my prepared statement and I would be pleased to answer any questions you may have.

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 H.R. 1593 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):

WILD AND SCENIC RIVERS ACT

(Public Law 90-542; Approved October 2, 1968)

[16 U.S.C. 1276 et seq.]

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act be cited as the "Wild and Scenic Rivers Act".

* * * * *

SEC. 5(a). The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

* * * * *

() *ELK RIVER, WEST VIRGINIA.—The approximate 5-mile segment of the Elk River from the confluence of the Old Field Fork and the Big Spring Fork in Pocahontas County to the Pocahontas and Randolph County line.*

(b) STUDIES AND REPORTS.—

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() *ELK RIVER, WEST VIRGINIA.*—*Not later than 3 years after funds are made available to carry out this paragraph, the Secretary of Agriculture shall complete the study of the 5-mile segment of the Elk River, West Virginia, designated for study in subsection (a), and shall submit to Congress a report containing the results of the study. The report shall include an analysis of the potential impact of the designation on private lands within the 5-mile segment of the Elk River, West Virginia, or abutting that area.*

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