

EIGHTMILE WILD AND SCENIC RIVER ACT

—————
JULY 10, 2007.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 986]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 986) to amend the Wild and Scenic Rivers Act to designate certain segments of the Eightmile River in the State of Connecticut as components of the National Wild and Scenic Rivers System, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Eightmile Wild and Scenic River Act”.

SEC. 2. WILD AND SCENIC RIVER DESIGNATION, EIGHTMILE RIVER, CONNECTICUT.

(a) FINDINGS.—Congress finds the following:

(1) The Eightmile River Wild and Scenic River Study Act of 2001 (Public Law 107-65; 115 Stat. 484) authorized the study of the Eightmile River in the State of Connecticut from its headwaters downstream to its confluence with the Connecticut River for potential inclusion in the National Wild and Scenic Rivers System.

(2) The segments of the Eightmile River covered by the study are in a free-flowing condition, and the outstanding resource values of the river segments include the cultural landscape, water quality, watershed hydrology, unique species and natural communities, geology, and watershed ecosystem.

(3) The Eightmile River Wild and Scenic Study Committee has determined that—

(A) the outstanding resource values of these river segments depend on sustaining the integrity and quality of the Eightmile River watershed;

(B) these resource values are manifest within the entire watershed; and

(C) the watershed as a whole, including its protection, is itself intrinsically important to this designation.

(4) The Eightmile River Wild and Scenic Study Committee took a watershed approach in studying and recommending management options for the river segments and the Eightmile River watershed as a whole.

(5) During the study, the Eightmile River Wild and Scenic Study Committee, with assistance from the National Park Service, prepared a comprehensive management plan for the Eightmile River watershed, dated December 8, 2005 (in this section referred to as the “Eightmile River Watershed Management Plan”), which establishes objectives, standards, and action programs that will ensure long-term protection of the outstanding values of the river and compatible management of the land and water resources of the Eightmile River and its watershed, without Federal management of affected lands not owned by the United States.

(6) The Eightmile River Wild and Scenic Study Committee voted in favor of inclusion of the Eightmile River in the National Wild and Scenic Rivers System and included this recommendation as an integral part of the Eightmile River Watershed Management Plan.

(7) The residents of the towns lying along the Eightmile River and comprising most of its watershed (Salem, East Haddam, and Lyme, Connecticut), as well as the Boards of Selectmen and Land Use Commissions of these towns, voted to endorse the Eightmile River Watershed Management Plan and to seek designation of the river as a component of the National Wild and Scenic Rivers System.

(8) The State of Connecticut General Assembly enacted Public Act 05–18 to endorse the Eightmile River Watershed Management Plan and to seek designation of the river as a component of the National Wild and Scenic Rivers System.

(b) DESIGNATION.—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 new paragraph:

“() EIGHTMILE RIVER, CONNECTICUT.—Segments of the main stem and specified tributaries of the Eightmile River in the State of Connecticut, totaling approximately 25.3 miles, to be administered by the Secretary of the Interior as follows:

“(A) The entire 10.8-mile segment of the main stem, starting at its confluence with Lake Hayward Brook to its confluence with the Connecticut River at the mouth of Hamburg Cove, as a scenic river.

“(B) The 8.0-mile segment of the East Branch of the Eightmile River starting at Witch Meadow Road to its confluence with the main stem of the Eightmile River, as a scenic river.

“(C) The 3.9-mile segment of Harris Brook starting with the confluence of an unnamed stream lying 0.74 miles due east of the intersection of Hartford Road (State Route 85) and Round Hill Road to its confluence with the East Branch of the Eightmile River, as a scenic river.

“(D) The 1.9-mile segment of Beaver Brook starting at its confluence with Cedar Pond Brook to its confluence with the main stem of the Eightmile River, as a scenic river.

“(E) The 0.7-mile segment of Falls Brook from its confluence with Tisdale Brook to its confluence with the main stem of the Eightmile River at Hamburg Cove, as a scenic river.”.

(c) MANAGEMENT.—The segments of the main stem and certain tributaries of the Eightmile River in the State of Connecticut designated as components of the National Wild and Scenic Rivers System by the amendment made by subsection (b) (in this section referred to as the “Eightmile River”) shall be managed in accordance with the Eightmile River Watershed Management Plan and such amendments to the plan as the Secretary of the Interior determines are consistent with this section. The Eightmile River Watershed Management Plan is deemed to satisfy the requirements for a comprehensive management plan required by section 3(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)).

(d) COMMITTEE.—The Secretary of the Interior shall coordinate the management responsibilities of the Secretary with regard to the Eightmile River with the Eightmile River Coordinating Committee, as specified in the Eightmile River Watershed Management Plan.

(e) COOPERATIVE AGREEMENTS.—In order to provide for the long-term protection, preservation, and enhancement of the Eightmile River, the Secretary of the Interior may enter into cooperative agreements pursuant to sections 10(e) and 11(b)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(e), 1282(b)(1)) with the State of Connecticut, the towns of Salem, Lyme, and East Haddam, Connecticut, and appro-

appropriate local planning and environmental organizations. All cooperative agreements authorized by this subsection shall be consistent with the Eightmile River Watershed Management Plan and may include provisions for financial or other assistance from the United States.

(f) RELATION TO NATIONAL PARK SYSTEM.—Notwithstanding section 10(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(c)), the Eightmile River shall not be administered as part of the National Park System or be subject to regulations which govern the National Park System.

(g) LAND MANAGEMENT.—The zoning ordinances adopted by the towns of Salem, East Haddam, and Lyme, Connecticut, in effect as of December 8, 2005, including provisions for conservation of floodplains, wetlands, and watercourses associated with the segments, are deemed to satisfy the standards and requirements of section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277 (c)). For the purpose of section 6(c) of that Act, such towns shall be deemed “villages” and the provisions of that section, which prohibit Federal acquisition of lands by condemnation, shall apply to the segments designated by subsection (a). The authority of the Secretary to acquire lands for the purposes of this Act shall be limited to acquisition by donation or acquisition with the consent of the owner thereof, and shall be subject to the additional criteria set forth in the Eightmile River Watershed Management Plan.

(h) WATERSHED APPROACH.—

(1) IN GENERAL.—In furtherance of the watershed approach to resource preservation and enhancement articulated in the Eightmile River Watershed Management Plan, the tributaries of the Eightmile River watershed specified in paragraph (2) are recognized as integral to the protection and enhancement of the Eightmile River and its watershed.

(2) COVERED TRIBUTARIES.—Paragraph (1) applies with respect to Beaver Brook, Big Brook, Burnhams Brook, Cedar Pond Brook, Cranberry Meadow Brook, Early Brook, Falls Brook, Fraser Brook, Harris Brook, Hedge Brook, Lake Hayward Brook, Malt House Brook, Muddy Brook, Ransom Brook, Rattlesnake Ledge Brook, Shingle Mill Brook, Strongs Brook, Tisdale Brook, Witch Meadow Brook, and all other perennial streams within the Eightmile River watershed.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section and the amendment made by subsection (b).

PURPOSE OF THE BILL

The purpose of H.R. 986 is to amend the Wild and Scenic Rivers Act to designate certain segments of the Eightmile River in the State of Connecticut as components of the National Wild and Scenic Rivers System.

BACKGROUND AND NEED FOR LEGISLATION

In 2001, Congress enacted the Eightmile River Wild and Scenic River Study Act (P.L. 107–65), authorizing a study of the river from its headwaters to its confluence with the Connecticut River near Hamburg, CT.

As a result of that law, a local study committee was organized, with members including local selectmen and representatives of land use commissions, area land trusts, a regional planning agency, the USDA’s Natural Resource Conservation Service, the state Department of Environmental Protection, and The Nature Conservancy. The committee was coordinated and staffed by the National Park Service.

On July 17, 2006, the National Park Service released a draft study report, which deemed portions of the river and its tributaries eligible and suitable for designation under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.).

Specifically, the study determined that 25.3 miles of the river and selected tributaries are eligible for designation, citing six “out-

standingly remarkable” values such as an intact watershed with a natural flow, very high water quality with few current sources of degradation, unusual regional geological features including an unusual alignment of bedrock, large numbers of rare plants and animals and significant natural communities, few invasive species, and extensive forest cover.

The study cites strong local support, the existence of an appropriate management framework and state and local land use controls among the factors that make the river suitable for designation, and notes that conservation land ownership and topography also help provide adequate long-term protection for the watershed. The study recommends designating the various segments as “scenic.”

The study also recommends that the designated segments be managed through a partnership agreement as envisioned in section 10(e) of the Wild and Scenic Rivers Act, and the study committee produced a management plan (dated Dec. 8, 2005) for the watershed.

H.R. 986 would implement the recommendations of the study. The bill designates 25.3 miles of the Eightmile River and its tributaries in Connecticut as a national scenic river. The bill also directs that the designated segments be managed according to that plan and any amendments that the Interior Secretary determines to be consistent with the bill.

COMMITTEE ACTION

H.R. 986 was introduced on February 12, 2007 by Representative Joe Courtney (D-CT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public Lands.

The Subcommittee held a hearing on H.R. 986 on April 17, 2007 and met on April 19, 2007 to mark up the legislation.

At the subcommittee markup Representative Rob Bishop (R-UT) offered an amendment to forbid condemnation of lands or interests in land within the authorized boundaries of the Eightmile River as described in the bill. The amendment also would have deleted a reference to section 6(c) of the Wild and Scenic Rivers Act. That language permits the Secretary of the Interior to acquire lands by condemnation unless local ordinances are deemed sufficient to protect the river. As introduced, H.R. 986 would have deemed existing local ordinances to satisfy section 6(c).

Chairman Raul Grijalva (D-AZ) offered a second degree amendment to deem the zoning ordinances adopted by the towns of Salem, East Haddam and Lyme to satisfy section 6(c) of the Act and limit the Secretary’s acquisition authority to lands that are donated or bought from willing sellers.

The Subcommittee adopted the Grijalva amendment by voice vote and then agreed to the Bishop amendment, as amended, also by voice vote. The bill, as amended, was then favorably reported to the Full Committee, also by voice vote.

On May 2, 2007, the full Natural Resources Committee met to consider the bill and agreed to consider a committee print incorporating the subcommittee amendment as original text.

Representative Bishop offered an amendment to forbid the use of federal funds to condemn land to carry out the purposes of the bill.

The amendment was not adopted by a roll call vote of 9 yeas to 17 nays, as follows:

The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Provides that this Act may be cited as the “Eightmile Wild and Scenic River Act”.

Section 2. Wild and scenic river designation, Eightmile River, Connecticut

Subsection (a) contains findings about the Eightmile River.

Subsection (b) designates segments of the main stem and specified tributaries of the Eightmile River, totaling 25.3 miles, to be administered by the Secretary of the Interior as follows:

A 10.8-mile segment of the main stem, from its confluence with Lake Hayward Brook to its confluence with the Connecticut River at the mouth of Hamburg Cove, as a scenic river.

An 8.0-mile segment of the East Branch of the Eightmile River starting at Witch Meadow Road to the confluence with the main stem of the Eightmile River, as a scenic river.

A 3.9-mile segment of Harris Brook starting with the confluence of an unnamed stream lying 0.74 miles due east of the intersection of Hartford Road (State Route 85) and Round Hill Road to its confluence with the East Branch of the Eightmile River, as a scenic river.

A 1.9-mile segment of Beaver Brook starting at its confluence with Cedar Pond Brook to its confluence with the main stem of the Eightmile River, as a scenic river.

A 0.7-mile segment of Falls Brook from its confluence with Tisdale Brook to its confluence with the main stem of the Eightmile River at Hamburg Cove, as a scenic river.

Subsection (c) directs that the designated segments be managed in accordance with the Eightmile River Watershed Management Plan and such amendments to the plan as the Secretary of the Interior determines are consistent with this section. The subsection also deems that the plan satisfies the requirements of section 3(d) of the Wild and Scenic Rivers Act for a comprehensive management plan.

Subsection (d) directs the Secretary of the Interior to coordinate management responsibilities with the Eightmile River Coordinating Committee.

Subsection (e) permits the Secretary of the Interior to enter into cooperative agreements under sections 10(e) and 11(b)(1) of the Wild and Scenic Rivers Act with the State of Connecticut, the towns of Salem, Lyme, and East Haddam, Connecticut, and appropriate local planning and environmental organizations.

Subsection (f) asserts that the Eightmile River shall neither be administered as part of the National Park System nor be subject to regulations which govern the National Park System.

Subsection (g) deems the zoning ordinances adopted by the towns of Salem, East Haddam, and Lyme, Connecticut, in effect as of December 8, 2005, including provisions for conservation of floodplains, wetlands and watercourses, to satisfy the standards and requirements of section 6(c) of the Wild and Scenic Rivers Act. Further,

the subsection directs that those towns shall be deemed “villages” under the Act, and that the provisions of the Act prohibiting federal acquisition of land by condemnation shall apply to the segments designated by the bill. The subsection further states that the authority of the Secretary to acquire lands for purposes of the bill shall be limited to lands acquired by donation or from willing sellers.

Subsection (h) recognizes the tributaries—twenty listed brooks and all other perennial streams—within the Eightmile River watershed as integral to the protection and enhancement of the river and its watershed.

Subsection (i) authorizes such sums as are necessary to carry out the bill.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to designate certain segments of the Eightmile River in the State of Connecticut as components of the National Wild and Scenic Rivers System.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 986—Eightmile Wild and Scenic River Act

H.R. 986 would designate a 25-mile portion of the Eightmile River in Connecticut as a scenic river under the Wild and Scenic Rivers Act. Based on information from the National Park Service, CBO estimates that the proposed designation would not signifi-

cantly affect the agency's administrative or land-management costs, which are subject to appropriation. Enacting H.R. 986 would not affect direct spending or revenues.

H.R. 986 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.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 986 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

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) * * *

* * * * *

() *EIGHTMILE RIVER, CONNECTICUT.*—*Segments of the main stem and specified tributaries of the Eightmile River in the State of Connecticut, totaling approximately 25.3 miles, to be administered by the Secretary of the Interior as follows:*

(A) *The entire 10.8-mile segment of the main stem, starting at its confluence with Lake Hayward Brook to its confluence with the Connecticut River at the mouth of Hamburg Cove, as a scenic river.*

(B) *The 8.0-mile segment of the East Branch of the Eightmile River starting at Witch Meadow Road to its confluence with the main stem of the Eightmile River, as a scenic river.*

(C) *The 3.9-mile segment of Harris Brook starting with the confluence of an unnamed stream lying 0.74 miles due east of the intersection of Hartford Road (State Route 85) and Round*

Hill Road to its confluence with the East Branch of the Eightmile River, as a scenic river.

(D) The 1.9-mile segment of Beaver Brook starting at its confluence with Cedar Pond Brook to its confluence with the main stem of the Eightmile River, as a scenic river.

(E) The 0.7-mile segment of Falls Brook from its confluence with Tisdale Brook to its confluence with the main stem of the Eightmile River at Hamburg Cove, as a scenic river.

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DISSENTING VIEWS

We oppose H.R. 986 in its current form and urge the Majority to adopt our amendment to protect the private property rights of “Mom and Pop” landowners within the river corridor.

H.R. 986, as introduced, made a tepid attempt to prohibit condemnation of private property by the National Park Service. Thus, Congressman Rob Bishop proposed an amendment to strengthen the bill, believing it was imperative to have iron-clad property rights protections—especially in the Congressional district where the historic U.S. Supreme Court case *Kelo v. City of New London* originated.

The Majority is willing to expose the private property rights of “Mom and Pop” landowners within this river corridor to language that identifies a point in time, more than two years ago, when local zoning regulations were deemed to satisfy a requirement in the Wild and Scenic Rivers Act that prohibits condemnation. Since H.R. 986 is silent on what the Secretary of the Interior’s authority will be when these same regulations are locally amended, it may trigger the National Park Service’s ability to condemn land within the river corridor.

H.R. 986 was rushed to subcommittee markup approximately 52 hours following the legislative hearing and before follow-up questions could be answered by the National Park Service or even before a transcript was made available. No comprehensible reason was given for this sense of urgency, which clearly impairs the legislative process.

As noted above, Congressman Rob Bishop offered an amendment at the subcommittee markup that strictly prohibited the National Park Service from acquiring land by condemnation, but allowing the purchase of land or the Park Service to accept donated lands. Subcommittee Chairman Grijalva then offered a substitute amendment to the Bishop amendment to reinsert convoluted legislative language in the bill that does nothing to prohibit condemnation.

At the Full Committee markup, Congressman Bishop attempted again to add language to protect the rights of private property owners by prohibiting the use of federal funds to condemn land within the river corridor. While the Majority acknowledged that the Bishop language would accomplish its goals, it stubbornly lamented it would be “redundant” to its convoluted language in the bill. We believe strongly that protection of private property rights, which were considered so sacred by our Founding Fathers to be included in the Bill of Rights, should never be considered “redundant.”

History shows that the mere threat of condemnation is the hammer used to force middle-class landowners into becoming “willing sellers” to federal agencies. These hard working and Godfearing folks do not have the time and money to counter high-priced lawyers working for the U.S. Department of Justice. As a result, they

never show up in the U.S. Department of Justice statistics entitled "condemnation cases by agency."

H.R. 986 will expose the private property owners along the river and throughout the watershed to strict regulations that amount to down-zoning. One of these regulations puts a cap on the amount of impervious surfaces in the watershed. If a property owner within the watershed had plans to add a room to his home, the roof would constitute an impervious surface and he will be barred from construction. Another regulation would prohibit simple landscaping because the land may be in a riparian corridor and will have to remain in its "natural native condition." These are just two examples of regulations found in the management plan this bill gives a Congressional blessing to.

H.R. 986 should come before the House under a fair and open process that allows it to be amended to protect the private property rights of "Mom and Pop" landowners.

ROB BISHOP (UT).
LOUIE GOHMERT.
JEFF FLAKE.
TOM COLE.
CHRIS CANNON.
STEVAN PEARCE.
BILL SHUSTER.
DON YOUNG.
DEAN HELLER.
HENRY E. BROWN, Jr.
DOUG LAMBORN.
JOHN J. DUNCAN, Jr.
BILL SALI.
CATHY McMORRIS RODGERS.

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