

Calendar No. 489

94TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ No. 94-502

DESIGNATING A SEGMENT OF THE MISSOURI RIVER IN THE STATE OF MONTANA AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

DECEMBER 1, 1975.—Ordered to be printed

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

REPORT

[To accompany S. 1506]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 1506) to designate a segment of the Missouri River, Montana, as a component of the National Wild and Scenic Rivers System having considered the same, reports favorably thereon with an amendment to the text 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 provisions:

That section 3(a) of the Wild and Scenic Rivers Act (82 Stat. 906, 907), as amended (16 U.S.C. 1271, 1274(a) et seq.), is further amended by adding at the end thereof the following new paragraph:

"(11) MISSOURI, MONTANA.—The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as generally depicted on the boundary map entitled 'Missouri Breaks Freeflowing River Proposal,' dated October 1975, to be administered by the Secretary of the Interior. There are authorized to be appropriated such sums as are necessary for the purpose of this river segment."

SEC. 2. After consultation with the State and local governments and the interested public, the Secretary shall, pursuant to section 3(b) of the Wild and Scenic Rivers Act and within one year of enactment of this Act—

(1) establish detailed boundaries of the river segment designated as a component of the National Wild and Scenic Rivers System pursuant to section 1 of this Act (hereinafter referred to as the "river area"): *Provided*, That the boundaries of the portion of the river area from Fort Benton to Coal Banks Landing shall be drawn to include only the river and its bed and exclude all adjacent land except significant historic sites and such campsites and access points as are deemed necessary by the Secretary, and to which the Secretary finds no reasonable alternative, as set forth in the management plan required pursuant to clause (2) of this section; and

(2) determine, in accordance with the guidelines in section 2(b) of the Wild and Scenic Rivers Act, which of the three classes—wild river, scenic river, or recreation river—best fit portions of the river segment, designate such portions in such classes, and prepare a management plan for the river area in accordance with such designation.

Sec. 3. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") shall manage the river area pursuant to the provisions of this Act and the Wild and Scenic Rivers Act, and in accordance with the provisions of the Taylor Grazing Act (48 Stat. 1269), as amended (43 U.S.C. 315), under principles of multiple use and sustained yield, and with any other authorities available to him for the management and conservation of natural resources and the protection and enhancement of the environment, where such Act, principles, and authorities are consistent with the purposes and provisions of this Act and the Wild and Scenic Rivers Act.

(b) (1) The Secretary may acquire land and interests in land only in accordance with the provisions of this Act and the Wild and Scenic Rivers Act and the limitations contained in section 6 of that Act and only: (A) at Fort Benton for the visitor facility as provided in subsection (g) (2) of this section; (B) at the site of Fort McKenzie; (C) in that portion of the river area downstream from Fort Benton to Coal Banks Landing for historic sites, campsites, and access points in accordance with section 2(1) of this Act; and (D) in that portion of the river area downstream from Coal Banks Landing so as to provide, wherever practicable and necessary for the purposes of this Act and the Wild and Scenic Rivers Act, rim-to-rim protection for such portion.

(2) In accordance with section 6(b) of the Wild and Scenic Rivers Act, the Secretary shall not acquire fee title to any lands by condemnation under the authority of that Act or this Act, except that the Secretary may use condemnation when necessary and within the limitations on acquisition set forth in clause (1) of this subsection to clear title, acquire scenic easements, or acquire such other easements as are reasonably necessary to give the public access to the river segment within the river area and to permit its members to transverse the length of said river area or of selected portions thereof.

(3) The Secretary shall, to the extent feasible, give priority in expenditure of funds pursuant to this Act for the acquisition and development of campsites and historic sites, including the site of a visitor center at Fort Benton and the site of Fort McKenzie.

(c) Consistent with the provisions of this Act and the Wild and Scenic Rivers Act, the Secretary may issue easements, licenses, or permits for rights-of-way through, over, or under the lands in Federal ownership within the river area, or for the use of such lands on such terms and conditions as are in accordance with the provisions of this Act, the Wild and Scenic Rivers Act, and other applicable law.

(d) The Secretary is authorized to permit the construction of a bridge across the river in the general vicinity of the community of Winifred, Montana, in order to accommodate the flow of north-south traffic. Such construction shall be in accordance with a plan which is mutually acceptable to the Secretary and State and local highway officials, and which is consistent with the purposes of this Act and the Wild and Scenic Rivers Act.

(e) The Secretary is authorized to permit for agricultural purposes such pumping facilities and associated pipelines within the river area as may be necessary in order to assure the continuation of an adequate supply of water from the Missouri River to the owners of lands adjacent to the river within the river area.

(f) The Secretary shall permit hunting and fishing in the river area in accordance with applicable Federal and State laws, except that he may designate zones where, and periods when, no hunting or fishing shall be permitted for reasons of public safety or administration.

(g) (1) The Secretary, acting through the Bureau of Land Management, shall exercise management responsibilities in the river area for:

- (A) the grazing of livestock;
- (B) the application of the United States mining and mineral leasing laws;
- (C) the management of fish and wildlife habitat;
- (D) the division and use of water for agricultural and domestic purposes;
- (E) the acquisition of lands and interests therein;
- (F) the administration of public recreational uses of, and any historic sites and campsites in, the river area; and
- (G) all other management responsibilities except those set forth in paragraph (2) of this subsection.

(2) The Secretary, acting through the National Park Service, shall be responsible for the construction, operation, and management of any visitor facility in or near Fort Benton which is found necessary in accordance with the management plan developed pursuant to section 2 and the provision, at such facility, of interpretive services for the historic, archaeological, scenic, natural, and fish and wildlife resources of the area.

I. PURPOSE

The purpose of S. 1506, as ordered reported, is to designate a 149 mile segment of the Missouri River in the State of Montana as a component of the National Wild and Scenic Rivers System.

II. BACKGROUND

A. ADMINISTRATIVE AND LEGISLATIVE HISTORY

In 1968, the Congress enacted the Wild and Scenic Rivers Act (P.L. 90-542; 82 Stat. 906) which established the National Wild and Scenic Rivers System, designated segments of 8 rivers as the initial components of the System, and required that segments of 27 other rivers be studied by either the Secretary of the Interior or the Secretary of Agriculture to determine their suitability for inclusion in the System. Subsequently, the Congress has added segments of 28 additional rivers to the study list (Act of January 3, 1975, P.L. 93-621, 88 Stat. 2094) and two additional components to the System (Act of October 25, 1972, P.L. 92-560, 86 Stat. 1174; and Act of May 10, 1974, P.L. 93-279, 88 Stat. 122). In addition, segments of three rivers have been designated as State-administered components of the System by administrative action of the Secretary of the Interior pursuant to section 2(a)(ii) of the Wild and Scenic Rivers Act, as amended (16 USC 1271).

Among the 27 river segments which were initially designated by the Wild and Scenic Rivers Act for study was a stretch of the Missouri River in Montana. Section 5(a)(13) of that Act identified the 180 mile stretch from Fort Benton downstream to Ryan Island as the study segment. The Secretary of the Interior was given the task of conducting the study and he, in turn, assigned the responsibility to the Bureau of Outdoor Recreation. In 1971, the Bureau formed a study task force composed of representatives from the State of Montana, Bureau of Land Management, Fish and Wildlife Service, National Park Service, Bureau of Reclamation, Forest Service, and U.S. Corps of Engineers. The draft study report, recommending the designation of a 128 mile segment of the Missouri River for addition to the National Wild and Scenic Rivers System, was published early this year. In testimony before the Subcommittee on the Environment and Land Resources on September 19, 1975, Assistant Secretary of the Interior Nathaniel P. Reed summarized the draft report's findings:

Our study concludes that this stretch of the Missouri meets all of the criteria for inclusion in the National System. We believe that its outstanding scenery, wildlife, historic values, and recreation potential warrant preservation in a free flowing condition. . . .

The 90 day formal review of the draft report by other Federal agencies and the State of Montana required by section 4(b) of the Wild and Scenic Rivers Act, as amended, has been completed and

the results are being analyzed. The final study report and Presidential recommendations are expected to be transmitted to the Congress prior to the end of the year.

This wild and scenic river study report is not the first instance in which official recognition has been given to the significance of this segment of the Missouri River as an historic, scenic, recreational, and scientific resource. In 1960, the National Park Service began an examination of the Missouri River between Fort Peck Reservoir and Fort Benton to determine its potential as a unit of the National Park System. Two years later, the Service recommended that the 180-mile segment be established as a 268,000-acre Lewis and Clark National Wilderness Waterway within the National Park System. In 1966, the State of Montana gave recognition to the recreational values of this segment of the Missouri by designating it a component of the Montana Recreational Waterway System. (This system was established by the Montana Fish and Game Commission in 1965. It has not received legislative recognition, however, and thus has no formal legal status.) Also in 1966, in response to this Committee's request to the Secretary of the Interior, the Bureau of Outdoor Recreation embarked on a study of the Middle Missouri River from Yankton, South Dakota, upstream to Fort Benton, Montana, to determine how the recreation resources of the area could be enhanced. The 1968 study report, *The Middle Missouri: A Rediscovery*, contained the recommendation that the free-flowing segment of the Missouri between Coal Banks Landing and the west boundary of the Charles M. Russell National Wildlife Refuge be protected as the Missouri Breaks National River.

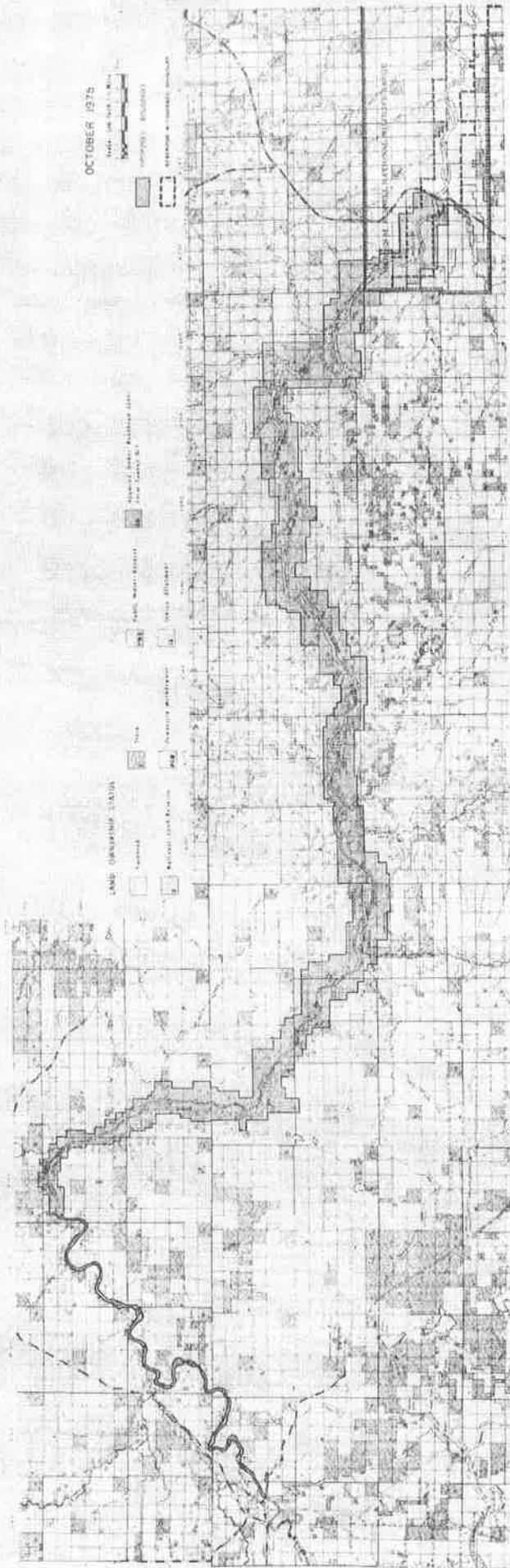
On March 30, 1971, Senator Metcalf introduced S. 1405, a bill to establish the Missouri Breaks Scenic Recreation River. The Subcommittee on Parks and Recreation held a field hearing on the measure in Great Falls, Montana, on August 16, 1971; but no further action was taken on either S. 1405 or its counterpart measures in the House (H.R. 1129 (Mr. Saylor) and H.R. 13003 (Mr. Roe)). With minor changes, the measure was re-introduced by Senator Metcalf as S. 1009 in the 93d Congress. Once again, no action was taken on the proposal.

S. 1506, as introduced by Senator Metcalf on April 28, 1975, was a modified version of the earlier bills. A field hearing on the proposal was held by the Subcommittee on the Environment and Land Resources in Billings, Montana, on August 25, 1975. A second hearing on S. 1506 was held in Washington, D.C., on September 19, 1975, to receive the testimony of Assistant Secretary Reed.

B. THE RIVER

The segment to be designated a wild and scenic river by S. 1506, as ordered reported, is the last major free-flowing portion of our Nation's longest river. From Three Forks to Fort Benton, the Missouri is characterized by several dams and intensive bottomland cultivation. From Fort Peck to its junction with the Mississippi, the river has been heavily engineered with channel pilings, flood walls, and dams and reservoirs which have erased the river's natural setting. Only the 149 mile stretch from Fort Benton to the Robinson Bridge (approximately 16 miles upstream from Fort Peck Reservoir) of the entire 2500-mile

MISSOURI BREAKS FREE — FLOWING RIVER PROPOSAL



13096-9 5-11-76 SOL 14

long river retains the primitive, free-flowing characteristics required for wild and scenic river designation.

Two features distinguish this particular river segment—known as the “Missouri Breaks”—from many of the other designated wild and scenic rivers. First, the Missouri Breaks possesses historical values of extraordinary significance. From the moment the Lewis and Clark expedition embarked from their encampment at the mouth of the Wood River on May 14, 1804, to the coming of the railroad, the Missouri River served as a great waterway westward. Explorers, fur trappers, soldiers, steamboat passengers, forty-niners, settlers, and merchants pushed up the river and dispersed across the Northwest. With arrival of the Utah Northern Railroad in 1880, the advent of road travel on better topographic routes to the north and south, and subsequent large scale water development commencing with the construction of Fort Peck dam in 1934 and the 1944 authorization of the Pick-Sloan Plan, the river was bypassed. This fortuitous circumstance permitted this segment of the river to escape the pressures for development felt elsewhere on the Missouri and the other navigable, western rivers. With the departure of the many river travelers and the partial regeneration of tree stands cut for fuel during the steamboat era, the Missouri Breaks may appear today more as it did when Lewis and Clark first traversed it than it has much of the time since that historic expedition.

Those who would float the Missouri Breaks today can still experience vividly the history of the area. They can camp again among the cottonwoods and on the beaches where the Lewis and Clark expedition encamped on twelve occasions as it proceeded up the Missouri Breaks from May 23 to June 13, 1805, and the single night on its swift return downstream through the segment on July 29 and 30, 1806.

Each day, the modern river traveler leisurely descending the Missouri Breaks can enjoy the truly unique, somewhat ironic, experience of placing a copy of the Lewis and Clark Journals across his knee and reading the first impression, but still accurate, descriptions of the vivid scenery he is floating by and of the expedition's back-breaking efforts to ascend the river at Spring flood in canoes or piroques by tow-line, sail, and oars. For today's traveler, a camera would be a luxury, for, if he holds prints of Carl Bodmer's paintings, he will find that when he proceeds to take a picture he will be standing on the same site Bodmer chose to paint and his viewfinder will be filled with the very scene rendered by the artist. He can seek out teepee rings, visit the sites of buffalo jumps, stand in the rifle pits where Chief Joseph and his army crossed the river during their tragic flight, find where the Peter Balen and Marion steamboats wrecked, approach the grave site of massacred woodcutters, explore old homestead cabins, and search for the sites of Forts Benton, McKenzie, Piegan, Clagget, and Chardon, and Camp Cook.

The second feature of particular significance is the ready accessibility of this river segment. Disturbed only by minor rapids—the “Breaks” which give this segment its name and which are manifested as a rippling on otherwise smooth-flowing water—the river can be floated by the less experienced river travelers. It poses no significant danger to the old or very young and does not require sophisticated equipment. Sufficient access points permit the traveler to spend only a brief day or a leisurely week on the river. In short, designation of the

Missouri Breaks as a wild and scenic river would provide the opportunity to enjoy a primitive recreation experience to the less hardy without great cost in money or time.

In addition to its historic and recreational attributes, the Missouri Breaks enjoys significant scientific and wildlife values. As testimony at the field hearing on S. 1506 disclosed, the Breaks area is a virtual treasure-trove of archaeological material concerning the Plains Indian culture. Numerous archaeological surveys—particularly the Mallory, Brumley, Stallcop, and Davis surveys of the last decade and a half—have disclosed several hundred sites for archaeological investigation. Each year brings new finds as the snow melt further erodes the river's banks. In addition, the river provides valuable lessons in the study of geology. The Missouri Breaks discloses much about the Cretaceous period 70 million years ago, vulcanism, erosion, and river courses changed by continental glacial action. Finally, the river area and adjoining uplands constitute what the U.S. Fish and Wildlife Service has termed "one of the last nearly unspoiled great game regions of the West . . . the variety and abundance of wildlife afford high quality hunting found in few other places today". Mule deer, white-tailed deer, elk, antelope, bighorn sheep, furbearers, waterfowl, and a variety of upland game birds can be observed and hunted in season. Wild turkeys have been introduced and are thriving in the area, and bison could be restored to a selected part of their ancestral haunts along the river.

The Missouri Breaks is certainly rich in scenic values, perhaps the most important values this river segment possesses. The placid flow of the river fortuitously affords the traveler sufficient time to contemplate fully the spectacular scenery he is passing. From Fort Benton to Coal Banks Landing, a distance of 42 miles, the river flows northeasterly. It averages 600 feet in width and is dotted with islands and sandbars and bordered by grass covered bluffs which rise sharply to a flat prairie about 300 feet above the flood plain. From Coal Banks Landing downstream about 9 miles to Haystack Butte, the river shifts to a southeasterly course and the scenery gradually changes. The flood plain, which before was seldom more than a half mile wide on either side of the river, rapidly narrows further and the river becomes entrenched. From this point downstream about 33 miles to about 4 miles above the Judith River is found the most spectacular scenery in the Breaks and perhaps the entire Missouri River. The almost complete lack of man made features has insured that this scenery remains faithful to that first observed by Lewis and Clark. Lewis' journal entry for May 31, 1805, contains a most vivid description of the "white rocks":

The hills and river Clifts which we passed today exhibit a most romantic appearance. The bluffs of the river rise to the height from 2 to 30 feet and in most places nearly perpendicular; they are formed of remarkable white sandstone which is sufficiently soft to give way readily to the impression of water; two or three thin horizontal stratas of white free-stone, on which the rains or water make no impression, lie imbedded in these clifts of soft stone near the upper part of them; the earth on the top of these Clifts is a dark rich loam, which forming a graduly ascending plain extends back from $\frac{1}{2}$ a mile to a mile where the hills commence and rise ab-

ruptly to a height of about 300 feet more. The water in the course of time in descending from those hills and plains on either side of the river has trickled down the soft sand cliffs and worn it into a thousand grotesque figures, which with the help of a little imagination and an oblique view, at a distance are made to represent elegant ranges of lofty freestone buildings, having their parapets well stocked with statuary; columns of various sculpture both grooved and plain, are also seen supporting long galleries in front of those buildings; in other places on a much nearer approach and with the help of less imagination we see the remains or ruins of elegant buildings; some columns standing and almost entire with their pedestals and capitals; others retaining their pedestals but deprived by time or accident of their capitals, some lying prostrate and broken others in the form of vast pyramids of conic structure bearing a series of other pyramids on their tops becoming less as they ascend and finally terminating in a sharp point. niches and alcoves of various forms and sizes are seen at different heights as we pass. the thin strata of hard freestone intermixed with the soft sandstone seems to have aided the water in forming this curious scenery. As we passed on it seemed as if those scenes of visionary enchantment would never have had an end; for here it is too that nature presents to the view of the traveler vast ranges of walls of tolerable workmanship, so perfect indeed are those walls that I should have thought that nature had attempted here to rival the human art of masonry had I not recollected that she had first began her work. These walls rise to the height in many places of 100 feet, are perpendicular, with two regular faces and are from one to 12 feet thick, each wall retains the same thickness at top which it possesses at bottom.¹

From about four miles above to four miles below the Judith River, the canyon widens and the river shifts to an eastward direction. The white rocks pass from view, the bluffs take on a grayish color, and denser concentrations of evergreens are found. At its confluence with the Judith River, the valley is substantially wider and contains the largest concentration of cottonwood, ash, and boxelder in the area. From 4 miles below the Judith to Cow Island, a distance of about 38 miles, the canyon closes in again and provides rugged badlands as the river's backdrop. In places, the barren, brown, severely eroded bluffs, supporting only a few scattered conifers, rise 1,100 feet above the river. Downstream from Cow Island to the Robinson Bridge, there is a transition from the harsh badlands to topography of a more open character; the flood plain becomes wider, the bluffs lower, vegetation denser, and islands more frequent.

As noted above, man-made intrusions in the river corridor are few. There are private landholdings, particularly in the upper stretches of the Missouri Breaks, but most of the land was passed over during the homesteading era in favor of the more accessible, high rolling lands to the north and south of the river. The total percentage of land in the

¹ DeVoto, Bernard (ed.), *The Journals of Lewis and Clark*, Houghton Mifflin Company, Boston (1953), pp. 123-124.

146,000 acre river area in private ownership is 25%. The state owns 9% of the acreage, and the Federal government 66%. The only activity on most of the private land and on virtually all of the Federal land is cattle grazing. (There are 111 grazing permits or leases for a total of 8876 annual unit months on the Federal lands, most of which are administered by the Bureau of Land Management.) Only a very few farmhouses, a small number of irrigated fields, minor pumping equipment, and two small ferries and their cables are visible from Coal Banks Landing to Robinson Bridge. Between Fort Benton and Coal Banks Landing more works of man in the form of the Great Northern Railroad grade, electric and telephone lines, and roads are present in the flood plain, but, in the most part, not visible from the river. In this section are the only communities which lie in the flood plain of the entire segment—Fort Benton, Loma, and Virgelle.

The draft wild and scenic river report states that the Montana Department of Planning and Economic Development expects little change in the ranching economy which predominates in the 15 counties adjacent to the river segment and slow growth in the region. Designation of the Missouri Break as a wild and scenic river should be of economic benefit to the region by stimulating the growth of a recreation-oriented service economy in the upstream communities.

Two water resource projects have been proposed for the river in the vicinity of the Missouri Breaks—the Fort Benton Dam proposed by the Bureau of Reclamation and the High Cow Creek Dam proposed by the Corps of Engineers. These two projects were identified in the 1963 joint Department of the Interior—Department of the Army study and report on the feasibility of water and related land development in the Missouri from Fort Benton to the Fort Peck Reservoir.

The Fort Benton dam, part of the Pick-Sloan Missouri Basin program, would have hydroelectric power production, irrigation, and flood control as its principal purposes. The dam itself would not be located within the river segment, but the project would have to be altered as the afterbay dam would be sited about ten miles downstream on the wild and scenic river. The first detailed investigation of the Fort Benton Unit by the Bureau of Reclamation began in 1965 and was completed in 1971, with preparation of a Status Report. That report concluded that while the Fort Benton Unit had potential for peaking power for integration with baseload steam plants in the area, while future consideration of the Unit might be warranted under conditions of increased regional power needs, construction of the Unit is neither economically justifiable under the present level of construction costs and at the present rate of interest nor financially feasible under existing market and rate conditions.

The High Cow Creek Dam would also promote hydroelectric power and flood control. To be located only 23 miles upstream from the Fred Robinson Bridge, this dam would completely eliminate the free-flowing value of most of the Breaks, immersing the river channel and its bluffs, including the "white rocks". The Division Engineer's report was submitted to the Chief of Engineers in 1963 and was forwarded to Federal agencies and the Governor of Montana in 1964 for review and comment. The Governor of Montana opposed construction of the project. At the time the report was submitted, the benefit-cost ratio was less than unity.

III. S. 1506, AS ORDERED REPORTED

On November 20, 1975, in open markup with a quorum present, the Interior Committee ordered reported by unanimous voice vote an amendment in the nature of a substitute to S. 1506 which had been discussed at a Committee markup session the previous day. The principal changes in the bill, as introduced, are identified below in the context of a summary of the reported bill's provisions.

S. 1506, as ordered reported, would amend section 3(a) of the Wild and Scenic Rivers Act by adding the 149 mile segment of the Missouri River from Fort Benton to the Fred Robinson Bridge to the list of components of the National Wild and Scenic Rivers System. It would require the Secretary of the Interior to manage that river segment and apply to it all the relevant provisions of the Wild and Scenic Rivers Act.

Because the word "wild" is a part of the Wild and Scenic Rivers Act, many assume that the wild and scenic river areas are treated like wilderness areas. It is erroneous, however, to make an analogy between the Wild and Scenic Rivers Act and the Wilderness Act. The Wild and Scenic Rivers Act should more properly be considered a multiple-use act, save one use. The only use prohibited is impoundment; the river segment must remain free flowing.

All of the uses presently being made of the Missouri Breaks would continue without significant interference upon designation of the river as a wild and scenic river. Farming, grazing, residential use, hunting and fishing, ferry and bridge travel would be unaffected by the Wild and Scenic Rivers Act and S. 1506, as ordered reported. The Wild and Scenic Rivers Act and S. 1506 would not interfere substantially with the operation of the mining and mineral leasing laws, except where portions of the river segment are designated as "wild". In the wild river portions, mineral development may be limited within a quarter mile from the bank of the river. The Wild and Scenic Rivers Act provides that claims perfected and leases let in a river corridor after its inclusion in the National Wild and Scenic Rivers System may be operated subject to regulations designed to protect the natural values of the river. Prior claims and leases are not subject to such regulation.

The designation of the Missouri Breaks is not a reservation of its waters for purposes other than to preserve the river in a free-flowing state. The State's jurisdiction over waters of any river is not affected by the Wild and Scenic Rivers Act. That Act does not alter established principles of existing water law. The waters above or below a wild and scenic river are not affected as long as such water projects do not invade or significantly detract from the scenic status of the designated river segment.

The only prohibited activity under the Wild and Scenic Rivers Act is the development of water resource projects. The Missouri Breaks, once designated, must continue in its free-flowing state, subject only to minor diversions for stock watering or irrigation.

S. 1506, as ordered reported, contains several provisions the express purpose of which is to insure that traditional uses of the river area can continue. First, section 3 (a) specifically requires the Secretary to administer the river area in accordance with the provisions of the Taylor Grazing Act and under the principles of multiple-use and sustained yield, unless those provisions and principles conflict with the

provisions of S. 1506, as ordered reported, and the Wild and Scenic Rivers Act. The Committee is not aware of any such conflict and would expect that any conflict which might occur could be settled so as not to seriously affect the economic well-being of traditional users of the river area.

Sections 3(e) and (f) provide additional assurances that traditional uses will continue. Section 3(e) authorizes the Secretary to permit for agricultural purposes pumping facilities and associated pipelines required to assure a continued, adequate supply of water to the owners of lands adjacent to the river in the river area. Section 3(f) requires the Secretary to continue to permit hunting and fishing in the river area in accordance with applicable Federal and State laws. He is allowed to restrict those activities only for reasons of public safety or administration.

Section 3(e) specifically asserts that rights-of-way may continue to be issued for Federal lands in the river area. To remove all doubt as to the awarding of a particular right-of-way, section 3(d) authorizes the Secretary of the Interior to permit the construction of a bridge across the river near Winifred, Montana, to relieve the increasingly inadequate ferry service now provided at four points along the Missouri Breaks. This construction is to be undertaken in accordance with a plan to be agreed upon by the Secretary and State and local highway officials.

Finally and perhaps most importantly, section 3(g) added by the amendment, requires that the Bureau of Land Management, the Federal agency which is presently administering most of the land in the river area and which has developed a working relationship with traditional users of the river, shall continue to be responsible for all uses in the Missouri Breaks. The BLM is specifically charged with responsibility for the grazing of livestock, the application of the mining and mineral leasing laws, the management of fish and wildlife habitat, the division and use of water for agricultural and domestic purposes, the acquisition of lands and interests in land, the administration of public recreational uses of the river and any historic sites and campsites in the river area, and all other activities and use except the limited responsibility, discussed below, outside of the river area given to the Park Service.

Both the Wild and Scenic Rivers Act and S. 1506, as ordered reported, severely restrict the Federal government's authority to acquire land—particularly by condemnation—in the Missouri Breaks.

First, under the Wild and Scenic Rivers Act, the boundaries of a designated wild and scenic river are limited to an average of not more than 320 acres per mile on both sides of the river. However, Federal acquisition of lands *by any means* cannot occur everywhere within this corridor. The Act prohibits the Federal government from acquiring land beyond an even narrower corridor of 100 acres per mile on both sides of the river. Beyond that point, the Federal government's acquisition authority would be limited to scenic easements only.

Of course, most landowners are not concerned about acquisition of land by the Federal government when the landowner parts with his property voluntarily. Instead, they are concerned about only one means of land acquisition—condemnation. Section 6(b) of the Wild

and Scenic Rivers Act prohibits Federal condemnation of private property within the 100 acres per mile corridor if 50 percent or more of the corridor's land is in public ownership. Even on rivers where less than 50 percent of the land is publicly owned, condemnation cannot occur freely. First, the Federal government is stopped from further exercising the eminent domain authority to obtain fee title as soon as the 50 percent mark is reached. And, second, even if less than 50 percent of the land is publicly owned, private land cannot be condemned if it is within a city or town which has a valid zoning ordinance which conforms to the purposes of the Wild and Scenic Rivers Act. In the above circumstances, condemnation is limited to the acquisition of only scenic or access easements or for the purpose of clearing title.

As 75 percent of the land in the Missouri Breaks river area is in public ownership, no condemnation of fee title can occur. Use of the eminent domain authority is restricted to the three limited purposes discussed above. Section 3(b)(2) of S. 1506, as ordered reported, reasserts this prohibition on fee title acquisition by condemnation.

Section 3(b)(1), however, puts additional restrictions on acquisition in the Missouri Breaks area. First, at Fort Benton, the Federal government is authorized to acquire land only for a visitor center. From Fort Benton to Coal Banks Landing, land may be obtained only for access points, campsites, and historic sites, including the site of Fort McKenzie. Land to be acquired must be identified in the management plan discussed below.

Section 3(b)(1) also provides that from Coal Banks Landing downstream to the Robinson Bridge land acquisition (voluntary, except condemnation for the three limited purposes discussed above) is to be undertaken so as to provide "wherever practicable" rim-to-rim protection in that portion. The "wherever practicable" phrase was adopted in the amendment to avoid application of the rim-to-rim mandate in areas such as the junction with the Judith River where the flood plain opens up and the bluffs recede back quite a distance from the river. On the other hand, throughout the river segment, but particularly in the "white rocks" portion, there are numerous side-canyons which possess all the values for which the Missouri Breaks is renowned. Clearly, the averaging technique in establishing river boundaries and acquiring land authorized by the Wild and Scenic Rivers Act should be employed in order to permit the inclusion of these side-canyons. The Committee expects, however, that, as a high percentage of the land downstream from Coal Banks Landing is already in Federal ownership and as the private land is devoted almost entirely to the compatible use of livestock grazing, acquisition of land can be kept to a minimum.

The draft wild and scenic river report recommended for designation a 128 mile stretch of river from Coal Banks Landing to the Rocky Point "Historic Site". S. 1506, as introduced, would have designated a 149 mile (the bill erroneously stated 170 mile) segment from Coal Banks Landing to the Robinson Bridge. The amendment continued the deletion of the 21 mile stretch from the bridge to the Rocky Point Historic Site. As this stretch is within the Charles M. Russell National Wildlife Refuge it will receive sufficient protection without wild and scenic river designation. Its topography is neither so fragile nor

so unique in historical, scenic, or scientific values to require the additional protection which designation would provide. On the other hand, as Fort Benton is closely associated with the history of the river, the Committee chose to link it to the river area to be designated. In recognition, however, of the large acreage in private ownership between Fort Benton and Coal Banks Landing, the amendment provides that in that portion of the river area only the river and its bed and not the adjacent land are to be included and limits acquisition in that stretch as discussed above.

The historic significance of Fort Benton and the entire Missouri Breaks suggests a need for the services of personnel trained in interpreting historic, as well as scenic and scientific, values for the public. Thus, section 3(h)(2) of the amendment provides that the National Park Service is to be responsible for the construction, operation, and management of a visitor center in or near Fort Benton and provide the necessary interpretive services at the facility. The section clearly states, and the Committee emphasizes, that the Park Service role is strictly limited to that described. The service is to perform that role only at the visitor center and not in the river area itself. All other responsibilities, including administration of the river area, are to be within the province of the Bureau of Land Management.

Finally, the bill provides that, as required by Section 3(b) of the Wild and Scenic Rivers Act, within one year of S. 1506's enactment, the Secretary of the Interior, in consultation with the State, affected local governments, and the public, is to prepare a management plan for the river. Among other things, the plan will define the boundaries of the river area and designate the categories—wild river, scenic river, or recreation river—under which various portions of the river segment will be managed.

IV. Cost

As noted above, acquisition of land or interests in land in the Missouri Breaks river area is expected to be kept to a minimum. In addition, as "hardened" campsites and other recreational facilities are inappropriate for a wild and scenic river, development costs will also be relatively low, although a modest increase in the number of campsites with primitive facilities (now six, owned and managed by the Montana Game and Fish Department) is foreseen. Finally, an increase in management costs will be necessary in order to manage and protect the river area in the face of an expected increase in recreational use as a result of the enactment of S. 1506. Furthermore, additional management costs will likely be incurred in conducting other relatively low-cost activities, such as a program to propagate new cottonwood stands.

Section 1 of S. 1506, as ordered reported, contains an open-ended authorization. The estimated figures provided by the Department of the Interior are as follows: \$1,750,000 for acquisition of land and interests in land, \$600,000 for development, and \$140,000 annually for maintenance.

V. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, in open markup on November 20, 1975, with a quorum present and by voice vote, unanimously recommended the enactment of S. 1506, as amended.

VI. EXECUTIVE COMMUNICATIONS

As noted in Section II, the final study report of the Department of the Interior and Presidential recommendations have not yet been transmitted to the Congress although both are anticipated before the end of the year. For this reason, the Department did not submit a formal report to the Committee on S. 1506. Set forth below is the testimony of Assistant Secretary of the Interior, Nathaniel Reed, which summarizes the draft report's findings:

STATEMENT OF NATHANIEL P. REED, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR BEFORE THE SENATE INTERIOR SUBCOMMITTEE ON ENVIRONMENT AND LAND RESOURCES ON S. 1506, A BILL CONCERNING A SEGMENT OF THE MISSOURI RIVER IN MONTANA, SEPTEMBER 19, 1975

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to participate in your consideration of S. 1506, a bill to designate a 175-mile segment of the Missouri River downstream from the city of Fort Benton, Montana, as a component of the National Wild and Scenic Rivers System. This segment is otherwise known as the "Missouri Breaks."

A 180-mile segment of the Missouri between Fort Benton and Ryan Island was designated in the 1968 Wild and Scenic Rivers Act for study as a potential addition to the national system. The Bureau of Outdoor Recreation has completed the study called for by the 1968 Act. This study has undergone the 90-day formal review by Federal agencies and the State of Montana, and we are presently evaluating the inter-agency comments. We anticipate that the final study report will be submitted to the Congress this fall.

Our preliminary conclusion is that a 128-mile segment of the Missouri River should be designated for addition to the National Wild and Scenic Rivers System, and pursuant to a recommendation by the Assistant Secretary, Land and Water Resources and myself, this segment would be administered by the Bureau of Land Management in cooperation with the Fish and Wildlife Service, the State of Montana, and local units of government.

I would note that our report does not recommend designating the 42-mile segment of the Missouri between the city of Fort Benton and Coal Banks Landing as a wild and scenic river component because there is considerable evidence of man's intrusion and much of this section is privately owned. While our report recommends inclusion of the 128-mile section in the National Wild and Scenic Rivers System, I must point out that the law calls for review of any report by other interested agencies. I am sure you all recognize, as we do, that there are other values associated with this stretch of the Missouri. The Federal Power Commission notes the hydroelectric potential, and the Corps of Engineers is embarked

on a restudy of the Upper Missouri Basin for evaluation of various development potentials. The mineral, coal, and oil reserves must be considered. The Administration is in the process of evaluating these considerations against Interior's recommendation that the river be included in the System.

Our study concludes that this stretch of the Missouri meets all of the criteria for inclusion in the National System. We believe that its outstanding scenery, wildlife, historic values, and recreation potential warrant preservation in a free flowing condition and foregoing or postponing development of other values. There are those who take the opposite view. For these reasons, we recommend that the Congress defer action on S. 1506 until we have had an opportunity to evaluate all these considerations.

This concludes my formal statement. I shall be glad to respond to any questions you may have.

VII. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1506 as ordered reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman) :

SEC. 3 OF THE ACT OF OCTOBER 2, 1968 (82 STAT. 906) AS AMENDED (16 U.S.C. 1271)

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) CLEARWATER, MIDDLE FORK, IDAHO.—The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochisa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

(2) ELEVEN POINT, MISSOURI.—The segment of the river extending downstream from Thomasville to State Highway 142; to be administered by the Secretary of Agriculture.

(3) FEATHER, CALIFORNIA.—The entire Middle Fork; to be administered by the Secretary of Agriculture.

(4) RIO GRANDE, NEW MEXICO.—The segment extending from the Colorado State line downstream to the State Highway 96 crossing, and the lower four miles of the Red River; to be administered by the Secretary of the Interior.

(5) ROGUE, OREGON.—The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Department or as directed by the President.

(6) SAINT CROIX, MINNESOTA AND WISCONSIN.—The segment between the dam near Taylors Falls, Minnesota, and the dam near

Gordon, Wisconsin, and its tributary, the Namekagon, from Lake Namekagon downstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior: *Provided*, That except as may be required in connection with items (a) and (b) of this paragraph, no funds available to carry out the provisions of this Act may be expended for the acquisition or development of lands in connection with, or for administration under this Act of, that portion of the Saint Croix River between the dam near Taylors Falls, Minnesota, and the upstream end of the Big Island in Wisconsin, until sixty days after the date on which the Secretary has transmitted to the President of the Senate and Speaker of the House of Representatives a proposed cooperative agreement between the Northern States Power Company and the United States (a) whereby the company agrees to convey to the United States, without charge, appropriate interests in certain of its lands between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, including the company's right, title, and interest to approximately one hundred acres per mile, and (b) providing for the use and development of other lands and interests in land retained by the company between said points adjacent to the river in a manner which shall complement and not be inconsistent with the purposes for which the lands and interests in land donated by the company are administered under this Act. Said agreement may also include provision for State or local governmental participation as authorized under subsection (e) of section 10 of this Act.

(7) SALMON, MIDDLE FORK, IDAHO.—From its origin to its confluence with the main Salmon River; to be administered by the Secretary of Agriculture.

(8) WOLF, WISCONSIN.—From the Langlade-Menominee County line downstream to Keshena Falls; to be administered by the Secretary of the Interior.

(9) LOWER SAINT CROIX, MINNESOTA AND WISCONSIN.—The segment between the dam near Taylors Falls and its confluence with the Mississippi River: *Provided*, (i) That the upper twenty-seven miles of this river segment shall be administered by the Secretary of the Interior; and (ii) That the lower twenty-five miles shall be designated by the Secretary upon his approval of an application for such designation made by the Governors of the States of Minnesota and Wisconsin.

(10) CHATTOOGA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA.—The Segment from 0.8 mile below Cashiers Lake in North Carolina to Tugaloo Reservoir, and the West Fork Chattooga River from its junction with Chattooga upstream 7.3 miles, as generally depicted on the boundary map entitled "Proposed Wild and Scenic Chattooga River and Corridor Boundary," dated August 1973; to be administered by the Secretary of Agriculture: *Provided*, That the Secretary of Agriculture shall take such action as is provided for under subsection (b) of this section within one year from the date of enactment of this paragraph (10): *Provided further*, That for the purposes of this river, there are authorized to be appropriated not more than \$2,000,000 for the acquisition of lands and interests in lands and not more than \$809,000 for development.

"(11) MISSOURI, MONTANA.—The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as

generally depicted on the boundary map entitled 'Missouri Breaks Freeflowing River Proposal', dated October 1975, to be administered by the Secretary of the Interior. There are authorized to be appropriated such sums as are necessary for the purpose of this river segment."

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of this Act, establish detailed boundaries therefor (which boundaries shall include an average of not more than three hundred and twenty acres per mile on both sides of the river); determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments; and prepare a plan for necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

○