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SENATE

{ REPORT
110-283

FOSSIL CREEK WILD AND SCENIC RIVER ACT

APRIL 10, 2008.—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 S. 86]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 86) to designate segments of Fossil Creek, a tributary to the Verde River in the State of Arizona, as wild and scenic rivers, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

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

SECTION 1. SHORT TITLE.

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

SEC. 2. DESIGNATION OF WILD AND SCENIC RIVER SEGMENTS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended—

(1) by redesignating paragraph (167) (relating to the Musconetcong River, New Jersey) as paragraph (169);

(2) by designating the undesignated paragraph relating to the White Salmon River, Washington, as paragraph (167);

(3) by designating the undesignated paragraph relating to the Black Butte River, California, as paragraph (168); and

(4) by adding at the end the following:

“(170) FOSSIL CREEK, ARIZONA.—Approximately 16.8 miles of Fossil Creek from the confluence of Sand Rock and Calf Pen Canyons to the confluence with the Verde River, to be administered by the Secretary of Agriculture in the following classes:

“(A) The approximately 2.7-mile segment from the confluence of Sand Rock and Calf Pen Canyons to the point where the segment exits the Fossil Spring Wilderness, as a wild river.

“(B) The approximately 7.5-mile segment from where the segment exits the Fossil Creek Wilderness to the boundary of the Mazatzal Wilderness, as a recreational river.

“(C) The 6.6-mile segment from the boundary of the Mazatzal Wilderness downstream to the confluence with the Verde River, as a wild river.”.

SEC. 3. RESTORATION ACTIVITIES.

(a) **ARIZONA PUBLIC SERVICE COMPANY.**—Without further consultation under section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1278), Arizona Public Service Company, the former licensee for the Childs-Irving Hydroelectric Project (FERC project number 2069), may conduct project decommissioning and restoration activities agreed to in the surrender application and relevant docketed filings with the Federal Energy Regulatory Commission.

(b) **FEDERAL AND STATE AGENCIES.**—Federal and State agencies may conduct native fish restoration and barrier maintenance activities in accordance with the Environmental Assessment, Decision Notice, and Finding of No Significant Impact for the document entitled “Native Fish Restoration in Fossil Creek” and dated 2004.

SEC. 4. STREAM MONITORING.

Notwithstanding the amendment made by section 2, the United States Geological Survey or any other entity that has been given written permission for the activity from the Secretary of Agriculture may undertake any necessary activities, including access by any existing road, to install, operate, maintain, or otherwise manage 1 or more stream flow gauges in Fossil Creek in cooperation with the Forest Service for the purpose of monitoring and collecting stream flow and other water resource information.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

2. Amend the title so as to read: “A bill to designate Fossil Creek, a tributary of the Verde River in the State of Arizona, as a component of the National Wild and Scenic Rivers System.”.

PURPOSE

The purpose of S. 86 is to designate approximately 16.8 miles of Fossil Creek, located in the State of Arizona, as a component of the National Wild and Scenic Rivers System.

BACKGROUND AND NEED

Located in central Arizona, Fossil Creek is a unique warm-water perennial stream that flows from a complex of springs 14 miles to the Verde River, which has been designated a wild and scenic river. Located in the Mazatzal Mountains, Fossil Creek flows through remote and rugged terrain including a portion of the Mazatzal Wilderness. Fossil Springs produces a constant supply of water that is approximately 70 degrees Fahrenheit and the creek is known for its travertine pools. The creek also provides important habitat for a diverse native fisheries population.

From 1908 to 2005, almost all of the natural flow of Fossil Creek was removed from the creek for the Childs-Irving hydroelectric project, operated by Arizona Public Service. In 2004 APS agreed not to seek renewal of the license and began a plan to decommission the supporting infrastructure so that natural flows could be restored to Fossil Creek.

S. 86 would designate approximately 16.8 miles of Fossil Creek as a wild and scenic river in recognition of its outstanding resource values. The bill would recognize that ongoing project decommissioning activities and restoration efforts would be allowed to continue.

LEGISLATIVE HISTORY

S. 86 was introduced by Senators McCain and Kyl on January 4, 2007. The Subcommittee on National Parks held a hearing on the bill on November 8, 2007. (S. Hrg. 110–282.) At its business meeting on January 30, 2008, the Committee on Energy and Natural Resources ordered S. 86 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 86, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 86, the Committee adopted an amendment in the nature of a substitute. The amendment deleted the findings section and made other conforming changes. The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the “Fossil Creek Wild and Scenic River Act.”

Section 2 amends section 3(a) of the Wild and Scenic Rivers Act (12 U.S.C. 1274(a)) to designate approximately 16.8 miles of Fossil Creek in Arizona as a component of the National Wild and Scenic Rivers System. Approximately 9.3 miles would be designated as “wild” segments, and approximately 7.5 miles would be designated as a “recreational” segment.

Section 3(a) authorizes Arizona Public Service Company, the former licensee for the Childs-Irving Hydroelectric Project, to conduct project decommissioning and restoration activities as agreed to with the Federal Energy Regulatory Commission, without requirements for further consultation under section 7 of the Wild and Scenic Rivers Act.

Subsection (b) authorizes Federal and State agencies to conduct native fish restoration and barrier maintenance activities in accordance with the referenced documents.

Section 4 provides that the United States Geological Survey or any other entity that has written permission from the Secretary of Agriculture may undertake activities related to stream flow gauges in Fossil Creek, for the purpose of monitoring and collecting stream flow and other water resource information.

Section 5 authorizes the appropriation of such sums as are necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

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

S. 86—Fossil Creek Wild and Scenic River Act of 2007

S. 86 would designate about 17 miles of Fossil Creek, in Arizona, as a wild or recreational river. The bill also would authorize the Arizona Public Service Company to decommission river projects and conduct restoration activities along Fossil Creek.

Assuming the availability of appropriated funds, CBO estimates that it would cost less than \$1 million over the 2009–2013 period to carry out the activities authorized by the bill. Enacting this legislation would not affect direct spending or revenues.

S. 86 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 Tyler Kruzich. 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 S. 86. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 86, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 86, 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 Forest Service at the November 8, 2007 Subcommittee hearing on S. 86 follows:

STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL
FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to provide the Department's view on the Fossil Creek Wild and Scenic River Act of 2007.

With some minor amendments, the Department of Agriculture strongly recommends that S. 86 be enacted.

S. 86 would amend section 3(a) of the Wild and Scenic Rivers Act (16 USC 1274(a)) to designate Fossil Creek, a tributary of the Verde River in the State of Arizona, as a component of the National Wild and Scenic Rivers System. The segments to be designated by S. 86 include the river from its source to its confluence with the Verde Wild and

Scenic River. S. 86 provides allowance for specified fish restoration activities and stream flow monitoring.

Fossil Creek has been impacted since the early 20th century by the Childs-Irving Hydropower Project which diverted essentially all the water from Fossil Springs for power production. In 2004, as a result of a unique collaboration among Arizona Public Services (APS), the Forest Service, tribes, environmental groups and others, the Childs- Irving Hydropower Project license was surrendered with a plan to decommission the supporting infrastructure and restore flows to Fossil Creek.

APS supported the decommissioning of this project to give the residents of the State a perennial stream in the desert that possesses rare regional and national values. Fossil Creek, with its consistent spring flow, harbors the endangered desert fish, contains unique geologic formations, and provides an opportunity to share the prehistory and history of central Arizona.

S. 86 recognizes the significant efforts made by Federal, State, tribal and local entities to return this tributary to a free-flowing condition. Passage of this bill ensures the protection of this tributary for future generations.

We would like to work with the Subcommittee on ensuring consistency in the language of this bill, and the Wild and Scenic Rivers Act, and Forest Service reports and analyses of Fossil Creek.

In addition, the uppermost point of the Fossil Creek tributary is difficult to identify. We would like to work with the Subcommittee to provide a description of this beginning point. We also would like to ensure that the designated river segments are accurately classified. Due to the existence of the Fossil Springs Dam, the 16.8 mile stretch of Fossil Creek that would be designated includes a 7.5 mile stretch that fits the description for a recreation river, rather than a scenic river.

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 the bill S. 86 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. 1271 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 may be cited as the “Wild and Scenic Rivers Act”.

* * * * *

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

* * * * *

(167) *WHITE SALMON RIVER, WASHINGTON.—*

* * * * *

(168) *BLACK BUTTE RIVER, CALIFORNIA.—*

* * * * *

[(167)] (169) *MUSCONETCONG RIVER, NEW JERSEY.—*

* * * * *

(170) *FOSSIL CREEK, ARIZONA.—Approximately 16.8 miles of Fossil Creek from the confluence of Sand Rock and Calf Pen Canyons to the confluence with the Verde River, to be administered by the Secretary of Agriculture in the following classes:*

(A) *The approximately 2.7-mile segment from the confluence of San Rock and Calf Pen Canyons to the point where the segment exists the Fossil Creek Wilderness, as a wild river;*

(B) *The approximately 7.5-mile segment from where the segment exits the Fossil Creek Wilderness to the boundary of the Mazatzal Wilderness, as a recreational river.*

(C) *The 6.6-mile segment from the boundary of the Mazatzal Wilderness downstream to the confluence with the Verde River, as a wild river.*

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