

TO AMEND THE WILD AND SCENIC RIVERS ACT TO DESIGNATE A SEGMENT OF ILLABOT CREEK IN SKAGIT COUNTY, WASHINGTON, AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

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DECEMBER 8, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1740]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1740) to amend the Wild and Scenic Rivers Act to designate a segment of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic Rivers System, 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. 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 by adding at the end the following:

“( ) ILLABOT CREEK, WASHINGTON.—

“(A) The 14.3-mile segment from the headwaters of Illabot Creek to the northern terminus as generally depicted on the map titled ‘Illabot Creek Proposed WSR–Northern Terminus’, dated September 15, 2009, to be administered by the Secretary of Agriculture as follows:

“(i) The 4.3-mile segment from the headwaters of Illabot Creek to the boundary of Glacier Peak Wilderness Area as a wild river.

“(ii) The 10-mile segment from the boundary of Glacier Peak Wilderness to the northern terminus as generally depicted on the map titled ‘Illabot Creek Proposed WSR–Northern Terminus’, dated September 15, 2009, as a recreational river.

“(B) Action required to be taken under subsection (d)(1) for the river segments designated under this paragraph shall be completed through revision of the Skagit Wild and Scenic River comprehensive management plan.

“(C) The Secretary of Agriculture may not acquire by condemnation any land or interest in land within the boundaries of the Illabot Creek Wild and Scenic River described in subparagraph (A).

“(D) Nothing in this paragraph creates or authorizes the creation of a protective perimeter or buffer zone around the boundaries of the Illabot Creek Wild and Scenic River described in subparagraph (A). The fact that an activity or use can be seen or heard from within such boundaries shall not preclude the conduct of that activity or use outside such boundaries.

“(E) No private property or non-Federal public property shall be included within the boundaries of the Illabot Creek Wild and Scenic River described in subparagraph (A) without the written consent of the owner of such property.”.

#### PURPOSE OF THE BILL

The purpose of H.R. 1740, as ordered reported, is to amend the Wild and Scenic Rivers Act to designate a segment of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic Rivers System.

#### BACKGROUND AND NEED FOR LEGISLATION

H.R. 1740 will designate segments of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic Rivers System. The designated area is located within the Mt. Baker-Snoqualmie National Forest and totals 14.3 miles in two separate segments. Illabot Creek is located approximately 100 miles northeast of Seattle, Washington, and flows from the glaciers of the North Cascades into the upper Skagit River, the largest tributary to Puget Sound.

The U.S. Forest Service studied Illabot Creek for a potential Wild and Scenic River designation as part of the Mt. Baker-Snoqualmie National Forest planning process. The study found that the creek possesses “outstandingly remarkable values,” consistent with the requirements of the Wild and Scenic Rivers Act.

During full committee consideration of the bill, an en bloc amendment offered by Congressman Rob Bishop (R-UT) was adopted, making three enhancements to the bill to protect property rights. Similar language was offered in the 111th Congress by Congressman Bishop to legislation involving federal designations. Wild and Scenic Rivers are routinely represented as ground-up, locally based and supported initiatives. Therefore, there is no reason to arm federal bureaucrats with the power of condemnation, or the threat of condemnation, over property owners. Accordingly, the Bishop amendment prohibits the use of condemnation by the Secretary of Agriculture within the designation.

The amendment also prohibits the creation of a buffer around the boundaries of the designation. The Committee expects the U.S. Forest Service to abide by the boundaries created in the legislation and to resist expanding its influence beyond them. Unfortunately, history has demonstrated that federal land managers have interpreted their authority to stretch beyond what Congress created, thereby making this language necessary and warranted.

Finally, the amendment prohibits the inclusion of private or non-federal public property within the boundaries of the designation without written consent of the owner. Consistent with the claim

that this designation is locally supported, the Committee sees no reason to forcefully include owners within the designation without them first making their consent known in writing. This will serve to protect owners and validate the public process that led to the designation.

#### COMMITTEE ACTION

H.R. 1740 was introduced on May 5, 2011, by Congressman Rick Larsen (D-WA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public Lands. On June 14, 2011, the Subcommittee held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on National Parks, Forests and Public Lands was discharged by unanimous consent. Congressman Rob Bishop (R-UT) offered an en bloc amendment designated .040; the amendment was adopted by voice vote. The bill was then ordered favorably reported, as amended, to the House of Representatives by voice vote.

#### 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.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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. 1740—A bill to amend the Wild and Scenic Rivers Act to designate a segment of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic River System*

H.R. 1740 would designate an additional 14.3 miles of the Illabot Creek in Washington State as part of the National Wild and Scenic Rivers System. Based on information provided by the Forest Service and assuming the availability of appropriated funds, CBO estimates that the agency would spend less than \$20,000 a year to maintain, protect, and enhance the creek. Enacting H.R. 1740 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1740 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of 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, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the Forest Service and assuming the availability of appropriated funds, CBO estimates that the agency would spend less than \$20,000 a year to maintain, protect, and enhance the designated river sections.

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, as ordered reported, is to amend the Wild and Scenic Rivers Act to designate a segment of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic Rivers System.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### 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) \* \* \*

\* \* \* \* \*

( ) *ILLABOT CREEK, WASHINGTON.—*

*(A) The 14.3-mile segment from the headwaters of Illabot Creek to the northern terminus as generally depicted on the map titled "Illabot Creek Proposed WSR-Northern Terminus", dated September 15, 2009, to be administered by the Secretary of Agriculture as follows:*

(i) *The 4.3-mile segment from the headwaters of Illabot Creek to the boundary of Glacier Peak Wilderness Area as a wild river.*

(ii) *The 10-mile segment from the boundary of Glacier Peak Wilderness to the northern terminus as generally depicted on the map titled "Illabot Creek Proposed WSR-Northern Terminus", dated September 15, 2009, as a recreational river.*

(B) *Action required to be taken under subsection (d)(1) for the river segments designated under this paragraph shall be completed through revision of the Skagit Wild and Scenic River comprehensive management plan.*

(C) *The Secretary of Agriculture may not acquire by condemnation any land or interest in land within the boundaries of the Illabot Creek Wild and Scenic River described in subparagraph (A).*

(D) *Nothing in this paragraph creates or authorizes the creation of a protective perimeter or buffer zone around the boundaries of the Illabot Creek Wild and Scenic River described in subparagraph (A). The fact that an activity or use can be seen or heard from within such boundaries shall not preclude the conduct of that activity or use outside such boundaries.*

(E) *No private property or non-Federal public property shall be included within the boundaries of the Illabot Creek Wild and Scenic River described in subparagraph (A) without the written consent of the owner of such property.*

\* \* \* \* \*

## ADDITIONAL VIEWS

During the 111th Congress, Members of the Natural Resources Committee came together to approve straightforward legislation authorizing a Wild and Scenic River designation for Illabot Creek (H.R. 1593). The bill was reported from the Committee by unanimous consent. The bipartisan agreement continued when the House approved the legislation by a voice vote under suspension of the rules. In March of 2010, the Senate Energy and Natural Resources Committee ordered H.R. 1593 favorably reported, without amendment.

Unfortunately, it appears that the Republican standards for passage of this legislation in the House are a moving target. This Congress, the Majority insisted on inserting three new provisions in H.R. 1740 that were never raised during previous consideration of the bill. These provisions are unnecessary and potentially harmful to this Wild and Scenic designation.

The Majority amendment would prohibit condemnation of land, or any interest in land, within the boundaries of the Illabot Creek Wild and Scenic River as designated by the bill. Condemnation is rarely used with regard to wild and scenic river management and, in those rare instances where it is employed the owner of any condemned land is fully compensated. A prohibition on such authority leaves the Forest Service and the river at the mercy of any and all possible development on non-federal land along the river corridor. This policy could lead to a hollow wild and scenic designation where activity on non-federal land damages the resources values of the river such that the Illabot is wild and scenic in name only.

Next, the Majority amendment prohibits creation of “buffer zones” around the boundaries of the wild and scenic river. Given that the designation does not create a buffer zone, this amendment is unnecessary and harms the bill by inserting an amorphous and undefined term into the text.

Finally, the Majority amendment prohibits inclusion of private property or non-federal public property within the boundaries of the wild and scenic designation without written consent of the owner. Inclusion of non-federal property within the boundary has no impact on private property rights but does facilitate acquisition of non-federal property should the owner wish to sell. Insertion of this language means that the boundaries of this wild and scenic river could change monthly or even daily depending on what arrives in each days’ mail. This language serves no valid purpose and will create extreme management challenges for the Illabot.

Were any of these provisions justified, Republicans would have offered them in the previous Congress. They were not offered then, and they should be removed from the bill now.

EDWARD J. MARKEY.  
RUSH HOLT.  
DALE E. KILDEE.  
GRACE F. NAPOLITANO.  
NIKI TSONGAS.  
RAÚL M. GRIJALVA.  
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