

Calendar No. 496

106TH CONGRESS
2D SESSION

S. 1849

[Report No. 106-266]

A BILL

To designate segments and tributaries of White Clay Creek, Delaware and Pennsylvania, as a component of the National Wild and Scenic Rivers System.

APRIL 12, 2000

Reported with an amendment

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To designate segments and tributaries of White Clay Creek, Delaware and Pennsylvania, as a component of the National Wild and Scenic Rivers System.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1999

Mr. BIDEN (for himself and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

APRIL 12, 2000

Reported by Mr. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To designate segments and tributaries of White Clay Creek, Delaware and Pennsylvania, as a component of the National Wild and Scenic Rivers System.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “White Clay Creek Wild
5 and Scenic Rivers System Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) Public Law 102–215 (105 Stat. 1664) di-
4 rected the Secretary of the Interior, in cooperation
5 and consultation with appropriate State and local
6 governments and affected landowners, to conduct a
7 study of the eligibility and suitability of White Clay
8 Creek, Delaware and Pennsylvania, and the tribu-
9 taries of the creek for inclusion in the National Wild
10 and Scenic Rivers System;

11 (2) as a part of the study described in para-
12 graph (1), the White Clay Creek Study Wild and
13 Scenic Study Task Force and the National Park
14 Service prepared a watershed management plan for
15 the study area entitled “White Clay Creek and Its
16 Tributaries Watershed Management Plan”, dated
17 May 1998, that establishes goals and actions to en-
18 sure the long-term protection of the outstanding val-
19 ues of, and compatible management of land and
20 water resources associated with, the watershed; and

21 (3) after completion of the study described in
22 paragraph (1), Chester County, Pennsylvania, New
23 Castle County, Delaware, Newark, Delaware, and 12
24 Pennsylvania municipalities located within the wa-
25 tershed boundaries passed resolutions that—

1 (A) expressed support for the White Clay
2 Creek Watershed Management Plan;

3 (B) expressed agreement to take action to
4 implement the goals of the Plan; and

5 (C) endorsed the designation of the White
6 Clay Creek and the tributaries of the creek for
7 inclusion in the National Wild and Scenic Riv-
8 ers System.

9 **SEC. 3. DESIGNATION OF WHITE CLAY CREEK.**

10 Section 3(a) of the Wild and Scenic Rivers Act (16
11 U.S.C. 1274(a)) is amended by adding at the end the fol-
12 lowing:

13 “(161) WHITE CLAY CREEK, DELAWARE AND PENN-
14 SYLVANIA.—

15 “(A) SEGMENTS.—The 191 miles of river seg-
16 ments of White Clay Creek (including tributaries of
17 the Creek and all second order tributaries of the
18 designated segments) in the States of Delaware and
19 Pennsylvania (referred to in this paragraph as the
20 ‘Creek’), as depicted on the recommended designa-
21 tion and classification maps, as follows:

22 “(i) 30.8 miles of the east branch, includ-
23 ing Trout Run, beginning at the headwaters
24 within West Marlborough township downstream
25 to a point that is 500 feet north of the Borough

of Avondale wastewater treatment facility, as a recreational river.

“(ii) 15.0 miles of the east branch beginning at the southern boundary line of the Borough of Avondale to a point where the East Branch enters New Garden Township at the Franklin Township boundary line, including Walnut Run and Broad Run outside the boundaries of the White Clay Creek Preserve, as a recreational river.

“(iii) 4.0 miles of the east branch that flow through the boundaries of the White Clay Creek Preserve, Pennsylvania, beginning at the northern boundary line of London Britain township and downstream to the confluence of the middle and east branches, as a scenic river.

“(iv) 20.9 miles of the middle branch, beginning at the headwaters within Londonderry township downstream to the boundary of the White Clay Creek Preserve in London Britain township, as a recreational river.

“(v) 2.1 miles of the west branch that flow within the boundaries of the White Clay Creek Preserve in London Britain township, as a scenic river.

1 “(vi) 17.2 miles of the west branch, begin-
2 ning at the headwaters within Penn township
3 downstream to the confluence with the middle
4 branch, as a recreational river.

5 “(vii) 12.7 miles of the main stem, exclud-
6 ing Lamborn Run, that flow through the
7 boundaries of the White Clay Creek Preserve,
8 Pennsylvania and Delaware, and White Clay
9 Creek State Park, Delaware, beginning at the
10 confluence of the east and middle branches in
11 London Britain township, Pennsylvania, down-
12 stream to the northern boundary line of the city
13 of Newark, Delaware, as a scenic river.

14 “(viii) 27.5 miles of the main stem (includ-
15 ing all second order tributaries outside the
16 boundaries of the White Clay Creek Preserve
17 and White Clay Creek State Park), beginning
18 at the confluence of the east and middle
19 branches in London Britain township, Pennsyl-
20 vania, downstream to the confluence of the
21 White Clay Creek with the Christina River, as
22 a recreational river.

23 “(ix) 1.3 miles of Middle Run outside the
24 boundaries of the Middle Run Natural Area, as
25 a recreational river.

1 “(x) 5.2 miles of Middle Run that flow
2 within the boundaries of the Middle Run Nat-
3 ural Area, as a scenic river.

4 “(xi) 15.6 miles of Pike Creek, as a rec-
5 reational river.

6 “(xii) 38.7 miles of Mill Creek, as a rec-
7 reational river.

8 “(B) BOUNDARIES.—

9 “(i) IN GENERAL.—Except as provided in
10 clause (ii), action required to be taken under
11 subsection (b) shall be taken not later than 1
12 year after the date of enactment of this para-
13 graph, except that, with respect to the segments
14 designated by subparagraph (A), in lieu of the
15 boundaries provided for in subsection (b), the
16 boundaries of the segments shall be the greater
17 of—

18 “(I) the 500-year floodplain; or

19 “(II) 250 feet as measured from the
20 ordinary high water mark on both sides of
21 the segment.

22 “(ii) EXCEPTIONS.—The boundary limita-
23 tions described in clause (i) are inapplicable
24 to—

1 ~~“(I) the areas described in subpara-~~
 2 ~~graph (D)(i); and~~

3 ~~“(II) the properties, as generally de-~~
 4 ~~scribed on the map entitled “White Clay~~
 5 ~~Creek Wild and Scenic River Study Area~~
 6 ~~Recommended Designated Area”, dated~~
 7 ~~June 1999, on which are located the sur-~~
 8 ~~face water intakes and water treatment~~
 9 ~~and wastewater treatment facilities of—~~

10 ~~“(aa) the City of Newark, Dela-~~
 11 ~~ware;~~

12 ~~“(bb) the corporation known as~~
 13 ~~United Water Delaware; and~~

14 ~~“(cc) the Borough of West~~
 15 ~~Grove, Pennsylvania.~~

16 ~~“(C) ADMINISTRATION.—~~

17 ~~“(i) IN GENERAL.—The segments des-~~
 18 ~~ignated by subparagraph (A) shall be adminis-~~
 19 ~~tered by the Secretary of the Interior (referred~~
 20 ~~to in this paragraph as the ‘Secretary’), in co-~~
 21 ~~operation with the White Clay Creek Watershed~~
 22 ~~Management Committee as provided for in the~~
 23 ~~plan prepared by the White Clay Creek Wild~~
 24 ~~and Scenic Study Task Force and the National~~
 25 ~~Park Service, entitled “White Clay and Its~~

1 Tributaries Watershed Management Plan” and
 2 dated May 1998 (referred to in this paragraph
 3 as the ‘Management Plan’).

4 “(ii) REQUIREMENT FOR COMPREHENSIVE
 5 MANAGEMENT PLAN.—The Management Plan
 6 shall be considered to satisfy the requirements
 7 for a comprehensive management plan under
 8 subsection (d).

9 “(D) CHURCHMAN’S MARSH, LAMBORN RUN,
 10 AND OTHER PROPERTIES.—

11 “(i) IN GENERAL.—Churchman’s Marsh,
 12 Lamborn Run, and the properties on which the
 13 intake structures and pipelines for the proposed
 14 Thompson’s Station Reservoir shall be located
 15 shall be considered suitable for designation as
 16 components of the National Wild and Scenic
 17 Rivers System only at such time as those areas
 18 are removed from consideration as locations for
 19 the reservoir under the comprehensive plan of
 20 the Delaware River Basin Commission.

21 “(ii) SUBSEQUENT DESIGNATIONS.—Noth-
 22 ing in this paragraph prohibits the designation
 23 of an area described in clause (i) as a compo-
 24 nent of the National Wild and Scenic Rivers
 25 System if, on a date after the date of enact-

ment of this paragraph, the additional segment is determined to be suitable for such designation.

“(iii) ASSISTANCE FOR SUBSEQUENT DESIGNATIONS.—The Secretary shall offer assistance to the State of Delaware and New Castle County, Delaware, if an area described in clause (i) is designated a component of the National Wild and Scenic Rivers System.

“(E) MANAGEMENT.—

“(i) IN GENERAL.—The segments designated by subparagraph (A) shall be managed in accordance with the Management Plan.

“(ii) FEDERAL ROLE.—

“(I) IN GENERAL.—The Director of the National Park Service (or a designee) shall represent the Secretary in the implementation of the Management Plan and this paragraph (including the review, required under section 7(a), of proposed federally-assisted water resources projects that could have a direct and adverse effect on the values for which the segments were designated and authorized).

1 “(H) ASSISTANCE.—To assist in the
 2 implementation of the Management Plan
 3 and to carry out this paragraph, the Sec-
 4 retary may provide technical assistance,
 5 staff support, and funding at a cost to the
 6 Federal Government in an amount, in the
 7 aggregate, of not to exceed \$150,000 for
 8 each fiscal year.

9 “(iii) COOPERATIVE AGREEMENTS.—Any
 10 cooperative agreement entered into under sec-
 11 tion 10(e) relating to any of the segments des-
 12 ignated by subparagraph (A)—

13 “(I) shall be consistent with the Man-
 14 agement Plan; and

15 “(II) may include provisions for finan-
 16 cial or other assistance from the United
 17 States to facilitate the long-term protec-
 18 tion, conservation, and enhancement of the
 19 segments.

20 “(iv) STATE REQUIREMENTS.—State and
 21 local zoning laws and ordinances, as in effect on
 22 the date of enactment of this paragraph, shall
 23 be considered to satisfy the standards and re-
 24 quirements under section 6(e).

1 “(v) NATIONAL PARK SYSTEM.—Notwith-
 2 standing section 10(c), any portion of a seg-
 3 ment designated by subparagraph (A) that is
 4 not in the National Park System as of the date
 5 of enactment of this paragraph shall not, under
 6 this paragraph—

7 “(I) be considered a part of the Na-
 8 tional Park System;

9 “(II) be managed by the National
 10 Park Service; or

11 “(III) be subject to laws (including
 12 regulations) that govern the National Park
 13 System.

14 “(vi) NO LAND ACQUISITION.—The Fed-
 15 eral Government shall not acquire, by any
 16 means, any right or title in or to land, any
 17 easement, or any other interest for the purpose
 18 of carrying out this paragraph.”.

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “White Clay Creek Wild*
 21 *and Scenic Rivers System Act”.*

22 **SEC. 2. FINDINGS.**

23 *Congress finds that—*

24 (1) *Public Law 102–215 (105 Stat. 1664) di-*
 25 *rected the Secretary of the Interior, in cooperation*

1 *and consultation with appropriate State and local*
2 *governments and affected landowners, to conduct a*
3 *study of the eligibility and suitability of White Clay*
4 *Creek, Delaware and Pennsylvania, and the tribu-*
5 *taries of the creek for inclusion in the National Wild*
6 *and Scenic Rivers System;*

7 *(2) as a part of the study described in paragraph*
8 *(1), the White Clay Creek Study Wild and Scenic*
9 *Study Task Force and the National Park Service pre-*
10 *pared a watershed management plan for the study*
11 *area entitled “White Clay Creek and Its Tributaries*
12 *Watershed Management Plan”, dated May 1998, that*
13 *establishes goals and actions to ensure the long-term*
14 *protection of the outstanding values of, and compat-*
15 *ible management of land and water resources associ-*
16 *ated with, the watershed; and*

17 *(3) after completion of the study described in*
18 *paragraph (1), Chester County, Pennsylvania, New*
19 *Castle County, Delaware, Newark, Delaware, and 12*
20 *Pennsylvania municipalities located within the wa-*
21 *tershed boundaries passed resolutions that—*

22 *(A) expressed support for the White Clay*
23 *Creek Watershed Management Plan;*

24 *(B) expressed agreement to take action to*
25 *implement the goals of the Plan; and*

1 (C) endorsed the designation of the White
 2 Clay Creek and the tributaries of the creek for
 3 inclusion in the National Wild and Scenic Riv-
 4 ers System.

5 **SEC. 3. DESIGNATION OF WHITE CLAY CREEK.**

6 Section 3(a) of the Wild and Scenic Rivers Act (16
 7 U.S.C. 1274(a)) is amended by adding at the end the fol-
 8 lowing:

9 “(161) WHITE CLAY CREEK, DELAWARE AND PENNSYL-
 10 VANIA.—

11 “(A) SEGMENTS.—The 191 miles of river seg-
 12 ments of White Clay Creek (including tributaries of
 13 the Creek and all second order tributaries of the des-
 14 ignated segments) in the States of Delaware and
 15 Pennsylvania (referred to in this paragraph as the
 16 ‘Creek’), as depicted on the recommended designation
 17 and classification maps, as follows:

18 “(i) 30.8 miles of the east branch, including
 19 Trout Run, beginning at the headwaters within
 20 West Marlborough township downstream to a
 21 point that is 500 feet north of the Borough of
 22 Avondale wastewater treatment facility, as a rec-
 23 reational river.

24 “(ii) 15.0 miles of the east branch beginning
 25 at the southern boundary line of the Borough of

1 *Avondale to a point where the East Branch en-*
 2 *ters New Garden Township at the Franklin*
 3 *Township boundary line, including Walnut Run*
 4 *and Broad Run outside the boundaries of the*
 5 *White Clay Creek Preserve, as a recreational*
 6 *river.*

7 *“(iii) 4.0 miles of the east branch that flow*
 8 *through the boundaries of the White Clay Creek*
 9 *Preserve, Pennsylvania, beginning at the north-*
 10 *ern boundary line of London Britain township*
 11 *and downstream to the confluence of the middle*
 12 *and east branches, as a scenic river.*

13 *“(iv) 20.9 miles of the middle branch, begin-*
 14 *ning at the headwaters within Londonderry*
 15 *township downstream to the boundary of the*
 16 *White Clay Creek Preserve in London Britain*
 17 *township, as a recreational river.*

18 *“(v) 2.1 miles of the west branch that flow*
 19 *within the boundaries of the White Clay Creek*
 20 *Preserve in London Britain township, as a sce-*
 21 *nic river.*

22 *“(vi) 17.2 miles of the west branch, begin-*
 23 *ning at the headwaters within Penn township*
 24 *downstream to the confluence with the middle*
 25 *branch, as a recreational river.*

1 “(vii) 12.7 miles of the main stem, exclud-
2 ing Lamborn Run, that flow through the bound-
3 aries of the White Clay Creek Preserve, Pennsyl-
4 vania and Delaware, and White Clay Creek
5 State Park, Delaware, beginning at the con-
6 fluence of the east and middle branches in Lon-
7 don Britain township, Pennsylvania, down-
8 stream to the northern boundary line of the city
9 of Newark, Delaware, as a scenic river.

10 “(viii) 27.5 miles of the main stem (includ-
11 ing all second order tributaries outside the
12 boundaries of the White Clay Creek Preserve and
13 White Clay Creek State Park), beginning at the
14 confluence of the east and middle branches in
15 London Britain township, Pennsylvania, down-
16 stream to the confluence of the White Clay Creek
17 with the Christina River, as a recreational river.

18 “(ix) 1.3 miles of Middle Run outside the
19 boundaries of the Middle Run Natural Area, as
20 a recreational river.

21 “(x) 5.2 miles of Middle Run that flow
22 within the boundaries of the Middle Run Nat-
23 ural Area, as a scenic river.

24 “(xi) 15.6 miles of Pike Creek, as a rec-
25 reational river.

1 “(xii) 38.7 miles of Mill Creek, as a rec-
2 reational river.

3 “(B) BOUNDARIES.—

4 “(i) IN GENERAL.—Except as provided in
5 clause (ii), in lieu of the boundaries provided for
6 in subsection (b), the boundaries of the segments
7 shall be the greater of—

8 “(I) the 500-year floodplain; or

9 “(II) 250 feet as measured from the or-
10 dinary high water mark on both sides of the
11 segment.

12 “(ii) EXCEPTIONS.—The boundary limita-
13 tions described in clause (i) are inapplicable
14 to—

15 “(I) the areas described in section 4(a)
16 of the White Clay Creek Wild and Scenic
17 Rivers Act; and

18 “(II) the properties, as generally de-
19 picted on the map entitled “White Clay
20 Creek Wild and Scenic River Study Area
21 Recommended Designated Area”, dated
22 June 1999, on which are located the surface
23 water intakes and water treatment and
24 wastewater treatment facilities of—

1 “(aa) the City of Newark, Dela-
2 ware;

3 “(bb) the corporation known as
4 United Water Delaware; and

5 “(cc) the Borough of West Grove,
6 Pennsylvania.

7 “(C) ADMINISTRATION.—

8 “(i) IN GENERAL.—The segments designated
9 by subparagraph (A) shall be administered by
10 the Secretary of the Interior, in cooperation with
11 the White Clay Creek Watershed Management
12 Committee as provided for in the plan prepared
13 by the White Clay Creek Wild and Scenic Study
14 Task Force and the National Park Service, enti-
15 tled ‘White Clay and Its Tributaries Watershed
16 Management Plan’ and dated May 1998.”.

17 **SEC. 4. SUBSEQUENT DESIGNATIONS.**

18 (a) IN GENERAL.—Churchman’s Marsh, Lamborn
19 Run, and the properties on which the intake structures and
20 pipelines for the proposed Thompson’s Station Reservoir
21 may be located shall be considered suitable for designation
22 as components of the National Wild and Scenic Rivers Sys-
23 tem only at such time as those areas are removed from con-
24 sideration as locations for the reservoir under the com-
25 prehensive plan of the Delaware River Basin Commission.

1 (b) *ASSISTANCE FOR SUBSEQUENT DESIGNATIONS.*—
 2 *The Secretary of the Interior (hereinafter referred to as the*
 3 *“Secretary”) shall offer assistance to the State of Delaware*
 4 *and New Castle County, Delaware, if an area described in*
 5 *subsection (a) is designated a component of the National*
 6 *Wild and Scenic Rivers System.*

7 **SEC. 5. MANAGEMENT.**

8 (a) *IN GENERAL.*—*In order to provide for the long-*
 9 *term protection, preservation, and enhancement of White*
 10 *Clay Creek and its tributaries, the Secretary shall offer to*
 11 *enter into cooperative agreements pursuant to section 10(e)*
 12 *and section 11(b)(1) of the Wild and Scenic Rivers Act (16*
 13 *U.S.C. 1281(e) and 16 U.S.C. 1282(b)(1)) with the White*
 14 *Clay Creek Watershed Management Committee as provided*
 15 *for in the plan entitled “White Clay Creek and its Tribu-*
 16 *taries Watershed Management Plan” and dated May, 1998*
 17 *(hereinafter referred to as the “management plan”).*

18 (b) *FEDERAL ROLE.*—*(1) The Director of the National*
 19 *Park Service (or a designee) shall represent the Secretary*
 20 *in the implementation of the management plan and this*
 21 *paragraph (including the review, required under section*
 22 *7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a)),*
 23 *of proposed Federally-assisted water resources projects that*
 24 *could have a direct and adverse effect on the values for*
 25 *which the segments were designated and authorized).*

1 (2) *To assist in the implementation of the management*
 2 *plan and to carry out this Act, the Secretary may provide*
 3 *technical assistance, staff support, and funding at a cost*
 4 *to the Federal Government in an amount, in the aggregate,*
 5 *of not to exceed \$150,000 for each fiscal year.*

6 (c) *COOPERATIVE AGREEMENTS.—Any cooperative*
 7 *agreement entered into under section 10(e) of the Wild and*
 8 *Scenic Rivers Act (16 U.S.C. 1281(e)) relating to any of*
 9 *the segments designed by section 3—*

10 (1) *shall be consistent with the management*
 11 *plan; and*

12 (2) *may include provisions for financial or other*
 13 *assistance from the United States to facilitate the*
 14 *long-term protection, conservation, and enhancement*
 15 *of the segments.*

16 (d) *COMPREHENSIVE MANAGEMENT PLAN.—The man-*
 17 *agement plan shall be deemed to satisfy the requirements*
 18 *for a comprehensive management plan under section 3(d)*
 19 *of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)).*

20 (e) *STATE REQUIREMENTS.—State and local zoning*
 21 *laws and ordinances, as in effect on the date of enactment*
 22 *of this Act, shall be considered to satisfy the standards and*
 23 *requirements under section 6(c) of the Wild and Scenic Riv-*
 24 *ers Act (16 U.S.C. 1277(c)).*

1 (f) *NATIONAL PARK SYSTEM.*—*Notwithstanding sec-*
2 *tion 10(c) of the Wild and Scenic Rivers Act (16 U.S.C.*
3 *1281(c)), any portion of a segment designated by section*
4 *3 that is not in the National Park System as of the date*
5 *of enactment of this Act shall not—*

6 (1) *be considered a part of the National Park*
7 *System;*

8 (2) *be managed by the National Park Service; or*

9 (3) *be subject to laws (including regulations)*
10 *that govern the National Park System.*

11 (g) *NO LAND ACQUISITION.*—*The Federal Government*
12 *shall not acquire, by any means, any right or title in or*
13 *to land, any easement, or any other interest for the purpose*
14 *of carrying out this Act.*