

The original documents are located in Box 10, folder “10/22/74 HR11541 Transfers of Wildlife Refuge Rights-of-Way (vetoed)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 16 1974

VETOED
10/22/74
Veto message delivered to
Clerk of House: 5:00 pm
10/22/74

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 11541 - Transfers of wildlife
refuge rights-of-way
Sponsor - Rep. Sullivan (D) Missouri and 13 others

Last Day for Action

October 22, 1974 - Tuesday

Purpose

Establishes an additional new standard under which the Secretary of the Interior may grant rights-of-way upon National Wildlife Refuge System lands and requires payment of fair market value for such rights-of-way.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
Department of the Interior	Disapproval (Veto Message attached)
Department of Transportation	Cites concerns
Department of Justice	Defers to Interior
Department of the Treasury	No recommendation

Discussion

Under present law, the Secretary of the Interior is authorized to grant rights-of-way through any area within the National Wildlife Refuge System whenever he determines



that such uses are compatible with the major purposes for which the refuge areas were established; that is, to maintain and preserve migratory bird and wildlife habitat. In addition, Interior regulations require payment of fair market value for such rights-of-way, although Federally aided highways are excepted from payment.

H.R. 11541 would amend the National Wildlife Refuge System Administration Act to require, in addition to the "compatibility" criterion cited above, that refuge system rights-of-way be granted only "after reviewing all reasonable alternatives to the use of such area and determining that such use is the most feasible and prudent alternative for such purpose." The enrolled bill would also require the Secretary to obtain fair market value for all rights-of-way granted. In cases where units of Federal, State, or local government are exempted from such payment by any other provision of Federal law, compensation could be by any other means agreeable to the Secretary, including land exchange or the loan of personnel or equipment. The Secretary could waive these non-monetary forms of compensation if he finds them impracticable or unnecessary. Funds collected in payment for refuge rights-of-way would generally be used to acquire new refuge system lands.

In reporting on the bill in committee, Interior favored H.R. 11541 subject to deletion of the requirement that there be "no feasible and prudent alternative to such use." Interior noted that such language would be identical to language in the Department of Transportation Organic Act concerning the approval by that Department of highway projects affecting parks, refuges, and recreation areas. The highway language was interpreted by the Supreme Court in 1971 in the so-called Overton Park case as limiting Transportation discretion in building a highway through a park.

Specifically the Court said that the Department's alternatives were limited to ". . . a small range of choices . . ." and that the Department must conclude that "as a matter of sound engineering it would not be feasible to build a highway along any other route" before finding "no feasible alternative" to the park route. Additionally, the Court



stated in its Overton Park opinion that only if all other alternatives pose "unique problems" could the Department find "no prudent alternative."

Interior, in its report to the Committee, expressed the concern that unless the "no feasible and prudent" language was deleted, it would find the Overton Park interpretation unduly limiting its flexibility to grant refuge system rights-of-way.

However, notwithstanding Interior's strong objections, the House retained the highway language and passed the bill under a suspension of the rules vote.

In reporting on H.R. 11541, the Senate Commerce Committee registered similar concerns that application of the Overton Park decision to the refuge system "could virtually preclude the use of refuge lands for any right-of-way, including those which impose only a minimum of disruption of refuge values." Accordingly, the Committee amended the House passed bill to require the Secretarial determination of "the most feasible and prudent alternatives for such purpose." In explaining its amendment the Committee stated that:

". . . By changing the burden to be sustained by the Secretary from a determination that there is no other feasible and prudent alternative, meaning virtually any other alternative, to a determination that the refuge route is the most feasible and prudent alternative, the Secretary, after comparing the costs and benefits of all reasonable alternatives, may grant a permit if the best route crosses a national wildlife refuge.

"In making such a determination, the Secretary shall consider all of the economic, social, and environmental costs associated with all reasonable alternatives to the use of the refuge lands and with the refuge use as well. As in the case in assessing alternatives under the National Environmental Policy Act, the alternative of no right-of-way, easement, or reservation must be considered.



Obviously, the Secretary need not consider absurd alternatives. Rather, he should consider all reasonable alternatives which might ultimately prove to be the most 'feasible and prudent alternative'."

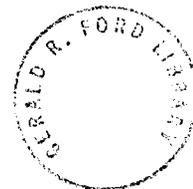
The Senate passed the bill by voice vote and it is essentially this version that is enacted.

In its views letter on the enrolled bill, Interior recommends veto on the basis that:

"Notwithstanding the Senate Committee's attempt to distinguish the requirement in H.R. 11541 from the requirement in the Department of Transportation Organic Act under review in the Overton Park case (Senate Report No. 93-1126, p. 4.), we continue to believe that the imposition of such a standard would unduly limit the flexibility necessary in right-of-way siting and would preclude the consideration of factors which public policy would otherwise require sound decision-making to weigh.

"Our concern about this provision does not prejudice the merits of any pending application for a right-of-way, specifically, with respect to the pending application to construct a gas pipeline across the Arctic National Wildlife Refuge in Alaska. Rather, we are concerned about the administrative and legal problems which could be created by this language as it would affect all rights-of-way application in any area of the National Wildlife Refuge System."

It can be argued, along the lines of the Senate Committee report, that the new "prudent and feasible" standard does not really require the Secretary of the Interior to do anything more than he otherwise should in thoroughly considering rights-of-way and the advantages and disadvantages of each. In this sense the new standard may not impose any actual additional burden on the Secretary. Nevertheless,



such a standard, set against the background of the highway standard from which it was derived, and the Overton Park case, along with a legislative history that may confuse more than clarify all cause us to share Interior's concern. In this connection, the extensive litigation which has surrounded the environmental impact statement requirements of the National Environmental Policy Act suggests a substantial likelihood that similar attacks in the courts with protracted delays might well follow at least some decisions made pursuant to the new standard.

Under the circumstances, we are inclined to resolve our doubts in favor of the administering agency, Interior, which has both wildlife refuge and energy responsibilities. Accordingly, we recommend your disapproval of H.R. 11541 and have prepared an alternative veto message for your consideration.


Director

Enclosures



THE WHITE HOUSE

ACTION

WASHINGTON

Last day - Tuesday, October 22

October 19, 1974

MEMORANDUM FOR

THE PRESIDENT

FROM:

KEN COLE C

SUBJECT:

Enrolled Bill: Transfers of Wildlife
Refuge Rights-of-Way, H.R. 11541

BACKGROUND

Under current law, the Secretary of the Interior may grant rights-of-way through any area within a National Wildlife Refuge by making the determination that such right-of-way is compatible with the major purposes for which the refuge area was established. H.R. 11541 would add an additional test requiring a finding that the Secretary of Interior has considered all reasonable alternatives such as rerouting power or pipe lines, etc., and "...the proposed right-of-way use is the most feasible and prudent alternative for such purpose."

ARGUMENTS FOR SIGNING

This bill will establish environmental criterion more stringent than the current requirement which must be met before any rights-of-way may be approved by the Secretary of Interior. The effects of the bill will be to further protect wildlife refuges by establishing another reasonable environmental test.

ARGUMENTS FOR VETO

In Interior's view, the imposition of such a standard unnecessarily limits the needed flexibility in granting these rights-of-way, especially for energy-related projects such as the proposed gas pipeline from Alaska. Although the test which would be established by this act is reasonable, it will provide yet another arrow in the quiver of those who want to delay and stop these projects. The balance is already tilted against the forces of progress because of existing environmental laws and court decisions.



STAFF AND AGENCY POSITIONS

Phil Areeda recommends that you sign this bill.

Russ Train defers to Interior.

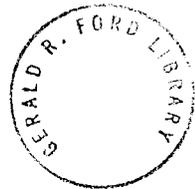
The following recommend veto:

Interior
Roy Ash (see enrolled bill memorandum attached)
Ken Cole
Bill Timmons

DECISION - H.R. 11541

Sign _____
(Tab A contains enrolled bill
and a draft signing statement
approved by Paul Theis)

Veto MTF,
(Sign veto message approved
by Paul Theis at Tab B)





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 11 1974

Dear Mr. Ash:

This responds to your request for the views of this Department on the enrolled bill, H.R. 11541, "To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses."

We recommend that the President not approve this enrolled bill.

H.R. 11541 would amend section 4(d) of the Act of October 15, 1966, to add a restriction on the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. In addition to the determination of the compatibility of these uses, the Secretary would also be required to determine, after reviewing all reasonable alternatives to the use of such area, that the proposed use is the most feasible and prudent alternative for such purpose. The bill would also prohibit granting of any right-of-way, easement, or reservation to any Federal, State, local agency or private party without payment of the fair market value. In the case of a Federal, State or local agency, the Secretary may agree to compensation other than payment of fair market value, if such compensation is consistent with the objectives of the National Wildlife Refuge System, or he may waive such a requirement if he finds it impracticable or unnecessary.

H.R. 11541 also requires that all such sums received, after payment of necessary expenses, must be deposited in the Migratory Bird Conservation Fund and be available to carry out the land acquisition activities authorized under the Migratory Bird Conservation Act and Migratory Bird Hunting Stamp Act. In addition, H.R. 11541 would make any pending actions filed with the Secretary of the Interior under section 4(d)(2) of the Act of October 15, 1966, subject to the above amendments.

Currently, by regulation the Fish and Wildlife Service of this Department requires payment for all rights-of-way across lands of the refuge system at a rate commensurate with charges made for similar right-of-way privileges across private lands. Excepted from payment are rights-of-way acquired as part of the Federal aid highway system and the National System of Interstate and Defense Highways. H.R. 11541, would make such payment a statutory requirement and would authorize compensation for these highway systems unless the Secretary determined that such compensation was impracticable or unnecessary.



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Let's Clean Up America For Our 200th Birthday



This Department supported these provisions of H.R. 11541 because we believed that payment for rights-of-way is consistent with Public Law 90-404, which required payment into the Migratory Bird Conservation Fund of not less than the acquisition costs of lands acquired with migratory bird conservation funds or the fair market value of donated lands in the event of their disposal. This requirement of reimbursement for refuge lands converted to other uses, tends to discourage applications for all but essential uses, and facilitates the replacement of refuge lands affected by such uses.

However, we have consistently opposed the inclusion of a "feasible and prudent alternative" standard in decision-making process for right-of-way siting through refuges. On April 10, 1974, this Department reported favorably to the Senate Committee on Commerce on H.R. 11541 as passed by the House recommending that "the phase 'and (ii) there is no feasible and prudent alternative to such use of the area' be deleted from Section 1 of the bill, and that the words 'to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System' be deleted from the title of H.R. 11541." On May 27, 1974 we reiterated our concern about this language and expressed our further concern that the action of the Committee on Commerce incorporating a requirement that the Secretary of the Interior review, prior to the granting of a right-of-way across a refuge, "...all possible alternatives...." to the use of the area would "impose an enormous burden of statutory construction, filled with an infinite number of variables."

On September 20, 1974 we wrote identical letters to the Chairmen of the Senate Committee on Commerce and the Committee on Public Works as well as the Chairman of the House Committee on Merchant Marine and Fisheries stating that while H.R. 11541 as passed by the Senate substituted a review of "all reasonable" alternatives rather than "all possible" alternatives, this change did not alleviate the uncertainty about which we expressed concern in our May 27 letter. In addition, we expressed our belief that "the imposition of the prudent and feasible standard would increase the probability of protracted litigation and disrupt the orderly and efficient siting of rights-of-way on National Wildlife Refuges throughout the United States."



The requirement that the proposed use be the most feasible and prudent alternative would establish a new standard for such siting determinations. The present standard is embodied in the 1973 amendment to the Mineral Leasing Act of November 18, 1973, where it is provided that rights-of-way over refuge lands shall not be granted "...if the Secretary or agency head determines it would be inconsistent with the purposes of the reservation." In contrast, the "feasible and prudent" language would be virtually identical to language in the Department of Transportation Organic Act, Act of October 15, 1966, relating to the approval by the Department of highway projects affecting parks, recreation areas, or refuges. The Supreme Court, in Citizens to Preserve Overton Park v. Volpe, 401 U.S.C. 402(1971), interpreted this language as limiting agency discretion to "...a small range of choices..." (Ibid, at 416.) In order to find no "feasible" alternative, the Court said it must first be concluded that "as a matter of sound engineering it would not be feasible to build the highway along any other route." (Ibid, at 411.) Additionally, to find no "prudent" alternative, the Overton Park opinion requires that all other alternatives pose "unique problems." (Ibid, at 413.)

Notwithstanding the Senate Committee's attempt to distinguish the requirement in H.R. 11541 from the requirement in the Department of Transportation Organic Act under review in the Overton Park case (Senate Report No. 93-1126, p. 4.), we continue to believe that the imposition of such a standard would unduly limit the flexibility necessary in right-of-way siting and would preclude the consideration of factors which public policy would otherwise require sound decision-making to weigh.

Our concern about this provision does not prejudice the merits of any pending application for a right-of-way, specifically, with respect to the pending application to construct a gas pipeline across the Arctic National Wildlife Refuge in Alaska. Rather, we are concerned about the administrative and legal problems which could be created by this language as it would affect all rights-of-way applications in any area of the National Wildlife Refuge System.

Sincerely yours,

Rayston C. Hughes

Assistant Secretary of the Interior

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503



TO THE HOUSE OF REPRESENTATIVES

I return herewith, without my approval, H.R. 11541, a bill "To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses."

H.R. 11541, as enrolled would amend section 4(d) of the Act of October 15, 1966, to add a restriction on the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. In addition to the determination of the compatibility of these uses, the Secretary would also be required to determine after reviewing all reasonable alternatives to the use of such area, that the proposed use is the most feasible and prudent alternative for such purpose. The bill would also prohibit granting of any right-of-way, easement, or reservation to any Federal, state, local agency, or private party without payment of the fair market value. In the case of a Federal, state or local agency, the Secretary may agree to compensation other than payment of fair market value, if such compensation is consistent with the objectives of the National Wildlife Refuge System, or he may waive such a requirement if he finds it impracticable or unnecessary.

H.R. 11541 also requires that all such sums received, after payment of necessary expenses, must be deposited in the Migratory Bird Conservation Fund and be available to carry out the land acquisition activities authorized under the Migratory Bird Conservation Act and Migratory Hunting Stamp Act. In addition, H.R. 11541 would make any pending actions filed with the Secretary of the Interior under section 4(d)(2) of the Act of October 15, 1966, subject to the above amendments.



The imposition of "feasible and prudent alternative" standard in the decision making process for right-of-way siting through wildlife refuges would establish an additional standard for such determinations. The present standard is embodied in the 1973 amendment to the Mineral Leasing Act, Act of November 18, 1973, where it is provided that rights-of-way over refuge lands shall not be granted "...if the Secretary or agency head determines it would be inconsistent with the purposes of the reservation." In contrast, the "feasible and prudent" language would be identical to language in the Department of Transportation Organic Act, Act of October 15, 1966, relating to the approval by that Department of highway projects affecting parks, recreation areas, or refuges. The Supreme Court, in Citizens to Preserve Overton Park v. Volpe, 401 U.S.C. 402(1971), interpreted this language as limiting agency discretion to "...a small range of choices..." (Ibid, at 416). In order to find no "feasible" alternative, the Court said it must first be concluded that "as a matter of sound engineering it would not be feasible to build the highway along any other route." (Ibid, at 411.) Additionally, to find no "prudent" alternative, the Overton Park opinion requires that all other alternatives pose "unique problems." (Ibid, at 413.)

The imposition of such a new standard would unduly limit the flexibility necessary in right-of-way siting and would preclude the consideration of factors which public policy would otherwise require sound decision-making to weigh.

For these reasons, I believe that existing statutory standards under the Mineral Leasing Act amendment of 1973 as well as the National Wildlife Refuge Administration Act and the National Environmental Policy Act provide adequate protection for the values of our National Wildlife Refuge System and that the approval of H.R. 11541 would not be desirable.

THE WHITE HOUSE
October , 1974





ASSISTANT SECRETARY

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 11, 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This is in response to your request for the views of this Department on H.R. 11541, an enrolled bill

"To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System, and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses."

The National Wildlife Refuge Administration Act of 1966 authorizes the Secretary of the Interior to permit the use of areas within the National Wildlife Refuge System for such purposes as roads, canals, and pipelines whenever he finds that such uses are compatible with the purpose for which the areas are established. H.R. 11541 amends that Act to require the Secretary to make the additional finding that after reviewing all reasonable alternatives to the use of such areas "such use is the most feasible and prudent alternative for such purposes." This means that, in the case of a transportation project approved by the Secretary of Transportation, both the Secretary of the Interior and the Secretary of Transportation will be called upon to make similar determinations as to the feasibility of various alternatives to the use of a

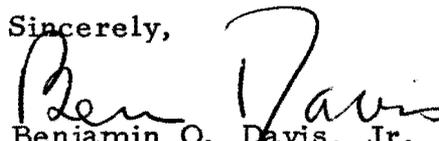


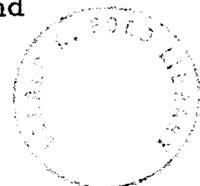
wildlife refuge area to accommodate the transportation project. (See section 4(f) of the Department of Transportation Act.) We believe that the addition of the requirement for a finding by the Secretary of the Interior is unnecessary in such cases. The provision will create an unnecessary burden with respect to the administration of transportation programs and possibly cause unnecessary delays in the processing of transportation projects. It would also unnecessarily inject the Secretary of the Interior into an area of expertise of primary concern to this Department.

The bill further requires that payments be made to the Secretary of the Interior by grantees of rights-of-way, easements, or reservations in areas within the Refuge System. This would change current practice where a Federal agency may obtain a permit for the use of land under the jurisdiction of another Federal agency without compensation. However, we note that the Secretary of the Interior may waive the requirement for compensation if he finds the requirement is impractical or unnecessary. Accordingly, we would assume that the requirement could be waived where the compensation would be less than the administrative costs associated with making or receiving payments.

In conclusion, we believe that it is unnecessary and unfortunate to establish a requirement that the Secretary of the Interior make findings with respect to alternatives to the use of areas in the Wildlife Refuge System for transportation projects. We recognize, however, that our concerns in this regard probably are secondary to other purposes that may be served by enactment of the bill. Therefore, we do not recommend that the President veto the bill solely on these grounds. If the bill is enacted, we will be happy to work closely with the Department of the Interior so that determinations made by both Departments can be developed in a proper and timely manner.

Sincerely,


Benjamin O. Davis, Jr.
Assistant Secretary for
Environment, Safety, and
Consumer Affairs



Department of Justice
Washington, D. C. 20530

OCT 11 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

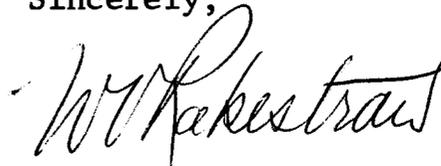
Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 11541, 93rd Congress, "To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses."

The provisions of this enrolled bill appear appropriate for the purposes of the bill, and present no constitutional or other legal questions.

In view of the fact that the Department of the Interior has the primary interest in the subject matter of the enrolled bill, we defer to that Department as to whether the bill should have Executive approval.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General





THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 11 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 11541, "To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses."

The enrolled enactment would require any Federal, State or local agency or any private individual or organization to pay to the Secretary of the Interior the fair market value of any right-of-way, easement, or reservation obtained on lands in the National Wildlife Refuge System. All sums received by the Secretary, net of expenses, would be earmarked to the migratory bird conservation fund to be used exclusively for land acquisition purposes.

The migratory bird conservation fund consists of receipts from the sale of duck hunting stamps and appropriations, which are treated as an advance to be repaid to Treasury without interest beginning with fiscal year 1977 in annual amounts comprising 75 percent of the moneys accruing annually to the fund. All moneys in the fund "are appropriated" in the enabling legislation for payment of expenses for preparation and sale of the stamps, and for acquisition of suitable areas for migratory bird refuges. The proposed extension of such "backdoor" financing would run directly counter to the apparent intent of the Congress in enacting P.L. 93-344, the Congressional Budget and Impoundment Control Act of 1974. We believe that the method of financing these



programs should be reconsidered in light of P.L. 93-344 and that these programs should be subject to the regular appropriations process. A proposed report to the Senate Commerce Committee discussing these difficulties with H.R. 11541 was forwarded to your office for clearance on May 16, 1974.

The legislative history indicates that the Department of the Interior generally supported H.R. 11541 and specifically recommended that the original bill be amended to earmark the proceeds from right-of-way dispositions exclusively for land acquisition purposes.

In view of the foregoing, the Department has no recommendation to make with respect to approval of the enrolled enactment.

Sincerely yours,



General Counsel



THE WHITE HOUSE

WASHINGTON

October 17, 1974

MEMORANDUM FOR: KATHY TINDLE

FROM: DUDLEY CHAPMAN *DC*

SUBJECT: Enrolled Bill H.R. 11541
(Log No. 669)

My own view is that the President should not veto the bill. This is not a budgetary-inflation issue, but a very minor technical issue that does not appear to warrant the drastic remedy of veto and the risk of an override. The requirement which Interior opposes is similar to requirements in other environmental legislation which has very strong support in the Congress. Compliance obviously imposes somewhat of a burden on Interior and risks delay through litigation, but the delays can be minimized by extra effort to assure proper compliance.

I agree with Mr. Chapman.

Phillip Areeda



THE WHITE HOUSE
WASHINGTON

10/17/74

TO: WARREN HENDRIKS



RDL

Robert D. Linder

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 669

Date: October 17, 1974

Time: 9:30 a.m.

FOR ACTION: Michael Duval
 ✓ Phil Buchen - *no veto*
 ✓ Bill Timmons - *note comments*
 ✓ Paul Theis

cc (for information): Norm Ross
 Warren K. Hendriks
 Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 18, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 11541 - Transfers of Wildlife Refuge Rights-of-Way

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Kathy Tindell - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

October 18, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS *BT*

SUBJECT: Action Memorandum - Log No. 669
Enrolled Bill H.R. 11541 - Transfers
of Wildlife Refuge Rights-of-Way

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

10/18/74
Assuming there will be other netos during the recess period. I wouldn't challenge the "to pocket nets or not to pocket nets" argument on this issue alone.

BT



ACTION MEMORANDUM

WASHINGTON

Date: October 17, 1974

Time: 9:30 a.m.

FOR ACTION: Michael Duval
Phil Buchen
Bill Timmons
✓ Paul Theis

cc (for information): Norm Ross
Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 18, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 11541 - Transfers of Wildlife
Refuge Rights-of-Way

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing



1974 OCT 17 AM 11 37

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

STATEMENT BY THE PRESIDENT

I am today signing into law H.R. 11541, a bill which would amend the National Wildlife Refuge System Administration Act of 1966.

By amending Section 4(d) of the Act of October 15, 1966, this bill would spell out new restrictions on the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. These new standards would require the Secretary to review all reasonable alternatives to the use of these Refuges and to make a determination after such a review that the proposed right-of-way "is the most feasible and prudent alternative for such purpose."

If we are to have adequate energy-transmission and communications facilities, we must have rights-of-way on which to locate them. However, when such lands have a special status as wildlife refuges, we must be extra careful to protect this status from unnecessary intrusions.



I believe that these new standards will strengthen the existing provisions of law designed to protect our national wildlife refuge system and at the same time provide the needed balance between this protection and other vital national objectives such as becoming more energy independent.

Although I recognize that some have argued that these new standards may result in delays to the construction of urgently needed facilities, particularly those designed to help meet energy needs, I believe that H.R. 11541 can be administered by the Secretary of the Interior in a manner which achieves the environmental objectives without unacceptable delays in these projects.

#



THE WHITE HOUSE
WASHINGTON

October 19, 1974

Mr. Rumsfeld:

For your information, Phil Areeda's
paragraph was inserted.

Jerry Jones
Jerry Jones

*As first case
no prob. it is
Areeda's
3/1 Gov. Allman's
et. could. -*



THE WHITE HOUSE
WASHINGTON

October 19, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP AREEDA *PA.*

SUBJECT: Pocket Veto

With respect to any pending bills that you wish to veto during the current Congressional recess, it is recommended that you refuse to sign the bill and return it to the Congressional agents appointed to receive Presidential messages. Everyone agrees that this course of action will result in an effective veto. Roy Ash, Phil Buchen, Ken Cole and Bill Timmons agree.

In order to make clear that we are preserving the Presidential prerogative of the pocket veto, we recommend that each such veto message contain the following paragraph.

*I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time."

In the event that you wish to assert a pocket veto without the precaution of returning the unsigned bill to Congress, we ask that you call us in for a meeting.

APPROVE _____

HAVE A MEETING _____

THE WHITE HOUSE

WASHINGTON

October 19, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP AREEDA *P.A.*

SUBJECT: Pocket Veto

With respect to any pending bills that you wish to veto during the current Congressional recess, it is recommended that you refuse to sign the bill and return it to the Congressional agents appointed to receive Presidential messages. Everyone agrees that this course of action will result in an effective veto. Roy Ash, Phil Buchen, Ken Cole and Bill Timmons agree.

In order to make clear that we are preserving the Presidential prerogative of the pocket veto, we recommend that each such veto message contain the following paragraph.

~~PHILLIP AREEDA~~
I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time."

In the event that you wish to assert a pocket veto without the precaution of returning the unsigned bill to Congress, we ask that you call us in for a meeting.

APPROVE _____

HAVE A MEETING _____



TO THE HOUSE OF REPRESENTATIVES

I return herewith, without my approval, H.R. 11541, a bill "To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses."

H.R. 11541, as enrolled would amend section 4(d) of the Act of October 15, 1966, to add a new standard restricting the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. In addition to the determination of the compatibility of these uses, the Secretary would also be required, under the new standard, to determine after reviewing all reasonable alternatives to the use of such area, that the proposed right-of-way use is the most feasible and prudent alternative for such purpose.

The bill would also prohibit granting of any right-of-way, easement, or reservation to any Federal, State, local agency, or private party without payment of the fair market value. In this regard, H.R. 11541 requires that all such sums received, after payment of necessary expenses, must be deposited in the Migratory Bird Conservation Fund and be available to carry out the land acquisition activities authorized under the Migratory Bird Conservation Act and Migratory Hunting Stamp Act. In the case of a Federal,



State or local agency, the Secretary may agree to compensation other than payment of fair market value, if such compensation is consistent with the objectives of the National Wildlife Refuge System, or he may waive such a requirement if he finds it impracticable or unnecessary.

My objections to H.R. 11541 center around its provisions which establish the additional new standard for granting rights-of-way across national wildlife refuges.

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Indeed, so important are such rights-of-way that we often take privately-owned lands for this purpose through eminent domain proceedings.

If privately-owned lands are to be taken in this manner, then it is only right that government-owned lands be made available when required. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

I believe that this protection is properly provided under existing law which requires the Secretary of the Interior to determine that granting a right-of-way across a national wildlife refuge or national park must be compatible with the purposes for which the park or refuge had been established. Only last year, Congress enacted legislation which had the effect of reiterating this protection in the case of refuges.

In my judgment, the compatibility requirement and the environmental impact review and statement required by the



National Environmental Policy Act fully safeguard the values and integrity of our National Wildlife Refuge System without the need for a new standard of the type that would be established by H.R. 11541. In fact, the National Park System, which would not be affected by the present bill, is regarded as properly protected by these requirements.

In addition to being unnecessary, I regard the proposed new standard in H.R. 11541 as highly undesirable. It contains some of the criteria embodied in a more stringent statutory standard governing highway rights-of-way across refuges and parks, a standard which has been the subject of protracted litigation. This fact and a legislative history that confuses rather than clarifies can only serve to create uncertainty and delay, and very possibly further litigation, without serving any useful purpose.

In sum, since I believe that, as in the case of our parks, our wildlife refuges are properly protected by existing law, we should avoid changes in the law that could create further obstacles and delays in the construction of vitally needed facilities, particularly those facilities designed to help meet urgent energy needs.

Accordingly, I am withholding my approval from H.R. 11541.

THE WHITE HOUSE

October , 1974



TO THE HOUSE OF REPRESENTATIVES:

I return herewith, without my approval, H.R. 11541, a bill which would amend the National Wildlife Refuge System Administration Act of 1966. I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

This bill would amend section 4(d) of the Act of October 15, 1966, by adding a new standard in determining the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. This new standard would require the Secretary to review all reasonable alternatives to the use of such area, and then make a determination that the proposed right-of-way use is the most feasible and prudent alternative for such purpose.

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

However, I believe that such protection is properly provided under existing law which requires environmental impact review and further requires the Secretary of the Interior to determine that granting a right-of-way across a national wildlife refuge or national park must be compatible with the purposes for which the park or refuge had been established. Only last year, Congress enacted legislation which had the effect of reiterating this protection in the case of refuges.

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The bill would also prohibit granting of any right-of-way, easement, or reservation to any Federal, State, local agency, or private party without payment of the fair market value. In this regard, H.R. 11541 requires that all such sums received, after payment of necessary expenses, must be deposited in the Migratory Bird Conservation Fund and be available to carry out the land acquisition activities authorized under the Migratory Bird Conservation Act and Migratory Hunting Stamp Act. In the case of a Federal, State or local agency, the Secretary may agree to compensation other than payment of fair market value, if such compensation is consistent with the objectives of the National Wildlife Refuge System, or he may waive such a requirement if he finds it impracticable or unnecessary.



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If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Indeed, so important are such rights-of-way that we often take privately owned lands for this purpose through eminent domain proceedings.

If privately owned lands can be taken in this manner, then it is only fair that government-owned lands be made available when required. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

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In my judgment, the compatibility requirement and the environmental impact review and statement required by the National Environmental Policy Act fully safeguard the values and integrity of our National Wildlife Refuge System without the need for a new standard of the type that would be established by H.R. 11541. In fact, the National Park System, which would not be affected by the present bill, is regarded as properly protected by these requirements.

In short, I regard the proposed new standard in H.R. 11541 as highly undesirable. It contains some of the criteria embodied in a more stringent statutory standard governing highway rights-of-way across refuges and parks,

a standard which has been the subject of protracted litigation. This fact and a legislative history that confuses rather than clarifies can only serve to create uncertainty and delay, and, very possibly, further litigation without serving any useful purpose.

In sum, since I believe that, as in the case of our parks, our wildlife refuges are properly protected by existing law, we should avoid changes in the law that could create further obstacles and delays in the construction of vitally needed facilities, particularly those facilities designed to help meet urgent energy needs.

Accordingly, I am withholding my approval from H.R. 11541.

THE WHITE HOUSE,



TO THE HOUSE OF REPRESENTATIVES

I return herewith, without my approval, H.R. 11541, a bill ^{which would} amend the National Wildlife Refuge System Administration Act of 1966 ⁱⁿ order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses.

^{This bill} H.R. 11541, as enrolled ⁱⁿ would amend section 4(d) of the Act of October 15, 1966, ^{to} add ⁱⁿ a new standard determining the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. This new standard would require the Secretary to determine after reviewing all reasonable alternatives to the use of such area, ^{and then make a determination} that the proposed right-of-way use is the most feasible and prudent alternative for such purpose.

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

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Our wildlife refuges are properly protected by existing law. We should avoid changes in the law that could create further obstacles and delays in the construction of vitally needed facilities, particularly those facilities designed to help meet urgent energy needs.

Accordingly, I am withholding my approval from H.R. 11541.

Sign - TAB - A

Statement By The President

~~TO THE HOUSE OF REPRESENTATIVES~~

I am today signing into law H. R. 11541, a bill which would amend the National Wildlife Refuge System Administration Act of 1966.

By amending Section 4(d) of the Act of October 15, 1966, this bill would spell out new restrictions on the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. These new standards would require the Secretary to review all reasonable alternatives to the use of these Refuges and after such a review to make a determination that the proposed right-of-way "is the most feasible and prudent alternative for such purpose."

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. However, when such lands have a special status as wildlife refuges, we must be extra careful to protect this status from unnecessary intrusions.



I believe that these new standards will strengthen the existing provisions of law designed to protect our national wildlife refuge system and at the same time provide the needed balance between this protection and other vital national objectives such as becoming more energy independent.

Although I recognize that some have argued that these new standards may result in delays to the construction of urgently needed facilities, particularly those designed to help meet ~~urgent~~ energy needs, I believe that H.R. 11541 can be administered by the Secretary of the Interior in a manner which achieves the environmental objectives without unacceptable delays in these projects.

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The bill would also prohibit granting of any right-of-way, easement, or reservation to any Federal, State, local agency, or private party without payment of the fair market value. In this regard, H.R. 11541 requires that all such sums received, after payment of necessary expenses, must be deposited in the Migratory Bird Conservation Fund and be available to carry out the land acquisition activities authorized under the Migratory Bird Conservation Act and Migratory Hunting Stamp Act. In the case of a Federal, State or local agency, the Secretary may agree to compensation other than payment of fair market value, if such compensation is consistent with the objectives of the National Wildlife Refuge System, or he may waive such a requirement if he finds it impracticable or unnecessary.



My objections to H.R. 11541 center around its provisions which establish the additional new standard for granting rights-of-way across national wildlife refuges.

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Indeed, so important are such rights-of-way that we often take privately owned lands for this purpose through eminent domain proceedings.

If privately owned lands can be taken in this manner, then it is only fair that government-owned lands be made available when required. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

I believe that this protection is properly provided under existing law which requires the Secretary of the Interior to determine that granting a right-of-way across a national wildlife refuge or national park must be compatible with the purposes for which the park or refuge had been established. Only last year, Congress enacted legislation which had the effect of reiterating this protection in the case of refuges.

In my judgment, the compatibility requirement and the environmental impact review and statement required by the National Environmental Policy Act fully safeguard the values and integrity of our National Wildlife Refuge System without the need for a new standard of the type that would be established by H.R. 11541. In fact, the National Park System, which would not be affected by the present bill, is regarded as properly protected by these requirements.

In short, I regard the proposed new standard in H.R. 11541 as highly undesirable. It contains some of the criteria embodied in a more stringent statutory standard governing highway rights-of-way across refuges and parks,

a standard which has been the subject of protracted litigation. This fact and a legislative history that confuses rather than clarifies can only serve to create uncertainty and delay, and, very possibly, further litigation without serving any useful purpose.

In sum, since I believe that, as in the case of our parks, our wildlife refuges are properly protected by existing law, we should avoid changes in the law that could create further obstacles and delays in the construction of vitally needed facilities, particularly those facilities designed to help meet urgent energy needs.

Accordingly, I am withholding my approval from H.R. 11541.

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If privately-owned lands ^{can} ~~are to~~ be taken in this manner, then it is only ^{fair} ~~right~~ that ^{on} government-owned lands be made available when required. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as ^{on} rights-of-way.

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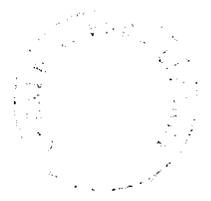
TO THE HOUSE OF REPRESENTATIVES

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TRANSFERS OF WILDLIFE REFUGE RIGHTS-OF-WAY

JANUARY 21, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 11541]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 11541) a bill to amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

The amendment is as follows:

On page 3, line 5, strike the period and the close quotation marks at the end of the line and insert the following: "and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.)." "

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to provide for the replacement of lands within the National Wildlife Refuge System that are permitted to be used for roads, canals, pipelines, et cetera.

In accomplishing this purpose, the legislation would require to be paid into the Migratory Bird Conservation Fund the fair market value of any lands within the System used for such purposes.

LEGISLATIVE BACKGROUND

On January 18, 1973, Mr. Dingell (for himself, Mr. Karth, Mr. McCloskey, Mr. Conte, Mr. William D. Ford, Mr. Nedzi, and Mr. Moss) introduced H.R. 2286. On November 15, 1973, H.R. 11541—a bill identical to H.R. 2286 as reported by the Subcommittee on Fisheries and Wildlife Conservation and the Environment—was introduced by Mrs. Sullivan (for herself, Mr. Dingell, Mr. McCloskey, Mr. Karth, Mr.

Biaggi, Mr. Conte, Mr. Forsythe, Mr. William D. Ford, Mr. Kyros, Mr. Breaux, Mr. Studds, Mr. Nedzi, Mr. Moss, and Mr. Bowen).

Briefly explained, H.R. 2286, as introduced, would amend the Refuge Revenue Sharing Act to require any moneys remaining in its separate fund after all payments are made under that Act to be transferred to the Migratory Bird Conservation Fund to be used to carry out the purposes of the Migratory Bird Conservation Act. In addition, the legislation would require to be paid into the Migratory Bird Conservation Fund the fair market value of lands transferred to a State for the rights-of-way of any highway, road, street, etc. (excluding county roads), across lands within the National Wildlife Refuge System.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on the legislation on July 23, 1973.

The Departments of Commerce and Transportation in their reports on the legislation deferred to the views of the Department of the Interior. In its report on the legislation, the Department of the Interior recommended enactment of the legislation if section 1 of the bill—to require the transfer of net revenues from the Refuge Revenue Sharing Act to the Migratory Bird Conservation Fund—was deleted, and section 2 of the bill was amended to delete the reference in the bill that would exclude county roads from the coverage of the Act and to earmark the fair market value receipts from rights-of-way for land acquisition only.

After giving careful consideration to the evidence presented at the hearings and the departmental reports, on November 8, 1973, the Subcommittee ordered reported to the Full Committee, H.R. 2286, with amendments. This was accomplished by striking out all after the enacting clause and substituting new language. The title of the bill also was amended.

On January 22, 1974, your committee unanimously ordered reported to the House by voice vote, H.R. 11541, with a technical amendment, which, in essence, is identical to the bill ordered reported by the Subcommittee, H.R. 2286, with amendments. The bill, as reported, is in essence the bill as suggested for adoption by the Department of the Interior, with two exceptions. First, the bill would appropriately amend the National Wildlife Refuge System Administration Act rather than the Refuge Revenue Sharing Act. Second, the coverage of the bill was broadened to include all right-of-way transfers, such as for pipelines, canals, roads, ditches, etc., not just those for highway purposes only.

THE AMENDMENT

The amendment was technical in nature.

As introduced, the bill would require funds received for the fair market value of transfers to be deposited in the Migratory Bird Conservation Fund and used to carry out the land acquisition provisions of the Migratory Bird Conservation Act. The same fund is also used to carry out the land acquisition provisions of the Migratory Bird Hunting Stamp Act. In view of this, your Committee amended the

bill to provide that the fund would be used to carry out the land acquisition provisions of both Acts.

BACKGROUND AND NEED FOR THE LEGISLATION

Originally in the 48 contiguous States there were some 127 million acres of wetlands. By 1955, this total acreage had been reduced to approximately 74 million acres. Of this amount, only 22.5 million acres were of significant value for migratory waterfowl use. Since it was anticipated that 10 million acres would remain in private ownership, there remained to be acquired for public control 12.5 million acres. Of this amount, available information indicated that about 5 million acres would be secured by the States, leaving 7.5 million acres to be purchased by the Secretary of the Interior from the migratory bird conservation fund. By 1958, purchases and donations consisted of approximately 3.5 million acres. Another 1.5 million acres were added by 1961, leaving 2.5 million acres to be acquired by the Secretary under the original goal. Since 1961, only 1.3 million additional acres have been acquired. At this date, there remains to be acquired approximately 1.2 million acres of land.

The average cost of land in fee today is \$142 per acre as compared to \$31 per acre in 1962 and \$3 per acre in 1934.

The National Wildlife Refuge System is rather a complex organization. It is composed of both public domain and acquired lands. Approximately 85 percent of the lands within the System is reserved from the public domain and about 12 percent is acquired lands. About 3 percent of the System is non-Federal land administered under agreement, easement, or lease. Less than 5 percent of the land in the System was approved by the Migratory Bird Conservation Commission. Almost 4 percent was acquired with duck stamp funds. The price of the duck stamp is \$5 and the anticipated revenues from the sale of such stamps for the next several years is estimated to be approximately \$11 to \$12 million per year.

Units of the National Wildlife Refuge System consist of wildlife refuges, wildlife ranges, game ranges, wildlife management areas, waterfowl production areas, or areas for the conservation and protection of fish and wildlife that are threatened with extinction. The System is administered by the Secretary of the Interior.

The Department of the Interior witness in his testimony at the Subcommittee hearings estimated that had H.R. 2286, as introduced, been in effect for the past five years the fair market value of the land given over to highway rights-of-way would have amounted to \$200,000, an average of approximately \$40,000 per year.

Subsequent to the hearings, representatives of the Department advised your Committee that had H.R. 2286, as amended, been in effect, the legislation would have produced about \$60,000 per year for the past five years.

Following is a tabulation submitted by the Department of the Interior indicating the number of highway rights-of-way, including their acreage, granted over refuge lands from 1967-1972:

HIGHWAY RIGHTS-OF-WAY GRANTED OVER REFUGE LANDS 1967-72

1. STATE HIGHWAYS

State	Unit	Acres in right-of-way		
		New location	Improvement	Material site
Alaska	Wheeler	93.8		
Do	Nunituk	20.8		
Arizona	Havasu	7.2	8.0	1.25
Arkansas	White River			4.0
Delaware	Prime Hook			
Idaho	Camas		9.3	
Maine	Moosehorn		3	
Missouri	Squaw Creek	1.0	19.5	
Minnesota	Becker WPA		1.8	
Do	Otter Tail WPA		5.8	
Do	Upper Mississippi		15.8	
Nevada	Desert		12.0	
New York	Montezuma		5.9	
North Dakota	Logan WPA		1.2	
Oklahoma	Salt Plains		3.8	
Oregon	Cape Mears		2.0	
Pennsylvania	Erie		1	
South Carolina	Carolina Sandhills WPA		103.7	
Do	Santee		16.3	
South Dakota	Faulk WPA		18.4	
Do	Hand WPA		6.4	
Do	Kingsbury WPA	12.4		
Do	Codington WPA		4.2	
Texas	Aranzas		2.6	
Washington	Ridgefield	33.8		
Do	Turbull		32.5	
Do	Toppenish		1	
Wyoming	Pathfinder	.9		
Totals		169.9	269.9	5.25

2. COUNTY HIGHWAYS

State	Unit	Acres in right-of-way		
		New location	Improvement	Material site
Alabama	Wheeler		11.6	
Arizona	Havasu		16.8	
Florida	J. N. "Ding" Darling			10.0
Illinois	Chautauqua		4.2	
Minnesota	Becker WPA		5.4	
Do	Big Stone WPA	1.0		
Do	Cottonwood WPA		1.4	
Do	Douglas WPA	1.4	.5	
Do	Grant WPA		2.1	
Do	Jackson WPA		4	
Do	Kandiyohi WPA		10.2	2.1
Do	Otter Tail WPA		2.7	
Do	Sherburne		4.9	
Do	Stearns WPA		1.6	
Do	Stevens WPA		5	
Mississippi	Noxubee			.6
Nebraska	Fort Niobrara		1.0	
Do	Valentine		4.3	
North Dakota	Des Lacs		22.2	
Do	Kiddier WPA		19.0	
Do	Lake George		12.6	
Do	Logan WPA		46.7	
Do	Pierce WPA		40.8	
Do	Renville WPA		6.8	
Do	Roletta WPA		3.8	
Do	Upper Souris		4.0	
Do	Ward WPA		.2	
Oregon	Ankeny		4.4	
Do	William L. Finley		.3	
South Carolina	Carolina Sandhills WPA		.2	
South Dakota	Beadle WPA		2.7	
Do	Day WPA		5.1	
Do	Deuel WPA		.2	
Do	Edmunds WPA		2.8	
Do	Hanson WPA		1.8	
Do	Lake WPA		.4	
Tennessee	Tennessee	.5		
Washington	Little Pend Oreille		3.4	
Totals		2.9	245.0	12.7

Your Committee would like to point out that, although it appears that legislation would produce only nominal funds for land acquisition, it is an equitable way to replace wildlife lands taken out of the National Wildlife Refuge System. Also, your Committee would like to point out that our Nation is facing an energy crisis, and will likely continue to face such a crisis for the next decade. In an effort to alleviate this situation, legislation was recently enacted into law (Public Law 93-153) that authorizes the building of the Alaska Pipeline, which will transport oil from Prudhoe Bay, Alaska, to Valdez, Alaska, at which port the oil would be transhipped by ocean-going tankers. That law also authorizes the building of additional oil pipelines, as well as gas pipelines, not only across certain Federal lands in the State of Alaska, but also across lands within the National Wildlife Refuge Systems located in any of the other 49 states.

Although it does not appear that the Alaska Pipeline will cross any lands within the National Wildlife Refuge System, Public Law 93-153 does recognize that other pipelines will need to be built in order to assist in the energy crisis our Nation is facing. Therefore, it is the opinion of your Committee that, as a result of the pressures emanating from the energy crisis and the enactment of Public Law 93-153, H.R. 11541, will produce a considerably larger amount of funds than that previously estimated. In fact, soil samplings are presently underway in the Arctic Game Refuge in the State of Alaska by an Alaskan company relative to the possible building of a natural gas pipeline across that land.

Therefore, should any lands of the System be utilized for such purposes, then it is only right that the fair market value of such lands be placed in the Migratory Bird Conservation Fund so that these lands, which are held in trust, can be replaced at the earliest possible date.

WHAT THE BILL DOES: SECTION-BY-SECTION ANALYSIS

As indicated in the legislative background of this report, your Committee ordered reported to the House, H.R. 11541, a clean bill, with a technical and clarifying amendment, which, in essence, is identical to the bill ordered reported by the Subcommittee, H.R. 2286, with amendments. There follows a section-by-section summary of H.R. 11541, accompanied by discussion, where appropriate.

SECTION 1

Under present law (16 U.S.C. 668dd(d)(1)), the Secretary of the Interior is authorized, under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such purposes are compatible with the major purposes for which such areas were established.

In addition, under 16 U.S.C. 668dd(d)(2), the Secretary is authorized, under such regulations as he may prescribe, to permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as, but not necessarily

limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines such uses are compatible with the purposes for which these areas were established.

Paragraph (1) of section 1 of the bill (other than for technical changes) would amend section 4(d) of the Act (16 U.S.C. 668dd(d)) to require the Secretary to determine, not only that the use to be permitted by present law would be consistent with the purposes for which such area was established, but he must also determine that there is no feasible and prudent alternative to such use of such area.

Your Committee would like to point out that the language in paragraph (1) of section 1 of the bill, which requires the Secretary to find that "there is no feasible and prudent alternative to such use of such area" is in essence the language of the Federal-Aid Highway Act of 1968, which requires the Secretary of Transportation to make such a finding for any program or project to use lands within a wildlife or waterfowl refuge for highway purposes. Since the Secretary of the Interior administers all areas within the National Wildlife Refuge System, of which a wildlife refuge is one, your Committee deemed it advisable to add to the National Wildlife Refuge System Administration Act of 1966, the requirement that he make the same finding that is required to be made by the Secretary of Transportation under the Federal-Aid Highway Act. In this way, the National Wildlife Refuge System Administration Act will be complete within itself, and the Secretary of the Interior would be required to make such a finding regarding areas within the System.

Under present law, there is no requirement that any payment be paid by the permittee for any use of any area within the System that may be authorized by the Secretary of the Interior. Paragraph (2) of section 1 of the bill would require the grantee of any right-of-way, easement, or reservation in, over, across, through, or under any area within the System in connection with any use that may be permitted, such as for pipelines, powerlines, roads, etc., to pay to the Secretary of the Interior the fair market value of such use as determined by the Secretary as of the date of conveyance. In addition, all sums received by the Secretary, after paying necessary administration expenses, would be required to be deposited in the Migratory Bird Conservation Fund and earmarked for land acquisition purposes only.

The earmarking of the funds for land acquisition purposes only was suggested by the Department of the Interior. Your Committee wholeheartedly agrees with this suggestion and so provided in the legislation. The theory behind this provision is that starting with fiscal year 1977, 75 percent of the money accruing to the Migratory Bird Conservation Fund from the sale of duck stamps will have to be utilized to repay advance appropriations under the Wetlands Loan Act of 1961. Consequently, after fiscal year 1977, there will be little money available with which to complete the original land acquisition goal. The moneys to be received from such permittees should go a long way in helping to achieve this goal. Also, in this way lands that are diverted to other uses will be assured of being replaced with other lands of equal value.

SECTION 2

Section 2, subsection (a), of the bill would provide with respect to section 4(d)(2) of existing law (16 U.S.C. 668dd(d)(1)) that any

request for permission to use an area within the System filed with the Secretary under such section, as in effect before the date of enactment of this legislation, and with respect to which the Secretary has not taken final action before such date of enactment, shall be treated as having been filed pursuant to the section, as amended by this legislation. That is to say, any request for permission to use an area which has not been acted on prior to the effective date of this legislation shall be required to meet the new test provided under section 4(d)(1)(B), which requires the Secretary to find that there is no feasible and prudent alternative to such use of such area. Naturally, he will also have to find, as required by existing law, that the use of such area is compatible with the purposes for which such area was established.

Subsection (b) of section 2 of the bill would amend section 4(d)(2) of the Act, as amended by this legislation, to require such section to apply with respect to any right-of-way, easement, or reservation granted by the Secretary on or after the date of enactment of this legislation. It is to be noted that the section would apply even though the Secretary has permitted a certain use to be made of an area but on which a right-of-way, easement, or reservation has not been granted.

For example, evidence was offered at the Subcommittee hearings indicating that the Alaskan Arctic Gas Study Company had been issued a permit by the Secretary of the Interior to take soil samples of certain areas within the Arctic game range, an area of the National Wildlife Refuge System, relative to the possible construction of a natural gas pipeline extending from Prudhoe Bay, Alaska, to the Alaskan-Canadian border. Therefore, if a right-of-way, easement, or reservation is subsequently issued for such purpose after the effective date of this legislation, then the grantee of the right-of-way, easement, or reservation will be required to pay to the Secretary, for deposit in the Migratory Bird Conservation Fund, the fair market value of such right-of-way, easement, or reservation. This will be the case, irrespective of any other law which has authorized or may hereafter authorize the construction of an oil or gas pipeline across any lands within the National Wildlife Refuge System.

COST OF THE LEGISLATION

In the event this legislation is enacted into law, your Committee estimates—based on information supplied by the Department of the Interior—that there would be no additional cost to the Federal Government.

DEPARTMENTAL REPORTS

H.R. 2286 (a similar bill to H.R. 11541) was the subject of three departmental reports. These reports follow herewith:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 20, 1973.

HON. LEONOR K. (MRS. JOHN B.) SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Your Committee has requested the views of this Department on H.R. 2286, a bill "To amend the Act of June 15,

1935, to provide for the disposition of moneys in the migratory bird conservation fund, and for other purposes.”

We have no objection to the enactment of H.R. 2286 if amended by deleting Section 1 and revising Section 2 as suggested herein.

Section 1 of H.R. 2286 would amend Section 401 (e) of the so-called Refuge Revenue Sharing Act (16 U.S.C. 715s(e)) to provide that moneys remaining at the end of any fiscal year in the National Wildlife Refuge Fund be transferred to the Migratory Bird Conservation Fund for all uses specified by the Migratory Bird Conservation Act, as amended (16 U.S.C. 715 *et seq.*). Annual surplus in the National Wildlife Refuge Fund, comprised of revenues obtained in administration of the National Wildlife Refuge System, may now be used only for management of the Refuge System and for enforcement of the Migratory Bird Treaty Act. It is estimated the surplus will be \$1.3 million in Fiscal Year 1974.

Section 2 of H.R. 2286 would require State Highway Departments to pay to the Secretary of the Interior the fair market value of rights-of-way for highways across lands of the National Wildlife Refuge System. All sums so received by the Secretary would also be deposited into the Migratory Bird Conservation Fund. Existing law (23 U.S.C. 317) does not require payment for rights-of-way sought by States pursuant to their participation in a Federal-aid Highway Construction program.

The purpose of both sections is to increase the amount of funds available for acquisition of waterfowl habitat. Nonetheless, enactment of section 1 could result in a reduction of the additional funds much needed and regularly appropriated to cover the costs of refuge management and enforcement of regulations. We believe that legislation recently passed by Congress, and signed by the President, vesting in the Secretary of the Interior authority to fix the Duck Stamp fee at a level not less than \$3.00 nor more than \$5.00 (Public Law 92-214) will increase significantly the monies available for acquisition of waterfowl production areas. An increase in the individual fee (to \$5) is expected to generate additional revenue for this purpose of over \$11 million over the next five years.

Payment for rights-of-way, as proposed in section 2 of H.R. 2286, is consistent with Public Law 90-404, which required payment into the migratory bird conservation fund of not less than the acquisition costs of lands acquired with migratory bird conservation funds or the fair market value of donated lands in the event of their disposal. This requirement of reimbursement for refuge lands converted to other uses tends to discourage applications for all but essential uses, and facilitates the replacement of refuge lands so acquired.

Section 2 would require payment for rights-of-way, heretofore granted without consideration, in the event of acquisition by a State for highway construction under the Federal-aid system. The requirement would not be applicable, however, to easements acquired for “county roads”. We object to this exclusion, not only because it is often difficult to distinguish between “State” and “county” highway projects, but because the exclusion is inconsistent with the obvious purposes of this legislation. The payment provision would be applicable to both acquired and public lands, and to all units of the National Wildlife Refuge System.

Under Sections 1 and 2 of H.R. 2286, all funds deposited into the migratory bird conservation fund "shall be available to carry out the provisions of the Migratory Bird Conservation Act, as amended". Because the so-called Wetlands Loan Act of 1961, as amended (16 U.S.C. 715k-3 *et seq.*) requires that repayment shall be made, starting with FY 1977, in annual amounts comprising 75 percent of the monies accruing annually to the migratory bird conservation fund, most of the monies deposited therein under H.R. 2286 would not be available for new or replacement land acquisition, as intended. We recommended, therefore, that monies so deposited under Section 2 be made available only for the purpose of land acquisition.

Accordingly, we have no objection to enactment of H.R. 2286, if amended (1) to delete section 1; (2) to delete the words "but excluding county roads," as they appear in line 6, page 2; and (3) to insert the words "for land acquisition" between the words "provisions" and "of" in line 16, page 2.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., July 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 2286, a bill

"To amend the Act of June 15, 1935, to provide for the disposition of moneys in the migratory bird conservation fund, and for other purposes."

The bill, in section 1, would amend section 401 (e) of the Act of June 15, 1935 (16 USC 715s(e)) to provide that any money covered into the United States Treasury and reserved in the separate fund maintained by revenues received by the Secretary of the Interior from sales of timber and other resources within areas of the National Wildlife Refuge System shall be transferred to the migratory bird conservation fund and shall be available to carry out the provisions of the Migratory Bird Conservation Act (16 USC 715-715d, e, f-k, l-r). Such funds under existing law may be used by the Secretary of the Interior, in his discretion, for management of the System, including construction and alteration of buildings, roads and other facilities and for enforcement of the Migratory Bird Treaty Act (16 USC 703-711).

Section 2 of the bill would require States to pay to the Secretary the fair market value for rights-of-way of roads, etc., acquired within the National Wildlife Refuge System. Moneys so received would be deposited into the migratory bird conservation fund and be available to carry out provisions of the Migratory Bird Conservation Act.

The Department of Commerce defers to the Department of the Interior as to the merits of the bill.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,
Acting General Counsel.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in reply to your request for the views of the Department of Transportation on H.R. 2286, a bill:

"To amend the Act of June 15, 1935, to provide for the disposition of moneys in the migratory bird conservation fund, and for other purposes."

The proposed bill would amend 16 U.S.C. 715s(e) to earmark the moneys left in the Wildlife Fund exclusively for carrying out the provisions of the Migratory Bird Conservation Act.

Section 2 of the bill would require that State highway departments, prior to taking land within the Wildlife Refuge System for any highway purpose except a county road, pay the fair market value of such lands into the Migratory Bird Fund. That "fair market value" would be determined by the Secretary of the Interior. These provisions would not apply to Federal intragency transfers.

The Department of Transportation defers to the Department of Interior concerning the merits of this legislation.

The Office of Management and Budget has advised that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

J. THOMAS TIDD,
Acting General Counsel.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as 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):

SECTION 4(d) OF THE ACT OF OCTOBER 15, 1966

(80 Stat. 928, 16 U.S.C. 668dd(d))

Sec. 4. ***

(d) (1) The Secretary is authorized, under such regulations as he may prescribe, to—

[(1)] (A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which

such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe; and

[(2) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.]

(B) *subject to paragraph (2) of this subsection, permit the use of any area within the system for purposes such as, but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that (i) such use is compatible with the purposes for which the area is established, and (ii) there is no feasible and prudent alternative to such use of such area.*

(2) *Notwithstanding any other provision of law, the Secretary of the Interior may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1) (B) of this subsection unless the grantee pays to the Secretary the fair market value (determined by the Secretary as of the date of conveyance) of the right-of-way, easement, or reservation. All sums received by the Secretary of the Interior pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).*

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TRANSFERS OF WILDLIFE REFUGE RIGHTS-OF-WAY

AUGUST 22, 1974.—Ordered to be printed

Mr. HART, from the Committee on Commerce,
submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 11541]

The Committee on Commerce, to which was referred the bill (H.R. 11541) to amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

The purpose of this legislation is to provide a mechanism for the replacement of lands within the National Wildlife Refuge System that are permitted to be used for roads, canals, pipelines or other uses. Whenever such a use requires a right-of-way, easement, or reservation in, over, across, through, or under any area within the System, the payment of fair market value for such use would be required. The proceeds would be used for land acquisition.

In addition, an additional prerequisite is established which must be satisfied before the Secretary of the Interior can permit the use of any area within the System for such uses as powerlines, telephone lines, canals, ditches, pipelines or roads. Under current law, such uses may

be permitted if they are compatible with the purposes for which the area is established. The legislation would add the further criterion that such use may be permitted only if it is found to be the most feasible and prudent alternative for such purpose after carefully reviewing all reasonable alternatives to the use of such area.

Finally, the bill requires that national wildlife refuge revenues (known as the "Refuge Revenue Sharing Fund") be devoted to the acquisition of needed refuge areas. After payments to the counties in which refuges are located (as compensation in lieu of taxes), a substantial amount of money remains in the fund. Under current law, that money is used for management of refuge areas and law enforcement by the Bureau of Sport Fisheries and Wildlife. The reported bill would devote this money to land acquisition.

BACKGROUND AND NEED

The National Wildlife Refuge System consists of wildlife refuges, wildlife ranges, game ranges, wildlife management areas, waterfowl production areas, and areas for the conservation of endangered species of fish and wildlife. The system is administered by the Bureau of Sport Fisheries and Wildlife within the Department of the Interior.

More than 30 million acres of land and water are included within the System. The bulk of the acreage is land withdrawn from the public domain in Alaska and the Western States. Vitally important units of the System are also found in the eastern portion of the Nation as well as the Midwest. These areas are primarily wetlands areas to support migratory waterfowl. Moreover, the Interior Department estimates that approximately 1.2 million acres of vital wetlands habitat has yet to be acquired. The bulk of this land lies in the Great Plains states where valuable waterfowl nesting marshes are rapidly being lost to development and drainage.

The pressures on the National Wildlife Refuge System to provide recreation and other uses has grown tremendously in recent years. Currently, approximately 18 million visits are made annually to national wildlife refuges.

In addition, the pressures have grown to permit other uses such as pipelines, highways, power lines, and other uses for units of the National Wildlife Refuge System.

While many uses of national wildlife refuges are entirely appropriate, it is also a reasonable public policy that the beneficiaries of such uses pay their fair share for the privilege of using a national wildlife refuge for these purposes. Furthermore, if revenue is generated from such uses of such areas, it is entirely appropriate that the revenue be used to replace the values lost through the acquisition of new land.

Under current law, such uses may be permitted if they are "compatible with the purposes for which these areas are established" (16 U.S.C. 668(dd)(d)(2)). As uses such as these have not been authorized by the Interior Department for national wildlife refuges to a great extent in the past, the administrative interpretation of "compatible with the purposes for which these areas are established" has not been well established. Nonetheless, there is some indication that the Department of the Interior may interpret this language broadly to allow such uses if the damage and detraction from the

values of the area is not overly severe. Given the possibility of this interpretation, additional direction from the Congress is in order so that if such uses can be provided without the use of refuge lands at the same or less total environmental, economic and social cost, then the use of a national wildlife refuge should be avoided.

In the last 4 fiscal years, receipts from all uses of wildlife refuges have yielded between \$4 and \$4.8 million. Approximately \$1 to \$2 million has been left in the fund at the end of each fiscal year following payments to counties in lieu of taxes and after payments of certain costs. The amount of revenue available to the revenue refuge sharing fund will continue to grow as greater use of the National Wildlife Refuge System is made for revenue producing uses. Thus, a considerable amount of money will be available for needed land acquisition.

H.R. 11541 was introduced on November 15, 1973 in the House of Representatives by Mrs. Sullivan and 13 other cosponsors.

Following passage by the House of Representatives, the bill was introduced in the Senate on January 23, 1974 and referred to the Committee on Commerce.

Hearings were held on H.R. 11541 and other legislation by the Subcommittee on the Environment on April 11 and May 8, 1974. The full Committee on Commerce ordered the legislation reported on July 31, 1974.

SECTION-BY-SECTION ANALYSIS

Section 1

The short title of the proposed legislation is the "National Wildlife Refuge System Administration Act Amendments of 1974."

Section 2

Section 2 amends section 668dd(d) of title 16 of the United States Code by altering the criteria that must be satisfied before the Secretary of the Interior can approve the use of national wildlife refuges for certain purposes. In addition, this section also requires the payment of the fair market value of rights-of-way, easements, and reservations across national wildlife refuges.

Under the provisions of current law, the Secretary of the Interior is authorized to permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as power lines, telephone lines, canals, ditches, pipelines, and roads, if he determines that "such uses are compatible with the purposes for which these areas are established."

Section 2 of H.R. 11541 would maintain this criterion, but in addition require that "after reviewing all reasonable alternatives to the use of such area, that such use is the most feasible and prudent alternative for such purpose". As passed by the House of Representatives, a different criterion required that before approving such use, the Secretary must find that "there is no feasible and prudent alternative to such use of such area". Under the House language, which is similar to section 4(f) of the Department of Transportation Act, it is likely that the interpretation given to the language of the Department of Transportation Act would be applied here as well.

The Supreme Court in a case involving a highway proposed to bisect Overton Park in Memphis, Tennessee (*Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971)), interpreted section 4(f) of

the DOT Act in a manner which, if that language were applied to this legislation, could virtually preclude the use of refuge lands for any right-of-way, including those which impose only a minimum of disruption to refuge values. In Overton Park, the Supreme Court concluded that if, virtually any other alternative existed, which was engineeringly feasible and did not "present unique problems," then a highway could not violate a park.

In adopting different language on this point from the House-passed bill the Committee does not intend to affect the interpretation and administration of the DOT Act or any other provision of law.

The language adopted by the Committee differs from section 4(f) of the DOT Act in that if the Secretary finds that a refuge route is "the *most* feasible and prudent alternative for such purpose" (emphasis added), he may grant the necessary permits. By changing the burden to be sustained by the Secretary from a determination that there is no other feasible and prudent alternative, meaning virtually any other alternative, to a determination that the refuge route is the *most* feasible and prudent alternative, the Secretary, after comparing the costs and benefits of all reasonable alternatives, may grant a permit if the best route crosses a national wildlife refuge.

In making such a determination, the Secretary shall consider all of the economic, social, and environmental costs associated with all reasonable alternatives to the use of the refuge lands and with the refuge use as well. As is the case in assessing alternatives under the National Environmental Policy Act, the alternative of no right-of-way, easement, or reservation must be considered. Obviously, the Secretary need not consider absurd alternatives. Rather, he should consider all reasonable alternatives which might ultimately prove to be the *most* "feasible and prudent alternative."

Section 2 also requires that the Secretary of the Interior not grant any right-of-way, easement, or reservation involving a national wildlife refuge unless the grantee pays to the Secretary the fair market value of the right-of-way, easement, or reservation. With respect to any Federal, State, or local agency which is exempted from payment by any other provision of law, such as Federal Aid Highway Act, payment will not be required. Rather, such agencies would be required to otherwise compensate the Secretary by a means agreeable to the Secretary if such compensation relates to the objectives of the National Wildlife Refuge System. The Secretary is authorized to waive requirements for compensation if the requirement for compensation is impracticable or unnecessary because of the insignificance of the right-of-way or other factors. All sums received by the Secretary under this section shall be deposited into the Migratory Bird Conservation Fund and made available for refuge land acquisition.

Section 3

Subsection (a) of this section requires that any request for permission to use an area within the National Wildlife System which is filed before the effective date of the amendments, section 1 of this act shall only be granted in accordance with the criteria specified in section 1 of this legislation.

Subsection (b) makes the requirement for payment of fair market value for any right-of-way, easement, or reservation applicable to any such use permitted after the effective date of this act.

Section 4

Section 4 requires funds remaining in the Refuge Revenue Sharing Fund at the end of each fiscal year to be transferred to the Migratory Bird Conservation Fund and thereby made available for land acquisition in accordance with the provisions of the Migratory Bird Conservation Act.

Revenue accruing to the fund comes from the sale or other disposition of animals, timber, hay, grass, minerals, and other privileges granted with respect to national wildlife refuges. After deducting the administrative costs of selling such products from the fund, the remaining money, under current law, is available to the counties in which national wildlife refuges are located as payments in lieu of taxes lost by virtue of the public ownership of refuge lands.

Over the course of the last four fiscal years, from \$.8 to \$1.7 million has remained in the fund at the close of each fiscal year. That money is currently available for management of the National Wildlife Refuge System and enforcement of the Migratory Bird Treaty Act.

Concern was voiced by members of the Committee that making such funds available for land acquisition would detract from management and law enforcement in certain States where land acquisition was of less importance. Consequently, the committee added a condition to this requirement specifying that funds available for the management of the National Wildlife Refuge System or for enforcement of the Migratory Bird Treaty Act shall not be diminished by the transfer of such funds for land acquisition. Therefore, the Interior Department would be expected to request additional appropriated funds, probably through a supplemental appropriation request, to make up the balance of the funds in the Refuge Revenue Sharing Fund which will now be used for land acquisition.

COST ESTIMATE

In accordance with Section 252 of the Legislative Reorganization Act of 1970, based on information supplied by the Department of Interior, the committee estimates that there would be no additional cost to the Federal Government if the proposed legislation were enacted.

CHANGES IN EXISTING LAW

In accordance with rule XXIX of the standing rules of the Senate, changes in existing law made by the proposed legislation, as reported by the committee are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is put in italic, and existing law with no changes is shown in roman):

(80 Stat. 928, 16 U.S.C. 668dd(d))

Sec. 4. * * *

(d) (1) The Secretary is authorized, under such regulations as he may prescribe, to—

[(1)] (4) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 per

centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe; and

【(2) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.】

(B) subject to paragraph (2) of this subsection, permit the use of any area within the system for purposes such as, but not necessarily limited to, power lines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that (i) such use is compatible with the purposes for which the area is established and (ii) after reviewing all reasonable alternatives to the use of such area, that such use is the most feasible and prudent alternative for such purpose.

(2) Notwithstanding any other provision of law, the Secretary of the Interior may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary the fair market value (determined by the Secretary as of the date of conveyance) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel: Provided, That (1) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (2) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary of the Interior pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).

SECTION 401(e) OF THE ACT OF JANUARY 15 1935 (16 U.S.C. 715S (e))

SEC. 401 . . .

(e) Uses for surplus moneys.

【Any moneys remaining in the fund after all payments are made for any fiscal year may be used by the Secretary thereafter for management of the System, including but not limited to the construction, improvement, repair, and alteration of buildings, roads, and other facilities, and for enforcement of the Migratory Bird Treaty Act, as amended.】

Any moneys remaining in the fund after all payments under this section are made for any fiscal year shall be transferred to the Migratory Bird Conservation Fund and shall be available for land acquisition under the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.): Provided, That the funds available for the management of the National Wildlife Refuge System or for enforcement of the Migratory Bird Treaty Act shall not be diminished by the amendments made to this subsection by the National Wildlife Refuge System Administration Act Amendments of 1974, unless by specific act of Congress.

TEXT OF H.R. 11541, AS REPORTED

AN ACT To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Wildlife Refuge System Administration Act Amendments of 1974"

SEC. 2. Section 4(d) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(d)) is amended—

- (1) by striking out "(1)" and inserting in lieu thereof "(A)";
- (2) by inserting "(1)" immediately after "(d)";
- (3) by amending paragraph (2) to read as follows:

"(B) subject to paragraph (2) of this subsection, permit the use of any area within the system for purposes such as, but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that (i) such use is compatible with the purposes for which the area is established, and (ii) after reviewing all reasonable alternatives to the use of such area, that such use is the most feasible and prudent alternative for such purpose."; and

- (4) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of law, the Secretary of the Interior may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary the fair market value (determined by the Secretary as of the date of conveyance) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel: *Provided, That* (1) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (2) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary of

the Interior pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.)."

SEC. 3. (a) Any request for permission to use an area within the National Wildlife Refuge System which was filed with the Secretary of the Interior under section 4(d)(2) of the Act of October 15, 1966 (as in effect before the date of the enactment of this Act), and with respect to which the Secretary has not taken final action before such date of enactment shall be treated by the Secretary as having been filed with him pursuant to section 4(d)(1)(B) of the Act of October 16, 1966 (as added by this Act) on such date of enactment.

1966 (as in effect before the date of the enactment of this Act).

SEC. 4. That section 401(e) of the Act of January 15, 1935 (16 U.S.C. 715s(e)), is amended to read as follows:

"(e) Any moneys remaining in the fund after all payments under this section are made for any fiscal year shall be transferred to the Migratory Bird Conservation Fund and shall be available for land acquisition under the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.): *Provided*, That the funds available for the management of the National Wildlife Refuge System or for enforcement of the Migratory Bird Treaty Act shall not be diminished by the amendments made to this subsection by the National Wildlife Refuge System Administration Act Amendments of 1974, unless by specific act of Congress."

AGENCY COMMENTS

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 10, 1974.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Your committee has requested the views of this Department on H.R. 11541, a bill to amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain use to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses, which passed the House of Representatives on January 22, 1974.

We recommend the enactment of this bill if amended as suggested herein.

Section 1 of H.R. 11541 would amend section 4(d) of the act of October 15, 1966, to add a restriction on the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. In addition to the determination of the compatibility of these uses, the Secretary would also be required to determine that there is no feasible and prudent alternative to such use. Section 1 would also prohibit granting of any right-of-way, easement, or reservation to any Federal, State, local agency, or

private party without payment of the fair market value. It requires that all such sums received, after payment of necessary expenses, must be deposited in the Migratory Bird Conservation Fund and would be available to carry out the land acquisition activities authorized under the Migratory Bird Conservation Act and Migratory Bird Hunting Stamp Act.

Section 2 of H.R. 11541 would make any pending actions filed with the Secretary of the Interior under section 4(d)(2) of the act of October 15, 1966, subject to the above amendments.

Payments for rights-of-way is consistent with Public Law 90-404, which required payment into the Migratory Bird Conservation Fund of not less than the acquisition costs of lands acquired with migratory bird conservation funds or the fair market value of donated lands in the event of their disposal. This requirement of reimbursement for refuge lands converted to other uses, tends to discourage applications for all but essential uses, and facilitates the replacement of refugee lands affected by such uses.

Currently, by regulation, we require payment for all rights-of-way across lands of the refuge system at a rate commensurate with charges made for similar right-of-way privileges across private lands. Excepted from payment are rights-of-way acquired as part of the Federal aid highway system and the National System of Interstate and Defense Highways. Enactment of H.R. 11541, if amended as suggested in this report, would make such payment a statutory requirement and would also eliminate the exemptions presently existing for the aforementioned highway systems.

The requirement that there be no feasible and prudent alternative to such use would establish a new standard for such determinations. The present standard is embodied in the 1973 amendment to the Mineral Leasing Act, Act of November 18, 1973, where it is provided that rights-of-way over refuge lands shall not be granted ". . . if the Secretary or agency head determines it would be inconsistent with the purposes of the reservation." In contrast, the "feasible and prudent" language would be identical to language in the Department of Transportation Organic Act, Act of October 15, 1966, relating to the approval by that Department of highway projects affecting parks, recreation areas, or refuges. The Supreme Court, in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S.C. 402 (1971), interpreted this language as limiting agency discretion to ". . . a small range of choices . . ." (*Ibid*, at 416.) In order to find no "feasible" alternative, the Court said it must first be concluded that "as a matter of sound engineering it would not be feasible to build the highway along any other route." (*Ibid*, at 411.) Additionally, to find no "prudent" alternative, the Overton Park opinion requires that all other alternatives pose "unique problems." (*Ibid*, at 413.)

We believe that the imposition of such standards by H.R. 11541 would unduly limit the flexibility necessary in right-of-way siting and would preclude the consideration of factors which public policy would otherwise require sound decision-making to weigh. We therefore recommend that the phrase "and (ii) there is no feasible and prudent alternative to such use of the area" be deleted from Section 1 of the bill, and that the words "to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System" be deleted from the title of H.R. 11541.

In addition, we recommend that the words "or grant easements in, over, across, upon, through or under" be inserted between the words "of" and "any" on line 3 of page 2. This amendment would retain the authority for the Secretary to grant easements that currently exists in the National Wildlife Refuge System Administration Act of 1966.

We would also like to call this committee's attention to another potential problem with respect to rights-of-way through the Arctic National Wildlife Range arising out of the decision of the Circuit Court in *Parker v. United States*, 448 F. 2d 793 (10th Cir.) cert. denied sub nom. *Kaibab Industries v. Parker*, 405 U.S.C. 989 (1972). In the *Parker* case the court held that, pending explicit action by the President and Congress regarding lands subject to review under the Wilderness Act, no administrative action could be taken which conceivably might affect the wilderness value of such lands.

Since the Arctic National Wildlife Range is an area which has been designated for Wilderness Act review, the *Parker* rationale might be applied as to administrative consideration of the alternative of siting a gas pipeline across the Range. Thus, while we do not necessarily agree with an application of the *Parker* decision rationale to the Arctic National Wildlife Range, we believe that this Committee should be aware of the potential problem especially in light of the clear and growing need to maintain and increase the nation's fuel supply, and the consequent need for maximum flexibility in the choice of transportation modes for natural gas from Arctic sources.

The Alaska Native Claims Settlement Act provides, by its Section 17(d), that no activity under the mineral leasing acts, including the issuance of permits for pipelines, shall take place for up to 5 years from the issuance of Secretarial recommendations, on lands withdrawn pursuant to the Act. And while the Arctic National Wildlife Range does not include lands withdrawn pursuant to the Act, the proposals which we transmitted to the Congress on December 17, 1973 (introduced in the Senate as S. 2917) withdraws adjoining lands which would be merged with the existing range to establish a new Arctic National Wildlife Range. The situation as to the Range lands could, therefore, conceivably be compared to that which gave rise to the *Parker* decision, since the lands in that case were not designated by the Wilderness Act as directly subject to review, but were merely lands adjoining such designated lands, and therefore were subject to discretionary inclusion in the recommendations of the Secretary of Agriculture. It is our position that, for a variety of legal reasons, such a comparison between the Wilderness Act and the Settlement Act would not be sound. However, we are studying issues which may be posed by the *Parker* case and the Alaska Native Claims Settlement Act and are considering various possible solutions to those problems. If we should determine that clarifying statutory authority is necessary, we shall, of course, propose appropriate legislation.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

KENT FRIZZELL,
Acting Secretary of the Interior.

SUPPLEMENTAL VIEWS OF MESSRS. HART, LONG,
STEVENSON, COTTON, GRIFFIN, AND BEALL,

We concur with the Committee's modification of the House-passed amendment to section 4(d)(2) of the National Wildlife Refuge system Administration Act of 1966.

As passed by the House of Representatives, the bill would have precluded the Secretary of the Interior from granting a right-of-way across a wildlife refuge unless "there is no feasible and prudent alternative to such use of such area."

Virtually identical language contained in section 4(f) of the Department of Transportation Act and section 138 of the Federal-Aid Highway Act of 1958 has been interpreted by the Supreme Court in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971), to foreclose construction of a highway across parkland unless all other alternatives would not be feasible "as a matter of sound engineering" or would involve "uniquely difficult problems."

As the Committee report points out, it is likely that the Court's interpretation in *Overton Park* would be applied to the provision in the House-passed bill. Unfortunately, the effect of such an interpretation could be to prevent construction of vitally needed energy projects, such as a trans-Canada natural gas pipeline, despite the fact that such a route might be far superior from an overall environmental and economic standpoint. This problem was underscored in the following colloquy between Senator Stevens and the Deputy Assistant Secretary of the Interior for Fish and Wildlife, Mr. Douglas Wheeler, during hearings before the Environment Subcommittee on April 11, 1974:

Senator Stevens. Well, that provision, as I understand it, suggested there be no feasible or prudent alternative to the rights-of-way which would absolutely preclude the building of the Canadian gas pipeline.

Mr. Wheeler. Yes, sir, that is our judgment, as it pertains to Refuge lands, absent the finding required that there be no feasible and prudent alternative.

Subsequently during the hearings, Mr. Wheeler emphasized that it would be "very difficult" to build the Canadian pipeline without traversing the Arctic National Wildlife Range, "*since the shortest and possibly the least damaging route is across refuge lands.*" (Emphasis added)

While the environmental impact of constructing a highway through a city park may be isolated from environmental and economic considerations affecting other segments of the highway, such an approach would not be environmentally or economically sound in determining the best way to transport natural gas from the North Slope of Alaska. As several of our colleagues pointed out recently in a letter to Secretary Morton urging approval of the trans-Canada natural gas pipeline,

The environmental impact statement on the Alaskan oil pipeline did raise the possibility of a gas line through Alaska. However, the impact statement reached the conclusion that 'A gas pipeline through Canada to the Midwest seems to be much more feasible.' This conclusion was based on strong evidence that an Alaskan gas pipeline and

liquifaction would pose severe environmental and economic problems.

Furthermore, testimony was received by the Committee that the overall cost of diverting the Canadian route around the Arctic National Wildlife Range would be about \$1.4 billion, and possibly much higher if pending legislation to expand the Range is approved.

Finally, substantial environmental protection is already afforded for wildlife refuge areas under current laws. Not only must these areas be considered in environmental impact statements filed pursuant to the provisions of the National Environmental Policy Act of 1969, but existing section 4(d)(2) of the National Wildlife Refuge System Administration Act of 1966 requires the Secretary of the Interior, before issuing a right-of-way permit, to determine whether the use would be "compatible" with the purposes for which the area was established. In addition, the recently enacted law authorizing construction of the trans-Alaska pipeline imposes further environmental safeguards before pipeline rights-of-way may be granted.

Because of these considerations and to avoid further extension of the *Overton Park* decision, the Committee agreed to substitute for the House language a provision which would authorize the Secretary of the Interior to grant a right-of-way permit across a wildlife refuge if that route would be "the most feasible and prudent alternative." As the Committee report makes clear, this would assure consideration of both the environmental *and* economic costs of alternative routes. In other words, the Committee amendment simply requires an evaluation of reasonable alternatives similar to that required under the National Environmental Policy Act of 1969.

We believe the Committee amendment better serves the public interest by expanding, instead of limiting, environmental considerations, and by focusing on the most efficient and equitable way of delivering additional energy supplies to American consumers.

PHILLIP A. HART,
RUSSELL B. LONG,
ADLAI E. STEVENSON III,
NORRIS COTTON,
ROBERT P. GRIFFIN,
J. GLENN BEALL.





Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Wildlife Refuge System Administration Act Amendments of 1974".

SEC. 2. Section 4(d) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(d)) is amended—

- (1) by striking out "(1)" and inserting in lieu thereof "(A)";
- (2) by inserting "(1)" immediately after "(d)";
- (3) by amending paragraph (2) to read as follows:

"(B) subject to paragraph (2) of this subsection, permit the use of any area within the system for purposes such as, but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that (i) such use is compatible with the purposes for which the area is established, and (ii) after reviewing all reasonable alternatives to the use of such area, that such use is the most feasible and prudent alternative for such purpose"; and

- (4) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of law, the Secretary of the Interior may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary the fair market value (determined by the Secretary as of the date of conveyance) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel: *Provided*, That (1) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (2) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary of the Interior pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.)."

SEC. 3. (a) Any request for permission to use an area within the National Wildlife Refuge System which was filed with the Secretary of the Interior under section 4(d)(2) of the Act of October 15, 1966 (as in effect before the date of the enactment of this Act), and with respect to which the Secretary has not taken final action before such date of enactment shall be treated by the Secretary as having been filed with him pursuant to section 4(d)(1)(B) of the Act of October 15, 1966 (as added by this Act) on such date of enactment.

H. R. 11541—2

(b) Section 4(d) (2) of the Act of October 15, 1966 (as added by this Act), shall apply with respect to any right-of-way, easement, or reservation granted by the Secretary of the Interior on or after the date of the enactment of this Act, including any right-of-way, easement, or reservation granted on or after such date in connection with any use permitted by him pursuant to section 4(d) (2) of the Act of October 15, 1966 (as in effect before the date of the enactment of this Act).

SEC. 4. That section 401(e) of the Act of January 15, 1935 (16 U.S.C. 715s(e)), is amended to read as follows:

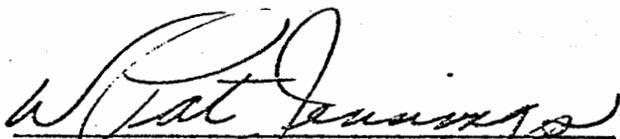
“(e) Any moneys remaining in the fund after all payments under this section are made for any fiscal year shall be transferred to the Migratory Bird Conservation Fund and shall be available for land acquisition under the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.): *Provided*, That the funds available for the management of the National Wildlife Refuge System or for enforcement of the Migratory Bird Treaty Act shall not be diminished by the amendments made to this subsection by the National Wildlife Refuge System Administration Act Amendments of 1974, unless by specific act of Congress.

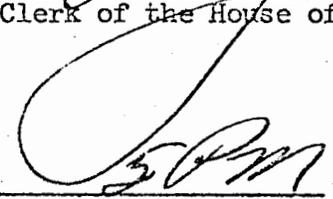
Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

October 22, 1974

Received from the White House a sealed envelope said to contain H.R. 11541, An Act to amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses, and a veto message thereon.


Clerk of the House of Representatives


Time received



TO THE HOUSE OF REPRESENTATIVES:

I am withholding my approval from H.R. 11541, a bill which would amend the National Wildlife Refuge System Administration Act of 1966. I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

This bill would amend section 4(d) of the Act of October 15, 1966, by adding a new standard in determining the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. This new standard would require the Secretary to review all reasonable alternatives to the use of such area, and then make a determination that the proposed right-of-way use is the most feasible and prudent alternative for such purpose.

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

However, I believe that such protection is properly provided under existing law which requires environmental impact review and further requires the Secretary of the Interior to determine that granting a right-of-way across a national wildlife refuge or national park must be compatible with the purposes for which the park or refuge had been established. Only last year, Congress enacted legislation which had the effect of reiterating this protection in the case of refuges.

In short, our wildlife refuges are properly protected by existing law. We should avoid changes in the law that could create further obstacles and delays in the construction of vitally needed facilities, particularly those facilities designed to help meet urgent energy needs.

Accordingly, I am withholding my approval from H.R. 11541.

Ronald R. Ford

THE WHITE HOUSE,

OCT 22 1974



(WASHINGTON BRIEFS)

WASHINGTON (UPI) -- PRESIDENT FORD HAS IN EFFECT VETOED AN ENVIRONMENTAL PROTECTION BILL, BUT CONGRESSIONAL SOURCES SAY THAT BY PURPOSELY REFUSING TO SEND CONGRESS A VETO MESSAGE, FORD MAY HAVE ENSURED ITS ENACTMENT.

FORD RETURNED THE BILL TO CONGRESS UNSIGNED YESTERDAY, CHALLENGING A NEW CONGRESSIONAL TECHNIQUE TO HEAD OFF "POCKET VETOES". OFFICERS HAVE BEEN APPOINTED DURING THE CURRENT CONGRESSIONAL RECESS TO RECEIVE OFFICIAL MESSAGES.

CONGRESSIONAL SOURCES SAID THEY THOUGHT THE BILL ACTUALLY COULD BECOME LAW PRECISELY BECAUSE FORD CHOSE TO SEND IT BACK TO CONGRESS UNSIGNED RATHER THAN TAKE NO ACTION AT ALL.

FORD SAID HE TOOK THE ACTION BECAUSE THE LEGISLATION WOULD NEEDLESSLY DELAY EFFORTS TO MEET "URGENT ENERGY NEEDS". THE BILL WOULD AMEND THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966 BY REQUIRING THE INTERIOR SECRETARY "TO REVIEW ALL REASONABLE ALTERNATIVES" BEFORE ALLOWING CERTAIN RIGHTS-OF-WAY ACROSS LAND IN THE NATIONAL WILDLIFE REFUGE SYSTEM.

WASHINGTON (UPI) -- AMERICAN OFFICIALS SAID TODAY THAT IF DEMONSTRATIONS AGAINST PRESIDENT FORD'S PLANNED VISIT TO JAPAN NEXT MONTH CONTINUE AND BECOME MORE BITTER, IT MAY BE NECESSARY TO RECONSIDER MAKING THE TRIP.

THEY EMPHASIZE THERE ARE NO INDICATIONS SO FAR THAT THE DEMONSTRATIONS, LED BY JAPANESE COMMUNIST AND SOCIALIST PARTY ORGANIZERS, WILL BECOME SO VIOLENT AS TO WARRANT CANCELING THE SCHEDULED VISIT.

THE BIG ISSUE AMONG THE ORGANIZERS OF CURRENT DEMONSTRATIONS IS THE ALLEGED PRESENCE OF U.S. NUCLEAR WEAPONS IN JAPANESE TERRITORY, WHICH WOULD BE CONTRARY TO PUBLIC ASSURANCES GIVEN BY AMERICAN OFFICIALS AND THE JAPANESE GOVERNMENT.

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WASHINGTON (UPI) -- THE DEMOCRATS, WHO TRADITIONALLY PICTURE THEIR GOP OPPONENTS AS THE CREATURES OF THE WEALTHY AND PRIVILEGED CLASS, CAN'T KICK THE FAT CATS AROUND IN THIS ELECTION.

FOR THE FIRST TIME IN RECENT MEMORY, DEMOCRATIC CANDIDATES FOR THE HOUSE AND SENATE IN 1974 HAVE COLLECTED MORE CAMPAIGN FUNDS THAN THE REPUBLICANS, ACCORDING TO FIGURES FROM THE CITIZENS ACTION GROUP, COMMON CAUSE.

WORKING WITH REPORTS UP TO SEPT. 1, THE COMMON CAUSE MONITORS FOUND DEMOCRATIC CANDIDATES HAD COLLECTED \$22 MILLION COMPARED TO \$16 MILLION FOR REPUBLICANS -- A 58-42 PER CENT SPLIT. THAT MORE THAN REVERSED THE 1972 PATTERN, WHEN GOP CONGRESSIONAL CANDIDATES GOT 54 PER CENT OF THE CONTRIBUTIONS.

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WASHINGTON (UPI) -- ASSISTANT EPA ADMINISTRATOR ROGER STRELOW YESTERDAY CRITICIZED AS IRRESPONSIBLE AND MISLEADING A NEWSPAPER ADVERTISEMENT BY A MAJOR UTILITY GROUP ATTACKING THE EPA.

THE DOUBLE-PAGE AD ACCUSED EPA ADMINISTRATOR RUSSELL TRAIN OF TELLING "HALF A STORY" IN A LETTER TO THE EDITOR WHICH APPEARED EARLIER IN SEVERAL PUBLICATIONS.

THE AMERICAN ELECTRIC POWER SYSTEM SAID IN THE AD THAT TRAIN'S COMMENTS WERE A "LIMPING DEFENSE" WHICH, AMONG OTHER THINGS, "DID NOT REVEAL THAT OTHER EPA POLICIES WILL OUTLAW 160 MILLION ANNUAL TONS (OF COAL) NOW BEING BURNED."

STRELOW INTERRUPTED A NEWS CONFERENCE ON ANOTHER MATTER TO ATTACK THE AD. HE ADMITTED THAT HIGH SULFUR COAL NOW BEING USED WOULD NOT BE IN COMPLIANCE WITH CLEAN AIR RULES LATER ON, BUT ADDED:

"THE CLAIM THAT, COME MID-1975, EPA IS GOING TO SHUT DOWN ALL OF THE POWER PLANTS IN THE COUNTRY THAT ARE BURNING SOMETHING OVER 100 MILLION TONS OF COAL BECAUSE OF THAT FACT SIMPLY IS NOT TRUE."

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WASHINGTON (UPI) -- THE EPA SAYS HEAVY TRUCKS THAT TRAVEL INTERSTATE HIGHWAYS MUST BE MADE QUIETER. BUT ITS ORDER IS BEING ATTACKED FROM TWO DIRECTIONS.

THE AMERICAN TRUCKING ASSOCIATION SAYS IT WILL CAUSE HIGHER CONSUMER PRICES OF GOODS SHIPPED BY TRUCK.

Office of the White House Press Secretary
(Cleveland, Ohio)

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

I am withholding my approval from H.R. 11541, a bill which would amend the National Wildlife Refuge System Administration Act of 1966. I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

This bill would amend section 4(d) of the Act of October 15, 1966, by adding a new standard in determining the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. This new standard would require the Secretary to review all reasonable alternatives to the use of such area, and then make a determination that the proposed right-of-way use is the most feasible and prudent alternative for such purpose.

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

However, I believe that such protection is properly provided under existing law which requires environmental impact review and further requires the Secretary of the Interior to determine that granting a right-of-way across a national wildlife refuge or national park must be compatible with the purposes for which the park or refuge had been established. Only last year, Congress enacted legislation which had the effect of reiterating this protection in the case of refuges.

In short, our wildlife refuges are properly protected by existing law. We should avoid changes in the law that could create further obstacles and delays in the construction of vitally needed facilities, particularly those facilities designed to help meet urgent energy needs.

Accordingly, I am withholding my approval from H.R. 11541.

GERALD R. FORD



THE WHITE HOUSE,
October 22, 1974

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October 10, 1974

Dear Mr. Director:

The following bills were received at the White House on October 10th:

H.J. Res. 1131 ✓
H.R. 11581 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk



The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.

TO THE HOUSE OF REPRESENTATIVES:

*W. Handley
10/21/74*

~~I am withdrawing my approval from~~
~~I return herewith, without my approval, H.R. 11541, a~~
bill which would amend the National Wildlife Refuge System Administration Act of 1966. I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

This bill would amend section 4(d) of the Act of October 15, 1966, by adding a new standard in determining the authority of the Secretary of the Interior to allow certain rights-of-way across lands of the National Wildlife Refuge System. This new standard would require the Secretary to review all reasonable alternatives to the use of such area, and then make a determination that the proposed right-of-way use is the most feasible and prudent alternative for such purpose.

If we are to have adequate energy-transmission and communication facilities, we must have rights-of-way on which to locate them. Of course, when such lands have a special status as wildlife refuges or national parks, we must fully protect this status when portions of these areas are sought for use as rights-of-way.

However, I believe that such protection is properly provided under existing law which requires environmental impact review and further requires the Secretary of the Interior to determine that granting a right-of-way across a national wildlife refuge or national park must be compatible with the purposes for which the park or refuge had been established. Only last year, Congress enacted legislation which had the effect of reiterating this protection in the case of refuges.

