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APPROVED  
FEB 4 - 1976

*Signed*  
2/4/76

THE WHITE HOUSE

WASHINGTON

ACTION

February 4, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *[Signature]*

SUBJECT: H.R. 11510 - Emergency Blackbird Control in Kentucky and Tennessee

Attached for your consideration is H.R. 11510, a bill sponsored by Representative Beard (D) of Tennessee and 14 others, directing the Interior Department to apply control chemicals to blackbird and starling roosts in Kentucky and Tennessee. The last day for action is Monday, February 9, 1976.

BACKGROUND

The bill waives compliance with the National Environmental Policy Act, the Federal Environmental Pesticide Control Act, or any other provision of the law. The Governor of either State must certify that the birds pose a significant hazard to health, safety, or property and the Secretary must find that the use of a registered chemical will not cause hazards to health, safety, or property. The bill is effective through April 15, 1976.

The bill, introduced as an emergency measure and without committee approvals, passed both Houses unanimously with little debate. Additionally, the Tennessee and Kentucky legislatures have noted to ask approval of the bill, as have both Governors.

The urgency of action is based on the use of Tergitol, a chemical that depends on cold weather to be effective.

*Posted*  
2/4/76

*To Archive*  
2/4/76



AGENCY RECOMMENDATIONS

Office of Management and Budget (Tab A)	Approval
Department of the Interior	Approval
Environmental Protection Agency	Disapproval
Council on Environmental Quality	Disapproval
Department of Defense	Defers to CEQ (Informally)
Department of Justice	Defers to Interior
Department of Agriculture	Defers to Interior

STAFF COMMENTS

Jack Marsh, Robert Hartmann, Max Friedersdorf,  
Rogers Morton, Ken Lazarus, and I recommend approval.

RECOMMENDATION

That you approve this bill.





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

FEB 8 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 11510 - Emergency  
starling and blackbird control in Kentucky  
and Tennessee  
Sponsors - Rep. Beard (D) Tennessee and 14 others

Last Day for Action

February 9, 1976 - Monday

Purpose

To direct the Interior Department to apply bird control chemicals to blackbird roosts in excess of 500,000 birds in Kentucky and Tennessee until April 15, without complying with the National Environmental Policy Act or other laws, if the Governor of either State certifies that the birds pose significant hazards to health, safety, or property, and if the Secretary of the Interior finds that chemical use will not cause hazards to health, safety, or property.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Environmental Protection Agency	Disapproval
Council on Environmental Quality	Disapproval
Department of Defense	Defers to CEQ (Informally)
Department of Justice	Defers to Interior
Department of Agriculture	Defers to Interior

Discussion

Up to 77 million blackbirds, starlings, and grackles have made winter roosts in Kentucky and Tennessee this year. The birds have become a serious nuisance and are causing property damage. Moreover, the birds'

feces -- accumulating to as much as a foot and a half in depth in some areas -- may carry a fungus which causes histoplasmosis, a respiratory disease.

Non-lethal means of dispersing the birds have failed. The best alternative for eliminating the birds appears to be the use of Tergitol, a chemical which when sprayed on the birds washes off the protective oils in their feathers causing them to freeze during rainy, cold weather (45 degrees or less). Tergitol is a non-poisonous biodegradable detergent which quickly dissolves and leaves no adverse environmental after-effects. This chemical was developed by the U.S. Fish and Wildlife Service for use in bird control.

When a similar blackbird roosting problem occurred last winter, the Department of the Army treated birds in the vicinity of Fort Campbell with Tergitol. Because of delays caused by litigation initiated by the Society for Animal Rights, however, this Tergitol application occurred late in the winter season and a lack of rainy, cold weather limited its effectiveness.

Since then, Tergitol has been registered as a pesticide by the Environmental Protection Agency and placed under the exclusive control of the Department of the Interior. In a continuation of its case, the Society for Animal Rights sought again to prohibit the use of Tergitol, and the Department of Justice entered into an agreement in November, 1975 which stipulated that the Federal Government would not use Tergitol until such time as an appropriate national environmental impact statement (EIS) was completed. We have been informally advised by Interior that the EIS will not be completed for some weeks. Under the terms of this stipulation, however, the Secretary of the Interior can use Tergitol in those cases where he declares, upon application by the States, that an emergency exists involving "substantial, imminent, and demonstrable health or safety hazard to humans."

The enrolled bill would direct the Secretary of the Interior to apply bird control chemicals to those blackbird roosts in the States of Kentucky and Tennessee which contain in excess of 500,000 birds. On or before April 15, 1976, such blackbird control measures would not have to comply with provisions of the National

Environmental Policy Act (NEPA), the Federal Environmental Pesticide Control Act (FEPCA), or any other provision of law. However, before taking action, the Governors of Kentucky and/or Tennessee must certify to the Secretary that "blackbird roosts" are a significant hazard to human health, safety or property in their respective States, and in turn, the Secretary must determine that the treatment of a particular roost would not pose a hazard to human health, safety or property.

H.R. 11510 was introduced, passed, and enrolled in less than a day without committee hearings and without an opportunity for any Executive Branch comment. The bill passed in the House on a voice vote without debate. Similarly, the Senate passed the bill on a voice vote following floor statements in which Senators Baker (R) and Brock (R) of Tennessee and Huddleston (D) and Ford (D) of Kentucky strongly supported it. The Senators generally noted that for reasons of human health and to avoid further property damage immediate action is imperative. It should also be noted that Congressman Leggett's Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on H.R. 11510 on February 2, 1976, six days after it passed, apparently in response to the manner in which the measure had been handled.

Following the enrollment of H.R. 11510, on January 31, the Secretary of the Interior issued a declaration of emergency, under the terms of the court stipulation referred to above, covering one of the approximate thirty roosts in this two State area. It is expected that further emergency findings may be prepared by the States and declared by the Secretary. Each such emergency declaration, however, is subject to challenge by the Society for Animal Rights for five days after its issuance.

#### Arguments Against Approval

1. Under the existing court stipulation, use of registered bird control agents is allowed when the Secretary of Interior finds that human health and safety is threatened. Therefore, this bill may not be needed to accomplish its purpose and if signed into

law would unnecessarily override the court agreement and generally applicable laws.

2. The bill exempts chemical application in Kentucky and Tennessee not only from NEPA and the FEPCA but all other provisions of law. The only other NEPA exception was an issue of national significance, the Alaskan pipeline, and criticism from environmental groups was heavy then, and is expected to be heavy now. The scope of the bill's exemption is excessively broad, even if only for a limited period of time. More importantly, however, this bill sets an undesirable precedent of congressional exemption from NEPA of specific agency actions and creates the potential for circumvention of environmental laws. CEQ stated publicly at the February 2nd hearing that it was recommending veto of the bill.

3. H.R. 11510 was introduced, passed and enrolled in less than a day without the customary Executive Branch and congressional committee review process and without floor debate.

4. It is not entirely clear that the bill would overcome further delays in dealing with the blackbird problem since environmentalist and animal rights groups may well initiate more litigation to challenge any finding by the Secretary of the Interior that the chemical use will not be harmful to human health and safety.

5. In addition to gaining favorable reaction by animal lovers and those who strongly support NEPA, veto of the bill, as unnecessary, would not incur the disfavor of any large groups and would be acceptable to the residents of the impacted area provided we are prepared to meet bonafide emergencies.

#### Arguments for Approval

1. A threat to human health may exist in Kentucky and Tennessee. Existing law and procedures will interfere with treatment of this pest control problem except on a case by case basis, each subject to challenge in court.



2. Under the court stipulation, the Secretary can take emergency action for health or safety reasons but not for the protection of property, which is also a factor in the blackbird problem.

3. As a check, the bill provides that the Secretary of the Interior must determine that chemical use under the particular circumstances will not be adverse to human health and safety. As noted, Tergitol is non-poisonous and biodegradable.

4. The provisions of this emergency legislation are effective for a very limited period of time, until April 15, 1976, and are extremely restricted in scope, applicable only to Kentucky and Tennessee in clearly defined situations.

5. While it is true that the Secretary's determination under the bill could be challenged in the courts, experience seems to indicate that litigation and resulting delays are more likely in the case of action under the court stipulation.

6. Both Justice and Interior informally participated in the drafting of the bill. At the February 2nd House hearings, Interior acknowledged its participation and further indicated the Department would recommend its approval by the President. Under these circumstances, disapproval would be difficult.

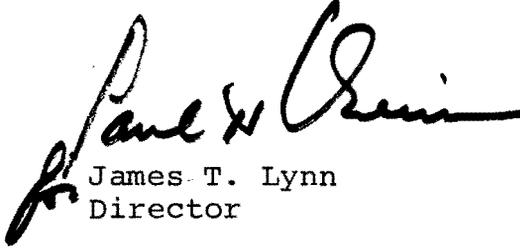
7. While approval would make environmentalists unhappy, there is widespread support in Kentucky and Tennessee for prompt elimination of this bird nuisance.

8. The uproar created over the manner in which this bill was passed should tend to minimize its value as a precedent for future exemptions to NEPA and related laws.

#### Recommendation

On balance, we conclude that the arguments favoring approval outweigh those in favor of veto. While the manner in which this legislation was enacted is deplorable, we do not believe that any useful purpose

would be served by issuance of a signing statement. As already noted, the furor which the bill has generated should do much to minimize it as a precedent.

  
for James T. Lynn  
Director

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

DATE: 2-9-76

TO: Bob Linder

FROM: Jim Frey

Attached is the Defense views  
letter on H.R. 11510, for  
inclusion in the enrolled bill  
file. Thanks.



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

3 February 1976

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for the Department's position on the enrolled enactment of H. R. 11510, 94th Congress, an Act "To provide for starling and blackbird control in Kentucky and Tennessee."

The Department of Defense has sought to comply with the National Environmental Policy Act, and other legal requirements that relate to the control of blackbirds at military installations in Kentucky and Tennessee. To this end, a final Environmental Impact Statement and a supplement to the final Environmental Impact Statement on the control of blackbirds have been filed by this Department with the President's Council on Environmental Quality.

The overall impact of the National Environmental Policy Act is within the purview of the President's Council on Environmental Quality as the agent for implementation of the Act by the Executive Branch. Similarly, the overall impact of other laws that would be suspended in their application to the blackbird control program in Kentucky and Tennessee by this enactment are the responsibility of agencies outside the Department of Defense. Therefore, the matter of the general appropriateness of H. R. 11510 should be primarily considered by the Council and those several other agencies.

Sincerely,

A handwritten signature in cursive script, reading "Richard A. Wiley", is written over the typed name.

Richard A. Wiley



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

FEB 3 - 1976

Dear Mr. Lynn:

This responds to your request for our views on enrolled bill H.R. 11510, "To provide for starling and blackbird control in Kentucky and Tennessee. This letter supercedes our report on the enrolled bill dated January 29, 1976.

We recommend that the President approve this enrolled bill.

Enrolled bill H.R. 11510 directs the Secretary to provide for bird control treatment at those roost sites of more than 500,000 birds certified by the Governor of Kentucky or Tennessee to be a significant hazard to health, safety, or property, unless it is determined by the Secretary that such treatment would pose a hazard to human health, safety, or property. Once it has been determined that the roost treatment poses no hazard, then no "provision of law shall apply to any such blackbird control activities".

We believe that the bill will provide immediate relief for those persons in the Kentucky/Tennessee area who have been beset by the millions of blackbirds in various roosts throughout that area. Because of the short term nature of the bill, it is extremely unlikely that a sufficient number of birds would be removed to affect the overall population of blackbirds.

Presently the United States Fish and Wildlife Service is completing an environmental impact statement on the use of PA-14 to control blackbirds. The final statement, however, will not be published until early spring.

The Kentucky/Tennessee situation is not limited to human health or safety; there is a substantial problem of damage to agriculture and property. Pursuant to a stipulation entered into between plaintiffs and



*Save Energy and You Serve America!*

federal defendants in the lawsuit Society for Animal Rights, et al. v. Rumsfeld, et al., Civil Action No. 75-0159 (D.D.C.), the Fish and Wildlife Service agreed to use PA-14 only in the event that an "emergency situation arises which poses substantial, imminent and demonstrable health or safety hazards to humans. . . ."

A question has been raised as to the propriety of this Department's supporting a bill whose primary effect is to circumvent the provisions of the stipulation. The stipulation provides that the Fish and Wildlife Service shall not "aid, abet, assist, encourage, or otherwise, directly or indirectly, participate in or facilitate the use of PA-14 for blackbird control by the United States Government or anyone else. . . ." The Department does not feel that its favorable recommendation of this bill constitutes a violation of the stipulation. A cabinet officer has an affirmative duty to respond to legislative proposals, and to construe the Secretary's participation as contrary to the stipulation is unwarranted.

We believe that the environmental consequences of any blackbird control undertaken pursuant to this bill will be minimal, and that the benefits derived from such treatment will be significant. Accordingly, we recommend the approval of H.R. 11510.

Sincerely yours,



Secretary of the Interior

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C. 20503



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 2 1976

OFFICE OF THE  
ADMINISTRATOR

Dear Mr. Lynn:

This letter is in response to your request for the position of the Environmental Protection Agency regarding enrolled bill H.R. 11510, "To provide for starling and blackbird control in Kentucky and Tennessee."

Although we realize that the excessive bird populations in Kentucky and Tennessee do present a hazard, we think that alternatives exist to the legislative approach taken here. Consequently, we must urge that the President veto the measure for the reasons set forth below.

I. We believe that H.R. 11510 establishes an undesirable precedent in that it exempts this particular situation from the Federal pesticide regulatory statute. The amended FIFRA has been carefully drafted to adequately protect man and the environment from uncontrolled or irresponsible pesticide use. In addition, the Act is designed to operate in both normal and emergency situations. Section 18 of FIFRA permits emergency actions which can be taken by both the State and Federal governments. The effect of H.R. 11510 is to circumvent the administrative framework established by the law. By so doing, it creates other disturbing results.

First, it permits the use of any "chemicals registered for bird control purposes." We interpret this to mean that only registered avian pesticides can be used. Under this language, however, registered avian control agents having a high toxicity could be used in a manner which would contravene established application instructions; for instance, by aerial spraying rather than by a ground application. This could have harmful effects.

Second, Section 2(b) of H.R. 11510 would restrain EPA from proceeding against either an agency of the Federal government or the States of Tennessee and Kentucky in the event that a registered pesticide was misused during this limited control program. In this way, the public would be unprotected against possible improper use of toxic pesticides and the intent of Congress, as expressed in FIFRA, would be subverted.

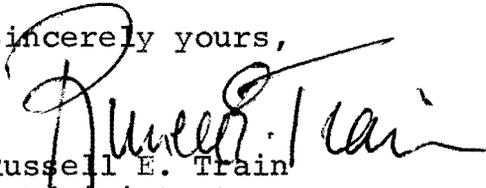
In short, we believe that environmental safeguards contained in FIFRA should not be abandoned in response to a particular pest control problem. A mechanism for dealing with emergency situations is provided in the statute, and it would be short-sighted--not to mention a very serious precedent--to reject the carefully conceived framework of the FIFRA in preference for piecemeal legislative action. In addition, as we will discuss below, a preferable strategy exists which can ensure that this emergency situation is remedied without causing any harm to environmental interests.

II. We view the provision of H.R. 11510 which specifically exempts the proposed bird eradication program from the coverage of NEPA as an unwarranted and extremely undesirable development. By enacting NEPA, Congress intended that all Federal agencies would comply with its provisions and incorporate environmental factors into agency decision-making. The signing of H.R. 11510 would undercut the spirit of NEPA and could lead to a further de-emphasis of that statute. We strongly believe this should be avoided.

In addition, we believe that the signing of H.R. 11510 is not needed to conduct the limited program proposed for Kentucky and Tennessee. In prior litigation on this question, the Department of Justice (representing the Department of the Interior) has entered into a consent agreement which provides a potential solution to this problem. Under an emergency clause, this agreement permits the Department of the Interior to commence a bird-spraying operation prior to the completion of the NEPA process. Once the Department of the Interior finds that an emergency exists, it may take immediate action to control the bird population through the use of the pesticide Tergitol. To date, the Department of the Interior has not declared an emergency and has not completed a draft environmental impact statement. We would recommend that the Department of the Interior exercise its emergency authority if it finds that an extreme situation exists. While this action is underway, Interior could expedite its preparation of an environmental impact statement so that important factors do not go unexamined. This strategy allows for emergency action to control an imminent threat to the public health and safety, while also providing for NEPA analysis as soon as possible. We would strongly suggest that this approach be taken so that all interests are protected.

In summary, we sympathize with the plight of the citizens of Kentucky and Tennessee who are affected by this serious pest control problem. However, we do not feel that the approach taken by H.R. 11510 best serves their interests or those of the nation as a whole. Furthermore, a feasible procedure exists which can assist all of the parties involved. We, therefore, recommend that the President veto H.R. 11510.

Sincerely yours,



Russell E. Train  
Administrator

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C. 20503

**Department of Justice**  
**Washington, D.C. 20530**

January 29, 1976

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 11510), "To provide for starling and blackbird control in Kentucky and Tennessee."

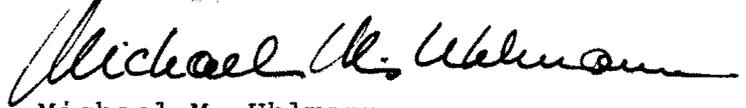
Section 1 of H.R. 11510 declares that an emergency exists regarding the winter roosts of starlings and blackbirds in Kentucky and Tennessee.

Section 2 of H.R. 11510 would allow the Secretary of Interior to chemically treat certain bird roosts in Kentucky and Tennessee for control purposes upon certification by the Governors of the respective states that said birds pose a hazard to human health, safety or property.

Section 3 of H.R. 11510 stays applicability of NEPA and FEPCA regarding any control measures undertaken on or before April 15, 1976 in view of the existing emergency.

The Department of Justice defers to the Department of Interior and other interested agencies as to recommendations for Executive action on this measure.

Sincerely,



Michael M. Uhlmann  
Assistant Attorney General





DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

January 30, 1976

Honorable James T. Lynn  
Director  
Office of Management and Budget

Dear Mr. Lynn:

Your office requested this report on the enrolled bill H. R. 11510, a bill "To provide for starling and blackbird control in Kentucky and Tennessee."

The Department defers to the Department of the Interior for its recommendations regarding actions concerning this bill.

The bill authorizes a starling and blackbird control program in Kentucky and Tennessee.

Sincerely,

*John A. Knebel*  
John A. Knebel  
Acting Secretary

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006

January 30, 1976

Dear Mr. Frey:

Thank you for the opportunity to comment on H.R. 11510, the enrolled bill to provide for starling and blackbird control. The Council recommends that the President veto this bill for the following reasons.

First, the bill is unnecessary since there already exist adequate emergency powers to allow the killing of blackbirds with registered control agents (Tergitol). The Department of the Interior in conjunction with the involved environmental groups, particularly the Society for Animal Rights, plaintiff in the previous suit on the issue, developed a written stipulation which provided for the Department to issue a permit for blackbird control in cases of a public health emergency. This stipulation was in force when the legislation was passed. Efforts to determine whether an emergency existed were halted by Interior after passage of the legislation. They should be renewed immediately. Furthermore, the provisions of the National Environmental Policy Act regarding blackbird control on military installations have already been adequately addressed by the Department of Defense. Thus, under the emergency provision of the stipulations, Defense is prepared to initiate control measures in their areas in full compliance with NEPA.

Second, the bill is dangerously broad. Apart from its complete exemption of blackbird control measures from the National Environmental Policy Act and the Federal Environmental Pesticide Control Act, the bill exempts blackbird control measures from all other provisions of law. This includes such non-environmental matters as public liability for damages during control measures and other criminal and civil

laws, as well as the Endangered Species Act, Park Service and Forest Service legislation, and water pollution and health laws. The scope of the exemption alone should justify a veto.

Third, the bill was introduced, passed and enrolled in less than a day without the benefit of hearings and without Executive Branch comments. For example, we understand that neither the Committee Chairman, nor any of the majority or minority members or staff of the Senate Committee on Interior and Insular Affairs knew of the bill's existence until after it had been passed. The Environmental Protection Agency and the Council on Environmental Quality learned of the bill only after it had been enrolled.

In conclusion, the Council believes that H.R. 11510 goes too far. Its authorities and sweeping exemptions are not needed and could create unanticipated legal problems. The lack of legislative due process in the passage of the bill is evident. Most importantly, it sets an unacceptable precedent of congressional exemption of specific agency actions from NEPA without the benefit of careful deliberation, or Executive Branch comments.

Sincerely,



John Busterud  
Acting Chairman

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Room 7201  
New Executive Office Building  
Washington, D.C. 20503

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 276

Date: February 4

Time: 800pm

FOR ACTION:

Jack Marsh *sign*  
Robert Hartmann *sign*  
Max Friedersdorf *sign*  
Ken Lazarus *sign*  
George Humphreys *sign*

cc (for information): Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 4

Time: 500pm

SUBJECT:

H.R. 11510 - Emergency starling and blackbird control in Kentucky and Tennessee

ACTION REQUESTED:

- |   |   |
|---|---|
| <input type="checkbox"/> For Necessary Action         | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief     | <input type="checkbox"/> Draft Reply              |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks            |

REMARKS:

Please return to Judy Johnston, Ground Floor 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

Date: February 4

Time: 800pm

FEB 4 1976  
~~5:00pm~~  
11:00am

FOR ACTION: ✓ Jack Marsh  
Robert Hartmann  
Max Friedersdorf  
Ken Lazarus  
George Humphreys

cc (for information): Jim Cavanaugh

FROM THE STAFF SECRETARY

DUL: Date: February 4

Time: 500pm

SUBJECT:

H.R. 11510 - Emergency starling and blackbird control in Kentucky and Tennessee

ACTION REQUESTED:

- |   |   |
|---|---|
| <input type="checkbox"/> For Necessary Action         | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief     | <input type="checkbox"/> Draft Reply              |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks            |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*Approve!*  
*Bill - gm*  
*2/4*  
2219

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.

THE WHITE HOUSE

WASHINGTON

February 4, 1976

MEMORANDUM FOR: JIM CAVANAUGH  
FROM: MAX L. FRIEDERSDORF *m.l.*  
SUBJECT: H. R. 11510 - Emergency starling and blackbird  
control in Kentucky and Tennessee

The Office of Legislative Affairs concurs with the agencies  
that the subject bill be signed. We strongly recommend that  
this bill be signed today before 2 P. M.

Attachments

Date: February 4

Time: 800pm

FOR ACTION: Jack Marsh  
Robert Hartmann  
Max Friedersdorf  
Ken Lazarus  
George Humphreys

cc (for information): Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 4

Time: ~~500pm~~ 11:00 AM

SUBJECT:

2/4/76 - 8:35 pm

H.R. 11510 - Emergency starling and blackbird control in Kentucky and Tennessee

ACTION REQUESTED:

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

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*Sign it, emphasizing urgent and serious hazard to human health x*

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.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

FEB 9 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 11510 - Emergency  
starling and blackbird control in Kentucky  
and Tennessee  
Sponsors - Rep. Beard (D) Tennessee and 14 others

Last Day for Action

February 9, 1976 - Monday

Purpose

To direct the Interior Department to apply bird control chemicals to blackbird roosts in excess of 500,000 birds in Kentucky and Tennessee until April 15, without complying with the National Environmental Policy Act or other laws, if the Governor of either State certifies that the birds pose significant hazards to health, safety, or property, and if the Secretary of the Interior finds that chemical use will not cause hazards to health, safety, or property.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Environmental Protection Agency	Disapproval
Council on Environmental Quality	Disapproval
Department of Defense	Defers to CEQ (Informally)
Department of Justice	Defers to Interior
Department of Agriculture	Defers to Interior

Discussion

Up to 77 million blackbirds, starlings, and grackles have made winter roosts in Kentucky and Tennessee this year. The birds have become a serious nuisance and are causing property damage. Moreover, the birds'

H. R. 11510

# Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

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

## An Act

To provide for starling and blackbird control in Kentucky and Tennessee.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds that in Kentucky and Tennessee large concentrations of starlings, grackles, blackbirds, and other birds found in "blackbird roosts" pose a hazard to human health and safety, livestock and agriculture, that the roosts are reestablished each winter, that dispersal techniques have been unsuccessful, that control is most effective when birds are concentrated in winter roosts, and that an emergency does exist which requires immediate action with insufficient time to comply with the National Environmental Policy Act.*

SEC. 2. (a) Upon certification by the Governor of Kentucky and/or Tennessee to the Secretary of the Interior that "blackbird roosts" are a significant hazard to human health, safety or property in his state, the Secretary of the Interior shall provide for roosts determined through normal survey practices of the Department of the Interior to contain in excess of 500,000 birds to be treated with chemicals registered for bird control purposes, unless the Secretary determines that treatment of a particular roost would pose a hazard to human health, safety or property.

(b) The provisions of the National Environmental Policy Act of 1969 (83 Stat. 852), the Federal Environmental Pesticide Control Act (86 Stat. 975), or any other provision of law shall not apply to any such blackbird control activities undertaken, on or before April 15, 1976, by the States of Kentucky or Tennessee or the Federal Government within the States of Kentucky or Tennessee.

*Speaker of the House of Representatives.*

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

January 28, 1976

Dear Mr. Director:

The following bills were received at the White House on January 28th:

✓ H.R. 9861  
✓ H.R. 11510

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 James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C.