

## Calendar No. 581

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SENATE

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### EAST ROSEBUD WILD AND SCENIC RIVERS ACT

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AUGUST 30, 2016.—Ordered to be printed

Filed, under authority of the order of the Senate of July 14, 2016

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Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 1577]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1577) to amend the Wild and Scenic Rivers Act to designate certain segments of East Rosebud Creek in Carbon County, Montana, as components of the Wild and Scenic Rivers System, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 3, line 12, strike “Section” and insert the following:

(a) DESIGNATION.—Section

2. On page 4, after line 8, add the following:

(b) ADJACENT MANAGEMENT.—

(1) IN GENERAL.—Nothing in paragraph (213) of section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) (as added by subsection (a)) creates a protective perimeter or buffer zone outside the designated boundary of the river segment designated by that paragraph.

(2) OUTSIDE ACTIVITIES.—The fact that an otherwise authorized activity or use can be seen or heard within the boundary of the river segment designated by paragraph (213) of section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) (as added by subsection (a)) shall not preclude the activity or use outside the boundary of the river segment.

## PURPOSE

The purpose of S. 1577 is to amend the Wild and Scenic Rivers Act to designate certain segments of East Rosebud Creek in Carbon County, Montana, as components of the Wild and Scenic Rivers System.

## BACKGROUND AND NEED

Montana's East Rosebud Creek flows through glacial-carved valleys and originates in the Absaroka-Beartooth Wilderness. During its journey to the Yellowstone River, East Rosebud Creek flows into Rosebud Lake. The segment that flows from the lake provides opportunity for whitewater paddling.

In 1998, the U.S. Forest Service conducted a study which determined that the East Rosebud Creek was eligible for inclusion in the Wild and Scenic Rivers System. The study found that two areas of East Rosebud Creek contained remarkable values in the geologic, recreational, and scenic categories. A 13-mile segment was recognized for its wild characteristics running from the source of the creek in the wilderness area to East Rosebud Lake. A second section of the creek flows northwest from the lake, and is significant for its recreational values. Featuring a significant number of category five rapids, the creek is a popular section of whitewater for kayakers.

In 2009, a Montana company proposed building a hydroelectric dam on the East Rosebud, including a two-mile penstock. The company received a preliminary permit from the Federal Energy Regulatory Commission but allowed it to expire after facing significant local opposition. Designation as a wild and scenic river under S. 1577 would prohibit any future development.

## LEGISLATIVE HISTORY

S. 1577 was introduced by Senators Tester and Daines on June 15, 2015. The Senate Committee on Energy and Natural Resources' Subcommittee on National Parks held a hearing on the bill on March 17, 2016.

H.R. 2787, the companion bill to S. 1577, was introduced in the House of Representatives by Representative Zinke on June 15, 2015. The bill was referred to the House Committee on Natural Resources Subcommittee on Federal Lands on July 1, 2015.

In the 113th Congress, Senator Walsh introduced S. 2392 on May 22, 2014. The Subcommittee on National Parks held a hearing on S. 2392 on July 23, 2014 (S. Hrg. 113-493). In the House of Representatives, Representative Daines introduced a similar bill, H.R. 5543, on September 18, 2014. H.R. 5543 was referred to the House Committee on Natural Resources Subcommittee on Public Lands and Environmental Regulation on September 29, 2014.

The Committee on Energy and Natural Resources met in open business session on July 13, 2016, and ordered S. 1577 favorably reported as amended.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on July 13, 2016, by a majority voice vote of

a quorum present, recommends that the Senate pass S. 1577, if amended as described herein.

#### COMMITTEE AMENDMENTS

During its consideration of S. 1577, the Committee adopted an amendment that adds a provision regarding adjacent management. The amendment specifies that the bill does not create a perimeter or buffer zone outside of the river corridor and that activities that are otherwise authorized outside of the Wild and Scenic River System are not precluded as a result of the designation.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides a short title for the measure.

##### *Section 2. Findings; purpose*

Section 2 provides the findings of Congress and the purpose of the Act.

##### *Section 3. Designation of Wild and Scenic River Segments*

Section 3(a) amends section 3(a) of the Wild and Scenic Rivers Act to designate portions of the East Rosebud Creek in the state of Montana as wild and scenic.

Subsection (b) clarifies that the designation does not create a perimeter or buffer zone outside of the designated boundary of the river segment. It further specifies that activities outside of the Wild and Scenic River System shall not be precluded as a result of the designation even if the authorized activity or use can be seen or heard within the designated boundary of the river segment.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been reported but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at [www.cbo.gov](http://www.cbo.gov).

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1577. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

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

Little, if any, additional paperwork would result from the enactment of S. 1577, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 1577, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

## EXECUTIVE COMMUNICATIONS

The statement for the record from the National Forest System, Forest Service, U.S. Department of Agriculture at the March 17, 2016, Subcommittee on National Parks hearing on S. 1577 follows:

STATEMENT FOR THE RECORD, NATIONAL FOREST SYSTEM,  
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

This prepared statement of position reflects the view of the U.S. Department of Agriculture (USDA) regarding S. 1577, the “East Rosebud Wild and Scenic Rivers Act”

The Wild and Scenic Rivers Act, Public Law 90–542 (16 U.S.C. 1271–1287, as amended) protects the free-flowing condition, water quality, and outstandingly remarkable natural, cultural, and recreational values of some of our most precious waters. It also provides an opportunity to build partnerships among landowners, river users, tribal nations, and all levels of government.

S. 1577 amends Section 3(a) of the Act to designate certain segments of East Rosebud Creek in Carbon County, Montana, as components of the Wild and Scenic Rivers System. It adds a 13-mile segment from the source of the creek in the Absaroka-Beartooth Wilderness to East Rosebud Lake as a wild river, and the 7-mile segment from below East Rosebud Lake to the first private land as a recreational river.

The Department supports S. 1577.

The bill is consistent with the Custer National Forest Land and Resource Management Plan Amendment Number 2, approved December 15, 1989, which identifies the segments as eligible for designation as wild and recreational respectively. The Custer Gallatin National Forest has not conducted a suitability study for East Rosebud Creek; therefore, the Department does not have a recommendation regarding designation under the Wild and Scenic Rivers Act. However, as eligible rivers, these segments are currently managed by the Custer Gallatin National Forest in a manner consistent with the proposed designations.

The proposed designations would prohibit future Federal Energy Regulatory Commission’s (FERC) licensing of any new hydroelectric facility on, or directly affecting, these creek segments. There is no existing FERC license, nor any pending proposal for a license, in the East Rosebud Creek area.

Congressional designation of these two segments would not disrupt or alter existing management or use of the area surrounding East Rosebud Creek, but would require additional planning and monitoring for the creek and adjacent Custer Gallatin National Forest lands.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the original 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):

## WILD AND SCENIC RIVERS ACT

### Public Law 90-542, as amended

\* \* \* \* \*

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

\* \* \* \* \*

(213) *EAST ROSEBUD CREEK, MONTANA.*—*The portions of East Rosebud Creek in the State of Montana, consisting of—*

(A) *the 13-mile segment exclusively on public land within the Custer National Forest from the source in the Absaroka-Beartooth Wilderness downstream to the point at which the Creek enters East Rosebud Lake, including the stream reach between Twin Outlets Lake and Fossil Lake, to be administered by the Secretary of Agriculture as a wild river; and*

(B) *the 7-mile segment exclusively on public land within the Custer National Forest from immediately below, but not including, the outlet of East Rosebud Lake downstream to the point at which the Creek enters private property for the first time, to be administered by the Secretary of Agriculture as a recreational river.*

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