

Mr. Barker

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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-198921

[Department of Interior Authority to Complete] April 21, 1981

Mr. Benjamin F. Butts
Upper Manistee River Association
Suite 2300
150 South Wacker Drive
Chicago, Illinois 60606

Dear Mr. Butts:

You requested our opinion on whether the Department of the Interior may complete the Au Sable River and Manistee River studies and reports required by the Wild and Scenic Rivers Act even though the Act's October 2, 1979 deadline for the studies and reports has expired. The Department is studying the rivers to determine whether they are suitable for addition to the National Wild and Scenic Rivers System.

We have examined the Act and its legislative history and we conclude that Congress did not intend that the deadline limit the Secretary's authority to complete the studies.

The Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq. (1976)) establishes a national system in which State or Federal authorities administer rivers which are components of the system for their permanent preservation. The Act originally designated eight component rivers and also prescribed the procedures for adding more to the system. Under the procedures, formal consideration of a river begins when Congress designates it for potential addition to the system. Section 1276(a)(1) of title 16 lists the designated rivers. The Secretary of the Interior then investigates the rivers' suitability for addition to the system and prepares a report on his findings. He sends copies to Federal and State officials for comments. The Secretary then submits his report with the comments to the President who sends his recommendation to Congress. The Congress, if it believes the river is suitable for inclusion after considering the President's recommendation, then passes a bill which adds the river to the system (when the President signs it). Section 1274(a)(1) of title 16 lists the component rivers.



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[Public Law 93-621 designated the Manistee and Au Sable rivers for potential addition to the national wild and scenic rivers system on January 3, 1975.] Section 1(b) gave the Secretary a deadline for completing his suitability studies and reports on the rivers designated. It provides in pertinent part:

"The studies of rivers named in subparagraphs (28) through (55) of subsection (a) of this section shall be completed and reports thereon submitted by [not later than October 2, 1979***]."

(The Au Sable river is named in subparagraph 29, the Manistee river in subparagraph 44.)

Congress arrived at [the approximately 5-year study period] because it believed that that was the amount of time the Executive Departments would need to complete the studies (with one exception not relevant here). The Senate Committee on Interior and Insular Affairs, which was responsible for the provision, chose the October 2, 1979 deadline based upon the Department of the Interior's estimate of its average time for completing a study. The original House bill which provided for thirteen river studies set the study deadline at October 2, 1978. However, the Conferees agreed that although 4 years might be sufficient to complete thirteen studies, the longer 5-year period would be necessary for the greater number required as a result of the conference. H.R. Rep. No. 93-1645, 93rd Cong., 2nd Sess. 6 (1974).

[The Act does not state whether consideration of a river should continue if the Secretary does not meet the deadline.] The legislative history does not contain anything directly on this point. However, it is a well-established principle that a statutory provision should be construed with reference to the leading idea or purpose of the whole statute. Sutherland, Statutes and Statutory Construction § 46.05 (1972). Following this rule, [we are certain that Congress would want the Secretary to complete the river studies and reports.]

[The Act's purpose is to preserve rivers with scenic, recreational, geologic, fish and wildlife, historic or cultural value in a free-flowing condition to protect water quality and fulfill national conservation purposes.] 16 U.S.C. §§ 1271, 1272 (1976). Congress was concerned that delay of Government action increased the likelihood that a river would become unsuitable for inclusion in the system because of development. S. Rep. No. 738, 93rd Cong. 2nd Sess. 9 (1974). [Congress therefore imposed time limits on the Secretary's suitability studies and reports in order to reduce delay and increase the chances of river preservation through inclusion into the national system.]

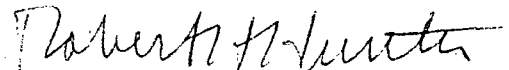
B-198921

[It is not consistent with the purpose of the Wild and Scenic Rivers Act to interpret the deadline provision as an absolute limitation upon the Secretary's authority to complete studies.] The opportunity to conserve a river may be lost once consideration of it stops. Congress inserted the deadline provision as a vehicle for increasing the chances for river preservation. It is anomalous to construe such a provision in a way which would eliminate a river's chances for protection.

The studies and reports are an intermediate step in a process which, as noted above, begins long before the studies are made, and which may continue for years after the reports are completed. The studies can be involved and costly. We seriously question whether Congress intended that the administrative effort and funds expended on uncompleted studies be, in effect, wasted because the Secretary failed to meet the deadline.

We recognize that one reason Congress put a deadline on the Secretary's studies and reports was a concern that delays left property owners "in the unfortunate position of not knowing for an extended period what will be the future of their property." S. Rep. No. 738, supra. However, [the legislative history contains nothing to indicate that Congress was so concerned about reducing landowner uncertainty that it intended that consideration of a river cease, thus defeating the Act's overall purpose if the Secretary failed to meet the deadline.]

Sincerely yours,



Robert H. Hunter
Assistant General Counsel