

PORTLAND
City Club
BULLETIN

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Friday . . . 12:10 P.M.

PORTLAND, OREGON - Oct. 9, 1970 - Vol. 51, No. 19

*Printed herein for presentation, discussion and action at this
Friday's luncheon, October 9th:*

REPORTS

ON

State Initiative Measures

SCENIC WATERWAYS BILL

(State Measure No. 9)

The Committee: David M. Crow, James T. Grindee, Edward P. Hall,
William W. Howard, D.M.D., Talbert D. Sehorn *and*
Vernon L. Rifer, *Chairman*

AND

**RESTRICTS GOVERNMENT POWERS
OVER RURAL PROPERTY**

(State Measure No. 11)

The Committee: William C. Church, Arno Reifenberg, Charles Robinowitz,
Sidney I. Spiegel, Donald A. Waggoner, Joseph E. Worth *and*
Michael C. Kaye, *Chairman*

*"To inform its members and the community in public matters and to
arouse in them a realization of the obligations of citizenship."*

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MOVIE STAR HORTON EARLY CITY CLUB MEMBER

The death last week of Edward Everett Horton, 83, popular character actor, recalled to many City Club members that Mr. Horton was an active member of this civic organization while a member of the Baker Theater company in Portland.

His original membership application still in the files lists his phone number as "Main 2" and he checked "Amusements" as his preferred area of committee research.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION (Act of October 23, 1962; Section 4369, Title 39, United States Code)

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I certify that the statements made by me above are correct and complete (signed) Ellamae W. Naylor, Editor.

REPORT
ON
SCENIC WATERWAYS BILL
(State Measure No. 9)

Purpose: To preserve natural beauty of certain rivers. Designates as "scenic waterways" portions of Rogue, Illinois, Deschutes, Owyhee, John Day Rivers, and all Minam River. Prohibits dams and reservoirs on these rivers. State Highway Commission given condemnation and rule-making powers. Landowners within a quarter mile of such rivers must give Commission one year advance notice before mining, cutting trees, or constructing any roads, buildings, or other structures. Governor may designate additional "scenic waterways".

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Your Committee was appointed to investigate and make recommendations on the Scenic Waterways Bill to appear on the November 3, 1970, ballot as State Measure No. 9. Measure No. 9 was placed on the November ballot as a result of an initiative petition. The Scenic Waterways Bill is intended to complement on the state level the National Wild and Scenic Rivers Bill (Public Law 90-542). The Scenic Waterways Bill is included as Exhibit A to this report.

In the course of its investigation the Committee contacted by letter approximately 25 political and business leaders in the regions most directly affected by this bill. The response to these letters was extremely limited, possibly indicating a lack of information on the measure at the local level. The Committee interviewed the following persons:

Herbert H. Anderson, Committee for Minam Action
Herbert Beale, Columbia Region Association of Governments
Dave Corkran, Columbia Chapter, Sierra Club
Ross Davis, Boise Cascade Corporation
Dan Dority, Lake Oswego
Wendell Gray, Deschutes Club
Fred D. Gustafson, Chief Engineer, State Water Resources Board
Paul Hanneman, Oregon State House of Representatives
John J. Inskeep, Oregon State Senate
Tom McAllister, *Oregon Journal*
John T. McMahan, Grants Pass Chamber of Commerce
H. J. Nelson, U. S. Bureau of Reclamation
Robert K. Potter, Scenic Rivers Committee, a citizens' group
Ralph Robinson, Oregon Farm Bureau Federation
Edward Sanchez, U. S. Corps of Engineers
David G. Talbot, Superintendent of Parks, State of Oregon
Don S. Willner, Oregon State Senate

II. HISTORY AND BACKGROUND

The first scenic rivers bill was introduced in the 1967 Session of the Oregon Legislature by Senator Don S. Willner. The bill was supported by outdoor and conservation groups and endorsed by newspapers throughout the State, but opposed by certain timber, agricultural and real estate interests. The bill passed the State Senate but died in Committee in the House of Representatives. After the 1967 session, a Citizens' Committee was formed to solve some of the problems which had killed the original bill.

Senator Willner and Representative Stafford Hansell introduced a modified bill in the 1969 session of the State Legislature. At this session there was little open opposition to the bill but a good deal of private interest lobbying. The Senate and the House passed differing versions of the bill, and it subsequently died in conference committee on adjournment day.

The sponsors of the bill decided not to wait until the 1971 Legislative Session, but to take the case directly to the people through an initiative petition. The petition efforts were started at the State Fair in Salem during August, 1969, and on June 23, 1970, a petition bearing 53,000 signatures was submitted to the Secretary of State. Sponsors of the petition included many Oregon conservation and recreation groups.

By way of background, under existing law, the State Water Resources Board is the single state agency responsible for formulating state water resource policy and for devising plans and programs for development of the water resource. The State Highway Commission is responsible for administering state park lands.

At present there is no organized campaign in opposition to the measure and a rather limited campaign by its proponents.

III. DESCRIPTION OF THE ACT

Measure No. 9 accomplishes the following:

1. Establishes as "scenic waterways" portions of the Rogue River (88 miles), Illinois River (46 miles), Deschutes River (100 miles), Owyhee River (70 miles), John Day River (147 miles), and all of the Minam River (45 miles). Other scenic rivers can be added (a) if they meet the criteria set forth in the bill, (b) if they are recommended for inclusion by the State Highway Commission, (c) if the recommendation is supported by the Water Resources Board, (d) if the Governor of Oregon designates the new stretch of river for inclusion, and (e) if the following general session of the Oregon Legislature does not exercise a veto.

2. Measure No. 9 establishes a system of "scenic waterways" which should be distinguished from "wild rivers". As described in the National Wild and Scenic Rivers Act (PL 90-542), "wild rivers" are defined as:

"those rivers or sections of rivers that are free from impoundments and generally inaccessible except by trail with watersheds or shorelines essentially primitive and waters unpolluted."

Scenic Rivers are defined as:

"those rivers or sections of rivers that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by road."

3. An adjacent landowner (within one quarter mile of the riverbank) who wishes to make any changes in the use of his land must give the Highway Commission advance notice. If the change is compatible with the scenic qualities of the area, e.g., a farmer putting up a new barn, the Commission's administrative procedures should allow immediate approval of construction. If the change is in conflict with the bill, the Commission is instructed to negotiate with the landowner for up to one year in an endeavor to work out a way that the landowner's objectives can be achieved and preserve the view from the river. As an example, in the case of timber harvesting, a selective cut management plan probably could be negotiated with the Commission. If a successful agreement could not be reached by negotiation within one year, the landowner is free to proceed with his plans, but at the same time, the Highway Commission is free to acquire the land by condemnation.

4. Money for purchasing scenic easements or acquiring land from private owners would come from the Federal Land and Water Conservation Act with matching monies from state gasoline tax revenues. The State may trade public lands in lieu of condemnation and purchase.

5. The public is not given any right of trespass over private land, but the Highway Commission may purchase such land as necessary for road or trail access.

6. Designation of a river as a scenic waterway in no way restricts the right of access to the river necessary to utilize existing water rights.

7. The State Water Resources Board must consider recreation, fish and wildlife as the highest and best uses of waters within scenic waterways.

8. No dams, reservoirs or other water impoundment facilities shall be constructed on waters within scenic waterways. No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses encompassed by the bill.

9. The State Scenic Waterways Bill does not affect lands under the jurisdiction of an Indian tribe or the United States Government. The Highway Commission may enter into agreements with the tribe or the Federal Government for the administration of such lands.

10. Passage of the State Scenic Waterways Bill would allow the Governor to request inclusion of the streams into the Federal Wild and Scenic River System. (PL 90-542) Such inclusion would preclude construction of dams by federal agencies on the designated rivers.

11. Property taxes on private land within the scenic waterways shall be assessed on the basis of true cash value of the property less any reduction in value caused by the scenic easement.

IV. ARGUMENTS IN FAVOR OF THE MEASURE

The following arguments have been advanced in favor of this measure:

1. Portions of rivers determined to be "scenic" should be claimed now to prevent further development incompatible with the scenic beauty of the rivers as they now exist. Preemption of our remaining free-flowing rivers is occurring now and future growth and development will accelerate the change. Already many stretches of Oregon rivers have been taken over by commercial development and lost to scenic uses.

2. The measure is a good compromise between the rights of private property owners and the interests of the people of the State of Oregon.

3. The State can prevent nonfederal dam construction. Although it cannot prohibit federal dams on state scenic waterways, it is unlikely that the federal government would build a dam where the State opposed it. The streams protected by this measure can have federal protection under the National Wild and Scenic Rivers System when requested by the Governor or Legislature.

4. The Legislature can delete, add to, or change portions of the measure so the Act remains amenable to legislative process.

5. The measure contemplates agreements between private landowners on the rivers affected and the Highway Commission. The State would have no power to condemn during the period when these agreements are in effect or during any negotiating period.

6. There would be no new appropriation of tax dollars if this measure were passed. The Highway Commission is directed to use, as deemed necessary, existing federal monies now coming into the State which would be matched by gasoline tax revenues.

7. Without this measure, river land could be condemned for a park. This measure gives the adjacent landowners greater protection since, if he leaves his land in its present use, it is free from condemnation proceedings. Compatible agriculture and forestry are protected with the bill; also existing water rights are preserved. No right of trespass is given to the public over any private land covered by this measure.

8. Additional rivers may be added to the scenic waterways system, utilizing the administrative procedures set forth in the bill.

V. ARGUMENTS AGAINST THE MEASURE

Arguments advanced to your Committee in opposition to this measure include:

1. No thorough study has been undertaken of the designated rivers by the State Water Resources Board to show that such restrictive use is in the public interest. To prevent or limit development of water supply, flood control, agriculture and forestry could result in an economic loss to the State.
2. The State Water Resources Board has been given jurisdiction by the Legislature of all state water policy. It already has the power to create scenic waterways without this initiative measure.
3. The establishment of the State Highway Commission as a land-use policy agency is a dangerous precedent. Such power should be left to local planning commissions.
4. The establishment of scenic waterways places aesthetic considerations over the economic values of the water.
5. The Governor's power to propose additional scenic rivers is an excessive transfer of legislative power to the executive branch.
6. Complex measures of this type should be developed in the Legislature rather than by the initiative process.
7. Lack of an independent source of funds for development of this scenic rivers system may negate the principles of the bill. It may be necessary in the future to divert money from existing state park and highway construction programs.
8. The notification process established by the measure is an unnecessary burden on small landowners.
9. The measure does not prohibit certain facilities such as timber harvesting, which may affect the aesthetic qualities of the area.
10. The establishment of recreation as one of the highest uses for the rivers could result in high density recreation developments incompatible with scenic beauty.
11. The failure to establish land controls beyond one-quarter mile from the riverbanks or in tributaries of the scenic rivers does not provide adequate protection for the overall environment of the river. Passage of this measure will give the impression that these rivers are completely protected, thus eliminating public pressure for more stringent conservation legislation.

VI. DISCUSSION AND CONCLUSIONS

The major argument in favor of Measure No. 9 deals with a fundamental conservation objective of preserving scenic and primitive areas now, before man leaves his indelible mark on them. Henry David Thoreau has expressed man's need for wilderness in *Walden* ". . . in Wildness is the preservation of the World. Every tree sends its fibers forth in search of the Wild. The cities import it at any price. Men plow and sail for it. From the forest and wilderness come the tonics and barks which brace mankind. . . ." This need transcends political and economic considerations. Passage of Measure No. 9 will be a statement of affirmative intent by the voters to preserve some portion of their once wild rivers in a nearly natural state.

Both opponents and proponents of Measure No. 9 agree that is not a perfect bill. The fact that no organized opposition exists, though, indicates a general concurrence with the principles if not the particulars of the measure. The bill has been described as "adequate compromise". Conservation groups generally look upon it as a building block, while commercial interests feel it is something they can live with.

The legal, political and economic arguments against the measure, set forth in Section V are substantial and may provide serious roadblocks to successful administration of the "scenic waterways" system. However, the need for preservation of natural areas is not depreciated by these arguments. If anything, the negative arguments with the most merit are whether this bill will have any substantial effect in preserving the environment of these rivers and also if it will

