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THE VIRGINIA WILDERNESS ACT:
PRESERVING NATURE'S BEAUTY

by Robin T. Browder

The preservation of our forests in their natural state is one of the greatest responsibilities with which our country has been charged. In accordance with this responsibility, Senators John Warner and Paul Trible introduced the Virginia Wilderness Bill of 1987 designating several areas in Virginia as wilderness.

The act is the result of an effort initiated by the Senators with the advice of the counties of Craig, Allegheny, Bath, and Rockridge, the Westavoco Corporation, the Citizens organizations of the Virginia Wilderness Committee, the Appalachian Forest Management Group, and the Mountain Rogers Christmas Tree Association.¹ Its purpose was to designate certain areas in Virginia and West Virginia as components of the National Wilderness Preservation System, and to repeal an air quality study mandated by the Virginia Wilderness Act of 1984. This study was to be conducted by the Secretary of Agriculture in consultation with the Environmental Protection Agency on the effects of a proposed industrial development site at Covington, Virginia on the air quality of the areas proposed and designated as wilderness by that act.

As early as 1924 areas were designated for wilderness preservation. However, it was not until 1929 that the

¹ H.R. 2878, 100th Cong., 1st Sess. 133 Congr. Rec. 110, S9201 (1987)

Secretary of Agriculture established, by regulation, procedures to designate certain areas as wilderness. These regulations distinguished wilderness areas, which were lands in excess of 100,000 acres from primitive areas which contained between 5,000 and 100,000 acres of land. In 1930 the Secretary of Agriculture and the Chief of the Forest Service set aside 88 areas to be designated as wilderness and primitive areas. It was not until 1964 that Congress officially recognized these regulations by creating the Wilderness Act Statute ²

The Wilderness Act defines wilderness areas as (1) areas "where the earth and its community of life are untrampled by man, where man himself is a visitor who does not remain." ³ The law is characterized as an area of undeveloped Federal land retaining its primeval character and influence without permanent improvements or human habitation, which is protected to preserve its natural conditions. The act specifically outlined certain necessary factors for designating an area as wilderness areas: (1) being an area generally affected by the forces of nature, "with the imprint of man unnoticeable; (2) having outstanding opportunities for solitude or a primitive, unconfined type of recreation; (3) having at least 5,000 acres of land or be of a sufficient size to make practicable its preservation

² Act of September 2, 1964, Pub. L. No. 88-577, 1964 U.S. Code Cong. & Administrative News (78 Stat.) 3616.

³ IBID.

and use in an unimpaired condition; (4) containing ecological, geological, or other features of scientific, educational, scenic or historical value. ⁴

The Wilderness Act gives the Secretary of Agriculture and the Secretary of the Interior authority to designate certain areas as wilderness subsequent to presidential approval provided that they give public notice of the proposed action by publication in the Federal Register and/or in a newspaper with general circulation in the area being affected. In addition, they must hold public hearings at a location convenient to the area being affected and advise the Governor of each state as well as the governing board of each county, Federal departments and agencies concerned to submit their views on the action either at the hearing or within thirty days following the hearing. ⁵

The overall purpose of the act was to provide a permanent purpose for this land. Congress sought a statutory framework that would allow long range planning and would assure that future administrators could not abolish these areas. In essence, Congress reasoned that since these areas were established by administrative action of the executive branch they could also be abolished and declassified or the governing rules could be changed by administrative action. Basically, the statutory authority given the

⁴ Wilderness Act of 1964, sec. 1131(c), 16 U.S.C. sec. 1131, (1964)

⁵ Wilderness Act of 1964, sec. 1132(d)(1), 16 U.S.C. sec. 1131 (1964)

Wilderness Act allows Congress to fulfill its responsibility under the United States Constitution to exercise jurisdiction over public lands. ⁶

The underlying sentiment of these Acts resulted from the Congressional foresight viewing our society's progressive expansion from a developing agricultural society to a highly technical, mechanized world. Increased population has placed demands on our society resulting in necessary expansion into areas once only inhabited by wild life. In addition, our society's desire for a more efficient and self-sufficient society has led to increased mechanization. These as well as many other factors have had the effect of slowly engulfing the parts of our environment which previously existed in a natural state.

The purpose of the Virginia Wilderness Act is coexistent with the statutory purposes of the Wilderness Act of 1964. Congress is empowered to establish a Wilderness Preservation System in Virginia composed of federally owned land designated as Wilderness Areas which will be administered for use and enjoyment in such a way as not to sacrifice their beauty or future use and enjoyment as wilderness areas.

First initiated in 1984, the Bill designated 11 areas, approximately 56,000 acres of land in the Jefferson and National Forest, as Wilderness areas. Specifically, these

⁶ H.R. Rep. No. 1538, 88th Cong. 2nd Sess. (1964) reprinted in U.S. Code Cong. & Administrative News Legislative History of the Wilderness Act, 1964 at 3616 (1964).

areas include Barbour's Creek in the Jefferson and George Washington National Forests located in Craig and Allegheny County; Shawver's Run in Jefferson National Forest in Allegheny and Bath counties; and Rich Hole in the George Washington National Forest and Rockridge County. These areas are especially noted for their steep, rugged terrain forested with Southern Hardwoods, Mountain Laurels, Ferns and Rhododendron. In addition, there are approximately five miles of native trout streams and a good population of bear and turkey. ⁷

These areas are Federally owned as part of the national forest system, thus no private property will be condemned and the Federal Government will not incur any additional costs. The bill identifies specific benefits arising from multiple use of these areas. The areas appropriate for road construction, mining, timber, production, petroleum exploration, and intensive recreation will remain under the management of the Forest Service. ⁸

Central to the creation of the Wilderness Act is the long term preservation of these areas. The Virginia Wilderness Act contains many of the controls placed in the original Wilderness Act to secure the creators' intent. No commercial enterprise or permanent roads, except if necessary to meet minimum requirements for administration of the area, are

⁷ H.R. 2878, 100th Cong., 1st Sess., 133 Cong. Rec. 110, H5948 (1987)

⁸ IBID.

allowed. In addition, prohibited the use of temporary roads, motor vehicles, motorized equipment or motorboats, the landing of aircraft or any other form of mechanical transport, and building of any structure or installation within any such area are prohibited. However, the act allows the Secretary of Agriculture to use any measures necessary to control fire, insects, and disease and does not prevent any activity for the purpose of gathering information about mineral or other resources if it is in accordance with measures compatible with the preservation of the environment as a wilderness area.⁹

The act gives the President authority to authorize prospecting for water resources, the establishment and maintenance of reservoirs, water conservation works, power projects, transmission lines and any other facilities needed in the public interest. In addition, the grazing of livestock is permitted to continue subject to any reasonable regulations. The act only allows for commercial services performed within Wilderness areas where necessary in accordance with recreational and wilderness purposes.¹⁰

In situations where state-owned or privately owned land is completely surrounded by wilderness areas, the state or private owner is given rights to assure adequate access or the state owned land shall be exchanged for Federally owned land

⁹ Wilderness Act of 1964, sec. 1133, 16 U.S.C. sec. 1131 (1964)

¹⁰ IBID.,

in the same State of approximately equal value provided that the United States does not transfer any mineral interests unless the State or private owner relinquishes mineral interests to the United States. The act authorizes Congress to acquire privately owned land if the owner consents to the acquisition and if the acquisition is specifically authorized by Congress. In accordance with this the Secretary of Agriculture may accept gifts or bequests of land within areas designated as wilderness if he has given 60 days advance notice to the President of the Senate and Speaker of the House of Representatives.¹¹

In a constantly expanding society there is a special need to protect and preserve existing natural resources. Since the inception of the Wilderness Act over 350 state acts have been created in over half of the states in the United States. The Virginia Wilderness Act and others like it to expand the consciousness our country about the necessity of preserving nature's beauty and majesty by regulating the expansion of the technology so that it will not consume the very beauty which surrounds us, even if this same beauty provides the raw materials used in expansion. In essence, Senators Tribble and Warner would like the Wilderness act to be an "enhancement of their recognition of the delicate balance between our citizen's desire to preserve Virginia's natural beauty and the need for the region to promote economic growth".¹²

¹¹ IBID.,

¹² H.R. 2878, 100th Cong., 1st. Sess., 133 Cong. Rec. 110, S9201 (1987)