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Niobrara National Scenic River, 1985-2000: Old arguments, new compromises

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NIOBRARA NATIONAL SCENIC RIVER, 1985—2000:
OLD ARGUMENTS, NEW COMPROMISES

A Thesis

Presented to the
Department of History
and the Faculty of the Graduate College
University of Nebraska

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
University of Nebraska at Omaha

by

James A. Roeder

September 2002

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THESIS ACCEPTANCE

Acceptance for the faculty of the Graduate College,
University of Nebraska, in partial fulfillment of the
requirements for the Master of Arts degree,
University of Nebraska at Omaha

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Date *Sept. 18, 2002*

NIOBRARA NATIONAL SCENIC RIVER, 1985—2000: OLD ARGUMENTS, NEW COMPROMISES

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University of Nebraska at Omaha, 2002

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In May 1991, President George H. Bush signed into law the *Niobrara Scenic River Designation Act*, which gave federal scenic-river designation to a 70-mile stretch of this northern-Nebraska river. The successful effort to protect this river was a protracted, often acrimonious battle, pitting Nebraska neighbors against each other. Interested parties found themselves on opposing sides of a seemingly insurmountable divide, either believing that this river resource should be given federal protection to preserve it unimpaired for future generations, or arguing that the local people should be allowed to determine the fate of “their” river without federal interference.

The twentieth century West has seen this same battle waged many times before the Niobrara case. From Hetch-Hetchy to Echo Park to Glen Canyon; from Buffalo River to Auburn Dam to the Sagebrush Rebellion, the debate has been much the same. Those who favor federal protective legislation contend that only the federal government has the wherewithal and the power to assure that these fragile resources are protected from development and short-sighted

exploitation. Those opposed to federal designation argue that any such preservation actions would compromise their freedoms and property rights.

The impetus for federal designation came from a group of landowners along the river, who first organized in 1980 and lobbied U.S. Senator J. James Exon to introduce federal legislation protecting the river. He did so in 1985. This initiated a six-year process of meetings, discussions, editorializing, angry rhetoric, and finally compromise, involving Nebraska's entire Congressional delegation, three governors, countless local officials, and a number of the state's newspapers. This thesis will consider the federal, state and local efforts that led to the designation of the Niobrara as a federal scenic river, and the efforts at managing the park in its first decade of existence.

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Introduction

The history of the creation of the Niobrara National Scenic River is a story of controversy and compromise. It is a local story, but it is also a national story because it relates to the larger environmental movement, and because it represents one of the first instances in which a unit of the National Park system was designated for management in partnership with the local inhabitants. The impetus for scenic-river designation was truly a grass-roots effort, in which many local citizens organized to preserve a treasured natural resource that was part of their community. The legislative process evolved into an emotional and controversial debate, with the two sides holding greatly disparate perspectives on the land and on the future management of its resources.

To fully understand the scenic river controversy, one must first consider Norden Dam, the centerpiece of a regional irrigation project that would have irreparably changed the free-flowing character of the river and inundated a large portion of the most biologically unique part of the valley. This controversial project, which was first proposed in 1952, polarized opinion within the local community. Dam advocates saw Norden as an economic panacea, and dam opponents saw it as a pork-barrel boondoggle that would destroy their river. To a large extent, the scenic-river battle involved many of the same groups that were associated with the Norden controversy, although the roles were reversed – dam advocates opposed the scenic river, and dam foes supported the scenic-river designation. This initial controversy thus provided a background of animosity

and distrust that would significantly hinder efforts at cooperation during the debate over scenic-river designation.

The scenic-river proposal was initiated by a group of area residents, mostly ranchers, who foresaw destructive changes coming to the valley in the form of land subdivision, recreational development, and an immense federal water project. They believed that, if left unchecked, these developments would threaten their lifestyle and irreparably degrade their beloved valley, and they chose to organize against these changes. They understood the unique character of the river, and believed that it warranted national recognition and protection.

The Niobrara is an exceptionally beautiful stream as it flows through a deep, mostly forested canyon. It is unique among rivers of the Great Plains because it is spring-fed, flows swiftly, and has a sand and gravel bed that provides an ideal water depth for floating and swimming. It has high sand banks in places, and frequent waterfalls feed the river along its south bank and side canyons. The scenery along the river banks is pastoral, with the landscape punctuated by moderate-sized family ranches and farming operations. But the most outstanding character of the river is its biological diversity. The valley is a patchwork of overlapping plant communities, where eastern, northern and western woodlands intersect, and several prairie plant-community types intermingle in a complex web of exceptional ecological value.

The people that organized to protect the river believed that the Niobrara was an ideal candidate for addition to the Wild and Scenic Rivers system.

Designation as a scenic river would, they believed, provide the means for protecting the river while preserving their way of life. The Wild and Scenic Rivers Act of 1968 was created to counter-balance the river-damming frenzy of the previous several decades, in which a large number of rivers had been dammed, diverted and degraded. This piece of legislation was one of several watershed federal laws in the 1960s and early 1970s, that responded to the growing environmental consciousness of the American people.

The Act had several unique characteristics that made it particularly suitable for preserving rivers such as the Niobrara, because it flows through lands that are mostly in private ownership. It included limitations on land acquisition, and encouraged cooperative approaches to river management, including partnerships between the federal government and local authorities. This flexibility was seen as critical to the notion of National Scenic River status for the Niobrara, because landowner support was contingent on certain conditions, namely restrictions on land acquisition, local involvement in developing a river management plan, and assurances that the existing ranching and farming lifestyles would be preserved.

After all, northern Nebraska is cattle country, and these scenic-river advocates were mostly ranchers. Many of these families had lived along the river since the initial period of Anglo-American settlement in the late nineteenth century, and had developed a strong love for the land. Indeed the scenic beauty

and exceptional biologic diversity were largely attributable to the past stewardship of these landowners.

Not all of the local people, however, supported the idea of a scenic river. Led by individuals with pro-developmental interests, a substantial opposition group quickly emerged. Soon, some of the surrounding town and county governments came out against the proposal, and the local media began trumpeting this anti-scenic-river position. These opponents never really developed a rational or consistent argument against the scenic river status, other than to say that it was unnecessary, and would result in an unwanted intrusion of the federal government into their lives, and threaten their property rights. These foes of the scenic river even resorted to some questionable tactics to enlist public support to kill the legislation. They further suffered from an insurmountable credibility gap, as many of them proved to be ill-informed and self-interested, and were unable to shake the stigma of association with the discredited Norden Dam project.

The two different viewpoints that coalesced in the Niobrara Scenic River controversy closely followed a paradigm that had emerged in the United States in the second half of the twentieth century. A new environmental consciousness had developed among mainstream Americans. With an increase in leisure time and disposable income, more people were seeking solace from their busy lives in the natural world. From this pursuit followed a greater awareness of the environment, as well as an increased imperative to preserve and protect these

remaining scenic, ecological and recreational resources. Furthermore, with more education and sensitivity, many new “greener” Americans developed a heightened consciousness in their relations with the non-human world. They began to view nature as having an inherent right to exist separate from any utilitarian or economic value that it might contain. While the roots of these ideas harken back to Henry David Thoreau, George Perkins Marsh, John Muir and Aldo Leopold, environmentalism had truly come into the American mainstream by the late 1960s and early 1970s.

Other factors also contributed to the environmental impulse. The 1960s were a turbulent period in which the status quo was questioned on many fronts, including the issues of civil rights, anti-war protest, and the women’s rights struggle. Also, the newly established medium of television reached a tremendous audience, and the networks and local outlets, which were mostly sympathetic to the environmental issues, presented environmentalism in a positive light. The publication of Rachel Carson’s *Silent Spring* in 1962, as well as the awe-inspiring Apollo photograph of Earth from the Moon, and countless other images helped launch and strengthen the groundswell of public opinion.

This was also a time of activist federal promotion of environmental legislation, which was part cause and part effect of the changing age. In addition to the 1968 Wild and Scenic Rivers Act, the Federal Government passed the Clean Air Act in 1967, the National Environmental Policy Act (NEPA) in 1970, the Clean Water Act in 1972, and the 1973 Endangered Species Act. The passage

of these laws offered proof that environmentalism had emerged as a major public policy issue.

Many other Americans, however, viewed the new environmental movement as unrealistic and anti-development. While virtually no one would consider himself or herself as being “against the environment,” many people continued to view natural resources as primarily a source of wealth and prosperity. This viewpoint was buttressed by the preeminence of private-property rights and a long-held distrust of the federal government, both of which had long been central tenets of the traditional American psyche. These factors have produced a significant reactionary force that seeks to prevent advances in environmental regulations because of the fear of an accompanying loss of freedoms.

Despite the contentiousness associated with these legislative attempts, the Niobrara story is also unique in its ultimate commitment to compromise. The grass-roots proposal was written with great sensitivity to local needs and concerns, and included substantial checks on federal power. As the legislation evolved, further efforts at compromise were added. The debate was long and protracted, and considerable animosity was expressed, but the scenic-river proponents had done their homework, demonstrated a sincere willingness to compromise, and ultimately seized the moral high ground in the debate. After an excruciating six-year struggle in Washington, including several respites to allow

the state and local authorities to take the initiative in protecting the river, the process culminated in the Niobrara National Scenic River Act of May 1991.

Since that time, there have been nine new private-domain wild-and-scenic-river designations, and all have included provisions for the Park Service to manage the river by working in partnership with the local authorities. With the reality of private land ownership and the national trend at decentralizing and streamlining government, this cooperative management approach seems to be the wave of the future. In this, the Niobrara has national significance as a test case. With this national scope, and the fascinating local interplay of the opposing factions, the history of how this new unit of the National Park System came about is indeed a story worth telling.

The inspiration for this thesis topic had multiple origins. Float trips on the river in 1997 and 1998 greatly piqued my curiosity about an erstwhile peculiar unit of the National Park system. And having read *The Battle for the Buffalo River* (1992) by Neil Compton several years ago, the thought occurred to me that a similar work on the Niobrara would be a good choice for a thesis-length work, and it has proven to be so.

Throughout the process of researching and writing this thesis, I have benefited greatly from the kindness, wisdom and efforts of many people. Dr. Jim Shaw, Government Documents Librarian at UNO, was very helpful and extremely

knowledgeable; on numerous occasions he located a document in minutes that would have taken the author hours to find. The staff of the Niobrara National Park Service office in O'Neill, Nebraska, particularly Superintendent Paul Hedren and Phil Campbell, proved very kind and helpful. I owe a debt to Mike Forsberg, who, for the apparent love of research, compiled a very comprehensive collection of documents on the Niobrara's administrative history, all neatly filed in the park office in O'Neill. The staff of the Historical Society of Douglas County was very helpful as well, and their newspaper clipping files proved quite useful. I am also indebted to Dr. William Pratt and Dr. Charles Gildersleeve for their willingness to be part of my thesis committee. But my greatest measure of gratitude goes to Dr. Michael Tate, whose direction and superb editing were indispensable to this thesis. Furthermore, his prompt reviews of my chapters greatly helped to expedite an otherwise laborious process.

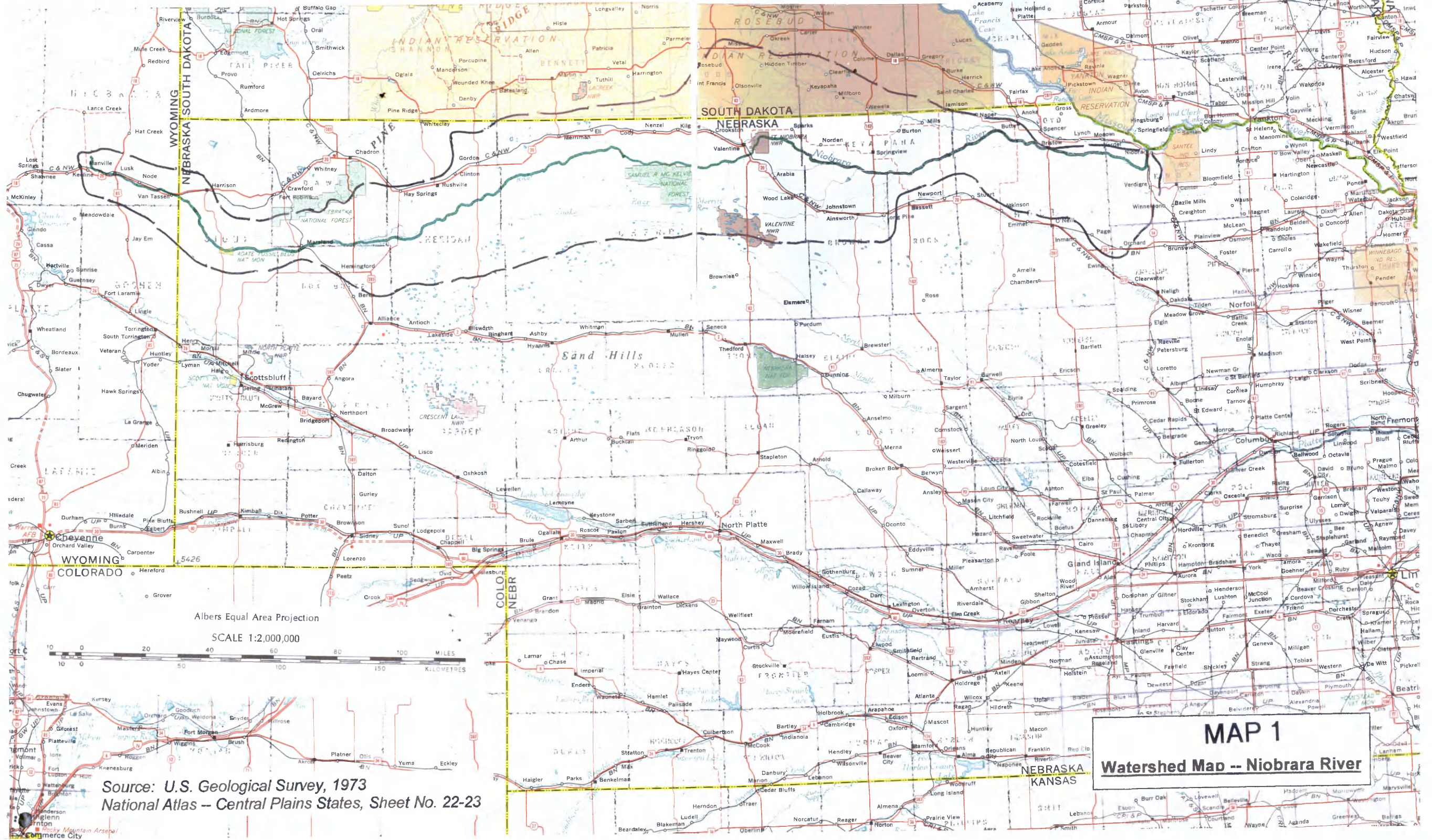
On a more personal note, I would like to acknowledge the inspiration I received from my late uncle, Dr. Richard B. Roeder of Montana, a fine historian and a damned good radical. I would also like to thank my wife and soul-mate Joan Skokan for her encouragement and support. A heartfelt thanks also goes to my parents, Helen and Bob Roeder, who have always encouraged me in all of my endeavors.

Chapter I

Environment and Early History

Northern Nebraska's Niobrara River has been called a biological crossroads, a natural wonder, and an environmental treasure. The river has also been called a "large drainage ditch where we are losing our surplus groundwater."¹ These two diametrically opposed perspectives typify the debate over designating the Niobrara River as a federal scenic river, a struggle that has pitted Nebraskans against one another in a scenario familiar to western historians. For more than a century, the American West has served as the battleground between those who view the land's resources as an asset to be exploited, and those who believe that certain parts of the natural landscape should be protected for their inherent values and preserved "unimpaired for the enjoyment of future generations."² This struggle culminated in the passage of the *Niobrara Scenic River Designation Act of 1991*³, which was signed into law in May of that year.

The Niobrara River is 400 miles long, has a total watershed of 11, 800 square miles, and meets its confluence with the Missouri River in northeastern Nebraska (see Map 1). Its headwaters are in eastern Wyoming, roughly thirty miles west of the Nebraska border, and the Niobrara enters the state as a rather typical high plains stream. Between the towns of Chadron and Valentine, it



Source: U.S. Geological Survey, 1973
 National Atlas -- Central Plains States, Sheet No. 22-23

MAP 1
Watershed Map -- Niobrara River

enters the Sand Hills physiographic province, and begins to take on its unique character. The river has cut a valley, in places three hundred feet deep, which extends down into the massive Ogallala Aquifer, the source of most of the river's flow. This results in a unique plains river that flows cool, clear, and swift through its forested canyons. The scenic and biological climax of the river is the seventy-six mile stretch downstream from Valentine, noted in the 1982 *National Rivers Inventory* as having outstanding scenic, geologic, and plant and wildlife values.⁴ It is this reach that became the subject of the federal scenic river designation.

First and foremost, the Niobrara Valley is a biological crossroads. The valley straddles the 100th Meridian, which is often considered the transition between the humid east and arid west. As a result, both eastern and western ecosystems overlap here. The valley is an important species migration corridor, and a finger of eastern deciduous forest extends up the Niobrara from the Missouri River, the latter valley also representing an extension of the eastern forests. Here are found the western limits of several eastern tree species, including bur oak, American elm, black walnut, green ash, basswood and hackberry. Many species of western or Rocky Mountain trees likewise reach their eastern limit in the valley, notably ponderosa pine, serviceberry and horizontal juniper. Yucca and cactus are also present. To further enrich the mix, there are representatives of the northern boreal forests, including paper birch, aspen, ferns, and club-mosses.⁵ These northern species are remnants of the

Wisconsin glaciers, which moved through the area between 70,000 and 10,000 years ago.⁶ The Niobrara Valley marked the southernmost advance of these continental glaciers, and these remnant plant species are now isolated by 450 miles of prairie from their kin in northern Minnesota and southern Manitoba.

Three distinct prairie ecosystems also overlap here: tallgrass, mixed-grass and sand hills. The grasses and forbs associated with these prairie types interweave with the forest ecosystems to provide extensive habitat diversity for wildlife, including birds, mammals, reptiles, amphibians and insects. The differing exposures between the northern and southern valley walls, which also vary with the meandering river and side canyons, create microclimates in which the various flora and fauna interweave in a patchwork of biological diversity. It is this overlapping of habitat types that gives the Niobrara its special character.

The Niobrara as a recreational resource is unmatched in the central Great Plains region. "Niobrara" is a Ponca Indian word meaning "running water" -- a very appropriate descriptive name. A canoeist or inner-tube floater experiences a swift current, cool aquifer-fed water, and a clear river with a sandy bottom. The water in the popular floating areas is mostly waist-deep, with frequent deeper pools making ideal swimming stops. Numerous waterfalls gracing the south bank, some falling directly into the main stream, are a refreshing break on a hot summer day. The canyon is filled with forests, interspersed with grazed fields, and the several historic iron bridges provide points of reference along the river. Nowhere does a paved road infringe upon the scene, and gravel roads run near

the river in only a few areas, but are rarely visible from the river. The river's popularity has blossomed in recent years. On summer Saturdays, all of the local outfitters are booked to capacity, and a floater is rarely out of site of another group of river users. Yet on weekdays, and in the spring and fall, use is very light, and solitude can easily be found.

The valley is also rich in pre-historic resources, with nationally and even globally significant paleontological sites found along the river. These sites contain fossils from the mid-Tertiary and Pleistocene eras, and many of the important finds are displayed in the State Museum of Natural History in Lincoln.⁷ The area contains over two hundred noted archeological sites, including Paleo-Indian campsites, and at least one buffalo jump.⁸ The valley was used by various ancient peoples for hunting and gathering, and also contains the region's only source of stone for making tools. Most of the pre-historic sites have yet to be evaluated or have their resources catalogued.⁹ Significant cultural resources from the historic period also exist, including several iron-truss bridges and an abandoned town site known as Meadville.¹⁰

The Euro-American settlement of north-central Nebraska began in earnest during the 1880s. After passing through a brief open-range cattle period, homesteading began to dominate these rural counties. The Sioux City and Pacific Railroad (also known as the Fremont, Elkhorn, and Missouri Valley) reached Valentine in 1883.¹¹ A land office was opened there that year, which spurred homesteading of the Niobrara Valley and the tablelands north of the

river.¹² The Sand Hills south of the river, while less hospitable than other areas, attracted ranchers who mostly claimed the better hay valleys and lands along streams and other water holes.¹³ County governments were soon created with the organization of Brown and Cherry, both in 1883, and Keya Paha and Rock Counties in 1884 and 1888, respectively.¹⁴

Most of these homesteaders sought to graze cattle and grow corn and other crops for market. The 1880s was a decade with above-normal rainfall, and population growth was steady. The 1890s, however, was a period of below-normal precipitation, and some settlers were forced out.¹⁵ A period of prosperity returned in the early twentieth century, with steady population growth through 1920. Hard times returned in the 1920s, followed by extreme conditions during

Table 1 -- Population Trends in the Niobrara Region

Year	COUNTY				4-County
	Brown	Cherry	Keya Paha	Rock	Total
1890	4359	6428	3920	3083	17,790
1900	3470	6541	3076	2809	15,896
1910	6083	10,414	3452	3627	23,576
1920	6749	11,753	3594	3703	25,799
1930	5772	10,898	3203	3366	23,239
1940	5962	9637	3235	3977	22,811
1950	5164	8397	2160	3026	18,747
1960	4436	8218	1672	2554	16,880
1970	4021	6846	1340	2231	14,438
1980	4377	6758	1301	2383	14,819
1990	3657	6307	1029	2019	13,012
2000	3525	6148	983	1756	12,412

Source: U.S. Bureau of the Census.

the 1930s. The population has been in steady decline since 1920, with the exception of the 1970s, during which a few counties experienced slight growth.¹⁶

A second surge of settlement occurred in the Sand Hills starting in 1905. This new round of farming proved mostly unsuccessful due to the extremely thin topsoil, and these failures contributed to the proliferation of large ranching operations, as successful ranchers bought out their unsuccessful farming neighbors.¹⁷ While some moderate-sized family ranches remained in the prime land of the Niobrara Valley, the trend of fewer, larger ranching operations had become established – a trend that continues today. It is these ranchers who formed the backbone of the local populace, and many of them comprised the constituency for the federal irrigation projects that would dominate the politics of the river for several decades, beginning in the mid-1950s. Notwithstanding its biological and environmental importance, the river is a source of precious water, and the question of how this resource would be used framed the debate over the river's future.

The first significant effort to alter the hydrology of the Niobrara came in 1952, with the release of a Bureau of Reclamation report on the Niobrara Basin. This report presented a basin-wide water development plan for the Niobrara and its tributaries, and included fourteen operating units and eight main-stem dams.¹⁸ One of these dams, known in the 1952 report as Meadville, would evolve into Norden Dam, located in the heart of the most biologically and scenically valuable portion of the river. This reservoir, if constructed, would normally release *no*

water to the downstream river channel, thus completely eliminating aquatic life in this reach.¹⁹

The Meadville Dam was to be the centerpiece of the O'Neill Unit, a Rube Goldberg-esque plumbing system that would store and divert the river's entire flow via a fifteen-mile canal to the Long Pine Reservoir. From that point, it would either run through the latter dam's power plant for power generation, or be directed through a 108-mile long canal to irrigate 66,100 acres of farmland near the towns of O'Neill and Atkinson.²⁰ Two pumping plants would also be needed to deliver water to that portion of the land too high for gravity flow. Even with the Bureau's notoriously "fuzzy" accounting methods, the O'Neill Unit had a benefit-to-cost ratio of only 1.04 to 1.00.²¹ This poor financial prognosis relegated development of the O'Neill Unit to some future date at which the benefit-to-cost ratio might be more favorable.

While some of the features recommended in the 1952 report were eventually built, the Norden Dam remained mired in controversy for three decades. Beginning in 1971, an effort was undertaken in Congress to authorize construction of a revised O'Neill Unit, and to appropriate funds for this purpose. This revised dam project, along with associated pumping systems and canals, was to provide heavily subsidized irrigation water to 77,000 acres of farmland, but it would have required 30,000 acres of land for construction of the facility – 22,000 for the dam and reservoir, and 8,000 for canals and laterals. The resulting impoundment would have flooded nineteen miles of the stream, and

inundated 6,375 acres of bottomland in this most ecologically unique and valuable part of the entire valley.²² Congressman Dave Martin from Nebraska's third district introduced H.R. 868 in January 1971, to authorize construction, and a companion bill, S. 353, was introduced in the Senate.

In March 1972, the House and Senate held subcommittee hearings on the project. Some modifications had been made to the O'Neill Unit following the Bureau's original report, notably the absence of the Long Pine Dam, an increase in the irrigable acreage, and provisions for minimum releases from Norden Dam.²³ In both chambers, committee members were apparently in full support of the project, as none expressed any opposition. The Nixon administration, speaking through the Department of the Interior, voiced its support of the bills, albeit with minor amendments.²⁴ State agencies, including the legislature, the governor's office, the Nebraska Department of Water Resources, and the Nebraska Soil and Water Commission, were unanimous in their support. Other entities, including the Burlington Northern Railroad, the Rosebud Indian Reservation, and the National Water Resources Association, expressed their support.²⁵

Some individuals and organizations did oppose the project, including two Sierra Club chapters and the Omaha-based Quality Environmental Council. Doris Gates, from Chadron, Nebraska, representing the Rocky Mountain Chapter of the Sierra Club, called the project "economically unsound, ruinous to the environment, and contrary to the current needs of the United States and the

State of Nebraska.”²⁶ The last point raised the poignant issue that the government was paying farmers elsewhere *not* to grow a commodity, while taxpayers were being asked to subsidize an environmentally destructive project so that other farmers could grow more of that same commodity. Dwight Hoxie, Chairman of the Bluestem Sierra Club chapter, argued that the Bureau’s analysis was inherently flawed because it ignored current and future recreational benefits associated with a free-flowing Niobrara.²⁷ Mary Carter, a university student from Omaha, traveled to Washington, D.C. for the committee hearing, and stated that the Bureau’s report ignored the unique, irreplaceable biology of the area.²⁸ Attached to the House subcommittee hearing records were twenty-five letters in opposition to the project, mostly for fiscal and environmental reasons. The committee appeared to marginalize this well-founded opposition, and it seemed that approval was a *fait accompli*.

The Senate committee hearing proceeded in like fashion, with many of the same witnesses.²⁹ The committee members listened to both sides, but had little to say and even appeared disinterested. It is noteworthy that only one member of the sixteen-member Senate committee was from a state east of the Great Plains. Perhaps the opponents calling these western federal water projects “pork-barrel” had some veracity. These authorization bills were not advanced out of committee, yet authorization of the O’Neill Unit was written into the omnibus Reclamation Project Authorization Act of 1972 (Public Law 92-514),³⁰ signed by President Richard Nixon on October 20, 1972.³¹

During the preceding several decades, the United States had constructed dams on a large number of her rivers, and a growing constituency of citizens and organizations had begun to question the wisdom of this profligate dam building. In response to this movement, legislation was developed in Congress to counter-balance the trend of massive water development, and to preserve certain rivers in their free-flowing state. This monumental legislation, known as the Wild and Scenic Rivers Act of 1968, was one of the landmark environmental laws passed by the federal government in the 1960s. The Niobrara was one of the rivers under consideration for designation with the Act. However, the final bill included it only as a study-river for possible future addition to the system. The Wild and Scenic Rivers Act was signed into law as Public Law 90-542 by President Lyndon Johnson on October 2, 1968.³² This legislation would provide the mechanism for the protection of the Niobrara and many other rivers.

Meanwhile, grass-roots opposition to Norden Dam emerged in the Niobrara Valley. Wes Sandall, Robert Warrick, and a number of local ranchers organized the Save the Niobrara River Association (SNRA) in early 1975 with the express purpose of defeating Norden Dam and thus keeping the river in its free-flowing state.³³ SNRA filed a request for an injunction against the project in 1976, claiming that the Bureau's Environmental Impact Statement (EIS) did not adequately address the negative effects of the project. On March 4, 1977, U.S. District Court Judge Warren Urbom agreed and issued an injunction, finding that

the project's environmental impact statement was badly flawed.³⁴ By this time, the SNRA had begun an effort to sway public opinion against the project.

As a further sign that the O'Neill Unit was falling into disfavor, the article coverage and editorials in Nebraska's three largest newspapers -- the Omaha *World-Herald*, *Lincoln Journal*, and *Lincoln Star* -- began to weigh against the Norden Dam. Partly attributable to new, younger editorial personnel, and partly due to a general growing environmental consciousness, these articles were instrumental in shaping state-wide opinion on the issue.³⁵ In a 1977 poll conducted by the SNRA, only 24 percent of Nebraskans supported construction of the project, while 27 percent opposed.³⁶

Meanwhile, in March 1977, an organization was formed to counteract the SNRA's efforts. The Nebraska Water Resources Association, a water development group founded in the 1940s, joined forces with Missouri Valley Machinery and Valmont Industries to produce educational materials and advertising to sway public opinion and politicians toward support for the dam.³⁷ Missouri Valley Machinery was the local Caterpillar heavy-equipment franchise, which was in a position to reap enormous profits from selling and servicing construction equipment for the project, and Valmont manufactured irrigation systems. They formed a so-called Education Committee, which developed literature, films, and advertising to promote the worthiness of the O'Neill Unit.³⁸ Their efforts would ultimately prove futile.

By the late 1970s, the era of big dam building was passing. In January 1977, newly inaugurated Jimmy Carter, a Washington outsider, perceived the dam-building frenzy of the prior several decades very differently from the entrenched interests in Congress, the Corps of Engineers, and the Bureau of Reclamation. In April, Carter released a list of dam projects that he saw as unjustified both fiscally and ethically.³⁹ While the Niobrara was not on the Carter hit-list, his strong position indicated a significant policy shift. Concurrently, the growing environmental movement had come to see these projects as causing significant harm, which had been ignored or glossed over in the past. The annual appropriations hearings for the O'Neill Unit continued, with funds approved for study and design, and a construction access road was built. Yet, until the court injunction was lifted, construction could not begin on the dam.

Meanwhile, changes in the membership and philosophies in Congress were beginning to come into play. In 1978, Congress initiated action to defund the O'Neill unit, when Representative Andrew Jacobs of Indiana offered an amendment to do so.⁴⁰ This attempt failed, but others would follow. Also in 1978, a significant contingent of credible individuals traveled to Washington to speak against the O'Neill Unit at the House appropriations hearings. Rancher Wesley Sandall questioned the deficit spending, and argued that those standing to benefit were corporate and large business interests, rather than the local ranchers. Canoe outfitter Loren Wilson showed that the Bureau had clearly underestimated -- even ignored -- the existing economic benefits of the free-

flowing river that would be lost if the project were built.⁴¹ The most persuasive witness was Professor Loyd K. Fischer, an agricultural economist from the University of Nebraska -- Lincoln. Fischer forcefully assailed the credibility of the Bureau's benefit-to-cost analysis, demonstrating that several of their key assumptions were totally unjustified. With these corrections, the project's benefit-to-cost ratio dropped from 2.7:1.00 to 0.40:1.00.⁴² This appropriations hearing was a further illustration that the era of the Bureau of Reclamation's power and credibility was indeed coming to an end.

The following year brought more changes that would help spell the end of Norden Dam. J. James Exon and Douglas Bereuter were elected from Nebraska to the U.S. Senate and House, respectively. These two men, a Democrat and a Republican, would prove instrumental in the ultimate defeat of Norden Dam, and the ultimate designation of scenic river status for the Niobrara. Also in 1979, Judge Urbom continued the injunction, again calling the EIS inadequate for not addressing geologic instability, and for not considering other alternatives to increase crop production.⁴³ While the O'Neill Unit was delayed by Judge Urbom's injunction, and while the opposition to the dam was beginning to find a voice in Congress, the grass-roots effort -- first created to kill Norden Dam -- developed a new proposal for federal scenic-river designation.

NOTES

¹ U.S. Congress, House, Committee on Interior and Insular Affairs, *Niobrara Scenic River Designation Act of 1991, H.R. 614*, Hearing before the Subcommittee on National Parks and Public Lands, 102nd Cong., 1st sess., March 21, 1991, 72.

² 39 Stat. 535. There are several recent secondary sources that consider issues of western water development from a historical perspective. See Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Pantheon Books), 1985; Michael L. Lawson, *Dammed Indians: the Pick-Sloan Plan and the Missouri River Sioux, 1944-1980* (Norman: University of Oklahoma Press), 1982; William D. Rowley, *Reclaiming the Arid West: The Career of Francis G. Newlands* (Bloomington, IN: Indiana University Press), 1996; and Marc Reisner, *Cadillac Desert: The American West and its Disappearing Water* (New York: Viking Press), 1986.

³ 105 Stat. 254. Public Law 102-50, 102d Congress, May 24, 1991, (S.248).

⁴ United States Department of the Interior, National Park Service. *The Nationwide Rivers Inventory*. Washington, DC. January 1982, 128.

⁵ U.S. Department of the Interior, National Park Service, "Niobrara National Scenic River -- Nebraska," (pamphlet), Government Printing Office, 1996, n.p.

⁶ U.S. Department of the Interior, National Park Service, and State of Wisconsin, Department of Natural Resources, "Official Map and Guide, Ice Age National Scientific Reserve, Wisconsin," (pamphlet), Government Printing Office, 1996, n.p.

⁷ United States Department of the Interior, National Park Service, *General Management Plan / Final Environmental Impact Statement, Niobrara National Scenic River*, 1996, 12.

⁸ Grant Sims, "Whoa, This is Nebraska?" *Outside*, April 1989, 146.

⁹ United States Department of the Interior, *General Management Plan*, 67.

¹⁰ United States Department of the Interior, National Park Service, Midwest Regional Office, Office of Planning and Resource Preservation, Division

of Cultural Resources Management, Branch of History & Branch of Historical Landscape Architecture, *Historical Overview and Inventory of the Niobrara / Missouri National Scenic Riverways, Nebraska / South Dakota*, report prepared by Rachel Franklin, Michael Grant and Martha Hunt (Omaha: National Park Service, 1994), 123.

¹¹ Charles Barron McIntosh, *The Nebraska Sand Hills: The Human Landscape* (Lincoln: University of Nebraska Press, 1996), 121.

¹² *Ibid.*, 124.

¹³ *Ibid.*, 168.

¹⁴ Department of the Interior, Census Office, *Compendium of the Eleventh Census: 1890, Part I. – Population* (Washington, D.C.: Government Printing Office, 1892). Pp. 261-262, 267, 270.

¹⁵ Charles S. Reece, *An Early History of Cherry County, Nebraska*, internet document at <http://www.LivGenMI.com/1945NECherryCountytitle.htm>, p. 34.

¹⁶ United States Department of Commerce, Bureau of the Census, various census reports.

¹⁷ James C. Olson, and Ronald C. Naugle, *History of Nebraska*, Third Edition (Lincoln: University of Nebraska Press, 1997), 193.

¹⁸ United States Department of the Interior, Bureau of Reclamation, Region 7. *Missouri River Basin Project. Niobrara River Basin, Nebraska, Wyoming, South Dakota: A Plan of Development for the Niobrara River Basin, Modifying the Approved Comprehensive Plan for the Missouri River Basin Project*, Denver, September 1952, "Report of the Regional Director," p. 1.

¹⁹ *Ibid.*, "Substantiating Report," p. 167 and 173.

²⁰ *Ibid.*, p. 33.

²¹ *Ibid.*, "Report of the Regional Director," p. 29.

²² U.S. Congress, Senate, Committee on Interior and Insular Affairs, *O'Neill Unit, Missouri River Basin Project, Nebraska, S. 353: Hearing before the Subcommittee on Water and Power Resources*, 92nd Cong., 2nd sess., March

21, 1972, 67. U.S. Congress, House, 97th Cong., 1st sess., HJR 631, *Congressional Record* 128, pt. 22 (December 14, 1982): 30528-9.

²³ U.S. Congress, House, 92nd Congress, 2nd sess., Committee on Interior and Insular Affairs, *O'Neill Unit, Missouri River Basin Project, Nebraska, Hearing Before the Subcommittee on Irrigation and Reclamation, H.R. 868, March 20, 1972, 2.*

²⁴ *Ibid.*, pp. 2-6.

²⁵ *Ibid.*, pp. 43-67.

²⁶ *Ibid.*, 75.

²⁷ *Ibid.*, 77.

²⁸ *Ibid.*, 107.

²⁹ U.S. Congress, Senate, *O'Neill Unit, Hearing before the Subcommittee, March 21, 1972, pp. 30-47, 69-81.*

³⁰ 86 Stat. 964-969.

³¹ *Weekly Compilation of Presidential Documents*, Vol. 8, No. 44 (Monday, October 30, 1972), 1587.

³² *Weekly Compilation of Presidential Documents*, Vol. 4, No. 40 (October 7, 1968), 1439.

³³ Lynn Frederick Amis, "A Tale of Two Dams: Environmentalism in Nebraska" (M.A. thesis, Arizona State University, 2001), 97. This thesis tells the story of the environmental movement in Nebraska and how it shaped the debate over Calamus Dam, which was built, and Norden Dam, which was defeated.

³⁴ *Save the Niobrara River Association v. Andrus, et. al.*, U.S. District Court for the State of Nebraska, 483 F. Supp. 844 (1977).

³⁵ Amis, 106-7.

³⁶ Amis, 139.

³⁷ Amis, 133.

³⁸ Amis, 131.

³⁹ Marc Reisner, *Cadillac Desert: The American West and its Disappearing Water* (New York: Viking Press, 1986), 324-342.

⁴⁰ Amis, 157.

⁴¹ U.S. Congress, House, Committee on Appropriations, *Public Works for Water and Power Development and Energy Research Appropriation Bill, 1979, Hearings Before a Subcommittee, Part 9: Testimony of Members of Congress and other Individuals and Organizations, 95th Congress, 2nd sess., May 31, 1978, 1781-84.*

⁴² *Ibid.*, 1934.

⁴³ Fred Thomas, "Norden Dam Delayed Again," *Omaha World-Herald*, Evening Edition, April 17, 1979, 11.

Chapter II

A Scenic River Proposal

In 1980, a group of Niobrara valley landowners, led by rancher Franklin Egelhoff, began to mobilize support for permanent protection of the river that they knew and loved.¹ This group of activists, who had previously organized as the Save the Niobrara River Association, researched the names of all of the property owners along the river, and went door-to-door, meeting people and soliciting input. They came to believe that creating a partnership between the federal government and the local citizens would be the best way to preserve the river in its free-flowing state, while simultaneously allowing the established ranching and farming uses to continue. They formulated a proposal, and, in May 1980, wrote to Senator J. James Exon requesting that he sponsor legislation to add the Niobrara to the national Wild and Scenic River System.² These citizens represented a majority of the property owners on the 47-mile stretch of river between Borman Bridge and Meadville, Nebraska. A similar letter to Exon was sent in October from most of the landowners along the river between state highways 7 and 137³ (see Map 2, page 35).

Egelhoff was concerned about the growing proliferation of cabins along the river, and he could foresee that, if unchecked, development and commercialization would destroy the Niobrara's beauty and ecology. He freely praised neighbors for their stewardship of the river, but he believed that

“overzealous developers” were threatening to permanently mar the valley that had been his lifelong home.⁴ According to Egelhoff, over 85 percent of the landowners supported the scenic river concept in 1980; their local government, however, did not share Egelhoff’s values. Early in the process of formulating their proposal, the landowners invited the Keya Paha County Commissioners to their meetings, but none ever attended.⁵ The reason for their lack of attendance is unclear, but this county board eventually became strong a opponent of the scenic-river effort.

Little apparent progress was made during the next several years, yet the political scene was gradually changing as more progressive and pro-environment leadership was emerging. In December 1982, the U.S. House of Representatives voted 245 to 144 to withhold funding for the Norden Dam project.⁶ A joint House-Senate conference committee reinstated the funding, but the O’Neill Unit issue would never return to the floor of either chamber for debate. The public’s concern over boondoggle water projects and growing environmental awareness heralded the end of the Norden Dam, while setting the stage for the success of the scenic river proposal. In November 1982, Nebraska elected a new governor in Robert Kerrey, a moderate Democrat, and a man who would later become a U.S. Senator and compile an impressive pro-environment voting record.

Meanwhile, national conservation organizations had become aware of the Niobrara debate and they joined the push for scenic river designation. The

experience that these national groups brought to the cause would provide vital leadership and expertise in the struggle for popular opinion and political influence. An important leader emerged from the national groups in Ron Klataske, Regional Vice President of the National Audubon Society. On June 1, 1983, Klataske wrote to Senator Exon again asking that he consider introducing a Niobrara scenic river designation bill.⁷ The environmental groups would have to wait several years for action from Washington, but their perseverance would eventually bear fruit.

In early 1985, the scenic river effort first received state-wide press coverage in the Omaha *World-Herald*. Exon had agreed to meet with Klataske and the Niobrara landowners group in March to discuss the possibilities of legislation.⁸ Two months later, an extensive article appeared in the *World-Herald* stating that Exon had agreed to introduce a scenic-river designation bill in the Senate for the 76-mile stretch between Valentine and Highway 137.⁹ Whereas the 1980 requests to Exon had been uncoordinated and came from three different groups of landowners, this new effort brought the entire 76-mile reach within one proposal for the first time. The proponents sought a compromise between preservation and water users, and they structured their proposal to be compatible with an irrigation and groundwater recharge project that had recently been authorized as a more suitable alternative to the Norden Dam. They also included a provision allowing a diversion dam to be permitted within the designated river. This dam, known as the Springview Unit, was

proposed originally as part of the 1952 Bureau of Reclamation report to provide irrigation water to the area around Springview, the Keya Paha county seat. The centerpiece of this system was a low-head diversion dam to be built in the river, but apparently the proponents found this structure unobjectionable, and consistent with their values of using the resource without causing irreparable harm.¹⁰

In July, Exon sent a copy of his draft bill to Nebraska Governor Bob Kerrey, and asked for his comments prior to introducing the bill in the Senate.¹¹ In late September, Kerry responded with a letter stating his support of the bill, and offering two comments. First, Kerrey asked that the bill clarify that scenic river designation would not affect the existing Ainsworth or Mirage Flats irrigation projects, which were upstream from the area under scenic river consideration. Kerrey also asked for wording that the state's administration of water rights would remain unchanged by federal designation.¹² Kerrey's response was dated September 27, just three days before Exon introduced the bill. While Kerrey's specific wording was not included, subsequent legal clarifications indicated that his two concerns were adequately addressed by statute and case law. Dayle Williamson, Nebraska's Director of Natural Resources, in a memorandum to the governor, expressed his support of the bill; he particularly worried that economic hardships might cause some landowners to sell their riverfront land for development, and open further development plans.¹³ The support of the

governor and the state director of Natural Resources were encouraging, but the political pressure from opponents of designation had yet to coalesce.

In a letter to Exon's office from Nebraska Natural Resources Commission legal counsel Jay Holmquist, several specific legal concerns were raised, along with suggested wording to serve as a remedy.¹⁴ While many of these items were esoteric and legal in nature, the letter did raise several unanswered questions, particularly concerning what landowner activities would be restricted, and about the specific width of the protected corridor. These legitimate concerns would remain unaddressed in the bill, and indeed would eventually become the key objections raised by scenic-river foes.¹⁵ Opponents held that a Section 5(a) study – as required by the 1968 Wild and Scenic River Act -- addressing the issues of boundaries and management should be undertaken prior to designation, rather than after. Indeed, the boundary issue would be successfully challenged in the courts at a later date and final resolution still has not been achieved even today.

Throughout the summer of 1985, there appeared to be no organized opposition to the proposal, and what little local newspaper coverage existed was either neutral or supportive. By late August, however, opponents to federal scenic river designation began making their voices heard, and an article in the *Ainsworth Star-Journal* presented the controversy to its readers. This article posited that the supporters and opponents were the same as in the late Norden Dam issue, but the roles were reversed – pro-dam interests against the scenic

river, and vice-versa.¹⁶ This article printed the full-text of a letter to Senator Exon from the three members of the Keya Paha County Board of Commissioners. They expressed their vehement opposition to federal designation in a manner both extremely negative and highly disrespectful of Senator Exon. Presenting the other side of the issue, the article then cited a press release from a group of Niobrara River landowners and the National Audubon Society, which challenged the Keya Paha County letter and a statement of opposition from the Lower Niobrara Natural Resources District. Klataske called their opposition “based on unfounded fears,” and characterized their anger as “misplaced hostility” over the Norden Dam controversy.¹⁷ The proponents also expressed concern that these two representative governmental bodies had taken these positions of opposition without hearing the viewpoints of their constituents who favored the scenic river designation.

The day after this article appeared in the Ainsworth paper, a man who would become the most vocal foe of scenic river designation wrote a letter to Governor Kerrey expressing his opposition. Harlin E. Welch -- manager of the Ainsworth Irrigation District, President of the Nebraska Landowners and Sportsmen Association, and a leading Norden Dam proponent -- wrote that designation was not needed because the landowners had done a good job preserving the river. Welch also railed against the National Audubon Society as an “outsider,” and called the scenic river proponents a “special interest group.”¹⁸

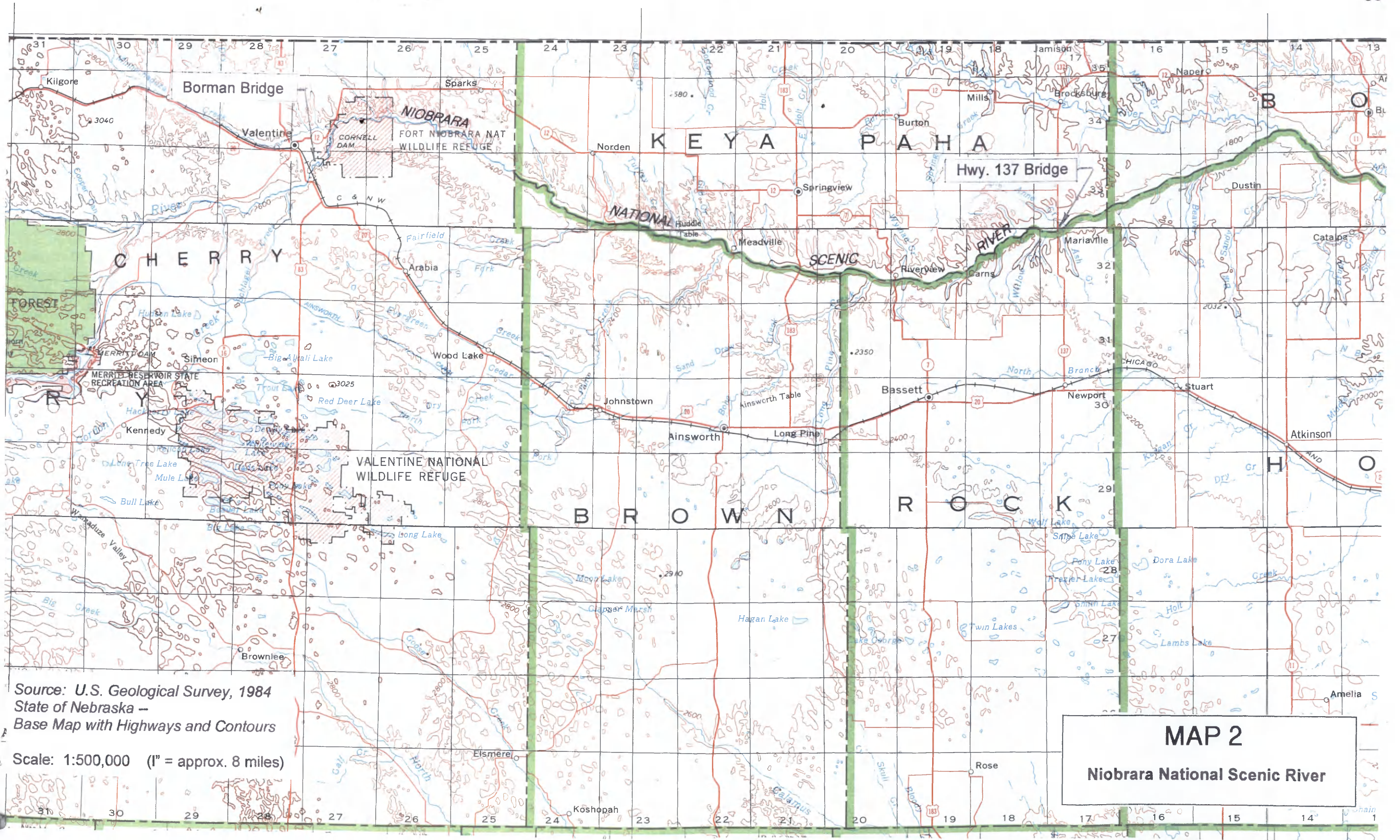
Welch began a campaign to organize opposition to the scenic river proposal, and he would soon emerge as a worthy opponent to the environmental advocates.

On September 10, the National Park Service held an informational meeting in Bassett, Nebraska, to explain some of the provisions of the bill, and to provide background on the 1968 Wild and Scenic Rivers Act. Dave Shonk, Special Assistant to the Regional Director of the National Park Service, attempted to alleviate some concerns by stating that the land would be protected by the federal government purchasing conservation easements on a willing-seller basis. He also stressed that the land would not be removed from the tax rolls and that present landowner operations, particularly farming and ranching, could continue.¹⁹ On the next two evenings, meetings were held in Valentine and Ainsworth, but these meetings were chaired by Harlin Welch. Opponents in attendance raised concerns about the importance of how the boundaries would be determined, about county road maintenance and water rights,²⁰ and about landowner liability insurance needs.²¹

Coverage of these three meetings in the local weekly newspapers makes an interesting study in small-town journalism. The Ainsworth *Star-Journal* and the Springview *Herald* provided balanced coverage by presenting both sides and focusing on the topic of the proposed federal scenic river designation. On the other hand, the Atkinson *Graphic* and the O'Neill-based *Holt County Independent* ran a long, identical article that was clearly opposed to federal scenic river designation, and largely framed the issue around the Norden Dam / O'Neill

Unit.²² At one point in the article, Jack Odgaard, President of the Nebraska Water Resources Association, projected that economic benefits of \$15 million would have been achieved annually from the O'Neill Unit. This figure was based on the projection of 300,000 people utilizing the project.²³ The combined population of Cherry, Rock, Brown, Keha Paha, and Holt Counties was 36,050 persons, and the entire state of Nebraska only contained 1.71 million persons,²⁴ so Odgaard's financial analysis seems overly inflated. It will be recalled that these communities – O'Neill and Atkinson, along with their surrounding rural areas – were to be the beneficiaries of the irrigation water from that defeated project. Perhaps the proponents of designation were correct in attributing much of the scenic-river opposition to lingering resentments over Norden Dam.

On September 30, 1985, Exon introduced S. 1713, the Niobrara Scenic River Designation Act.²⁵ This bill would add a 76-mile stretch of the Niobrara River to the national system of wild and scenic rivers, to be administered by the Secretary of the Interior. The protected segment would run from the Borman Bridge, near Valentine, to Nebraska Highway 137, north of Newport (see Map 2). The Niobrara would be classified as a "scenic" river, which the Wild and Scenic River Act defines as one free of impoundments, largely primitive and undeveloped, and accessible in limited places by roads.²⁶ Also established by the bill would be an eleven-member Niobrara Scenic River Advisory Commission, which



Source: U.S. Geological Survey, 1984
 State of Nebraska –
 Base Map with Highways and Contours

Scale: 1:500,000 (1" = approx. 8 miles)

MAP 2
Niobrara National Scenic River

shall participate in and have a significant role in the development and review of the management plan for the river ... and in the formulation and review of subsequent agency plans including annual operation and maintenance plans.²⁷

Local interests would be heavily represented on this board, as its composition would include six landowners along the protected river segment; two members of a local governmental unit; one canoe outfitter; one state-appointed member; and one member of a conservation group. Furthermore, the bill required the council chairperson to be a permanent resident of one of the four affected counties.²⁸

The bill specified a one-half mile boundary width on each side of the river, with a provision for enlarging the area with the consent of the affected property owner. It directed the Secretary of the Interior to “protect the pastoral landscape and the established farming and ranching lifestyles” of the valley.²⁹ One further section predicated that easements could be obtained on no more than five per cent of the total boundary area without consent of the owner.³⁰ In one final provision for conciliating the local water users, the bill was written to specifically not preclude the proposed Springview diversion dam and pumping station, which had been under consideration since the 1952 Bureau of Reclamation study. This provision would later be grounds for objection by environmentalists, and was eventually resolved in the final bill with a compromise.

With the introduction of S. 1713, the debate over the scenic river proposal escalated. On October 2, the *Springview Herald* ran two articles on the story, both of which presented the proposal in a favorable light, including quotations

from Senator Exon and several leaders of the landowner group advocating the federal designation. Furthermore, the *Herald* printed the full text of the bill without commentary. However, the leader of the opposition had indeed been hard at work marshalling opposition to the bill. In a press release dated October 11, Welch claimed that his organization had contacted sixty-seven landowners living within one-half mile of the river -- out of a possible eighty -- and had found sixty opposed to the bill.³¹ On the 17th, the *Holt County Independent* published a long article that was strongly unfavorable to scenic river designation. The article, which quoted liberally from Welch, mentioned little about the specifics of the proposed legislation, and presented no viewpoints in favor of designation. In one particularly unbelievable quotation, Welch stated "for every person supporting this proposal in our area, there are more than fifty people against it."³²

Two weeks later, the *Ainsworth Star-Journal* published a letter to the editor, signed by thirty-two landowners, to specifically refute Welch's press release, calling it filled with "exaggerated claims and misleading statements."³³ The letter said that Welch had prohibited the pro-scenic-river landowners from participating in his recent organizational meetings, thus preventing the attendees from hearing their side. It forcefully stated that "a majority of the land is owned by ranchers and farmers who have requested the proposal and still support it."³⁴ Welch's contention of fifty-to-one opposition is shown to be hyperbole; he would have had to find 1600 persons in opposition to offset even these thirty-two supporters!

The statewide papers also entered the fray. On October 11, the Lincoln *Journal* officially endorsed Exon's bill, and called for 3rd District Representative Virginia Smith to introduce a companion bill in the U.S. House.³⁵ This editorial reiterated that riverfront land would remain on the tax rolls, existing land uses would be allowed to continue, and water rights would not be affected. A subsequent *Journal* article exposed the efforts at spreading misinformation about the proposal, and quoted Bassett area landowner Joe Leonard as having said that the "water development interests involved in the opposition have gone to extremes to create controversy where there wasn't any and confusion where there shouldn't be any."³⁶

A further argument that Welch had made was that the bill was fiscally irresponsible, because it would require \$4.5 million for acquiring easements and developing access points along the river.³⁷ Proponents of designation pointed out the hypocrisy in this argument, since Welch had recently advocated spending \$406 million on the Norden Dam, which would have been a huge government subsidy for a small number of ranchers and construction companies.³⁸ Proponents also pointed out that the funding for the scenic river would be allocated from the Land and Water Conservation Fund, through which the federal government funds park acquisition and development from a tax on off-shore oil drilling.³⁹ If these funds were not spent on the Niobrara, they would simply be spent on a park in another part of the country.

In light of the controversy surrounding his proposal, and the seemingly growing opposition, Senator Exon was convinced that the time was not yet right for federal action. Dismayed at the way events had unfolded, Exon said “unwarranted attacks and improper motives have been falsely alleged.”⁴⁰ He agreed to withdraw his bill from the Senate if the Nebraska Natural Resources Commission (NRC) would undertake a study of scenic river designation for the Niobrara. The NRC agreed to consider the issue at an upcoming January 16, 1986 meeting, and it scheduled a public hearing in Springview for January 7 in order to discuss the matter with the local people.⁴¹ The coverage of this meeting in the *Holt County Independent* was considerably more balanced than its October articles, yet it was clear that opponents of scenic river designation were well represented at this meeting.

At its second meeting, the NRC agreed to undertake a study, and established a three-member subcommittee for the purpose. The stated objectives of the study would be to survey the landowners along the river, and to offer alternatives for its protection.⁴² The subcommittee was scheduled to meet with Governor Kerrey on January 28, and was to report to the full NRC on February 20 with a plan.⁴³

Meanwhile, several national conservation groups had reviewed Exon’s scenic river proposal, and they sent a letter to the Senator asking him to strengthen the bill. The organizations represented in the letter were the American Rivers Conservation Council, Environmental Policy Institute, Izaak Walton

League, National Parks and Conservation Association, Sierra Club, and the Wilderness Society.⁴⁴ The letter listed several concerns that, without remedy, would cause these organizations to withhold support from S. 1713. These groups felt that the constraints on land acquisition were too stringent, possibly preventing control of key land parcels within the corridor. Also, concerning the wording that permitted all current land uses to continue, they believed that a mechanism should be provided to prevent incompatible land uses. They also disagreed with the provision permitting the Springview diversion dam within the designated river, fearing that this would set the dangerous precedent of allowing dams within the federal scenic-river system.⁴⁵ Instead, they preferred that the river be designated with a gap between the two river sections. Their first two concerns could not be addressed without violating important compromises made with the original proponents, so these provisions would remain.⁴⁶ Their preference for a gap, rather than a permitted dam, was eventually accommodated by a change in the bill.⁴⁷ As it turned out, this “gap” area coincided with the area of weakest landowner support, so removal of designation from this gap would also serve to lessen the opposition. This letter from the national conservation groups clearly shows that they preferred a much stronger bill, but Exon was unwilling to concede on certain issues. He was indeed trying to find common ground between protection of the resource and the needs of the local people.⁴⁸

While the NRC was conducting its study, many of the local governments passed resolutions in opposition to the federal scenic river proposal. Sparsely populated Keya Paha County (1,029 persons in the 1990 census) led the way with a letter to the NRC opposing scenic river designation, saying that any protection would be best provided by county governments and the Natural Resource Districts.⁴⁹ On May 29, Keya Paha County's board of commissioners made an official statement of opposition, citing possible adverse impacts on their tax base and on county road maintenance. Their resolution also made a statement calling the Niobrara River only "a large drainage ditch where we are losing our surplus ground water."⁵⁰ Scenic-river proponents would later use this outrageous statement to persuasively demonstrate that the local governments were not the appropriate entities for protecting the river. The Lower Niobrara Natural Resource District -- covering the Niobrara Valley downstream from Meadville -- resolved thirteen to zero, at its June 2 meeting, to oppose national scenic river designation.⁵¹ The Brown County Board of Commissioners did likewise the next day, followed in rapid succession by the Niobrara River Basin Development Association, County Board of Cherry County, and the Middle Niobrara NRD.⁵²

Governor Kerrey, however, was still strongly in support of the scenic river proposal. Apparently aware that the NRC was hostile toward federal

⁴⁹ Natural Resource Districts (NRDs) are watershed-based local government units, created by the State of Nebraska in 1972. They have jurisdiction over natural resources, and members are democratically elected to serve their districts.

designation, he wrote to Larry Moore, chairman of the NRC, urging completion of the study:

I urge the Commission to speed up the study and come out strongly in support of designation. Every major environmental preservation effort in the United States has been done with significant local opposition. The real issue is do we want the river to remain the same for our children and grandchildren? As state and local leaders, we must have the courage to take stands that are controversial.⁵³

Kerrey was clearly exercising leadership on this issue, but the signs from the NRC were not encouraging. On June 12, the NRC met to consider the Niobrara, along with its routine business, and a motion was prepared to officially oppose federal designation. However, several commissioners objected because the Niobrara was not on the board's agenda for the day, and thus a decision at that time would deprive citizens a voice at the meeting. The Commission then agreed to delay their decision until September, with one member asking the two sides to work together over the summer in an attempt to find some acceptable compromise. Commissioner Vince Kramper, who offered the motion to oppose designation, predicted that his viewpoint would eventually prevail, saying "the minds of the commissioners are made up."⁵⁴ Several weeks later, the three-member NRC subcommittee met in Ord, Nebraska. The minutes of the meeting show strong opposition to federal designation:

It is clear that none of the three members on the [sub]committee wanted to see Exon's proposal passed as it is presently written. Frank [Bartak] does not want to see any protective action, federal or state, taken at this time ... Milt [Christiansen] and Mike [Shaughnessy] appeared to be considering other alternatives less than federal designation.⁵⁵

It appeared that Senator Exon's offer to give the State an opportunity to protect the river was a forlorn hope.

An issue first raised in January by the National Conservation Groups – the dangerous precedent of allowing a dam within a scenic river – came to the fore in May 1986. The *Omaha World-Herald* ran an article saying that the scenic river proponents would agree to a revision in the bill language that would designate the river in two segments, omitting the seven- to ten-mile reach in which the Springview diversion dam would be located.⁵⁶ On May 6, Senator Exon asked the Department of the Interior if there was a precedent for establishing scenic rivers with a gap between two segments.⁵⁷ Interior responded in early June that eight other rivers had been created in segments, with three of those cases being in situations similar to the Niobrara.⁵⁸ When the bill was reintroduced in the 101st Congress, it still covered the entire 76-mile stretch, but subsequent amendments would omit a six-mile section pending approval of the diversion dam. A sunset clause stipulated that, if the diversion dam were not approved and authorized within five years of passage of the bill, this stretch would become part of the scenic river.⁵⁹

In August, the NRC released its study, which surveyed the landowners and evaluated preservation options, but made no formal recommendations.⁶⁰ The report's survey revealed that, based on acreage of land owned along the 76-mile river corridor, and excluding government-owned property, 62 percent of the land was owned by people who supported the national scenic river, with 32

percent in opposition, and 6 percent offering no opinion. Based solely on the number of landowners, regardless of acreage, 39 percent were in favor, 41 percent were opposed, 8 percent had no opinion, and 11 percent “might favor designation under some circumstances.”⁶¹ So, depending on how the question was framed, both proponents and opponents could claim majority support for their position!

The report disproved the argument by some opponents that the designation would have an adverse impact on the local tax base. Most importantly, it stated that Nebraska lacked an effective mechanism for protecting its rivers. The report noted that twenty-eight other states had developed river preservation mechanisms, suggesting that Nebraska was certainly not in the forefront of protecting natural resources.⁶² The report concluded by remarking that “what is lacking under [Nebraska] state law is the basic governmental structure and direction to ... [attain] the goal of river preservation.”⁶³

The Natural Resources Commission met on September 11th. Kramper agreed to withdraw his motion-to-oppose that was tabled at the June meeting. A considerably more moderate, although somewhat ambiguous, motion was then unanimously passed that praised the value of the resource, while avoiding mention of federal designation. It sidestepped the issue by saying that it “strongly favors local involvement at this time,” and that the local people, through their duly elected local governments, should “preserve, protect, and manage” the river as they see fit.⁶⁴ The state-wide papers and Senator Exon complimented

the Commission on its clear acknowledgment that the river is a resource worth protecting, and Exon promised to continue his efforts at achieving a better consensus among the residents.⁶⁵ The Lincoln *Journal* also was pleased that the resolution used the words “local involvement” rather than “local control,” thus leaving open the door to federal action.⁶⁶ On the other hand, the board apparently ignored the strong conclusion of the NRC study that Nebraska lacked an existing mechanism to adequately protect the river. With the recommendation for local involvement, a push began for the affected counties to adopt zoning ordinances.⁶⁷ At the time, none of the four counties had zoning ordinances in place, although Brown County had, just ten days earlier, initiated the process of zoning the county through the establishment of a three-member planning commission.⁶⁸ Local and state efforts would continue in the upcoming months, although some people questioned whether these efforts were in earnest or simply to forestall federal action.

While the NRC report was being issued, the Omaha *World-Herald*, the paper with the largest circulation in Nebraska, came out with a strong endorsement of the federal scenic-river proposal.⁶⁹ The editorial acknowledged that the concept of a partnership between the federal government and the local citizenry would be the best approach for preservation. It also praised past stewardship by the residents, but stressed that less-enlightened landowners might come to control parts of the valley, likely resulting in inappropriate development and degradation of the environment. On August 1st, the *World-*

Herald ran a group of articles, including a pro-and-con debate, that gave substantial coverage to these issues. They compared pro-designation landowners – often ranchers or farmers willing to make some sacrifices to ensure that their way of life and the river were protected -- with anti- landowners -- often business people or owners of small parcels who anticipated future lucrative land-development possibilities.⁷⁰ These articles also showed the views held by key political leaders. U.S. Representative Virginia Smith, who represented the Niobrara area in Congress, opposed the designation, citing lack of local support. Congressman Hal Daub, whose district included Omaha, refused to take a stand, saying that he would back Smith's position because the river was in her district.⁷¹ The scenic-river effort would get no leadership from these politicians. The statewide coverage by the *World-Herald* and the Lincoln dailies was developing pro-designation attitudes in the state's urban centers, but the local populace remained badly divided. One local opponent, State Senator Howard Lamb, whose 43rd District covered all of the counties involved in the scenic-river proposal, would carry the effort to the state legislature at its next session.

On January 27, 1987, Lamb introduced LB 415, a bill to amend Nebraska's interlocal cooperation act to "authorize the creation of regional park authorities."⁷² As mentioned in the NRC's study, the state did not have appropriate mechanisms in place for local governmental units to cooperate in protecting the Niobrara. This deficiency would hinder local efforts at preservation because the portion of the river under consideration fell within four counties, one

irrigation district, and two natural resource districts (NRDs). Lamb's bill sought to remedy this by allowing the counties, NRDs, public power districts, and irrigation or reclamation districts to cooperate with one another for "regional park and other outdoor recreational facilities."⁷³ While LB415 was targeted specifically at the Niobrara, it might also prove useful for future park and land preservation efforts. The bill was referred to the Committee on Government, Military, and Veterans Affairs, which held a hearing on February 11th. Harlin Welch and others testified in favor of the measure, but the bill was doomed when the Nebraska Game and Parks Commission testified in opposition, seeing the bill as a possible threat to its jurisdiction.⁷⁴ To the dismay of those advocating local action for preserving the river – and to those who hoped that this effort would obviate federal action – the committee voted six to zero to indefinitely postpone action on the bill.⁷⁵

After this failed effort in the Unicameral, other than some progress at the county level in developing zoning regulations, the issue faded into the background for two years until the first session of the 101st Congress, in which Senator Exon re-introduced his bill. Nebraska's congressional delegation in the 101st Congress, however, would be markedly different. As a result of the November 1988 election, Robert Kerrey would join Exon in the U.S. Senate, and Peter Hoagland would replace Hal Daub in Congress. Four of the five members were now supporters of the Niobrara Scenic River Designation Act, with Virginia Smith remaining the only opponent. These political changes would prove instrumental in the ultimate success of the effort, but the struggle had just begun.

NOTES

¹ U.S. Congress, House, Committee on Interior and Insular Affairs, *Niobrara Scenic River Designation Act of 1990: hearings before the Subcommittee on National Parks and Public Lands*, 101st Cong., 2nd sess., Ainsworth, Nebraska, March 16, 1990, 172.

² Franklin and Lillie Egelhoff, et. al., undated letter to Honorable (Senator) J. James Exon, apparent date May 1980. Letter on file at O'Neill National Park Service Office, O'Neill, NE, NNRC File Drawer II, Folder #1.. These files hereinafter cited as O'Neill NPS Office. A copy of this letter is included in the Appendix. This letter also found at U.S. Congress, House, *Niobrara Scenic River Designation Act of 1990: hearings before the Subcommittee*, March 16, 1990, 431.

³ Ron Klataske, Regional Vice President of National Audubon Society, to Senator James Exon, June 1, 1983, copy of letter on Exon Library World-wide Web Site: <http://www.exonlibrary.com/pdf/ic1983.pdf>, pp. 21 and 22 of 70.

⁴ Gabriella Stern, "Scenic River Proposal Makes Waves," *Omaha World-Herald*, August 1, 1986, 37.

⁵ U.S. Congress, House, *Niobrara Scenic River Designation Act of 1990: hearings before the Subcommittee*, March 16, 1990, pp. 172-174.

⁶ U.S. Congress, House, HJR (House Joint Resolution) 631, 97th Cong., 1st sess. *Congressional Record* 128, pt. 22 (December 14, 1982): 30532.

⁷ Klataske to Exon, June 1, 1983, pp. 21 and 22 of 70.

⁸ Fred Thomas, "'Wild, Scenic' Tag Sought to Prohibit Dams on Niobrara," *Omaha World-Herald*, March 17, 1985, p. 10-B.

⁹ Fred Thomas, "National Scenic River Status Sought for Niobrara Stretch," *Omaha World-Herald*, May 20, 1985, 13.

¹⁰ *Ibid.*, 13.

¹¹ Senator J. James Exon, to The Honorable Robert Kerrey, July 11, 1985, O'Neill NPS Office, Folder #5.

¹² Governor Robert Kerrey, to Senator J. James Exon, September 27, 1985, O'Neill NPS Office, Folder #5.

¹³ Dayle E. Williamson, memorandum to Governor Robert Kerrey, September 20, 1985, O'Neill NPS Office, Folder #5.

¹⁴ Jay Holmquist, Assistant Legal Counsel, Nebraska Natural Resources Commission, letter to Mr. Greg Pallas, September 27, 1985, O'Neill NPS Office, Folder #5.

¹⁵ U.S. Congress, House, *Niobrara Scenic River Designation Act of 1990: hearings before the Subcommittee*, March 16, 1990, pp. 38, 185, 194, 316, 413.

¹⁶ "Controversy Brews on River Designation," *Ainsworth Star-Journal*, August 21, 1985, p. 1.

¹⁷ *Ibid.*

¹⁸ Harlin D. Welch, to Governor Robert Kerrey, August 22, 1985, O'Neill NPS Office, Folder #5.

¹⁹ "Scenic River Meeting Draws Large Crowd," *Springview Herald*, September 18, 1985, p. 1.

²⁰ *Ibid.*

²¹ "Area Meeting Held on Scenic River Designation," *Ainsworth Star-Journal*, September 18, 1985, 2.

²² Burns McCulloh, "Landowners Speak Out Against Proposed Scenic River Bill," *Atkinson Graphic*, September 19, 1985, 1.

²³ *Ibid.*, 2.

²⁴ William A. McGeeveran, Ed., *World Almanac and Book of Facts, 2002*, (New York: World Almanac Books, 2002), 432-3.

²⁵ Congress, Senate, *Niobrara Scenic River Designation Act of 1985*, 99th Cong., 1st sess., S. 1713, *Congressional Record* 131, pt. 124, (September 30, 1985): S 12317.

²⁶ 16 USC 1273 (b), (2).

²⁷ U.S. Congress, Senate, *Niobrara Scenic River Act of 1985*, Section 3(c).

²⁸ *Ibid.*, Section 3(d).

²⁹ *Ibid.*, Sec. 2(C).

³⁰ *Ibid.*, Sec. 2(E),(i).

³¹ Harlin D. Welch, press release from Nebraska Landowner's and Sportsmen's Association, October 11, 1985, O'Neill NPS Office, Folder #5.

³² "Welch: 75% of Landowners Oppose Scenic River Designation for Stretch of Niobrara," *Holt County Independent*, October 17, 1985, 2.

³³ Harold and Lucille Hutton, et. al., letter to the editor, *Ainsworth Star-Journal*, October 30, 1985, p. 3.

³⁴ *Ibid.*

³⁵ "Preserve the Niobrara," *Lincoln Journal* (editorial), October 11, 1985, 8.

³⁶ "Niobrara Landowner Group Says Misinformation Spread," *Lincoln Journal*, October 21, 1985, 6.

³⁷ U.S. Congress, Senate, *Niobrara Scenic River Act of 1985*, Section 2(i).

³⁸ "Investment for Niobrara is Praised by Landowners," *Rock County Leader*, November 14, 1985, 5.

³⁹ *Ibid.*

⁴⁰ J. James Exon, to Mr. Vince Kramper, Chairman, Nebraska Natural Resources Commission, December 20, 1985, O'Neill NPS Office, Folder #5.

⁴¹ "Many at Hearing Question Scenic River," *Holt County Independent*, January 9, 1986, 1.

⁴² Dayle E. Williamson, Director of Natural Resources, to Senator J. James Exon, January 17, 1986, O'Neill NPS Office, Folder #4.

⁴³ Dayle E. Williamson, Director of Natural Resources, to U.S. Representative Virginia Smith, January 24, 1986, O'Neill NPS Office, Folder #4.

⁴⁴ American Rivers Conservation Council, et. al., to Senator J. James Exon, January 8, 1986, O'Neill NPS Office, Folder #4.

⁴⁵ Ibid.

⁴⁶ U.S. Congress, Senate, Committee on Energy and Natural Resources, *Harpers Ferry; Niobrara River; and Council Bluffs, Iowa Trails Interpretation Center*, hearing before the Subcommittee on Public Lands, National Parks, and Forests, S. 280, 101st Congress, 1st sess., April 5, 1989, 155.

⁴⁷ 105 Stat. 254. Public Law 102-50, 102nd Congress, May 24, 1991 (S. 248), Sec. 3(b).

⁴⁸ U.S. Congress, Senate, *Harpers Ferry ...*, hearing before the Subcommittee, April 5, 1989, 155.

⁴⁹ Keya Paha County Board of Commissioners, resolution addressed to Nebraska Natural Resources Commission, April 8, 1986, O'Neill NPS Office, Folder #4.

⁵⁰ "Keya Paha County Board of Commissioners Statement," May 29, 1986, O'Neill NPS Office, Folder #4.

⁵¹ Lower Niobrara NRD, "Resolution," June 2, 1986 (Attached to memorandum from Keith Drury, NRD District Manager, to Nebraska NRC), O'Neill NPS Office, Folder #4.

⁵² Brown County Board of Commissioners, "Resolution," June 3, 1986. Niobrara River Basin Development Association Board of Directors, "Resolution," June 10, 1986. Cherry County Board of Commissioners, "Resolution," June 10, 1986. F. D. Graff, District Manager, Middle Niobrara NRD, to Scenic River Committee, Nebraska Natural Resources Commission, June 10, 1986, All documents found at O'Neill NPS Office, Folder #4.

⁵³ Governor Robert Kerrey, to Larry Moore, Chairman of NRC, May 6, 1986, O'Neill NPS Office, Folder #4.

⁵⁴ Nancy Hicks, "Resource Commission Delays Scenic River Vote for Niobrara," *Lincoln Star*, June 13, 1986, 11.

⁵⁵ "Scenic River Three-Member Committee Meeting, Ord, Nebraska, July 3, 1986," memorandum, O'Neill NPS Office, Folder #3.

⁵⁶ Fred Thomas, "Scenic-River Supporters Hope Proposal Will Flow," *Omaha World-Herald*, May 2, 1986, 17.

⁵⁷ J. James Exon, to Paul R. Holtz, U.S. Department of Interior, May 6, 1986, O'Neill NPS Office, Folder #4.

⁵⁸ Denis P. Galvin, letter signed for William Penn Mott, Jr., Director, to Senator Exon, June 2, 1986, O'Neill NPS Office, Folder #4.

⁵⁹ Public Law 102-50, 102nd Congress, May 24, 1991 (S. 248). See appendix for full text of the law.

⁶⁰ Annette Kovar, *The Niobrara River: A Proposal for Scenic River Designation* (Lincoln: Nebraska Natural Resources Commission, 1986), 1.

⁶¹ *Ibid.*, 15.

⁶² *Ibid.*, 17.

⁶³ *Ibid.*, 27.

⁶⁴ Nebraska Natural Resources Commission, "Resolution Relating to the Niobrara Scenic River Designation," September 11, 1986, O'Neill NPS Office, Folder #3.

⁶⁵ Senator J. James Exon, to Larry Moore, Chairman, Nebraska Natural Resources Commission, September 18, 1986, O'Neill NPS Office, Folder #3.

⁶⁶ Al J. Laukaitis, "Exon Cheers Commission's Punt of Niobrara Designation," *Lincoln Journal*, September 12, 1986, 14.

⁶⁷ Fred Thomas, "Commission Urges Local Efforts To Protect Niobrara River 'Values'," *Omaha World-Herald*, September 12, 1986, 9.

⁶⁸ County Commissioners of Brown County, "Resolution No. _____," [unnumbered], September 2, 1986, O'Neill NPS Office, Folder #4.

⁶⁹ "Niobrara Should Receive Scenic River Designation," *Omaha World-Herald*, August 10, 1986, p. 24-A.

⁷⁰ "Focus on the Niobrara Scenic River Questions," *Omaha World-Herald*, August 1, 1986, 37.

⁷¹ Stern, "Scenic River Proposal Makes Waves," 37.

⁷² Nebraska, 90th Legislature, 1st sess., "A Bill to Authorize Creation of Regional Park Authorities," LB 415, introduced 1/27/87.

⁷³ *Ibid.*, 1.

⁷⁴ U.S. Congress, Senate, *Harpers Ferry ...*, hearing before the Subcommittee, April 5, 1989, 136.

⁷⁵ Nebraska, 90th Legislature, 1st sess., Hearing before the Committee on Government, Military and Veterans Affairs, *LB 415*, February 11, 1987, 4.

Chapter III

The Battle Begins

Senator J. James Exon reintroduced his Niobrara Scenic River Designation bill on January 3, 1989, the first day of the 101st Congress.¹ More than three years had passed since he had agreed to remove the bill from consideration to allow state and local authorities an opportunity to institute their own plan for protecting the river. There had been no significant progress, and no clear demonstration of will at the state or local levels. Exon had come to believe that the local authorities were not going to provide meaningful protection, and that it was time for federal action.² Assigned bill number S. 280, the Niobrara Scenic River Designation Act of 1989 was identical to the version tabled in 1985. The bill was referred to the Committee on Energy and Natural Resources, and a hearing was scheduled for April 5 before the Subcommittee on Public Lands, National Parks, and Forests.

The reintroduction of Exon's bill initiated another flurry of activity among opponents of scenic river designation. The boards of commissioners in Cherry, Brown, Keya Paha and Holt Counties all renewed their resolutions of opposition, originally adopted in 1986.³ Joining these counties in opposition were the cities of Long Pine, Ainsworth and Springview, as well as the Middle Niobrara and Lower Niobrara Natural Resource Districts. Several of these bodies took action in response to a phone call from State Senator Howard Lamb, a leading scenic-

river opponent, and in whose district the river lies.⁴ These governing bodies viewed the scenic-river designation as a threat to future irrigation and hydroelectric uses of the river, and they feared that it would become a financial burden by requiring locally-funded road improvements. They also reasoned that there was no need for the legislation because the local landowners had been good stewards in the past. One local mayor showed an attitude of provincialism when he stated that the only people who would benefit from the proposal were city dwellers from Omaha and Lincoln.⁵

Several other entities, including the North Central Nebraska Reclamation District and the Niobrara River Basin Development Association, began working to unify opponents by asking residents to protest Exon's bill.⁶ While the bias of these pro-water development groups against scenic-river status was to be expected, the local weekly newspapers also contributed by running articles heavily slanted against federal efforts. The headlines, "People in North Central Nebraska Abandoned,"⁷ and "Exon Bill Would End Norden Dam,"⁸ showed not only an anti-scenic river slant, but also demonstrated that at least some of the locals were still clinging to the pipe dream of Norden Dam.

A new Nebraska governor had been elected after Exon removed his original bill from consideration. In late January 1989, Republican Governor Kay A. Orr was leaning toward support of Exon's bill, so long as a reasonable accommodation was made to consider local involvement in the management of the river.⁹ However, Virginia Smith, northern Nebraska's representative in the

U.S. Congress, remained strongly opposed to Exon's bill. She took the position that she could only support it if her "constituents were unified behind it."¹⁰ Smith had been strongly in favor of the Norden Dam and she was politically very conservative, which reflected the prevailing ideology of many of her constituents. She clearly did not espouse the changes in attitudes toward the environment that were occurring in the mainstream of American society in the late twentieth century. Because she was a skillful and experienced politician, she would remain a formidable opponent for the duration of her tenure in the House of Representatives.

Governor Orr clarified her position in a March 14 letter to Senator Exon by stating her general support of the concept, but requesting important amendments. Her conditions included strengthening the proposed Niobrara Scenic River Advisory Commission; clarifying that the act would not create a federal reservation of water outside the limits of the designated area; and adding specific restrictions to any scenic easements obtained for the park.¹¹ By late March, however, Governor Orr had begun to favor a detailed study in lieu of immediate designation. In a letter to Smith, she wrote that a delay in designation would be a worthwhile sacrifice because a detailed management study would provide answers to important questions before committing to designating the scenic river.¹² Smith subsequently introduced H.R. 1673, which would fund and authorize the Department of Interior to conduct a one-year study of the entire 486-mile Niobrara River within Nebraska.¹³

As it had done in 1985, the Omaha *World-Herald* endorsed Exon's bill. In a February 5th editorial, the paper praised the bill as striking a good balance between protecting the river and respecting the interests of the local residents, and it noted the bill's strong bipartisan support. The article also argued that the federal government – with its ability to bring a broad perspective to the issue – was the most appropriate entity for preserving the river. The *World-Herald* likewise criticized Smith for “testing the political winds” rather than taking a stand, and it called on her to take “a more statesmanlike approach.”¹⁴ During the following month, the *World-Herald* released the results of a state-wide poll that it had conducted. It found that 74% of adult Nebraskans supported a “nationally protected” wild and scenic Niobrara, and only 11% were opposed. Interestingly, in Smith's entire 3rd Congressional District, 65% were in support, and only 20% were opposed. While the poll confirmed significant opposition in the four-county affected area -- responses there were two-to-one against – it showed that, state-wide, including much of rural Nebraska, support for designation was strong. Furthermore, the poll showed that the issue was non-partisan, as no appreciable difference was found between the responses given by Republicans and Democrats.¹⁵

In preparation for the upcoming Senate subcommittee hearing, the National Park Service evaluated the proposed legislation and offered an official opinion. Believing that the bill, as written, would create “planning and management problems,” the Park Service held that the specific details

concerning the park -- management options, eligibility for inclusion within the system, boundary options, and classification options¹⁶ -- would be better addressed through a study of the river, rather than being written into the legislation.¹⁷ The Park Service presented this position at the hearing, and would maintain throughout the designation process that a full study of the river should be undertaken prior to designation.

The Senate Subcommittee on Public Lands, National Parks, and Forests held a hearing in Washington on April 5, 1989. This was the scenic-river designation's first official public hearing before Congress, and both sides were well-represented. Senator Exon began by explaining some of the history of the legislation, and again he stressed that it was the landowners who had requested the bill and indeed still supported it.¹⁸ Some foes of the bill argued that it would cause a loss of jobs and an increase in the county tax burden. Exon countered that, on the contrary, designation would encourage economic activity by increasing recreational visitation to the river. He cited the results of a survey conducted by the Valentine Economic Development Committee, which concluded that the average canoeist spent \$165.00 per visit, with then-current visitation ranging between 20,000 and 25,000 canoeist per year.¹⁹ He also presented an estimate from a reputable economist that designation would result in \$4 million annually in additional sales, which would provide \$1.2 million in net income for the region.²⁰

Exon also spoke strongly against Smith's study bill, introduced in the House the day before the Senate subcommittee hearing. He hinted that it was merely a stalling tactic, and that it would introduce new complications and enlarge the base of the opposition.²¹ He argued that there was no logic in studying the entire 486 miles, because large portions of the river were nothing more than a typical high plains stream flowing through ordinary grasslands. Nebraska's junior senator, Robert Kerrey, also made a brief statement before the subcommittee, praising Exon's courage for leading this controversial and politically risky bill. Kerrey called S.280 a good compromise between the needs of the local landowners and the urgency for resource protection.²²

Virginia Smith began her testimony against S. 280 by asking the subcommittee to hold field hearings on the bill in the Niobrara valley area, which she felt would show the magnitude of local opposition to the bill. She stated that many residents resented the intrusion from Washington, and they disagreed that only the federal government was capable of protecting the river.²³ She also argued that a study had never been conducted on the river's suitability for scenic-river status, thereby justifying her study bill as the best course of action. Smith's position was that the river had been well tended by the landowners in the past, so the protective designation was unnecessary. A dialog followed between Smith, Exon, and subcommittee chair Conrad Burns of Montana. Burns pointed out that the 1968 "Nationwide Rivers Inventory," compiled in preparation for the original Wild and Scenic Rivers Act, identified 253 river-miles of the Niobrara as

having potential for designation. He then asked Exon why the current proposal covered only seventy-six miles. Exon simply stated that this stretch was chosen because it was requested by the landowners, and no significant interest had been shown in other areas.²⁴ This lack of landowner interest beyond the 76-mile stretch challenged the merit of Smith's bill to study the entire river.

Opponents of scenic river designation testified next, starting with Rufus Amis, past president of the Nebraska Water Resources Association, an industry group advocating construction of dams and irrigation projects. Indeed, as owner of a heavy-equipment dealership during the push for approval of Norden Dam, he had been a key proponent of that now defunct project, and had stood to reap tremendous financial gain by selling and repairing the machinery to be used in its construction.²⁵ In cross-examination, Exon intimated that perhaps Amis still held out hope that the Norden Dam would be built, a point that scenic-river proponents would use to assail opponents throughout the process.

Amis presented a written report articulating thirteen points as bases of objection to the scenic-river designation. These points mostly re-iterated the arguments that opponents had been making since 1985: that the river was already well protected; the residents did not want the bill and were offended by the federal government's intrusion; comprehensive resource planning should be undertaken prior to federal action; and that resource management was best handled by the local authorities. Amis further argued that water rights might be impinged upon, and that an erosion of the tax base would occur, causing an

economic hardship.²⁶ Scenic-river advocates had predicted that designation would spur a large increase in visitation, thereby benefiting the local economy through an influx of tourist dollars. Amis, in a final point, predicted that such increase in visitation was not likely to occur from designation.²⁷ His points added nothing new to the argument, save his prediction of future visitation, one that would be proven quite incorrect.

Following Amis's testimony, a financial analysis of the effects of the proposed designation was entered into the record. This report, prepared by the Niobrara Basin Environmental Improvement Commission, a Norden Dam advocate and scenic-river foe, presented eleven pages of predicted negative economic effects from designation, followed by one page that merely dismissed any possible positive economic impacts as unlikely.²⁸ This report is indicative of the tremendous ideological gulf that existed between the two sides. Foes framed most of their objections in economic terms, but refused to consider that economic benefits of a scenic river might be significant. They also believed that they held the moral high ground, in that they were protecting the rights of future generations to exploit the resource and thus make a living in a hard land. Proponents, on the other hand, sought to preserve the river for its intrinsic value, for its diversity of life, and for the enjoyment of future generations of Americans. The record shows that Exxon and the bill's proponents truly sought compromise on this issue, while the opponents did not.

Exon again raised the further-study issue when he asked Denis Galvin, Deputy Director of the National Park Service, how long it would take to conduct the study that they were recommending. Galvin said that usually two years were needed for developing draft plans and properly involving the public in the review and comment process.²⁹ Exon then asked Galvin how a study could be completed in the one-year period that the Smith bill mandated – for the entire 486-mile river, no less. Galvin responded that the time for the public to review and comment on the alternatives would be compromised.³⁰ This was an obvious and fairly persuasive effort by Exon to demonstrate that Smith's study bill was of dubious nature.

A panel of three proponents testified as the next group of expert witnesses. Valley resident Beryl Kuhre -- widow of Loring Kuhre, a canoe outfitter and early scenic-river advocate who had died in 1986³¹ -- reiterated the grass-roots origins of the bill, and emphasized the ecological and aesthetic values of the river.³² George Lincoln, a businessman from Lincoln and owner of a ranch in the Niobrara region, while praising the stewardship of the landowners, contended that only the federal government had the power to protect the valley from the impending pressures of commercialization.³³ Al Steuter, director of science and stewardship at The Nature Conservancy's Niobrara Valley Preserve, stressed the importance of the valley's habitat and biological diversity. He feared that fragmentation of that habitat would be the inevitable result of piece-meal development. He also noted that valley real estate was being aggressively

marketed with a strong recreational emphasis, a sure sign that development was imminent.³⁴

State Senator Howard Lamb led the next panel of opponents. After a brief testimony about his life experiences on the river, he presented a three-page written statement listing his objections to the bill, including older arguments that the local people did not want it, and that the landowners were preserving the integrity of the valley. Lamb did, however, present a new reason to oppose designation -- a federal scenic river would attract *too many* visitors. He argued that the hordes of canoeists would exceed the area's capacity and degrade the resource from overuse.³⁵ Next to speak was Robert Hilske, manager of the Middle Niobrara NRD. He stated that the best course of action would be to develop a comprehensive, basin-wide economic land- and water-use plan.³⁶ He believed that the scenic-river designation was hasty, and would preclude the future "best use" of the resource. Keya Paha County Commissioner Larry Shepperd completed the remarks of the panel of expert witnesses by saying that the scenic river would lock up the water that future generations would need. He also stated the well-worn axiom that local people know what is best for their area and they should be able to decide its fate without intrusion from the federal government.³⁷

The final group of witnesses represented the environmental community. Kevin Coyle was vice president of American Rivers, a national organization advocating healthy and free-flowing rivers. Ron Klataske was both a Vice

President in the National Audubon Society and a local landowner; he owned 218 acres of pasture along the river north of Bassett. He was an important leader among the scenic-river proponents, and his viewpoint contained both a national perspective and a local sensitivity. Klataske freely praised S.280 as an excellent compromise that “safeguard[s] the vital interests of ...owners along the river, and recognizes that good stewardship can be achieved through a carefully articulated partnership between private individuals and their government.”³⁸ He also persuasively showed that Smith’s bill to study the entire river would create confusion and result in no benefit for the river. The legislation for the 76-mile stretch was conceived and drafted by the landowners in that area. If grass-roots support were to develop elsewhere in the valley, either for designation or study, then those owners could initiate action separately. He argued that it was pointless to lump the 76-mile stretch – where “public use is accepted, endorsed, part of the lifestyle ... [and] part of the local economy” – with the very different upper and lower river where public use is not accepted.³⁹

Coyle presented several specific recommendations for improving the bill, including deleting Section 2(D), allowing the Springview diversion dam. He recommended that the river be designated with a gap rather than establishing the dangerous precedent of authorizing a dam within a scenic river. He also believed that the Niobrara Scenic River Advisory Commission would unnecessarily hinder the Park Service in its management of the river.⁴⁰ In lieu of this body, Coyle suggested the use of private land trust activities, development of

cooperative agreements, and use of local land management plans as creative methods to accomplish the same ends in a way that would allow the Park Service more management flexibility.⁴¹ Exon, of course, could not concede this item, since the Advisory Commission was a central tenet of the grass-roots proposal.

A final argument by Coyle was that certain specific management issues would be more appropriately covered in the legislative history than in the bill language; again, this would allow greater flexibility to the Park Service in developing a management plan. Coyle gave two examples: Section 2(F),(ii), which allowed certain landowners to build one additional residence under certain circumstances; and Section 2(F),(i), which stated that existing practices, such as irrigation systems, could be repaired or replaced.⁴² The bill, as it emerged from committee, would strike some of this objectionable language, particularly the additional residence clause.⁴³

Once again, a clear philosophical split was evident between the scenic-river friends and foes. Opponents largely centered their arguments around “it ain’t broke, so don’t fix it.” Proponents of the bill, on the contrary, argued that development pressures were building, and the time to protect the resource was before it became degraded. Exon, Hoagland, Kerrey, and other proponents advocated pro-active leadership; Smith, at least on this issue, did not. On the other hand, there was some very important common ground. Almost all people on both sides of the issue agreed on the high quality of the resource and on the

need to maintain its integrity; what differed was their proposed method for doing so.

On October 31, the Senate Committee on Energy and Natural Resources ordered S.280, with amendments, favorably reported, by a vote of nineteen to zero.⁴⁴ The amendments included various technical changes to better conform to the Wild and Scenic Rivers Act.⁴⁵ Importantly, the six-mile segment at the Springview diversion dam project was deleted, and a study was authorized to evaluate and identify alternatives for construction of the diversion dam in a manner that would not adversely affect the river.⁴⁶ The amended bill reached the floor of the Senate on November 9, and passed on a unanimous voice vote.⁴⁷

The next step for the legislation was in the U.S. House of Representatives, and scenic-river foes had an important ally there in Virginia Smith. She was a steadfast opponent of designation, and her legislative skills and seniority encouraged the opponents in their hope of stopping the bill. In anticipation of the House subcommittee hearings, state and local activity accelerated. Governor Orr and her aides had been studying Exon's bill, and requested that three changes be made before she could offer her support. She requested that the Advisory Commission be strengthened to give the local people more power; that that board be given veto power over federal land purchases or condemnations; and that more study be given to the width of the protected corridor.⁴⁸ Exon responded by stressing that the amount of local involvement in this legislation was already unprecedented, and that Orr's requests would render the Park

Service powerless.^{*49} Governor Orr supported the scenic-river designation “in concept,” but she sought to ensure that the local people would be adequately involved in the planning. Orr sent Nebraska’s Natural Resources Director Dayle Williamson to Washington in January to meet with the state’s congressional delegation to work out a compromise that would be “best for Nebraska.”⁵⁰ Although this compromise effort would prove unsuccessful, by late January, Orr had gone on record as “strongly supporting” scenic river designation for the Niobrara, but wanting local involvement in the process.⁵¹

Until November 1989, Congressman Douglas Bereuter -- representing the Lincoln-based First District -- had been silent on the Niobrara issue. First elected in 1978, Bereuter continues today to serve as the senior member of Nebraska’s congressional delegation. A moderate Republican with a mixed record on environmental issues, Bereuter entered the Niobrara debate by announcing his intention to introduce his own bill in the House. Known as H.R. 3823, Bereuter’s bill would designate the 76-mile stretch as a scenic river, but would further authorize establishment of a maximum 170,000-acre Niobrara-Buffalo Prairie National Park, albeit with no land condemnation authority for the latter.⁵² H.R. 3823 would also designate a national recreational river on portions of the Missouri and Niobrara near their confluence. With Bereuter’s announcement, all

* Even without these concessions to Orr, the federal courts would, in 1999, rule that the Park Service had delegated too much of its authority to the Niobrara Council, and they required the Park Service to rewrite its management plan. See Chapter 6, below.

of the state's congressional delegation except Virginia Smith would now be advocating the scenic river.

As the momentum grew in Washington for designation, the resistance in the four-county Niobrara Valley area stiffened. The local newspapers ran numerous articles on the controversy, generally from the anti-scenic river viewpoint, and several counties and municipalities reiterated their opposition on the usual grounds: loss of potential irrigation and hydroelectric development; removal of land from the tax rolls; creation of a financial burden for law enforcement and road maintenance; loss of local control; and the ever-popular, "too much federal intervention."⁵³ Even the Upper Elkhorn NRD, which was in a different watershed and had no jurisdiction along the Niobrara, went on record in opposition, apparently as a gesture of solidarity with its beleaguered comrades to the north.⁵⁴ Certain private citizens were also increasing their activity in opposition. In early February 1990, the Nebraska Landowner's and Sportsmen's Association, led by President Harlin Welch, requested that all landowners within the valley post their land to prohibit hunting, fishing and trespassing, except to any person who could show a return receipt and copies of letters sent to Congress opposing the scenic river.⁵⁵ The pettiness of this action demonstrated an air of desperation; perhaps some of the scenic-river foes sensed that they were fighting a losing battle.

In an effort to develop a compromise, Virginia Smith arranged a meeting with the other members of Nebraska's congressional delegation, to be held in

Washington on January 24th. All members except Bob Kerrey attended the closed-door meeting, and Dayle Williamson attended as Governor Orr's representative.⁵⁶ Exon offered a compromise that, while still designating the river during that year, would prohibit the federal government from obtaining easements or condemning land for one year while the management plan was prepared. Smith still found this unacceptable, saying it would be pointless to study the river once the designation was a *fait accompli*.⁵⁷ Exon also agreed to include Bereuter's recreational river segments in his bill, and to authorize a feasibility study of the proposed Niobrara-Buffalo Prairie National Park.⁵⁸ For her part, Smith agreed to scale down her study proposal to consider only the 76-mile stretch, which would at least lessen the objection that studying the entire river was simply a red herring.⁵⁹ Notwithstanding these compromises, it appeared that the ideological gap between advocates and foes was too great to bridge. Exon said that he did not believe that a compromise could be reached on which all parties could agree. State Senator Howard Lamb showed the futility of compromise when he said "I don't see anything that would make the scenic river designation be acceptable to me or a great many people in the area."⁶⁰ In March, the House subcommittee would hold hearings on three different Niobrara bills – one from each of Nebraska's three representatives. Unity had proven elusive.

In February 1990, opponents of designation took drastic action on two different fronts, both of which would backfire and lead to them being branded as

reactionary extremists. On February 4th, the Niobrara Basin Preservation Association, yet another anti-scenic river organization led by Harlin Welch, ran a full-page advertisement in the Sunday *World-Herald*.⁶¹ It stated that Senator Exon has “declared war on rural Nebraska and on [the] Niobrara River Basin.” The advertisement said he was trying to “railroad thru [sic] Congress” legislation that will:

- Disastrously alter canoeing on the river;
- Disastrously alter hunting and fishing, and turn it over to a federal bureaucrat for control;
- Remove “forever” the use of 1.2 million acre-feet of water per year [the river’s entire flow] from Nebraskans, turning it over to the federal government;
- Impose restrictions on the river that are “equal of [sic] simply turning over private property” to Washington; and
- Impose federal rules that will adversely affect livestock grazing and land use rights.⁶²

The advertisement named nine members of the sponsoring organization, and listed sixteen municipalities and other groups that were opposed to “Exon-sponsored legislation to seize the Niobrara.” After a defensive statement about how the politicians had ignored their concerns, it urged readers to write Exon and Governor Orr to express their opposition. It provided a handy form to fill in, clip, and mail, that said “We are against your scenic rivers legislation to control our land and limit our rights.”⁶³

A reading of Exon’s bill and the Wild and Scenic Rivers Act would prove groundless the claims of the attack advertisement’s sponsors, and an immediate and strong reaction was forthcoming. Exon called the advertisement “the big lie

technique,” and its accusations “so ludicrous [that] they are not worthy of serious discussion.”⁶⁴ He also said it “demonstrates the irresponsible hysteria that a few ringleaders will go to satisfy their ends.”⁶⁵ Many of the supporters of the scenic-river believed that their cause was actually helped by this advertisement, which in reality further marginalized and de-legitimized the opposition. Ron Klataske was quoted in a *World-Herald* article on February 7th:

it is ironic the ‘ringleaders’ – Harlin Welch ... Don Zwiebel ... and John DeCamp – advocated building the Norden Dam. They never expressed concern for the landowners ... who would have lost 30,000 acres through condemnation for that project.⁶⁶

In a guest editorial in the *World-Herald*, Dick Spelts, chair of Nebraskans for the Niobrara, a pro-scenic-river group, countered the attack advertisement by showing that Exxon had been very cooperative with the foes, seeking compromise, and pulling back his first bill in 1985 to allow state and local action. Instead of raising legitimate questions, Spelts said its sponsors “chose distortion and scare tactics, still apparently bitter” over the death of Norden Dam.⁶⁷

Scenic-river foes made another attempt at rallying the opposition when they invited Charles Cushman, leader of the National Inholder’s Association, to join their battle against the scenic river. This organization’s stated purpose was to represent “people who have property interests within the boundaries of a federally managed area.”⁶⁸ But the organization and its leader had an ignominious reputation for spreading misinformation and anti-government propaganda. Cushman spoke in Bassett on February 14, and railed against the

Park Service, the scenic-river bill, environmentalists, and the federal government.⁶⁹ Cushman stated that “the National Park Service’s record of broken promises ... [is] a history of land takings and destruction of communities and culture[s].”⁷⁰ He argued that Exon’s bill is “a quick, election-year ‘fix’ of a ‘problem’,” and that it “will result in a huge loss of open farm and grazing land.”⁷¹

Cushman’s general attack on the National Park Service was mostly groundless. His *modus operandi* was to cite a few isolated incidents and blow them out of proportion to instill fear in the local populace. Cushman had used this method to divide and inflame the community around the proposed Flint Hills Prairie National Monument in Kansas, effectively dooming that proposal, and, in the words of Larry Bayer, mayor of Strong City, Kansas, “leaving community officials to deal with false rumors.”⁷² Cushman’s specific attacks on Exon’s bill showed that he either had not researched the issue, or was deliberately misrepresenting the facts. As for his assertion that Exon’s bill was an election-year “quick fix,” it may be recalled that the legislation had been in progress since 1985, and in both cases, Exon had introduced his bill at the beginning of a new congress – nearly two years before the following election! Exon was indeed up for election in November, and scenic-river foes hinted that his position on the Niobrara would threaten his chances at reelection.⁷³ He went on to easily defeat his opponent for another six-year term.

Whether Cushman’s activities had the desired effect of fostering opposition is unclear. However, the local opposition group’s decision to bring in

the man whom Congressman John Seiberling of Ohio called “one of the most notorious liars in the country”⁷⁴ had a negative effect on their image, and further damaged their credibility. In fact, the members of the House subcommittee that would conduct the Niobrara hearings soon began getting a large number of letters from Nebraskans who had been inculcated with misinformation from Cushman. Dan McAcliffe, an aide to Congressman and subcommittee member Ben Nighthorse Campbell (D-CO), reported that committee members were “really concerned that Cushman got into the act, and will react strongly by pushing for passage of the bill.”⁷⁵ Yet another tactic of desperation had failed.

The scenic-river opponents suffered from a credibility problem. Even when one ignores the extreme cases, many of their arguments against designation were clearly self-serving. The unwillingness of the local authorities to relinquish any control to the federal government is understandable and predictable. Yet without specific reasoning, their abstract arguments put them at an intellectual disadvantage vis-à-vis the bill’s proponents, who could point to the grass-roots origin of the bill, and to the noble goal of preserving the natural resource. Further damaging their credibility was their association with the now-discredited Norden Dam Project. Although few people articulated their opposition in these terms, their hope of a future large federal irrigation and hydropower project – which had come to be viewed as potentially disastrous to the river and many of the landowners, while being extremely lucrative for a few

lucky beneficiaries – further allowed scenic-river proponents to take and hold the moral high ground on the issue.

Another central argument against designation – the river has been well cared-for in the past, so there is no justification for action – was seen as reactionary and ill informed. For the prior half-century, the American landscape had been undergoing profound changes. Americans had seen many beloved landscapes being developed, subdivided, commercialized and degraded. With ever-growing numbers of people, a huge increase in the popularity of recreation and second-homes, improved transportation, and even the rise in telecommuting and its attendant dispersal of population, the pressure on scenic areas like the Niobrara were becoming irresistible. The protection that the landowners had been providing through their admirable stewardship was in reality a very slender thread. Coupled with increasing economic instability within the agricultural sector, *drastic change loomed ominously over the pastoral valley*. Once a single landowner sold out to a developer, it would become increasingly difficult for neighbors to resist the pressure. The proponents saw these changes coming, and their goal was to prevent these consequences by protecting the river before development occurred. To argue that there was no threat flew in the face of the overwhelming recent experience of many Americans.

One group of arguments against designation did clearly have credibility. While the legislation had been carefully written, there were still many unanswered questions, particularly concerning boundary and management

issues. That a specific study addressing these issues had not been conducted by the Park Service was a legitimate concern. In hindsight, Exon probably should have pushed for a study in 1985, and then forcefully followed up with a designation bill in 1988. By 1990, however, the further delays that would result from a study were seen as potentially disastrous for the river. While federal development projects would be precluded during a study period, subdivision of private land would be unrestricted. Seeing the issue as their most credible hope, many scenic-river foes eventually embraced this argument. Nonetheless, they remained poorly unified in their opposition, and eventually lost the political battle.

On March 6, Congressman Bruce Vento announced that the House Subcommittee on National Parks and Public Lands would hold a field hearing, at the behest of Virginia Smith, on March 16 in Ainsworth, followed by a March 29 hearing in Washington, to consider the three bills on the Niobrara.⁷⁶ In a lead editorial on March 18, the *World-Herald* wrote that the field hearings would provide another opportunity for local input, and would help to show Congress that there was considerable support for federal protection in the Niobrara region.⁷⁷ Several days later, the *World-Herald* printed a full-page group of articles summarizing the controversy and the pending legislation, and included “for” and “against” articles, written by Ron Klataske and Charles Cushman, respectively.⁷⁸ This extensive coverage demonstrated the importance of the issue to many Nebraskans.

The affected counties were also making one further attempt at forestalling federal action when they announced, on March 17, their intention to create an intergovernmental cooperative agreement to “prepare a local river protection plan as an alternative to a federal law.”⁷⁹ On March 27, the Boards of Commissioners for Cherry, Rock, Brown and Keya Paha Counties voted to form the Niobrara Basin Joint Management Board, and to establish a set of temporary regulations that would limit development activities in a corridor one-half-mile wide on each side of the river. These regulations, which were to expire on April 1, 1991 unless extended, would severely limit new buildings, land subdivision, or expansion of existing uses; and prohibit mobile homes, feedlots, or animal confinement operations.⁸⁰ Rancher and scenic-river advocate Wes Sandall called the requirements a smorgasbord of restrictions that would be more strict than the federal laws. He also criticized the commissioners for not consulting the nearly one hundred landowners affected.⁸¹ Nonetheless, the action was taken to demonstrate that the local authorities could and would control the river in order to protect its value. The counties would send a representative to Washington to participate in the upcoming subcommittee hearings, where they would trumpet their recent action as proof that federal designation was unneeded.⁸²

On March 28, Virginia Smith and seven other Republican House members met with John Sununu, Chief-of-Staff to President George H. Bush, to discuss land-use issues of interest to western states, including the Niobrara legislation. She asked for the administration’s support of her bill to study the river prior to

designation, and she raised the issue of a possible veto if the Exxon bill were to reach the president's desk.⁸³ While receiving no assurances from Sununu, Smith was able to obtain a recommendation letter from Interior Secretary Manuel Lujan, Jr. Lujan wrote that he opposed any bill that would designate the river before a National Park Service study was conducted, and that he would recommend a presidential veto of any such legislation.⁸⁴ Lujan's letter to Smith explained the administration's position: "The president has stated his firm belief that, to protect the integrity and viability of the park system, a new area study should be a prerequisite for the establishment of any new unit of the National Park system."⁸⁵

Even though the hearings had yet to be completed and legislation was far from the president's desk, Smith seemed to believe that she did not have the votes, as she was "outnumbered by so many city-based members."⁸⁶ Smith exhibited a bit of defensiveness when she blamed "urban-dominated Congress ...[for] stifling economic development in rural districts" under the guise of environmental protection.⁸⁷ The demographics indeed were not in her favor, but the United States government is a complex entity that seeks to balance the needs of individuals with those of society as a whole. The focus of this complex legislative process would now move to the House Subcommittee on National Parks and Public Lands.

NOTES

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² *Ibid.*, 22.

³ Nicole Simmons, "Counties Line Up Against Niobrara Plan," *Omaha World-Herald*, February 8, 1989, 39.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ "Scenic River Letters Sought," *Holt County Independent*, February 9, 1989, 2.

⁷ "People in North Central Nebraska Abandoned," *Ainsworth Star-Journal*, February 8, 1989, pp. 1, 6.

⁸ "Exon Bills Would End Norden Dam," *Holt County Independent*, February 9, 1989, 2.

⁹ Dayle Williamson, Nebraska Natural Resources Commission, memorandum to Mike Jess, Director of Natural Resources, January 30, 1989. Document on file at O'Neill National Park Service Office, O'Neill, NE, NNRC File Drawer II, Folder #1. Hereinafter cited as O'Neill NPS Office.

¹⁰ Nicole Simmons, "Virginia Smith Says She Can't Back Niobrara Plan," *Omaha World-Herald*, evening edition, February 2, 1989, 2.

¹¹ Governor Kay A. Orr to Senator J. James Exon, March 14, 1989, O'Neill NPS Office, Folder #12.

¹² Governor Kay A. Orr to Congresswoman Virginia Smith, March 31, 1989, O'Neill NPS Office, Folder #12.

¹³ U.S. Congress, Senate, *Harpers Ferry ...*, hearing before the Subcommittee, April 5, 1989, 23.

¹⁴ "Exon's Niobrara Proposal Gets Welcome Support," editorial, Omaha *World-Herald*, February 5, 1989, 12-B.

¹⁵ "Niobrara River Scenic Tag Found Favor in W-H Poll," Omaha *World-Herald*, March 14, 1989, pp. 1, 6.

¹⁶ U. S. Congress, Senate, *Harpers Ferry ...*, hearing before the Subcommittee, April 5, 1989, 34.

¹⁷ Regional Director, Midwest Region, National Park Service, memorandum to Assistant Director for Legislative and Congressional Affairs, Washington Office, National Park Service, "Comments on H.R. 761 and S. 280 [Niobrara]," March 21, 1989, O'Neill NPS Office, Folder #27.

¹⁸ U.S. Congress, Senate, *Harpers Ferry ...*, hearing before the Subcommittee, April 5, 1989, 22-23.

¹⁹ U.S. Congress, House, Committee on Interior and Insular Affairs, *Niobrara Scenic River Designation Act of 1990*, hearing before the Subcommittee on National Parks and Public Lands, H.R. 761, H.R. 1673, H.R. 3823, and S. 280, 101st Cong., 2nd sess., March 16, 1990, 38.

²⁰ U.S. Congress, Senate, *Harpers Ferry ...*, hearing before the Subcommittee, April 5, 1989, 23.

²¹ *Ibid.*

²² *Ibid.*, 39-40.

²³ *Ibid.*, 41.

²⁴ *Ibid.*, 95.

²⁵ *Ibid.*, 53.

²⁶ *Ibid.*, 50-51.

²⁷ *Ibid.*

²⁸ *Ibid.*, 59-72.

²⁹ *Ibid.*, 98.

³⁰ Ibid., 98.

³¹ "Loring Kuhre Dies," *Ainsworth Star-Journal*, August 13, 1986, 1.

³² U.S. Congress, Senate, *Harpers Ferry ...*, hearing before the Subcommittee, April 5, 1989, 110.

³³ Ibid., 111-112.

³⁴ Ibid., 113-114.

³⁵ Ibid., 121-125.

³⁶ Ibid., 126.

³⁷ Ibid., 127.

³⁸ Ibid., 139.

³⁹ Ibid., 157.

⁴⁰ Ibid., 148.

⁴¹ Ibid., 149.

⁴² Ibid., 149.

⁴³ U.S. Congress, Senate Committee on Energy and Natural Resources, *Niobrara Scenic River Designation Act of 1989*, report prepared by Mr. Bennett Johnston, 101st Congress, 1st sess., October 31, 1989, Calendar No. 332, Report 101-177, p. 4.

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⁴⁵ Ibid.

⁴⁶ Ibid., 5.

⁴⁷ U.S. Congress, Senate, *Niobrara Wild and Scenic Rivers Act*, 101st Cong., 1st sess., S. 280, *Congressional Record*, 135, No. 157, (November 9, 1989): S15408-10.

⁴⁸ "Orr Aides, Exon Disagree Over Scenic-River Bill," *Omaha World-Herald*, November 18, 1989, 31.

⁴⁹ *Ibid.*

⁵⁰ Bob Reeves, "Orr Envoy to Members of Congress to Seek Consensus on Niobrara Bill," *Lincoln Star*, December 14, 1989, 12.

⁵¹ "Resource Director Says Gov. Orr Backs River Plan," *Omaha World-Herald*, Evening Edition, January 31, 1990, 15.

⁵² Doug Bereuter, "Bereuter Proposes National Park for Nebraska and Scenic River Protection for Niobrara River" (press release), November 29, 1989, O'Neill Park Office, Folder #12.

⁵³ "NRD Unit Opposes River Designation," *Omaha World-Herald*, December 22, 1989, 30.

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⁵⁵ "Hunting Restrictions Being Urged," *Ainsworth Star-Journal*, February 7, 1990, 1.

⁵⁶ Paul Goodsell, "Nebraska Delegation Still Split on Niobrara," *Omaha World-Herald*, January 28, 1990, p. 2-B.

⁵⁷ "Exon Offers Compromise on Niobrara River Plan," *Omaha World-Herald*, January 25, 1990, 22.

⁵⁸ Goodsell, "Nebraska Delegation Still Split," p. 2-B.

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⁶¹ Niobrara Basin Preservation Association, "Has Exon Declared War on Rural Nebraska ...?" paid advertisement in *Omaha World-Herald*, February 4, 1990, p. 18-B.

⁶² *Ibid.*

⁶³ Ibid.

⁶⁴ Fred Thomas, "Exon Brands Niobrara Ad 'Ludicrous'," *Omaha World-Herald*, February 5, 1990, 12.

⁶⁵ Ibid.

⁶⁶ "Scenic Niobrara Backers: Ad Helps," *Omaha World-Herald*, Evening Edition, February 7, 1990, 16.

⁶⁷ Dick Spelts, "Scenic River Foes Use Distortion," *Omaha World-Herald*, February 21, 1990, 9.

⁶⁸ Charles Cushman, "National Scenic River Designation: The Arguments For and Against," *Omaha World-Herald*, March 21, 1990, 10.

⁶⁹ Fred Thomas, "Some Question Tactics of Scenic River Opponent," *Omaha World-Herald*, February 25, 1990, pp. 1, 15.

⁷⁰ Charles Cushman, "National Scenic ... Arguments," 10.

⁷¹ Ibid.

⁷² Thomas, "Some Question Tactics," pp. 1, 15.

⁷³ Paul Goodsell, "Help of National Group Sought in Fight," *Omaha World-Herald*, February 9, 1990, 15.

⁷⁴ Thomas, "Some Question Tactics," pp. 1, 15.

⁷⁵ Dayle Williamson, Nebraska NRC, memorandum to Bud Cuca, Governor's Office, April 3, 1990, O'Neill Park Office, Folder #18.

⁷⁶ Paul Goodsell, "Niobrara Hearing is March 16," *Omaha World-Herald*, March 7, 1990, 23.

⁷⁷ "Niobrara River Hearings Should Help Clear the Air," *Omaha World-Herald*, editorial, March 18, 1990, p. 14-B.

⁷⁸ "Niobrara Flows into Landscape of Controversy," *Omaha World-Herald*, March 21, 1990, 10.

⁷⁹ Fred Thomas, "Scenic-River Foes to Prepare Local Plan," *Omaha World-Herald*, March 18, 1990, p. 10-B.

⁸⁰ Fred Thomas, "Scenic-Tag Backer Says Four-County Niobrara Pact Restrictive," *Omaha World-Herald*, March 29, 1990, 17.

⁸¹ "4 County Boards Try to Prevent Scenic Designation of Niobrara," *Lincoln Star*, March 29, 1990, 16.

⁸² Thomas, "Scenic-Tag Backer," 17.

⁸³ Paul Goodsell, "Scenic-River Fight Flows to White House," *Omaha World-Herald*, March 29, 1990, 13.

⁸⁴ Joe Ruff, "Secretary of Interior to Give Bush Advice on Niobrara Bills," *Lincoln Star*, March 30, 1990, 24.

⁸⁵ Secretary of Interior Manuel Lujan, Jr., to Representative Virginia Smith, March 29, 1990, O'Neill Park Office, Folder #11.

⁸⁶ Goodsell, "Scenic-River Fight Flows to White House," 17.

⁸⁷ Smith Meets with Bush Aide, Seeks Support for Niobrara Bill," *Lincoln Star*, March 30, 1990, 24.

Chapter IV

Showdown in the House

Nearly a year had passed since the U.S. Senate had unanimously passed the Niobrara Scenic River Designation Act. Since that time, the bill's opponents had become more strident and seemingly more desperate in their tactics. Compromise had been sought among the Nebraska Congressional delegation, but no consensus was reached – James Exon, Robert Kerrey, Peter Hoagland, and Douglas Bereuter all supported scenic-river designation, and Virginia Smith remained ardently opposed. The House of Representatives was now called upon to settle the issue, and the subcommittee hearing would be the forum for gathering information and taking the testimony of witnesses.

The House Subcommittee on National Parks and Public Lands was chaired by Democrat Bruce Vento of Minnesota. He was first elected to Congress in 1976, and had chaired the subcommittee since 1985. Vento was a tireless advocate of environmental protection, and helped to pass over 300 laws protecting parks and natural landscapes over his career in Congress.¹ A skilled politician, he was very familiar with the pertinent laws relating to federal parks and lands, and he was very well informed about the specific Niobrara legislation and related issues.

The subcommittee first traveled to Ainsworth, Nebraska for a field-hearing on March 16, and then returned to Washington to continue the process on March

29. In both locations, panels of expert witnesses for and against were heard and then questioned by subcommittee members. Four different pieces of legislation were under consideration: Jim Exon's Senate Bill S. 280 and Peter Hoagland's companion House Bill H.R. 761, as well as Virginia Smith's study bill, H.R. 1673, and Doug Bereuter's bill (H.R. 3823) to both designate the river and study the feasibility of a possible Buffalo Prairie National Park.

The Ainsworth field hearing started with several local government officials serving as witnesses, all of whom were strongly opposed to designation. Donald Petersen, president of the Valentine City Council, stated that Exon's bill would essentially turn over the entire annual flow of water within the river to the federal government, and that the legislation contained no assurances that the present land uses along the river would be allowed to continue.²

Next to testify was William Ward, a county commissioner from Cherry County, who launched into a diatribe about how the United States government was on a crusade to take over all of the private land in the country, and he compared the situation to the Soviet Union, where all of the land was owned by the government.³ This drivel was ignored by the subcommittee, but Ward then showed himself to be totally uninformed when, under cross-examination by Vento, Ward admitted that he thought the government could condemn "up to 320 acres per mile of either side" of the river.⁴ This half-mile line, of course, represented one possible boundary, within which the government could obtain conservation easements.

Robert Hilske, manager of the Middle Niobrara Natural Resources District (NRD), based his opposition on a lack of data showing that the 76-mile stretch met the criteria for designation. He further argued that information had not been provided addressing the bill's effects on private land ownership, natural resources, and the local economy. Hilske contended that the entire river basin should be comprehensively studied in lieu of approving the pending designation.⁵

Next to testify was Don Zwiebel, president of the Niobrara Preservation Association, the organization that sponsored the February 1990 attack advertisement in the Omaha *World-Herald*. He was considerably less confrontational at the hearing than his attack advertisement had been. He argued that the watershed should be comprehensively studied prior to designation, and he expressed grave concern over the federal government appropriating water rights.⁶ Vento subsequently proved the water rights issue moot by stating that designation would establish a federal water allocation only on unappropriated water at the time of designation. The federal government could condemn private water rights – although they would have to pay for the water – but, as of 1989, the federal government had never condemned a water right for a wild and scenic river.⁷

The next panel of witnesses, all in support of designation, began with Al Steuter, Director of Science and Stewardship at the Nature Conservancy's Niobrara Valley Preserve. This private conservation organization had purchased 52,000 acres of valley land in Cherry, Brown and Keya Paha counties in 1980 in

an effort to preserve the biological significance of the valley. At the time, the Niobrara Valley Preserve was the organization's largest holding, and the property included nineteen miles of riverfront on one side of the river, and four miles on the other.⁸ Steuter provided two lengthy documents addressing the valley's importance to wildlife and its unusual associations of plant communities.

Next to testify was Wesley Sandall, a rancher and member of the Save the Niobrara River Association (SNRA). Sandall emphasized the scenic and biological importance of the area, and presented a petition bearing 20,000 signatures in support of Exon's bill.⁹ He stated that the residents and landowners who cherished the river and wanted to protect it "are partially threatened by those that want to develop their own interest." He saw these threats to the river as grave and immediate, and argued that the Exon- Hoagland bill would be the best means for boosting the economy of the area; preserving important activities such as hunting, fishing and canoeing; and assuring that agriculture remained the predominant land use in the valley.¹⁰

The final witness on this panel was rancher Franklin Egelhoff, the prime mover of the initial grass-roots scenic river proposal in 1980. He reiterated that support for designation remained strong among many landowners, and he countered two of the objections frequently raised by opponents – the threat of increased taxes, and the lack of local support.¹¹ While not as articulate as many of the witnesses, his sincerity and earnestness in the cause certainly strengthened the perception of the bill as a grass-roots effort.

Next to testify was rancher Tony Arrowsmith. He had been an important opponent of the Norden Dam project, and had even served as treasurer of the SNRA, but he was strongly opposed to the scenic-river effort. He owned nearly 17,000 acres of valley land, including thirteen miles of riverfront, making him one of the largest valley landowners.¹² Perhaps unfortunately for the scenic-river foes, his testimony and statements were filled with misinformation, parochialism and anti-government invective. Showing that he had been inculcated by the views of National Inholders Association leader Charles Cushman, Arrowsmith said he had spoken with persons from other scenic river areas, and they “confirmed my doubts about a scene beyond my worst expectations.”¹³ In railing against what he perceived as an onslaught of city-slicker canoeists using the river, he asked rhetorically “would the cities of ... metropolitan Nebraska appreciate us camping in their front yards?”¹⁴ In a final point, Arrowsmith called it a “known fact” that the Park Service would be condemning lands for access points at every bridge crossing.¹⁵ When asked by Congressman Hoagland where he got his “known facts” about the Park Service condemning land, he referred to “literature when this first came out,” which had “probably [been distributed] before the bill was drawn up completely.”¹⁶

Arrowsmith and other ill-informed witnesses hurt the credibility of the opposition, but perhaps less so than the extreme right-wing ideology displayed by the next witness, Russell Barelmann of the Nebraska Farm Bureau Federation. He extolled the sanctity of private ownership of land and property

rights, and argued that what he termed “intervention by the federal government” would “erode and corrupt the innate values of the area and the people who live here,” and would lead to degradation of the river.¹⁷ Barelmann even took the opportunity to rail against wolves -- the universal bogeymen of the Farm Bureau -- which live nowhere near the Niobrara.¹⁸ It was certainly not lost on subcommittee members that the Farm Bureau is one of the most powerful lobbyists in Washington, and frequently the beneficiary of federal laws and largess. For this organization to be spewing forth such anti-federal-government drivel was blatant hypocrisy. No subcommittee members challenged Barelmann’s assertions, and no questions were asked of him.

Also testifying was Bob Sears, Director of the Nebraska Cattlemen’s Association. He also voiced concern over the loss of personal property rights and local control of water resources, and he feared that designation would remove land from the tax rolls.¹⁹ Hoagland then remarked that the National Cattlemen’s Association had recently reviewed the scenic-river designation bill, and had stated that it had “no concern about the [land] acquisition” issue.²⁰ After two panels of opposition witnesses had spoken, no particularly strong arguments had been made against designation. If anything, their self-serving arguments had detracted from their credibility.

One final panel of witnesses testified at the field hearing. Canoe outfitter Louis Christiansen reiterated the ten-year history of the scenic-river effort, and he held that passage of the bill should occur as soon as possible.²¹ In his written

statement, Christiansen described the recent proliferation of haphazard development along the river, including summer cabins and services for canoeists, and he argued that further delay would only allow this problem to worsen.²² Rancher and SNRA secretary Elsie Leonard eloquently and convincingly argued that it was time to implement “some sort of rules and regulations to protect the river,” and that she and other landowners would “welcome the minimal restrictions” of designation to ensure the preservation of the river.²³ In her written statement, Leonard also held that the government payments for scenic easements would inject money into the local economy, which she called “still financially distressed.”²⁴ By the end of the field hearing, the proponents seemed to have made a persuasive case for scenic-river designation. The hearing concluded with Virginia Smith again calling for a study of the river, not to determine if the river was worthy of designation -- as nearly all agreed on that -- but to determine the best way to manage the river.²⁵

It will be recalled that, shortly after the field hearing, officials from the four affected counties entered into an agreement for establishing local regulations for the preservation of the river. They apparently had realized they were losing the battle, so they quickly developed this cooperative agreement in a last-ditch effort to forestall federal designation. They now concurred that protective regulation was needed, but held that the local authorities were best positioned to develop and implement the regulations.

When the hearing resumed on March 29, Warren Arganbright, an attorney from Cherry County, traveled to Washington to argue this line of reasoning. He presented copies of the resolutions from the four counties creating the Niobrara River Joint Management Board (NRJMB), which included issues to be addressed and management options to be considered.²⁶ Arganbright testified that the locals had “seen the light,” and that Congress had “awakened us to the fact that these things [subdivision, haphazard development, and degradation] can happen”²⁷ Vento then asked Arganbright to explain the inconsistency in Cherry County Commissioner Ward’s testimony two weeks earlier that “the county did not need or want local zoning,” and his subsequent vote for the four-county pact. Arganbright was unable to explain this inconsistency.²⁸

Vento continued to discredit the NRJMB by pointing out that the local regulations would not apply to federal projects such as a resurrected Norden Dam, which was one of the gravest potential threats to the river.²⁹ He also questioned the legality of NRJMB under Nebraska law, which required that, if zoning is to be implemented, it must be applied to the entire county. It was obvious that any effort to encumber these four huge counties with zoning just to effectively regulate a relatively small area would be a politically difficult process.³⁰ Perhaps the four-county pact was a sincere effort, but the hastiness with which it was developed made it of questionable efficacy.

The hearing provided an opportunity for several subcommittee members to speak in opposition to scenic-river designation. Republican Congressman

Robert Lagomarsino of California said there were “many unanswered questions.”³¹ He also praised the recent efforts by the local authorities to protect the river with their four-county pact.³² Republican James Hansen of Utah, a man whose voting record and actions in Congress demonstrated extreme hostility to the environment, spoke against designation, instead praising Smith’s bill to study the river.³³

Another key opponent was Ron Marlenee from Montana. In response to a scenic-river advocate who warned of the threat of subdividing the land for recreational development, Marlenee railed against any such effort to stop subdivision, which he viewed as a sacrosanct property right.³⁴ Defending an unrestricted right of property owners to fragment and develop their lands regardless of the effects on neighbors or the environment, Marlenee showed himself as a property-rights extremist, and very much out of step with mainstream American thought. During this particular speech his time ran out, and Vento immediately cut him off – the only time in two days of testimony that the chairman did not allow a speaker to conclude his remarks at the expiration of his allotted time. These three western Congressmen would lead the fight against the scenic river both in committee and on the House floor. Their ideological battle would continue, but their arguments rang increasingly hollow.

Senator Exon was invited to testify, and he used the opportunity to try to discredit the scenic-river opponents by painting them as extremists.³⁵ He provided copies of letters written to him from several opponents including an

NRD official who wrote that “America is moving toward socialism,”³⁶ and a real estate broker who called the Wild and Scenic River Act “totalitarian.”³⁷ While the use of extreme cases to generalize about a group is a questionable tactic, the examples did seem to further detract from the credibility of the scenic-river foes.

Exon also produced several letters of support, including one from landowner Harold Hutton, who owned three and a half miles of river frontage, and whose family had lived there for 110 years. Hutton wrote that Exon’s bill “does not interfere with a single thing that I wish to do.”³⁸ Hutton added that the anti-scenic river people have put up a “steady barrage of agitation against designation ... [and that their] true objective is another dam project, but they won’t admit it.”³⁹ Exon summarized his testimony by saying that the original landowners who created the scenic-river proposal wanted one thing – that the river be “protected without trampling on anyone’s rights.”⁴⁰

Virginia Smith was an important opposition witness at the hearing. While not a member of the committee, she was given priority as the Congresswoman from the Niobrara region. As before, she stated that she opposed designation because the local people did not want it, and because the issue needed further study before a decision was made.⁴¹ She also disagreed that the valley was threatened by development, saying “there is no threat ... it is pristine.”⁴²

Chairman Vento took exception with her assertion that there were virtually no valley landowners in support of designation. He asked her how many people lived along the 76-mile stretch, and she said “there are 15,000 people who live

along the river, and they are very much opposed to it."⁴³ When challenged by Vento, she admitted that she did not know how many actually lived along the river, and that the population figure she quoted referred to the total for the four affected counties. As usual, Vento had done his homework, and made Smith look a bit foolish by informing her that there were exactly eighty-one private landowners along the river.⁴⁴ Smith's effort was earnest and admirable, but she was overmatched in this exchange.

A group of officials from the National Park Service testified next. Herbert Cables, Jr., Deputy Director of the Park Service, reiterated the administration's opposition to designation without a full study, which would determine whether the river met the requirements for eligibility as a scenic river, and furthermore would evaluate management options.⁴⁵ Also testifying was David Givens, Associate Regional Director of the Midwest Region of the Park Service. When questioned by Vento, Givens concurred that the river has "all the qualities that fulfill the suitability and other requirements of the Wild and Scenic Rivers [Act]."⁴⁶ After this discussion, both Cables and Givens agreed that the only real need for the study was to address issues of management, but they believed this was sufficient grounds to oppose the scenic-river bill.

Next to testify in opposition was Howard Lamb, the Nebraska State Senator whose district encompassed the four affected counties. He feared that the residents would lose their property rights, and that the Niobrara Scenic River Advisory Commission, as established by the bill, would have no real power

because its members were to be appointed by the Secretary of the Interior. He further argued that there was no real threat to the river, and that the local authorities were taking effective action with their recent cooperative agreement, a plan that he supported.⁴⁷ Vento's cross-examination then forced Lamb to admit, embarrassingly, that he had not even read the four-county pact that he claimed to support.⁴⁸

Following Lamb, Bryce Neidig, President of the Nebraska Farm Bureau, argued that the scenic-river would "prohibit or severely restrict most economic uses of" the 76-mile corridor.⁴⁹ This was a curious statement, given that Section 2(C) of the bill specifically directed that the area be managed to protect "the established farming and ranching lifestyles."⁵⁰ Interestingly, no subcommittee members asked the president of the Farm Bureau what other land uses he was concerned about. Neidig also repeated the thoroughly discredited arguments that the lands in scenic easements would no longer be on the tax rolls, and that local water rights would be threatened.⁵¹ Neidig did say that the Farm Bureau supported Smith's study bill, but, when questioned by Vento, admitted that he would still oppose the scenic-river even if the study returned a favorable recommendation.⁵²

Eddie Nichols, President of the Nebraska Cattlemen's Association, stated that the threat of land condemnation would lower property values, and that the easements might be written in a way "tantamount to outright opposition, yet the owner [would] not [be] fully compensated."⁵³ Since the easements would be on a

willing-grantor basis, Nichols's latter point seemed to question the competence and literacy of the residents, and to hint at deliberate deception on the part of the federal government. Furthermore, Nichols's unsupported assertion that a unit of the National Park system would devalue the nearby property values was an absurdity.

The last opposition witness was Dr. Irene Graves, a local landowner, range-management expert, and ecologist.⁵⁴ Her written statement included an historical account of ranching in the area, and how invasive and exotic species of plants were being successfully controlled. Her principal argument against the scenic river was that the local ranchers, with their generations of experience at "controlled grazing [,] selective haying and rangeland improvement practices" were better suited to preserving the balance of the ecosystem than the federal government.⁵⁵ Her point was valid, but inaccurate, since the valley was threatened by development, not ranching. Graves then testified that she believed the federal government intended to remove all grazing from federal lands.⁵⁶ Vento responded with exasperation at this totally uninformed statement from a supposed expert witness.⁵⁷ As is common knowledge to anyone with a rudimentary knowledge of the uses of public lands, particularly those lands managed by the Forest Service and the Bureau of Land Management, grazing on the public domain is not only protected by federal law, but is also securely entrenched both bureaucratically and politically.

Several additional witnesses testified in support of the scenic-river designation, including Tom Cassidy, representing American Rivers, a national environmental organization. His organization supported the designation, but objected to the six-mile study section. They advocated designating the entire seventy-six miles, rather than leaving the door open for a diversion dam.⁵⁸ Cassidy also asked for more specific wording in the bill to provide guidance for the development of the management plan.⁵⁹ Following Cassidy, proponents presented two petitions in favor of designation, which contained a total of 35,000 signatures.⁶⁰

The final proponent to testify was Doug Kuhre, valley rancher and campground operator, and son of early scenic-river advocate Loring Kuhre, recently deceased. He used economic data to show that the profitability of ranching paled in comparison to the recreational and development potential of valley lands.⁶¹ This fact was inescapable, and as the older generation of ranchers died, "there is a pressure on [their] heirs to consider development," and there is a "great deal of demand for cabin sites along the river."⁶² Kuhre gave one more poignant reason why there should be no more delays in establishing the scenic river. Considering the many years of controversy over Norden Dam and recently the scenic river, he felt it would be best for the community if a decision were made rather than to continue the upheaval with more years of study.⁶³

At the start of the Washington hearing, chairman Vento had expressed his dismay at the abundance of misinformation he had witnessed at the field hearing, saying that “this issue ... has created a new license for fiction and mythology.”⁶⁴ He had hoped that the Washington hearing would help to set the record straight, and it seemed that in many cases it had done so. The facts seemed to favor the proponents. And notwithstanding the objections of Virginia Smith, two important politicians – Vento as the subcommittee chair, and Morris Udall as chair of the Committee on Interior and Insular Affairs – were solidly in favor of scenic-river designation. The subcommittee hearing was a critical part of the law-making process, but there were more hurdles to clear.

On June 6, the Democrat-controlled Committee released its report, which favorably recommended S. 280, with amendments, by a vote of twenty-six to fourteen.⁶⁵ All twenty-five Democrats on the committee, and one Republican (Stan Parris of Virginia) voted in favor. The other fourteen Republicans signed a dissenting view, calling for defeat of the bill because “instant” designation without a complete study would be “unprecedented for a river with substantial private interests.” They also argued that significant questions remained concerning the river’s resource values and the impact that designation would have on the landowners.⁶⁶

The committee report attempted to minimize the opposition by stating that much of it was “based on the mistaken notion” that the scenic river would significantly alter the existing valley land uses. It further reiterated that both the

bill and the Wild and Scenic Rivers Act recognized and protected the importance of these land uses.⁶⁷ In yet another effort to dispel fears to the contrary, the report also confirmed that designation would have no impact on existing water rights. The report acknowledged the outstanding stewardship of the valley landowners, but held that, without proper protection, the “Niobrara is vulnerable to adverse developments and degradation.”⁶⁸ The report characterized the recent four-county agreement as being of questionable enforceability. The committee concluded that further study prior to designation was unnecessary because the Niobrara had been under consideration for designation since the mid-1960s, and almost no one had questioned the river’s eligibility. They wrote that the time had come to pass the bill and “implement... a mutually beneficial management partnership among Niobrara Valley landowners, State and local governments, and the Federal government.”⁶⁹

One important amendment that the committee-reported bill contained was designation of the entire 76-mile stretch, thereby rejecting the Senate’s six-mile gap for the so-called Springview Unit.⁷⁰ Another significant amendment added two recreational river designations – a 25-mile stretch of the Niobrara above its confluence with the Missouri River, and a 39-mile reach of the Missouri. The bill also authorized studies of two new possible park units -- a Niobrara-Buffalo Prairie National Park, and a national recreation area in northeast Nebraska. These additional recreational river units and the two study areas were all taken from Representative Bereuter’s bill.⁷¹ But the House amendment that would

generate the most controversy dealt with restrictions on land acquisition. The Senate bill included limiting land condemnation to five percent of the total land within the river corridor, and a complete prohibition on condemning access easements adjacent to the bridges that were within one-quarter mile of a residence.⁷² The House bill removed all of these restrictions, instead relying on the acquisition limitations specified in the Wild and Scenic River Act.

On June 26, the bill was debated on the floor of the House of Representatives. This debate was largely a microcosm of the subcommittee hearings, with Lagomarsino, Jim Lightfoot of Iowa, Don Young, and Virginia Smith speaking against “instant designation,” and Vento, Hoagland, Bereuter, and Bill Richardson of New Mexico arguing in support of the bill.⁷³ After considerable discussion, Smith offered her bill in place of the amended S. 280. After much ideological debate, a vote was called; the Smith amendment received 115 votes of support, and 302 votes of opposition.⁷⁴

Congressman Don Young then introduced an amendment that would have prohibited all acquisition of land or easements without the consent of the property owner.⁷⁵ This amendment, of course, would have created a scenic river in name only, with no power, and with “no ability to protect that resource.”⁷⁶ Vento showed that some condemnation authority was necessary, but, in fact, was strictly limited by the Wild and Scenic Rivers Act and the bill’s wording.⁷⁷ The Young amendment also failed, by a vote of 93 to 323.⁷⁸

After the failure of these efforts to derail the scenic river, the bill, as referred by the committee, passed by a vote of 358 in favor to 59 opposed.⁷⁹ The bill had finally cleared the House, but the amendments required that the differences between the Senate and House bills would need to be resolved in a joint conference committee before the legislation could be sent to the president.

The summer of 1990 passed with no further action on the legislation, and the end of the session was quickly approaching. In early October, Exon announced that negotiators from the two chambers had reached an agreement,⁸⁰ and on October 18 he released the details.⁸¹ The compromise bill established further limitations on land acquisition to assuage the opposition's fears that it would be a "land grab." The park would be prohibited from acquiring, without consent of the owners, an interest in land -- either in fee simple or in easement -- in excess of five percent of the total area within the park boundary. The Park Service was furthermore prohibited from taking (fee simple) title to lands in excess of *two* percent, without consent of the owners. Five- and two percent of the maximum boundary area represented 1,216 acres and 486 acres, respectively.⁸² An exception to this limitation was provided, under Section 4(b), if it could be proven that local governments were inadequately protecting the river and its associated values.⁸³ A second compromise dealt with the 6-mile Springview gap. The gap remained, but Section 3(b) was amended so that the six-mile segment would automatically become part of the scenic river if the

Springview project had not been authorized and funds appropriated within five years after final bill passage.⁸⁴

Virginia Smith, however, still objected to the bill, saying that Section 4(b) – the exception to the land acquisition limitations – would permit the Secretary of the Interior to override the restrictions.⁸⁵ She used this argument to continue her fight at blocking the bill, as both chambers now needed to vote on the compromise version. And with the end of the session looming, the possibility of President George H. Bush using the pocket veto to kill the bill was increasing. After Congress had adjourned, the president faced no threat of a veto-override, a political embarrassment that he of course wished to avoid.

As a further effort to kill the bill, Smith asked Senator Bill Armstrong of Colorado to “place a hold” on the Niobrara bill, which would prevent a Senate vote on the measure. Under Senate rules, any senator may use this technique to prevent consideration of a bill, and Armstrong agreed to Smith’s request – apparently in retaliation for Senator Exon’s roll in the 1989 defeat of Two Forks Dam, a water project in Colorado on the Platte River that Armstrong had championed.⁸⁶ The rules also allowed a senator using the “hold” tactic to remain anonymous. Exon eventually discovered that Armstrong was the culprit; in retaliation, he used his senate privilege to hold up several of the president’s ambassadorial appointments. The White House then called Exon, who “told them to talk to Armstrong.”⁸⁷ With pressure from the White House, Armstrong agreed to release his hold on the Niobrara, and Exon followed suit. The Senate

then passed the Niobrara compromise legislation with four hours left in the session.⁸⁸

After the bill cleared the Senate, it was carried across the Capitol to the House, where many representatives had already begun drifting away since it was after midnight of the final day of the session. With so many of its members absent, the House was operating under a suspension of rules, which required a two-thirds majority of those voting to pass legislation. After a few brief remarks from Vento, Smith, and Bereuter, a vote was taken on the amended and senate-passed bill. In the last vote of the 101st Congress, 157 voted in favor and 95 opposed, with 181 absent -- eleven votes shy of the two-thirds needed under suspension of rules.⁸⁹ Doug Bereuter called it a "sympathy vote" for Smith, who was retiring at the end of the session.⁹⁰ As only 59 members of Congress voted against the bill in June, perhaps Bereuter's statement was true. However, the amendments to the bill might have been grounds for thirty-six more votes against, but the point is moot. Furthermore, President Bush may have pocket-vetoed the bill even had it passed.

The Niobrara Scenic River Designation Act had come within a whisker of passing the 101st Congress. The bill's arch-opponent, Virginia Smith, had succeeded in killing the legislation as a finale to her sixteen-year tenure in Congress. Smith's successor, Republican Bill Barrett, was also strongly against the Niobrara bill, yet he lacked Smith's seniority and connections. The political clout of those opposing designation appeared to be waning at the close of the

101st Congress, and the new Congress would surely include a renewed effort at designating the Niobrara as a National Scenic River.

NOTES

¹ Greg Gordon, "Bruce Vento: 1940-2000, A Champion Until the End," *Minneapolis Star Tribune*, October 11, 2000, 1A.

² U.S. Congress, House, Committee on Interior and Insular Affairs, *Niobrara Scenic River Designation Act of 1990*, hearing before the Subcommittee on National Parks and Public Lands, H.R. 761, H.R. 1673, H.R. 3823, and S. 280, 101st Cong., 2nd sess., March 16, 1990, 37.

³ *Ibid.*, 44.

⁴ *Ibid.*, 98.

⁵ *Ibid.*, 50.

⁶ *Ibid.*, 59.

⁷ *Ibid.*, 93.

⁸ *Ibid.*, 100.

⁹ *Ibid.*, 171.

¹⁰ *Ibid.*

¹¹ *Ibid.*, 172. Fred Thomas, "Need for Protection, Not Means, Agreed Upon," *Omaha World-Herald*, March 17, 1990, 9.

¹² U.S. Congress, House, *Niobrara Scenic River Designation Act*, hearing before the Subcommittee, March 16, 1990, 185.

¹³ *Ibid.*, 186.

¹⁴ *Ibid.*, 185.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 196.

¹⁷ *Ibid.*, 189-90.

¹⁸ Ibid., 190.

¹⁹ Ibid., 193-4.

²⁰ Ibid., 197.

²¹ Ibid., 200.

²² Ibid., 202.

²³ Ibid., 204-5.

²⁴ Ibid., 207.

²⁵ Ibid., 211.

²⁶ Ibid., 361-71.

²⁷ Ibid., 402. Paul Goodsell, "4-County Pact Gets Mixed Reviews at Hearing," *Omaha World-Herald*, March 30, 1990, 13.

²⁸ U.S. Congress, House, *Niobrara Scenic River Designation Act*, hearing before the Subcommittee, March 16, 1990, 415.

²⁹ Ibid., 416.

³⁰ Ibid., 418.

³¹ Ibid., 214.

³² Ibid., 215.

³³ Ibid., 213-4.

³⁴ Ibid., 288.

³⁵ Ibid., 217.

³⁶ Ibid., 218.

³⁷ Ibid., 219.

³⁸ Ibid., 245.

³⁹ Ibid.

⁴⁰ Ibid., 261.

⁴¹ Ibid., 265.

⁴² Ibid., 290.

⁴³ Ibid., 295.

⁴⁴ Ibid., 295.

⁴⁵ Ibid., 297.

⁴⁶ Ibid., 310.

⁴⁷ Ibid., 315.

⁴⁸ Ibid., 330.

⁴⁹ Ibid., 321.

⁵⁰ U.S. Congress, Senate, *Niobrara River Scenic River Designation Act of 1989*, 101st Cong., 1st sess., Section 2(C).

⁵¹ U.S. Congress, House, *Niobrara Scenic River Designation Act*, hearing before the Subcommittee, March 16, 1990, 321.

⁵² Ibid., 328.

⁵³ Ibid., 413.

⁵⁴ Ibid., 445.

⁵⁵ Ibid., 447.

⁵⁶ Ibid., 449.

⁵⁷ Ibid., 449.

⁵⁸ Ibid., 332.

⁵⁹ Ibid., 334.

⁶⁰ Ibid., 422, 428.

⁶¹ Ibid., 428.

⁶² Ibid., 428.

⁶³ Ibid., 435.

⁶⁴ Ibid., 213.

⁶⁵ U.S. Congress, House, *Amending the Wild and Scenic Rivers Act by Designating a Segment of the Niobrara River in Nebraska as a Component of the National Wild and Scenic Rivers System*, 101st Cong., 2d sess, June 6, 1990, Report 101-526, Part 1, p. 7.

⁶⁶ Ibid., 9-10.

⁶⁷ Ibid., 4.

⁶⁸ Ibid., 5.

⁶⁹ Ibid, 5.

⁷⁰ Ibid., 1.

⁷¹ Ibid., 1, 2.

⁷² U.S. Congress, Senate Committee on Energy and Natural Resources, *Niobrara Scenic River Designation Act of 1989*, report prepared by Mr. Bennett Johnston, 101st Congress, 1st sess., October 31, 1989, Calendar No. 332, Report 101-177, p. 2.

⁷³ U.S. Congress, House, *Niobrara Scenic River Designation Act of 1990*, 101st Cong., 2d sess., S. 280, *Congressional Record*, 136, No. 83, (June 26, 1990): H4147-H4155.

⁷⁴ Ibid., H4165.

⁷⁵ *Ibid.*, H4166.

⁷⁶ Congress, House, Congressman Vento of Minnesota speaking for *Niobrara Scenic River Designation Act of 1990*, S. 280, 101st Cong., 2d sess., *Congressional Record* 136, No. 83 (36 June 1990): H4166.

⁷⁷ *Ibid.*, H4167.

⁷⁸ U.S. Congress, House, *Niobrara Scenic River Designation Act of 1990*, 101st Cong., 2d sess., S. 280, *Congressional Record*, 136, No. 83, (June 26, 1990): H4168.

⁷⁹ *Ibid.*, H4169.

⁸⁰ Gabriella Stern, "Lawmakers Compromise on Niobrara Scenic Label," *Omaha World-Herald*, October 7, 1990, 7-A.

⁸¹ Paul Goodsell, "Condemnation Along Niobrara Limited to 5%," *Omaha World-Herald* Metropolitan Edition, October 18, 1990, pp. 1, 2.

⁸² *Ibid.*, 2.

⁸³ U.S. Congress, Senate, *Niobrara Scenic River Designation Act of 1991*, 102nd Cong., 1st sess., S. 248 (January 3, 1991) Sec. 4(b).

⁸⁴ *Ibid.*, Sec. 3.

⁸⁵ Paul Goodsell, "Nebraska Delegation Still Divided Over River Bill's Limits," *Omaha World-Herald*, October 20, 1990, 11.

⁸⁶ David C. Beeder, "Sen. Armstrong Gave Mrs. Smith Aid on River Bill," *Omaha World-Herald* Metropolitan Edition, October 29, 1990, 1.

⁸⁷ *Ibid.*, 2.

⁸⁸ U.S. Congress, Senate, *Niobrara Wild and Scenic Rivers Act*, 101st Cong., 2d sess., S. 280, *Congressional Record*, 136, No. 150, Part III, (October 27, 1990): S17642. Beeder, "Sen. Armstrong Gave Mrs. Smith Aid," 1.

⁸⁹ U.S. Congress, House, *Niobrara River Scenic River Designation Act of 1989*, 101st Cong., 2d sess., S. 280, *Congressional Record*, 136, No. 150, Part II, (October 27, 1990): H13356.

⁹⁰ Paul Goodsell and Daniel Garfield, "House Kills Niobrara Bill on Last Vote of Session," *Omaha World-Herald*, October 28, 1990, p. 1-A.

Chapter V

A Decision is Made

On January 23, 1991, Nebraska Senators Bob Kerry and Jim Exon reintroduced the Niobrara National Scenic River Designation Act, now known as S. 248, a bill that was identical to the compromise version from the final days of the 101st Congress. The Senate subcommittee chose not to hold hearings, as the legislation had been thoroughly discussed during the 101st Congress, and had passed the floor of the Senate without dissent. On February 27, 1991, the Senate Committee on Energy and Natural Resources recommended unanimously that the full Senate pass S. 248.¹ On April 17, the bill was approved on the floor by a unanimous voice vote. As had also been the case in the 101st Congress, there was no significant senate opposition, and the strong support of both Nebraska senators assured easy passage.

The local political leadership remained strongly opposed to the scenic river, and they still hoped that state action might avert federal designation. On January 22, 1991, State Senator Howard Lamb introduced a bill in the Nebraska Unicameral to allow counties to designate portions of streams within their borders as scenic river corridors.² Lamb, whose district included a large portion of the river, co-owned a stretch of riverfront land along the proposed scenic river, to which he remained strongly opposed. Lamb's bill, LB 511, attempted to derail federal action by establishing a legal mechanism that local governments could

use to protect the river. He argued that “the majority of the local people ... don’t want the [U.S.] Department of Interior telling them what to do,”³ and that the counties comprised the most appropriate jurisdiction for protecting the river and its resources.⁴ Furthermore, he testified, “... the object of the bill is to keep this [protection] authority as close to the local level as possible.”⁵ A hearing was held on February 7 before the Committee on Government, Military & Veteran Affairs. After considerable debate, LB 511 was indefinitely postponed in committee.

It was becoming apparent that LB 511 was a forlorn hope for opponents of the federal scenic river. Just two days before the committee hearing on LB 511, newly-elected Nebraska Governor E. Benjamin Nelson had publicly stated that the time for state action had passed. He noted that the state had studied the issue, but was apparently not going to take any significant action to preserve the river.⁶ Furthermore, Nelson wrote a letter to House subcommittee chairman Bruce Vento indicating his support for the House version of S. 248, known as H.R. 614.⁷ In April, Senator Lamb managed to get his bill considered on the floor of the legislature, but it failed passage by a one-vote margin. On May 15, one day after the U.S. House of Representatives approved H.R. 614, Senator Lamb again got LB 511 considered, and the bill passed first-round floor approval by a vote of 25-14.⁸ Lamb appeared to be making a last-ditch effort, with a presidential veto being his only remaining hope. After President George H. Bush signed the bill into law on May 24, LB 511 was no longer germane, and it failed to

obtain second-round approval in the Unicameral. Governor Nelson was indeed prescient in calling this action too little, too late.⁹

Newly elected to Congress from Nebraska's third district was Republican Bill Barrett, who began his term by vowing to lead the opposition to scenic-river designation in Congress. Much as his predecessor Virginia Smith had done, he argued that his constituents were opposed to federal control.¹⁰ Barrett agreed with the widely held belief that the river deserved protection, but he argued that further study was needed to address both management issues and the bill's possible impact on landowners. As a remedy, he introduced his own legislation, H.R. 1548, which would authorize a three-year study of a 253-mile stretch of the river for potential addition to the Wild and Scenic Rivers system.¹¹ This bill would eventually be considered on the House floor as an amendment, but it had no more success than Virginia Smith's one-year study bill had in 1990.

On January 23, 1991, representatives Peter Hoagland (D-Nebraska) and Doug Bereuter (R-Nebraska), along with fourteen other co-sponsors, re-introduced the Niobrara Scenic River Designation Act, H.R. 614. The bill was referred to the Committee on Interior and Insular Affairs. Its subcommittee on National Parks and Public Lands held a hearing on the bill in Washington on March 21. This hearing served as yet another opportunity for both sides to air their views, and for the subcommittee members to again debate the issue. H.R. 614 was identical to the compromise version that had emerged from the joint

House-Senate conference committee of October 18, 1990, only to be killed at the final hour by Virginia Smith's persistent efforts.

The composition of the House subcommittee had not changed significantly since the 101st Congress, and Bruce Vento still served as its chairman. Congressman Robert Lagomarsino again led the subcommittee opposition to H.R. 614. His objections still centered on what he called "instant designation," and on issues of land acquisition. Opponents continued to argue that local control was the most appropriate means for protection, and a few still argued that there was no reason to alter the status quo. But the opposition's most promising strategy was to push for Barrett's study bill. Lagomarsino said that Barrett's three-year study bill would determine which segments should be protected, how they should be protected, and what agency should have management responsibility.¹² Opponents argued that there was no pressing threat of development, and that since the study would preclude any federally-funded water projects during its duration, a delay would not result in degradation of the river.¹³

Scott Sewell, a high-level Department of the Interior official, spoke for the Bush Administration on the issue. Sewell restated the administration's policy that no new national park units should be created without first completing a Wild and Scenic Rivers Act Section 5(a) study, lest the quality of the National Park System be possibly degraded with sub-standard areas. Sewell also implied that there was no precedent for designation without such a study.¹⁴ Although calling for "more study" is often a ruse in Washington for killing legislation, this argument

certainly did have some merit. There were legitimate uncertainties concerning the scenic river's boundaries and how they should be managed. Yet proponents made some very strong arguments against the further-study approach, and for designating the river without further delay. There had been numerous studies by federal, state and private entities, and there was near unanimity that the 76-mile stretch of the Niobrara was a unique asset and certainly worth preserving. In response to foes questioning why this particular segment was chosen for designation, proponents pointed out that the initiative was taken by the Egelhoffs, Kuhres, and other landowners back in the early 1980s, and future reaches could always be added. Vento disagreed that H.R. 614 would preclude consideration of different management alternatives. He held that the General Management Plan development process, which would occur after designation, is the suitable time to consider and select management options. He quoted Section 10(e) of the Wild and Scenic River Act, which specifically provided the flexibility of allowing cooperative management agreements between the Secretary of the Interior and local government entities.¹⁵

Several proponents testified that development threats were imminent and that the Niobrara was growing in popularity, which would likely lead to a proliferation of second homes and tourist-oriented businesses. Although opponents pointed out that a formal study would preclude a dam or other major government project during the study period, proponents argued that these restrictions would not prevent private developments along the river. Therefore

the time to protect the river was before the development occurred, not after the physical changes had already been made.¹⁶ Chairman Vento specifically refuted portions of Sewell's testimony by saying "over half the rivers in the wild and scenic system have been brought in without going through that particular [5(a)] process."¹⁷ Vento also objected to Sewell and others calling H.R. 614 "instant designation," pointing out it had been twenty-five years since Congress first discussed the Niobrara.¹⁸ Bereuter called the Niobrara "one of the most studied rivers in the United States" and Hoagland presented a four-page chronology detailing the general history and prior studies of the river.¹⁹ Chairman Vento also stated very clearly that he believed some of the opponents of designation were using the "more study" argument simply as a delaying tactic.²⁰

The subcommittee hearing included substantial testimony from local people who strongly supported the scenic river, notwithstanding the arguments to the contrary. The remarks of local rancher Elsie Leonard were particularly telling:

our support from the landowners has remained remarkably high in spite of the misinformation and pressure tactics of water development interests and the [National] Inholders Association. From the letters we have in support of the scenic river, I can assure you that at least half of the private land along the 70 miles of river designed [sic] by this bill is still owned by supporters of national scenic river designation.²¹

Representative Bereuter offered one particularly compelling reason why designation should occur immediately, rather than waiting through another postponement. He poignantly stated "this is an issue that has caused intense animosity among some people in the area of the Niobrara Valley ... children of

people who favor it [designation] are threatened at school. It has reached that state of affairs.”²² With the issue splitting the community to this degree, he believed it was time to make the best decision and move on.

Another key argument of the opponents centered on the issue of land acquisition and local control. Lagomarsino acknowledged that the bill placed some reasonable limits on acquisition in Section 4(a), but he was still concerned about the escape clause.²³ This clause allowed the Secretary of the Interior to waive the acquisition limits if, “after notice and opportunity for public comment,” the Secretary found that the local and state governments were not adequately protecting the resource. Lagomarsino cited the earlier case of the St. Croix River National Scenic River, along the border between Minnesota and northern Wisconsin, as an example of the federal government trampling on the rights of landowners. He argued that, in establishing that scenic river, the government reneged on its agreements and condemned excess lands in a heavy-handed manner.²⁴ This example had first been cited in 1990 by the National Inholders Association, hired by the scenic-river foes to build public opposition to designation.

The panel of witnesses in the opposition camp again voiced concerns on the issues of local control and land acquisition. Unable to appear before the subcommittee, Bryce P. Neidig of the Nebraska Farm Bureau provided a written statement that was vitriolic and condescending toward the federal government. He criticized the loss of private land ownership through condemnation, and the

possible effects that designation would have on existing land uses such as farming, grazing and watering.²⁵ Another witness in opposition was David Jones, the Niobrara River Basin's representative to the Nebraska Natural Resources Commission, whose primary focus was on water rights. He was concerned that federal control would preempt existing water rights, and that ranchers would be denied access to the water in time of drought.²⁶ As had been shown earlier by Chairman Vento, these water rights arguments were a fallacy, and were totally unsupported by the facts.

Vento disputed the argument over the St. Croix issue, and showed that it was a poor and irrelevant comparison. Because the St. Croix valley is adjacent to Vento's St. Paul-based district, he knew the facts in the case, and he stated that what went on there was not what Charles Cushman and Bob Lagomarsino had contended.²⁷ Nonetheless, the bill's authors appeared genuinely concerned about limiting federal condemnation power, hence the inclusion of Section 4(a) of the bill. Chairman Vento acknowledged the validity of the private ownership issue, but argued that the bill's limitations on land acquisition adequately address these concerns.²⁸ Bereuter added "one of the reasons we put in very specific language limiting condemnation is so that the St. Croix example ... would not take place [again]."²⁹

A decade earlier, many of these same voices, now in opposition to the scenic river, were strong proponents of the Norden Dam, which would have inundated 30,000 acres of land in the valley. This posed a contradiction that did

not go unnoticed by supporters of the Niobrara designation. Bereuter pointed out that many of the scenic-river foes who based their opposition on the federal “land-grab” seemed to have forgotten that the Norden Dam and associated canals would have condemned a far greater amount of land than the scenic-river might potentially affect.³⁰ Throughout the years of debate, the association of the scenic-river foes with Norden Dam undermined their credibility when they argued against federal land condemnation.

The well-worn issue of local control versus federal protection was debated further in the hearing. Even though there had been no significant progress by the local people at preserving the river since the mid-1980s, scenic-river foes continued to argue against federal control. Lagomarsino contended that “private persons have protected the river for generations, and ... there is no threat of development.”³¹ Jimmy Jackman of Ainsworth, Nebraska, who served as chairman of both the Brown County Board of Commissioners and the Niobrara Basin Joint Management Board, re-iterated the long-term care for the river that local people had shown.³² And Barrett implied that he still held out hopes for state or local control, pointing out that his study bill (H.R. 1548) “will also allow the Department of Interior to seriously consider state and local protection options.”³³

Chairman Vento cited the Keya Paha County Board’s now infamous statement about the river being “a large drainage ditch” to refute the argument that the river could be best protected by local authorities.³⁴ Bereuter took a

position more moderate and pragmatic, re-iterating that the bill did not preclude local preservation efforts, and indeed even established the locally-dominated Niobrara Scenic River Advisory Commission to assist the federal government with developing a management plan. While some of the opponents were clearly self-interested, many were sincere and sought to do the right thing in pushing for local control. However, the structure of the United States government allows for the central government to step in and take action on an issue of national or regional significance when it believes that local efforts are inadequate. Such was the case with the Niobrara.

On May 7, 1991, the committee issued its report. By a straight party-line vote of twenty-eight Democrats to sixteen Republicans, the committee reported favorably on H.R. 614, and recommended that the full House pass the bill.³⁵ Robert Lagomarsino and eleven other committee members signed a dissenting view on the bill. Their dissent began with a statement that demonstrated the ideological canyon separating the two sides: “the Committee is again embarking on a course of action which penalizes private citizens for taking care of important natural and cultural resources by removing them from their control.”³⁶ The term “penalize” is an interesting one here. Perhaps the Egelhoffs, Kuhres and Leonards would see designation as a *reward* for their stewardship of the resources. Another interesting sentence in the dissent uses the term “instant designation” three times in discussing the legislation, an obvious effort to control the terms of the debate. But proponents repeatedly pointed out that Congress

had considered designation of the Niobrara off and on since the mid- 1960s, and that the specific legislation had been under consideration since 1985.

On May 14, the bill was debated on the floor of the House. A number of members spoke in opposition, and at least one had apparently not read the text of the bill. Representative Robert S. Walker of Pennsylvania used a bit of hyperbole when he referred to the bill as the “Monster That Would Not Die,” and said the bill “...gobbles up land without compensation.”³⁷ No new arguments against designation were raised on the floor, but freshman Congressman Barrett’s statements were perhaps the most credible of all those speaking against the bill. He agreed that protection of the river was important, but believed that federal designation was not necessarily the best means. Barrett argued for further study because previous studies had not addressed such issues as land ownership and management options, which was true.³⁸ On the other hand, Vento challenged the sincerity of the “more study” camp, in referring to the debate and testimony of the subcommittee hearing:

I thought it was telling that when certain key opponents were asked if another study recommended designation whether they would then support such action[,] they said no. With such a position a study will not be used to enlighten, rather it appears that for opponents of designation its purpose is to delay and defeat.³⁹

Barrett’s study bill was debated as an amendment, and the familiar arguments were once again made by both sides. When a roll-call vote was taken, Barrett’s amendment failed to pass by a vote of 109 to 293.

As he had done in 1990, Congressman Don Young introduced his amendment to prohibit forced condemnation or forced conservation easements under any circumstances. This would create a federal designation in name only, and, without enforcement powers, the scenic river would have remained effectively under local control, rendering the whole federal process essentially meaningless. After debate, Young's amendment failed to pass by a vote of 124 to 283.

After these two amendments had been rejected, the House finally voted on the Niobrara Scenic River Designation Act of 1991, which easily passed by a vote of 333 to 71. Since H.R. 614 was identical to the Senate-passed S. 248, the legislation was sent directly to the president, with no conference committee needed to resolve differences between the bills. The lopsided votes were significant in that they reflected enough support to easily override a presidential veto, although override was by no means a certainty if the president rejected the bill.

Local opposition in the Niobrara Valley had certainly not yet conceded the fight. Two days after the bill passed the House, a Valentine, Nebraska radio show urged its listeners to call the White House to express their views. Nearly two hundred people responded, almost all of them urging President Bush to veto the legislation.⁴⁰ Whether this response proved that most area residents opposed the bill is debatable, but certainly the overwhelming majority of listeners who chose to call in to KVSH-AM did. And one prominent opponent, Harlin

Welch, president of the Nebraska Landowners and Sportsmen's Association, threatened court action should the president sign the bill into law.⁴¹

In Washington, the politicians lobbied the Bush administration, and "counted heads" in Congress for a possible veto override. On May 21, Congressman Barrett met with Bush's Chief of Staff John Sununu to push for a veto. Barrett told Sununu that Bush could veto the bill and still "save face" with the environmental community by citing the lack of a formal study.⁴² Barrett was aware that Bush had not had a veto overridden yet, and it seemed unlikely that the President would risk an override on this relatively insignificant bill. Also, former U.S. Senator from Nebraska Carl Curtis, an opponent of the bill, was lobbying senators in hopes of sustaining a possible veto.⁴³ Senator Exon met with Interior Secretary Manuel Lujan to persuade him to urge Bush to sign the bill. Exon told the Secretary that he would consider a veto "an unfriendly act."⁴⁴ In a separate interview, Exon expressed his confidence that Bush's supporters in the Senate would not vote to sustain a veto, citing the unwritten rule that senators will not override a veto of legislation that is supported by both senators of the involved state.⁴⁵

On May 24, the president reluctantly signed the Niobrara Scenic River Designation Act of 1991 into law. Bush said that he was "extremely disappointed" that the river was designated without a Section 5(a) study as provided for in the Wild and Scenic Rivers Act.⁴⁶ He did acknowledge that the river was an "outstanding river resource, and [that] the national significance of

the resource is not in question.” He remarked that a formal 5(a) study should be “an absolute requirement” in cases “where private property interests are at stake,” and he also reiterated his concern that designaiton without study could threaten the “integrity and viability of the National Park System.”⁴⁷ It had been eleven years since the original group of landowners had developed their scenic river proposal. There had been considerable acrimony over the debate, but the decision had finally been made. Residents of the Niobrara Valley would now have a new neighbor in the National Park Service -- for better or for worse.

NOTES

¹ Senate Committee on Energy and Natural Resources, *Niobrara Scenic River Designation Act of 1991*, report prepared by Mr. Johnston, 102nd Cong., 1st sess., March 7, 1991, Calendar No. 33, Report 102-19, 3.

² Nebraska, 92nd Legislature, 1st sess., *LB 511: A Bill ... to Provide for the Designation of Scenic River Corridors ...*, January 22, 1991.

³ Nebraska, 92nd Legislature, 1st sess., *Hearing before the Committee on Government, Military and Veteran Affairs, LB 511: A Bill ... to Provide for the Designation of Scenic River Corridors ...*, February 7, 1991, 23.

⁴ *Ibid.*, 2.

⁵ Nebraska, 92nd Legislature, 1st sess., *Hearing before the Committee on Government, Military & Veteran Affairs, LB 511*, February 7, 1991, 17.

⁶ David E. Lynch, "Nelson Says State Too Late on Niobrara," *Lincoln Journal*, February 5, 1991, 5.

⁷ Gov. E. Benjamin Nelson, letter to Congressman Bruce Vento, March 13, 1991, on file at National Park Service Office, O'Neill, NE., NNRC File Drawer II, Folder #21.

⁸ *Unicameral Update*, Nebraska State Legislature, for the week ending May 17, 1991, 8.

⁹ Lynch, "Nelson Says State Too Late," 5.

¹⁰ Paul Goodsell, "Barrett Vows to Challenge Niobrara Bill," *Omaha World-Herald*, January 24, 1991, 17.

¹¹ Congress, House, *A Bill to Amend the Wild and Scenic Rivers Act to Designate a Certain Portion of the Niobrara River in the State of Nebraska for Study for Potential Addition to the Wild and Scenic Rivers System*, 102^d Cong., 1st sess., H.R. 1548 (March 21, 1991), 1.

¹² *Ibid.*, 45.

¹³ *Ibid.*, 64.

¹⁴ Ibid., 52.

¹⁵ Ibid., 59.

¹⁶ Ibid., 66.

¹⁷ Ibid., 50.

¹⁸ Ibid., 58.

¹⁹ Ibid., 16.

²⁰ Ibid., 58.

²¹ Ibid., 85.

²² Ibid., 45.

²³ Ibid., 14.

²⁴ Ibid.

²⁵ Ibid., 141.

²⁶ Ibid., 116.

²⁷ Ibid., 31.

²⁸ Ibid., 59.

²⁹ Ibid., 17.

³⁰ Ibid., 16.

³¹ U.S. Congress, House, Committee on Interior and Insular Affairs, *Niobrara Scenic River Designation Act of 1991, H.R. 614*, Hearing before the Subcommittee on National Parks and Public Lands, 102nd Cong., 1st sess., March 21, 1991, 14.

³² Ibid., 122.

³³ Ibid., 23.

³⁴ Ibid., 110-111.

³⁵ House, Committee on Interior and Insular Affairs, *Designating Certain Segments of the Niobrara River in Nebraska and a Segment of the Missouri River in Nebraska and South Dakota as components of the Wild and Scenic Rivers System*, report prepared by Mr. Miller of California, 102nd Cong., 1st sess., May 7, 1991, Report No. 102-51, Part 1. (Serial Set #14073.)

³⁶ Ibid., 9.

³⁷ U.S. Congress, House, Niobrara Scenic River Designation Act of 1991, H.R. 614, 102nd Cong., 1st sess., *Congressional Record* 137, pt. 72, (May 14, 1991): H2996.

³⁸ Ibid., H3000-H3001.

³⁹ Ibid., H2997.

⁴⁰ "Cherry County Residents Protest Niobrara Bill," *Lincoln Star*, May 16, 1991, 15.

⁴¹ Ibid.

⁴² Paul Goodsell. "Exon Is Fighting to Prevent Veto Of His Niobrara Scenic-River Bill," *Omaha World-Herald*. May 23, 1991, 20.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ President, Signing Statement, "Statement on Signing the Niobrara Scenic River Designation Act of 1991," *Weekly Compilation of Presidential Documents*, Vol. 27, No. 22, May 24, 1991, 674.

⁴⁷ Ibid.

Chapter VI

A Work in Progress

Eleven years had passed since the grass-roots effort was begun, and the Niobrara National Scenic River had finally become a reality. The day after President George H. Bush signed Public Law 102-50, an article appeared in the *Omaha World-Herald* that quoted reactions of scenic-river supporters and foes. The former, of course, were elated. Franklin Egelhoff, the leader of the original group of landowners that developed the scenic-river proposal, said, perhaps with a bit of Midwestern understatement, he was “well pleased” that the president had signed the bill into law.¹ Conversely, hard feelings remained among some valley residents who had fought in vain to defeat federal designation. Harlin Welch hinted that he and other local people held resentments that might make Park Service personnel uncomfortable in their upcoming work. Welch warned that “federal planners and others working in the area in coming months probably [will] not get a friendly welcome from some local residents ... I wouldn't want their job.”²

The designation process had been lengthy and the debate often acrimonious. But now the Park Service began the long effort at preparing a management plan, which involved gathering and studying information, developing draft plans and options, conducting public hearings, considering public comments, revising the documents, and handling the associated

paperwork. The Park Service named Warren Hill as superintendent, and opened its main office in O'Neill. The scenic river grew in 1996 with the inclusion of the six-mile gap, which ran from Rock Creek to Chimney Creek. Under the enabling legislation, this segment became part of the scenic river because no water resources project had been authorized within the five-year window. Hill retired in March 1997 and was replaced by Paul Hedren, the current superintendent of the park.³ In 2000, the park added its first resource management ranger, Stuart Schneider, who was assigned to a field office in Valentine.⁴ At present there are six full-time employees of the Niobrara National Scenic River, split between headquarters in O'Neill and the Valentine office.⁵

The Park Service was required by law to develop a general management plan, which is the document that establishes the framework for park management.⁶ As part of this process, the National Environmental Policy Act (NEPA) of 1969, requires that an environmental impact statement (EIS) be prepared by any federal agency "engaged in a major ... action that would significantly affect the quality of the human environment."⁷ The Park Service began gathering data in the summer of 1991 with public informational meetings, and then initiated the formal plan development process with public discussion meetings across the state in 1992, and with the enumeration of planning issues that would be addressed in the near future.⁸ After a lengthy planning process that included assistance from the Niobrara Scenic River Advisory Commission and others, a draft plan was released on March 25, 1996, with public comments

accepted until May 28 of that year.⁹ After the incorporation of these comments, the *General Management Plan / Final Environmental Impact Statement (GMP / FEIS)* received final approval and was published in the *Federal Register*.

This document presented four different management alternatives and three different boundary options. Management Alternative A was a “no action” option, as required by NEPA, which served as a baseline for comparison. Alternative B, would “provide for management by a local council,” with the Park Service providing “funding and technical help by cooperative agreement.”¹⁰ Alternative C would manage the river by using a partnership between local entities and the Park Service. Alternative D would provide National Park Service management with “cooperative agreements with local entities for some services.”¹¹ The public comment process leaned strongly toward Alternative B, which the Park Service finally selected to manage the river.¹²

Three different boundary options were considered. Alternative One was the quarter-mile (on each side) interim boundary per the Wild and Scenic Rivers Act, and would include 21,346 acres of land. Alternative Two was a variable-width boundary drawn to “include as many significant resources as possible within the legislated acreage limits,” and would include 20,205 acres. Boundary Alternative Three was a scaled-down version of Alternative Two, also with a variable-width boundary, and it contained 9,842 acres. The public comment process did not indicate a clear preference on the boundary options. On

December 20, 1996, the Park Service released a Record of Decision that selected Boundary Alternative Two.¹³

In July 1997, the Park Service joined with the four counties in an interlocal agreement that officially created the fifteen-member Niobrara Council, which would, under the selected management option, manage the river with federal funding and technical help.¹⁴ The Council began holding public meetings on the third Thursday of each month in Ainsworth, Nebraska, to discuss and make decisions on river management issues.¹⁵ In April 1998, the Council, in its first regulatory action, adopted a code of conduct for river users. This code banned alcohol and drugs on the river; required outfitters to number their rental craft and keep records of usage; and banned firearms, fireworks, littering and disturbing the peace.¹⁶ During the following December, the Council added a sixteenth member from a “non-profit environmental, conservation, or wildlife organization.” The Council was thus enlarged to provide an additional perspective that was missing before.¹⁷

The Park Service soon found itself defending its General Management Plan in two separate federal lawsuits. It is ironic that the suits came from opposite sides – one plaintiff was a property-rights advocate, and the other was a group of environmental organizations. Just as Senator James Exon and the other lawmakers had learned, efforts at compromise often made both sides unhappy. In the first suit, David Sokol, a wealthy Omaha businessman and owner of a ranch in the Niobrara Valley, sued the Park Service because of its

boundary selection. The Sokol lawsuit asserted that the planning team did not evaluate resources for possible inclusion based on the “outstandingly remarkable” test, as required by statute. This test is satisfied when a resource is found to have characteristics that are unique, rare, or exemplary.¹⁸ On February 22, 1999, U.S. District Court Judge Joseph Bataillon found in favor of the Park Service and upheld its boundary selection.¹⁹ Sokol then appealed, and on April 10, 2000, Judge Richard Arnold of the U.S. Court of Appeals, Eighth Circuit, reversed and remanded the District Court decision.²⁰ Judge Arnold ruled that the planning team used the less specific test of “significant and important” in evaluating resources for inclusion within the boundary.²¹ This less restrictive test is commonly used by the Park Service in park studies, but is not applicable under the more strict Wild and Scenic Rivers Act requirements. The Court directed the Park Service to “select boundaries that seek to protect and enhance the outstandingly remarkable values” of the Niobrara National Scenic River.²²

While the Sokol lawsuit was pending, the National Parks Conservation Association and the American Canoe Association sued the Park Service for improperly preparing the Environmental Impact Statement, and for delegating too much authority to the Niobrara Council.²³ On the first count, the court sided with the plaintiff that the Park Service did not adequately detail and evaluate the possible environmental ramifications that may result from the different management options.²⁴ The GMP / FEIS identified four different management options. However, in considering the possible adverse impacts for the three

action alternatives, the Park Service lumped them all together, whereas it should have evaluated them separately. Park representatives held that, since all three alternatives shared the same “desired future conditions,” the possible adverse effects would be similar.²⁵ The court rejected this argument, and ordered the Park Service to “perform a new and thorough EIS” in accordance with the National Environmental Policy Act.

The second basis of the suit was that the Park Service had illegally delegated its management authority to the Niobrara Council, allegedly producing direct degradation of park resources and injury to the plaintiffs. The plaintiffs illustrated this by saying that, while the Council was in its formative stage, the Park Service failed to implement even minimal, low cost actions to preserve the resources, such as erecting signage to keep visitors off of the fragile sand cliffs, studying the river’s carrying capacity, and providing suitable toilet and refuse disposal facilities.²⁶ As another basis for injury, the plaintiffs argued that the arrangement did not provide satisfactory public access to information about management decisions. Under the Administrative Procedures Act, federal agencies must publish notice and provide an opportunity for public comment prior to making significant management decisions. Since the Niobrara Council was exempt from these requirements, the plaintiffs alleged an “informational injury.”²⁷

The enabling legislation had created the Niobrara Scenic River Advisory Commission to assist the Park Service in developing a management plan for the river.²⁸ This temporary committee served the function by providing assistance

during the planning process. However, the Niobrara Council – sanctioned by the selected management alternative and comprised mostly of locally appointed and elected members – was given unprecedented authority in management of the park. Case and statutory law permitted the Park Service to delegate management authority, so long as it “retains final reviewing authority.”²⁹ In this case, however, the Park Service had only one vote on the Council, and no veto authority. The Park Service’s only recourse was its power to dissolve the Council if the former found that the latter was not adequately protecting park resources. The court held it unlikely that the Park Service would use this drastic remedy.³⁰ In a defeat for the Park Service and the Niobrara Council, the court “enjoined [the Park Service] from unlawfully delegating their responsibility to manage the Niobrara.”³¹

In response to Judge Kessler’s order, the Park Service began developing a new general management plan whose draft is presently in its final stages.³² Whereas the 1996 plan called for management by the Niobrara Council with Park Service technical and funding assistance, the new plan recommended **Management Alternative B – National Park Service Management with Partners**. It gives the Park Service the lead management role, but with the strong assistance of the Niobrara Council, public land trusts, and other partnership entities.³³ This selection recognizes that the Park Service has achieved considerable success recently in managing scenic rivers by developing productive partnering relationships. Given the predominance of private land

ownership in the valley and the restraints on land acquisition imposed by the enabling legislation, cooperative relationships seem to be the only practical means for managing a park of this nature.

In this general approach, the new plan mirrors the defunct 1996 plan. An essential difference, however, is that in the new approach, the Park Service will exercise control over protection of the natural resources, and over other functions -- such as interpretation -- for which it is uniquely suited.³⁴ The Park Service will also encourage full use of county zoning, and will support the Niobrara Council with its state-sanctioned zoning oversight authority.³⁵ Another key difference in the plans concerns acquisition of easements. In the 1996 plan, acquisition of easements was not part of the Park Service's responsibility. In the new plan, the Park Service and the various partners, particularly the Niobrara Council, are all empowered to obtain scenic and conservation easements. Furthermore, the landowner who is granting the easement will choose which entity will hold the easement, be it the Park Service, Niobrara Council, the Nature Conservancy or a similar land trust.³⁶

The new plan is essentially complete, with only final review pending by the Midwest Regional Office, and the policy and legal staffs in Washington, D.C. It is expected that this process will be completed by the end of 2002, with the Draft General Management Plan / Environmental Impact Statement to be published and distributed to the public in early 2003. The plan will then become "final" after a Record of Decision is developed and published, usually six months after

release of the Draft plan.³⁷ This new plan appears to have addressed the concerns of the plaintiffs in the NPCA lawsuit, and certainly complied with Judge Kessler's order in the case. While still respecting the partnership approach, the Park Service has now retained the lead role in resource protection for the park. Furthermore, the new EIS considers separately the possible adverse impacts of the four different management alternatives, in compliance with the first part of Judge Kessler's ruling.

In response to the court order in the Sokol lawsuit, the NPS planning team started the boundary creation process anew in 2000 by enumerating and evaluating resources for possible inclusion. This new study team had the benefit of a planning tool that the initial team did not. In December 1999, the federal Interagency Wild & Scenic Rivers Coordinating Council released a technical manual, the *Wild & Scenic River Study Process*, that recommended procedures and established specific parameters for evaluating if resources were "outstandingly remarkable," as required by statute. This test is met if the resources are found to be "unique, rare, or exemplary ... in a regional or national context."³⁸ In a meticulous, carefully-documented process that closely followed these guidelines, the study team concluded that the Niobrara National Scenic River contained outstandingly remarkable resources in four out of seven possible categories – scenic, recreational, geologic and paleontological.³⁹

The planners then developed a new corridor boundary line to encompass and protect as many of these outstandingly remarkable resources as possible.

The result was the preferred Boundary Alternative 3. This planning team considered viewsheds as scenic resources, and adjusted the boundary accordingly at the main highway crossings and other scenic overlooks, and along the upper river, which is the most popular recreational canoeing stretch. Concerning paleontological resources, they included all fifteen identified internationally significant sites, and many of the thirty-seven national-caliber sites.⁴⁰ By virtue of including the river itself – unique in that it flows directly on its bedrock substrate – and many of the ninety waterfalls, the “outstandingly remarkable” geological resources were included and protected.⁴¹ This preferred boundary included 23,074 acres, which is slightly less than the 24,320-acre statutory maximum. Although there are no plans to mark the boundary on the ground, the line was established to follow logical demarcations, such as section lines, existing roads, toes-of-slope and ridgelines.⁴²

The Park Service now strongly believes that the study process and the selected boundary are defensible in court.⁴³ This new resource categorization and boundary-drawing process clearly complies with the Judge Arnold’s order by following the guidelines from the Interagency Wild & Scenic Rivers Coordinating Council, and by carefully applying the “outstandingly remarkable values” tests. Whether lawsuit plaintiff David Sokol is satisfied with the result is unknown, because recent Park Service attempts to contact Sokol for his review of the process have been unsuccessful.⁴⁴ After the General Management Plan is accepted, the boundary approval process continues with publication, a record-of-

decision, and delivery of the completed boundary maps to Congress for final approval. This process may be completed by late 2003.

While the Park Service was responding to the two lawsuits, state and local authorities increased their preservation efforts. In July 1998, Rock County adopted a county-wide zoning ordinance, joining Brown and Keya Paha Counties, which had implemented zoning several years earlier.⁴⁵ After Cherry County adopted a zoning ordinance in October 2000,⁴⁶ all four scenic-river counties had zoning in place. The Nebraska Legislature, partially in response to the NPCA court ruling, codified into state law the Niobrara Council when it passed LB 1234 in April 2000.⁴⁷ This legislation, with the goal of maintaining “local participation and control,” specified the council makeup and granted it certain jurisdictional powers over the scenic-river corridor. LB 1234 also gave the Council authority to perform scenic-river operational and management functions that the Park Service may delegate.⁴⁸ These powers included the authority to obtain and hold title to land and scenic easements, and to “review and approve or reject all zoning regulations” within the scenic-river corridor.⁴⁹ LB 1234 also created a fund for the operation of the Council, although no state funds were appropriated at that time.⁵⁰ In 2002, the state strengthened the Council’s power by permitting the acquisition of scenic easements *outside* of the park corridor.⁵¹ These actions demonstrate that the state government is committed to the Niobrara Council, and to the cooperative management relationship between the Council and the Park Service.⁵²

As events have unfolded, it appears that the arguments against designation were largely unfounded. At least to date, the fears of a land-grab have not materialized. In fact, not a single conservation easement has been obtained. There is no evidence of significant hostility to the Park Service. Other than a few minor disagreements over boundary issues, most local people have apparently accepted the new realities, and are working together for the common good of the valley and river corridor.⁵³ With the new management plan nearing implementation and the state-sanctioned Niobrara Council fully functioning, the Niobrara National Scenic River now has the mechanisms in place, and most people apparently have the willingness to work diligently and earnestly to preserve the Niobrara and its unique resources. To be sure, the Niobrara National Scenic River is still a work in progress, and remains a subject worthy of future study. In this era of so-called partnership between federal and local governments, the Niobrara will prove to be an interesting test case in the viability of this partnership approach to managing the country's natural and scenic resources.

NOTES

¹ David Hendee, "Valentine-Area Residents See Scenic-River Wish Come True," *Omaha World-Herald*, May 25, 1991, 1.

² *Ibid.*, 1.

³ Julie Anderson, "Park Service Names Niobrara River Chief," *Omaha World-Herald*, Evening Edition, December 27, 1996, 14.

⁴ Julie Anderson, "Zeus the Peregrine Seeking New Mate," *Omaha World-Herald*, October 29, 2000, 8-B.

⁵ Paul Hedren, Superintendent, interview by author, 19 July 2002, Niobrara National Scenic River Office, O'Neill, Nebraska

⁶ United States Department of the Interior, National Park Service, *General Management Plan / Final Environmental Impact Statement, Niobrara National Scenic River*, 1996, 2. This document hereinafter referred to as *1996 GMP / FEIS*.

⁷ National Parks and Conservation Association, et. al, v. Stanton, 54 F. Supp. 2d., 22 (D.D.C. 1999).

⁸ *1996 GMP / FEIS*, 5.

⁹ *Ibid.*, 6.

¹⁰ *Ibid.*, iii.

¹¹ *Ibid.*

¹² *Ibid.*, 6.

¹³ Sokol v. Kennedy, 48 F.Supp.2d 914 (D. Neb. 1999).

¹⁴ National Parks and Conservation Association, et. al, v. Stanton, 54 F. Supp. 2d., 10 (D.D.C. 1999).

¹⁵ *The Niobrara Council*, internet web page:
<http://www.niobraraCouncil.org>.

¹⁶ Julie Anderson, "Niobrara Council Backs Conduct Code on River," *Omaha World-Herald*, May 1, 1998, 24.

¹⁷ Julie Anderson, "Calculations Attach Meaning to Season's Global Sleigh Ride," *Omaha World-Herald*, December 19, 1999, 11-B.

¹⁸ Sokol v. Kennedy, 210 F.3d 876, 879. (8th Cir., 2000).

¹⁹ Sokol v. Kennedy, 48 F.Supp.2d 911 (D. Neb. 1999).

²⁰ Sokol v. Kennedy, 210 F.3d 876 (8th Cir., 2000).

²¹ *Ibid.*, 880.

²² *Ibid.*, 881.

²³ National Parks and Conservation Association, et. al, v. Stanton, 54 F. Supp. 2d., 7-25 (D.D.C. 1999).

²⁴ NPCA v. Stanton, 9.

²⁵ *Ibid.*, 24.

²⁶ *Ibid.*, 15.

²⁷ *Ibid.*, 7.

²⁸ *Niobrara Scenic River Designation Act of 1991*, Public Law 102-50, 105 Stat. 254, May 24, 1991, Sec. 5(a).

²⁹ NPCA v. Stanton, 8.

³⁰ *Ibid.*, 21.

³¹ *Ibid.*, 24.

³² United States Department of the Interior, National Park Service, *Niobrara National Scenic River General Management Plan / Environmental Impact Statement – Pre-draft Components of May 1, 2001*. This document hereinafter referred to as *2002 GMP / EIS*.

³³ *2002 GMP / EIS*, 30. Hedren interview, July 19, 2002.

³⁴ Ibid.

³⁵ Ibid., 32.

³⁶ Hedren interview, July 19, 2002.

³⁷ Ibid.

³⁸ Interagency Wild and Scenic Rivers Coordinating Council, *Wild & Scenic River Study Process*, December 1999, 12. This document accessed via the internet on July 26, 2002, at <http://www.nps.gov/rivers/publications/study-process.pdf>.

³⁹ *2002 GMP / EIS*, 10-14, 17-18.

⁴⁰ Hedren interview, July 19, 2002.

⁴¹ *2002 GMP / EIS*, 10-14, 17-18.

⁴² Hedren interview, July 19, 2002.

⁴³ Ibid.

⁴⁴ Hedren Interview, July 19, 2002.

⁴⁵ "Zoning Will Help Niobrara and Counties," (Editorial), *Omaha World-Herald*, July 30, 1998, 18.

⁴⁶ The Niobrara Council web page, <http://www.niobaracouncil.org>, "Archived Minutes and Agendas," October 19, 2000, Item 5(G).

⁴⁷ Nebraska, Ninety-sixth Legislature, 2d sess., "An Act Relating to the Environment ...," LB 1234, April 11, 2000.

⁴⁸ Ibid., Sec. 4.

⁴⁹ Ibid., Sec. 4, Sec. 6.

⁵⁰ Ibid., Sec. 5.

⁵¹ Nebraska, Ninety-seventh Legislature, 2d sess., "Niobrara Scenic River Act," LB 1003, April 19, 2002, Sec. 44.

⁵² Ibid., Sec. 42.

⁵³ Hedren interview, July 19, 2002.

Conclusion

The Niobrara National Scenic River has been in existence for eleven years, and its impact can now be measured with greater clarity. When one reads the original "Niobrara Scenic River Proposal" of May 1980 (see Appendix), written by the group of landowner-advocates, the truly grass-roots nature of this legislation is irrefutable. With the overarching goal of preserving the river, there were three central tenets of their proposal: (1) the existing ranching and farming land uses shall be protected and recognized as desirable; (2) some restrictions on land acquisition by the government are necessary; and (3) local interests shall have a hand in developing the management plan for the river. These themes were respected throughout the law-making process by the political leaders, especially Senator James Exon, and were contained in the final designation act, Public Law 102-50. To date, the Park Service has largely honored these requests both in spirit and in precise law.

The Department of the Interior opposed the Niobrara Scenic River Designation Act during the legislation process, largely because of the lack of a formal Wild and Scenic Rivers Act study. However, once the designation was a *fait accompli*, the Park Service accepted the Niobrara into its fold, and began the process of managing the river in a professional manner, and in accord with its mandate. The Park Service's initial efforts ran afoul of the courts, in one instance because it delegated too much of its management authority, and in the other

because it drew the boundary without fully following the relevant procedures.

After losing these two lawsuits, the Park Service developed a new management plan and recommended a new boundary that have satisfied most affected individuals. The land grab and heavy-handed federal intrusion that were predicted by some opponents have not materialized. Indeed, the Park Service has proven to date to be a good neighbor, one genuinely desirous of a true partnership for the sake of the river.

The scenic-river opponents were unsuccessful at preventing designation because they failed to present credible arguments to justify their position. Many of the opponents were ill-informed and blatantly self-interested, and they were further hurt by their association with the discredited Norden Dam proposal. They attempted to take the moral high ground by playing the property-rights card, but their strategy ultimately failed because their arguments were based on emotions rather than facts. Furthermore, in their unwillingness to compromise, they were perceived as reactionaries.

On the other hand, the advocates had done their homework, and they began with a moderate, grass-roots proposal that was well-conceived and contained key elements of cooperation and protection for the local interests. Throughout the legislative process, proponents expressed a strong willingness to compromise, so long as the key elements of the original landowner proposal were respected. They maintained this tenor of cooperation throughout the

process, and they demonstrated considerable integrity in the face of persistent opposition.

In the years since designation, visitation of the river has continued to grow. People come from throughout the state, region, and country to experience the unique beauty of the Niobrara. Most visitors float the river, but others come to camp, hike, fish or sightsee. While the specter of overuse is present, the mechanisms are in place to provide reasonable protection for the river. Furthermore, the attitude of cooperation and acceptance that appears to prevail in the valley today bodes well for the future of the Niobrara.

The Niobrara Scenic River is nationally significant as an early test case in the partnership-management approach for Wild and Scenic Rivers within the private domain. Since the May 1991 designation of the Niobrara, there have been forty-four additions to the Wild and Scenic Rivers system (through 2000). Thirty-one of these rivers were within areas with substantial federal land ownership – mostly in national forests -- and are managed by the U.S. Forest Service or the Bureau of Land Management. Of the remaining thirteen new river additions, four were designated by the Secretary of the Interior at the behest of the state governors, and will be managed by the state government: Westfield River in Massachusetts, Big and Little Darby Creeks in Ohio, Willowa River in Oregon, and Lumber River in North Carolina.¹

The nine remaining rivers are similar to the Niobrara because they are characterized by substantial private land ownership, and were designated by acts

of Congress. All nine of these rivers followed the lead of the Niobrara by including wording in their enabling legislation that provided for management by partnership. Examples include management “through cooperative agreements” with specified state or local governments, and through coordination with the local river advisory committee that was established through the pre-designation study process. Several river designations declare that the local zoning laws “are deemed to satisfy the standards and requirements” of management under the Wild and Scenic Rivers Act (see Table 2, below). The Wild and Scenic Rivers Act was wisely written to allow just such creative approaches to managing the rivers.

In private-domain rivers such as the Niobrara, minimal federal land acquisition is required. In traditional units such as national parks and national monuments, the federal government owns all or nearly all of the lands within the park boundaries. This ownership allows a free hand in park management and operation. But without this land ownership, a cooperative agreement between the federal government and the local authorities becomes necessary and desirable to achieve resource protection. The authors of the Wild and Scenic Rivers Act realized that where private landownership was already established, working within this framework would achieve more successful resource protection for more rivers, and would produce far less opposition. The legislation and management plans for the Niobrara were developed to respect this private land ownership, while preserving the river and its associated resources.

Table 2
 Wild and Scenic Rivers Additions, 1992--2000
 Rivers in the Private Domain -- with Partnership Management

Name	State	Date	Public Law No.	Citation	Letter Code
Great Egg Harbor River	New Jersey	10/27/92	102-536	106 Stat. 3528	a
Maurice River	New Jersey	12/1/93	103-162	107 Stat. 1968	a
Farmington River	Connecticut	8/26/94	103-313	108 Stat. 1699	a
Lamprey River (#1)	New Hampshire	11/12/96	104-333	110 Stat. 4093	b, d
Sudbury, Assabet, Concord	Massachusetts	4/9/99	106-20	113 Stat. 30	b, d
Lamprey River (#2)	New Hampshire	5/2/00	106-192	114 Stat. 233	b, d
Wekiva River	Florida	10/13/00	106-299	114 Stat. 1050	a
White Clay Creek	Penna. & Del.	10/24/00	106-357	114 Stat. 1393	d
Lower Delaware	N.J. and Penna.	11/1/00	106-418	114 Stat. 1817	a, d

Letter Code Explanation:

- (a) Management through cooperative agreements with state or local jurisdictions.
- (b) Management with use of local zoning ordinances.
- (c) Management to be coordinated with ... River Advisory Committee.

The partnership-management experiment has been underway for nearly a decade on several private-domain Wild and Scenic Rivers around the country. Future historians and public-lands specialists will have the opportunity to consider if this approach to management of wild and scenic rivers and other natural and scenic resources – an approach largely initiated with the Niobrara – becomes a viable, useful new tool for protecting the country’s resources, and indeed for giving Americans a larger stake therein.

NOTES

¹ National Park Service, Wild and Scenic Rivers System, web-site viewed July 1, 2002, at <http://www.nps.gov/rivers/wildriverstable.html>.

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Appendix

Niobrara NSR Detail Map – West Section 167

Niobrara NSR Detail Map – Central Section 168

Niobrara NSR Detail Map – East Section 169

Initial Landowner Letter and Scenic River Proposal..... 170-172

Niobrara Scenic River Designation Act of 1991 173-177

OVERSIZED

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INITIAL LANDOWNER LETTER AND SCENIC RIVER PROPOSAL (3 pages)

Honorable J. James Exon
Senate Office Building,
Washington, D. C., 20510

Dear Senator Exon:

As landowners along the Niobrara River east of Valentine, we are writing to you because of your efforts in the U. S. Senate to preserve family farms and family ranches, along with our natural environment, while keeping federal fiscal responsibility clearly in mind.

The Niobrara River Valley between Valentine and the Norden Bridge is a national treasure which should be protected. We would like to establish a partnership arrangement with the U. S. Department of Interior to preserve the established free-flowing character of the river and to combine with that the protection of the pastoral landscape and the established farming and ranching lifestyles. We have given careful consideration to the National Wild and Scenic Rivers Act and believe it offers the best opportunity to accomplish the above-mentioned goals.

We respectfully urge you to sponsor and support legislation which would add this stretch of the Niobrara River to the Wild and Scenic Rivers system. We have attached draft language which we could support and would welcome an opportunity to work with your staff to provide additional details which will assure protection of this resource of national significance and our interests as farm and ranch stewards of this most-scenic Nebraska River Valley. On our behalf, please contact the other members of the Nebraska delegation in the U. S. House of Representatives and the U. S. Senate and Governor Thone to seek support for this measure.

We thank you in advance for this consideration.

Sincerely,

<i>Franklin V. Phillips</i>	<i>Fritz J. Brandenburg</i>
<i>Loring E. & Carl Kuhn</i>	<i>Steve Hobbs</i>
<i>G. W. Walsbach</i>	<i>Earlene Kuhl</i>
<i>A. H. M. Binley</i>	<i>Lillian Osburn</i>
<i>Alfred L. Conner</i>	<i>Wayne or Lois Sharp</i>
<i>Frank Kopyanowski</i>	<i>Jan Conner</i>
<i>Fredrick Z. Kopyanowski</i>	<i>William Hardman</i>
	<i>William Hardman</i>

Source: U.S. Congress, House, Committee on Interior and Insular Affairs. Niobrara Scenic River Designation Act of 1990: hearings before the Subcommittee on National Parks and Public Lands, 101st Cong., 2nd sess.. Ainsworth, Nebraska, March 16, 1990, 431-433.

Niobrara Scenic River Proposal

May 29, 1980

The segment from Borman Bridge southeast of Valentine approximately 47 miles downstream to the bridge south of the Meadville village site as generally depicted on the map entitled "Boundary Map, Proposed Niobrara Scenic River Valley Corridor, 1980" to be designated as a scenic river to be administered by the Department of Interior in coordination with and in consideration of the advice of the Niobrara Scenic River Advisory Council. In addition to the landscape and other natural values associated with the Niobrara River Valley as specified in Section 1 (b) to be preserved in association with the established free-flowing character of the river it shall be the purpose of this paragraph to combine with the above values the protection of the pastoral landscape and the established farming and ranching lifestyles of the rural people who depend upon the land in this unique area. The Advisory Council shall consist of seven members appointed by the Secretary, four of which shall be owners of farm or ranch property within the designated River Corridor; the balance of the council may include in its membership representatives from the affected county and local governmental subdivisions and/or private organizations whose purposes include the philosophy of river conservation. The Advisory Council shall: participate in the development and review of the management plan, and participate in the formulation and review of subsequent agency plans including annual operation and maintenance. Notwithstanding the authority to the contrary contained in Subsection 6 (a) of this Act, no land whatsoever in fee title shall be acquired without the consent of the owner. Furthermore, no less than fee interest in land (i.e., conservation easements) may be acquired without the consent of the owner: Provided a less than fee interest (conservation easement) in no more than 5 percent of the privately owned acreage within the designated River Corridor (and only on lands within 880 yards of the river, but not to include established farmsteads even within that distance) may be obtained without the consent of the landowner in such instance that activities are occurring or threatening to occur which pose a substantial threat to the integrity of the river and the values for which it was designated. Existing land use practices as conducted by present owners and/or operators will be permitted within the River Corridor. Structures in place or under construction at the time of designation will be considered compatible with such designation and therefore repair or replacement of said residential, farmstead, agricultural (including irrigation and fencing systems), fish hatchery and recreational facilities, bridges and other structures shall not be foreclosed. Similarly, land use practices utilized at the time of designation, including established livestock operations, silvicultural practices and private campgrounds shall be considered compatible with designation.

This is not, however, intended to preclude the acquisition of easements acquired on a willing-seller basis which will enhance the scenic or natural values of the corridor. Subsurface rights (including natural gas and petroleum resources) may not be acquired except with the consent of the owner. Current landowners of more than 40 acres of land within the River Corridor would also be permitted to relocate their primary residence or build one residence (if none now exists) on their property within the 880 yard distance, however, residential subdivisions would not be permitted unless approved by the Advisory Council and the Secretary. Public access easements may be obtained at the following locations: Berry Bridge, Allen Bridge, Brewer Bridge, Rockford Bridge, Norden Bridge and Meadville Bridge. These sites shall not be for purposes of public camping and shall not exceed 5 acres per site. This paragraph shall not preclude the purchase of other public access easements on a willing seller-willing buyer basis. However, public access easements shall not be acquired through condemnation which parallel the river. Furthermore, because of the extensive public land holdings which parallel most of the river upstream from the Cornell Dam to the Borman Bridge, no interests in land in that stretch will be acquired without the consent of the landowner. Easements for scenic overlooks adjacent to existing public roads may be acquired on a willing-seller basis within the Valley Corridor identified on the "Boundary Map, Proposed Niobrara Scenic River Valley Corridor, 1980". Donations of land or interests in land within and beyond the specified boundaries of the Valley Corridor may be donated to the Department of Interior if it contributes to the purposes of this designation. With the approval of the Secretary and advice of the Council, such donations may be granted by the landowner directly to nonprofit conservation organizations for the same purposes. The Interior Department may enter into cooperative agreements with local units of government for maintenance of existing access and paralleling roads within the Valley Corridor, law enforcement, control of trespass, litter control, interpretive programs and other associated visitor services. The Department of Interior may share in the expense of instituting conservation practices on private land which will contribute to and enhance scenic and/or natural values or contribute to the protection of resources of historical or archaeological significance within the River and Valley Corridors. For purposes of carrying out the provision of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated \$3,000,000 for acquisition of interests in lands and \$1,000,000 for development.

For purposes of clarification it is also intended that state and private water rights will be unchanged; that hunting and fishing privileges, camping and trespassing on private property are to remain the prerogative of the landowner; that fencing systems will remain the prerogative of the landowner, although the Department of Interior may assist in the improvement of fencing system to enhance ~~the~~ ^{the} of this river designation. Continued operation and maintenance of the ~~land~~ ^{land} established (since 1915) and only modestly intrusive Cornell Dam powerworks will be permitted, although public safety markers and portage facilities may be provided.

NIOBRARA SCENIC RIVER DESIGNATION ACT OF 1991 (5 pages)

105 STAT. 254

PUBLIC LAW 102-50—MAY 24, 1991

Public Law 102-50
102d Congress

An Act

May 24, 1991
[S. 248]

To amend the Wild and Scenic Rivers Act to designate certain segments of the Niobrara River in Nebraska and a segment of the Missouri River in Nebraska and South Dakota as components of the wild and scenic rivers system, and for other purposes.

Niobrara Scenic
River
Designation
Act of 1991.
Natural
resources.
16 USC 1271
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Niobrara Scenic River Designation Act of 1991".

SEC. 2. DESIGNATION OF THE RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end thereof the following:

"() NIOBRARA, NEBRASKA.—(A) The 40-mile segment from Borman Bridge southeast of Valentine downstream to its confluence with Chimney Creek and the 30-mile segment from the river's confluence with Rock Creek downstream to the State Highway 137 bridge, both segments to be classified as scenic and administered by the Secretary of the Interior. That portion of the 40-mile segment designated by this subparagraph located within the Fort Niobrara National Wildlife Refuge shall continue to be managed by the Secretary through the Director of the United States Fish and Wildlife Service.

"(B) The 25-mile segment from the western boundary of Knox County to its confluence with the Missouri River, including that segment of the Verdigre Creek from the north municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara, to be administered by the Secretary of the Interior as a recreational river.

"After consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.

"() MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The 39-mile segment from the headwaters of Lewis and Clark Lake to the Ft. Randall Dam, to be administered by the Secretary of the Interior as a recreational river."

SEC. 3. STUDY OF 6-MILE SEGMENT.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following at the end:

"() NIOBRARA, NEBRASKA.—The 6-mile segment of the river from its confluence with Chimney Creek to its confluence with Rock Creek."

(b) WATER RESOURCES PROJECT.—If, within 5 years after the date of enactment of this Act, funds are not authorized and appropriated for the construction of a water resources project on the 6-mile segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek, at the expiration of such 5-

16 USC 1274
note.

year period the 6-mile segment shall be designated as a component of the National Wild and Scenic Rivers System by operation of law, to be administered by the Secretary of the Interior in accordance with sections 4 and 5 of this Act and the applicable provisions of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287). The Secretary of the Interior shall publish notification to that effect in the Federal Register.

Federal
Register,
publication.

SEC. 4. LIMITATIONS ON CERTAIN ACQUISITION.

16 USC 1274
note.

(a) **LIMITATIONS.**—In the case of the 40-mile and 30-mile segments of the Niobrara River described in the amendment to the Wild and Scenic Rivers Act made by section 2 of this Act, the Secretary of the Interior shall not, without the consent of the owner, acquire for purposes of such segment land or interests in land in more than 5 percent of the area within the boundaries of such segments, and the Secretary shall not acquire, without the consent of the owner, fee ownership of more than 2 percent of such area. The limitations on land acquisition contained in this subsection shall be in addition to, and not in lieu of, the limitations on acquisition contained in section 6 of the Wild and Scenic Rivers Act.

(b) **FINDING; EXCEPTION.**—The 5 percent limitation and the 2 percent limitation contained in subsection (a) of this section shall not apply if the Secretary of the Interior finds, after notice and opportunity for public comment, that State or local governments are not, through statute, regulation, ordinance, or otherwise, adequately protecting the values for which the segment concerned is designated as a component of the national wild and scenic rivers system.

SEC. 5. NIOBRARA SCENIC RIVER ADVISORY COMMISSION.

16 USC 1274
note.

(a) **ESTABLISHMENT.**—There is hereby established the Niobrara Scenic River Advisory Commission (hereinafter in this Act referred to as the “Commission”). The Commission shall advise the Secretary of the Interior (hereinafter referred to as the “Secretary”) on matters pertaining to the development of a management plan, and the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of this Act which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

(b) **MEMBERSHIP.**—The Commission shall consist of 11 members appointed by the Secretary—

(1) 3 of whom shall be owners of farm or ranch property within the upper portion of the designated river corridor between the Borman Bridge and the Meadville;

(2) 3 of whom shall be owners of farm or ranch property within the lower portion of the designated river corridor between the Meadville Bridge and the bridge on Highway 137;

(3) 1 of whom shall be a canoe outfitter who operates within the river corridors;

(4) 1 of whom shall be chosen from a list submitted by the Governor of Nebraska;

(5) 2 of whom shall be representatives of the affected county governments or natural resources districts; and

(6) 1 of whom shall be a representative of a conservation organization who shall have knowledge and experience in river conservation.

(c) **TERMS.**—Members shall be appointed to the Commission for a term of 3 years. A member may serve after the expiration of his term until his successor has taken office.

(d) **CHAIRPERSON; VACANCIES.**—The Secretary shall designate 1 of the members of the Commission, who is a permanent resident of Brown, Cherry, Keya Paha, or Rock Counties, to serve as Chairperson. Vacancies on the Commission shall be filled in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation, but the Secretary is authorized to pay expenses reasonably incurred by the Commission in carrying out its responsibilities under this Act on vouchers signed by the Chairperson.

(e) **TERMINATION.**—The Commission shall cease to exist 10 years from the date of enactment of this Act.

16 USC 1274
note.

SEC. 6. MISSOURI RIVER PROVISIONS.

(a) **ADMINISTRATION.**—The administration of the Missouri River segment designated in section 2 of this Act shall be in consultation with a recreational river advisory group to be established by the Secretary. Such group shall include in its membership representatives of the affected States and political subdivisions thereof, affected Federal agencies, organized private groups, and such individuals as the Secretary deems desirable.

(b) **BRIDGES.**—The designation of the Missouri River segment by the amendment made by section 2 of this Act shall not place any additional requirements on the placement of bridges other than those contained in section 303 of title 49, United States Code.

(c) **EROSION CONTROL.**—Within the Missouri River segment designated by the amendment made by section 2 of this Act, the Secretary shall permit the use of erosion control techniques, including the use of rocks from the area for streambank stabilization purposes, subject to such conditions as the Secretary may prescribe, in consultation with the advisory group described in subsection (a) of this section, to protect the resource values for which such river segment was designated.

16 USC 1274
note.

SEC. 7. NATIONAL RECREATION AREA STUDY.

(a) **IN GENERAL.**—The Secretary of the Interior, acting through the Director of the National Park Service, shall undertake and complete a study, within 18 months after the date of enactment of this section, regarding the feasibility and suitability of the designation of lands in Knox County and Boyd County, Nebraska, generally adjacent to the recreational river segments designated by the amendments made by section 2 of this Act and adjacent to the Lewis and Clark Reservoir, as a national recreation area. The Secretary may provide grants and technical assistance to the State of Nebraska, the Santee Sioux Indian Tribal Council, and the political subdivisions having jurisdiction over lands in these 2 counties to assist the Secretary in carrying out such study. The study under this section shall be prepared in consultation with the Santee Sioux Tribe, affected political subdivisions, and relevant State agencies. The study shall include as a minimum each of the following:

- (1) A comprehensive evaluation of the public recreational opportunities and the flood plain management options which are available with respect to the river and creek corridors involved.

(2) An evaluation of the natural, historical, paleontological, and recreational resources and values of such corridors.

(3) Recommendations for possible land acquisition within the corridor which are deemed necessary for the purpose of resource protection, scenic protection and integrity, recreational activities, or management and administration of the corridor areas.

(4) Alternative cooperative management proposals for the administration and development of the corridor areas.

(5) An analysis of the number of visitors and types of public use within the corridor areas that can be accommodated in accordance with the full protection of its resources.

(6) An analysis of the facilities deemed necessary to accommodate and provide access for such recreational uses by visitors, including the location and estimated costs of such facilities.

(b) **SUBMISSION OF REPORT.**—The results of such study shall be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 8. STUDY OF FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.

16 USC 1a-5
note.

(a) **IN GENERAL.**—The Secretary of the Interior shall undertake and complete a study of the feasibility and suitability of establishing a national park in the State of Nebraska to be known as the Niobrara-Buffalo Prairie National Park within 18 months after the date of enactment of this Act.

(b) **AREA TO BE STUDIED.**—The areas studied under this section shall include the area generally depicted on the map entitled “Boundary Map, Proposed Niobrara-Buffalo Prairie National Park”, numbered NBP-80,000, and dated March 1990. The study area shall not include any lands within the boundaries of the Fort Niobrara National Wildlife Refuge.

(c) **RESOURCES.**—In conducting the study under this section, the Secretary shall conduct an assessment of the natural, cultural, historic, scenic, and recreational resources of such areas studied to determine whether they are of such significance as to merit inclusion in the National Park System.

(d) **STUDY REGARDING MANAGEMENT.**—In conducting the study under this section, the Secretary shall study the feasibility of managing the area by various methods, in consultation with appropriate Federal agencies, the Nature Conservancy, and the Nebraska Game and Parks Commission.

(e) **SUBMISSION OF REPORT.**—The results of the study shall be submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

105 STAT. 258

PUBLIC LAW 102-50—MAY 24, 1991

16 USC 1274
note.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Approved May 24, 1991.

LEGISLATIVE HISTORY—S. 248:

HOUSE REPORTS: No. 102-51, Pt. 1 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 102-19 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 137 (1991):

Apr. 17, considered and passed Senate.

May 14, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 27 (1991):

May 24, Presidential statement.