

## THE PASSAGE OF THE APPALACHIAN BILL

ON THE 15th of February the long struggle for national legislation looking to the perpetuation of the forests of the Southern Appalachian and White Mountains was ended when the bill known as the Weeks, or Appalachian bill, was passed by a vote of 58 to 9. As it had been passed by the House in June of last year and was enacted by the Senate without change, it only remains for it to receive the signature of President Taft to become a law.

Between twelve and one o'clock, immediately at the close of the morning hour, the bill was called up by Senator Brandegee of Connecticut, who had it in charge. Senator Stone of Missouri, who had offered an amendment, withdrew it. Senator Brandegee then reviewed the legislative history of this bill in the Senate and the bill was read. The Senator from Connecticut made a brief and admirable opening statement and answered several questions, after which Senator Burton of Ohio addressed the Senate for over two hours in opposition to the bill. During this time he adduced nothing new. The Senator's secretary sat beside him with a ponderous array of volumes, pamphlets and documents, but his arguments and citations, which were numerous, were the old familiar ones which have been answered again and again.

Senator Newlands of Nevada spoke about an hour. He explained that he was in favor of the bill and desired its passage, but that his purpose in opposing it in its present form at the last session was "not to defeat the bill, but to anchor it more firmly in the interstate commerce power of the Constitution, and enlarge its area so as to provide a comprehensive scheme of legislation that would involve the regulation of the flow of all the navigable rivers of the country in aid of navigation, and accomplish that ultimate object by the storing of the flood waters of these rivers, including the sources of streams for purposes of irrigation and power; by the protection of forested areas included within the watersheds of such rivers and their sources, so as to prevent precipitate run-off and safeguard against denudation and erosion; by the protection of the river banks by revetment and levees, so as to confine the rivers to their channels, and thus aid in the reclamation of vast areas of swamp and overflowed lands within the drainage basins of such rivers containing an alluvial soil of enormous fertility and requiring only protection from flood waters to insure their highest agricultural development." He further explained that since there seemed to be a well grounded fear that the pressing of amendments at this time would endanger the passage of the bill, which he did not wish to do, he should withdraw his amendment and seek to accomplish his object through a more comprehensive piece of legislation at a later time. He summarized with much skill and clearness the arguments for the bill and devoted considerable time to the plan of a great national waterways system which is his special interest in legislation.

Mr. Newlands' position was a matter of gratification to friends of the bill because he has always been accredited a friend of progressive forestry legislation and it was a great disappointment to find him ranged apparently with opponents of this bill at the last session.

The next speaker was Senator Simmons of North Carolina, a long-time supporter of the various Appalachian forest bills. He made a carefully pre-

pared argument, reinforced by observations from his own state which is so largely interested in this question.

Senator Heyburn of Idaho, strengthened the case for the bill by his opposition. The point of his remarks was that this bill proposed to buy several counties entire, counties with a large population, of which he gave the figures, and turn them into solitudes. He denounced it is the "most radical piece of fancy legislation that has ever been proposed in the Congress of the United States."

Senator Smith of South Carolina, replied effectively to certain remarks of the Idaho Senator on the effects of erosion.

Senator Burton offered two amendments, the first providing for an examination of the lands to be purchased by the Engineer Corps of the United States Army instead of by the Geological Survey, and the second providing "that on lands acquired by the Commission timber shall be sold and water-power shall be granted only at prices and on terms approved by the National Forest Reservation Commission." Both amendments were rejected and roll calls were refused.

The roll call was then ordered on the passage of the bill and it was passed by a vote of 58 to 9. The vote concluded at about half-past five o'clock in the afternoon. The record was as follows:

<i>Yeas—58</i>			
BACON	CURTIS	LODGE	SMITH, Md.
BEVERIDGE	DICK	MARTIN	SMITH, Mich
BORAH	DIXON	NEWLANDS	SMITH, S. C.
BOURNE	DUPONT	NIXON	SMOOT
BRADLEY	FLETCHER	OLIVER	STEPHENSON
BRANDEGEE	FLINT	OVERMAN	SUTHERLAND
BRIGGS	FOSTER	PAGE	SWANSON
BROWN	FRAZIER	PENROSE	TALIAFERRO
BURNHAM	FRYE	PILES	TAYLOR
BURROWS	GALLINGER	PERKINS	WARNER
CARTER	GAMBLE	RICHARDSON	WARREN
CHAMBERLAIN	GUGGENHEIM	ROOT	WATSON
CRANE	JONES	SCOTT	WETMORE
CRAWFORD	KEAN	SIMMONS	YOUNG
CUMMINS	LA FOLLETTE		
<i>Nays—9</i>			
BRISTOW	CULLOM	GRONNA	PAYNTER
BURTON	DAVIS	McCUMBER	SHIVELY
CLARK, Wyoming			
<i>Not voting—24</i>			
ALDRICH	CLARK, Ark.	HEYBURN	PERCY
BAILEY	CULBERSON	JOHNSTON	RAYNER
BANKHEAD	DEPEW	LORIMER	STONE
BULKELEY	DILLINGHAM	MONEY	TERRELL
BURKETT	GORE	NELSON	THORNTON
CLAPP	HALE	OWEN	TILLMAN

Of the Senators not voting all but four, Senators Hale, Lorimer, Nelson and Tillman, were placed on record by their pairs. These showed Senators Aldrich, Bulkeley, Burkett, Clapp, Depew, Dillingham, Johnston, Money, Rayner, Terrell and Thornton in favor of the bill, and Bailey, Bankhead, Clark of Arkansas, Culberson, Gore, Heyburn, Owen, Percy and Stone opposed.

There is evidence in this large senatorial majority in favor of the bill that its friends have been very successful in presenting the arguments for it during the last few weeks, because there was undoubtedly a much larger opposition to the measure some months ago than the vote shows at the present time. This is a matter for great congratulation. The bill was in charge of Senator Brandegee who has worked for its success faithfully and efficiently during the session. Closely associated with him on the floor was Senator

Gallinger, who has been actively in the service for this legislation since it was first proposed. For the final success much credit is due to the work of Senator Crane, whose wise counsel and service has always been available in its behalf. On the Democratic side Senators Chamberlain, Fletcher, and Overman have been particularly strong in their support. The text of the bill, as enacted, follows:

### AN ACT

To enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of the Congress of the United States is hereby given to each of the several States of the Union to enter into any agreement or compact, not in conflict with any law of the United States, with any other State or States for the purpose of conserving the forests and the water supply of the States entering into such agreement or compact.

SEC. 2. That the sum of two hundred thousand dollars is hereby appropriated and made available until expended, out of any moneys in the National Treasury not otherwise appropriated, to enable the Secretary of Agriculture to cooperate with any State or group of States, when requested to do so, in the protection from fire of the forested watersheds of navigable streams; and the Secretary of Agriculture is hereby authorized, and on such conditions as he deems wise, to stipulate and agree with any State or group of States to cooperate in the organization and maintenance of a system of fire protection on any private or state forest lands within such State or States and situated upon the watershed of a navigable river: *Provided*, That no such stipulation or agreement shall be made with any State which has not provided by law for a system of forest-fire protection: *Provided further*, That in no case shall the amount expended in any State exceed in any fiscal year the amount appropriated by that State for the same purpose during the same fiscal year.

SEC. 3. That there is hereby appropriated, for the fiscal year ending June thirtieth, nineteen hundred and ten, the sum of one million dollars, and for each fiscal year thereafter a sum not to exceed two million dollars for use in the examination, survey, and acquirement of lands located on the headwaters of navigable streams or those which are being or which may be developed for navigable purposes: *Provided*, That the provisions of this section shall expire by limitation on the thirtieth day of June, nineteen hundred and fifteen.

SEC. 4. That a commission, to be known as the National Forest Reservation Commission, consisting of the Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, and two members of the Senate, to be selected by the President of the Senate, and two members of the House of Representatives, to be selected by the Speaker, is hereby created and authorized to consider and pass upon such lands as may be recommended for purchase as provided in section six of this Act, and to fix the price or prices at which such lands may be purchased, and no purchases shall be made of any lands until such lands have been duly approved for purchase by said commission: *Provided*, That the members of the commission herein created shall serve as such only during their incumbency in their respective official positions, and any vacancy on the commission shall be filled in the manner as the original appointment.

SEC. 5. That the commission hereby appointed shall, through its president, annually report to Congress, not later than the first Monday in December, the operations and expenditures of the commission, in detail, during the preceding fiscal year.

SEC. 6. That the Secretary of Agriculture is hereby authorized and directed to examine, locate, and recommend for purchase such lands as in his judgment may be necessary to the regulation of the flow of navigable streams, and to report to the National Forest Reservation Commission the results of such examinations: *Provided*, That before any lands are purchased by the National Forest Reservation Commission said lands shall be examined by the Geological Survey and a report made to the Secretary of Agriculture, showing that the control of such lands will promote or protect the navigation of streams on whose watersheds they lie.

SEC. 7. That the Secretary of Agriculture is hereby authorized to purchase, in the name of the United States, such lands as have been approved for purchase by the National Forest Reservation Commission at the price or prices fixed by said commission: *Provided*, That no deed or other instrument of conveyance shall be accepted or approved by the Secretary of Agriculture under this Act until the legislature of the State in which the land lies shall have consented to the acquisition of such land by the United States for the purpose of preserving the navigability of navigable streams.



SEC. 8. That the Secretary of Agriculture may do all things necessary to secure the safe title in the United States to the lands to be acquired under this Act, but no payment shall be made for any such lands until the title shall be satisfactory to the Attorney-General and shall be vested in the United States.

SEC. 9. That such acquisition may in any case be conditioned upon the exception and reservation to the owner from whom title passes to the United States of the minerals and of the merchantable timber, or either or any part of them, within or upon such lands at the date of the conveyance, but in every case such exception and reservation and the time within which such timber shall be removed and the rules and regulations under which the cutting and removal of such timber and the mining and removal of such minerals shall be done shall be expressed in the written instrument of conveyance, and thereafter the mining, cutting, and removal of the minerals and timber so excepted and reserved shall be done only under and in obedience to the rules and regulations so expressed.

SEC. 10. That inasmuch as small areas of land chiefly valuable for agriculture may of necessity or by inadvertence be included in tracts acquired under this Act, the Secretary of Agriculture may, in his discretion, and he is hereby authorized, upon application or otherwise, to examine and ascertain the location and extent of such areas as in his opinion may be occupied for agricultural purposes without injury to the forests or to stream flow and which are not needed for public purposes, and may list and describe the same by metes and bounds, or otherwise, and offer them for sale as homesteads at their true value, to be fixed by him, to actual settlers, in tracts not exceeding eighty acres in area, under such joint rules and regulations as the Secretary of Agriculture and the Secretary of the Interior may prescribe; and in case of such sale the jurisdiction over the lands sold shall, ipso facto, revert to the State in which the lands sold lie. And no right, title, interest, or claim in or to any lands acquired under this Act, or the waters thereon, or the products, resources, or use thereof after such lands shall have been so acquired, shall be initiated or perfected, except as in this section provided.

SEC. 11. That, subject to the provisions of the last preceding section, the lands acquired under this Act shall be permanently reserved, held, and administered as national forest lands under the provisions of section twenty-four of the Act approved March third, eighteen hundred and ninety-one (volume twenty-sixth, Statutes at Large, page eleven hundred and three), and Acts supplemental to and amendatory thereof. And the Secretary of Agriculture may from time to time divide the lands acquired under this Act into such specific national forests and so designate the same as he may deem best for administrative purposes.

SEC. 12. That the jurisdiction, both civil and criminal, over persons upon the lands acquired under this Act shall not be affected or changed by their permanent reservation and administration as national forest lands, except so far as the punishment of offenses against the United States is concerned, the intent and meaning of this section being that the State wherein such land is situated shall not, by reason of such reservation and administration, lose its jurisdiction nor the inhabitants thereof their rights and privileges as citizens or be absolved from their duties as citizens of the State.

SEC. 13. That five per centum of all moneys received during any fiscal year from each national forest into which the lands acquired under this Act may from time to time be divided shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the state legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein: *Provided further*, That there shall not be paid to any State for any county an amount equal to more than forty per centum of the total income of such county from all other sources.

SEC. 14. That a sum sufficient to pay the necessary expenses of the commission and its members, not to exceed an annual expenditure of twenty-five thousand dollars, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available, and shall be paid out on the audit and order of the president of the said commission, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of said commission.

Passed the House of Representatives June 23 (calendar day, June 24), 1910.

Passed the Senate February 15, 1911.

## EDITORIAL

### THE APPALACHIAN BILL

**T**HE passage by the Senate on Wednesday of the bill commonly known as the Weeks, or Appalachian, bill ends the first stage of a long struggle for national forests in the eastern mountains, a struggle that began in 1899. The bill now enacted bears little resemblance to those that preceded it up to the time of the Sixtieth Congress, although its purpose has been well understood to be the same, that is, the perpetuation of forests upon the great watersheds of the Appalachian ridge. It is a general law, providing for no particular locality, but there can hardly be a question raised as to its intent or as to the regions which are in present need of action by the nation.

Imperfect as it admittedly is, this new forest law marks a distinct step in advance, and may be said in some sense to be the beginning of a new departure in that it makes our national forest policy really national, although the application of the principle under the new law is greatly circumscribed. This aspect of the question is discussed in another connection.

Under its provisions much good may be accomplished in the nature of forest preservation and protection if it is broadly and generously interpreted by its administrators; but it has been frankly admitted by its advocates that it is acceptable only as a beginning and a means of testing the application of a most important economic principle.

As passed by the House last June, the bill carried an appropriation for the fiscal year ending June 30, 1910, of one million dollars, and for each succeeding year until 1915 of two million dollars annually, making an aggregate of eleven million dollars. Because of legislative conditions, it was necessary to pass the bill in the Senate without amendment and this provision was therefore unchanged. It is, therefore, probable that the first million dollars which was allotted for 1910 will be lost and that only ten million will be available for the purposes of the act. It is not certain, however, that the intent of the bill may not be considered and the full appropriation made available.

The passage of the bill is a notable triumph of enlightened public sentiment over political obstruction. Here was a measure which had the endorsement of three successive Presidents of the United States, of intelligent citizenship all over the land, as voiced by practically every great national organization that is working for the public welfare, by commercial and industrial bodies, by the federated women's clubs of America and an almost unanimous periodical and newspaper press. Notwithstanding such support as would seem to have assured its prompt enactment, it met in Congress from year to year a most stubborn opposition, directed by the leaders of the party organizations on both sides of the House. In the Senate there was a bitter sectional hostility from the northwest, which finally melted away leaving Senators Heyburn of Idaho and Clark of Wyoming, as its sole exponents. Notwithstanding its importance to the south, there was from that section a considerable opposition on the part of adherents of a strict, old-fashioned states rightsism, and the unfavorable influence of party leaders was strong in the middle

west. So far as evidence has appeared, this opposition in our national legislature has had no support outside of Congress, and it is remarkable that it has held out so long against an unusually broad, national and non-partisan public demand.

It is a weakness of the American people to develop great enthusiasms, embody them in law and then forget them, to become absorbed in their daily vocations and in fresh interests. This disposition has nullified many good laws. Let it be remembered in this hour of triumph that the ultimate success of this new forest law will depend upon the continued interest and intelligent support of those whose efforts have secured its enactment. In the face of public indifference it will become a useless instrument. Forcefully and intelligently sustained, it may be the beginning of greater good to the people of the whole country than even its most ardent friends have claimed.

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#### ITS CONSTITUTIONAL ASPECT

THE new forest law in its present form must be regarded as partial, since it provides for maintaining forest cover only on drainage areas necessary for "conserving the navigability of navigable rivers." This is in deference to an opinion given by the Judiciary Committee of a former House of Representatives, and to the views of many constitutional lawyers as to the powers of the general government. We have always deemed it unfortunate that the discussion of this great public question was forced as a matter of expediency into so narrow a channel by the dictum of a political committee which is in no sense a judicial body, although made up of very able lawyers. Its members sit upon the committee as advocates rather than as judges in many cases, and this was especially true in connection with the Appalachian bill, which involved so many points of controversy and had aroused strong feeling. At the time that the opinion was rendered upon the Appalachian bill, several members of the committee, including its chairman, represented the spirit of intense hostility to the measure which guided the action of the leaders of the House organization. Under these circumstances we could hardly expect that an opinion would be rendered such as we should look for from the Supreme Court of the United States.

The views expressed by the committee are not unquestioned and we believe that time will teach the American people that an adequate timber supply, the preservation of the flow of streams for water power and the public health, and the sanitary influence of the mountain forests, are as necessary to the people as the navigability of their rivers, that is, that they are essential to the general welfare. In the debate last summer in the House no arguments for the bill were more gratifying than those of Mr. Mann of Illinois and General Keifer of Ohio, both of whom took a strong stand for the power of the general government to preserve our forests on the ground of the general welfare. Hoke Smith, Secretary of the Interior under President Cleveland and twice elected governor of Georgia, is on record with a similar declaration. None of these men is a radical, or a dangerous loose constructionist. They have with them many lawyers equally able and learned with those on the other side. It is the lesson of our whole history from the time of the Louisiana Purchase, made by the greatest of all the strict constructionists, that when a great national need has arisen, the provisions of the Constitution have been found to be ample to safeguard the nation. In academic constitutional discussions, the general welfare clause is but little regarded. When practical need arises, it is realized that the wise and cautious statesmen who debated almost every word of our great instrument of government, did not insert those words for mere verbiage. They knew what some lesser interpreters of the Constitution seem to forget,

that any such instrument, to be permanent, must provide for national growth and changing conditions. Nothing is more instructive in our history than the prophetic vision with which Washington, Jefferson, Marshall and others of our elder statesmen, looked forward through the years to the development of the nation they were founding. They would never have circumscribed that development by any provision which could have prevented the guarding of the people's welfare against any unfavorable conditions that might arise.

The nation that can purchase lands for national parks, as has been done several times, can purchase lands for national forests to maintain a permanent timber supply, protect our waterpowers and preserve the public health, whether such forests affect the navigability of navigable rivers or not. It was decided by the Supreme Court in the Gettysburg case that the national government could purchase land for the inculcation of patriotism. This was a broad interpretation, but one which need not cause terror in the heart of any citizen of the United States or admirer of the Constitution. It is distinctly in the line of the maintenance of national dignity and good citizenship.

Not to go back to old purchases of land in the early history of the country which have already been cited, to provide timber for the Navy, there are on record the following purchases of land within recent years which certainly do not come under the interstate commerce clause in any sense: Sully's Hill National Park, North Dakota, was purchased from the Devil's Lake Indians by virtue of an act dated April 27, 1904. Platt National Park was purchased from the Choctaw and Chickasaw Indians by authority of acts dated July 1, 1902, and April 21, 1904. The National Bison Range on the Flathead Indian Reservation was authorized by act dated May 23, 1908. By this act \$30,000 was appropriated to enable the Secretary of the Interior to pay the confederated tribes for the land according to an act dated April 23, 1904. The same act provided ten thousand dollars for fencing the range and putting up buildings. An act dated March 4, 1909, provided \$47,000 for the maintenance of the Montana Bison Range.

If the government can do these things with its money, it is idle to claim that it cannot spend it equally for lands in any of the states of the Union for the important economic purposes connected with forestry as understood in these modern times. The fact is, we strain at gnats and swallow camels in appropriation of money for national purposes, and whenever it suits legislators to oppose a measure which is otherwise meritorious, the cry of unconstitutionality is almost always resorted to. Notwithstanding all the agitation, argument, and education of recent years, we have much to learn as a people in regard to the economic importance and necessity of scientific forestry. This lesson is being rapidly learned, however, and when it is fully understood the resulting enlightenment will lead to a development of our forest policy which will not endanger the Constitution, but will give greater permanence to the nation, strengthen the United States treasury, and infinitely add to our resources as a people in the years to come.

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