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January 29, 1976

SUBJECT: STARLING AND BLACKBIRD  
CONTROL ACT (H.R. 11510)

What is the President's decision going to be on the  
bird control bill passed Tuesday by the House and Senate  
and opposed strongly by the environmentalists?

GUIDANCE: As you know, the enrolled bill arrived here  
yesterday. As with any enrolled bill, the  
President will make no decision on it until  
the appropriate agencies have made comment.  
The last day for action on it is February 9.

ME

APPROVED  
FEB 4 - 1976

Signed  
2/4/76

THE WHITE HOUSE

WASHINGTON


ACTION

February 4, 1976

Posted  
2/4/76

To Archive  
2/4/76

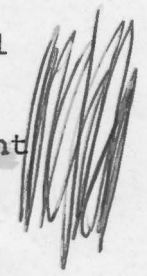
MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON 


SUBJECT: H.R. 11510 - Emergency Blackbird Control in Kentucky and Tennessee

Attached for your consideration is H.R. 11510, a bill sponsored by Representative Beard (D) of Tennessee and 14 others, directing the Interior Department to apply control chemicals to blackbird and starling roosts in Kentucky and Tennessee. The last day for action is Monday, February 9, 1976.

BACKGROUND

The bill waives compliance with the National Environmental Policy Act, the Federal Environmental Pesticide Control Act, or any other provision of the law. The Governor of either State must certify that the birds pose a significant hazard to health, safety, or property and the Secretary must find that the use of a registered chemical will not cause hazards to health, safety, or property. The bill is effective through April 15, 1976. 

The bill, introduced as an emergency measure and without committee approvals, passed both Houses unanimously with little debate. Additionally, the Tennessee and Kentucky legislatures have noted to ask approval of the bill, as have both Governors.

The urgency of action is based on the use of Tergitol, a chemical that depends on cold weather to be effective. 



AGENCY RECOMMENDATIONS

Office of Management and Budget (Tab A)	Approval
Department of the Interior	Approval
Environmental Protection Agency	Disapproval
Council on Environmental Quality	Disapproval
Department of Defense	Defers to CEQ (Informally)
Department of Justice	Defers to Interior
Department of Agriculture	Defers to Interior

STAFF COMMENTS

Jack Marsh, Robert Hartmann, Max Friedersdorf,  
Rogers Morton, Ken Lazarus, and I recommend approval.

RECOMMENDATION

That you approve this bill.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

FEB 3 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 11510 - Emergency  
starling and blackbird control in Kentucky  
and Tennessee  
Sponsors - Rep. Beard (D) Tennessee and 14 others

Last Day for Action

February 9, 1976 - Monday

Purpose

To direct the Interior Department to apply bird control chemicals to blackbird roosts in excess of 500,000 birds in Kentucky and Tennessee until April 15, without complying with the National Environmental Policy Act or other laws, if the Governor of either State certifies that the birds pose significant hazards to health, safety, or property, and if the Secretary of the Interior finds that chemical use will not cause hazards to health, safety, or property.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Environmental Protection Agency	Disapproval
Council on Environmental Quality	Disapproval
Department of Defense	Defers to CEQ (Informally)
Department of Justice	Defers to Interior
Department of Agriculture	Defers to Interior

Discussion

Up to 77 million blackbirds, starlings, and grackles have made winter roosts in Kentucky and Tennessee this year. The birds have become a serious nuisance and are causing property damage. Moreover, the birds'

feces -- accumulating to as much as a foot and a half in depth in some areas -- may carry a fungus which causes histoplasmosis, a respiratory disease.

Non-lethal means of dispersing the birds have failed. The best alternative for eliminating the birds appears to be the use of Tergitol, a chemical which when sprayed on the birds washes off the protective oils in their feathers causing them to freeze during rainy, cold weather (45 degrees or less). Tergitol is a non-poisonous biodegradable detergent which quickly dissolves and leaves no adverse environmental after-effects. This chemical was developed by the U.S. Fish and Wildlife Service for use in bird control.

When a similar blackbird roosting problem occurred last winter, the Department of the Army treated birds in the vicinity of Fort Campbell with Tergitol. Because of delays caused by litigation initiated by the Society for Animal Rights, however, this Tergitol application occurred late in the winter season and a lack of rainy, cold weather limited its effectiveness.

Since then, Tergitol has been registered as a pesticide by the Environmental Protection Agency and placed under the exclusive control of the Department of the Interior. In a continuation of its case, the Society for Animal Rights sought again to prohibit the use of Tergitol, and the Department of Justice entered into an agreement in November, 1975 which stipulated that the Federal Government would not use Tergitol until such time as an appropriate national environmental impact statement (EIS) was completed. We have been informally advised by Interior that the EIS will not be completed for some weeks. Under the terms of this stipulation, however, the Secretary of the Interior can use Tergitol in those cases where he declares, upon application by the States, that an emergency exists involving "substantial, imminent, and demonstrable health or safety hazard to humans."

The enrolled bill would direct the Secretary of the Interior to apply bird control chemicals to those blackbird roosts in the States of Kentucky and Tennessee which contain in excess of 500,000 birds. On or before April 15, 1976, such blackbird control measures would not have to comply with provisions of the National



Environmental Policy Act (NEPA), the Federal Environmental Pesticide Control Act (FEPCA), or any other provision of law. However, before taking action, the Governors of Kentucky and/or Tennessee must certify to the Secretary that "blackbird roosts" are a significant hazard to human health, safety or property in their respective States, and in turn, the Secretary must determine that the treatment of a particular roost would not pose a hazard to human health, safety or property.

H.R. 11510 was introduced, passed, and enrolled in less than a day without committee hearings and without an opportunity for any Executive Branch comment. The bill passed in the House on a voice vote without debate. Similarly, the Senate passed the bill on a voice vote following floor statements in which Senators Baker (R) and Brock (R) of Tennessee and Huddleston (D) and Ford (D) of Kentucky strongly supported it. The Senators generally noted that for reasons of human health and to avoid further property damage immediate action is imperative. It should also be noted that Congressman Leggett's Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on H.R. 11510 on February 2, 1976, six days after it passed, apparently in response to the manner in which the measure had been handled.

Following the enrollment of H.R. 11510, on January 31, the Secretary of the Interior issued a declaration of emergency, under the terms of the court stipulation referred to above, covering one of the approximate thirty roosts in this two State area. It is expected that further emergency findings may be prepared by the States and declared by the Secretary. Each such emergency declaration, however, is subject to challenge by the Society for Animal Rights for five days after its issuance.

#### Arguments Against Approval

1. Under the existing court stipulation, use of registered bird control agents is allowed when the Secretary of Interior finds that human health and safety is threatened. Therefore, this bill may not be needed to accomplish its purpose and if signed into



law would unnecessarily override the court agreement and generally applicable laws.

2. The bill exempts chemical application in Kentucky and Tennessee not only from NEPA and the FEPCA but all other provisions of law. The only other NEPA exception was an issue of national significance, the Alaskan pipeline, and criticism from environmental groups was heavy then, and is expected to be heavy now. The scope of the bill's exemption is excessively broad, even if only for a limited period of time. More importantly, however, this bill sets an undesirable precedent of congressional exemption from NEPA of specific agency actions and creates the potential for circumvention of environmental laws. CEQ stated publicly at the February 2nd hearing that it was recommending veto of the bill.

3. H.R. 11510 was introduced, passed and enrolled in less than a day without the customary Executive Branch and congressional committee review process and without floor debate.

4. It is not entirely clear that the bill would overcome further delays in dealing with the blackbird problem since environmentalist and animal rights groups may well initiate more litigation to challenge any finding by the Secretary of the Interior that the chemical use will not be harmful to human health and safety.

5. In addition to gaining favorable reaction by animal lovers and those who strongly support NEPA, veto of the bill, as unnecessary, would not incur the disfavor of any large groups and would be acceptable to the residents of the impacted area provided we are prepared to meet bonafide emergencies.

#### Arguments for Approval

1. A threat to human health may exist in Kentucky and Tennessee. Existing law and procedures will interfere with treatment of this pest control problem except on a case by case basis, each subject to challenge in court.

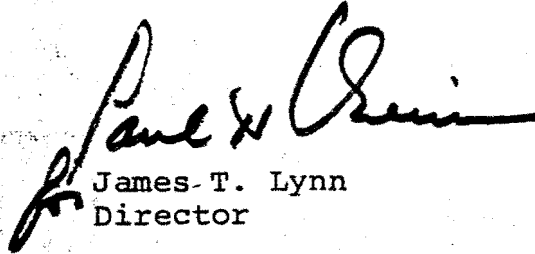


2. Under the court stipulation, the Secretary can take emergency action for health or safety reasons but not for the protection of property, which is also a factor in the blackbird problem.
3. As a check, the bill provides that the Secretary of the Interior must determine that chemical use under the particular circumstances will not be adverse to human health and safety. As noted, Tergitol is non-poisonous and biodegradable.
4. The provisions of this emergency legislation are effective for a very limited period of time, until April 15, 1976, and are extremely restricted in scope, applicable only to Kentucky and Tennessee in clearly defined situations.
5. While it is true that the Secretary's determination under the bill could be challenged in the courts, experience seems to indicate that litigation and resulting delays are more likely in the case of action under the court stipulation.
6. Both Justice and Interior informally participated in the drafting of the bill. At the February 2nd House hearings, Interior acknowledged its participation and further indicated the Department would recommend its approval by the President. Under these circumstances, disapproval would be difficult.
7. While approval would make environmentalists unhappy, there is widespread support in Kentucky and Tennessee for prompt elimination of this bird nuisance.
8. The uproar created over the manner in which this bill was passed should tend to minimize its value as a precedent for future exemptions to NEPA and related laws.

#### Recommendation

On balance, we conclude that the arguments favoring approval outweigh those in favor of veto. While the manner in which this legislation was enacted is deplorable, we do not believe that any useful purpose

would be served by issuance of a signing statement. As already noted, the furor which the bill has generated should do much to minimize it as a precedent.

A handwritten signature in cursive script, appearing to read "James T. Lynn".

James T. Lynn  
Director

Enclosures