

IDAHO WILDERNESS WATER FACILITIES ACT

JANUARY 19, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 3538]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3538) to authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Idaho Wilderness Water Facilities Act".

SEC. 2. TREATMENT OF EXISTING WATER DIVERSIONS IN FRANK CHURCH-RIVER OF NO RETURN WILDERNESS AND SELWAY-BITTERROOT WILDERNESS, IDAHO.

(a) AUTHORIZATION FOR CONTINUED USE.—The Secretary of Agriculture shall issue a special use authorization to each of the 20 owners of a water storage, transport, or diversion facility (in this section referred to as a "facility") located on National Forest System land in the Frank Church-River of No Return Wilderness or the Selway-Bitterroot Wilderness (as identified on the map titled "Unauthorized Private Water Diversions located within the Frank Church-River of No Return Wilderness", dated December 14, 2009, or the map titled "Unauthorized Private Water Diversions located within the Selway-Bitterroot Wilderness", dated December 11, 2009) for the continued operation, maintenance, and reconstruction of the facility if the Secretary determines that—

(1) the facility was in existence on the date on which the land upon which the facility is located was designated as part of the National Wilderness Preservation System (in this section referred to as "the date of designation");

(2) the facility has been in substantially continuous use to deliver water for the beneficial use on the owner's non-Federal land since the date of designation;

(3) the owner of the facility holds a valid water right for use of the water on the owner's non-Federal land under Idaho State law, with a priority date that predates the date of designation; and

(4) it is not practicable or feasible to relocate the facility to land outside of the wilderness and continue the beneficial use of water on the non-Federal land recognized under State law.

(b) TERMS AND CONDITIONS.—

(1) EQUIPMENT, TRANSPORT, AND USE TERMS AND CONDITIONS.—In a special use authorization issued under subsection (a), the Secretary shall—

(A) allow use of motorized equipment and mechanized transport for operation, maintenance, or reconstruction of a facility, if the Secretary determines that—

(i) the use is necessary to allow the facility to continue delivery of water to the non-Federal land for the beneficial uses recognized by the water right held under Idaho State law; and

(ii) after conducting a minimum tool analysis for the facility, the use of nonmotorized equipment and nonmechanized transport is impracticable or infeasible; and

(B) preclude use of the facility for the storage, diversion, or transport of water in excess of the water right recognized by the State of Idaho on the date of designation.

(2) ADDITIONAL TERMS AND CONDITIONS.—In a special use authorization issued under subsection (a), the Secretary may—

(A) require or allow modification or relocation of the facility in the wilderness, as the Secretary determines necessary, to reduce impacts to wilderness values set forth in section 2 of the Wilderness Act (16 U.S.C. 1131) if the beneficial use of water on the non-Federal land is not diminished; and

(B) require that the owner provide a reciprocal right of access across the non-Federal property, in which case, the owner shall receive market value for any right-of-way or other interest in real property conveyed to the United States, and market value may be paid by the Secretary, in whole or in part, by the grant of a reciprocal right-of-way, or by reduction of fees or other costs that may accrue to the owner to obtain the authorization for water facilities.

PURPOSE OF THE BILL

The purpose of H.R. 3538 is to authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the state of Idaho, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Selway-Bitterroot Wilderness was designated by Congress in 1964. Most of its 1,340,502 acres lie in the State of Idaho, abutting the Frank Church-River of No Return Wilderness, which was designated by Congress in 1980. The area contains some of the largest and most rugged remote tracts of land in the lower 48 states.

Predating the existence of these two wilderness areas, private landowners had received permits to maintain and repair water diversions that existed on National Forest System lands. The water is used for a combination of purposes, including drinking water for private cabins and ranches. Many of the permits have since expired, leaving those who own the water diversions without any options for mechanically maintaining their water systems.

H.R. 3538 would give the Secretary of Agriculture the authority to issue special use authorizations to owners of water storage, transport, or diversion facilities within the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness for the continued maintenance of their water facilities. The permits would only be issued if the owner could prove that the facility existed prior to the designated wilderness, the facility had been used

to deliver water to the owner's land since the designation, the owner had a valid water right, and it would not be practicable to move the facility outside of the wilderness area. It is estimated that several dozen different individuals or businesses have water diversions in the aforementioned wilderness areas.

COMMITTEE ACTION

H.R. 3538 was introduced on September 8, 2009 by Representative Michael Simpson (R-ID). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public lands. On November 17, 2009, the Subcommittee held a hearing on the bill during which a witness from the U.S. Forest Service testified in support of the legislation.

On December 16, 2009, the Subcommittee was discharged from further consideration of H.R. 3538 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairman Raul Grijalva (D-AZ) offered an amendment in the nature of a substitute to specify the water facilities covered by the legislation through the use of a map and other technical changes. The amendment was agreed to by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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H.R. 3538 would authorize the Secretary of Agriculture to issue special permits for continued use of historic water diversions for those with valid water rights in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness of Idaho. Based on information from the Forest Service, CBO estimates that enacting H.R. 3538 would have a negligible effect on the federal budget because any costs to process the permits would be paid by the permit holders.

H.R. 3538 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 3538 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.