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SENATE

{ REPORT  
{ 111-257

### DEVIL'S STAIRCASE WILDERNESS ACT

AUGUST 5, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 1272]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1272) to provide for the designation of the Devil's Staircase Wilderness Area in the State of Oregon, to designate segments of Wasson and Franklin Creeks in the State of Oregon as wild or recreation rivers, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Devil's Staircase Wilderness Act of 2010".

#### SEC. 2. DEFINITIONS.

In this Act:

- (1) MAP.—The term "map" means the map entitled "Devil's Staircase Wilderness Proposal" and dated June 15, 2010.
- (2) SECRETARY.—The term "Secretary" means—
  - (A) with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of Agriculture; and
  - (B) with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior.
- (3) STATE.—The term "State" means the State of Oregon.
- (4) WILDERNESS.—The term "Wilderness" means the Devil's Staircase Wilderness designated by section 3(a).

#### SEC. 3. DEVIL'S STAIRCASE WILDERNESS, OREGON.

(a) DESIGNATION.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the approximately 30,540 acres of Forest Service land and Bureau of Land Management land in the State, as generally depicted on the map, is designated as wilder-

ness and as a component of the National Wilderness Preservation System, to be known as the “Devil’s Staircase Wilderness”.

(b) MAP; LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall prepare a map and legal description of the Wilderness.

(2) FORCE OF LAW.—The map and legal description prepared under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the map and legal description.

(3) AVAILABILITY.—The map and legal description prepared under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Forest Service and Bureau of Land Management.

(c) ADMINISTRATION.—Subject to valid existing rights, the area designated as wilderness by this section shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in that Act to the effective date shall be considered to be a reference to the date of enactment of this Act; and

(2) any reference in that Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary that has jurisdiction over the land within the Wilderness.

(d) FISH AND WILDLIFE.—Nothing in this section affects the jurisdiction or responsibilities of the State with respect to fish and wildlife in the State.

(e) ADJACENT MANAGEMENT.—

(1) IN GENERAL.—Nothing in this section creates any protective perimeter or buffer zone around the Wilderness.

(2) ACTIVITIES OUTSIDE WILDERNESS.—The fact that a nonwilderness activity or use on land outside the Wilderness can be seen or heard within the Wilderness shall not preclude the activity or use outside the boundary of the Wilderness.

(f) PROTECTION OF TRIBAL RIGHTS.—Nothing in this section diminishes any treaty rights of an Indian tribe.

(g) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

IN GENERAL.—Administrative jurisdiction over the approximately 49 acres of Bureau of Land Management land north of the Umpqua River in sec. 32, T. 21 S., R. 11 W, is transferred from the Bureau of Land Management to the Forest Service.

(2) ADMINISTRATION.—The Secretary shall administer the land transferred by paragraph (1) in accordance with—

(A) the Act of March 1, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 480 et seq.); and

(B) any laws (including regulations) applicable to the National Forest System.

**SEC. 4. WILD AND SCENIC RIVER DESIGNATIONS, WASSON CREEK AND FRANKLIN CREEK, OREGON.**

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

“(210) FRANKLIN CREEK, OREGON.—The 4.5-mile segment from its headwaters to the line of angle points within sec. 8, T. 22 S., R. 10 W., shown on the survey recorded in the Official Records of Douglas County, Oregon, as M64–62, to be administered by the Secretary of Agriculture as a wild river.

“(211) WASSON CREEK, OREGON.—The 10.1-mile segment in the following classes:

“(A) The 4.2-mile segment from the eastern boundary of sec. 17, T. 21 S., R. 9 W., downstream to the western boundary of sec. 12, T. 21 S., R. 10 W., to be administered by the Secretary of the Interior as a wild river.

“(B) The 5.9-mile segment from the western boundary of sec. 12, T. 21 S., R. 10 W., downstream to the eastern boundary of the northwest quarter of sec. 22, T. 21 S., R. 10 W., to be administered by the Secretary of Agriculture as a wild river.”

2. Amend the title so as to read: “A bill to provide for the designation of the Devil’s Staircase Wilderness Area in the State of Oregon, to designate segments of Wasson and Franklin Creeks in the State of Oregon as components of the National Wild and Scenic Rivers System, and for other purposes.”

#### PURPOSE

The purpose of S. 1272 is to designate approximately 30,540 acres of Federal land in the State of Oregon as the Devil's Staircase Wilderness Area and to amend the Wild and Scenic Rivers Act to designate approximately 10.1 miles of Wasson Creek and 4.5 miles of Franklin Creek in the State of Oregon as "wild rivers."

#### BACKGROUND AND NEED

The Devil's Staircase area is part of the Oregon Coast Range on the west coast of Oregon, northwest of Elkton. The terrain is steep, wild, and remote, and is home to two threatened bird species: the northern spotted owl and the marbled murrelet. The name "Devil's Staircase" comes from a stair-step waterfall on Wasson Creek.

Approximately 23,660 acres of the land proposed for wilderness designation are managed by the Forest Service as Late Successional Reserves in the Siuslaw National Forest. The Bureau of Land Management ("BLM") manages approximately 6,880 acres of the land proposed for wilderness designation, most of which is re-vested Oregon and California Railroad land. The BLM land currently is administratively protected as an Area of Critical Environmental Concern and through other protective classifications.

The creeks proposed for designation under the Wild and Scenic Rivers Act are characterized by outstanding scenic, recreational, and ecological values, and have been identified as critical habitat for coho salmon, a threatened species under the Endangered Species Act.

#### LEGISLATIVE HISTORY

S. 1272 was introduced by Senators Wyden and Merkley on June 16, 2009. The Subcommittee on Public Lands and Forests held a hearing on the bill on October 8, 2009 (S. Hrg. 111-285). The Committee on Energy and Natural Resources considered the bill and adopted an amendment in the nature of a substitute and an amendment to the title at its business meeting on June 16, 2010. The Committee ordered S. 1272 favorably reported, as amended, at its business meeting on June 21, 2010.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 1272, if amended as described herein.

#### COMMITTEE AMENDMENT

During consideration of S. 1272, the Committee adopted an amendment in the nature of a substitute and an amendment to the title. The amendment includes a new map depicting the land proposed for wilderness designation, which includes a number of minor boundary adjustments to exclude roads and power lines, for example. The amendment also provides for the transfer of administrative jurisdiction over a parcel of approximately 49 acres of BLM land in the proposed Devil's Staircase Wilderness to the Forest

Service. The amendment is explained in detail in the section-by-section analysis below.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title for the bill, the “Devil’s Staircase Wilderness Act of 2010.”

*Section 2* defines key terms used in the bill.

*Section 3(a)* designates approximately 30,540 acres of Federal land managed by the Forest Service and BLM as the Devil’s Staircase Wilderness.

Subsection (b) directs the Secretary to prepare a map and legal description of the Wilderness and to make it publically available.

Subsection (c) provides that the designation of the Devil’s Staircase Wilderness shall be administered in accordance with the Wilderness Act, except as provided in paragraphs (1) and (2) and subject to valid existing rights. The Committee is aware that the Forest Service’s records indicate that some parcels of National Forest land within the proposed wilderness are subject to an existing undeveloped easement, including in sec. 15, T. 21 S., R. 10 W. This provision reiterates that the application of the Wilderness Act to the Federal land is subject to and would not interfere with the exercise of any valid existing easements.

Subsection (d) clarifies that the wilderness designation does not affect the State of Oregon’s jurisdiction with respect to fish and wildlife.

Subsection (e) clarifies that the wilderness designation does not create a buffer or preclude non-wilderness activities outside of the wilderness.

Subsection (f) confirms that the wilderness designation does not diminish any tribal treaty rights.

Subsection (g) transfers administrative jurisdiction over approximately 49 acres of BLM land to the Forest Service, to be administered in accordance with the “Weeks Law” (16 U.S.C. 480 et seq.) and other laws applicable to the National Forest System.

*Section 4* amends the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) to add approximately 4.5 miles of Franklin Creek and approximately 10.1 miles in two segments of Wasson Creek to be administered by the Secretaries of Agriculture and the Interior as wild rivers.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

##### *S. 1272—Devil’s Staircase Wilderness Act of 2010*

S. 1272 would designate about 30,520 acres of federal land in Oregon as the Devil’s Staircase Wilderness. The bill would also designate about 15 miles of creeks in the area as wild rivers under the Wild and Scenic Rivers Act. Based on information provided by the agencies that administer those areas, CBO estimates that implementing S. 1272 would have no significant effect on the federal budget. Enacting S. 1272 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

The acreage and waterways to be added by S. 1272 to the National Wilderness Preservation system or the Wild and Scenic Rivers System are already owned by the federal government and are currently administered—by either the Forest Service or the Bureau of Land Management (BLM)—for conservation purposes. CBO expects that designating those areas as wilderness would not raise the costs of managing or protecting them. We estimate that any costs to revise brochures, maps, and signs to reflect the new designations would be minimal because most such revisions would take place in conjunction with scheduled reprinting and routine maintenance.

Finally, CBO estimates that enacting S. 1272 would have no effect on Forest Service or BLM offsetting receipts. The lands that would be designated as wilderness under the bill are already managed for conservation purposes and produce no income from commercial activities.

S. 1272 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.

On November 5, 2009, CBO transmitted an estimate for H.R. 2888, the Devil's Staircase Wilderness Act of 2009, as ordered reported by the House Committee on Natural Resources on October 28, 2009. H.R. 2888 and S. 1272 are very similar, and the estimated budgetary effects of the two bills are the same.

The CBO staff contacts for this estimate are Alan Eder and Deborah Reis. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1272.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1272, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 1272, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The views of the Department of Agriculture and the Department of the Interior were included in testimony received by the Committee at a hearing on S. 1272 on October 8, 2009, which is printed below:

STATEMENT OF JAY JENSEN, DEPUTY UNDER SECRETARY  
FOR FORESTRY, NATURAL RESOURCES AND ENVIRONMENT,  
DEPARTMENT OF AGRICULTURE

Mr. Chairman, Honorable Ranking Member and distinguished members of the Committee, thank you for the opportunity to speak with you today about bills that address Wilderness designations in the coastal Douglas-fir forests of Oregon and Native land claims in Alaska. I will open my testimony by addressing the designation of Devil's Staircase and followed by the Southeast Alaska Native Land Entitlement Finalization Act.

S. 1272 would designate an area known as the Devil's Staircase as Wilderness under the National Wilderness Preservation System. In addition, S. 1272 would designate segments of Wasson and Franklin Creeks in the State of Oregon as wild rivers under the Wild and Scenic Rivers Act. The Department supports the designation of the Devil's Staircase Wilderness as well as the Wild and Scenic River designations on National Forest System lands. We would like to offer minor modifications to S. 1272 that would enhance wilderness values and improve our ability to manage resources in the area.

DEVIL'S STAIRCASE WILDERNESS DESIGNATION

The Devil's Staircase area lies in the central Oregon Coast Range, north of the Umpqua River and south of the Smith River. Elevations in the area range from near sea level to about 1,600 feet. The area is characterized by steep, highly dissected terrain. It is quite remote and difficult to access. A stair step waterfall on Wasson Creek is the source of the name Devil's Staircase.

The proposed Wilderness encompasses approximately 29,600 acres of National Forest System (NFS) and Bureau of Land Management (BLM) lands. NFS lands are approximately 23,500 acres, and BLM lands are approximately 6,100 acres. Approximately 7,800 acres of the NFS lands are within the Wasson Creek Undeveloped Area under the Forest Plan for the Siuslaw National Forest and were evaluated for wilderness characteristics in the 1990 Siuslaw National Forest Land and Resource Management Plan. While the Forest Service remains committed to the forest planning process, the agency did not have the opportunity to recommend wilderness during the development of the 1990 Siuslaw National Forest Land and Resource Management Plan. Congress passed Public Law 98-328, the Oregon Wilderness Act of 1984. That Act provided specific language regarding the wilderness recommendation process that exempted the Forest Service from having to further review a wilderness option for unroaded lands in the forest planning process since Congress had just acted on the matter. The Act does specify that during a forest plan revision the agency be required to revisit the wilderness options. For this reason, the Siuslaw National Forest Land and Resource Management Plan did not include a wilder-

ness recommendation. The 1990 Record of Decision determined that the Wasson Creek inventoried Roadless Area would be managed for undeveloped recreation opportunities.

All NFS lands that would be designated as Wilderness are classified as Late Successional Reserve under the Northwest Forest Plan, which amended the Siuslaw National Forest Land and Resource Management Plan in 1994. This land allocation provides for the preservation of old growth (late successional) habitat. There are no planned resource management or developed recreation projects within the NFS portion of the lands to be designated as Wilderness.

Most of the area is forested with older stands of Douglas-fir and western hemlock, and red alder in riparian areas. All three tree species are under-represented in the National Wilderness Preservation System, relative to their abundance on NFS lands in Washington and Oregon. These older stands provide critical habitat and support nesting pairs of the northern spotted owl and marbled murrelet, which are listed as Threatened species under the Endangered Species Act.

The proposed Devil's Staircase Wilderness provides an outstanding representation of the Oregon Coast Range and would enhance the National Wilderness Preservation System. The Oregon Coast Range has been largely modified with development, roads, and logging. Three small wilderness areas currently exist along the Oregon portion of the Pacific Coast Range, and the proposed Devil's Staircase Wilderness would more than double the acres of old-growth coastal rainforest in a preservation status. Wilderness designation would also preserve the Devil's Staircase, which is a unique landscape feature.

#### ROAD AND ROAD DECOMMISSIONING

There are approximately 24 miles of National Forest System roads within the proposal boundary, 10.5 miles of which are not needed for administrative use and would be decommissioned or obliterated.

The remaining 13.5 miles of road comprise Forest Service Road 4100, which bisects the proposed wilderness. The Department recommends the Committee consider including in the Wilderness designation Forest Service Road 4100 to be managed as a non-motorized, foot and/or horse trail compatible with wilderness uses. Removing the road would result in the Department being able to manage the wilderness as a whole rather than two halves. The road is currently brushy and difficult to travel, making restoration of a wilderness setting a viable option. The Forest Service would use a minimum-tool analysis to determine the appropriate tools necessary to complete activities associated with the road.

## WILD AND SCENIC RIVER DESIGNATIONS

S. 1272 would also designate approximately 10.4 miles of streams on National Forest System lands as part of the National Wild and Scenic Rivers System: 5.9 miles of Wasson Creek and 4.5 miles of Franklin Creek, both on the Siuslaw National Forest. Both Wasson and Franklin Creeks have been identified by the National Marine Fisheries Service (NMFS) as critical habitat for coho salmon (Oregon Coast ESU [Evolutionarily Significant Unit] of coho salmon), a Threatened species under the Endangered Species Act.

The Department defers to the Department of the Interior concerning the proposal to designate the 4.2-mile segment of Wasson Creek flowing on lands administered by BLM.

The Forest Service conducted an evaluation of the Wasson and Franklin Creeks to determine their eligibility for wild and scenic rivers designation as part of the forest planning process for the Siuslaw National Forest. However, the agency has not conducted a wild and scenic river suitability study, which provides the basis for determining whether to recommend a river as an addition to the National System. Wasson Creek was found eligible as it is both free-flowing and possesses outstandingly remarkable scenic, recreational and ecological values. The Department supports designation of the 5.9 miles of the Wasson Creek on NFS lands based on the segment's eligibility.

At the time of the evaluation in 1990, Franklin Creek, although free flowing, was found not to possess river-related values significant at a regional or national scale and was therefore determined ineligible for designation. Subsequent to the 1990 eligibility study, the Forest Service has found that Franklin Creek provides critical habitat for coho salmon, currently listed as Threatened under the Endangered Species Act, and also serves as a reference stream for research because of its relatively pristine character, which is extremely rare in the Oregon Coast Range. The Department does not oppose its designation. Designation of the proposed segments of both Wasson and Franklin Creeks is consistent with the proposed designation of the area as wilderness. The actual Devil's Staircase landmark is located on Wasson Creek.

We would like to work with the bill sponsors and the committee on several amendments and map revisions that we believe would enhance wilderness values and improve the bill.

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STATEMENT OF MARCILYNN A. BURKE, DEPUTY DIRECTOR,  
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE  
INTERIOR

Thank you for inviting the Department of the Interior to testify on S. 1272, the Devil's Staircase Wilderness Act of 2009. The Bureau of Land Management (BLM) supports S.



1272 as it applies to lands we manage, and we would like to work with the sponsor and the Committee on minor refinements to the bills.

#### BACKGROUND

The proposed Devil's Staircase Wilderness, near the coast of southwestern Oregon, is not for the faint of heart. Mostly wild land and difficult to access, the Devil's Staircase reminds us of what much of this land looked like hundreds of years ago. A multi-storied forest of Douglas fir and western hemlock towers over underbrush of giant ferns, providing critical habitat for the threatened Northern Spotted Owl and Marbled Murrelet. The remote and rugged nature of this area provides a truly wild experience for any hiker.

#### S. 1272

S. 1272 proposes to designate nearly 30,000 acres as wilderness, as well as portions of both Franklin Creek and Wasson Creek as components of the Wild and Scenic Rivers System. The majority of these designations are on lands managed by the U.S. Forest Service. The Department of the Interior defers to the U.S. Department of Agriculture on those designations.

Approximately 6,100 acres of the proposed Devil's Staircase Wilderness and 4.2 miles of the Wasson Creek proposed designation are within lands managed by the BLM. The Department of the Interior supports these designations and would like to work with the sponsor and the Committee on minor boundary modifications to improve manageability.

We note that while the vast majority of the acres proposed for designation are Oregon & California (O&C) lands, identified under the 1937 O&C Lands Act for timber production, however, the BLM currently restricts timber production on these lands. These lands are administratively withdrawn from timber production by the BLM, either through designation as an Area of Critical Environmental Concern or through other classifications. Additionally, the BLM estimates that nearly 90 percent of the area proposed for designation is comprised of forest stands that are over 100 years old, and provides critical habitat for the threatened Marbled Murrelet and Northern Spotted Owl.

The 4.2 miles of Wasson Creek would be designated as a wild river to be managed by the BLM under S. 1272. The majority of the acres protected through this designation would be within the proposed Devil's Staircase wilderness designation, though 752 acres would be outside the proposed wilderness on adjacent BLM lands.

The designations identified on BLM-managed lands under S. 1272 would result in only minor modification of current management of the area and would preserve these wild lands for future generations.

CONCLUSION

Thank you for the opportunity to testify in support of these important Oregon designations. The Department of the Interior looks forward to working with the sponsors and the Committee on minor modifications to the legislation and to welcoming these units into the BLM's National Landscape Conservation System.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1272, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**WILD AND SCENIC RIVERS ACT**

(Public Law 90-542; Approved October 2, 1968)

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes.

\* \* \* \* \*

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designed as components of the national wild and scenic rivers system:

\* \* \* \* \*

(210) *FRANKLIN CREEK, OREGON.—The 4.5-mile segment from its headwaters to the line of angle points within sec. 8, T. 22 S., R. 10 W., shown on the survey recorded in the Official Records of Douglas County, Oregon, as M64-62, to be administered by the Secretary of Agriculture as a wild river.*

(211) *WASSON CREEK, OREGON.—The 10.1-mile segment in the following classes:*

(A) *The 4.2-mile segment from the eastern boundary of sec. 17, T. 21 S., R. 9 W., downstream to the western boundary of sec. 12, T. 21 S., R. 10 W., to be administered by the Secretary of the Interior as a wild river.*

(B) *The 5.9-mile segment from the western boundary of sec. 12, T. 21 S., R. 10 W., downstream to the eastern boundary of the northwest quarter of sec. 22, T. 21 S., R. 10 W., to be administered by the Secretary of Agriculture as a wild river.*

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