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### IDAHO WILDERNESS WATER FACILITIES ACT

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AUGUST 5, 2010.—Ordered to be printed  
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Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany H.R. 4474]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 4474) 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, reports favorably thereon without amendment and recommends that the Act do pass.

#### PURPOSE

The purpose of H.R. 4474 is to authorize the Secretary of Agriculture to issue a special use authorization to each of 20 owners of twenty water storage, transport, or diversion facilities that are 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, to allow for the continued use of those facilities.

#### BACKGROUND AND NEED

The Selway–Bitterroot Wilderness and the adjacent Frank Church–River of No Return Wilderness are two large National Forest wilderness areas in the State of Idaho. Located within both wilderness areas are several small water facilities, including facilities for hydropower development, irrigation, and domestic water uses. These facilities are privately operated and predate the establishment of the Selway–Bitterroot Wilderness in 1964 and the Frank Church–River of No Return Wilderness in 1980.

In order to clarify that the owners of these water facilities can continue to operate and maintain them within the wilderness

areas, H.R. 4474 authorizes the Secretary of Agriculture to issue special use permits for those facilities if certain conditions are met.

#### LEGISLATIVE HISTORY

H.R. 4474, sponsored by Representatives Minnick and Simpson, passed the House of Representatives by a vote of 415–0 on January 27, 2010. Companion legislation, S. 2966, was introduced on January 28, 2010 by Senators Risch and Crapo.

The Subcommittee on Public Lands and Forests held a hearing on H.R. 4474 and S. 2966 on March 10, 2010. The Committee on Energy and Natural Resources considered the bill at its business meeting on June 16, 2010, and ordered H.R. 4474 favorably reported without amendment 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 H.R. 4474.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title, the “Idaho Wilderness Water Facilities Act.”

*Section 2(a)* authorizes the Secretary of Agriculture to issue a special use authorization to each of the twenty owners of a water storage, transport, or diversion facility located on National Forest System land in the Frank Church–River of No Return Wilderness and the Selway–Bitterroot Wilderness if certain conditions are met. The conditions that must be met include a finding that the water facility predated the establishment of the wilderness, that it has been in substantially continuous use since that time, that the operator holds a valid water right for the facility under Idaho State law, and that it would not be practical to relocate the facility outside of the wilderness area.

Subsection (b) authorizes the Secretary, under the special use authorizations, to allow the use of motorized equipment and mechanized transport necessary for the facilities’ operations. It also authorizes the Secretary to require the facilities to be modified or relocated in order to reduce impacts to the wilderness if the beneficial use of water is not impacted. Finally, it requires that the owners provide reciprocal right-of-way access across their properties provided they receive market value, paid by the Secretary, by granting a reciprocal right-of-way, a reduction of fees, or both.

#### COST AND BUDGETARY CONSIDERATIONS

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

#### *H.R. 4474—Idaho Wilderness Water Facilities Act*

H.R. 4474 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. 4474 would increase direct spending to process the permits and associated offsetting receipts from permit applications; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any net direct spending would be negligible in each year.

Currently, there are around 25 water diversion facilities located in those wilderness areas. Although owners of the water facilities have the authority to maintain the facilities, they cannot replace facilities or make major repairs without obtaining a special-use permit. The bill would authorize the Forest Service to issue such special use permits.

H.R. 4474 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 January 13, 2010, CBO transmitted a cost estimate for H.R. 3538, the Idaho Wilderness Water Facilities Act, as ordered reported by the House Committee on Natural Resources on December 16, 2009. The two pieces of legislation are similar, and CBO's estimated costs are the same.

The CBO staff contact for this estimate is Aurora Swanson. 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 H.R. 4474.

The Act 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 H.R. 4474, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

H.R. 4474, 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 testimony provided by the Forest Service at the March 10, 2010 Subcommittee hearing on H.R. 4474 follows:

#### STATEMENT OF HARRIS SHERMAN, UNDERSECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on S. 2966, the Idaho Wilderness Water Facilities Act.

The U.S. Forest Service supports S. 2966. The bill authorizes the issuance of a special use permit for the contin-

ued use of water storage, transport, or diversion facility located on National Forest System lands in the Frank Church–River of No Return Wilderness and the Selway–Bitterroot Wilderness in Idaho. The permits will only be issued to the water system owners of the water systems identified on the two maps accompanying S. 2966, and if certain conditions are met.

Currently, there are over 20 water developments within the Frank Church–River of No Return and Selway–Bitterroot Wilderness Areas that predate establishment of the wilderness, in some cases by decades.

These developments include hydropower developments, irrigation, and domestic water uses. The legislation establishing both wilderness areas did not address these pre-existing water developments. S. 2966 would direct the Forest Service to issue special use authorizations, if the Secretary makes the following determinations: the facility was in existence when the wilderness area on which the facility is located was designated as part of the National Wilderness Preservation System; 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; the owner of the facility has 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 pre-dates the date of designation; and it is not practicable or feasible to relocate the facility outside the wilderness and achieve the continued beneficial use of water on non-Federal land. We understand that the bill does not create any rights beyond what is provided in the special use permit and that both maintenance responsibilities and liabilities continue with the permit holder, and not the Federal government.

This concludes my prepared statement on S. 2966 and I would be pleased to answer any questions you may have.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 4474, as ordered reported.

