Calendar No. 443

105TH CONGRESS, *2d Session* | SENATE | REPORT 105–229

MOUNT ST. HELENS NATIONAL VOLCANIC MONUMENT COMPLETION ACT

JUNE 26, 1998.—Ordered to be printed

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

REPORT

[To accompany S. 638]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 638) to provide for the expeditious completion of the acquisition of private mineral interests within the Mount St. Helens National Volcanic Monument mandated by the 1982 Act that established the Monument, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

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 "Mount St. Helens National Volcanic Monument Completion Act."

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Act entitled "An Act to designate the Mount St. Helens National Volcanic Monument in the State of Washington, and for other purposes", approved August 26, 1982 (96 Stat. 301; 16 U.S.C. 431 note), required the United States to acquire all land and interests in land in the Mount St. Helens National Volcanic Monument;

(2) the Act directed the Secretary of Agriculture to acquire the surface interests and the mineral and geothermal interests by separate exchanges and expressed the sense of Congress that the exchanges be completed by November 24, 1982, and August 26, 1983, respectively; and

(3) the surface interests exchange was consummated timely, but the exchange of all mineral and geothermal interests has not yet been completed a decade and a half after the Act's enactment.

(b) PURPOSE.—The purpose of this Act is to provide for the expeditious completion of the previously mandated Federal acquisition of private mineral and geothermal interests within the Mount St. Helens National Volcanic Monument.

SEC. 3. ACQUISITION OF MINERAL RIGHTS WITHIN THE NATIONAL VOLCANIC MONUMENT.

Section 3 of the Act entitled "An Act to designate the Mount St. Helens National Volcanic Monument in the State of Washington, and for other purposes", approved August 26, 1982 (96 Stat. 302; 16 U.S.C. 431 note), is amended—

(1) in subsection (a), by striking "and except that the Secretary may acquire mineral and geothermal interests only by exchange. It is the sense of the Congress that in the case of mineral and geothermal interests such exchanges should be completed within one year after the date of enactment of this Act"; and

(2) by adding at the end the following:

(g) EXPEDITIOUS COMPLETION OF MINERAL AND GEOTHERMAL INTERESTS.

"(1) DEFINITION OF HOLDER.—In this subsection, the term 'holder' means a company, or its successor, referred to in subsection (c).

"(2) IN GENERAL.—Within the period described in paragraph (7), the Secretary of the Interior shall acquire by exchange the mineral and geothermal interests in the Monument of each holder.

"(3) MONETARY CREDITS.—

"(A) ISSUANCE.—In exchange for the mineral and geothermal interests acquired by the Secretary of the Interior from a holder under paragraph (2), the Secretary of the Interior shall issue to the holder monetary credits that may be exercised by the holder for payment of—

"(i) not more than 50 percent of the bonus or other payments made by successful bidders in any sales of mineral, oil, gas, or geothermal leases under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), or the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); or

"(ii) not more than 50 percent of any royalty, rental, or advance royalty payment made to the United States to maintain any mineral, oil, or gas, or geothermal lease issued under the Acts listed in clause (i).

"(B) VALUE OF CREDITS.—The credits issued under subparagraph (A) shall equal the fair market value of all mineral and geothermal interests conveyed in the exchange as determined under paragraph (4)

"(C) ACCEPTANCE OF CREDITS.—The Secretary of the Interior shall accept credits issued under subparagraph (A) in the same manner as cash for the payments described in subparagraph (A). The use and exercise of the credits shall be subject to the laws (including regulations) governing such payments, to the extent the laws are consistent with the subsection.

"(D) TREATMENT OF CREDITS FOR DISTRIBUTION TO STATES.—All amounts in the form of credits accepted by the Secretary of the Interior under subparagraph (C) for the payments described in subparagraph (A) shall be considered to be money received for the purpose of section 35 of the Mineral Leasing Act (30 U.S.C. 191) and section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019).

"(4) VALUATION OF INTERESTS.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of this subsection, the mineral and geothermal interests to be conveyed by each holder in the exchanges required by paragraph (2) shall be valued by one of the following methods, as selected by the Secretary of the Interior.

(i) USE OF APPRAISAL REPORT.—The 1982 value established by the report of the third party appraisal completed on September 11, 1991, shall be adjusted to reflect changes in the consumer price index for all urban consumers published by the Department of Labor as of the date on which the exchange is to be consummated pursuant to paragraph (7), or such other value as shall be mutually agreed to by the Secretary of the Interior and the holders not later than 30 days after the date of enactment of this subsection.

"(ii) NEW APPRAISAL.—

"(I) SELECTION OF APPRAISER.—Not later than 30 days after the date of enactment of this subsection, the Secretary of the Interior and the holders shall mutually agree on the selection of a qualified appraiser to conduct an appraisal of the mineral and geothermal interests.

"(II) NO AGREEMENT ON APPRAISER.—If no appraiser is mutually agreed to under subclause (I), not later than 60 days after the date of enactment of this subsection—

"(aa) the Secretary of the Interior and the holders shall each designate a qualified appraiser; and

"(bb) the two designated appraisers shall select a third qualified appraiser to perform the appraisal with the advice and assistance of the designated appraisers and in accordance with the instructions that were mutually agreed on for the September 11, 1991, third part appraisal.

"(III) DATE OF VALUATION.—The value of the mineral and geothermal interests to be conveyed by each holder shall be calculated as of August 26, 1982, adjusted to reflect changes in the consumer price index for all urban consumers published by the Department of Labor as of the date on which the exchange is to be consummated pursuant to paragraph (7).

"(IV) COSTS.—The Secretary of the Interior shall bear the costs of the process established by this clause.

"(B) TIMELY APPRAISAL REPORT.—The appraisal report resulting from subparagraph (A) shall be presented to the Secretary of the Interior timely to permit the Secretary of the Interior to determine the value of the mineral and geothermal interests to be conveyed by each holder. Not later than the date that is 180 days after the date of enactment of this subsection, the Secretary of the Interior shall notify each holder of the determination.

"(C) FAILURE OF PROCESS.—If the Secretary of the Interior fails to make a determination under subparagraph (B) by the date that is 180 days after the date of enactment of this subsection or if any holder does not agree with the value determined by the Secretary of the Interior under subparagraph (B), one or more of the holders may petition the United States Court of Federal Claims for a determination of the value of the mineral and geothermal interest to be conveyed by the holders in accordance with this subsection. Subject to the right of appeal, a determination by the Court shall be binding for purposes of this subsection on all parties.

"(5) EXCHANGE ACCOUNT.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 30 days after the completion of each exchange with a holder required by this subsection, the Secretary of the Interior shall establish, with the Minerals Management Service of the Department of the Interior, an exchange account for the holder for monetary credits described in paragraph (3).

"(B) INITIAL BALANCE.—The initial balance of credits in each holder's account shall be equal to the value as determined under paragraph (4) of the mineral and geothermal interest conveyed by the holder in the exchange.

"(C) USE OF CREDITS.—The balance of credits in a holder's account shall be available to the holder or its assigns for the purposes of paragraph (3). The Secretary of the Interior shall adjust the balance of credits in the account to reflect payments made pursuant to paragraph (3).

"(D) TRANSFER OF CREDITS.—

"(i) IN GENERAL.—A holder may transfer or sell any credits in the holder's account to another person.

"(ii) USE OF TRANSFERRED CREDITS.—Credits transferred under clause (i) may be used in accordance with this subsection only by a person that is qualified to bid on, or that holds, a mineral, oil, or gas lease under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), or the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

"(iii) NOTIFICATIONS.—A holder shall notify the Secretary of the Interior of any transfer or sale under this subparagraph promptly after the transfer or sale.

"(E) TIME LIMIT ON USE OF CREDITS.—On the date that is 5 years after an account is created under subparagraph (A), the Secretary of the Interior shall terminate the account and any remaining credits in the account shall become unusable.

"(6) TITLE TO INTERESTS.—On the date of the establishment of an exchange account for a holder under paragraph (5)(A), title to any miner and geothermal interest that are held by the holder and are to be acquired by the Secretary of the Interior under paragraph (2) shall transfer to the United States.

"(7) COMPLETION OF EXCHANGES.—The Secretary of the Interior shall complete the exchanges under paragraph (2) not later than 180 days after the date of enactment of this subsection or as soon as practicable after completion of the process described in paragraph (4)(C).".

PURPOSE OF THE MEASURE

The purpose of S. 638 is to provide for the expeditious completion of the previously mandated Federal acquisition of private mineral and geothermal interests within the boundaries of Mount St. Helens National Volcanic Monument.

BACKGROUND AND NEED

Public Law 97–243 established the 113,000-acre Mount St. Helens National Volcanic Monument in 1982. Section 3 of that Act directed the Secretary of Agriculture to acquire all lands and interests in lands within the boundaries of the Monument, except that mineral and geothermal interests were the only authorized to be acquired by exchange. The bill also included a sense of the Congress provision that mineral and geothermal exchanges should be completed within one year after the date of enactment. All inholdings within the monument are owned by Weyerhaeuser and Burlington Northern (now known as Burlington Resources Oil and Gas Company). To date, the Forest Service has acquired all of the surface estate within the Monument boundaries. In addition, approximately 27,000 acres of subsurface estate was acquired from the companies in 1991.

S. 638 addresses the approximately 10,750 acres of subsurface estate within the Monument remaining to be acquired. Although Weyerhaeuser and Burlington Resources Oil and Gas Company [the companies] have supported exchanging their subsurface interests and the Forest Service is directed under the Monument's enabling legislation to acquire them, and despite extensive negotiations over the past 14 years, the parties have not been able to agree on the value of the remaining interests.

In order to resolve all acquisition issues, S. 638 amends the Monument's enabling Act to eliminate the requirement that subsurface interests be acquired only by exchange. In lieu of exchanging mineral and geothermal interests, it requires the Secretary of the Interior to issue monetary credits to the companies when the subsurface interests are acquired. The companies would be allowed to use the credits for up to 50 percent of bonus bids or other payments made for mineral, geothermal, or off-shore oil and gas leases, and up to 50 percent of royalty payments. The companies would be authorized to transfer their credits to other qualified lessees, and all credits must be used within 5 years after the account is created.

LEGISLATIVE HISTORY

S. 638 was introduced by Senators Gorton and Murray on April 23, 1997 and was referred to the Committee on Energy and Natural Resources. The Subcommittee on National Parks, Historic Preservation, and Recreation held a hearing on October 29, 1997.

At its business meeting on May 13, 1998, the Committee on Energy and Natural Resources ordered S. 638, as amended, favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on May 13, 1998, by a unanimous vote of a quorum present, recommends that the Senate pass S. 638, if amended as described herein. The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

Yeas	Nays
Mr. Murkowski	
Mr. Domenici	
Mr. Nickles[1]	
Mr. Craig	
Mr. Campbell	
Mr. Thomas	
Mr. Kyl	
Mr. Grams[1]	
Mr. Smith	
Mr. Gorton	
Mr. Burns[1]	
Mr. Bumpers	
Mr. Ford	
Mr. Bingaman	
Mr. Akaka	
Mr. Dorgan[1]	
Mr. Graham[1]	
Mr. Wyden	
Ms. Landrieu	

[1] Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 638, the Committee adopted an amendment in the nature of a substitute, which made a number of clarifying and technical amendments to the bill as introduced.

The amendment also added a new subsection 3(d) which allows the Secretary of the Interior to consider payments received in the form of credits as money for the purpose of section 35 of the Mineral Leasing Act (30 U.S.C. 191) and section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019). The amendment further directs the Secretary of the Interior, within 180 days from the date of the enactment of this Act, to complete a timely appraisal report and to notify the subsurface holders of the appraised values.

The amendment also directs the Secretary of the Interior to establish, within the Minerals Management Service, an exchange account and an accounting system for the holder for monetary credits for a period of five years, at which time the account will be terminated.

Finally, the amendment provides that upon the establishment of an exchange account for a holder of subsurface rights, title to any

mineral and or geothermal interest shall be transferred to the United States.

The amendment is described in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the bill's short title as the "Mount St. Helens National Volcanic Monument Completion Act".

Section 2 provides Congressional findings for, and establishes the purpose of the bill. The findings are: (1) the 1982 enabling Act for the Monument required Federal acquisition of all private inholdings within the Monument boundaries; (2) Congress intended that the private surface estate and private mineral interests to be acquired by separate exchanges to be undertaken sequentially three months and a year after enactment (by November 24, 1982), for the surface estate and August 26, 1983, for the mineral interests; and (3) the surface estate exchange did occur in a timely manner but all mineral interests have not been acquired fourteen years after the designated deadline.

Subsection (b) states that the purpose of the bill is "to provide for the expeditious completion of the previously mandated Federal acquisition" of the Monument's private mineral and geothermal interests.

Section 3 amends the Monument's enabling Act in order to complete the acquisition of the private mineral and geothermal interests within the Monument.

Section 3(1) eliminates the requirement in the enabling Act that the private mineral and geothermal interests may be acquired only by exchange.

Section 3(2) adds a new subsection (g) to section 3 of the Monument's enabling Act which requires and establishes procedures for acquisition of the remaining privately owned mineral and geothermal interests.

Paragraphs (1) and (2) of the enabling Act's new section 3(g) reiterates the enabling Act's previous mandate to acquire, by exchange, the private mineral and geothermal interests within the Monument held by the companies.

Paragraph (2) also states that the exchange will be conducted by the Secretary of the Interior rather than the Secretary of Agriculture as provided in the Monument's enabling Act.

Paragraph (3)(A) establishes how the mineral interests will be acquired. In recognition of the difficulty previously encountered by the Federal Government and the companies in locating sufficient, suitable Federal mineral interests to exchange for the private mineral and geothermal interests, paragraph (3) substitutes the issuance of monetary credits for subsurface mineral and geothermal interests as the exchange medium for the Federal side of the exchange. The provision also allows the Secretary of the Interior to consider payments received in the form of credits as money for the purpose of section 35 of the Mineral Leasing Act (30 U.S.C. 191) and section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019).

Paragraph (3)(A) also specifies how the companies may use the Federal monetary credits they receive in exchange for their mineral

and geothermal interests. Whenever the companies are the winning bidders on Federal leases for coal, oil, gas, or other minerals under the Mineral Leasing Act of 1920; oil or gas under the Outer Continental Shelf Lands Act; or, geothermal steam under the Geothermal Steam Act of 1920, they can submit the credits in payment of up to 50% of the bonus bids or other payments required to acquire the leases. If the Companies own any such leases, they may also pay up to 50% of the payments necessary to maintain them including royalty, rental, and advance royalty payments.

Paragraph (3)(B) establishes the value of the credits and directs that exchanges must be for equal value.

Paragraph (3)(D) allows the Secretary of the Interior to consider payments received in the form of credits as money for the purpose of section 35 of the Mineral Leasing Act (30 U.S.C. 191) and section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019).

Paragraph (4) establishes alternative procedures for determining the fair market value of the private mineral and geothermal interests to be acquired.

The first procedure is to use the third party appraisal of the mineral and geothermal interests conducted for the Federal Government and the companies in 1991 and adjust the 1991 values to current dollars, or to adopt any other value agreeable to both the Secretary of the Interior and the companies. If the Secretary and the companies cannot agree to use the 1991 appraisal or cannot agree on a value by other means the alternative procedure would be exercised.

The alternative procedure would require that both parties agree on an appraiser, or each party could appoint their own preferred appraiser; the two appointed appraisers would select a third appraiser, who would perform the mineral and geothermal evaluations. If this alternative is exercised the appraisal must be conducted in accordance with the appraisal instructions which were mutually agreed upon by both parties for the 1991 appraisal; and the date of the appraisal would be August 26, 1982, adjusted for inflation to current dollars. This provision also requires the Secretary of the Interior to pay the cost of a new appraisal if the third party appraisal alternative is exercised.

Paragraph (4) establishes deadlines for the completion of the appraisal and a process for resolving any dispute over value arising from the appraisal. The provision requires that the first procedure of updating the 1991 appraisal or mutually agreeing to a value be completed within 6 months after enactment of S. 638. The provision sets an identical 6 month deadline for the alternative procedure. If the alternative appraisal procedure is not completed by the deadline; or, if one or both companies disagree with the value of the mineral and geothermal interests established by the Secretary of the Interior, the Companies are authorized to petition the United States Court of Federal Claims for a determination of the value of the mineral and geothermal interest to be conveyed.

Paragraph (5) provides the procedures for use of the monetary credits. The provision requires the Secretary of the Interior, through the Minerals management Service, to establish an exchange account for each company within 30 days after the completion of an exchange, from which the company may draw credits.

Paragraph (5) also permits the companies to transfer or sell their credits to other parties who, if they are qualified to hold Federal mineral or geothermal leases, may use the credits to make lease acquisition or maintenance payments. Finally, the paragraph limits the use of credits within five years of the establishment of the exchange accounts. Any unused credits are to be terminated at that time.

Paragraph (6) requires that both the transfer of title for a company's mineral or geothermal interests to the Federal Government and the establishment of an exchange account are to occur on the same date.

Paragraph (7) requires that the exchange process be completed within 6 months after the date of enactment or as soon as possible thereafter if the value determination is made by the United States Court of Federal Claims.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 5, 1998.

Hon. Frank H. Murkowski,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 638, the Mount St. Helens National Volcanic Monument Completion Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 638—Mount St. Helens National Volcanic Monument Completion Act

Summary: S. 638 would specify a process for valuing mineral and geothermal interests within the Mount St. Helens National Volcanic Monument and require the Secretary of the Interior to acquire such interests using monetary credits.

CBO estimates that enacting S. 638 would result in a net increase in direct spending of about $10 million over the 1999–2003 period. Therefore, pay-as-you-go procedures would apply. S. 638 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Description of the bill's major provisions: The Secretary of Agriculture manages the Mount St. Helens National Volcanic Monument within the boundaries of the Gifford Pinchot National Forest. Under current law (Public Law 97–243), the Secretary may acquire mineral and geothermal interests within the boundary of the

monument only by exchange. For several years the Forest Service, in cooperation with the Bureau of Land Management (in the Department of the Interior), has negotiated with the owners of about 10,750 acres of subsurface estate within the monument to complete exchanges, but the parties have not yet agreed on the value of the subsurface interests.

S. 638 would modify the methods used by the government to value and acquire these interests. It would specify that the valuation be based on market conditions as of August 26, 1982 (the year the monument was established), adjusted for inflation. The agencies could base that valuation on either an exiting third-party appraisal done in 1991 or a new appraisal. If the Secretary of the Interior does not determine the value within 180 days of enactment, or if any holder of interests disagrees with the value determined by the Secretary, then a binding determination would be made by the United States Court of Federal Claims.

Once value is determined, S. 638 would require the Secretary of the Interior to pay for the mineral and geothermal interests by issuing monetary credits, rather than by exchange as under current law. The monetary credits could be used over a five-year period to pay bonuses, royalties, or rent for mineral, oil and gas, or geothermal leases on federal land, and would be transferable. S. 638 provides that credits accepted by the Secretary of the Interior for such lease payments be considered as money received for the purpose of calculating payments to states.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 638 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 800 (general government).

[By fiscal year, in millions of dollars]

	1999	2000	2001	2002	2003
DIRECT SPENDING (INCLUDING OFFSETTING RECEIPTS)					
Spending under current law:					
Estimated budget authority	0	1	1	1	1
Estimated outlays	0	1	1	1	1
Proposed changes:					
Estimated budget authority	10	2	2	2	2
Estimated outlays	10	2	2	2	2
Spending under S. 638:					
Estimated budget authority	10	0	0	0	0
Estimated outlays	10	0	0	0	0

[1] Costs less than $500,000.
[2] Savings less than $500,000.
Note:—Implementing S. 638 also would increase discretionary spending in 1999, but we estimate the cost would be insignificant.

Basis of estimate: CBO estimates that enacting S. 638 would result in a net increase in direct spending of about $10 million over the 1999–2003 period. We estimate that any increase in spending subject to appropriation would be insignificant.

Direct spending: Under current law, the Forest Service has appraised the subsurface interests based on current market conditions (rather than on their value in 1982, when the monument was created) and estimates them to have a fair market value ranging from about $2 million to about $4 million. CBO assumes that, under current law, the federal government would likely acquire these interests through an exchange in which the private parties

would obtain the rights to other federal property of equal value. From a budgetary perspective, such an exchange would result in a loss of offsetting receipts from royalties and rental payments that otherwise would have been collected from leasing the federal interests offered in the exchange. Such income usually represents only a fraction of the market value, and is collected over the life of the project, which can span 10 years or more. We estimate that lost income to the government under current law would total less than $1 million over the 1999–2003 period, net of payments to states.

Under this bill, the federal government would award monetary credits, which are equivalent to cash, for the full market value of the property. CBO estimates that, by specifying that the value for the interests be determined as of 1982 (and adjusted for inflation), S. 638 would raise the cost of the property to be acquired. Based on a range of estimated 1982 values from the private interest holders, and adjusted for inflation as provided in the bill, CBO estimates that the private interest holders would receive monetary credits valued at about $10 million.

The value of monetary credits counts as direct spending in the year they are issued and as receipts in the years in which they are redeemed. If the credits displace cash payments that otherwise would have been received by the government, the use of the credits results in a corresponding loss of receipts. For the purposes of this estimate, we assume that the credits would be issued in fiscal year 1999 and redeemed within five years. CBO estimates that such credits would displace an equal amount of cash payments that private parties otherwise would have made for federal leases. Hence, we estimate that implementing this bill would increase direct spending by $10 million in 1999 and would have no significant budgetary impact in subsequent years.

Spending subject to appropriation: S. 638 provides that the Secretary of the Interior pay for any new appraisal. Based on information from the Forest Service, CBO estimates that conducting a reappraisal would cost less than $50,000 in fiscal year 1999.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted. CBO estimates that enacting S. 638 would result in a net increase in direct spending totaling about $10 million over the 1999–2008 period.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	.....	10	.....	.....	.....	.....	.....	.....	.....	.....	.....
Changes in receipts	Not applicable										

Intergovernmental and private-sector: S. 638 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Victoria V. Heid.

Estimate approved by: Robert A. Sunshine, Deputy 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. 638. 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 enactment of S. 638, as ordered reported.

EXECUTIVE COMMUNICATIONS

On April 30, 1998, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 638. These reports had not been received at the time the report on S. 638 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony of the Department of the Interior at the Subcommittee hearing follows:

TESTIMONY OF ROBERT ANDERSON, DEPUTY ASSISTANT DIRECTOR, MINERALS, REALTY, AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT

Mister Chairman and members of the Committee, I appreciate the opportunity to appear here today to discuss S. 638, a bill to provide for acquisition of private mineral rights held by Burlington Northern Incorporated and the Weyerhaeuser Company (the companies) within the Mount St. Helens National Volcanic Monument.

In 1982, the Congress passed and the President signed into law Public Law 97–243, an Act to designate the Mount St. Helens National Volcanic Monument. This Act, among other things, directed the Secretary of Agriculture to acquire all of the privately held lands within the newly created monument, including the mineral estate. The Forest Service informs me that significant progress has been made toward meeting that objective. With regard to Weyerhaeuser and Burlington Northern, the entire surface estate and over seventy percent of the mineral estate previously held by the companies has been acquired through exchange. This leaves approximately 10,750 acres of the mineral estate held by these companies at issue. The BLM and U.S. Forest Service have had discussions with the Weyerhaeuser Company and Burlington Northern Incorporated, but have been unable to come to a mutually satisfactory agreement to acquire these rights. The primary issue is the valuation of this mineral estate acreage. S. 638

is intended to resolve this impasse between the Federal Government and the companies. However, S. 638 will not resolve valuation issues with regard to the five other private inholdings covering five hundred ninety five acres within the monument.

While the Administration would like to see the issues resolved, we oppose S. 638 for several reasons. The bill:

Fails to recognize the complexity of assigning values to mineral resources, particularly geothermal resources;

Establishes a credit system for Federal payment and involves the Departments of the Interior and Treasury in implementation of the acquisition of resources beneath lands administered by the U.S. Forest Service, and

Sets an unrealistic time frame for completion of a project which has been a source of disagreement for eleven years.

I would like to briefly discuss each of these concerns.

VALUATION

This bill requires the Government to bear the full costs of a reappraisal, stipulates that any reappraisal be completed based on the same methodology which has already been rejected by both the BLM and the Forest Service, and specifies that the date of valuation for the mineral estate is 1982. This 1982 value would then be adjusted to reflect changes in the consumer price index. We feel this is inconsistent with Department of Justice instructions for federal appraisals.

Weyerhaeuser and Burlington Resources have stated their belief that the value of their remaining mineral estate consists primary of geothermal resources. The companies' latest estimate of value establishes a range between $6,420,000 and $10,746,000. This value is based primarily on a third party appraisal, paid for by the Forest Service and the companies, completed in September of 1991. That appraisal failed to meet Federal Appraisal Standards and could not be utilized as a basis of settlement. Neither the BLM nor the Forest Service, which administers the Monument, have accepted this appraisal because of the very speculative nature of the information used to arrive at a final value. In particular, this appraisal was based on a Discounted Cash Flow methodology, which assumed economic geothermal resources exist at the site. This appraisal did not correctly address the scientific probability of a viable geothermal resource based on a favorable geologic environment, nor did it reflect prices paid for similar interests in the market place.

Appraisals based on speculation cannot be defended. In fact, Department of Justice instructions prohibit the use of speculative data for assigning value in Federal appraisals. Significant technical and scientific information exists to show that the area in question within the Mount St. Hel-

ens National Volcanic Monument lacks several geologic features normally associated with a viable source of geothermal energy. In particular, U.S. Geological Survey investigations of geothermal resource potential conducted before and subsequent to the 1980 eruption of the mountain conclude that no convincing evidence is available of a high temperature geothermal reservoir beneath Mt. St. Helens. The Administration believes that these facts establish a level of speculation that prohibits the use of a discounted cash flow methodology in assigning a value to the mineral estate. Such an appraisal would not be in accordance with the Uniform Appraisal Standards for Federal Land Acquisition and the Uniform Standards of Professional Appraisal Practice.

This is not to say that the mineral estate is without value. Our preferred approach is to determine this value with an appraisal based on comparable sales of similar properties. To this end, the Forest Service, assisted by data supplied by both the BLM and the companies, is completing an appraisal of the property interest based upon potential comparable sales and other technical data to arrive at a current estimate of value for the mineral estate at issue. This reappraisal is scheduled for completion in mid to late November. Unfortunately, until this reappraisal is complete, I am unable to comment on any specific value, or range of values, that may be assigned to these holdings. We have, however, been informed that the entire 10,750 acres are speculative in character and are not known to contain any minerals defined with current development potential. Currently, the final decision on valuation is under the authority of the Secretary of Agriculture. We have conferred with the Forest Service and have agreed to discuss the details and conclusions of the reappraisal with both Committee staff and the companies once it is complete.

Our other concerns with the appraisal language involve the cost recovery and requirements for future appraisals. S. 638 states that the Secretary of The Interior shall bear the costs of any reappraisal required to establish a settlement value. This is inequitable and inconsistent with Federal guidelines for cost recovery. One-half of the costs of the rejected September, 1991 appraisal were paid by the government. The Forest Service is currently absorbing the cost of completing a reappraisal that will meet Federal standards. If this bill is enacted, and another, third party appraisal is required, the costs should be borne equally by the Secretary of The Interior and the companies.

The instructions for any new third party appraisal should be mutually agreed upon by the Secretary of The Interior acting through the Bureau of Land Management, the Secretary of Agriculture, acting through the Forest Service, and the companies. Such instructions should not be linked to the instructions which resulted in the September 1991 appraisal. As already noted, the methodology and

assumptions used to complete the 1991 appraisal led to its rejection by the Forest Service. We acknowledge that the Discounted Cash Flow appraisal technique is an accepted appraisal standard given the proper circumstances. These circumstances do not exist at Mt. St. Helens. To base a new appraisal on the same discounted cash flow methodology would be faulty due to the speculative nature of the interests. To reiterate, in our opinion, another appraisal beyond those which have already occurred, and the reappraisal currently being done, is not in the public interest.

The final issue regarding valuation is the date of any agreed upon settlement value. Offices of both the Department of Interior's Regional Solicitor and the Department of Agriculture's General Counsel have stated that any valuation date should be current, that is, based on the date that title is acquired by the Federal Government. S. 638 sets a 1982 appraisal date and makes the government liable for the costs of inflation. We believe the costs of inflation constitute a form of damages to the companies which are unwarranted.

CREDIT ACCOUNT

S. 638 would establish a credit account once a settlement value is reached. This credit settlement would be contrary to the original Act of 1982, which provides only for exchange for acquisition of mineral and geothermal interests. The proposed compensation mechanism could present serious constitutional difficulties under the Just Compensation Clause. The proposed mechanism calls for the U.S. to acquire mineral interests and provide, in exchange, consideration potentially worth less than fair market value. Moreover, it is not clear if the use of credits in future mineral leasing would result in the Federal Government having sufficient funds to pay the States their share from receipts. At a minimum, the issuance of credit will result in a net loss of revenue to the Federal Treasury. However, if a credit account must be established, we would recommend this account be managed by the Mineral Management Service (MMS) and not the Department of the Treasury. The MMS currently is the recipient of Federal payments and distributes receipts to the States. BLM works closely with MMS and can track and exchange required information easily. To duplicate this process at the Treasury Department would result in lost time and increased administrative costs. In addition, the loss of revenue in the form of credits is not offset in the legislation. As such, S. 638 would increase the deficit and contribute to a sequester of mandatory programs under the pay-as-you-go requirements of the Budget Enforcement Act.

UNREALISTIC TIMEFRAME

Finally, S. 638 requires that if determination of a new value is required via a new third party appraisal process,

all work must be completed within 120 days or the companies may proceed directly to U.S. Court of Federal Claims. In the event a new third party appraisal is required, the work cannot reasonably be expected to be completed within this time constraint. We acknowledge that completion of this exchange is long overdue. However, in order to assure we can meet required Federal appraisal guidelines and protect the public interest, a time frame of at least six months is required.

CONCLUSION

The Administration supports the expeditious acquisition of the privately held mineral rights. However, the value of the mineral estate must be based on available factual data such as comparable sales and scientific findings. A current reappraisal by the Federal agencies, scheduled for completion in just a few weeks, will assist in the establishment of a value which can both fairly compensate the companies for their investment and protect the public interest. The Forest Service and the BLM are working cooperatively and view this reappraisal as a key to the potential resolution of this issue. Determination of such a value could allow this transaction to be completed under existing authorities of the Forest Service, negating the need for this legislation.

This concludes my statement. I will be happy to answer any questions the members may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by the bill S. 638, 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);

(Public Law 97–243 as amended—August 26, 1982)

* * * * * * *

SEC. 3. (a) The Secretary shall acquire all lands and interests in lands within the boundaries of the Monument by donation, exchange in accordance with this Act or other provisions of law, or purchase with donated or appropriated funds, except as provided in subsection (c) **[**"and except that the Secretary may acquire mineral and geothermal interests only by exchange. It is the sense of the Congress that in the case of mineral and geothermal interests such exchanges should be completed within one year after the date of enactment of this Act"**]**. Any lands owned by the State of Washington or any political subdivision thereof may be acquired only by exchange. Those mining claims in the Green River-Polar Star area shall not be acquired without the consent of the owner.

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(g) EXPEDITIOUS COMPLETION OF MINERAL AND GEOTHERMAL INTERESTS.—

(1) DEFINITION OF HOLDER.—In this subsection, the term 'holder' means a company, or its successor, referred to in subsection (c).

(2) IN GENERAL.—Within the period described in paragraph (7), the Secretary of the Interior shall acquire by exchange the mineral and geothermal interests in the Monument of each holder.

(3) MONETARY CREDITS.—

(A) ISSUANCE.—In exchange for the mineral and geothermal interests acquired by the Secretary of the Interior from a holder under paragraph (2), the Secretary of the Interior shall issue to the holder monetary credits that may be exercised by the holder for payment of—

(i) not more than 50 percent of the bonus or other payments made by successful bidders in any sales of mineral, oil, gas, or geothermal leases under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), or the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); or

(ii) not more than 50 percent of any royalty, rental, or advance royalty payment made to the United States to maintain any mineral, oil or gas, or geothermal lease issued under the Acts listed in clause (i).

(B) VALUE OF CREDITS.—The credits issued under Subparagraph (A) shall equal the fair market value of all mineral and geothermal interests conveyed in the exchange as determined under paragraph (4).

(C) ACCEPTANCE OF CREDITS.—The Secretary of the Interior shall accept credits issued under subparagraph (A) in the same manner as cash for the payments described in subparagraph (A). The use and exercise of the credits shall be subject to the laws (including regulations) governing such payments, to the extent the laws are consistent with this subsection.

(D) TREATMENT OF CREDITS FOR DISTRIBUTION TO STATES.—All amounts in the form of credits accepted by the Secretary of the Interior under subparagraph (C) for the payments described in subparagraph (A) shall be considered to be money received for the purpose of section 35 of the Mineral Leasing Act (30 U.S.C. 191) and section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019).

(4) VALUATION OF INTERESTS.—

(A) IN GENERAL.—Not later than 120 days after the date of enactment of this sub-section, the mineral and geothermal interests to be conveyed by each holder in the exchanges required by paragraph (2) shall be valued by one of the following methods, as selected by the Secretary of the Interior:

(i) USE OF APPRAISAL REPORT.—The 1982 value established by the report of the third party appraisal completed on September 11, 1991, shall be adjusted to reflect changes in the consumer price index for all urban consumers published by the Department of

Labor as of the date on which the exchange is to be consummated pursuant to paragraph (7), or such other value as shall be mutually agreed to by the Secretary of the Interior and the holders not later than 30 days after the date of enactment of this subsection.

(ii) NEW APPRAISAL.—

(I) SELECTION OF APPRAISER.—Not later than 30 days after the date of enactment of this subsection, the Secretary of the Interior and the holders shall mutually agree on the selection of a qualified appraiser to conduct an appraisal of the mineral and geothermal interests.

(II) NO AGREEMENT ON APPRAISER.—If no appraiser is mutually agreed to under subclause (I), not later than 60 days after the date of enactment of this subsection—

(aa) the Secretary of the Interior and the holders shall each designate a qualified appraiser; and

(bb) the two designated appraisers shall select a third qualified appraiser to perform the appraisal with the advise and assistance of the designated appraisers and in accordance with the instructions that were mutually agreed on for the September 11, 1991, third part appraisal.

(III) DATE OF VALUATION.—The value of the mineral and geothermal interests to be conveyed by each holder shall be calculated as of August 26, 1982, adjusted to reflect changes in the consumer price index for all urban consumers published by the Department of Labor as of the date on which the exchange is to be consummated pursuant to paragraph (7).

(IV) COSTS.—The Secretary of the Interior shall bear the costs of the process established by the clause.

(B) TIMELY APPRAISAL REPORT.—The appraisal report resulting from subparagraph (A) shall be presented to the Secretary of the Interior timely to permit the Secretary of the Interior to determine the value of the mineral and geothermal interests to be conveyed by each holder. Not later than the date that is 180 days after the date of enactment of this subsection, the Secretary of the Interior shall notify each holder of the determination.

(C) FAILURE OF PROCESS.—If the Secretary of the Interior fails to make a determination under subparagraph (B) by the date that is 180 days after the date of enactment of this subsection or if any holder does not agree with the value determined by the Secretary of the Interior under subparagraph (B), one or more of the holders may petition the United States Court of Federal Claims for determination of the value of the mineral and geothermal interests to be conveyed by the holders in accordance with this subsection.

Subject to the right of appeal, a determination by the Court shall be binding for purposes of this subsection on all parties.

(5) EXCHANGE ACCOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 30 days after the completion of each exchange with a holder required by this subsection, the Secretary of the Interior shall establish, with the Minerals Management Service of the Department of the Interior, an exchange account for the holder for monetary credits described in paragraph (3).

(B) INITIAL BALANCE.—The initial balance of credits in each holders account shall be equal to the value as determined under paragraph (4) of the mineral and geothermal interests conveyed by the holder in the exchange.

(C) USE OF CREDITS.—The balance of credits in a holder's account shall be available to the holder or its assigns for the purposes of paragraph (3). The Secretary of the Interior shall adjust the balance of credits in the account to reflect payments made pursuant to paragraph (3).

(D) TRANSFER OF CREDITS.—

(i) IN GENERAL.—A holder may transfer or sell any credits in the holder's account to another person.

(ii) USE OF TRANSFERRED CREDITS.—Credits transferred under clause (i) may be used in accordance with this subsection only by a person that is qualified to bid on, or that holds, a mineral, oil, or gas lease under the Mineral Leasing Act (30 U.S.C. 181 et seq.), the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), or the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

(iii) NOTIFICATION.—A holder shall notify the Secretary of the Interior of any transfer or sale under this subparagraph promptly after the transfer or sale.

(E) TIME LIMIT ON USE OF CREDITS.—On the sale that is 5 days after an account is created under subparagraph (A), the Secretary of the Interior shall terminate the account and any remaining credits in the account shall become unusable.

(6) TITLE TO INTERESTS.—On the date of the establishment of an exchange account of a holder under paragraph (5)(A), title to any mineral and geothermal interests that are held by the holder and are to be acquired by the Secretary of the Interior under paragraph (2) shall transfer to the United States.

(7) COMPLETION OF EXCHANGES.—The Secretary of the Interior shall complete the exchange under paragraph (2) not later than 180 days after the date of enactment of this subsection or as soon as practicable after completion of the process described in paragraph (4)(C).

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