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SENATE

{ REPORT
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HELLS CANYON NATIONAL RECREATION AREA

SEPTEMBER 11, 1997.—Ordered to be printed

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

REPORT

together with

MINORITY VIEWS

[To accompany S. 360]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 360) to require adoption of a management plan for the Hells Canyon National Recreation Area that allows appropriate use of motorized and non-motorized river craft in the recreation area, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 360 is to amend the Hells Canyon National Recreation Area Enabling Act to require that motorized and non-motorized craft will be permitted access to, and use of, the entire portion of the Snake River within the recreation area at all times of the year.

BACKGROUND AND NEED

Hells Canyon National Recreation Area (HCNRA) was established by Congress in 1975 and is located in the northeast corner of Oregon and west central Idaho. The recreation area is administered by the National Forest Service as part of the Wallowa-Whitman National Forest. The Recreation Area lies within Baker and Wallowa Counties in Oregon, and Nez Perce, Adams and Idaho

Countries in Idaho. Principal nearby communities include Lewiston and the Boise/Caldwell/Nampa area in Idaho, Clarkston in Washington, and Baker City and La Grande in Oregon.

The principal physical feature of the HCNRA is Hells Canyon. Measuring 7,993 feet deep and 10 miles from rim to rim at places, it forms the deepest river canyon in North America. The HCNRA contains habitat for a wide variety of fish and wildlife. Cultural resources include old homesteads, mining sites, and prehistoric pictographs and petroglyphs. Historical resources include sites associated with the history of the Nez Perce Tribe. There are 652,488 acres within the HCNRA boundary, including approximately 33,000 acres which are in private ownership.

Approximately 71 miles of the Snake River in the HCNRA is designated as a component of the Wild and Scenic River System: a "wild" segment from Hells Canyon Dam north to Pittsburg Landing (31.5 miles), and a "scenic" segment from Pittsburg Landing north to the Wallowa-Whitman National Forest's north boundary (36 miles). The original 1975 enabling Act and later amendments designated about 215,000 acres within the recreation area as wilderness. The one half mile wide (average width) Snake River corridor, however, was excluded from the wilderness designation.

The Snake River segment of the HCNRA is a high volume river, with class IV rapids (on a scale of I to VI) located in the upper 16.3 miles of the river—the deepest part of Hells Canyon.

Commercial power boats have navigated the Snake River through what is now the HCNRA since the age of steamboats in the mid-nineteenth century. Commercial jet boats have been used on the Snake River since the early 1960s. The jet boats used at the HCNRA vary from 18 to 42 feet, and have a cruising speed of 28 to 35 MPH and a top speed of 50 MPH. Since they have no projecting propellers, they can run in relatively shallow water.

Commercial non-motorized use at Hells Canyon began to be popular when surplus rafts from World War II made river running more available and inexpensive. Float outfitter permits and launches have been regulated by the National Forest Service since the 1970s. During the 1992 regulated season, 12,168 people floated on the HCNRA. During this same period, 23,220 people accessed the HCNRA by power boat.

The Forest Service completed a comprehensive management plan (CMP) for Hells Canyon in 1982. This plan was appealed by private citizens and business owners based on proposed restrictions on power boating in the Wild and Scenic river portions of the HCNRA. In 1983, the Assistant Secretary of Agriculture settled the appeals by removing powerboating limitations from the plan until 1985, at which point powerboat use could be reassessed.

In October, 1994, the Forest Supervisor for the Wallowa-Whitman National Forest issued a "Recreation Management Plan for the Wild and Scenic Snake River." This management plan proposed limitations on power boat use at the HCNRA. The plan proposed establishing eight three-day periods of non-motorized use during the summer season. During these time periods, which fall after July 4th weekend and before the Labor Day weekend, motorized use would be prohibited from a 21-mile segment of the Snake River. The plan was developed using data from a visitor use study

that was conducted by the University of Idaho for the Forest Service in 1988–89. The plan was appealed to the Regional Forester in July, 1995.

The Regional Forester upheld many of the decisions in the plan, but requested further analysis on the economic impact of the plan on commercial outfitters and access to private inholdings. An environmental analysis specific to the Regional Forester's concerns on private land access and on environmental analysis specific to the Regional Forester's concerns on private land access and on the economic effects of proposed use allocations on commercial operators was undertaken in late 1996. According to the Forest Service, a decision on the analysis of economic effects on commercial operators was completed and incorporated into the 1997 use plan, implemented this summer. The analysis on the effects of the plan on private access is projected by the Forest Service to be complete by the 1998 summer use season. In the meantime, the Snake River Management Plan is being implemented by the Forest Service, without inclusion of the motorless boating provision, until the private access analysis is completed. As revised, the plan proposes a three-day non-motorized window to run from June through Labor Day, roughly every other week, with no restriction on motorized use over the July 4th week-ends.

LEGISLATIVE HISTORY

S. 360 was introduced by Senator Craig on February 26, 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 the bill on June 26, 1997.

At the business meeting on July 30, 1997, the Committee on Energy and Natural Resources ordered S. 360 favorably reported without amendments.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on July 30, 1997, by a unanimous vote of a quorum present, recommends that the Senate pass S. 360 without amendment.

The rollcall vote on reporting the measure was 11 yeas, 9 nays, as follows:

| YEAS | NAYS |
|---------------------------|---------------------------|
| Mr. Murkowski | Mr. Bumpers |
| Mr. Domenici ¹ | Mr. Ford |
| Mr. Nickles | Mr. Bingaman ¹ |
| Mr. Craig | Mr. Akaka ¹ |
| Mr. Campbell ¹ | Mr. Dorgan |
| Mr. Thomas ¹ | Mr. Graham ¹ |
| Mr. Kyl | Mr. Wyden |
| Mr. Grams | Mr. Johnson ¹ |
| Mr. Smith | Ms. Landrieu ¹ |
| Mr. Gorton | |
| Mr. Burns ¹ | |

¹ Indicates voted by proxy.

SUMMARY OF S. 360

Section 1 amends Section 10 of P.L. 94–199, the 1975 enabling Act for Hells Canyon National Recreation Area, by adding a new paragraph (a)(4).

The new paragraph (4) amends the Act by providing for control of the use and number of motorized and non-motorized craft as necessary, but only to the extent necessary to ensure that the uses are compatible with the Act.

The bill also adds a new subsection (b) to section 10, as follows:

Subsection (b)(1) states that the use of motorized and non-motorized river craft is recognized as a valid and appropriate use of the Snake River within the recreation area.

Paragraph (b)(2) directs that motorized and non-motorized craft be permitted access to, and use of, the entire river within the recreation area at all times during the year.

Paragraph (b)(3) directs that the concurrent use of the river within the recreation area by motorized and non-motorized river craft not be considered a conflict.

Paragraph (b)(4) states that the use of commercial and private motorized and non-motorized river craft be allowed at levels that optimize recreational use, within the reasonable capacity for the resources to sustain that level use; and while recognizing established use patterns and the economic well-being of the surrounding communities.

Paragraph (b)(5) provides that access to private property by motorized or non-motorized river craft by property owners in their usual and accustomed manner not be restricted.

COST AND BUDGETARY CONSIDERATIONS

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 360—A bill to require adoption of a management plan for the Hells Canyon National Recreation Area that allows appropriate use of motorized and nonmotorized river craft in the recreation area, and for other purposes

CBO estimates that enacting this bill would have no significant impact on the federal budget. Because S. 360 could affect offsetting receipts in 1998, pay-as-you-go procedures would apply; however, CBO estimates that any such effects would be negligible. S. 360 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

Enacting S. 360 would require the Secretary of Agriculture to adopt rules and regulations for managing the Hells Canyon National Recreation Area that recognize the use of motorized and non-motorized river craft as a valid and appropriate use of the Snake River within the recreation area and that permit such river craft access to, and use of, the entire river within the recreation area throughout the year. The U.S. Forest Service is currently planning to adopt a river management plan for the area that would revise

certain restrictions on the use of river craft and place new restrictions on the use of motorized river craft. Enacting S. 360 would prohibit the Forest Service from implementing some of the planned restrictions. Because outfitters pay recreation use fees to the federal government based on a percentage of their gross revenue and their revenues might decrease if the Forest Service implemented operational limitations, enacting the bill could result in greater receipts to the federal government. However, CBO estimates that any such effects on federal offsetting receipts would be negligible.

The CBO staff contact for this estimate is Victoria V. Heid. This estimate was 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. 360. 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. 360, as ordered reported.

EXECUTIVE COMMUNICATIONS

On July 30, 1997, 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. 360. These reports had not been received at the time the report on S. 360 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:

STATEMENT OF LYLE LAVERTY, DIRECTOR OF RECREATION, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present the Administration's views on S. 360, a bill which would require the "adoption of a management plan for the Hells Canyon National Recreation Area that allows appropriate use of motorized and nonmotorized river craft in the recreation area, and for other purposes."

The Department of Agriculture opposes S. 360.

Our basis for this recommendation is that the legislation would require changing the river management plan currently being adopted after many years of development. The forest planning process in place under the National Forest Management Act, providing for substantial public participation, guides management plan development. This proc-

ess works well and also provides the flexibility to make adjustments over time as public demands and resource conditions change.

S. 360 would amend section 10 of the Hells Canyon National Recreation Area Act by requiring the Forest Service to issue regulations for the control of the use and number of motorized and nonmotorized craft as necessary to ensure that such uses are compatible with the Hells Canyon National Recreation Area (HCNRA). While the Forest Service is pleased the legislation recognizes the need for managed use levels on the Snake River, specific regulations for managing the Federal portion of the HCNRA were issued in 1994.

These regulations specifically address standards for the use of motorized and nonmotorized river craft. These standards were the subject of extensive public comment, and the final rule strikes a careful and reasoned balance between preserving the unique natural resource values for which the HCNRA and Snake River were designated, and the continued balanced use of motorized and nonmotorized river craft.

The use levels established in the 1994 river management plan provide for recreation experiences consistent with wild and scenic river settings. Since 1975, increasing use levels have changed the river canyon setting from the primitive or semi-primitive experience normally associated with wild and scenic river designations. This change is directly associated with increased levels of both motorized and nonmotorized river craft.

When Congress passed the HCNRA Act in 1975, the Act required that a comprehensive management plan (CMP) be developed. That plan was issued in 1984, and was incorporated into the Wallowa—Whitman National Forest land and resource management plan (forest plan) in 1990. The CMP then became subject to the procedures for modifying management direction found in the National Forest Management Act (NFMA) and implementing regulations (36 CFR 219).

HISTORICAL MANAGEMENT OF USE LEVELS

Recreation use restrictions on the Snake River began in the 1970's when commercial floatboat outfitters were placed under special use permits in response to concerns about increasing numbers of outfitters. Restrictions on private and commercial floatboat launches were also started at this time on the wild portion of the river during the primary (summer) use season. The Forest Service proposed limitations on commercial and private powerboats in 1982 in order to keep recreation use levels within the carrying capacity of the river and to reduce encounters between float and powerboat use. Powerboat use had been unlimited under previous management plans. The decision to limit powerboat use was reversed in 1983 by the Assistant Secretary of Agriculture, thus unlimited use of powerboats

continued, while floatboat launches continued to be restricted.

In 1988, following the provisions of the Assistant Secretary's 1983 appeal decision, the Forest Service conducted an extensive survey of all river users. With the survey results as a basis, the Forest Service contracted with the University of Idaho to follow up with management recommendations. The University convened a task force, which presented recommendations for the management of the Snake River in 1991. In 1992, the Forest Service began to involve the public in developing an environmental impact statement (EIS), using the 1991 task force recommendations as a proposed action. In 1994, the Forest Supervisor issued a record of decision for the EIS, amending the forest plan with new management direction for the Wild and Scenic Snake River.

Limitations on powerboat use were proposed in this new Snake River plan. The decision on the plan was the subject of 31 separate appeals by individuals, organizations, and commercial outfitters. Most appeals were by outfitters and guides concerning limitations on the use of powerboats. The Deputy Regional Forester upheld most components of the river plan in resolving the appeals.

However, the Deputy Regional Forester also determined that the potential effects of the proposed plan on the economic viability of outfitter-guides had not been adequately analyzed or disclosed. The Forest Supervisor was directed to conduct additional analysis to determine the economic effects of the proposed use allocations and operating limits on each of the existing commercial outfitters. This analysis is complete and the Forest is incorporating the findings concerning economic effects into the river management plan.

The appeal decision also addressed the issue of access to private lands within the river corridor, and directed further review and analysis. This analysis should be completed in time to implement any proposed changes by the 1998 season. In the meantime, there will be no change in the current policy which provides for unrestricted motorized access to these private lands.

The decision to delay implementation of the non-motorized window portion of the final Snake River management plan pending the private land access analysis was itself the subject of litigation. The Hells Canyon Preservation Council had sought a preliminary injunction forcing the Forest Service to implement the non-motorized launch schedule identified in the plan. In May, the court denied the preliminary injunction, and the Snake River plan is currently being implemented for the 1997 primary season without the non-motorized window. The Forest Service has provided the court with an anticipated schedule for completion of the private land access analysis before the 1998 primary use season.

SUMMARY

The Snake River plan is an example of the process the Forest Service follows to reach resource management decisions. This collaborative process is open and inclusive, allowing the public ample opportunity to make their concerns known and have them considered. As resource stewards, we have the responsibility, by law, to seek to balance the needs of the people with the available resources.

Although this process is sometimes slower than is desired, I am convinced that it works. We prefer that the forest planning process be given the opportunity to complete its course. We think that is fair to the people who have participated, and local forest managers, that they see the results of many years of effort carried forward. The proposed legislation would force this process to start over again.

This concludes my prepared statement. I would be pleased to answer questions that you or other members of the Subcommittee may have.

MINORITY VIEWS OF SENATORS BUMPERS AND WYDEN

If enacted, S. 360 would overturn the Forest Service's management plan for the Hells Canyon National Recreation Area. The bill would favor one class of recreational users over another—in this case, operators of motorized “jet boats” over non-motorized “float boats.” We see no need to supersede a management plan developed by the Forest Service after years of public debate and involvement, designed to accommodate both motorized and non-motorized river craft users within the recreation area.

The Hells Canyon National Recreation Area in Oregon and Idaho was established in 1975 “to assure that the natural beauty, historical, and archaeological values of the Hells Canyon area and the 71-mile segment of the Snake River” running through the recreation area were “preserved for this and future generations.” Over sixty-seven miles of the Snake River within the recreation area have been designated as components of the Wild and Scenic Rivers System, with 36 miles designated as “scenic” and 31½ miles designated as “wild.”

The 1975 enabling legislation for the recreation area authorized the Forest Service to develop regulations necessary to accomplish the purpose of the Act, “including provision for the control of the use and number of motorized and non-motorized river craft.” While the enabling legislation made it clear that the operation of both motorized and non-motorized river craft were recognized as valid uses in the recreation area, the Act is also clear that the Forest Service is authorized to regulate the use and number of river craft in order to minimize conflicts between the different recreational experiences.

The Forest Service testified before the Committee that increasing use levels within the recreation area “have changed the river canyon setting from the primitive or semi-primitive experience normally associated with wild and scenic river designations. This change is directly associated with increased levels of both motorized and non-motorized river craft.”

The number of commercial and private non-motorized river craft within the recreation area have been regulated by the Forest Service since the 1970s. Until the new regulations were developed, no similar restrictions have been imposed on motorized river craft. Under the new regulations, motorized river craft would not be allowed on the river for three days every other week during the summer (and not even then if the three-day period encompasses a major holiday such as the Fourth of July), and only within the Snake River segment designated as a “wild” component of the Wild and Scenic River Systems. While use ceilings would also be imposed on motorized use in the rest of the recreation area, according to the Forest Service the new caps exceed the current level of use.

By comparison, non-motorized use would continue to be limited to five launches per day within the recreation area.

S. 360 would require the Forest Service to adopt a management plan for the recreation area that would permit the use of motorized boats on the Snake River within Hells Canyon on all portions of the river during all times of the year. The bill would also prohibit any restriction on the use of private powerboats for access to and from private property, even though the Forest Service testified that no private inholdings are within the segment proposed for closure to motorized river craft.

In our opinion, the Forest Service has acted properly and responsibly to try and balance two potentially conflicting uses within the recreation area. The agency has correctly interpreted the 1975 enabling Act by proposing a management plan which allows both motorized and non-motorized uses to continue while imposing reasonable limitations to minimize conflicts and enhance the recreational experience for both users.

DALE BUMPERS.
RON WYDEN.

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. 360, 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 94-199—DEC. 31, 1975)

SEC. 10. **【The Secretary】** (a) *RULES AND REGULATIONS.*—*The Secretary shall promulgate, and may amend, such rules and regulations as he deems necessary to accomplish the purposes of this Act. Such rules and regulations shall include, but are not limited to—*

【(a)】 (1) standards for the use and development of privately owned property within the recreation area, which rules or regulations the Secretary may, to the extent he deems advisable, implement with the authorities delegated to him in section 9 of this Act, and which may differ among the various parcels of land within the recreation area;

【(b)】 (2) standards and guidelines to insure the full protection and preservation of the historic, archaeological and paleontological resources in the recreation area;

【(c)】 (3) provision for the control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal land within the recreation area; and

【(d)】 provision for the control of the use and number of motorized and nonmotorized rivercraft: Provided, That the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area; and**】**

(4) subject to subsection (b), provision for control of the use and number of motorized and non-motorized river craft as necessary, but only to the extent necessary to ensure that such uses are compatible with this Act.

(b) *USE OF MOTORIZED AND NONMOTORIZED RIVER CRAFT.*—*For the purposes of subsection (a)(4)—*

(1) the use of motorized and nonmotorized river craft is recognized as a valid and appropriate use of the Snake River within the recreation area;

(2) motorized and nonmotorized river craft shall be permitted access to, and use of, the entire river within the recreation area at all times during the year;

(3) concurrent use of the river within the recreation area by motorized and nonmotorized river craft shall not be considered a conflict;

(4) use of commercial and private motorized and non-motorized river craft shall be allowed to continue on the entire Snake River within the recreation area throughout each year at

levels that optimize the opportunity of the American people to utilize the recreation area within the reasonable capacity of the resources to sustain that use, recognizing as acceptable established daily and seasonal use patterns and considering the economic well-being of surrounding communities; and

(5) use of motorized or nonmotorized river craft on the Snake River within the recreation area by owners of private property for the purpose of traveling to or from their property in their usual and accustomed manner shall not be restricted.

