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SENATE

{ REPORT
106-428

PROTECTIONS FOR THE WATERSHED OF THE LITTLE SANDY RIVER

SEPTEMBER 28 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2691]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2691) to provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

On page 5, insert:

"SEC. 3. LAND RECLASSIFICATION.

"(a) Within six months of the date of enactment of this Act, the Secretaries of Agriculture and Interior shall identify any Oregon and California Railroad lands (O&C lands) subject to the distribution provision of the Act of August 28, 1937 (chapter 876, title II, 50 Stat. 875; 43 U.S.C. § 1181f) within the boundary of the special resources management area described in Section 1 of this Act.

"(b) Interior shall identify public domain lands within the Medford, Roseburg, Eugene, Salem and Coos Bay Districts and the Klamath Resource Area of the Lakeview District of the Bureau of Land Management approximately equal in size and condition as those lands identified in paragraph (a) but not subject to the distribution provision of the Act of August 28, 1937 (chapter 876, title II, 50 Stat. 875; 43 U.S.C. § 1181f). For purposes of this paragraph, "public domain lands" shall have the meaning given the term "public lands" in Section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1702), but

excluding therefrom any lands managed pursuant to the Act of August 28, 1937 (chapter 876, title II, 50 Stat. 875; 43 U.S.C. § 1181f).

“(c) Within two years after the date of enactment of this Act, the Secretary of the Interior shall submit to Congress and publish in the Federal Register a map or maps identifying those public domain lands identified pursuant to paragraphs (a) and (b) of this Section. After an opportunity for public comment, the Secretary of the Interior shall complete an administrative land reclassification such that those lands identified pursuant to paragraph (a) become public domain lands not subject to the distribution provision of the Act of August 28, 1937 (chapter 876, title II, 50 Stat. 875; 43 U.S.C. § 1181f) and those lands identified pursuant to paragraph (b) become Oregon and California Railroad lands (O&C lands) subject to the distribution provision of the Act of August 28, 1937 (chapter 876, title II, 50 Stat. 875; 43 U.S.C. § 1181f).

“SEC. 4. ENVIRONMENTAL RESTORATION.

“IN GENERAL.—In order to further the purposes of this Act, there is hereby authorized to be appropriated \$10 million under the provisions of section 323 of the FY 1999 Interior Appropriations Act (P.L. 105–277) for Clackamas County, Oregon, for watershed restoration near the Bull Run Management Unit.”.

PURPOSE OF THE MEASURE

The purpose of S. 2691 is to provide for further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, near Portland, Oregon.

BACKGROUND AND NEED

The Little Sandy River lies adjacent to the Bull Run Watershed, which is the primary municipal water supply for the City of Portland, Oregon. The Bull Run Watershed Management Unit was established by Congress in 1977, creating a management partnership between the Forest Service and the city of Portland for the review of issues which may affect water quality and quantity. Additional protection was given to the Bull run Watershed by the Northwest Forest Plan in 1993, restricting all timber harvests in sensitive areas. Neither of these actions extended a satisfactory level of protection to the nearby Little Sandy Watershed. The Oregon Resources and Conservation Act of 1996 provided temporary protection for the Little Sandy Watershed. S. 2691 would expand the boundary of the Bull Run Watershed Management Unit to include the southern portion of the Little Sandy. This would add approximately 2,900 acres to the Bull Run Watershed Management Unit, resulting in a total of approximately 98,272 acres permanently protected as watershed for the city of Portland.

Population growth in and around the city of Portland and heightened awareness of water quality issues have increased the public's interest in the preservation of the Little Sandy Watershed. The legislation is needed to expand the size of the Bull Run Watershed Management Unit and provide permanent protection to the Little

Sandy River. In so doing, the city of Portland's protected watershed will be increased in size to help meet growing demand for drinking water within the city.

LEGISLATIVE HISTORY

S. 2691 was introduced on June 7, 2000 by Senator Wyden and referred to the Committee on Energy on Natural Resources. The Subcommittee on Forests and Public Land Management held a hearing on S. 2691 on July 20, 2000. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2692 reported favorably with an amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a voice vote of a quorum present, recommends that the Senate pass S. 2691 if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 2691, the Committee adopted an amendment offered by Mr. Wyden and Mr. Smith which added two sections to the bill.

The first of these, section 3, requires the Secretaries of Agriculture and Interior to complete an administrative land reclassification such that Oregon and California Railroad lands (O&C lands) that are within the affected area would become public domain lands and other public domain lands would become O&C lands for purposes of distribution of O&C receipts.

The second, section 4, authorizes funds for watershed restoration activities near the Bull Run Management Unit.

SECTION-BY-SECTION ANALYSIS

Section 1 amends Public Law 95-200 (16 U.S.C. 482b note) by striking section 1 and inserting new text that includes an additional portion of the Little Sandy River watershed in the Bull Run Watershed Management Unit of Oregon, including appropriate reference to a map depicting the new boundary, as well as conforming and technical amendments.

Section 2 amends Public Law 95-200 (16 U.S.C. 482b note) by striking paragraph (1) of section 2(b) and inserts new text to prohibit harvesting of trees in the unit as depicted in section 1. The section also makes conforming and technical amendments to the Oregon Resource Conservation Act of 1996 and the Omnibus Parks and Public Lands Management Act of 1996. The section also clarifies that there is no effect on any water rights by the Act.

Section 3 requires the Secretaries of Agriculture and Interior to complete an administrative land reclassification such that Oregon and California Railroad lands (O&C lands) that are within the affected area would become public domain lands and other public domain lands would become O&C lands for purposes of distribution of O&C receipts.

Section 4 authorizes funds for watershed restoration activities near the Bull Run Management Unit.

COST AND BUDGETARY CONSIDERATION

The Congressional Budget Office estimate of the costs of this measure has been requested but was not available at the time the report was filed. When the report is available, the Chairman will request it be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, change in existing law made by bill S. 2691, as ordered reported, are shown as follows:

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. 2691, as ordered reported.

EXECUTIVE COMMUNICATIONS

On September 20, 2000, the Committee on Energy and Natural Resources requested legislative reports from the Department of Interior and the Office of management and Budget setting forth executive views on the bill. These reports had not been received at the time the report on S. 2691 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

The testimony provided by the Department of Agriculture at the Subcommittee hearing follows:

STATEMENT OF PAUL BROUHA, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss the Administration's views concerning S. 2691, a bill to provide further protection for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon. I am Paul Brouha Associate Deputy Chief of the Forest Service.

S. 2691, if enacted, would add approximately 2,900 acres to the Bull run Watershed Management Unit. If enacted, timber harvest activities and general public access into this additional portion of the Little Sandy River watershed would be prohibited. The Administration does not feel this additional protection for the Little Sandy River watershed is warranted and, therefore, does not support this bill.

The majority of the Little Sandy River watershed is already within the Bull Run Watershed Management Unit. The Administration believes that the 1994 northwest forest plan amendments (NWFP) provide sufficient protection for the health of the Little Sandy River watershed and preservation of future options. Specifically, the Little Sandy River watershed is designated a Tier 2 Key watershed in the NWFP. This designation emphasizes high

water quality, as well as fish and watershed restoration. The NWFP, with its extensive system of late-successional and riparian reserves, watershed restoration, and other components of the aquatic conservation strategy, proves for a very high level of water quality protection.

The NWFP provides for a scientifically based, ecosystem approach for management of federal lands. It is based on landscape-level scientific analysis, and considers the inter-relationships of all the forest's resources in its implementation. The NWFP is designed to aid in the recovery of species listed under the Endangered Species Act (ESA) and is an integral part of recovery plans for all listed species, including the Northern Spotted Owl and the Lower Columbia River winter steelhead and Chinook salmon, fish stocks in the Sandy River Basin that are currently listed under the ESA. Portland General Electric has already committed to providing fish passage around their facility and restoring anadromous fish habitat in the Little Sandy. National Marine Fisheries Service has accepted the NWFP as an integral part of the recovery plan for the ESA listed fish in the Sandy River Basin.

The Point of diversion for Portland's Bureau of Water Works is above the confluence of the Little Sandy and Bull Run Rivers. A water supply option study conducted by the City of Portland in 1992 dismissed the option of developing the Little Sandy as a municipal water source because of issues related to water rights, cost of development, limited capacity, and impacts to a variety of resources. A Regional Water Supply Plan completed in 1996 by 27 water providers also dismissed the option of the Little Sandy Basin as a water supply source at the time but advocated protection. Therefore, it is unlikely that the water of the Little Sandy will ever be used as a municipal water source because of other available sources, the limited amount of water in the Little Sandy, the uncertainty of water rights, and the high costs of development. In addition, if municipal water rights were ever obtained for the Little Sandy River, the requirement under ESA to maintain instream water flows for the recovery of federally listed fish would restrict water depletion even for municipal use.

The Oregon Resources Conservation Act of 1996 (Division B of P.L. 104-208) directed the Secretary of Agriculture to study the portion of the Little Sandy River watershed within the Bull Run Watershed Management Unit. The Forest Service in consultation with the City of Portland, a private citizen-based Provincial Advisory Committee, and other interested parties, completed the study. It was submitted on June 15, 1998, by the Secretary to the Senate Committee on Agriculture, Nutrition, and Forestry, the Senate Committee on Energy and Natural Resources, the House Committee on Resources and the House Committee on Agriculture. The study recommended that the area continue to be managed under the direction of the NWFP. The reasons cited by the study are as follows:

- The Little Sandy River has not been and currently is not planned to be used to provide drinking water; and

- The waters of the Little Sandy River may be needed to provide for the needs of fish species being considered for listing under the ESA.

Since that time, both Chinook salmon and winter steelhead in the Sandy River Basin were listed under the ESA.

There are many environmental safeguards already in place for the Little Sandy River and other sensitive watersheds in the Pacific Northwest. For these reasons we feel that S. 1691 is unnecessary.

This concludes my testimony. I would be happy to answer any questions that you may have.

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. 2691, 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 95-200 (16 U.S.C. 482b note)

* * * * *

“DESIGNATION OF UNIT

[“Section 1. There is hereby established, subject to valid existing rights, a special resources management unit within the Mount Hood National Forest, State of Oregon, comprising approximately 95,382 acres as depicted on a map dated April 1977, and entitled ‘Bull Run Watershed Management Unit, Mount Hood National Forest’, which is on file and available for public inspection in the offices of the Chief, and the Regional Forester—Pacific Northwest Region, Forest Service, Department of Agriculture, minor adjustments in the boundaries of which may be made from time to time by the Secretary of Agriculture (hereinafter the ‘Secretary’) after consultation with the city and appropriate public notice and hearings.]

“SECTION 1. ESTABLISHMENT OF SPECIAL RESOURCES MANAGEMENT UNIT; DEFINITION OF SECRETARY.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established, subject to valid existing rights, a special resources management unit in the State of Oregon comprising approximately 98,272 acres, as depicted on a map dated May 2000, and entitled ‘Bull Run Watershed Management Unit’.

“(2) MAP.—The map described in paragraph (1) shall be on file and available for public inspection in the offices of the Regional Forester-Pacific Northwest Region, Forest Service, Department of Agriculture, and in the offices of the State Director, Bureau of Land Management, Department of the Interior.

"(3) BOUNDARY ADJUSTMENTS.—Minor adjustments in the boundaries of the unit may be made from time to time by the Secretary after consultation with the city and appropriate public notice and hearings.

"(b) DEFINITION OF SECRETARY.—In this Act, the term 'Secretary' means—

"(1) with respect to land administered by the Secretary of Agriculture, the Secretary of Agriculture; and

"(2) with respect to land administered by the Secretary of the Interior, the Secretary of the Interior.

"MANAGEMENT

"SEC. 2. (a) The unit and the renewable resources therein, shall be administered as a watershed by the [Secretary of Agriculture] Secretary in accordance with the laws, rules and regulations [applicable to National Forest System lands] applicable to National Forest System land (in the case of land administered by the Secretary of Agriculture) or applicable to land under the administrative jurisdiction of the Bureau of Land Management (in the case of land administered by the Secretary of the Interior) except to the extent that any management plan or practice is found by the Secretary to have a significant adverse effect on compliance with the water quality standards referred to in section 2(c) hereof or on the quantity of the water produced thereon for the use of the city, and other local government units and persons using such water under agreements with the city (and the Secretary shall take into consideration the cumulative effect of individual insignificant degradation), in which case, and notwithstanding any other provision of law, the management plan and all relevant leases, permits, contracts, rights-of-way, or other rights or authorization issued pursuant thereto shall forthwith be altered by the Secretary to eliminate such adverse effect by application of one or more such practices or uses: Provided, however, That use of such water for the production of energy and the transmission of such energy through and over the unit are deemed consistent with the purposes of this Act and the rights-of-way heretofore granted to Bonneville Power Administration by the Forest Service through and over the unit are validated and confirmed and deemed consistent with the purposes of this Act.

"(b) TIMBER CUTTING.—

*"(1) * * **

"(2) PERMITTED CUTTING.—

"(A) IN GENERAL.—Subject to subparagraph (B), the [Secretary of Agriculture] Secretary shall prohibit the cutting of trees in the area described in paragraph (1).

"(B) PERMITTED CUTTING.—Subject to subparagraph (C), the Secretary may only allow the cutting of trees in the area described in paragraph (1)—

"(i) for the protection or enhancement of water quality in the area described in paragraph (1); or

"(ii) for the protection, enhancement, or maintenance of water quantity available from the area described in paragraph (1); or

"(iii) for the construction, expansion, protection or maintenance of municipal water supply facilities; or

“(iv) for the construction, expansion, protection or maintenance of facilities for the transmission of energy through and over the unit or previously authorized hydroelectric facilities or hydroelectric projects associated with municipal water supply facilities.

“(C) SALVAGE SALES.—The [Secretary of Agriculture] Secretary may not authorize a salvage sale in the area described in paragraph (1).

“(b) TIMBER CUTTING [SIC]—

[“(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Agriculture shall prohibit the cutting of trees in that part of the unit consisting of the hydrographic boundary of the Bull Run River Drainage, including certain lands within the unit and located: below the headworks of the city of Portland, Oregon's water storage and delivery project, and as depicted in a map dated July 22, 1996 and entitled 'Bull Run River Drainage'.]

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall prohibit the cutting of trees on Federal land in the entire unit, as designated in section 1 and depicted on the map referred to in that section.

* * * * *

“(c) The policy set forth in [subsection (a) and (b)] subsections (a) and (b), [sic] shall be attained through the development, maintenance, and periodic revision of land management plans in accordance with procedures set forth in section 5[6] of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477, as amended: 16 U.S.C. 1604) [section 1604 of this title], [through the maintenance] (*in the case of land administered by the Secretary of Agriculture*) or section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) (*in the case of land administered by the Secretary of the Interior*) through the maintenance of systems for monitoring and evaluating water quality, and through supporting scientific research as the Secretary may deem necessary after consultation and in coordination with the city. In the development and revision of land management plans for the unit, the Secretary, except as otherwise provided in section 2(a) hereof, shall provide for public participation and shall consult and coordinate with appropriate officials and advisors of the city, and shall consider such data and research as the city may collect through its own monitoring systems and scientific efforts, if any. Such plans shall be prepared by an interdisciplinary team; be embodied in appropriate written material including maps and other descriptive documents; shall contain water quality standards developed by the Secretary after consultation and in cooperation with the city, which standards shall be substantially based on and shall reflect a quality of water not significantly less than the quality reflected by percentile curves developed from data collected from 1967 through 1975 and, if none, from data collected in the first three years of record thereafter; and be available to the public at convenient locations. The initial plan or plans shall be completed as soon as practicable after the enactment of this Act [Nov. 23, 1977], but not later than September 30, 1979. Current data shall be compared: to historical data at least annually for the purpose of determining compliance with the standards and the significance of

any deviation therefrom. Deviations occurring from operation, maintenance, alteration, or construction of water storage, or electrical generation and transmission facilities, seasonal fluctuations, variations in climate, and other natural phenomena, fire, or acts of God, shall not be considered in determining the historical or current percentile curves.

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Public Law 104-208—Sept. 30, 1996

* * * * *

【SEC. 606. Lands within the Bull Run Management Unit, as defined in Public Law 95-200, but not contained within the Bull Run River Drainage, as defined by this title and as depicted on the map dated July 1996 described in Section 604 of this title, shall continue to be managed in accordance with Public Law 95-200.】

* * * * *

Public Law 104-333—Nov. 12, 1996

【SEC. 1026. BULL RUN PROTECTION.—

】(a) AMENDMENTS TO PUBLIC LAW 95-200.—

】(1) The first sentence of section 2(a) of the Public Law 95-200 is amended by striking “2(b)” and inserting in lieu thereof “2(c)”.

】(2) The first sentence of section 2(b) of Public Law 95-200 is amended after “the policy set forth in subsection (a)” by inserting “and (b)”.

】(3) Subsections (b), (c), (d), and (e) of section 2 of Public Law 95-200 are redesignated as subsections (c), (d), (e), and (f), respectively.

】(4) Section 2 of Public Law 95-200 is amended by inserting after subsection (a) the following new subsection:

】“(b) TIMBER CUTTING.—

】“(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Agriculture shall prohibit the cutting of trees in that part of the unit consisting of the hydrographic boundary of the Bull Run River Drainage, including certain lands within the unit and located below the headworks of the city of Portland, Oregon’s water storage and delivery project, and as depicted in a map dated July 22, 1996, and entitled ‘Bull Run River Drainage’.

】“(2) PERMITTED CUTTING.—

】“(A) IN GENERAL.—Subject to subparagraph (B), the Secretary of Agriculture shall prohibit the cutting of trees in the area described in subparagraph (1).

】“(B) PERMITTED CUTTING.—Subject to subparagraph (C), the Secretary may only allow the cutting of trees in the area described in subparagraph (1)—

】“(i) for the protection or enhancement of water quality in the area described in subparagraph (1); or

[(ii) for the protection, enhancement, or maintenance of water quantity available from the area described in subparagraph (1); or

[(iii) for the construction, expansion, protection or maintenance of municipal water supply facilities; or

[(iv) for the construction, expansion, protection or maintenance of facilities for the transmission of energy through and over the unit or previously authorized hydroelectric facilities or hydroelectric projects associated with municipal water supply facilities.

[(C) SALVAGE SALES.—The Secretary of Agriculture may not authorize a salvage sale in the area described in subparagraph (1).]

[(b) REPORT TO CONGRESS.—The Secretary of Agriculture shall, in consultation with the city of Portland and other affected parties undertake a study of that part of the Little Sandy Watershed that is within the unit (hereinafter referred to as the “study area”). That study shall determine—

[(1) the impact of management activities within the study area on the quality of drinking water provided to the Portland Metropolitan area;

[(2) the identity and location of certain ecological features within the study area, including late successional forest characteristics, aquatic and terrestrial wildlife habitat, significant hydrological values, or other outstanding natural features; and

[(3) the location and extent of any significant cultural or other values within the study area.

[(c) RECOMMENDATIONS.—The study referred to in subsection (b) shall include both legislative and regulatory recommendations to Congress on the future management of the study area. In formulating such recommendations, the Secretary shall consult with the City of Portland and other affected parties.

[(d) EXISTING DATA AND PROCESSES.—To the greatest extent possible, the Secretary shall use existing data and processes to carry out the study and report.

[(e) SUBMISSION TO CONGRESS.—The study referred to in subsection (b) shall be submitted to the Senate Committees on Energy and Natural Resources and Agriculture and the House Committees on Resources and Agriculture not later than one year from the date of enactment of this section.

[(f) MORATORIUM.—The Secretary is prohibited from advertising, offering or awarding any timber sale within the study area for a period of two years after the date of enactment of this section.

[(g) WATER RIGHTS.—Nothing in this section shall in any way affect any State or Federal law governing appropriation, use of or Federal right to water on or flowing through National Forest System lands. Nothing in this section is intended to influence the relative strength of competing claims to the waters of the Little Sandy River. Nothing in this section shall be construed to expand or diminish Federal, State, or local jurisdiction, responsibility, interests, or rights in water resources development or control, including rights in and current uses of water resources in the unit.

[(h) OTHER LANDS IN UNIT.—Lands within the Bull Run Management Unit, as defined in Public Law 95–200, but not contained within the Bull Run River Drainage, as described in the amend-

ment made by subsection (a)(4) of this section and as depicted on the map dated July 22, 1996, and entitled "Bull Run River Drainage", shall continue to be managed in accordance with Public Law 95-200.]

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