

of financial institutions, the National Bankers Association. I believe that the support this measure has gained from such organizations shows that despite the opposition of some banks, there is significant support in the United States for a truly international approach to the problem of money laundering.

Lastly, our proposal has been endorsed by the National Association of District Attorneys. We believe that this is a particularly important endorsement because it is the State and local law enforcement officials who most frequently prosecute narcotics-related cases, including those concerning money laundering. The National Association of District Attorneys understands how vital certain basic financial information can be in the investigation and prosecution of money-laundering cases. Currently, even those foreign banks willing to cooperate with our law enforcement officials do not maintain the necessary records.

I hope that the current negotiations to bring the drug bill up for debate are soon resolved, and I look forward to Senate consideration of this proposal. ●

#### WOMEN'S BUSINESS OWNERSHIP ACT OF 1988

● Mr. WEICKER. Mr. President, I rise in support of the amendment offered by Senator BUMPERS on the Women's Business Ownership Act of 1988, legislation to promote the development and ownership of small businesses owned by women.

There has been an enormous growth in the number of women owned businesses in recent years. According to the Small Business Administration, the number of women-owned businesses has increased by 11 percent annually from 1974 to 1984, as compared to a 5.4-percent growth rate of businesses owned by men during that period. Today, women own one in four of all small businesses, and those businesses contribute jobs to our economy. The phenomenal growth in women owned businesses has occurred in many instances despite the continued stereotyping and discrimination that they face.

The bill will provide an important stimulus to encourage policies to foster the development of businesses owned and operated by women. It passed the House of Representatives earlier this week with overwhelming bipartisan support.

The provisions of this amendment, which have already been outlined by Chairman BUMPERS, are designed to overcome the very critical problems confronting women entrepreneurs. Those problems include getting access to capital and credit and obtaining management and technical assistance.

It is important to note that this body has already concurred in two provisions of this measure: The Demonstration Grant Program to provide management and technical assistance for women was contained in the SBA

reauthorization conference report, H.R. 4174, and the State Justice Commerce appropriations law signed by the President provides \$2 million for this program in fiscal year 1989. The second is an initiative to encourage preferred and certified lenders to make smaller loans, less than \$50,000, by allowing them to retain half of the 2-percent fee charged on those loans. This provision was also contained in the SBA reauthorization bill.

Another key provision of the bill would amend the Equal Credit Opportunity Act to add business loans to the type of loans covered by the Act. It also would require lenders to keep records relating to loans and to provide written notice to applicants of their right to receive notice of reasons for a loan denial.

In addition to modifying existing programs which should be helpful to women owned businesses, the bill also establishes a National Women's Business Council to study and review existing programs for helping women owned businesses enter the mainstream and to make recommendations to the Congress and the administration on improving efforts to promote women business ownership.

Mr. President, women entrepreneurs have made great gains. This legislation will help continue that process. Furthermore, it will provide a blueprint for future Federal efforts to assist women owned businesses. I urge my colleagues to support passage of the bill. ●

#### EXTENDING COVERAGE OF THE EQUAL CREDIT OPPORTUNITY ACT

● Mr. GARN. Mr. President, this bill extends the coverage of certain provisions of the Equal Credit Opportunity Act to business and commercial loans. But it gives the Federal Reserve the authority to exempt certain commercial loans and to determine the size and nature of the loans to be covered. We are not trying to cover million dollar loans to corporations. What we intend to include would be small business-type loans. We would expect the Federal Reserve to analyze the loan data and arrive at a reasonable figure in exempting large-dollar loans. I would expect that the dollar number might be somewhat around \$100,000 or even less, depending on what the data showed. ●

#### OMNIBUS OREGON WILD AND SCENIC RIVERS ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1034, S. 2148.

The ACTING PRESIDENT pro tempore. The clerk will report.

Mr. HATFIELD. Mr. President, may we have order so that we may conduct the business of the Senate?

The ACTING PRESIDENT pro tempore. The Senate will be in order.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2148) to amend the Wild and Scenic Rivers Act of 1968, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

#### SECTION 1. SHORT TITLE.

*This Act may be referred to as the "Omnibus Oregon Wild and Scenic Rivers Act of 1988".*

#### SEC. 2. AMENDMENTS TO THE WILD AND SCENIC RIVERS ACT.

*Section 3(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 907), as amended, is further amended by adding the following new paragraphs at the end thereof:*

*"( ) BIG MARSH CREEK, OREGON.—The 15-mile segment from the northeast quarter of section 15, township 26 south, range 6 east, to its confluence with Crescent Creek in the northeast quarter of section 20, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture: Provided, Nothing in this act shall prohibit the Secretary from undertaking construction activities to enhance and restore wetland resources associated with Big Marsh Creek.*

*"( ) CHETCO, OREGON.—The 44.5 mile segment from its headwaters to the Siskiyou National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:*

*"(A) the 25.5-mile segment from its headwaters to Boulder Creek at the Kalmiopsis Wilderness boundary as a wild river;*

*"(B) the eight-mile segment from Boulder Creek to Steel Bridge as a scenic river; and*

*"(C) the 11-mile segment from Steel Bridge to the Siskiyou National Forest boundary, one mile below Wilson Creek, as a recreational river.*

*"( ) CLACKAMAS, OREGON.—The 47-mile segment from Big Springs to Big Cliff; to be administered by the Secretary of Agriculture in the following classes:*

*"(A) The 4-mile segment from Big Springs to the Forest Service Road 4690 bridge as a scenic river;*

*"(B) the 3.5-mile segment from the Forest Service Road 4690 bridge to the junction with Oregon State Highway 224 as a recreational river;*

*"(C) the 10.5-mile segment from Oregon State Highway 224 to the June Creek Bridge as a scenic river;*

*"(D) the 9-mile segment from June Creek Bridge to Tar Creek as a recreational river;*

*"(E) the 5.5-mile segment from Tar Creek to just south of Indian Henry Campground as a scenic river; and*

*"(F) the 14.5-mile segment just south of Indian Henry Campground to Big Cliff as a recreational river.*

*"( ) CRESCENT CREEK, OREGON.—The 10-mile segment from the southwest quarter of section 11, township 24 south, range 6 east, to the west section line of section 13, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture.*

*"( ) CROOKED, OREGON.—The 15-mile segment from the National Grassland boundary to Dry Creek; to be administered by the Secretary of the Interior in the following classes:*

"(A) The 7-mile segment from the National Grassland boundary to River Mile 8 south of Opal Spring as a recreational river; and

"(B) the 8-mile segment from Bowman Dam to Dry Creek as a recreational river.

"( ) DESCHUTES, OREGON.—Those portions as follows:

"(A) The 40.4-mile segment from Wicktup Dam to northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 11-mile segment from the northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east, to Lava Island Camp as a scenic river; to be administered by the Secretary of Agriculture;

"(C) the 3-mile segment from Lava Island Camp to the Bend Urban Growth Boundary at the southwest corner of section 13, township 18 south, range 11 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 19-mile segment from Oden Falls to the Upper End of Lake Billy Chinook as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 100-mile segment from the Pelton Reregulating Dam to its confluence with the Columbia River as a recreational river; to be administered by the Secretary of the Interior through a cooperative management agreement between the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10 of this act and section 4 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

"( ) DONNER UND BLITZEN, OREGON.—Those segments, including its major tributaries, as a wild river; to be administered by the Secretary of the Interior as follows:

"(A) the 16.75-mile segment of the Donner and Blitzen from its confluence with the South Fork Blitzen and Little Blitzen;

"(B) the 12.5-mile segment of the Little Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(C) the 16.5-mile segment of the South Fork Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(D) the 10-mile segment of Big Indian Creek from its headwaters to its confluence with the South Fork Blitzen;

"(E) the 3.7-mile segment of Little Indian Creek from its headwaters to its confluence with Big Indian Creek; and

"(F) the 13.25-mile segment of Fish Creek from its headwaters to its confluence with the Donner und Blitzen.

"( ) EAGLE CREEK, OREGON.—The 27-mile segment from its headwaters below Eagle Lake to the Wallowa-Whitman National Forest boundary at Skull Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from its headwaters below Eagle Lake to the Eagle Cap Wilderness boundary at Hummingbird Mountain as a wild river;

"(B) the 15.5-mile segment from the Eagle Cap Wilderness boundary at Hummingbird Mountain to Paddy Creek as a recreational river;

"(C) the 6-mile segment from Paddy Creek to Little Eagle Creek as a scenic river; and

"(D) the 1.5-mile segment from Little Eagle Creek to the Wallowa-Whitman National Forest boundary as a recreational river.

"( ) ELK, OREGON.—The 19-mile segment to be administered by the Secretary of Agriculture in the following classes:

"(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river; and

"(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.

"( ) GRANDE RONDE, OREGON.—The 43.8-mile segment from its confluence with the Wallowa River to the Oregon-Washington State line in the following classes:

"(A) the 1.5-mile segment from its confluence with the Wallowa River to the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.4-mile segment from the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, to the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 9-mile segment from the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek to Wildcat Creek as a scenic river; to be administered by the Secretary of the Interior; and

"(D) the 15.9-mile segment from Wildcat Creek to the Oregon-Washington State line as a recreational river; to be administered by the Secretary of the Interior.

"( ) INNAHA, OREGON.—The 68-mile segment from its confluence with the North and South Forks of the Innaha River to its mouth; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6-mile segment from its confluence with the North and South Forks of the Innaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 4-mile segment from Cow Creek to its mouth as a scenic river.

"( ) JOHN DAY, OREGON.—The 147.5-mile segment from Service Creek to Tumwater Falls as a recreational river; to be administered through a cooperative management agreement between the State of Oregon and the Secretary of the Interior.

"( ) JOSEPH CREEK, OREGON.—The 29.1-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Oregon-Washington State line in the following classes:

"(A) the 8.6-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Wallowa-Whitman National Forest boundary as a wild river; to be administered by the Secretary of Agriculture; and

"(B) the 20.5-mile segment from the Wallowa-Whitman National Forest boundary to the Oregon-Washington State line as a wild river; to be administered by the Secretary of the Interior.

"( ) LITTLE DESCHUTES, OREGON.—The 12-mile segment from its source to the north section line of section 12, township 26 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture.

"( ) LOSTINE, OREGON.—The 16-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 5-mile segment from its headwaters to the Eagle Cap Wilderness boundary as a wild river; and

"(B) the 11-mile segment from the Eagle Cap Wilderness boundary to the Wallowa-Whitman National Forest boundary at Silver Creek as a recreational river.

"( ) MALHEUR, OREGON.—The 13.7-mile segment from Bosonberg Creek to the Malheur National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 7-mile segment from Bosonberg Creek to Malheur Ford as a scenic river; and

"(B) the 6.7-mile segment from Malheur Ford to the Malheur National Forest boundary as a wild river.

"( ) MCKENZIE, OREGON.—The 12.7-mile segment from Clear Lake to Scott Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 1.8-mile segment from Clear Lake to the head of maximum pool at Carmen Reservoir as a recreational river;

"(B) the 4.3-mile segment from a point 100 feet downstream from Carmen Dam to the maximum pool at Trail Bridge Reservoir as a recreational river; and

"(C) the 6.6-mile segment from the developments at the base of the Trail Bridge Reservoir Dam to Scott Creek as a recreational river.

"( ) METOLIUS, OREGON.—The 28.6-mile segment from the south Deschutes National Forest boundary to Lake Billy Chinook in the following classes:

"(A) the 11.5-mile segment from the south Deschutes National Forest boundary (approximately 2,055.5 feet from Metolius Springs) to Bridge 99 as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.1-mile segment from Bridge 99 to Lake Billy Chinook as scenic river; by the Secretary of Agriculture, through a cooperative management agreement between the Secretary of the Interior, the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10 of this act and section 4 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988: Provided, That the river and its adjacent land area will be managed to provide a primitive recreational experience as defined in the ROS User's Guide.

"( ) MINAM, OREGON.—The 39-mile segment from its headwaters at the south end of Minam Lake to the Eagle Cap Wilderness boundary, one-half mile downstream from Cougar Creek, as a wild river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK CROOKED, OREGON.—The 32.3-mile segment from its source at Williams Prairie to one mile from its confluence with the Crooked River in the following classes:

"(A) the 3-mile segment from its source at Williams Prairie to the Upper End of Big Summit Prairie as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 3.7-mile segment from the Lower End of Big Summit Prairie to the bridge across from the Deep Creek Campground as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 8-mile segment from the bridge across from the Deep Creek Campground to the Ochoco National Forest boundary, one-half mile from Lame Dog Creek as a scenic river; to be administered by the Secretary of Agriculture;

"(D) the 1.5-mile segment from the Ochoco National Forest boundary to Upper Falls as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 11.1-mile segment from Upper Falls to Committee Creek as a wild river; to be administered by the Secretary of the Interior; and

"(F) the 5-mile segment from Committee Creek to one mile from its confluence with the Crooked River as a recreational river; to be administered by the Secretary of the Interior.

"( ) NORTH FORK JOHN DAY, OREGON.—The 54.1-mile segment from its headwaters in the North Fork of the John Day Wilderness Area at section 13, township 8 south, range 36 east, to its confluence with Camas Creek in the following classes:

"(A) the 3.5-mile segment from its headwaters in the North Fork of the John Day Wilderness at section 13, township 8 south, range 38 east, to the North Fork of the John Day Wilderness boundary as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.5-mile segment from the North Fork of the John Day Wilderness boundary to Trail Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 24.3-mile segment from Trail Creek to Big Creek as a wild river; to be administered by the Secretary of Agriculture;

"(D) the 10.5-mile segment from Big Creek to Texas Bar Creek as a scenic river; to be administered by the Secretary of Agriculture; and

"(E) the 8.3-mile segment from Texas Bar Creek to its confluence with Camas Creek as a recreational river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK MALHEUR, OREGON.—The 25.5-mile segment from its headwaters to the Malheur National Forest boundary as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE, OREGON.—The 42.3-mile segment from Waldo Lake to the Willamette National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 8.8-mile segment from Waldo Lake to the south section line of section 36, township 19 south, range 5½ east as a wild river;

"(B) the 6.5-mile segment from the south section line of section 36, township 19 south, range 5½ east to Fisher Creek as a scenic river; and

"(C) the 27-mile segment from Fisher Creek to the Willamette National Forest boundary as a recreational river.

"( ) NORTH FORK OWYHEE, OREGON.—The 8-mile segment from the Oregon-Idaho State line to its confluence with the Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) NORTH FORK SMITH, OREGON.—The 13-mile segment from its headwaters to the Oregon-California State line; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6.5-mile segment from its headwaters to Horse Creek as a wild river;

"(B) the 4.5-mile segment from Horse Creek to Baldface Creek as a scenic river; and

"(C) the 2-mile segment from Baldface Creek to the Oregon-California State line as a wild river.

"( ) NORTH FORK SPRAGUE, OREGON.—The 15-mile segment from the head of River Spring in the southwest quarter of section 15, township 35 south, range 16 east, to the northwest quarter of the southwest quarter of section 11, township 35 south, range 15 east, as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH POWDER, OREGON.—The 6-mile segment from its headwaters to the Wallawa-Whitman National Forest boundary at River Mile 20 as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH UMPQUA, OREGON.—The 33.8-mile segment from the Soda Springs Powerhouse to Rock Creek in the following classes:

"(A) the 25.4-mile segment from the Soda Springs Powerhouse to the Umpqua National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture; and

"(B) the 8.4-mile segment from the Umpqua National Forest boundary to its confluence with Rock Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) POWDER, OREGON.—The 11.7-mile segment from Thief Valley Dam to the Highway 203 bridge as a scenic river; to be administered by the Secretary of the Interior.

"( ) QUARTZVILLE CREEK, OREGON.—The 12-mile segment from the Willamette National Forest boundary to Slack Water in Green Peter Reservoir as a recreational river; to be administered by the Secretary of the Interior.

"( ) ROARING, OREGON.—The 13.7-mile segment from its headwaters to its confluence with the Clackamas River; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 13.5-mile segment from its headwaters to one-quarter mile upstream of the mouth as a wild river; and

"(B) the 0.2-mile segment from one-quarter mile upstream of the mouth to its confluence with the Clackamas River as a recreational river.

"( ) SALMON, OREGON.—The 33.5-mile segment from its headwaters to its confluence with the Sandy River in the following classes:

"(A) the 7-mile segment from its headwaters to the south boundary line of section 6, township 4 south, range 9 east as a recreational river; to be administered by the Secretary of Agriculture. Provided, That designation and classification shall not preclude the Secretary from exercising discretion to approve the construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Timberline Lodge Winter Sports Area insofar as such construction does not involve water resources projects;

"(B) the 15-mile segment from the south boundary line at section 6, township 4 south, range 9 east to the junction with the South Fork of the Salmon River as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 3.5-mile segment from the junction with the south fork of the Salmon River to the Mt. Hood National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 3.2-mile segment from the Mt. Hood National Forest boundary to Lymph Creek as a recreational river; to be administered by the Secretary of the Interior; and

"(E) the 4.8-mile segment from Lymph Creek to its confluence with the Sandy River as a scenic river; to be administered by the Secretary of the Interior.

"( ) SANDY, OREGON.—Those portions as follows:

"(A) The 4.5-mile segment from its headwaters to the section line between sections 15 and 22, township 2 south, range 8 east as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.9-mile segment from the section line between sections 15 and 22, township 2 south, range 8 east to the Mt. Hood National Forest boundary at the west section line of section 26, township 2 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 12.5-mile segment from the east boundary of sections 25 and 36, township 1 south, range 4 east in Clackamas County near Dodge Park, downstream to the west line of the east half of the northeast quarter of section 6, township 1 south, range 4 east, in Multnomah County at Dabney State Park, the upper 3.8 miles as a scenic river and the lower 8.7 miles as a recreational river; both to be administered through a cooperative management agreement between the State of Oregon, the Secretary of the Interior and the Counties of Multnomah and Clackamas in accordance with section 10(e) of this Act. Provided, That nothing in this act shall preclude or impair the licensing,

development, operation, or maintenance of City of Portland, Oregon water resources facilities on those portions of the Bull Run or Little Sandy Rivers that are outside the boundary of the wild and scenic river area as designated in this section. Provided further, That nothing in this section is intended or shall be construed to affect any rights, obligations, privileges, or benefits granted to the City of Portland, Oregon under any prior authority of law or under any agreement or administrative ruling entered into or made effective before the effective date of this act.

"( ) SOUTH FORK IMNAHA, OREGON.—The 9-mile segment from its headwaters to the confluence with the Imnaha River as a wild river; to be administered by the Secretary of Agriculture.

"( ) SOUTH FORK JOHN DAY, OREGON.—The 47-mile segment from the Malheur National Forest to Smokey Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) SQUAW CREEK, OREGON.—The 15.4-mile segment from its source to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch, including the Soap Fork Squaw Creek, the North Fork, the South Fork, the East and West Forks of Park Creek, and Park Creek Fork; to be administered by the Secretary of Agriculture as follows:

"(A) The 6.6-mile segment and its tributaries from the source to the Three Sisters Wilderness boundary as a wild river; and

"(B) the 8.8-mile segment from the boundary of the Three Sisters Wilderness Area to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch as a scenic river. Provided, That nothing in this act shall prohibit the construction of facilities necessary for emergency protection for the town of Sisters relative to a rapid discharge of Carver Lake if no other reasonable flood warning or control alternative exists.

"( ) SYCAN, OREGON.—The 59-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to Coyote Bucket at the Fremont National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 26.4-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to the west section line of section 22, township 32 south, range 14 east, as a scenic river;

"(B) the 8.6-mile segment from the west section line of section 22, township 32 south, range 14 east, to the Fremont National Forest boundary in the southeast quarter of section 10, township 33 south, range 13 east, as a recreational river; and

"(C) the 24-mile segment from the Fremont National Forest boundary in the southwest quarter of section 10, township 33 south, range 13 east, to Coyote Bucket at the Fremont National Forest boundary, as a scenic river.

"( ) UPPER ROGUE, OREGON.—The 40.3-mile segment from the Crater Lake National Park boundary to the Rogue River National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 0.5-mile segment from the Crater Lake National Park boundary to approximately 0.1-mile downstream from the forest road 6530760 (West Lake Road) crossing as a scenic river;

"(B) the 6.1-mile segment from approximately 0.1-mile downstream from the Forest road 6530760 (West Lake Road) crossing to Minchaha Creek as a wild river; and

"(C) the 33.7-mile segment from Minchaha Creek to the Rogue River National Forest boundary as a scenic river.

"( ) WENAHU, OREGON.—The 21.55-mile segment from the confluence of the North Fork and the South Fork to its confluence with the Grande Ronde River; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 18.7-mile segment from the confluence of the North Fork and South Fork to the Umatilla National Forest as a wild river;

"(B) the 2.7-mile segment from the Umatilla National Forest boundary to the easternmost boundary of the Wenaha State Wildlife Area as a scenic area; and

"(C) the 0.15-mile segment from the easternmost boundary of the Wenaha State Wildlife Area to the confluence with the Grande Ronde River as a recreational river.

"( ) WEST LITTLE OWYHEE, OREGON.—The 51-mile segment from its headwaters to its confluence with Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) WHITE, OREGON.—The 46.5-mile segment from its headwaters to its confluence with the Deschutes River in the following classes:

"(A) The 2-mile segment from its headwaters to the section line between sections 9 and 16, township 3 south, range 9 east, as a recreational river; to be administered by the Secretary of Agriculture; Provided, That designation and classification shall not preclude the Secretary from exercising discretion to approve construction, operation, and from exercising discretion to approve construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Mt. Hood Winter Sports Area insofar as such construction does not involve water resource projects and is consistent with protecting the values for which the river was designated.

"(B) the 13.6-mile segment from the section line between sections 9 and 16, township 3 south, range 9 east, to Deep Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 6.5-mile segment from Deep Creek to the Mt. Hood National Forest boundary as wild river; to be administered by the Secretary of Agriculture;

"(D) the 22.8-mile segment from the Mt. Hood National Forest boundary to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and

"(E) the 1.6-mile segment from River Mile 1.6 to its confluence with the Deschutes River as a recreational river; to be administered by the Secretary of the Interior."

#### SEC. 3. WILD AND SCENIC RIVER STUDIES.

Section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) BLUE, OREGON.—The segment from its headwaters to the Blue River Reservoir; by the Secretary of Agriculture.

"( ) CHEWAUCAN, OREGON.—The segment from its headwaters to the Paisley Urban Growth boundary to be studied in cooperation with, and integrated with, the Klamath River Basin Plan; by the Secretary of Agriculture.

"( ) NORTH FORK MALHEUR, OREGON.—The segment from the Malheur National Forest boundary to Beulah Reservoir; by the Secretary of the Interior.

"( ) SOUTH FORK MCKENZIE, OREGON.—The segments from its headwaters to the upper end of Cougar Reservoir and from the lower end of Cougar Reservoir to its confluence with the McKenzie River; by Secretary of Agriculture.

"( ) STEAMBOAT CREEK, OREGON.—The entire creek; by the Secretary of Agriculture.

"( ) UPPER KLAMATH, OREGON.—The segment from immediately below John Boyle Dam to the Oregon-California State line; by the Secretary of the Interior: Provided, That nothing in this Act, or any amendments thereto, shall be construed to affect or delay, or to interfere with completion of, any studies or proceedings by any Department or agency of the United States which has jurisdiction over the Salt Caves Hydroelectric Project proposed by the City of Klamath Falls, Oregon.

"( ) WALLOWA, OREGON.—The segment from its confluence with the Minam River to its confluence with the Grande Ronde River; by the Secretary of Agriculture."

#### SEC. 4. INDIAN TREATY LANDS AND ADMINISTRATIVE PROVISIONS.

(a)(1) Lands now or hereafter held in trust by the United States for the benefit of an Indian tribe or individual Indian shall not be included within the boundaries of the Deschutes or Metolius Rivers as designated by this act without the consent of the applicable tribal council.

(2) When Indian treaty lands exist in association with lands included in the National Wild and Scenic Rivers System under this act, the Secretaries of the Interior and Agriculture, as appropriate, shall fully consult and enter into written cooperative management agreements with the affected Indian tribe for planning, administration, and management of such areas.

(b) Nothing in this Act shall affect:

(1) the jurisdiction or responsibilities of an Indian tribe with respect to fish, wildlife, land, and water management;

(2) the treaty or other rights of an Indian tribe;

(3) the water and land claims, present or future, of an Indian tribe;

(4) the relicensing or amending the license of the Pelton Hydroelectric Project, FERC Project No. 2030 so long as such project does not adversely affect the values for which the Deschutes River was designated;

(5) the licensing of the Whitewater Hydroelectric Project located within the Warm Springs Indian Reservation;

(6) the rights or jurisdiction of Indian tribes over waters or any river or stream within the affected river area or stream, or over any ground water resource; or

(7) the beneficial ownership interest of land held in trust, now or hereafter, by the United States for Indian Tribes or individual Indians;

#### SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years after the fiscal year 1988—

(a) for the purpose of acquisition of lands, waters, and interests therein pursuant to this Act, not to exceed \$10,000,000; and

(b) for the purpose of preparing the studies for the rivers and river segments listed in section 3 of this act, not to exceed \$2,500,000.

#### AMENDMENT NO. 3625

Mr. HATFIELD. Mr. President, I thank the majority leader for calling up this bill. I propose at this time amendments to the bill that have been cleared on both sides of the aisle. I move that they be considered en bloc, and agreed to en bloc.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

The amendment (No. 3625), agreed to, is as follows:

Page 21, line 20: Insert after the enacting clause "Title I."

Page 21, line 21: Delete "SECTION 1." and insert "SEC. 101."

Page 21, line 22: Strike "Act" and insert "Title".

Page 22, line 1: Delete "SEC. 2." and insert "SEC. 102."

Page 22, line 10: Strike "act" and insert "Act".

Page 22, line 21: Strike "eight-mile" and insert "8-mile".

Page 25, line 12: After "10" insert "(e)".

Page 25, line 12: Strike "act" and insert "Act".

Page 25, line 13: After the word "section", strike "4" and insert "105".

Page 28, line 6: Strike "scenic" and insert "wild".

Page 28, strike lines 12-22 in their entirety and insert:

"( ) IMNAHA, OREGON.—Those segments, including the South Fork Imnaha; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 5-mile segment from Cow Creek to its mouth as a scenic river; and

"(D) the 9-mile segment of the South Fork Imnaha from its headwaters to its confluence with the Imnaha River as a wild river."

Page 29, line 2: After the word "Interior", strike the period and insert "as provided in section 10(e) of this Act."

Page 29, line 3: Strike "29.1" and insert "8.6".

Page 29, lines 5-6: Strike the words "Oregon-Washington State line in the following classes:" and insert "Wallowa-Whitman National Forest boundary as a Wild river; to be administered by the Secretary of Agriculture."

Page 29, strike lines 7-15 in their entirety.

Page 29, line 17: After the word "source", insert "in the northwest quarter of section 15, township 26 south, range 6½ east".

Page 31, line 15: After the word "Interior," strike the comma and insert the word "and".

Page 31, line 17: After the word "Reservation," strike "and the State of Oregon".

Page 31, line 17: After "10" and insert "(e)".

Page 31, line 18: Strike the word "act" and insert "Act".

Page 31, line 18: Strike "4" and insert "105".

Page 36, line 18: Delete the words "Slack Water" and insert "slack water".

Page 38, line 22: After the word "Agriculture;" insert the word "and".

Page 39, line 9: Delete the " " after "Act" and insert ".".

Page 39, line 9: Strike *Provided, That nothing in* and delete lines 10-21 in their entirety.

Page 39, strike lines 22-25 in their entirety.

Page 40, line 19: Strike the word "act" and insert "Act".

Page 41, line 7: After "14" insert "½".

Page 43, line 22: Strike "wild" and insert "scenic".

Page 43, line 24: Strike "22.8" and insert "17.5".

Page 43, line 25: Strike "River Mile 2.2" and insert "Three Mile Creek".

Page 43, line 25-page 44, line 1: Strike "recreational" and insert "scenic".

Page 44, line 2: After the word "Interior;" strike the word "and".

Page 44, line 3: Insert a new section (E):

"(E) the 5.3-mile segment from Three Mile Creek to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and".

Page 44, line 3: Strike "(E)" and insert "(F)".

Page 44, line 7: Strike "SEC. 3." and insert "SEC. 102."

Page 45, strike lines 3-11 in their entirety.  
Page 45, after line 14 add the following new section:

**SEC. 104. UPPER KLAMATH RIVER STUDY.**

Section 5(d) of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82 Stat. 910) is amended by inserting "(1)" after "(d)" and by inserting the following new paragraph at the end thereof:

"(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or actions on this segment and its immediate environment."

Page 45, line 15: Strike "SEC. 4." and insert "SEC. 105."

Page 45, line 20: After the word "this" delete "act" and insert "Title".

Page 45, line 24: After the word "this" delete "act" and insert "Title".

Page 46, line 3: After the word "areas" strike the period and insert "as provided in section 10(e) of this Act."

Page 46, line 4: Strike "Act" and insert "Title".

Page 46, strike lines 15-17 in their entirety and renumber the subsequent paragraphs accordingly.

Page 46, line 23: Strike ";" and insert ".".  
Page 46, after line 23 insert the following new subsection:

"(c) Nothing in this Title shall preclude or impair the use by the City of Portland, Oregon of water in the Bull Run and Little Sandy Rivers to the extent that such water is necessary for the purpose of municipal water supply."

Page 47, line 1: Strike "SEC. 5." and insert "SEC. 106."

Page 47, line 5: Strike "Act," and insert "Title,".

Page 47, line 6: Strike "\$10,000,000; and" and insert "\$5,000,000;".

Page 47, line 8: Strike "3" and insert "103".

Page 47, line 8: Strike "act," and insert "Title,".

Page 47, line 9: Strike "\$2,500,000." and insert "\$2,500,000; and"

Page 47, after line 9 insert the following new paragraph:

"(c) for the purpose of preparing the study of the river segment listed in section 104 of this Title, not to exceed \$200,000."

At the end of the bill insert the following:  
"TITLE II—UMATILLA BASIN PROJECT,  
OREGON

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Umatilla Basin Project Act".

**SEC. 202. AUTHORIZATION OF PROJECT.**

(a) For purposes of mitigating losses to anadromous fishery resources and continu-

ing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, for the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report entitled: "Umatilla Basin Project, Oregon, Planning Report" dated February 12, 1988, in the manner specified by this Title. The principal work of the project shall consist of—

(1) lands, water rights, or interests therein acquired for the benefit of fishery resources;

(2) measures to convey water and improve the efficiency of the existing conveyance, distribution, and drainage systems of the Umatilla Project, where such measures are found to make water available for the benefit of fishery resources;

(3) pumping plants and related diversion, conveyance, and distribution features;

(4) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange required to fulfill the purposes of this title;

(5) fish passage and protective facilities and other necessary mitigation measures;

(6) a program to monitor and regulate project operations; and

(7) a program to evaluate fishery resource mitigation measures.

**SEC. 203. INTEGRATION AND OPERATION OF PROJECT.**

Project facilities and features authorized by this title shall be integrated and coordinated, from an operational standpoint, into existing features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provide for the monitoring and regulation of project related water supplies for the purposes herein identified.

**SEC. 204. POWER FOR PROJECT PUMPING.**

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

**SEC. 205. OPERATION AND MAINTENANCE COSTS.**

Non-Federal interests shall be responsible for the cost of operating and maintaining the projects except for those costs associated with implementation of section 204 of this title, and to fulfill the purpose of mitigating losses to anadromous fisheries resources.

**SEC. 206. INTERIM FLOW AUGMENTATION.**

Until the facilities authorized in this title are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary, through the

end of fiscal year 1988, to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

**SEC. 207. NON-FEDERAL COSTS.**

(a) CREDIT FOR NON-FEDERAL FISHERY RESOURCE IMPROVEMENTS.—The Umatilla Basin Project authorized by this title is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) TREATMENT OF NON-FEDERAL COSTS INCURRED IN IMPLEMENTING PROJECT FEATURES BEFORE APPROPRIATIONS.—To the extent any public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

**SEC. 208. CONJUNCTIVE USE OF PUMPING FACILITIES.**

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such project pumping capacity may be made available for use on presently irrigated lands eligible for service within the irrigation districts that participate in the project authorized in this title at a rate based on the operation and maintenance costs related to such conjunctive use and an appropriate share of capital costs for such use as specified by an agreement between the Secretary of the Interior and the irrigation districts: *Provided*, (a) that boundaries of the irrigation districts may be modified, upon approval of the Secretary of the Interior, to include such lands that received irrigation water service from those districts prior to October 1, 1988; and (b) that such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping, and the cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall be borne by irrigation districts receiving the benefit of such water.

**SEC. 209. LEASE AND PURCHASE OF WATER.**

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purpose of this title: *Provided*, That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated not more than \$1,000,000 to accomplish the purposes of this section.

## SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project and the study authorized by section 213 of this title the sum of \$42,400,000 (April 1987 prices), less any amounts previously appropriated for the project, plus a minus such amounts as maybe required by reason of changes in the cost of construction work of the type involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 210(b) of this title: *Provided*, That such funds are authorized to be appropriated only through the tenth fiscal year after which construction funds are first made available: *Provided further*, That all costs, including operation and maintenance costs, allocated to the mitigation of anadromous fish species and the study authorized to be appropriated such sums as maybe required for the Federal share of operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

## SEC. 211. WATER RIGHTS.

Nothing in this title shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(a) contract negotiation and administration;

(b) water conservation plans and activities required by section 210 of the Reclamation Reform Act of 1982 (P.L. 97-293);

(c) allocation of reservoir storage space;

(d) water deliveries outside the authorized service area; and,

(e) water rights held by the United States."

(4) confer upon any non-federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or Indian tribe if such rights were established by the setting aside of a reservation by treaty, Executive Order, agreements, or Act of Congress.

## SEC. 212. REHABILITATION AND BETTERMENT AUTHORIZATION

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Title, Stanfield and Westland Irrigation Districts shall be eligible to receive financial assistance, in an amount not to exceed \$2,000,000 each, as deemed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

## SEC. 213. REVIEW OF UMATILLA PROJECT OPERATIONS.

Within one year from the date of enactment of this Title, the Secretary shall complete a review of current operations of the Umatilla Project, for the purpose of identifying opportunities to further mitigate losses to anadromous fishery resources. Within 90 days of the completion of this review, the Secretary shall transmit a report thereon, together with any conclusions and recommendations to improve the management of the existing project, including measures that may require additional legislation, to the Committee on the Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The review shall include, but not be limited to the following:

Mr. HATFIELD. Mr. President, today, Senator PACKWOOD and I seek Senate passage of S. 2148, the Omnibus Oregon Wild and Scenic Rivers Act of 1988. This bill is the result of a thorough public comment process conducted over a period of nearly a year. Public hearings were conducted under the jurisdiction of the Subcommittee on Public Lands, National Parks and Forests of the full Senate Committee on Energy and Natural Resources.

As introduced, S. 2148 proposed to add segments of 40 Oregon rivers—totaling 1,705.5 miles—to the National Wild and Scenic Rivers System. At that time, this represented the largest single effort to expand the System in the lower 48 States since the Wild and Scenic Act's inception in 1968.

Mr. President, I have stated often that I believe water resources use will be the preeminent natural resource issue as we enter the 21st century. The experiences we have had during the last several years with droughts in the West only serve to underscore that concern. Accordingly, I believe that we must begin the process of planning for the protection and utilization of our precious water resources.

While I have been an ardent supporter of many of the Bureau of Reclamation's western water projects, and have supported several water storage projects in Oregon, I do not believe that dams and impoundments are the appropriate solution to all our water problems. Just as important as storing and holding water for irrigation, hydroelectric generation, drinking water, or other purposes, is the preservation of the watersheds of many of our free flowing rivers.

The purpose of this legislation, then, was to make a thorough examination of at least 40 Oregon rivers and to determine whether they should be preserved in their existing free-flowing conditions. Now that we have come to the conclusion of that process, I am confident that the values of the rivers in this bill will be best realized by ensuring that the rivers remain in their free-flowing state.

When S. 2148 was introduced on March 4 of this year, I stated that it was being offered as a discussion document for the purposes of beginning the public comment process. The

rivers included in that original proposal were recommended to me by both the Forest Service and the BLM. Both of these agencies currently are involved in their draft forest and land and resource management planning efforts, and I felt that these processes provided a base of information which already had been subjected to some public review and consideration. It was my hope that the list provided to me by these agencies would represent a broad range of rivers throughout the State, and would provide as many Oregonians as possible with an incentive to become involved in the public comment process.

Due to its very nature as a legislative proposal, I fully expected the bill to be revised and shaped further in the public arena. Accordingly, some of the rivers which were included in the bill when it was introduced have been deleted from consideration while others have been added. These changes were instituted predominantly from the oral and written testimony that was received in four official Senate hearings—three Oregon field hearings, one hearing in Washington, DC, and a public meeting that I conducted on my own. The field hearings were held in Oregon City on May 3, Bend on May 30, and Grants Pass on June 1. The hearing here in Washington was conducted on July 26, and the public meeting was held on August 30 in Baker, OR. These proceedings provided the opportunity for over 200 individuals to testify and provide public comment on the merits of S. 2148.

However, Mr. President, public input was not limited to just these hearings. My staff and I also reviewed hundreds of letters written by individuals and organizations from 32 different States. Furthermore, where I was unable to attend meetings personally, representatives of my office attended several public meetings ranging in size from 5 to 500 people in every part of Oregon.

During this process we received many excellent comments and suggestions for improvement of the bill. These suggestions have resulted in the documents before the Senate today. This bill will, upon enactment, designate segments of 40 Oregon rivers totaling over 1,400 miles as wild, scenic, or recreational river areas under the National Wild and Scenic Rivers System.

The increase of one river over the original version of the bill is due to the addition of six rivers—the Elk River, the North Fork of the Middle Fork of the Willamette River, the Sandy River, the Malheur River, the North Fork of the Malheur River, and Squaw Creek—and the deletion of five rivers—the Alsea River, the Burnt River, the Nestucca River, the South Fork of the Crooked River, and the Lower Williamson River.

The legislation also provides for the study of all or part of six other Oregon rivers according to section 5(a)

of the Wild and Scenic Rivers Act of 1968. All of these rivers were discussed during the public hearings process, but further information is necessary before a final decision can be made. The Departments of the Interior and Agriculture will embark upon 3-year studies for each of these rivers. At the end of the 3-year period, Congress will have the opportunity to determine whether these rivers should be included in the Wild and Scenic Rivers System. The rivers to be studied are the Blue River, the Chewaucan River, the North Fork of the Malheur River, the South Fork of the McKenzie River, the Willowa River, and Steamboat Creek.

A seventh river also will be studied, but is given special attention in the legislation. That river is the Upper Klamath. My decision to include the Upper Klamath River as a study river came only after extensive consideration and deliberation with my congressional delegation colleagues, the Governor of Oregon, representatives of the city of Klamath Falls, and after listening to and reading the testimony of many Oregonians.

Public sentiment about the Upper Klamath River is strong and understandable on both sides. The concern centers around the proposed Salt Caves Hydroelectric Project on the last free-flowing stretch of the river. The sponsor of the project is the city of Klamath Falls. Klamath Falls submitted an application for a license on this project in 1983, and has proceeded through the process for that license application since that time.

Mr. President, as many of my colleagues will attest, I am a stickler for process. I do not believe it is appropriate to avoid or circumvent established process simply for the sake of expediency. With regard to the Salt Caves Dam project, the city has entered into an administrative process, established in law by the Congress through the Federal Power Act. And while I choose not to offer any thoughts or comments on the relative merits of the Salt Caves project, I feel strongly that the city must be able to proceed through the process. The city has expended millions of public dollars during the process to move its application through over the years. If the application were new, I might feel differently about this matter. But the Salt Caves application is a mature one and I believe it is inappropriate to interfere with it.

On the other hand, it is important to note that I received more comments—testimony, letters, and personal statements—on this matter than on any other, except, perhaps, public concern about condemnation of private lands, which I will address shortly. If anything emerged from those comments, it is that an equally large number of Oregonians feel very strongly about the natural values of the Upper Klamath River and believe that it should

remain undeveloped. Although much information about the Upper Klamath has been developed in analyzing its natural values in terms of what would be destroyed with the construction of the Salt Caves Dam, there remains a lack of information about the natural qualities of the area in the context of no development.

Therefore, language has been included in the bill which would authorize a study of the Upper Klamath by the Secretary of the Interior in accordance with section 5(d) of the original 1968 act. The study shall run concurrently with and shall not interfere with Federal agency reviews on this section of the Klamath, including the city's license application for the Salt Caves project which is currently pending before FERC. It is the intent of this section that the study of the Klamath River's wild and scenic values should not delay or interfere with FERC's licensing process. It is intended that FERC should proceed without interruption with such process, including the preparation of an environmental impact statement.

We have directed the Secretary of the Interior to complete the wild and scenic study by April 1, 1990, to dovetail the completion of that study with the completion of the FERC EIS for the Salt Caves project. The effect of this timeline is to allow the FERC process to move ahead unimpeded, but a study of the natural values of the Upper Klamath will be provided for FERC and Congress to consider.

Related to the matter of the Upper Klamath River is the Klamath River basin compact. This compact is an interstate agreement between the States of Oregon and California which was approved by Congress in 1957. It addresses the various uses of water in the Klamath River basin, and has served Oregonians and Californians in the river basin very well for over 30 years.

Chief among the concerns expressed during the field hearings on S. 2148 was that wild and scenic river designation might conflict with, and possibly override, the compact. Oregon Attorney General Dave Frohnmayer recently prepared an analysis and opinion addressing this question. The Oregon attorney general concluded that section 13(e) of the Wild and Scenic Rivers Act of 1968 makes it clear that there is no necessary conflict between the compact and wild and scenic designation. As such, a conflict between the compact and any designation which Congress may make in the future could not occur.

I strongly believe in protecting interstate agreements. Congress should not attempt to overturn or override them through backdoor methods. I stated many times during the hearings process that I did not intend for the compact to be overturned by a future wild and scenic river designation, and am pleased that Attorney General Frohnmayer

has underscored this principle through his opinion. The text of the attorney general's opinion will be included in the RECORD at the conclusion of my statement.

Section 4 of the bill establishes a process whereby lands along the Deschutes and Metolius Rivers which are held in trust for the Confederated Tribes of the Warm Springs Reservation, cannot be included in the Wild and Scenic Rivers System without the consent of the applicable tribal council. This provides an assurance for the tribes, and individual Indians, that their treaty rights will be fully respected and protected by establishing the full consultation and cooperation we have come to expect between the Federal Government and the Warm Springs Indians. It is also my understanding that lands are held in trust for the Warm Springs tribes along the John Day River, south of Tumwater Falls. It is my intention that the provisions of section 4 apply to these lands as well.

Mr. President, I also want to make it very clear that our intent and desire is to have the Oregon State Scenic Waterway Program fully administer the lower 100 miles of the Deschutes River from Pelton Dam to the Columbia. In 1987 the Oregon State Legislature passed a bill creating the Deschutes River Management Committee. Where Indian lands lie within the boundary of a national wild and scenic river designated under the act, we expect full consultation and coordination with the appropriate tribal council during development of the river management plan. This is the first and only time the State legislature has ever passed a bill to address river management issues on a specific river. The intent of the committee is to develop a recreational management plan to address human access on the Deschutes. Our intent is to allow the committee and the State Scenic Waterway Program to move forward with its plans unimpeded by this act. Neither Congress nor the Bureau of Land Management should interfere with the program.

One of the major concerns which frequently arose during the public hearings was the Federal Government's authority, under the Wild and Scenic Rivers Act, to condemn private lands within wild and scenic river corridors. Of course, we all know that all levels of government—Federal, State, or local—have the power of eminent domain. Where it is determined to be in the public interest or need, government can condemn private lands or interest in private lands so long as the landowner is compensated for that land or interest. It is important to keep in mind that the Wild and Scenic Rivers Act establishes limits on this power. Section 6(b) of the act eliminates the power of condemnation of fee lands where 50 percent or more of the land in a federally designated wild and scenic river corridor is under some

kind of public ownership. I also want to emphasize that when calculating the number of publicly owned and privately owned acres within a federally designated river corridor, the Federal land management agencies should include all designated lands within a river system as a single management unit. For example, the Imnaha River and the South Fork Imnaha River are designated in this bill. When preparing a river management plan for these areas, the Forest Service should prepare a single management plan for this river system.

Mr. President, while I would not go so far as to say that condemnation for national purposes should never occur, I strongly believe that this power is one that should be eliminated wherever possible, and when not eliminated, should be used only as a last resort where all other methods of addressing land use considerations have been fully evaluated and determined unworkable. Because of my sensitivity to the issue of condemnation, this bill does not include rivers which have a preponderance of privately owned land. The evaluations which led to the final proposed river corridors were based on a breakdown of acreage ownership which were provided to me by the Forest Service and the BLM.

Among other concerns I heard during the review of S. 2148 as how other multiple land uses typically associated with river areas would be affected by wild and scenic river designation. As I have told my fellow Oregonians on many occasions, the Wild and Scenic Rivers Act is probably one of the most flexible land use statutes in existence. It recognizes that river areas have been intrinsically important to human development throughout our history. The act does not attempt to undo developments which are already in place, nor does it attempt to interfere with activities which already exist in the designated river area. For example, timber harvesting, mining, agriculture, grazing, and recreational uses are all grandfathered uses in the act and are allowed to continue to the extent they are currently practiced.

For example, if a rancher has cattle grazing in a designated river corridor—even in a wild river corridor—that grazing would be allowed to continue. In fact, with our programs designed to enhance and restore riparian areas from overgrazing, I can envision the day when it would be possible for grazing units to increase with improved riparian management.

Or, if a farmer were raising crops in a river area, he or she would be free to continue that activity. If a farmer were raising corn, and wanted to shift to a different crop, that would also be allowed.

Mining activities are also protected. Section 9 of the Wild and Scenic Rivers Act fully protects valid existing mining claims. Recreational mining is also allowed, particularly in scenic and recreational river areas.

Water rights also are fully protected. Section 12 clearly states that all existing rights in place before enactment of the act, and amendments to it, are protected and may not be abrogated without the consent of the party involved. Further, because of the importance of water projects in central and eastern Oregon, integrated surface water or ground water programs conducted outside the designated corridor which are designed to control runoff, reduce erosion, provide a beneficial impact on the seasonal stability of water flows, or which otherwise restore or enhance the values which led to the designation of the river area are not, per se, adverse to the purposes of this act. An example of these types of projects is the East Fork Cottonwood Creek project along the North Fork of the John Day River.

I also am aware of strong concerns over the legislation's potential impact on timber harvesting. While some slight reductions in the allowable sale quantity [ASQ] are likely to occur, the bill attempts to avoid concentrating these impacts in any particular river area. Based upon information provided by the Forest Service and BLM and my own analysis, I do not expect ASQ reductions to exceed 15 million boardfeet [MMBF] statewide under the bill.

Concern over potential timber harvesting impacts focused on the management of lands within, adjacent to, and upstream of designated river corridors. Timber harvesting is a statutorily accepted management activity on public lands which provides both environmental and economic balance in public land stewardship. Although section 12(a) of the 1968 Wild and Scenic Rivers Act provides agency direction with regard to adjacent land management, it is not my intent to create de facto river boundaries encompassing lands beyond the designated corridors.

Management activities should follow existing statutory direction, including that provided in the National Forest Management Act (Pub. L. 94-588, 90 Stat. 2949, as amended), the act of August 28, 1937 (the O&C Lands Act), (43 U.S.C. 1181a et seq., 50 Stat 874, as amended), and the Federal Land Policy Management Act (Pub. L. 94-579, 90 Stat. 2743, as amended) to protect the values for which the rivers were designated. While viewsheds and other values need to be protected, this should not be construed to mean that timber harvesting, and associated road and bridge construction necessary to accomplish that harvesting, not occur on adjacent lands or even within designated scenic or recreational river area corridors. The administering agencies already have land management policies that take into account river designations in the management of adjacent lands, and that will take these new designations into account. Professional agency direction in the management of adjacent and upstream lands is not to be further constrained by these designations. Rather, it should

be noted that timber management activities are allowed to continue adjacent to, and within scenic and recreational river areas in a manner consistent with the protection of the values which led to the river's designation.

It is also intended that designation of the wild and scenic river segments contemplated by the legislation should not, by itself, result in any additional restriction of forest management activities in areas upstream from the designated stream segments as a consequence of Oregon's water quality standards, including the State's anti-degradation policy (OAR 340-41-026). Concern that the State's water quality standards might result in such additional restrictions prompted other members of the Oregon congressional delegation and I to seek clarification of the applicability of Oregon's water quality standards, including the State's anti-degradation policy, to the control of activities—such as timber harvesting—that have the potential to generate nonpoint source pollution in areas upstream from designated wild and scenic river segments. The correspondence between the delegation and the State of Oregon, which will be reprinted at the conclusion of my statement in the RECORD, revealed that designation of additional wild and scenic river segments in Oregon would not, by itself, prohibit forest management activities consistent with State-approved best management practices in areas upstream from designated segments. This understanding of the applicability of the State's water quality standards is fundamental to our intention concerning the effect of designating the river segments contemplated by the amendment. It also is our understanding from the exchange of correspondence that the State's water quality standards and nonpoint source control programs comport with existing EPA policy and the applicable Federal law in these areas.

Mr. President, I also want the Senate to note that I am amending S. 2148 by adding a second title to the bill. This second title is an amended version of S. 1613, the Umatilla Basin Project Act, which was passed by the full Senate early last month. The amendment that I am offering today is very similar to the Senate-passed version of the bill. The substantive changes that have been made are the result of negotiations between my office, the members of the Oregon House delegation, and the staff of the House Subcommittee on Water and Power Resources. It is my hope that this revised version meets the objectives and concerns of the House.

Specifically, the House preferred that language be included in section 208 of title II which directs the irrigation districts to pay an appropriate share of the capital costs for the project, as negotiated with the Secretary of the Interior, and to ensure that the water provided to the irriga-

tors from the project be used only on land presently eligible for irrigation and which are within the boundaries of the irrigation districts. Another concern of the House that was addressed is found in section 212 of title II. Specific language has been included in this section that authorizes the Stanfield and Westland Irrigation districts to be eligible for Rehabilitation and Betterment Act loans, in an amount not to exceed \$2 million each. The House also requested that a review of the Umatilla project by the Secretary be completed within 1 year from the date of enactment to identify opportunities to further mitigate losses to anadromous fishery resources. That study is authorized in section 213 of Title II.

Finally, Mr. President, I thank Senator BUMPERS, chairman of the Subcommittee on Public Lands, National Parks and Forests, Senator BRADLEY, chairman of the Subcommittee on Water and Power, and Senator JOHNSTON, chairman of the full Senate Committee on Energy and Natural Resources, for their assistance in bringing this bill before the Senate today.

I also express my sincere appreciation to Bob Doppelt and Rick George of the Oregon Rivers Council for their vast knowledge of the rivers in this bill, and their invaluable help and support throughout the entire process. I know they have each spent thousands of hours working on this proposal, and am hopeful that they are pleased with the final version of the bill. Liz Frenkel, representing the Oregon chapter of the Sierra Club, also deserves special recognition for her role in developing this legislation, as well.

I thank the professional staff members of the Committee on Energy and Natural Resources for their expertise and assistance in this process. They have been down this road with me several times over the years, and I continue to be impressed with their grasp of natural resource issues in the State of Oregon. In particular, I want to thank Tom Williams, Jim O'Toole, Mike Harvey, Gary Ellsworth, Jim Beirne, and Russell Brown for their assistance over the past several months. Not only am I thankful for their knowledge of these issues, I am especially appreciative for their willingness to always work with my staff in a friendly and congenial manner.

Two members of my personal staff, Mike Salsgiver and Mark Walker, also deserve special thanks. Mike, who lives and works in Portland, became intimately familiar with every one of the rivers in this bill, and I know that this has been a long and sometimes arduous process for him and his family.

Last but not least, I thank Gal Achterman, Tom Imeson, John Lilly, and Bill Fuji, members of Governor Goldschmidt's staff, for their involvement in the crafting of this bill. Without their help, we would not be where we are today.

My only regret with regard to this legislation is that my dear friend Tony Bevinetto is not here today to share this moment with us. Tony provided valuable assistance to us in the early days of the bill's development, and as any good river guide can tell you, the first few miles are the roughest of any trip.

Mr. President, I ask unanimous consent that copies of letters between the Oregon congressional delegation and the State of Oregon, Attorney General Frohnmayer's opinion on the Klamath River basin compact, a summary of the characteristics of the rivers contained in the bill, and a copy of Senate Report No. 100-488 on the Umatilla Basin Project Act be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, September 14, 1988.

MR. FRED HANSEN,

Director, Department of Environmental Quality, State of Oregon, Portland, OR.

DEAR MR. HANSEN: As you may know, we are working on legislation to designate over 40 Oregon rivers and streams for protection under the National Wild and Scenic Rivers Act. It is important that we provide these outstanding national resource waters the recognition and protection they deserve. At the same time, it is imperative that we do so in a fashion that minimizes any adverse effects on Oregon's economy and does not result in any unintended impacts on upstream activities.

We are, therefore, writing to you to make sure that we have an accurate understanding of the applicability of Oregon's water quality standards, including the state's anti-degradation policy, to the control of activities that have the potential to generate nonpoint source pollution in areas upstream from designated national wild and scenic river segments. This is a concern raised in testimony by forest landowners, including the USDA Forest Service.

Under existing federal Environmental Protection Agency policy, affirmed most recently in an August 19, 1987, EPA policy memorandum, EPA has stated in relevant part, that:

"EPA's water quality standards regulation (40 CFR 131) provides that *State adopted water quality standards shall include designated beneficial uses and water quality criteria to protect those uses as well as include an anti-degradation policy*. It is intended that proper installation of State approved BMPs [best management practices] will achieve water quality standards. Therefore, water quality standards are to be used to measure the effectiveness of BMPs. In the review and revision of water quality standards as provided for in the CWA [Clean Water Act], the State should ensure that water quality standards are achievable and that water quality criteria reflect what is needed to assure protection of beneficial uses. As provided for in EPA's National Nonpoint Source Policy Statement, *there should be flexibility in water quality standards to address the impact of time and space components of NPS as well as naturally occurring events*." This involves the consideration of the variability of natural conditions, magnitude and frequency of impact, and level of acceptable risk.

"For proposed management actions, BMPs designed and implemented in accordance with a State approved process will nor-

mally constitute compliance with the CWA. The CWA does not itself directly establish a mechanism for enforcing WQSS directly against NPS. BMPs developed under a State approved process may be used as performance standards for proposed actions. Applicable water quality standards along with water quality monitoring should be used to measure the effectiveness of BMPs.

"Once BMPs have been approved by the State, the BMPs become the primary mechanism for meeting water quality standards. Proper installation, operation and maintenance of State approved BMPs are presumed to meet a landowner's or manager's obligation for compliance with applicable water quality standards." (Emphasis added).

Oregon's water quality standards, promulgated by the EPA properly reflect this direction. At OAR 340-41-026 (1)(b)(7) the rules require that "logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality." It is our understanding that, consistent with existing federal EPA policy, the state's forest practice rules are the state-approved BMPs and, therefore, "are presumed to meet a landowner's or manager's obligation for compliance with applicable water quality standards," including the state's anti-degradation policy at OAR 340-41-026 (1)(a).

The situation on federal lands administered by the USDA Forest Service and the Bureau of Land Management is similar. The aforementioned EPA policy memorandum suggests that:

"States and operators, managers and/or owners of large tracts of private or public land containing areas of high quality water, where changes in the use or management of the land could pose a threat of degradation, may find it advantageous to negotiate and establish comprehensive planning and operating procedures for the NPS management of such tracts or major portions thereof, consistent with this guidance. Such agreements would include, among other things, understanding regarding monitoring responsibilities, BMP implementation and plan enforcement.

Such procedures could be incorporated into memoranda of understandings (MOUs) between the parties, which should be reviewed and reexecuted periodically to allow for changes in conditions and/or policy."

It is our understanding that both the USDA Forest Service and the Bureau of Land Management have entered into such memoranda of understanding, with the DEQ, and that the requirements and practices contained in Forest Service and BLM timber sales contracts are deemed to be equivalent to those in the state forest practices rules. It is our further understanding with respect to the Forest Service, that the state is reviewing each draft plan prepared under the provisions of the National Forest Management Act of 1976 with the expressed purpose of assuring, among other things, that any new land allocations, standards, or guidelines contained in the draft plans would not contribute to a violation of the state's water quality standards.

Based upon the provisions of the preferred alternatives in the draft plans, the Forest Service has informed us in testimony that the designation of wild and scenic river segments as contemplated in our bill should not, by itself, result in any additional restriction of forest management activities in areas upstream from the designated stream segments as a consequence of the provisions of OAR 340-41-026. The Forest Service is confident that existing mechanisms for working with the DEQ are adequate to

assure compliance with the state's water quality standards program without significant timber harvest impacts as the NFMA plans are put into final form.

Would you please confirm whether our understanding of these matters is accurate, and whether the state concurs with the Forest Service's assessment of the extent of any upstream impacts from the proposed legislation. It is our intention to include your response in the legislative history of the final bill so that there will be no confusion over the applicability or impact of Oregon's water quality standards on streams above a segment designated in the legislation.

We may move to mark-up this bill as early as next week. Thank you for a prompt response to this inquiry.

Sincerely,

BOB PACKWOOD,  
*U.S. Senator.*

MARK O. HATFIELD,  
*U.S. Senator.*

LES AU COIN,  
*Member of Congress.*

RON WYDEN,  
*Member of Congress.*

DENNY SMITH,  
*Member of Congress.*

PETER DEFAZIO,  
*Member of Congress.*

DEPARTMENT OF  
ENVIRONMENTAL QUALITY,  
Portland, OR, September 22, 1988.

Senator MARK O. HATFIELD,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR HATFIELD: I am pleased to respond to your letter of September 14, 1988 and confirm our discussion with your staff that occurred prior to September 22, 1988 regarding the applicability of Oregon's water quality standards, including the anti-degradation policy, to the control of forest management activities or other activities that have the potential to generate non-point source pollution in areas upstream from designated national wild and scenic river segments.

Your letter accurately reflects our understanding of EPA policy direction regarding state water quality standards, the required anti-degradation policy, and control of non-point sources of pollution. Your letter also accurately reflects Oregon's current adopted standards and program for control of forest management related nonpoint sources of pollution. Finally, we generally agree with the assessment of the U.S. Forest Service relative to the extent of any upstream impacts from the proposed legislation.

Establishment of a wild and scenic river segment, by itself, will not automatically result in additional restrictions on activities upstream from a designated segment. Under existing laws and rules, such activities would have to be conducted in a manner which assures that best management practices are applied, that existing water quality standards are not violated, and that beneficial uses of the waterway downstream from the activity are not adversely affected by changes in water quality.

Perhaps the most significant issue is whether the anti-degradation policy contained in Oregon's Water Quality Standards would be interpreted to mean "no scientifically measurable change" in any physical, chemical or biological properties of the water when applied to a wild and scenic river segment. Water quality varies naturally. Some variation or change in water quality can occur without adversely affecting beneficial uses of a stream. We understand that designation of a wild and scenic river

segment would not arbitrarily preclude activities upstream by reinterpreting the existing anti-degradation policy as a "no measurable water quality change" policy. In order to protect beneficial uses and the special values associated with a designated wild and scenic river segment, however, it is appropriate to make sure that water quality changes resulting from activities upstream are minimized to the maximum extent practicable by use of best management practices.

The Department of Environmental Quality and Environmental Quality Commission are currently in the process of reviewing its nonpoint source pollution control program. This review process is expected to result in greater emphasis on monitoring and evaluating the effectiveness of best management practices in meeting water quality standards. Improved monitoring may identify the need in some instances to modify current best management practices to assure that water quality standards are met. In addition, the federal Clean Water Act requires states to review and update water quality standards on a three year cycle as appropriate. In conjunction with this process, and pursuant to Environmental Quality Commission policy direction, the current anti-degradation policy is being reviewed. Any clarifications of existing rules resulting from these processes would be generally applicable on a statewide basis.

However, if through ongoing review processes, current best management practices are determined to be insufficient to protect the beneficial uses and values in wild and scenic river segments, and perhaps other segments, improved or additional best management practices may be required, or it may be necessary to control more strictly or limit specific activities in portions of the upstream area.

Sincerely,

FRED HANSEN,  
*Director.*

DEPARTMENT OF JUSTICE,  
Salem, OR, September 21, 1988.  
WILLIAM H. YOUNG,  
*Director, Water Resources Department,  
Salem, OR.*

Re: Opinion Request OP-6268.

DEAR MR. YOUNG: You have asked several questions about the relationship between the Klamath River Basin Compact (Compact) and various possible state or federal management or designation actions. Because of the complexity of the issues involved, we address in this letter only your query as to what constraints, if any, the Compact places on the federal government's authority to designate that portion of the Klamath River governed by the Compact as a wild and scenic river. A letter addressing your remaining questions will follow shortly.

We conclude that the Klamath Compact does not affect congressional authority to designate the Klamath as a wild and scenic river. The Compact, however, may limit the potential effect of that designation.

#### DISCUSSION

The Klamath River Basin Compact (the Compact), codified at ORS 542.610 and 542.620, became effective in 1957 upon ratification by Oregon and California and consent by the United States Congress.<sup>1</sup> The purposes of the Compact are to provide for orderly development, use, conservation and control of the waters of the river for various purposes, including irrigation, domestic purposes, protection and enhancement of recreational, fish and wildlife resources, and hydroelectric and industrial purposes. See Art I(A).

The Wild and Scenic Rivers Act (Act), as amended, 16 USC §§ 1271-1287, initially was enacted in 1968. The Act provides for the management of wild and scenic rivers in a free-flowing condition. The original Act designated a number of river stretches as wild and scenic, see 16 USC § 1274, and provided a process for additional segments to be designated, see 16 USC §§ 1275, 1276. Congress is considering adding a portion of the upper Klamath River to the wild and scenic rivers system. See HR 4164.

Designation of a river under the Wild and Scenic Rivers Act affects both the federal government and the states. The Federal Energy Regulatory Commission (FERC) may not license a hydroelectric facility "on or directly affecting" any designated river stretch, 16 USC § 1278(a). No other federal agency may "assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect" on a designated stretch. Id. A state may continue to exercise its authority over the waters in the river only "to the extent that such jurisdiction may be exercised without impairing the purposes of [the Wild and Scenic Rivers Act] or its administration." 16 USC § 1284(d).

The effect of designation under the Act may be modified where the designated river stretch is covered by an interstate compact. Congress recognized that designation might interfere with rights and responsibilities established under an interstate compact. The Wild and Scenic Rivers Act provides:

"Nothing contained in this chapter shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system." 16 USC § 1284(e).

There is little doubt that Congress retains the right to override a compact if it so choose. One session of Congress lacks power to impair the legislative power of the subsequent Congress. *U.S. Steel Corp. v. Multi-state Tax Comm'n*, 434 US 452, 486 n 10, 98 S Ct 799, 54 L Ed2d 682 (1978); *Pennsylvania v. The Wheeling and Belmont Bridge Co.*, 50 US (18 How) 421, 423, 15 L Ed 435 (1855). In consenting to the Klamath Compact, Congress specifically reserved to itself such authority. See Pub. L. No. 85-222, § 6, 71 Stat 497, 508 (1957) ("The right to alter, amend, or repeal this Act is expressly reserved.") However, because your question arises in the context of HR 4164, which does not mention the Compact, we have analyzed your question assuming the applicability of 16 USC § 1284(e).

Under the terms of the Act, a conflict between wild and scenic designation and the Compact must be resolved in favor of the Compact. For instance, where a compact has allocated water between an upstream and downstream state, nothing in a wild and scenic rivers designation would increase the upstream state's compact obligation. The Klamath Compact does not make such an allocation, but embodies a number of management principles to which the parties have agreed.

Our inquiry, therefore, turns to whether designating a portion of the Klamath as a wild and scenic river would modify or conflict with the Compact. To answer that question, we first must determine the nature of the rights and obligations created by the Compact.

#### 1. State and Federal Obligations Under the Compact

Several features of the Compact are important to this discussion: (1) The Compact recognizes existing pre-Compact vested rights,<sup>2</sup> Art III(A); (2) As a general rule, no

person may acquire any water rights after the enactment of the Compact except through the state permit process, Art III(B); (3) Post-Compact appropriative rights for domestic uses, and irrigation uses up to the amount necessary to irrigate a total of 300,000 acres,<sup>9</sup> will have priority over post-Compact appropriative rights for other uses, Art III(C).

These substantive obligations bind the states; Article XII(A) provides that "[e]ach state and all persons using, claiming or in any manner asserting any right to the use of the water . . . shall be subject to the terms of this Compact." By and large, the Compact is designed to be self-executing. The provisions of the Compact "shall by operation of law be conditions of the various state permits, licenses or other authorizations relating to the waters of the Klamath River Basin." Art XII(D).

The federal government's obligations under the Compact are more limited than those of the states. Article XI limits the federal obligations to those specifically acknowledged in Article XIII. Article XI(A) provides that no Compact provision other than Article XIII may be interpreted in a way that would "impair or affect any rights, powers or jurisdiction of the United States, its agencies or those acting by or under its authority, in, over and to the waters of the Klamath River Basin."

Article XIII provides that the United States shall comply with: (a) the Article III(A) recognition of vested rights, see Art XIII(B)(1), and (b) a limited recognition of later-acquired rights for domestic and irrigation purposes.<sup>10</sup> Art XIII (B)(2). These requirements are binding on the United States, its agencies, and "any entity acting under any license or other authority granted under the laws of the United States." Art XIII(B).

#### 2. Effect of Designation Under the Act:

Were there no Klamath Compact, the designation of the Klamath as a wild and scenic river would have several significant effects. First, it would in effect create a federal reserved water right. See 16 USC § 1284(c). Second, it would preclude impoundments, at least on the designated stretch. Third, it would bar the federal government from authorizing hydroelectric facilities. 16 USC § 1278(a).

We next examine whether the existence of the Compact alters those effects.

##### a. Reserved Water Rights:

The Act effectively reserves to the federal government that amount of unappropriated water necessary to accomplish the purposes of each designation.<sup>7</sup> As stated in a 1979 Interior Department Solicitor's Opinion:

"The Wild and Scenic Rivers Act contains an express, through negatively phrased, assertion of federal reserved water rights:

"Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this chapter, or in quantities greater than necessary to accomplish these purposes."<sup>11</sup>

"The legislative history of the Wild and Scenic Rivers Act emphasizes the congressional intent to reserve unappropriated waters necessary to fulfill the Act's purposes. In explaining the conference report on the Senate floor, Senator Gaylord Nelson, a principal sponsor and floor manager of the bill in the Senate, read the following sectional analysis:

"Enactment of the bill would reserve to the United States sufficient unappropriated water flowing through Federal lands involved to accomplish the purpose of the legislation. Specifically, only that amount of water will be reserved which is reasonably

necessary for the preservation and protection of these features for which a particular river is designated in accordance with the bill."<sup>11</sup>

"Thus, the intent to reserve unappropriated waters at the time of river designation is clear and the remaining question is the scope of the reserved water right." 86 I.D. 553, 607-08 (1979) (emphasis in original; footnote and citations omitted).

A recent Department of Interior Solicitor's Opinion reaffirms this view, stating that "the reservation of waters was made, with limitations," in 16 USC § 1284(C). (Slip opinion dated July 28, 1988, at 28.)

The creation of such a reserved water right probably would conflict with the Compact. Of the provisions to which the federal government has bound itself in whole or in part, we believe that a federal reservation of water has the potential to create a conflict only with: Article III(A), which recognizes vested water rights that preexisted the Compact; Article III(B), which establishes the procedure for appropriating future rights; and with the special priorities established for domestic and irrigation uses.

We conclude that designation under the Act would not conflict with the Compact's recognition of preexisting vested rights. In the 1968 Wild and Scenic Rivers Act, Congress recognized the validity of existing water rights. Congress' intent was to reserve only unappropriated water rights at the time a river is designated. See colloquy between Senators Church and Allott, S Res 119, 90th Cong, 1st Sess, 113 Cong Rec 21747 (daily ed Aug. 8, 1967) ("The reservation of unappropriated waters for a National Wild and Scenic River System is not intended to affect any prior valid water right under State law . . .")

Regarding rights created after the effective date of the Compact, Article III(B) provides that "rights to the use of unappropriated waters originating within the Upper Klamath River Basin for any beneficial use . . . by direct diversion or by storage for later use, may be acquired by any person after the effective date of this compact by appropriation under the laws of the state where the use is to be made . . . and may not be acquired in any other way." This provision has no bearing on any reserved right created under the Act, because Article III(E) defines "person" to exclude the United States.<sup>8</sup>

Finally, we must explore whether the creation of a reserved right under the Wild and Scenic Rivers Act would conflict with the priority system created by the Compact. Under the Compact, water rights are given a priority based on filing time. See Art III(B)(1). However, in an effort to protect irrigation and domestic uses, Article III(C) of the Compact grants those uses, up to a specific amount, special priority over other uses.

In consenting to the Compact, Congress did not bind the United States to comply with Article III(C). However, in Article XIII(B)(2), the federal government did agree not to impair, without payment of just compensation, water rights for domestic or irrigation uses issued in the Upper Klamath River Basin, to the extent domestic and irrigation depletions above Keno, Oregon, do not exceed 340,000 acre-feet in any calendar year.

Therefore, the states may authorize additional domestic and irrigation uses up to the amount that would bring annual depletions at Keno to 340,000 acre-feet, even if those uses otherwise would conflict with the wild and scenic designation. Those rights, although granted later in time, would have priority over the federal reserved right.

##### b. Impoundment for Domestic and Irrigation Purposes:

Designation under the Wild and Scenic River Act appears to prohibit any further impoundments on the designated stretch of the river, for any purposes, including domestic or irrigation purposes. Upstream of downstream impoundments could be barred if they had an adverse effect on the designated stretch.<sup>9</sup>

One goal of the Compact is to meet the "anticipated ultimate requirements for domestic and irrigation purposes." Art I(B). Article III(C) contemplates the use of an amount of water sufficient to irrigate 100,000 acres in Oregon and 200,000 acres in California. To achieve that goal, the Compact established the priority and preference provisions discussed above. It is possible that the amount of additional irrigation development could not be realized without further impoundments, which might be within or above the scenic stretch.

Although the drafters of the Compact went to some lengths to assure that barriers to the full anticipated realization of irrigation and domestic uses would be removed, they did not obligate the states to grant all requests that would further such uses.<sup>10</sup> Therefore, even if compliance with the Act will impede development of the river's domestic and irrigation potential, this result does not modify or conflict with the terms of the Compact.

One may argue that 16 USC § 1284(e), quoted *supra* at 2, obligates the federal government not to take any actions that would interfere with a state's power under state law to manage river covered by a compact. Under this interpretation, the federal government would be bound by Virtue of 16 USC § 1284(e), to honor the amounts of water that can be given a special priority by Article III(C).

That interpretation, however, would modify the terms of the Compact, because it would impair the powers specifically reserved to the United States in Article XI(A), which states:

"Nothing in this compact shall be deemed: "A. To impair or affect any rights, powers or jurisdiction of the United States, its agencies or those acting by or under its authority, in, over and to the waters of the Klamath River Basin, nor to impair or affect the capacity of the United States, its agencies or those acting by or under its authority in any manner whatsoever, except as otherwise provided by the federal legislation enacted for the implementation of this compact as specified in Article XIII."

Further, a fourth preliminary draft of the Compact specified that state-awarded rights to use of water for domestic or irrigation purposes, established already or in the future, could not be limited by any federal assertion of a water right for power production, flood control, navigation or other non-consumptive uses anywhere in the Klamath River Basin. Under the proposed language, federal authority to designate the Klamath as a wild and scenic river would have been subordinated to state authority to appropriate water for domestic and irrigation uses. This provision was not adopted. We believe that the substitution of the more limited restriction of Article XIII shows that the federal government refused to be so restricted. See proposed Article III(D), Article X(A)(2), dated September 29, 1955.

The federal government's position on state authority over federal activities apparently was stated clearly during the negotiations. In a report on the Compact submitted to the California legislature, the issue was explained as follows:

"Both Commissions felt from the beginning that because of the great importance of federal activities in the Klamath River Basin, the Compact would be of little value unless the United States complied with its provisions the same as any other water user. Vigorous objections were raised, however, by certain federal agencies, particularly the Department of Justice and the Federal Power Commission. They made it plain that they would recommend opposition by the executive department of the federal government to Congressional approval of the Compact, if the Compact required full compliance with its terms by the United States. Because such opposition, if it developed, would seriously endanger the chances of Congressional consent and, further, would probably lead to a Presidential veto of the consent bill even if it did pass, the Commissions adopted another approach to securing adequate federal compliance.

"Article XIII of the Compact states that the Compact shall not go into effect unless the Act of Congress consenting to it subjects federal agencies and licensees to specified Compact provisions. These specified provisions are those which the Commissions believe must be respected by all water users in order for the Compact to be meaningful. They include recognition of existing water rights established under state law, restrictions on out-of-basin diversions, and the superiority of future rights for domestic, municipal, and irrigation uses in the Upper Klamath River Basin over rights for other uses. This approach accomplishes the basic purposes of the Compact and is apparently more acceptable to the objecting federal agencies."

Attachment B to letter from Bert A. Phillips, Chairman, California Klamath River Commission, to Joseph A. Beek, Secretary of the Senate and Arthur A. Ohnimus, Clerk of the Assembly, January 21, 1957, at 8-9.

In Article XIII, Congress carefully delineated the extent of the federal government's obligations under the Compact. Absent some clearer indication of congressional intent,<sup>11</sup> we decline to interpret the general language of 16 USC § 1284(e) to state Congress' intent to ignore those limitations. The better view of that statute is that Congress has reaffirmed whatever federal obligations have been agreed to in the Compact, and has declined to modify the rights and obligations of the states or the federal government under the Compact, but has not increased either federal or state obligations under the Compact.

#### c. Effect on Hydroelectric Projects:

If Congress designates a portion of the Klamath River as a wild and scenic river, that designation will bar hydroelectric development on that stretch of the river. FERC may not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or any other project works under the Federal Power Act, 16 USC § 1278(a). The designation will allow only those other uses that are consistent with wild and scenic status. 16 USC § 1281.

The Compact addresses hydroelectric development in two sections. First, Article IV provides that it shall be the "objective" of each state to provide for the most efficient use of available power head, in order to secure economic distribution of water, and low power rates for irrigation and drainage pumping. Second, Article III(B)(1) provides that each state shall give preference to certain uses over others in the event of conflict among applications for water use. The preferences, from highest to lowest are: (a) domestic; (b) irrigation; (c) recreation use, including fish and wildlife; (d) industrial use;

(e) generation of hydroelectric power; and (f) other uses recognized under state law.

Article IV states a goal of the Compact, but creates neither a state nor a federal obligation to grant a hydroelectric permit, or a water right for hydroelectric generation. Nor does it create a preference for hydroelectric uses over other uses. Article III(B)(1) does establish a method for resolving conflicts if applications for different uses are pending at the same time. In such a circumstance, hydroelectric use has a lower preference than the recreation, fisheries and wildlife uses protected by the wild and scenic designation. 16 USC § 1271. Therefore, we conclude that the Compact creates no rights or obligations regarding hydroelectric power that would conflict with the designation of the Klamath as a wild and scenic river.

#### 3. Relevance of Compact Consent Act:

One other point bears mention. For different reasons, different parties to the current dispute over the question discussed in this opinion regard section 4(c) of the congressional Act consenting to the Compact as dispositive of the question. That provision states:

"Nothing in this Act or in the compact shall be construed as:

\* \* \* \* \*

"(c) Impairing or affecting any existing rights of the United States to waters of the Klamath River Basin now beneficially used by the United States; nor any power or capacity of the United States to acquire rights in and to the use of the said waters of said basin by purchase, donation, or eminent domain."

Pub L. No. 85-222, § 4(c), 71 Stat 497, 508 (1957). Counsel for the City of Klamath Falls appears to argue that this provision sets forth the only ways in which the United States could acquire water rights after the effective date of the Compact.<sup>12</sup> That view is incorrect. The relevant question is what portion of the United States' authority Congress surrendered to the states by consenting to the Compact. The terms of the Compact itself, and specifically Articles XI and XIII, are the source of the answer to that question, as set forth in the preceding pages. The language quoted above does not bear on the issue. That provision is merely an interpretation clause that does not purport to limit federal power under the Compact, but rather to set forth expressly and in plain language that the Compact shall not be construed to impair certain specified, but nonexclusive, powers. Consequently, nothing in that provision affects the proper analysis of your inquiry.

#### CONCLUSION

The Klamath Compact does not forbid Congress from designating the Klamath River as a wild scenic river. There is no necessary conflict between the Compact and designation, nor does the designation modify the Compact. However, water reserved by that designation is subordinate to the rights of irrigators and domestic users, to the limited extent set out in Article XIII(B)(2).

Very truly yours,

DAVE FROHNMEYER,  
Attorney General.

#### FOOTNOTES

<sup>1</sup> See Note following ORS 542.610. Congress consented to the Compact by Pub. L. No. 85-222, 71 Stat 497 (1957).

<sup>2</sup> 16 U.S.C. § 1284(e) disclaims any intent to "alter, amend, repeal, interpret, modify, or be in conflict" with an interstate compact. First, the Wild and Scenic Rivers Act may not "be in conflict" with the Compact, i.e., forbid what is required or require what is forbidden by the Compact. Second, the Wild and Scenic Rivers Act may not "alter,

amend, repeal or modify" the Compact, i.e., add to or subtract from the rights and obligations under the Compact. Finally, the Wild and Scenic Rivers Act may not be used to "interpret" the Compact, i.e., be relied upon to construe language or clarify intent. For purposes of simplification, we will use the phrase "modify or conflict" as a shorthand for these restrictions.

<sup>3</sup> Other significant provisions include the following: (1) Priority of right will be governed by priority in time in the entire basin, Art III(B)(1); (2) In the event of conflicting applications for use of water, certain uses are given preference, Art III(B)(1); (3) With one exception, no out-of-basin diversions are permitted, Art III(B)(2)(a), (3)(a); (4) Diversions upstream from Keno, Oregon, for use in Oregon shall have return flows into the river upstream from Keno, Art III(B)(2)(a); (5) Substantially all return flows from diversion into California shall be returned above Keno, Art III(B)(3)(b); (6) Division out of the Jenny Creek Basin may be limited by the Klamath River Compact Commission.

<sup>4</sup> Article III(A) also recognizes inchoate rights then existing for the Klamath Project. Although project development had not yet been completed, all water rights that eventually might be put to beneficial use were recognized.

<sup>5</sup> Article III(c) refers to the amount of water necessary to irrigate 300,000 acres. In contrast, Article XIII(B)(2) refers to 340,000 acre-feet of water. There are not necessarily equal amounts.

<sup>6</sup> In addition, the federal government also agreed to comply with: (a) the limitations on diversions from the Jenny Creek basin, Art XIII(B)(3); (b) certain limitations on out-of-state diversions, Art XIII(B)(4); and (c) the provisions on return flows, Art XIII(B)(5).

<sup>7</sup> The reserved water rights doctrine had its genesis in *Winters v. United States*, 207 U.S. 564, 28 S Ct 207, 52 L Ed 340 (1908) (in creating the Fort Belknap Reservation, Congress implicitly reserved enough unappropriated water to fulfill the purposes of that Indian reservation). The doctrine has been applied to reservations of federal land for purposes other than Indian reservations. *E.g., Cappaert v. United States*, 426 U.S. 128, 96 S Ct 2062, 48 L Ed2d 523 (1976) (presidential proclamation designating Devil's Hole as part of National Monument implicitly reserved sufficient water to preserve the habitat of the rare Devil's Hole pupfish). We understand that a majority of the lands bordering the segment of the Klamath River proposed for designation are public lands managed by the Bureau of Land Management. It is, therefore, unnecessary to determine in this opinion the exact constitutional basis upon which a wild and scenic designation would "reserve" water were the designated stretch wholly in private ownership at the time of designation.

<sup>8</sup> Moreover, this provision would not in any event apply to a wild and scenic designation. Article III(B) does not apply to instream water rights. By its terms, Article III(B) addresses only "rights to the use of unappropriated waters \* \* \* by direct diversion or by storage for later use." (Emphasis added.)

<sup>9</sup> The Secretary of the Interior or the Secretary of Agriculture would determine whether a particular structure would have an adverse effect. See 16 U.S.C. § 1278(a). That determination would hinge on the overriding purpose of any designation under the Act: to preserve the stream in its free-flowing condition. See 16 U.S.C. § 1271. (In *Diack v. City of Portland*, 306 Or 287, 299, — P2d — (1988), the Oregon Supreme Court, construing Oregon's Scenic Waterways Act, ORS 290.805 to 390.925, held that the term "free-flowing" is self-explanatory, and is used in a "purely descriptive sense.") No federal department or agency may "recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration \* \* ." 16 U.S.C. § 1278(a). Under the Wild and Scenic Rivers Act, the state also must exercise its jurisdiction in a manner which will not impair the purpose of the Act or its administration. 16 U.S.C. § 1284(d).

<sup>10</sup> Under the Compact, each state grants to the other the right to construct facilities for storage and conveyance of water from one state to the other, "insofar as the exercise of such right may be necessary to effectuate and comply with the terms of this compact." Art V(A). We do not read this provision to create an absolute right to build an impoundment for storage. If State A authorizes the use of the water, State B will not object if the impoundment is located in State B so long as the location is approved by the Compact commission.

<sup>11</sup> The legislative history of the Wild and Scenic Rivers Act sheds no light on this issue. The only reference to the Compact in the legislative history is a colloquy between Representatives Flood and Aspinall concerning the impact of the Act on a proposed compact between New York, Pennsylvania and Delaware dealing with the Susquehanna River. See H.R. 18260, 90 Cong. 2d Sess. 114 Cong Rec 28590 (daily ed Sept. 12, 1968). We do not find this language particularly illuminating, other than to reconfirm the already apparent meaning of 16 U.S.C. § 1284(e), which by its terms pledges not to interfere with specified compacts.

<sup>12</sup> See letter dated July 25, 1988, from Richard M. Olick to George Piltcraft, mayor of City of Klamath Falls.

#### CHARACTERISTICS AND OUTSTANDINGLY REMARKABLE VALUES OF RIVERS DESIGNATED IN S. 2148

##### BIG MARSH CREEK, OREGON

Outstandingly remarkable values for Big Marsh Creek are: geology, fisheries/wildlife and scenic.

Big Marsh Creek is located in a deep, glaciated valley. The stream has been diverted from the natural channel for approximately 5 miles in the area of Big Marsh.

##### CHETCO, OREGON

The outstandingly remarkable values of the Chetco River are its anadromous fisheries and water quality. The Chetco provides high-quality spawning beds and rearing pools, as well as on-site angling. The river's recreation resource is also important.

##### CLACKAMAS, OREGON

The Clackamas River has several outstandingly remarkable values: a superb fishery, spectacular scenery, and significant recreational opportunities.

The river has been identified as one of the most important anadromous and trout fisheries on National Forest System lands in the Northwest Region. The outstanding scenery coupled with the river's proximity to Portland makes it one of the most popular recreation areas in the state. Another significant feature of the river is the confirmation of seven species of threatened or endangered plants.

The entire Clackamas River is recognized as a distinctive visual resource. Along the upper half of the river, dense forests and steep canyon walls are varied by large open meadows in the Big Bottom country. The lower half of the river is marked by a deep gorge with views of rock cliffs and three-laden slopes.

##### CRESCENT CREEK, OREGON

The Nationwide Rivers Inventory team identified geology as the outstandingly remarkable value for Crescent Creek.

Crescent Creek flows past some interesting recent lava flow formations and then through a generally flat marshy valley. It is felt to possess both outstanding geologic and scenic values.

##### CROOKED RIVER, OREGON

Outstanding scenic values exist within this 13.8 mile river segment from Bowman Dam to Dry Creek. The river meanders through a very scenic, rugged canyon that includes towering basalt cliffs up to 600 feet high, with scattered western juniper growing on its steep hillsides. State Scenic Highway 27 is adjacent to the river on the east bank. Several primitive BLM camping areas and the Chimney Rock Recreation Site are also located on the east bank between the highway and the river.

Fish habitat is good to excellent for rainbow and Lahontan trout as well as occasional smallmouth bass. Although this area is not unique or outstanding geologically, the steep, fractured basalt cliffs add significantly to the scenic quality of the area.

The river also provides expert whitewater kayaking and rafting opportunities (Class IV-V) during the spring runoff period.

##### DESCHUTES RIVER, OREGON

Outstanding scenic, recreational, cultural, geologic, wilderness, fish and wildlife as well as historic and botanical values exist in this area. The Deschutes flows through a rugged, highly scenic, steep-walled basalt canyon that increases in depth as it proceeds northward. The canyon contains outstanding scenery. Three waterfalls and a wide variety of riparian vegetation also enhance the qualities of the area. Excellent fishing opportunities exist for rainbow, German brown, Dolly Varden and Kokonee. Access is limited in the corridor due to its rugged character. No developed trails exist in the area. A portion of this river segment is located in the Steelhead Falls Wilderness Study Area. This segment contains significant cultural values which include prehistoric rock art sites, rock shelters and a historic river crossing. Unusual botanical values such as the Estes wormwood which is not known to occur anywhere else in the world is located in the area.

The lower 100 miles of the Deschutes provides excellent whitewater boating opportunities, and has 12 major rapids. Fishing for wild trout, steelhead and Salmon is considered to be some of the best in the nation.

##### DONNER UND BLITZEN RIVER, OREGON

The Blitzen River and its tributaries lie within, and are part of, Steens Mountain. Its outstandingly remarkable values include wild trout fisheries, scenery, and geology.

Steens Mountain offers an outstanding opportunity to explore a high elevation fault block geologic formation. From its gentle western slope, to the rugged east face, Steens Mountain offers a variety of unique ecosystems, along with textbook examples of glaciated canyons.

Because of the diversity of landform and elevation, Steens Mountain has a wide variety of plant and animal life.

##### EAGLE CREEK, OREGON

The outstandingly remarkable values of Eagle Creek are: scenic, recreational, and geologic. One section flows through a glaciated "u" shaped valley with mountain meadows and craggy peaks. Another section flows through 500-1,000 foot deep, forested canyon. The river is also extremely rich culturally, both historically and prehistorically.

##### ELK RIVER, OREGON

Fisheries are the outstanding remarkable value. The Elk River contains one of the most important and valuable wild runs of anadromous fish (steelhead and salmon) in Oregon. The scenic qualities of this small river are very complementary and its water quality and natural features are outstandingly remarkable.

##### GRANDE RONDE RIVER, OREGON

The outstandingly remarkable values of the Grande Ronde are: scenic, recreational, and wildlife and fisheries. Noted in the State of Oregon study: "The scenic quality from the river, as well as from the adjacent land, is spectacular. The views are enhanced by the dramatic cliffs and rock walls, and an abundant variety of trees, shrubs, and grasses. The character and shape of the canyon seem to change as a boater or hiker moves through it.

The river is also one of the most important and valuable rivers in northeastern Oregon in terms of recreational use. It is heavily used by rafters, kayakers, canoeists, and increasingly, by steelhead fishermen. The Grande Ronde is one of the best streams in this part of the state for rainbow

trout fishing and is becoming increasingly important for steelhead fishing. The Grande Ronde and Wallowa canyons are critical winter range for Rocky Mountain elk, deer, mountain sheep, and bald eagle.

##### IMNAHA RIVER, OREGON

The outstandingly remarkable values of the Imnaha River are: scenic, wildlife and fisheries. The river also has recreational, geological and cultural values.

##### JOHN DAY RIVER, OREGON

The outstandingly remarkable qualities include scenic, recreation, and fisheries.

The majority of the land adjacent to the John Day River is primitive and undeveloped. The river flows through gentle farmland which is privately owned as well as through rugged 1,000 foot deep basalt canyons which are predominantly public land. In the Dayville to Kimberly segment it flows through the John Day Fossil Beds National Monument. In the area between Butte Creek and Cottonwood Bridge, the river flows through three wilderness study areas which possess outstanding natural values. The river and the unconfined primitive recreation opportunities of the John Day Canyon in these areas are a major attraction for whitewater boaters and other recreationists. Besides the outstanding scenery, the area also offers outstanding bass and steelhead fishing, as well as excellent hunting, archaeological, paleontological, geological and historic values. The river offers 1-5 day whitewater boating opportunities during the spring months of April, May and June.

##### JOSEPH CREEK, OREGON

The outstandingly remarkable values of Joseph Creek are: scenic, recreational, geological, fisheries and cultural. The stream and its environs are popular for hiking, horseback riding, big game hunting, and supports an anadromous fishery.

The canyon and stream are named for Chief Joseph, famous Nez Perce Indian tribal leader.

##### LITTLE DESCHUTES, OREGON

The outstandingly remarkable values of the Little Deschutes are scenery and geologic features. The Little Deschutes River exhibits a unique, tight pattern of small loop meanders in a generally flat, broad marshy valley. It exhibits examples of oxbows, meander scars, cut off channels, and old terraces.

##### LOSTINE RIVER, OREGON

The outstandingly remarkable values of the Lostine River are: scenic, recreational, and wildlife and fisheries. The river is one of the most important drainages in the Eagle Cap Wilderness in terms of scenic quality and recreation potential. Part of it flows through typical glaciated "U" shaped valleys with beautiful mountain meadows surrounded by high, craggy limestone, granitic, and basaltic peaks. Segment B, while also a glaciated valley, is at a lower elevation and consequently more forested. The river offers numerous opportunities for hiking, camping, fishing, and hunting. The Lostine supports anadromous fish and a herd of Rocky Mountain Bighorn Sheep.

##### MALHEUR RIVER, OREGON

The Malheur River's outstandingly remarkable value is its unique scenic character. The river is in a rugged canyon, in some instances 500 to 600 feet in depth. There are prominent rock outcrops, particularly along the southwestern edge of the canyon. The canyon bottom vegetation is park-like, with sage brush/grass, meadows, and scattered old growth ponderosa pine.

**MCKENZIE RIVER, OREGON**

The outstandingly remarkable values associated with the McKenzie river are recreational, scenic, and cultural, and the Nationwide Rivers Inventory includes fisheries. The McKenzie River is an important and valuable river to Oregon in terms of challenge to the skills of whitewater rafters and driftboat users, fishing, and magnificent vegetation. Its water clarity and cold temperatures enjoy a national reputation.

**METOLIUS RIVER, OREGON**

The outstandingly remarkable values of the Metolius include: scenic, recreational, archaeological and historical, geological, water quality, and fisheries. The Metolius River originates from high volume springs of clear, cold water offering a unique point-source feature. One section is noted for its old-growth ponderosa pine stands. The river in this section flows along the base of the Green Ridge Fault and provides a variety of geologic features. Excellent kayaking and rafting opportunities exist in the study area. The river is noted for its excellent fishing and its kokanee spawning in the fall of the year.

**MINAM RIVER, OREGON**

The outstandingly remarkable values of the Minam River are: scenic, recreational, geological, and fisheries. The river flows through a typically glaciated valley surrounded by high and craggy granitic, limestone, and basaltic peaks. The valley is primarily forested with frequent occurrence of open grassy meadows. The river offers numerous opportunities for hiking, camping, fishing, and hunting.

**NORTH FORK CROOKED RIVER, OREGON**

The North Fork of the Crooked River is a free flowing river. A 12.5 mile segment of the North Fork flows through an existing wilderness study area. The river canyon has outstanding scenic qualities formed by basalt cliffs ranging from 300 to 900 feet high. The canyon has a large variety of vegetation ranging from Douglas fir, ponderosa pine and aspen groves in several areas to gently rolling hills covered with juniper and sage in others. The river provides outstanding fishing for trout, hunting for deer, elk and antelope, and some whitewater boating. There are two waterfalls located within the study area with vertical drops of 10-15 feet. These features add significantly to the natural beauty of the North Fork Canyon. The area also has significant cultural and geological features and is a favorite winter roosting area for bald eagles.

**NORTH FORK JOHN DAY RIVER, OREGON**

The outstandingly remarkable values of this study area include scenic, geologic, cultural, recreational, as well as fish and wildlife. The river canyon possesses unique topography created by rugged basalt outcrops. The vegetation of the area varies from dense ponderosa pine and Douglas fir on the upper portions to open juniper and sagebrush covered hillsides near Monument and Kimberly. The North Fork is one of the most important fisheries in the region. It supports the largest spawning population of wild spring chinook and summer steelhead in the Columbia River system upstream from Bonneville Dam.

**NORTH FORK MALHEUR RIVER, OREGON**

The outstandingly remarkable values of the North Fork Malheur River are scenic and geological. The river is in a steep, rugged canyon with basalt rimrock above the stream course. The canyon is, in some locations, 500 to 800 feet in depth. Each bend of the river brings into view another scene of the canyon's diverse micro-environments.

**NORTH FORK MIDDLE FORK WILLAMETTE RIVER, OREGON**

The inventory and study of the North Fork of the Middle Fork of the Willamette River for Oregon State Scenic Waterways designation suggests that the outstanding values include: water quality, recreational opportunities, scenery, archaeological and historical sites, and unique plant and animal species.

Water quality is an outstanding value of both Waldo Lake and the rivers. The level of purity of the lake is equal to laboratory distilled water. Waldo Lake is regarded by some experts as one of the purest lakes in the world (Castenholz, R.W., on the scientific value of Waldo Lake, Oregon Legislative Hearing, House Committee on Environment and Energy, May 2, 1983, Exhibit I of HB2435 testimony, Salem, Oregon).

The variety of recreational opportunities available include hiking and fly fishing for wild trout in a primitive setting. The river is well known to local anglers as a high quality fly fishing area.

The river also contains unique natural scenery. Among the scenic features is a steep river canyon that drops 2,400 feet in 3 miles and has 34 waterfalls within twice that distance. The lower 12 miles of one section flow through a steep canyon approximately 1,000 feet deep.

The NFMF has been an important travel and hunting route for nearly 10,000 years (Minor, Rick and Audrey Pecar, 1978, The Cultural Resources of the Willamette National Forest, Willamette National Forest, Eugene, Oregon). There is also evidence of the early logging railroads and Civilian Conservation Corps work.

The NFMF supports a variety of plant and animal life. It is home to several threatened and endangered species, (both State and Federally listed) such as the wolverine, fisher, bald eagle, Northern Spotted owl, bog orchid, coralroot orchid, mountain lady slipper, and others.

**NORTH FORK OWYHEE RIVER, OREGON**

Wildlife habitat, scenery, geology and recreation. The North Fork has been rated by the Boise (Idaho) BLM District as a "world class" expert kayaking stream. Although that portion of the North Fork in Oregon is very short it does have considerable value in terms of recreation and fish and wildlife habitat.

**NORTH FORK SMITH RIVER, OREGON**

The North Fork Smith River in Oregon flows out of the Kalmiopsis Wilderness, through a short reach of the Siskiyou National Forest, and on into California. At, and below the State line, the North Fork is designated as a Wild and Scenic River. The entire North Fork was originally included in the NRI for its "outstandingly remarkable" scenery, whitewater recreation potential, water quality, and fisheries. The scenery and "emerald hued" water of the Oregon portion of the North Fork greatly enhances and complements these values immediately downstream. From a systems approach, the Oregon portion is integral to the whole.

**NORTH FORK SPRAGUE RIVER, OREGON**

The NF Sprague contains outstanding scenic and geological features. In one section, the river flows through low sagebrush covered hills. Within another section, the river flows into a steep, basalt canyon returning, and in yet another section, to broad, high elevation meadows with stands of Lodgepole pines.

**NORTH POWDER RIVER, OREGON**

The outstandingly remarkable values of the North Powder river are its scenery and recreational opportunities. An historic

wheel track which follows the stream provides opportunities for motorized use in a relatively primitive setting. There are also opportunities to hike, hunt, and camp.

**NORTH UMPQUA RIVER, OREGON**

The values which make the North Umpqua suitable for designation are water quality, scenic quality, recreation opportunities, and the fisheries resource.

**POWDER RIVER, OREGON**

The Bureau has identified this area as having excellent raptor nesting and foraging habitat, bald eagle winter habitat, and outstanding recreational, scenic and cultural values.

**QUARTZVILLE CREEK, OREGON**

Recreational mining and scenic drive with some white-water boating opportunities at high flows.

**ROARING RIVER, OREGON**

The Roaring River's primitive character and remoteness are its outstandingly remarkable values. The Roaring River drainage is largely undeveloped with no vehicular access. Scenery and fisheries are two significant resources associated with the river.

**SALMON RIVER, OREGON**

The Salmon River's outstandingly remarkable values are its cold-water sport fishery and its varied vegetation and topography, and the Nationwide Rivers Inventory includes scenic value. The Salmon River is regarded as the best tributary fishery in the Sandy River drainage. Anadromous species include winter and summer steelhead, and spring chinook and coho salmon. Anadromous species are confined to the lower third of the river. Resident and wild cutthroat trout occur in good numbers above the falls.

From its headwaters through the upper third, the Salmon River is characterized by exposed rock and sparse coniferous vegetation. Steep canyon walls and dense coniferous forest, creating a sense of seclusion and isolation, are typical of the river's mid and lower sections. A 2.5 mile stretch of the river has successive, spectacular waterfalls ranging in height from approximately 15 to 75 feet.

**SANDY RIVER, OREGON**

The Upper Sandy River's outstandingly remarkable value is its striking scenery. Views from the river include forest, tall bluffs, and cliffs.

The Lower Sandy River's outstandingly remarkable values are its striking scenery and important recreational anadromous sport fishery. The Lower Sandy river flows through deeply cut gorges, with striking views from the river of the tall bluffs in a natural forested setting.

From the State study report, "the Sandy River in this stretch is a paradox: 35 minutes from downtown Portland and within an hour's drive of a million people, man's hand has yet touched it only lightly in passing."

The river, for three miles below Dodge Park, has the feel of a mountain stream in high country. The great shattered boulders along the bank and in the river seem to belong to an alpine area.

**SOUTH FORK IMNAHA RIVER, OREGON**

The outstandingly remarkable values of the SF Imnaha River are: scenic, recreational, geological, and fisheries. The river flows through a glaciated valley surrounded by high and craggy granitic, limestone, and basaltic peaks. The valley is primarily forested broken with frequent open grassy meadows. There are numerous opportunities for hiking, camping, fishing, and hunting.

**SOUTH FORK JOHN DAY RIVER, OREGON**

This 47 mile river segment has unique and outstanding scenic value with large basalt outcrops and a wide diversity of vegetation which includes grasses, willows, juniper and ponderosa pine with some Douglas fir on the moist north and east slopes. In the upper reaches the river flows through relatively level agricultural land before entering the more rugged canyon. This area has high value for sightseeing, camping, fishing, and other forms of dispersed recreation. There are 6 small ranches and a well maintained public road that parallels the river throughout the 48 mile length. Except for the road and ranches, the study area is natural in character. There are numerous small rapids and the larger Izee Falls area where the river drops 55 vertical feet in a short distance. Aldrich Mountain Wilderness Study Area provides a back drop for a portion of the canyon. The Murderers Creek State Wildlife Management Area is also adjacent to a portion of the river.

**SQUAW CREEK, OREGON**

The outstandingly remarkable values of Squaw Creek and its tributaries include scenic, recreational, archeological and historical. Squaw Creek originates in the Three Sisters Wilderness Area, and flows through high desert lands in unroaded areas. Squaw Creek is known for its old-growth ponderosa stands, and is also well-known for its ancient Indian archeological sites.

**SYCAN RIVER, OREGON**

The most outstanding characteristic for the river is its distinctive scenery, which varies from a steep canyon to broad meadow. The Nationwide Rivers Inventory also includes geology and wildlife. There is a diversity of rockform, vegetation, and landform. The vegetation is primarily coniferous with scattered old-growth ponderosa pine and lodgepole pine flats intermingled with water-related riparian vegetation such as willows and other deciduous shrubs. Expanses of sagebrush and bitterbrush, in the dryer areas lend diversity. Of noteworthy significance is Sycan Marsh which includes several rare plant communities. Recreational geological and cultural resources are also additional values associated with the river corridor.

**UPPER ROGUE RIVER, OREGON**

Outstandingly remarkable values of the river corridor include scenic, geologic, and historic features. Included within the river corridor are diverse landforms that vary from pumice flats to steep canyons and deep gorges. Volcanic actions have combined with fluvial and climatic forces to produce a river landscape with a rich diversity of landform, water features, vegetation and ecological systems. The river is an inherent part of a scenic highway corridor that serves as a major tourist route to Crater Lake National Park.

**WENAHU RIVER, OREGON**

The outstandingly remarkable values of the Wenaha River are: scenic, recreational, and wildlife and fisheries. The river flows between rugged basalt outcrops which rise about 1,600 feet to the plateau above. This is one of the best streams in this part of the state for rainbow trout fishing.

**WEST LITTLE OWYHEE RIVER, OREGON**

The Upper West Little Owyhee is unique in that it is deeply incised with interesting erosional patterns and varied rock formations. The vegetation within the river corridor is virtually pristine due to the rugged canyon walls that prevent livestock grazing. The canyon also offers superb scenery, unique cultural sites and opportunities for solitude and primitive recreation.

**WHITE RIVER, OREGON**

One area contains outstanding scenic, fish and wildlife, recreational and geologic values. This 19.2 mile river segment is one of the most scenic river segments in Oregon. The canyon area varies in width from ¼-½ mile. Except for the area west of Highway 197 near Tygh Valley, the canyon is very steep, generally rising 500 feet or more from the river to the canyon rim. A dense forest of Douglas and white fir, ponderosa pine and white oak cover the canyon area. Dense, lush green riverbank vegetation consisting of alder, carex and other species are abundant. The river provides excellent overall habitat for trout. Deer, elk, wild turkey, gray squirrels and nongame species also exist in the area. The 50-60 foot White River Falls are located within the White River State Park. Fish habitat is excellent, due to a stable river channel, riverbank shade and boulders which provide resting areas and escape cover for wild trout. Also, the dynamic forces of glaciation and erosion are readily evident.

**FINAL LIST OF RIVERS IN S. 2148, THE OMNIBUS OREGON WILD AND SCENIC RIVERS ACT OF 1988**

Designated rivers	Mileage	Agency	Class
1. Big Marsh Creek	15.00	FS	R
2. Chetco	44.50	FS	WSR
3. Clackamas	47.00	FS	SR
4. Crescent Creek	10.00	FS	R
5. Crookind	15.00	BLM	R
6. Deschutes	173.40	BLM, FS	SR
7. Donner und Blitzen	72.50	BLM	W
8. Eagle Creek	27.00	FS	WR
9. Elk	19.00	FS	WR
10. Grande Ronde	43.80	BLM, FS	WSR
11. Imnaha	77.00	FS	WSR
12. John Day (Main Stem)	147.50	BLM	R
13. Joseph Creek	8.60	FS	W
14. Little Deschutes	12.00	FS	R
15. Lostine	16.00	FS	WR
16. Malheur	13.70	FS	W
17. McKenzie	12.70	FS	SR
18. Metolius	26.50	FS	W
19. Minam	39.00	FS	W
20. North Fork Crooked	32.30	BLM, FS	WSR
21. North Fork John Day	54.10	BLM, FS	WSR
22. North Fork Malheur	25.50	FS	S
23. N. Fk. Mid. Fk. Willamette	42.30	BLM	WSR
24. North Fork Owyhee	8.00	BLM	W
25. North Fork Smith	13.00	FS	WS
26. North Fork Sprague	15.00	FS	S
27. North Powder	6.00	FS	S
28. North Umpqua	33.80	BLM, FS	R
29. Powder	11.70	BLM	S
30. Quartzville Creek	11.70	BLM	R
31. Roaring	12.70	FS	WR
32. Salmon	33.50	FS	WR
33. Sandy	74.90	FS	WSR
34. South Fork John Day	47.00	BLM	R
35. Squaw Creek	15.40	FS	WS
36. Sycan	59.00	FS	SR
37. Upper Rogue	40.30	FS	WS
38. Wenaha	21.55	FS	WSR
39. West Little Owyhee	51.00	BLM	W
40. White	46.50	FS	WSR
Total, 41 rivers	1,428.75		

*Study rivers:* Blue, Chewaucan, North Fork Malheur, South Fork McKenzie, Steamboat Creek, Upper Klamath, Willowa.

**UMATILLA BASIN PROJECT ACT REPORT**

[To accompany S. 1613]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1613) to authorize the Secretary of the Interior to construct, operate, and maintain the Umatilla Basin Project, Oregon, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill be amended to 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 "Umatilla Basin Project Act."

**SEC. 2. AUTHORIZATION OF PROJECT.**

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, or any other entity which participates in the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report of the Secretary dated February 12, 1988. The principal works of the project shall consist of—

- (1) pumping plants and related diversion, conveyance, and distribution features;
- (2) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange;
- (3) fish passage and protective facilities and other necessary mitigation measures;
- (4) a program to monitor and regulate project operations; and
- (5) a program to evaluate fishery resources mitigation measures.

**SEC. 3. INTEGRATION AND OPERATION OF PROJECT.**

Project facilities and features authorized by this Act shall be integrated and coordinated, from an operational standpoint, into other features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provide for the monitoring and regulation of project related water supplies for the purposes herein identified.

**SEC. 4. POWER FOR PROJECT PUMPING.**

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

**SEC. 5. FISHERY RESOURCE FACILITIES.**

Facilities and any other project features which furnish fishery resource benefits in connection with the project shall be constructed, operated, and maintained in accordance with the Federal Water Project Recreation Act (Public Law 89-72, 79 Stat. 213), as amended, except that costs, which shall be allocated to the mitigation of anadromous fish species, shall be nonreimbursable.

**SEC. 6. NON-FEDERAL OBLIGATIONS.**

The Secretary shall negotiate and enter into agreements which specify appropriate non-Federal obligations of the operation and maintenance of project facilities authorized in this Act. The Federal responsibility for operation and maintenance shall be limited to those costs in excess of non-Federal obligations as established by such agreements.

**SEC. 7. INTERIM FLOW AUGMENTATION.**

Until the facilities authorized in this Act are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

**SEC. 8. NON-FEDERAL COSTS**

(a) Credit for Non-Federal Fishery Resource Improvements. The Umatilla Basin Project authorized by this Act is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific and Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) Treatment of Non-Federal Costs Incurred in Implementing Project Features Before Appropriations. Where a public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

**SEC. 9. CONJUNCTIVE USE OF PUMPING FACILITIES.**

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such capacity shall be available to supplement the water supply of irrigated lands eligible for service from the irrigation districts that participate in the project authorized in this Act at a rate based upon a share of operation and maintenance costs associated with such use as negotiated by the Secretary of the Interior and the Irrigation districts: *Provided*, That such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping shall be borne by irrigation districts receiving the benefit of such water. The cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall also be included in the operation and maintenance costs.

**SEC. 10. REHABILITATION AND BETTERMENT AUTHORIZATION.**

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Act, such districts shall be eligible to receive financial assistance, as deemed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

**SEC. 11. LEASE AND PURCHASE OF WATER.**

The Secretary is authorized to acquire from willing parties land, water rights, or in-

terests therein for benefit of fishery resources consistent with the purpose of this Act: *Provided*, That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated such sums as required to accomplish the purposes of this section.

**SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project the sum of \$42,200,000 (April 1987 prices), plus or minus such amounts as may be required by reasons of changes in the cost of construction work of the types involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 12(b) of this Act. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

**SEC. 13. WATER RIGHTS.**

Nothing in this act shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or Indian tribe if such rights were established by the setting aside or a reservation by treaty, Executive order, agreements, or Act of Congress.

**PURPOSE**

As ordered reported, S. 1613 authorizes a management and facilities construction program for the restoration of anadromous fish runs in the Umatilla River Basin (a tributary of the Columbia River in north-central Oregon) and for the continuation of water service to entities currently served by the existing Umatilla project. The bill authorizes \$42.2 million for construction of the project. All these costs are allocated to the mitigation of anadromous fishery resources and are thus nonreimbursable. Pumping power for the fish restoration program would be provided by the Bonneville Power Administration.

**BACKGROUND**

The existing Umatilla project was authorized in 1905 pursuant to authority of the Reclamation Act of 1902. Initial project facilities were completed in 1908 with additional storage and conveyance facilities build during the 1920s. Major features include Cold Springs and McKay dams and reservoirs, three diversion dams, 137 miles of major canals, and one pumping plant. The project supplies irrigation water to approximately 30,000 acres. Principal crops

are alfalfa, pasture, mint, grain, and vegetables.

Historically, the Umatilla River supported significant salmon runs but by the 1960s Umatilla River salmon were extinct and the summer steelhead run significantly diminished. The decline in anadromous fisheries was largely the result of irrigation diversions for the Bureau of Reclamation's Umatilla project and the construction of mainstem dams on the Columbia River.

The anadromous fish runs in the Umatilla River were an important resource for the Confederated Tribes of the Umatilla Indian reservation located on the headwaters of the Umatilla River. In addition to providing both income and subsistence, fish runs are central to the religious and cultural traditions of the Tribes. The major purpose of this measure is to reestablish those runs. A series of Indian Treaty right fishing cases in federal courts culminated in the U.S. Supreme Court upholding the treaty rights of certain Indian Tribes (including the Confederated Tribes) to fish. Beginning in 1982, projects were implemented in the Basin to re-establish the fall Chinook salmon run with the first return in 1984; however, the competition between water for irrigation and stream flows to ensure anadromous fish runs still remains.

As part of the effort to restore anadromous fish runs in the Basin, the Bonneville Power Administration (BPA), pursuant to the authority of the Pacific Northwest Electric Power Planning and Conservation Act (P.L. 96-501), has invested \$7 million, with an additional \$13 million planned, for further fish facilities. In addition, BPA has provided electric power to operate existing pumps to provide limited flow enhancement for fisheries purposes in the interim until completion of other facilities. The Pacific Northwest Power Planning Council is presently reviewing the interim pumping program and has called for public comment.

The management and facilities authorized by S. 1613 would complement the ongoing BPA program within the Umatilla Basin and would enhance the value and effectiveness of fish passage management and facilities at the mainstem dams on the Columbia River downstream from the confluence with the Umatilla River.

The Confederated Tribes, local water interests, and the Bureau of Reclamation have participated in a study in an attempt to resolve the short and long term water use conflicts in the Umatilla Basin. Authority for the feasibility investigation of the proposed project by the Bureau of Reclamation was included in P.L. 89-561. Alternative proposals which were elevated included additional upstream storage and decreased irrigation diversions resulting from increased efficiency. The recommended plan as authorized by S. 1613 is the most cost effective and has a benefit to cost ratio of 1.7 to 1. The Planning Report/Draft Environmental Statement was released for public review in July 1986 and a public hearing was held by the Bureau of Reclamation in the project area in September of 1986.

The Confederated Tribes, local water interests, environmental groups, and the State of Oregon support the program and facilities authorized by S. 1613.

**Project facilities**

As ordered reported, S. 1613 would authorize the construction of pumping plants and related carriage facilities to deliver water from the Columbia River into storage facilities of the Umatilla project. The Columbia River water would be utilized by existing irrigators who would forgo diversions from the Umatilla River thereby providing

Instream flows for the passage of anadromous fish. Provision of water from the Columbia would provide for a water exchange between irrigators and the Confederated Tribes allowing maintenance of irrigated agriculture while promoting the restoration of anadromous fisheries.

Major structural features include a 10,000 horse power pumping plant on the Columbia River, two relift pumping plants, 12 miles of canals and pipelines, a pumping plant at the mouth of the Umatilla River, improvement of existing fish passage facilities, and installation of fish screens at diversion points.

**LEGISLATIVE HISTORY**

S. 1613 was introduced on August 6, 1987 by Senator Hatfield and was referred to the Committee on Energy and Natural Resources. A field hearing was held by the Subcommittee in Pendleton, Oregon on February 8, 1988 (S. Hrg. 100-614). A Washington, D.C. hearing was held before the Subcommittee on June 28, 1988, at which time the Administration opposed enactment.

A House companion measure, H.R. 4093, was introduced on March 3, 1988 by Congressman Smith of Oregon and is cosponsored by Congressmen DeFazio and Wyden. H.R. 4093 is pending before the Subcommittee on Water and Power Resources of the House Committee on Interior and Insular Affairs.

In the 99th Congress, a similar measure, S. 2931, was introduced but Congress adjourned before taking any action on the measure.

At the business meeting on Wednesday, August 10, 1988, the Senate Committee on Energy and Natural Resources ordered S. 1613 to be reported with an amendment in the nature of a substitute.

**COMMITTEE RECOMMENDATION**

The Senate Committee on Energy and Natural Resources, in open business session on August 10, 1988, by unanimous vote of a quorum present recommends that the Senate pass S. 1613 with an amendment in the nature of a substitute.

**COMMITTEE AMENDMENT**

The Committee adopted an amendment to S. 1613 in the nature of a substitute. The amendment specifies the project document (report of the Secretary dated February 12, 1988) to be used as the basis for the authorization of the Secretary to construct, operate, and maintain the Umatilla Basin Project.

The amendment deleted section 5 of S. 1613 as introduced. The original text of section 5 provided for the computation of the interest rate applicable to reimbursable costs. Since the Bureau of Reclamation has determined that all of the construction costs pursuant to S. 1613 will be allocated to the mitigation of anadromous fisheries and hence non-reimbursable, the original section 5 has been deleted since it has not application to the program authorized by the bill.

During consideration of S. 1613, concern was expressed that the authority contained in section 10 of the bill as introduced would allow the use of excess pumping capacity to serve newly irrigated lands. The new section 9 of the amendment retains the authorization to use excess project pumping capacity to supply irrigation water, but clarifies the bill to provide that such excess capacity shall be available only to supplement the water supply of irrigated lands eligible for service from the irrigation districts that participate in the project. The new section 9 also requires that the cost of such supplemental water shall be based upon a share of the operation and maintenance costs associated with such uses negotiated by the Sec-

retary and that pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The amendment requires that the cost of such power shall be borne by irrigation districts receiving the benefit of such water and prescribes the rates to be charged. The new section 9 retains the stipulation that provision of a supplemental water supply for irrigation shall be considered as secondary to the purpose of providing water for fishery resource purposes.

The substitute also includes a new section 13 regarding water rights. This section was added to ensure that the bill will not alter any existing water law or water right relating to a state, the federal government, an interstate compact, or an Indian tribe. This section is identical to language approved by the Committee earlier in the 100th Congress in other bills.

**SECTION-BY-SECTION ANALYSIS**

Section 1 is self-explanatory.

Section 2 is self-explanatory.

Section 3 is self-explanatory.

Section 4 directs the Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), to provide project power to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. During consideration of S. 1613, concern was expressed that passage of the measure would imply that the Bonneville Power Administration would be responsible for repayment of capital expenditures made pursuant to the bill or require additional capital expenditures by the Bonneville Power Administration for anadromous fishery mitigation in the Umatilla Basin. The Committee notes that neither this section, or any other section of the bill creates for the Bonneville Power Administration and responsibility for additional capital expenditures or the reimbursement of such expenditures.

Section 5 is self-explanatory.

Section 6 is self-explanatory.

Section 7 provides for interim flow augmentation. Section 7 authorizes appropriations for the operation and maintenance of existing pumps or other facilities for the purpose of providing interim flow augmentation for anadromous fish. The Committee notes that the Bonneville Power Administration is currently making funds available to provide for interim pumping at one site. The Committee expects that the BPA will continue to make funds available to provide power for such interim pumping until the facilities authorized by S. 1613 are constructed and in operation and as long as such pumping is consistent with the Columbia River Basin Fish and Wildlife Program.

Section 8 is self-explanatory.

Section 9 authorizes the use of project pumping facilities to provide supplemental irrigation water supplies when such pumping capacity is not needed for fishery resource benefits. When pumping capacity is available in excess of that needed to benefit fish and is utilized for pumping supplemental irrigation water supplies, the Administrator of the Bonneville Power Administration shall provide power to the Bureau of Reclamation for provision of the supplemental irrigation water. Pursuant to this section, the rate for this service during peak period hours (generally from 7:00 am until 10:00 pm) shall be the forecasted average rate to be paid by public bodies and cooperatives for irrigation loads during their peak periods. The rate during the off peak period

shall be the rate paid by public bodies and cooperatives for irrigation loads during off peak periods. The cost of power for such pumping shall be borne by the irrigation districts receiving such power. The irrigation districts will also be responsible for the cost of transmitting the power from the Federal Columbia River Power System to the project pumping facilities, which cost shall be included as a part of operation and maintenance costs.

**COST AND BUDGETARY CONSIDERATIONS**

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC August 22, 1988.  
HON. BENNETT JOHNSTON, JR.,  
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1613, the Umatilla Basin Project Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,  
JAMES L. BLUM,  
Acting Director.

**CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, AUGUST 22, 1988.**

1. Bill number: S. 1613.
2. Bill title: Umatilla Basin Project Act.
3. Bill status: As ordered by the Senate Committee on Energy and Natural Resources, August 10, 1988.
4. Bill purpose:

S. 1613 would authorize the appropriation of \$42.2 million plus inflation for the construction, operation, and maintenance of the Umatilla Basin Project in Oregon. The project would be built by the Bureau of Reclamation (BOR) as a means of exchanging water from various sources to restore anadromous fish runs in the Umatilla River Basin and to ensure the continuation of water service to local water districts. The bill would also authorize the appropriation of whatever funds are necessary to provide interim operation and maintenance and flow augmentation and to assist in the long-run operation and maintenance of the new facilities.

The bill would also:

Require the Bonneville Power Administration to provide power to execute the exchange of water authorized in the bill;

Provide for the calculation of project cost-sharing;

Allow for the use of excess project water, when available, for irrigation in the affected districts;

Authorize BOR to acquire certain land and water rights;

Provide for financial assistance for participating water districts for rehabilitation and betterment of project facilities.

5. Estimated cost to the Federal Government:

(In millions of dollars)

1989:		
Estimated Authorization level .....	3.4	
Estimated Outlays.....	2.8	
1990:		
Estimated Authorization level .....	6.7	
Estimated Outlays.....	6.2	
1991:		
Estimated Authorization level .....	11.6	
Estimated Outlays.....	10.9	
1992:		
Estimated Authorization level .....	20.2	
Estimated Outlays.....	18.4	

1993:  
 Estimated Authorization level ..... 7.6  
 Estimated Outlays..... 9.8

In addition, construction outlays totaling about \$2.2 million are estimated to be necessary in 1994 to complete the project. Annual operation and maintenance costs after construction is complete are estimated to total approximately \$1.4 million beginning in 1994.

The costs of this bill fall within budget function 300.

*Basis of Estimate:*

In preparing this estimate, we assumed that S. 1613 would be enacted by the early part of fiscal year 1989 and that appropriations would be provided annually, beginning with fiscal year 1989. Construction outlays for each year were estimated based on information from BOR. They were inflated using CBO's baseline inflation projections. Authorization levels were then estimated based on historical outlay rates for similar projects. After adjusting for inflation, the total authorization is estimated to be \$48.8 million, assuming appropriations begin in fiscal year 1989. Annual operation and maintenance costs were estimated based on information from BOR. We do not expect other provisions of the bill to result in significant additional costs to the Federal Government.

- 6. Estimated cost to State and local governments: None
- 7. Estimate comparison: None.
- 8. Previous CBO estimate: None.
- 9. Estimate prepared by: Theresa Gullo (226-2860)
- 10. Estimate approved by:

JAMES L. BLUM,  
*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. 1613. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in carrying out the actions authorized by S. 1613. Therefore, there would be no impact on personal privacy.

Other than the normal paperwork resulting from the construction of the Umatilla Basin Project, little, if any additional paperwork would result from the enactment of S. 1613 as reported.

**EXECUTIVE COMMUNICATIONS**

On January 12, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Department of Energy, Department of the Interior, and the Office of Management and Budget setting forth executive views on S. 1613. These reports had not been received in time for inclusion in this report. 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 agencies at the Subcommittee hearing follows:

**STATEMENT OF JOHN KEYS, REGIONAL DIRECTOR, PACIFIC NORTHWEST REGION, BUREAU OF RECLAMATION REGARDING S. 1613 TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE UMATILLA BASIN PROJECT, OREGON, FEBRUARY 8, 1988**

I am John Keys, Regional Director for the Bureau of Reclamation's Pacific Northwest

Region. I appreciate the opportunity to comment on the proposed Umatilla Basin Project being considered for construction authorization in S. 1613.

**BACKGROUND**

Representatives of the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon appeared before a congressional committee in Washington, DC, a few years ago. They asked that Reclamation formulate a plan that would help resolve an intensifying conflict over need for Umatilla River water for irrigation and for salmon and steelhead. The opportunity for cooperation among these groups and local irrigation districts was apparent, and Congress directed that the planning be done.

This planning effort has been a cooperative endeavor with the Confederated Tribes, State, irrigation districts, citizens committee, Northwest Power Planning Council, Bonneville Power Administration, Federal fish and wildlife agencies, Forest Service, and others. Comments on the plan at a public hearing in Pendleton were very positive.

The Administration has not made recommendations regarding project implementation. Therefore, my comments today are limited to background and technical aspects of the project.

The purpose of the proposed project is to improve streamflow and passage conditions in the Umatilla River to help restore salmon and steelhead runs while continuing to meet irrigation water supply commitments. The project does not address other basin water issues. The project will not abrogate or limit the reserved water rights of the Confederated Tribes of the Umatilla Indian Reservation.

The project is part of a multifaceted program to restore the Umatilla fishery which has been greatly diminished by regional resource development, including construction of the Federal Umatilla Reclamation project in the early 1900's. Features of the basinwide program have already been made a part of the Northwest Power Planning Council's Fish and Wildlife Program and are currently being implemented by Bonneville Power Administration under authorities specifically granted by Congress in the past several years. The Confederated Tribes and the State also are participating where they have authority and funding. The Umatilla basin project under study would provide the streamflow improvements critical to success of the basinwide program.

*Umatilla Basin Project Planning*

The key feature of the proposed project is a water exchange with the Columbia River on the north boundary of the Umatilla basin. Irrigators would forego some Umatilla River diversions and have that water replaced from the Columbia River. The exchange would improve Umatilla River flows during periods critical to fish.

*Plan features*

Streamflow objectives in the lower 50 miles of the Umatilla River (from McKay Creek downstream) designed to be satisfied by the project are: 300 cfs from October 1 through November 15; 250 cfs from November 16 through June 30 and September 16-30.

These flow levels were established in cooperation with tribal, State, and Federal biologists and agree with State flow objectives for the basin.

The project's major water exchange feature is a Columbia River pumping complex consisting of pumps and canals to deliver Columbia River water to existing distribution facilities of the Hermiston and Stanfield Irrigation Districts.

Other water exchange features to be constructed include:

Facilities to exchange water (up to 140 cfs) with the West Extension Irrigation District at Three Mile Falls Diversion Dam to improve flows in the lowest reach of the Umatilla River, and

A small pumping station on the Umatilla River at Cottonwood Bend (river-mile 13) to exchange water (30 cfs) with Westland Irrigation District

The exchange water supply pumped from the Columbia River would average about 39,000 acre-feet annually and range from a low of about 13,000 acre-feet to a high of about 74,000 acre-feet depending on natural runoff conditions in the basin. On the average, about 19 million kilowatt-hours of power would be needed to operate project pumping facilities. The Northwest Power Planning Council has adopted a measure which calls for Bonneville Power Administration to provide that power as a part of the council's Fish and Wildlife Program. Legislation such as this bill would give Bonneville authority to provide such power without charge.

In addition to water exchange facilities, fish passage facilities and screens would be installed at Maxwell, Feed Canal, Westland, and Stanfield Diversion Dams and Furnish Ditch, and a fish barrier would be placed at the mouth of McKay Creek. Construction of substantially all of the passage and screen facilities was authorized in the 1987 Department of Energy Appropriation Bill and is being funded by the Bonneville Power Administration.

The proposed project would include a program to monitor postconstruction operations so that streamflows could be "fine tuned" to maximize fishery benefits.

A project oversight committee would be formed to provide a forum of communication among irrigators, tribal leaders, State water managers, fish and wildlife experts, and project operators. This group would develop annual fish passage and flow objectives within project guidelines. Water regulation and enforcement would be provided in cooperation with the Oregon State watermaster office in Pendleton in accordance with State water law and the agreements specific to the Umatilla Basin Project.

Operation and maintenance oversight would be by personnel of Reclamation's Yakima Project office. That staff has experience in managing and operating similar fishery enhancement programs and facilities in the Yakima River basin.

*Proposed Project Accomplishments*

Streamflow and fishway improvements are critical to restoration of natural and hatchery runs of salmon and steelhead. Reclamation estimates that with the project, adult fish returns to the Umatilla River alone would average 46,000 fish. All together, the project would add an estimated average of 112,000 fish annually to the Columbia River, Pacific Ocean, add Umatilla River fisheries harvest.

Farmers would benefit from a resolution of the conflict over competing water needs for irrigation and fish. Near record runs of chinook salmon migrated up the Columbia River this past fall—evidence that Columbia River fishery restoration is working. In contrast, Umatilla River fall streamflows needed for fish migration were practically nonexistent. Absent a new water source, irrigation water supplies could be in jeopardy under claims of Indian treaty rights. Over 40,000 acres of cropland could risk loss of water supply.

Project cost estimate:  
 Construction (4/87) ..... \$46,000,000

## Project costs (annual):

Construction .....	4,076,000
Operation, maintenance, and replacement .....	238,000
Power .....	* 673,000
Power wheeling .....	172,000
<b>Total annual costs .....</b>	<b>5,159,000</b>

## Project benefits (annual):

Anadromous fish .....	* 7,760,000
Resident fish .....	79,000
Benefits to unemployed labor resources .....	316,000
<b>Total annual benefits...</b>	<b>8,155,000</b>

\* Includes about \$4 million for ladders and screens to be funded by the Bonneville Power Administration.

\* Includes power for pumping plants—\$421,000 at 22.2 mills, a value of power generation foregone at downstream powerplants—\$28,600, and economic value of replacing power from another source—\$223,400.

Sport fishing and commercial value.

Project monetary benefits (\$8,155,000 annually) compared to annual project costs (\$5,159,000) results in a benefit-cost ratio of 1.6 to 1.0.

About 5½ years would be needed to design and construct all project facilities under an optimum construction schedule, following authorization and with adequate appropriations. However, the project can be phase developed. Construction of facilities to exchange water with the West Extension Irrigation District at Three Mile Falls Diversion Dam would be a productive first phase. That exchange would improve streamflows from the Columbia River to the diversion dam. In combination with the new fish passage facilities being built at the dam and recent channel work, this would enable fish to return at least to Three Mile Falls Diversion Dam for harvest or transport to other areas. First phase facilities would cost about \$7 million and could be in place within 2 years after authorization. First phase operation and maintenance costs would be about \$15,000 annually, and pumping power costs would be about \$44,000 (2 million kilowatt-hours at 22.2 mills).

It should be noted that fish and wildlife facilities constructed under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 are considered in the calculation of project benefits and costs.

*Cost sharing*

The Administration has not yet developed a position on the appropriate level of non-Federal cost sharing for the proposed project.

*Local activities*

Local interests at this time are investing in Umatilla basin fishery restoration programs. Among these activities are:

\$21 million of fishery facilities that have been included in the Fish and Wildlife Program of the Northwest Power Planning Council. To date, \$7 million has been expended, and additional projects totaling \$8 million are in the final design stage. These activities are being funded by regional ratepayers through Bonneville Power Administration.

The Oregon Department of Fish and Wildlife has funded hatchery outplantings valued at about \$200,000 a year.

Irrigators are helping to fund fish monitoring programs and participating in planning studies.

The State of Oregon has funded activities of the Umatilla Basin Project citizens steering committee to aid in resolving critical water conflicts.

## CONCLUSION

This concludes my testimony. I will be pleased to answer any questions you may have.

STATEMENT OF JOHN S. ROBERTSON, DEPUTY ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION, U.S. DEPARTMENT OF ENERGY

## INTRODUCTION

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity to come before you to discuss the Umatilla Basin Project Act. My name is Jack Robertson, and I am the Deputy Administrator of the Bonneville Power Administration (BPA).

Mr. Chairman, since passage of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), BPA has aggressively met its fish and wildlife obligations and has expended over \$120 million on capital facilities and revenue funded projects. Our costs reach nearly \$650 million if estimates of foregone revenues for water budget and spill, and costs of operations and maintenance, depreciation, and annualized interest on capital investment are also included.

The bill would authorize \$42 million for the Secretary of the Interior to design, construct, and operate pumping plants and other facilities for the Umatilla Basin Project. You will be pleased to know that some project activities which were authorized last year by the Congress in connection with the Department of Energy's appropriations are already being implemented.

The bill seeks to mitigate losses to anadromous fishery resources by improving Umatilla River flows. In accomplishing this, the bill requires that BPA provide electricity for pumping water from the Columbia River into project irrigation district facilities in exchange for water presently withdrawn from the Umatilla River. The bill also provides an opportunity for irrigation districts participating in the flow enhancement to obtain additional irrigation water by utilizing the pumps when they are not needed for pumping water for the purpose of fish flows.

Mr. Chairman, we have serious concerns with the funding responsibilities and the effects such obligations could have on BPA ratepayers in the Pacific Northwest. We also believe that the bill needs technical revisions to provide consistency with the Regional Act. My comments today clarify these concerns and offer possible solutions.

## BPA'S COMMITMENT AND INVESTMENT IN THE UMATILLA BASIN

Under the Regional Act, we have a responsibility to protect, mitigate, and enhance fish and wildlife to the extent that these resources are affected by Federal hydroelectric projects. Because the damage to the Umatilla's fishery resource is a result of irrigation practices and not from hydroelectric development, we are not obligated to make fish investments in the Umatilla Basin. However, the Regional Act does provide us the authority to invest in certain fishery improvements in the Umatilla as off-site mitigation for hydropower fish losses elsewhere.

We previously determined that off-site mitigation to improve fish passage conditions, fix degraded habitat, and build new sources of fish for the Umatilla was appropriate. We based our decision on assurances from fish managers that our investments would yield solid returns in terms of increased fish production under existing flows. To date, we have invested \$7 million, and we plan to spend an additional \$13 million in Umatilla fishery improvements. For

this \$20-plus million investment, we hope to increase the salmon and steelhead runs back to the Umatilla by about 19,000 fish per year.

This bill seeks to increase existing flows by pumping water from the Columbia River to replace water that irrigators would otherwise draw from the Umatilla River. We are informed that this enhancement is expected to further increase Umatilla fish runs by another 17,400 fish and would come at a capital cost of \$42 million and annual power costs of \$675,000, plus wheeling costs of \$172,000. In light of our present commitment of \$20 million in the Umatilla, we do not feel that any further investments or expenditures by BPA ratepayers are appropriate.

## BPA CONCERNS WITH IRRIGATION PROVISIONS

If Congress authorizes the additional pumping solely for irrigation purposes when pumping capacity is in excess of that needed for fish flow purposes in the Umatilla River, S. 1613 should require that power be provided at a cost equal to our priority firm rate to public agencies. The bill presently requires BPA to provide such power at irrigation subsidy rates between 2 and 3 mills. The difference in power costs between the priority firm and irrigation subsidy rates could approach \$80,000 annually. We strongly recommend that the bill be amended to require that irrigators pay the priority firm rate normally charged Federal agencies and preference customers.

It is our understanding that all of the bill's costs will be allocated to mitigation of anadromous fish species and that, according to section 6, these costs are nonreimbursable. Consistent with this understanding, BPA recommends that the bill state that any costs actually allocated to irrigation be solely an obligation of irrigation beneficiaries so that any additional subsidy by BPA in the form of irrigation assistance is precluded.

## INTERIM PUMPING

Our final concern deals with provisions in the bill that provide for interim use of existing irrigation pumps to provide limited flow enhancement until project facilities are operational. The bill requires that BPA provide power to run existing pumps for this purpose. BPA has the authority to do this under the Regional Act. We made available \$45,000 last year and \$30,000 this year for such pumping purposes. A problem with interim pumping is the difficulty it presents with providing adequate amounts of water at the right times and in the right places. Another problem is that the actual benefits to fish are unknown. We have no evidence to indicate the success of interim pumping.

It is important to note that the Northwest Power Planning Council (Council) is presently considering amending its Fish and Wildlife Program to clarify the Umatilla pumping measure. Concern over interim flows has triggered this public process. If BPA is persuaded through that review that interim flow enhancement efforts would achieve substantial benefit to migrating fish, then BPA would provide funds for such measures under our existing authority. But we believe statutory direction at this time is premature. We therefore recommend that section 8, which authorizes interim pumping, be deleted from the bill.

## CONCLUSION

In conclusion, the bill has the potential to enhance the Pacific Northwest's salmon and steelhead resources. However, because of the large investment BPA has already made in the Umatilla Basin, we are opposed to BPA having any obligation to repay the \$1.

million provided in this legislation. We are also concerned that this bill not require BPA to pay any pumping costs.

I thank you for the opportunity to present our views and would be glad to address any questions you may have.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1613 as reported.

#### THE OREGON OMNIBUS WILD AND SCENIC RIVERS ACT OF 1988.

Mr. PACKWOOD. Mr. President, passage today of the Oregon Omnibus Wild and Scenic Rivers Act of 1988 is the culmination of many years effort to preserve one of Oregon's most precious resources: our wild, free-flowing rivers.

First, I would like to congratulate my colleague Senator MARK HATFIELD for his vision in introducing this historic bill as well as his dedication in seeing it through to its goal. I am genuinely proud to be an original cosponsor of this landmark bill which will add 41 Oregon rivers encompassing about 1,435 miles to the Wild and Scenic Rivers system and calls for the study of seven additional rivers for possible inclusion in the system.

This legislation represents a year of intense study and information gathering. The bill we are discussing today of course has changed from the bill Senator HATFIELD and I introduced last March. The changes reflect the concerns raised by Oregonians through the hearing process. Many of the changes resulted because of overwhelming public concern over how designation of a river under the Wild and Scenic Rivers Act would affect them personally. I fully understand the fears held by communities and individual property-owners, and both Senator HATFIELD and I recognized the need to address these concerns.

Under this bill today I am confident that our Federal land management agencies will work responsibly with private property owners to bring about cooperative land management agreements. This in turn will result in effective management of our river corridors to benefit all involved.

Obviously, this bill was fashioned under compromise. To meet the most serious concerns, in some instances, entire rivers have been dropped, and in others, segments have been eliminated. We have also developed report language to help clarify our intent and alleviate other local concerns. The Forest Service and the Bureau of Land Management now have the clear directive to work with those property owners along designated stretches of rivers so that the rights of the owners are protected while management goals are achieved.

Passage of this bill is simply the first step to protect many of Oregon's rivers. The next phase begins with the development of management plans and the initiation of studies for those rivers so designated. Developing ap-

propriate management plans is as important as designation itself in many cases. The rivers in this bill have an enormous variety of resources that need to be protected or enhanced. Some are in need of recreational facilities to allow the public greater use of the river stretch. Others are fragile, supporting important fishery habitat, and need to be protected from overuse. I encourage the agencies which will have these management responsibilities to recognize the wide array and values and manage accordingly.

Designation of these rivers in the Wild and Scenic Rivers Act also affords Federal managers the opportunity to work in conjunction with State and local programs aimed at enhancing and protecting river and water related resources. Watershed enhancement programs and fish and wildlife enhancement programs can benefit greatly with the added emphasis of Wild and Scenic designation.

Passage of the Oregon Omnibus Wild and Scenic Rivers Act does not end the debate in Oregon about management of our important waterways. It is, however, an important step towards a comprehensive water management policy. As the State of Oregon continues with its efforts towards basinwide and statewide water management plans, the Federal Government must be able to respond with laws and policies that complement the State's efforts. Further additions to the National Wild and Scenic Rivers System will undoubtedly be warranted in the near future.

In closing, let me add that my personal commitment to this legislation goes back nearly 20 years, and to our successful battle to preserve the Snake River with passage of the Hells Canyon National Recreation Area Act of 1975. I remember my first visit to Hells Canyon, I realized what was at stake was the destruction of one of the most beautiful and unique spots on earth. Like the Snake River, many of Oregon's rivers and waterways represent a truly unique natural resource.

When Congress originally enacted the Wild and Scenic Rivers Act of 1968 we declared that our established national policy of water resource development should be balanced by a new policy of protecting selected rivers in free-flowing form. I am enormously pleased to see today that Oregon's leadership pushes us a major step forward in accomplishing the goals of that 1968 act.

By passing this bill today, what we are really telling our children and our grandchildren is that we will live up to our pledge to preserve for them our beautiful and irreplaceable natural heritage.

Mr. HATFIELD. Mr. President, I ask for third reading of the bill.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee

amendment in the nature of a substitute, as amended.

The committee amended in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2148

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### TITLE I

##### SEC. 101. SHORT TITLE.

This title may be referred to as the "Omnibus Oregon Wild and Scenic Rivers Act of 1988".

##### SEC. 102. AMENDMENTS TO THE WILD AND SCENIC RIVERS ACT:

Section 3(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat: 907), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) BIG MARSH CREEK, OREGON.—The 15-mile segment from the northeast quarter of section 15, township 26 south, range 6 east, to its confluence with Crescent Creek in the northeast quarter of section 20, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture: *Provided*, Nothing in this Act shall prohibit the Secretary from undertaking construction activities to enhance and restore wetland resources associated with Big Marsh Creek.

"( ) CHETCO, OREGON.—The 44.5 mile segment from its headwaters to the Siskiyou National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 25.5-mile segment from its headwaters to Boulder Creek at the Kalmiopsis Wilderness boundary as a wild river;

"(B) the 8-mile segment from Boulder Creek to Steel Bridge as a scenic river; and

"(C) the 11-mile segment from Steel Bridge to the Siskiyou National Forest boundary, one mile below Wilson Creek, as a recreational river.

"( ) CLACKAMAS, OREGON.—The 47-mile segment from Big Springs to Big Cliff; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from Big Springs to the Forest Service Road 4690 bridge as a scenic river;

"(B) the 3.5-mile segment from the Forest Service Road 4690 bridge to the junction with Oregon State Highway 224 as a recreational river;

"(C) the 10.5-mile segment from Oregon State Highway 224 to the June Creek Bridge as a scenic river;

"(D) the 9-mile segment from June Creek Bridge to Tar Creek as a recreational river;

"(E) the 5.5-mile segment from Tar Creek to just south of Indian Henry Campground as a scenic river; and

"(F) the 14.5-mile segment just south of Indian Henry Campground to Big Cliff as a recreational river.

"( ) CRESCENT CREEK, OREGON.—The 10-mile segment from the southwest quarter of section 11, township 24 south, range 6 east, to the west section line of section 13, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture.

"( ) CROOKED, OREGON.—The 15-mile segment from the National Grassland bounda-

ry to Dry Creek; to be administered by the Secretary of the Interior in the following classes:

"(A) The 7-mile segment from the National Grassland boundary to River Mile 8 south of Opal Spring as a recreational river; and

"(B) the 8-mile segment from Bowman Dam to Dry Creek as a recreational river.

"( ) DESCHUTES, OREGON.—Those portions as follows:

"(A) The 40.4-mile segment from Wickiup Dam to northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 11-mile segment from the northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east, to Lava Island Camp as a scenic river; to be administered by the Secretary of Agriculture;

"(C) the 3-mile segment from Lava Island Camp to the Bend Urban Growth Boundary at the southwest corner of section 13, township 18 south, range 11 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 19-mile segment from Oden Falls to the Upper End of Lake Billy Chinook as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 100-mile segment from the Pelton Reregulating Dam to its confluence with the Columbia River as a recreational river; to be administered by the Secretary of the Interior through a cooperative management agreement between the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

"( ) DONNER UND BLITZEN, OREGON.—Those segments, including its major tributaries, as a wild river; to be administered by the Secretary of the Interior as follows:

"(A) the 16.75-mile segment of the Donner and Blitzen from its confluence with the South Fork Blitzen and Little Blitzen;

"(B) the 12.5-mile segment of the Little Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(C) the 16.5-mile segment of the South Fork Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(D) the 10-mile segment of Big Indian Creek from its headwaters to its confluence with the South Fork Blitzen;

"(E) the 3.7-mile segment of Little Indian Creek from its headwaters to its confluence with Big Indian Creek; and

"(F) the 13.25-mile segment of Fish Creek from its headwaters to its confluence with the Donner and Blitzen.

"( ) EAGLE CREEK, OREGON.—The 27-mile segment from its headwaters below Eagle Lake to the Wallowa-Whitman National Forest boundary at Skull Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from its headwaters below Eagle Lake to the Eagle Cap Wilderness boundary at Hummingbird Mountain as a wild river;

"(B) the 15.5-mile segment from the Eagle Cap Wilderness boundary at Hummingbird Mountain to Paddy Creek as a recreational river;

"(C) the 6-mile segment from Paddy Creek to Little Eagle Creek as a scenic river; and

"(D) the 1.5-mile segment from Little Eagle Creek to the Wallowa-Whitman National Forest boundary as a recreational river.

"( ) ELK OREGON.—The 19-mile segment to be administered by the Secretary of Agriculture in the following classes:

"(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river; and

"(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.

"( ) GRANDE RONDE, OREGON.—The 43.8-mile segment from its confluence with the Wallowa River to the Oregon-Washington State line in the following classes:

"(A) the 1.5-mile segment from its confluence with the Wallowa River to the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.4-mile segment from the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, to the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 9-mile segment from the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek to Wildcat Creek as a wild river; to be administered by the Secretary of the Interior; and

"(D) the 15.9-mile segment from Wildcat Creek to the Oregon-Washington State line as a recreational river; to be administered by the Secretary of the Interior.

"( ) IMNAHA, OREGON.—Those segments, including the South Fork Imnaha; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 4-mile segment from Cow Creek to its mouth as a scenic river; and

"(D) the 9-mile segment of the South Fork Imnaha from its headwaters to its confluence with the Imnaha River as a wild river.

"( ) JOHN DAY, OREGON.—The 147.5-mile segment from Service Creek to Tumwater Falls as a recreational river; to be administered through a cooperative management agreement between the State of Oregon and the Secretary of the Interior as provided in section 10(e) of this Act.

"( ) JOSEPH CREEK, OREGON.—The 8.6-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Wallowa-Whitman National Forest boundary as a wild river; to be administered by the Secretary of Agriculture.

"( ) LITTLE DESCHUTES, OREGON.—The 12-mile segment from its source in the northwest quarter of section 15, township 26 south, range 6½ east to the north section line of section 12, township 26 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture.

"( ) LOSTINE, OREGON.—The 16-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary; to be administered by the Secretary of Agriculture in the following classes: in the northwest quarter of section 15, township 26 south, range 6½ east.

"(A) the 5-mile segment from its headwaters to the Eagle Cap Wilderness boundary as a wild river; and

"(B) the 11-mile segment from the Eagle Cap Wilderness boundary to the Wallowa-Whitman National Forest boundary at Silver Creek as a recreational river.

"( ) MALHEUR, OREGON.—The 13.7-mile segment from Bosonberg Creek to the Malheur National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 7-mile segment from Bosonberg Creek to Malheur Ford as a scenic river; and

"(B) the 6.7-mile segment from Malheur Ford to the Malheur National Forest boundary as a wild river.

"( ) MCKENZIE, OREGON.—The 12.7-mile segment from Clear Lake to Scott Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 1.8-mile segment from Clear Lake to the head of maximum pool at Carmen Reservoir as a recreational river;

"(B) the 4.3-mile segment from a point 100 feet downstream from Carmen Dam to the maximum pool at Trall Bridge Reservoir as a recreational river; and

"(C) the 6.6-mile segment from the developments at the base of the Trall Bridge Reservoir Dam to Scott Creek as a recreational river.

"( ) METOLIUS, OREGON.—The 28.6-mile segment from the south Deschutes National Forest boundary to Lake Billy Chinook in the following classes:

"(A) the 11.5-mile segment from the south Deschutes National Forest boundary (approximately 2,055 feet from Metolius Springs) to Bridge 99 as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.1-mile segment from Bridge 99 to Lake Billy Chinook as scenic river; by the Secretary of Agriculture, through a cooperative management agreement between the Secretary of the Interior and the Confederated Tribes of the Warm Springs Reservation, as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988: *Provided*, That the river and its adjacent land area will be managed to provide a primitive recreational experience as defined in the ROS User's Guide.

"( ) MINAM, OREGON.—The 39-mile segment from its headwaters at the south end of Minam Lake to the Eagle Cap Wilderness boundary, one-half mile downstream from Cougar Creek, as a wild river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK CROOKED, OREGON.—The 32.3-mile segment from its source at Williams Prairie to one mile from its confluence with the Crooked River in the following classes:

"(A) the 3-mile segment from its source at Williams Prairie to the Upper End of Big Summit Prairie as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 3.7-mile segment from the Lower End of Big Summit Prairie to the bridge across from the Deep Creek Campground as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 8-mile segment from the bridge across from the Deep Creek Campground to the Ochoco National Forest boundary, one-half mile from Lame Dog Creek as a scenic river; to be administered by the Secretary of Agriculture;

"(D) the 1.5-mile segment from the Ochoco National Forest boundary to Upper Falls as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 11.1-mile segment from Upper Falls to Committee Creek as a wild river; to be administered by the Secretary of Interior; and

"(F) the 5-mile segment from Committee Creek to one mile from its confluence with the Crooked River as a recreational river; to

be administered by the Secretary of the Interior.

"( ) NORTH FORK JOHN DAY, OREGON.—The 54.1 mile segment from its headwaters in the North Fork of the John Day Wilderness Area at section 13, township 8 south, range 36 east, to its confluence with Camas Creek in the following classes:

"(A) the 3.5-mile segment from its headwaters in the North Fork of the John Day Wilderness at section 13, township 8 south, range 36 east, to the North Fork of the John Day Wilderness boundary as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.5-mile segment from the North Fork of the John Day Wilderness boundary to Trail Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 24.3-mile segment from Trail Creek to Big Creek as a wild river; to be administered by the Secretary of Agriculture;

"(D) the 10.5-mile segment from Big Creek to Texas Bar Creek as a scenic river; to be administered by the Secretary of Agriculture; and

"(E) the 8.3-mile segment from Texas Bar Creek to its confluence with Camas Creek as a recreational river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK MALHEUR, OREGON.—The 25.5-mile segment from its headwaters to the Malheur National Forest boundary as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE, OREGON.—The 42.3-mile segment from Waldo Lake to the Willamette National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 8.8-mile segment from Waldo Lake to the south section line of section 36, township 19 south, range 5½ east as a wild river;

"(B) the 6.5-mile segment from the south section line of section 36, township 19 south, range 5½ east to Fisher Creek as a scenic river; and

"(C) the 27-mile segment from Fisher Creek to the Willamette National Forest boundary as a recreational river.

"( ) NORTH FORK OWYHEE, OREGON.—The 8-mile segment from the Oregon-Idaho State line to its confluence with the Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) NORTH FORK SMITH, OREGON.—The 13-mile segment from its headwaters to the Oregon-California State line; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6.5-mile segment from its headwaters to Horse Creek as a wild river;

"(B) the 4.5-mile segment from Horse Creek to Baldface Creek as a scenic river; and

"(C) the 2-mile segment from Baldface Creek to the Oregon-California State line as a wild river.

"( ) NORTH FORK SPRAGUE, OREGON.—The 15-mile segment from the head of River Spring in the southwest quarter of section 15, township 35 south, range 16 east, to the northwest quarter of the southwest quarter of section 11, township 35 south, range 15 east, as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH POWDER, OREGON.—The 6-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary at River Mile 20 as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH UMPQUA, OREGON.—The 33.8-mile segment from the Soda Springs Power-

house to Rock Creek in the following classes:

"(A) the 25.4-mile segment from the Soda Springs Powerhouse to the Umpqua National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture; and

"(B) the 8.4-mile segment from the Umpqua National Forest boundary to its confluence with Rock Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) POWDER, OREGON.—The 11.7-mile segment from Thief Valley Dam to the Highway 203 bridge as a scenic river; to be administered by the Secretary of the Interior.

"( ) QUARTZVILLE CREEK, OREGON.—The 12-mile segment from the Willamette National Forest boundary to slack water in Green Peter Reservoir as a recreational river; to be administered by the Secretary of the Interior.

"( ) ROARING, OREGON.—The 13.7-mile segment from its headwaters to its confluence with the Clackamas River; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 13.5-mile segment from its headwaters to one-quarter mile upstream of the mouth as a wild river; and

"(B) the 0.2-mile segment from one-quarter mile upstream of the mouth to its confluence with the Clackamas River as a recreational river.

"( ) SALMON, OREGON.—The 33.5-mile segment from its headwaters to its confluence with the Sandy River in the following classes:

"(A) the 7-mile segment from its headwaters to the south boundary line of section 6, township 4 south, range 9 east as a recreational river; to be administered by the Secretary of Agriculture: *Provided*, That designation and classification shall not preclude the Secretary from exercising discretion to approve the construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Timerline Lodge Winter Sports Area insofar as such construction does not involve water resources projects;

"(B) the 15-mile segment from the south boundary line at section 6, township 4 south, range 9 east to the junction with the South Fork of the Salmon River as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 3.5-mile segment from the junction with the south fork of the Salmon River to the Mt. Hood National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 3.2-mile segment from the Mt. Hood National Forest boundary to Lymp Creek as a recreational river; to be administered by the Secretary of the Interior; and

"(E) the 4.8-mile segment from Lymp Creek to its confluence with the Sandy River as a scenic river; to be administered by the Secretary of the Interior.

"( ) SANDY, OREGON.—Those portions as follows:

"(A) The 4.5-mile segment from its headwaters to the section line between sections 15 and 22, township 2 south, range 8 east as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.9-mile segment from the section line between sections 15 and 22, township 2 south, range 8 east to the Mt. Hood National Forest boundary at the west section line of section 26, township 2 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture; and

"(C) the 12.5-mile segment from the east boundary of sections 25 and 36, township 1 south, range 4 east in Clackamas County near Dodge Park, downstream to the west

line of the east half of the northeast quarter of section 6, township 1 south, range 4 east, in Multnomah County at Dabney State Park, the upper 3.8 miles as a scenic river and the lower 8.7 miles as a recreational river; both to be administered through a cooperative management agreement between the State of Oregon, the Secretary of the Interior and the Counties of Multnomah and Clackamas in accordance with section 10(e) of this Act.

"( ) SOUTH FORK JOHN DAY, OREGON.—The 47-mile segment from the Malheur National Forest to Smokey Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) SQUAW CREEK, OREGON.—The 15.4-mile segment from its source to the hydrologic Gaging Station 800 Feet upstream from the intake of the McAllister Ditch, including the Soap Fork Squaw Creek, the North Fork, the South Fork, the East and West Forks of Park Creek, and Park Creek Fork; to be administered by the Secretary of Agriculture as follows:

"(A) The 6.6-mile segment and its tributaries from the source to the Three Sisters Wilderness boundary as a wild river; and

"(B) the 8.8-mile segment from the boundary of the Three Sisters Wilderness Area to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch as a scenic river: *Provided*, That nothing in this Act shall prohibit the construction of facilities necessary for emergency protection for the town of Sisters relative to a rapid discharge of Carver Lake if no other reasonable flood warning or control alternative exists.

"( ) SYCAN, OREGON.—The 59-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to Coyote Bucket at the Fremont National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 26.4-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to the west section line of section 22, township 32 south, range 14½ east, as a scenic river;

"(B) the 8.6-mile segment from the west section line of section 22, township 32 south, range 14 east, to the Fremont National Forest boundary in the southeast quarter of section 10, township 33 south, range 13 east, as a recreational river; and

"(C) the 24-mile segment from the Fremont National Forest boundary in the southwest quarter of section 10, township 33 south, range 13 east, to Coyote Bucket at the Fremont National Forest boundary, as a scenic river.

"( ) UPPER ROGUE, OREGON.—The 40.3-mile segment from the Crater Lake National Park boundary to the Rogue River National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 0.5-mile segment from the Crater Lake National Park boundary to approximately 0.1-mile downstream from the forest road 6530760 (West Lake Road) crossing as a scenic river;

"(B) the 6.1-mile segment from approximately 0.1-mile downstream from the Forest road 6530760 (West Lake Road) crossing to Minehaha Creek as a wild river; and

"(C) the 33.7-mile segment from Minehaha Creek to the Rogue River National Forest boundary as a scenic river.

"( ) WENAH, OREGON.—The 21.55-mile segment from the confluence of the North Fork and the South Fork to its confluence with the Grande Ronde River; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 18.7-mile segment from the confluence of the North Fork and South Fork to the Umatilla National Forest as a wild river;

"(B) the 2.7-mile segment from the Umatilla National Forest boundary to the easternmost boundary of the Wenaha State Wildlife Area as a scenic area; and

"(C) the 0.15-mile segment from the easternmost boundary of the Wenaha State Wildlife Area to the confluence with the Grande Ronde River as a recreational river.

"( ) WEST LITTLE OWYHEE, OREGON.—The 51-mile segment from its headwaters to its confluence with Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) WHITE, OREGON.—The 46.5-mile segment from its headwaters to its confluence with the Deschutes River in the following classes:

"(A) The 2-mile segment from its headwaters to the section line between sections 9 and 16, township 3 south, range 9 east, as a recreational river; to be administered by the Secretary of Agriculture; *Provided*, That designation and classification shall not preclude the Secretary from exercising discretion to approve construction, operation, and from exercising discretion to approve construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Mt. Hood Winter Sports Area insofar as such construction does not involve water resource projects and is consistent with protecting the values for which the river was designated.

"(B) the 13.6-mile segment from the section line between sections 9 and 16, township 3 south, range 9 east, to Deep Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 6.5-mile segment from Deep Creek to the Mt. Hood National Forest boundary as scenic river; to be administered by the Secretary of Agriculture;

"(D) the 17.5-mile segment from the Mt. Hood National Forest boundary to Three Mile Creek as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 5.3-mile segment from Three Mile Creek to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and

"(F) the 1.6-mile segment from River Mile 1.6 to its confluence with the Deschutes River as a recreational river; to be administered by the Secretary of the Interior."

#### SEC. 103. WILD AND SCENIC RIVER STUDIES.

Section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) BLUE, OREGON.—The segment from its headwaters to the Blue River Reservoir; by the Secretary of Agriculture.

"( ) CHEWAUCAN, OREGON.—The segment from its headwaters to the Paisley Urban Growth boundary to be studied in cooperation with, and integrated with, the Klamath River Basin Plan; by the Secretary of Agriculture.

"( ) NORTH FORK MALHEUR, OREGON.—The segment from the Malheur National Forest boundary to Beulah Reservoir; by the Secretary of the Interior.

"( ) SOUTH FORK MCKENZIE, OREGON.—The segments from its headwaters to the upper end of Cougar Reservoir and from the lower end of Cougar Reservoir to its confluence with the McKenzie River; by Secretary of Agriculture.

"( ) STEAMBOAT CREEK, OREGON.—The entire creek; by the Secretary of Agriculture.

"( ) WALLOWA, OREGON.—The segment from its confluence with the Minam River

to its confluence with the Grande Ronde River; by the Secretary of Agriculture."

#### SEC. 104. UPPER KLAMATH RIVER STUDY.

Section 5(d) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910) is amended by inserting "(1)" after "(d)" and by inserting the following new paragraph at the end thereof:

"(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or actions on this segment and its immediate environment."

#### SEC. 105. INDIAN TREATY LANDS AND ADMINISTRATIVE PROVISIONS.

(a)(1) Lands now or hereafter held in trust by the United States for the benefit of an Indian tribe or individual Indian shall not be included within the boundaries of the Deschutes or Metolius Rivers as designated by this title without the consent of the applicable tribal council.

(2) When Indian treaty lands exist in association with lands included in the National Wild and Scenic Rivers System under this title, the Secretaries of the Interior and Agriculture, as appropriate, shall fully consult and enter into written cooperative management agreements with the affected Indian tribe for planning, administration, and management of such areas as provided in section 10(e) of this Act.

(b) Nothing in this title shall affect:

(1) the jurisdiction of responsibilities of an Indian tribe with respect to fish, wildlife, land, and water management;

(2) the treaty or other rights of an Indian tribe;

(3) the water and land claims, present or future, of an Indian tribe;

(4) the relicensing or amending the license of the Pelton Hydroelectric Project, FERC Project No. 2030 so long as such project does not adversely affect the values for which the Deschutes River was designated;

(5) the rights or jurisdiction of Indian tribes over waters or any river or stream within the affected river area or stream, or over any ground water resource; or

(6) the beneficial ownership interest of land held in trust, now or hereafter, by the United States for Indian Tribes or individual Indians.

(c) Nothing in this title shall preclude or impair the use by the City of Portland, Oregon, of water in the Bull Run and Little Sandy Rivers to the extent that such water is necessary for the purpose of municipal water supply.

#### SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years after the fiscal year 1988—

(a) for the purpose of acquisition of lands, waters, and interests therein pursuant to this title, not to exceed \$5,000,000; and

(b) for the purpose of preparing the studies for the rivers and river segments listed in section 103 of this title, not to exceed \$2,500,000; and

(c) for the purpose of preparing the study of the river segment listed in section 104 of this title, not to exceed \$200,000.

#### TITLE II—UMATILLA BASIN PROJECT, OREGON

##### SEC. 201. SHORT TITLE.

This title may be cited as the "Umatilla Basin Project Act".

##### SEC. 202. AUTHORIZATION OF PROJECT.

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, for the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report entitled "Umatilla Basin Project, Oregon, Planning Report" dated February 12, 1988, in the manner specified by this Title. The principal work of the project shall consist of—

(1) lands, water rights, or interests therein acquired for the benefit of fishery resources;

(2) measures to conserve water and improve the efficiency of the existing conveyance, distribution, and drainage systems of the Umatilla Project, where such measures are found to make water available for the benefit of fishery resources;

(3) pumping plants and related diversion, conveyance, and distribution features;

(4) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange required to fulfill the purposes of this title;

(5) fish passage and protective facilities and other necessary mitigation measures;

(6) a program to monitor and regulate project operations; and

(7) a program to evaluate fishery resource mitigation measures.

##### SEC. 203. INTEGRATION AND OPERATION OF PROJECT.

Project facilities and features authorized by this title shall be integrated and coordinated, from an operational standpoint, into existing features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provided for the monitoring and regulation of project related water supplies for the purposes herein identified.

##### SEC. 204. POWER FOR PROJECT PUMPING.

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

## SEC. 205. OPERATION AND MAINTENANCE COSTS.

Non-Federal interests shall be responsible for the cost of operating and maintaining the project, except for those costs associated with implementation of section 204 of this title, and to fulfill the purpose of mitigating losses to anadromous fishery resources.

## SEC. 206. INTERIM FLOW AUGMENTATION.

Until the facilities authorized in this title are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary, through the end of fiscal year 1998, to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

## SEC. 207. NON-FEDERAL COSTS.

(a) CREDIT FOR NON-FEDERAL FISHERY RESOURCE IMPROVEMENTS.—The Umatilla Basin Project authorized by this title is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) TREATMENT OF NON-FEDERAL COSTS INCURRED IN IMPLEMENTING PROJECT FEATURES BEFORE APPROPRIATIONS.—To the extent any public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

## SEC. 208. CONJUNCTIVE USE OF PUMPING FACILITIES.

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such project pumping capacity may be made available for use on presently irrigated lands eligible for service within the irrigation districts that participate in the project authorized in this title at a rate based on the operation and maintenance costs related to such conjunctive use and an appropriate share of capital costs for such use as specified by an agreement between the Secretary of the Interior and the irrigation districts: *Provided*, (a) that boundaries of the irrigation districts may be modified, upon approval of the Secretary of the Interior, to include such lands that received irrigation water service from those districts prior to October 1, 1988; and (b) that such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for the irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping, and the cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall be borne by irriga-

tion districts receiving the benefit of such water.

## SEC. 209. LEASE AND PURCHASE OF WATER.

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purpose of this title: *Provided*, That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated not more than \$1,000,000 to accomplish the purposes of this section.

## SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project and the study authorized by section 213 of this title the sum of \$42,400,000 (April 1987 prices), less any amounts previously appropriated for the project, plus or minus such amounts as may be required by reason of changes in the cost of construction work of the types involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 210(b) of this title: *Provided*, that such funds are authorized to be appropriated only through the tenth fiscal year after which construction funds are first made available; *Provided further*, That all costs, including operation and maintenance costs, allocated to the mitigation of anadromous fish species and the study authorized in section 213 of this Title shall be nonreimbursable. There are also authorized to be appropriated such sums as may be required for the Federal share of operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

## SEC. 211. WATER RIGHTS.

Nothing in this title shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(4) confer upon any non-federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or Indian tribe if such rights were established by the setting aside of a reservation by treaty, Executive Order, agreements, or Act of Congress.

## SEC. 212. REHABILITATION AND BETTERMENT AUTHORIZATION.

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Title, Stanfield and Westland Irrigation Districts shall be eligible to receive financial assistance, in an amount not to exceed \$2,000,000 each, as deemed appropriate by the Secretary, under provisions of the Rehabilitation

and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

## SEC. 213. REVIEW OF UMATILLA PROJECT OPERATIONS.

Within one year from the date of enactment of this Title, the Secretary shall complete a review of current operations of the Umatilla Project, for the purpose of identifying opportunities to further mitigate losses to anadromous fishery resources. Within 90 days of the completion of this review, the Secretary shall transmit a report thereon, together with any conclusions and recommendations to improve the management of the existing project, including measures that may require additional legislation, to the Committee on the Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The review shall include, but not be limited to the following:

(a) contract negotiation and administration;

(b) water conservation plans and activities required by section 210 of the Reclamation Reform Act of 1982 (Public Law 97-293);

(c) allocation of reservoir storage space;

(d) water deliveries outside the authorized service area; and,

(e) water rights held by the United States."

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I want to thank the majority leader and all others for helping get this bill passed.

Mr. BYRD. Mr. President, my friend is welcome.

## RADON DETECTION

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 744.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 744) entitled "An Act to authorize the Environmental Protection Agency to assist States in development of radon programs, to conduct a study to determine the extent to which radon in the Nation's schools poses a threat to children and employees in such schools, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

## SECTION 1. INDOOR RADON ABATEMENT.

(a) AMENDMENT OF TOXIC SUBSTANCES CONTROL ACT.—The Toxic Substances Control Act (15 U.S.C. 2601 and following) is amended by adding after title II the following new title:

## "TITLE III—INDOOR RADON ABATEMENT

## "SEC. 301. NATIONAL GOAL.

"The national long-term goal of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings.