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WATERSHED OF THE LITTLE SANDY RIVER

JUNE 5, 2001.—Ordered to be printed

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

REPORT

[To accompany S. 254]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 254) to provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 254 is to provide for further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, near Portland, Oregon.

BACKGROUND AND NEED

The Little Sandy River lies adjacent to the Bull Run Watershed, which is the primary municipal water supply for the city of Portland, Oregon. The Bull Run Watershed Management Unit was established by Congress in 1977, creating a management partnership between the Forest Service and the city of Portland for the review of issues which may affect water quality and quantity. Additional protection was given to the Bull Run Watershed by the Northwest Forest Plan in 1993, restricting all timber harvests in sensitive areas. Neither of these actions extended a satisfactory level of protection to the nearby Little Sandy Watershed. The Oregon Resources and Conservation Act of 1996 provided temporary protection for the Little Sandy Watershed. S. 254 would expand the boundary of the Bull Run Watershed Management Unit to include the southern portion of the Little Sandy Watershed. This would add approximately 2,900 acres to the Bull Run Watershed Manage-

ment Unit, resulting in a total of approximately 98,272 acres permanently protected as watershed for the city of Portland.

Population growth in and around the city of Portland and heightened awareness of water quality issues have increased the public's interest in the preservation of the Little Sandy Watershed. The legislation is needed to expand the size of the Bull Run Watershed Management Unit and provide permanent protection to the Little Sandy River. In so doing, the city of Portland's protected watershed will be increased in size to help meet growing demand for drinking water within the city.

LEGISLATIVE HISTORY

S. 254 was referred to the Committee on Energy and Natural Resources on February 6, 2001. The Committee did not hold a hearing on the bill. However, on July 20, 2000, the Subcommittee on Forests and Public Land Management held a hearing on a similar piece of legislation, S. 2691, in the 106th Congress. On September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2691 reported favorably with an amendment, and on October 5, 2000, the Senate passed S. 2691 by unanimous consent. The House of Representatives took no action on S. 2691. The Committee on Energy and Natural Resources ordered S. 254 reported favorably without an amendment on May 16, 2001.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open, business session on May 16, 2001, by a voice vote, recommends that the Senate pass S. 254.

SECTION-BY-SECTION ANALYSIS

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

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

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

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

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office (CBO) estimate of the costs of this measure follows:

S. 254—A bill to provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes

CBO estimates that implementing S. 254 would cost \$10 million in 2002, assuming appropriation of the authorized amounts. The bill could affect direct spending (including offsetting receipts); therefore, pay-as-you-go procedures would apply, but we estimate that any such impact would be negligible. S. 254 contains no inter-governmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local or tribal governments.

S. 254 would add about 2,890 acres of federal lands to the Bull Run Watershed Management Unit in Oregon and amend current law to prohibit timber harvesting within that unit. The bill also would require the reclassification of other public lands, but we estimate that those provisions would have no significant budgetary impact. Finally, S. 254 would authorize the appropriation of \$10 million for a grant to Clackamas County, Oregon, to support watershed restoration activities near the management unit. We expect that the grant would be made in 2002, assuming appropriation of the authorized amount.

Based on information from the Forest Service and the Bureau of Land Management, we estimate that prohibiting timber harvesting within the management unit would not significantly affect federal receipts and subsequent payments to states over the next 10 years. Under the bill, that prohibition would apply to roughly 7,000 acres of land where timber harvesting is currently allowed. According to the agencies, those lands currently generate no significant receipts, and the agencies do not expect them to generate significant receipts from timber harvests in the near future.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 254.

EXECUTIVE COMMUNICATIONS

On May 23, 2001, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth executive views on S. 254. These reports had not been received at the time the report was filed. When the reports become available, the

Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 254, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 95–200 (16 U.S.C. 482b note)

* * * * *

“DESIGNATION OF UNIT

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

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

“(a) ESTABLISHMENT.—

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

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

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

“(b) DEFINITION OF SECRETARY.—*In this Act, the term ‘Secretary’ means—*

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

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

“MANAGEMENT

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

“(b) TIMBER CUTTING.—

“(1) * * *

“(2) PERMITTED CUTTING.—

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

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

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

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

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

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

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

“(b) TIMBER CUTTING [SIC]—

““(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Agriculture shall prohibit the cutting of trees in that part of

the unit consisting of the hydrographic boundary of the Bull Run River Drainage, including certain lands within the unit and located: below the headworks of the city of Portland, Oregon's water storage and delivery project, and as depicted in a map dated July 22, 1996 and entitled 'Bull Run River Drainage'.]

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

* * * * *

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

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Public Law 104–208—Sept. 30, 1996

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

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Public Law 104–333—Nov. 12, 1996

【SEC. 1026. BULL RUN PROTECTION.—**【(a) AMENDMENTS TO PUBLIC LAW 95–200.—**

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

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

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

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

【“(b) TIMBER CUTTING.—

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

【“(2) PERMITTED CUTTING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(h) OTHER LANDS IN UNIT.—Lands within the Bull Run Management Unit, as defined in Public Law 95–200, but not contained within the Bull Run River Drainage, as described in the amendment made by subsection (a)(4) of this section and as depicted on the map dated July 22, 1996, and entitled “Bull Run River Drainage”, shall continue to be managed in accordance with Public Law 95–200.]

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