OPAL CREEK FOREST PRESERVE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS

OF THE

COMMITTEE ON NATURAL RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 3905

A BILL TO PROVIDE FOR THE ESTABLISHMENT AND MANAGEMENT OF THE OPAL CREEK FOREST PRESERVE IN THE STATE OF OREGON

AUGUST 2, 1994—WASHINGTON, DC

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CONTENTS

	Page
Hearing held August 2, 1994	1
Text of H.R. 3905	37
Statement of Members:	
Dickey, Hon. Jay, a U.S. Representative from Arkansas	52
Kopetski, Hon. Mike, a U.S. Representative from Oregon	2
Vento, Hon. Bruce F., a U.S. Representative from Minnesota, and Chairman, Subcommittee on National Parks, Forests and Public Lands	1
Statement of Witnesses:	
Atiyeh, George, Friends of Opal Creek, Lyons, OR	21
Mickey, Ross, Northwest Forestry Association	21, 24
Thomas, Jack Ward, Chief, Forest Service, Department of Agriculture	7
Prepared statement	53
Additional material supplied:	
Friends of Opal Creek, Elkhorn, Oregon: "Opal Creek Ancient Forest—Scientific and Educational Preserve"	61

OPAL CREEK FOREST PRESERVE ACT

TUESDAY, AUGUST 2, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL PARKS,
FORESTS, AND PUBLIC LANDS,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:11 a.m. in Room 1324, Longworth House Office Building, Hon. Bruce F. Vento (chairman of the subcommittee) presiding.

[Text of H.R. 3905 may be found at end of hearing.]

STATEMENT OF HON. BRUCE F. VENTO, A U.S. REPRESENTATIVE FROM MINNESOTA, AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS

Mr. VENTO. The Subcommittee on Parks, Forests, and Public Lands will come to order. This morning we are meeting trying to wind up our legislative hearings so we can work on the legislation. We are considering the Opal Creek Preserve Act of 1994.

This is a measure introduced by Congressman Kopetski in February of this year and the Agriculture Committee has spent some time on it. The legislation designated about 22,000 acres, as amended by the Agriculture Committee, as the acres of the Willamette and Mount Hood National Forest in the Opal Creek area were designated as a preserve. This area contains one of the largest intact blocks of old growth forest in the Cascade Range and includes native steelhead trout and salmon runs and several threatened and endangered species such as the spotted owl.

I have heard the virtues of Opal Creek for a long time from the Members from Oregon, least of which Congressman Kopetski. In the President's plan it is managed as a later successional forest reserve and Representative Kopetski has been a persistent advocate in bringing this important area to the subcommittee's attention.

I appreciate the witnesses from Oregon being present on short notice as well, of course, the Forest Service Chief. I think it underlines the importance of this issue and the FEMAT process and this particular area.

While there is still disagreement in regards to some of the plans under FEMAT as they are winding their way through the courts and finding their way into implementation, there is generally, I understand, agreement on this. So it shouldn't open up the entire issue at this late date in the process.

Without objection, all of the statements and testimony of witnesses will be made part of the record in its entirety. Hearing no objection, so ordered.

We are pleased to welcome Congressman Mike Kopetski and, Mike, please proceed and you don't have to put your entire statement, but if you want to, read it.

STATEMENT OF HON. MIKE KOPETSKI, A U.S. REPRESENTATIVE FROM OREGON

Mr. KOPETSKI. Thank you, Mr. Chairman. I will summarize my statement. I do want to thank you and the committee for holding this hearing today. Because of the short notice we had to prepare for hearing, some who we would like to be here today from Oregon could not make the trip.

I do thank those who are able to attend, particularly George Atiyeh, who is a miner, but he is really a pioneer and one of the great empire builders in Oregon because he has devoted his entire life over the past two decades literally to try to preserve this very significant gift from God.

I know that a complete record is important for consideration of this committee and I would like to help by providing whatever additional information you may need. In addition, Chairman de la Garza and Mr. Rose will make available the full record of the Agriculture Committee for the consideration of this bill.

I want to start by giving a little bit of background on Opal Creek. It is in northwestern Oregon on the west slope of the Cascades and contains one of the largest intact stands of low elevation old growth in the Pacific Northwest. Walking through the forest, you cannot help but look up as the Douglas firs and the hemlocks tower around you.

The forest lies almost entirely in one watershed and covers about 22,000 acres. It is clearly one of Oregon's last uncut gems. The preserve lies entirely within my congressional district.

There are many reasons to legislate the preserve, including its biological significance, the popular support for protecting it and the minimal economic impact of giving it permanent protection.

Today's witnesses will speak to these reasons. But in addition to these policy arguments, it is my deeply held belief that Opal Creek is a special place that deserves to be set aside for people to enjoy today and forever.

During my campaign for the House, I made the issue of preservation of Opal Creek a top priority. I tried to legislate the preserve back in 1991 as part of a compromise piece of legislation dealing with the Owl Forest in the Northwest.

As you may recall, Mr. Chairman, I picked alternative eight of the gang of four report and actually got it out of the Agriculture Committee. Now, I am in my final months as a Member of Congress and I put Opal Creek on the top of my legislative agenda.

We have worked hard to ensure that this bill is fair, that all stakeholders have been involved in the creation and decision-making process. Of course, with legislation you can't make everybody happy, but I think we have come a long way down that trail. The details of protection and management in this bill have been nego-

tiated, written, rewritten and I am confident that the bill is good public policy.

I have tried to accommodate the Forest Service specifically by addressing their concerns in sections on rights of way, cultural and historic preservation, administrative access, road improvements and environmental remediation and liability pursuit.

I do want to say that the Forest Service will tell you, I hope, that they have had a good working relationship with me and my staff, Jennifer Pitt, as we have tried to draft the possible legislation. And I understand the Forest Service almost always takes the position that it has grave reservations about legislating in a piecemeal fashion.

I do appreciate this perspective. The Forest Service, after all, is concerned about the management of millions and millions of acres, but the fact is, legislation is the only way that we can protect the Opal Creek Forest permanently. In fact, many of our national preserved lands are protected because in the past the Congress has used this very, very same piecemeal approach.

I want to express that the President's plan for forests in the Pacific Northwest will designate the Opal Creek Forest as an old growth, late successional reserve. It is only through legislation that we can ensure permanency. Under the President's plan there will be very little logging at Opal Creek even without legislation.

Let me also say that both the administration and industry representatives have conceded to me that it would be very surprising if Opal Creek were ever harvested given the likelihood that a sale in this area would be litigated. Our self-deceiving attitudes toward places like Opal Creek contributed to the unsustainable harvest levels of the 1980s because although there was a tacit recognition that Opal Creek would never be cut, the inclusion of Opal Creek's trees in the timber base falsely elevated the volume that could be harvested annually on a sustainable basis. I maintain that an act of Congress is absolutely necessary to ensure that permanent protection.

Forest preservation, unfortunately, is tenuous as long as its security is based on the whims of succeeding administrations. Consistent policy objectives in this highly political and emotional arena of forest management are not guaranteed as long as America has four-year terms for the Presidency.

I want to address the section of the bill that calls for cooperative management of the preserve. My objective in requiring a cooperative management plan for Opal Creek is twofold: It will allow stakeholders to be heard in the process of developing a management plan for the area, and it will remove some of the burden of implementation of work plans for the preserve from the Forest Service.

This idea is neither original nor unprecedented. There are numerous examples of memoranda of understanding between the Forest Service and nonprofit organizations that formalize a role for extragovernmental management on national forest lands. There are two well-known examples on both coasts.

The Appalachian Mountain Club runs cabins and huts along the Appalachian Mountain trail which traverses much of the East Coast. The club provides trail work, educational programs, and is

allowed to charge a fee for their overnight facilities. On the West Coast, the Pacific Crest Trail Association has a similar function. In Oregon, the Friends of Bagby Hot Springs, which is also in my district, have an agreement whereby volunteers maintain the hot springs and the Forest Service has managerial oversight and provides materials such as cleaning equipment and supplies.

Although the bottom line in managing the preserve will still rest with the Forest Service, I believe that it is imperative that all interested parties should be at the table as a management plan is written. Opal Creek has been the focus of much contention in Oregon; the community, including the Forest Service has been polarized by the debate. It has been so high profile that a book has been written about it, David Seideman's "Showdown at Opal Creek."

The only way that trust will be rebuilt is if the process of determining management in the area includes inviting all stakeholders to weigh in. Cooperative management is an essential part of the healing that needs to go on.

Let me say that this legislation has been crafted in cooperation with the Forest Service, the environmentalists, and the industry. I have tried to accommodate the suggestions of everyone. I believe that we have reached a good compromise. The administration supports this legislation. This CBO has scored the bill at zero in recognition of the fact that the bill gives permanence to today's forest management plans and the reality that these forests will never be cut. The bill, in fact, will save the government the cost of the litigating any future sales offered in the Opal Creek Forest.

I also want to say that this legislation protects one of the Northwest's most spectacular places where thousands of people every year can access it. I think the most telling testimony on this legislation was offered by Dr. Norm Johnson, one of the original gang of four, if you will, who testified before the Agriculture Committee and cannot be here today. He said this is the most significant stand of old growth trees in the Northwest including wilderness areas and clearly it should be preserved through legislation.

I do also appreciate the fact, that my good friend and fellow eastern Oregonian, Jack Ward Thomas, is here today to talk about the Forest Service position and any concerns they may have with the legislation.

I also understand that the Forest Service and various Interior Department agencies are worried about the FACA problem. This is a very complex issue. I hope that general issue will be resolved shortly. It is not my intention to complicate this issue with this bill. It is my understanding that the White House Office of Environmental Policy has been working on ways to facilitate adaptive management groups like the Applegate Partnership created under option nine. One possibility is to have a partnership. In this case, the Forest Service and interested parties, report to federally chartered advisory committees such as the province teams that will be established in the Pacific Northwest.

I have some documents from the administration that would spell this out. In essence, what we did through the Agriculture Committee was exempt this area from the FACA process, but if report language is necessary to spell out a different partnership arrange-

ment, we are certainly willing to work with the committee on that kind of approach and language.

Again, thank you, Mr. Chairman. I know time is short these days.

Mr. VENTO. Well, thank you, Mike. Obviously, you have been working on this for a long time. It is my own fault that I hadn't looked at the Agriculture substitute until this morning when your staff presented me with a copy of it. In looking at maps this morning of Opal Creek, the Friends of Opal Creek in their publication you distributed to me, indicates they had 35,000 acres that they are working on. You are choosing to take in this final version trying to separate it out in a watershed manner. You pointed out a little over 22,000 acres; is that correct.

Mr. KOPETSKI. That is correct.

Mr. VENTO. So the remaining is the Little North Fork watershed and then the other portion is called the Santiam River.

Mr. KOPETSKI. Santiam.

Mr. VENTO. Santiam. Pardon me. Is Santiam not included in that? Opal Creek included the big private inholding so that portion is left out. But the anticipation is that it would fall under the administrative management plan developed by the administration under the FEMAT program?

Mr. KOPETSKI. That is correct. And what that means in terms of harvesting the area is that there are some stands of trees that are less than 80 years old and they would be subject to some thinning operations to help develop the healthiness of those particular stands.

Mr. VENTO. I hadn't looked over the entire rewrite of the Agriculture Committee. I don't know that they have seen it. One of the difficulties is whenever you get into a new designation and in this you are using the word, "preserve." It could be any type of phrase you use but what we normally do is, of course, try to look at a management scheme that has some history and some track record to it.

The concerns that I have, of course, are is that you are forced to articulate a lot more information and detail. Maybe we will be satisfied during the hearing by the Forest Service and others prior to our final action on this.

As an example, one of the things, Mike, and maybe the chief will be able to respond to this better, too, is that you get into a planning process. Does this mean we are into the same Forest Management Practices Act where we are going to have appeals? Are we going to have those types of safeguards or not? I don't know. These are some of the concerns where you are asking for a plan to be developed.

I think I understand what you want to do in terms of not having new roads built and not having roads used that historically, in fact you had some that were closed in there. Maybe those elements are no longer necessary because you have removed some of those areas from the bill. But that is an example just in terms of the roads and road issue, not to take a position on it, but those are hefty issues in terms of what happens.

And you have timber harvest that goes on in some areas. In other words, it is banned except for these certain reasons that you

have articulated in the initial bill. So if we do something, we need to be interfaced with the other procedures in the Forest Service if it is not already done in the bill that has come to you. Do you think that many of those issues have been resolved from the Agriculture bill? I see some are still outstanding here.

Mr. KOPETSKI. I think we have come a long way. We have met a number of times with the Forest Service and the staffs of the various committees and individual Members and tried not to tie the hands of the Forest Service unduly. The bottom line is it is their decision on the management practices. We are asking for cooperation with the parties involved and our intent is to take the approach that we mentioned with the Bagby Hot Springs and the Pacific Crest Trail folks that work with the Forest Service and BLM on a cooperative basis.

Part of this will result, Mr. Chairman, in the healing that really needs to go on in this specific area. A lot of the animosity, if you will, and emotionalism over the Owl Forest, interestingly, came from people on both sides who live in this area. And when we are talking about this cooperation, we are not just talking about the Forest Service and the environmentalists, but also between the people that are involved in the timber industry in that canyon as well. So I think that this will provide a mechanism for those on both sides of this highly emotional issue to get together and I believe that will help to heal this.

Now, the Forest Service is here today and apparently they have three changes that are——

Mr. VENTO. I would normally feel I was picking on you a little bit, but you have done enough work in forest management in some of these issues that this is really your bread and butter. So I am not really asking you questions that are questions, but I am just explaining, that I have got to resolve those questions in my mind right now.

You have obviously worked this through and I need to see how all this fits together in terms of accomplishing the goals. I agree with you in terms of cooperative agreements or memoranda of understanding and clearly here the Forest Service is in the catbird seat in terms of making those decisions. You put some language in here that encourages them strongly, encourages them without necessarily identifying a select group over and above others to work with.

I think that that will work. I understand what you are trying to do in terms of achieving a consensus type and cooperative and collaborative type of management. They would add qualitatively a positive difference, I assume, to this preserve.

Mr. KOPETSKI. I think one evidence of how we addressed the Forest Service management concerns is that the changes that they are recommending in today's hearing don't deal with management directives in the bill. So they have looked at this and asked what is there after we made further compromises in Agriculture Committee and the answer is that we are satisfied with it in terms of management directives. You may want to spell that out in your questions to the chief.

Mr. VENTO. Most of what I was thinking about in our initial reaction to this was should we really pick up a piece of the Pacific

Northwest FEMAT plan. That is, they say a piece that is very positive in terms of everyone agreeing is that this area should be conserved and preserved.

It is always good to have a little vinegar with the sugar sometimes if you want to legislate. And here it seems like it is an easier piece to do than some of the other aspects of the FEMAT plan. That would be my own concern. Of course, this is very much in flux, but I am persuaded by you and the others in terms of the type of support that you have gained so that we can go forward and do this piece without it necessarily being interpreted as a pattern or getting complicated with other issues, so we will proceed.

Mr. KOPETSKI. I appreciate that.

Mr. VENTO. Let me get you off the seat and get the guy that is, as you said, your neighbor from eastern Oregon, Chief of the Forest Service, Jack Ward Thomas. Obviously, his presence here underlines the importance and sensitivity of this issue. So we are pleased to have him before the Committee.

I daresay, Dr. Thomas, if some of my colleagues had known you were going to be here to talk about the Pacific Northwest, they would have been here. I think the sudden notice of this hearing in the early hour in the morning for some has probably saved you from having to answer a broader range of questions than region 6 and environs. But your statement has been made part of the record and you know I am not going to be too hard on you. Please proceed.

STATEMENT OF JACK WARD THOMAS, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. JACK THOMAS. Well, being in the office at 5:00 this morning to get ready to testify, I suppose there is something good about that.

Thanks for the opportunity to offer our views. The Department of Agriculture agrees with the objectives of House Resolution 3905. Our earlier concerns have been addressed mostly and after reconsideration, the Department of Agriculture would support enactment.

The preserve encompasses about 22,300 acres of national forest, State and private lands, about 256 acres located within the reserve. But they would not be part of the reserve unless we through the Secretary subsequently acquires the lands. The President's plan designates about 87 percent of the Federal land within the proposed Preserve as a late-successional reserve. The reserve encompasses Opal Creek, which is one portion of a late-successional reserve of about 7.430 million acres designated to maintain a late successional old-growth ecosystem.

This bill provides for preservation of about 19,400 acres of this area. Plus, it protects an additional 2,870 acres. We still have some concerns. Section 5–B of the bill requires the Secretary develop a co-op management plan in consultation and would exempt any advisory committee from requirements of the Federal Advisory Committee Act.

The administration generally does not support provisions that establish new advisory committees or seek to exempt groups from requirements of FACA. We recommend that Section 5–B be amended

to provide simply that the Secretary develop a management plan for the Preserve with public participation.

We recognize that protection of the Preserve is important, but would prefer to deal with issues of firewood and open fires and other details through public participation in the development of the Preserve Management Plan. Section 6–D prohibits, subject to valid existing rights, the use of motor vehicles on forest roads 2209, 290 and 330, by anyone other than the agency, mining claimants, or owners of private property within the Preserve.

Limiting public access on these roads raises concerns about appropriate public use. We recommend that Section 6–D be deleted. We prefer to deal with the subject of appropriate access with full participation, public participation, in the management plan.

Public access to the Preserve is contingent on acquisition, at a minimum, of right-of-way over some of the inholdings. All but 60 acres of the inholding are held by Friends of Opal Creek patented in 1991 and donated to the organization by the patentee.

We are concerned about the potential cost of acquiring this land at fair market value and prefer that the bill be amended for the establishment of the Preserve upon the acquisition through donation of adequate rights-of-way over these inholdings.

We would be happy to work with the subcommittee to develop mutually acceptable language to address these concerns. With that, I will stop and answer any questions you might have.

[The statement of Mr. Jack Thomas may be found at end of hearing]

Mr. VENTO. Thanks, chief.

Congressman Kopetski, if you want to join me up here to involve yourself in the discussion with the chief, you are welcome to do so. I have no objection to you asking a few questions. If you come on the Democratic side over here on my left, you will be all right. You have been around long enough that you probably would be recognized as being on the wrong side if you sat there.

Chief, one of the issues, and I would yield to my colleague from Oregon, is that the intention is that all of the inholdings within the area be donated along those lines. I don't know what the time frame would be for that to be accomplished. I have no feeling.

Congressman Kopetski I was wondering what the time frame for most of these donations might be. Will it be a couple of years if we, in fact, pass legislation working through the paperwork and getting the corporate groups and trust.

Mr. KOPETSKI. Mr. Chairman, there is no set time frame.

Mr. VENTO. The reason I am asking that question is because I am wondering if perhaps it is possible to extinguish some of the problems here. I think one of the reasons that the chief has raised the issue of access rights-of-ways and so forth is because it is a complicated factor. Chief, do you want to comment further on that.

Mr. JACK THOMAS. I think, Mr. Chairman if those properties were indeed donated, that the issue clears entirely and does not throw us through an access and right-of-way type of situation until we get to the donation. We have been working with friends of Opal Creek on these matters. And I think we are making good progress, but it would probably just be cleaner if that occurred.

Mr. VENTO. Do you want to comment that they don't want to donate. They want to, in fact, convey it for the price that they paid for it? I yield to the gentleman.

Mr. KOPETSKI. The Friends don't want to sell and the bill does not require acquisition.

Mr. VENTO. They want to keep it.

Mr. KOPETSKI. Right.

Mr. JACK THOMAS. We have, Mr. Chairman, some concerns in that direction. We have some legislation that already exists. If we were to acquire this, it would be at the patent cost. Our attorneys indicate to us that they think that that legislation is very apt to fail upon test and that if we did——

Mr. VENTO. The issue is, of course, you are under law required to pay fair market value. That is one of the problems. That is problem number one. Second, though, is they could donate an easement and still retain certain rights. They are in the drivers seat here and there is nothing forbidding you from accepting that particular easement, would there be?

Mr. JACK THOMAS. There is a special rule for any purchase, say of the Santiam number 1 tract, that has got some taking concerns. Section 7–B of the bill limits the amount the Secretary could pay if we elected to purchase the tract.

The Secretary could only pay an amount equal to or not more than the sum amount paid by the original patentee and the cost of the improvements. The bill doesn't provide that we purchase the tract on a willing seller basis. So we would have the option of utilizing condemnation authority. If we acquire that land by condemnation, we are obligated to pay fair market value under the Fifth Amendment and the fair market value of Santiam number 1 would likely far exceed the amount prescribed in the bill. Since the Secretary would be prohibited from paying more than the amount prescribed, it is probable that we would be in a process of doing a taking.

Mr. VENTO. This is a fine situation you have put me in.

Mr. KOPETSKI. Yes.

Mr. VENTO. Sounds like I have been arguing the other side of this takings business.

Mr. KOPETSKI. There are two issues involved here. One is there is the fact that in this one particular holding, this was a compromise because the bill was being criticized by, if you will, the Forest Service and people in the timber industry that these people might get a grand, unjust enrichment and the reason they were selling at fair market value. The reason they purchased this——

Mr. VENTO. I have heard this argument.

Mr. KOPETSKI. Yes. And it is sort of—and usually you are on the other side, but this time there is this agreement that they would sell it back at what they purchased it at so that there wouldn't be this unjust enrichment, if you will. The second issue is that there is language in the bill that the Forest Service couldn't condemn the land unless the land was being used contrary to the——

Mr. VENTO. For inconsistent purposes with the preserve.

Mr. KOPETSKI. Yes. These people—these are the Friends of Opal Creek. They are not going to build a resort and they are not going to start cutting down trees.

Mr. VENTO. I don't know the language right now, but I would think that if they were to donate a covenant, there would be some certainty. Maybe they could donate a covenant or any other part of the land to the Forest Service and retain whatever use or rights they want now and we could set something like that up and that could be a triggering mechanism for the legislation.

I would like the Forest Service to help achieve that so we would not end up with the dilemma as presented here. I think we have, right now got a problem someone is taking an adverse action and clearly they are not going to make it easy for the Forest Service down the road during implementation of the law. Perhaps donating some sort of a covenant over some of the features of it would satisfy the purposes of setting up the legislation.

We shouldn't set up a situation that is ultimately in contrast to this fair market value payment for the land. We are on a very slippery slope when we begin defining what constitutes fair market value. This is, of course, exactly my argument with Mr. Tauzin.

In other words, instructing the court and once we get on that, as I said, and insist it is a slippery slope, he disagrees with me, but this is a case where we would be doing it which would inure to the benefit of Forest Service as opposed to the individual property owner. I suspect that even though it comes this way in terms of the public good, it still presents the same problems to the courts that it would if it were defining the land value as higher in a sense so that is a problem.

And I see your point now. I was under the impression that there was going to be just a donation, but they want to continue their role as friends of Opal Creek and that is understandable.

Mr. KOPETSKI. Mr. Chairman, there is a plan that is being negotiated already in terms of the donations to the Forest Service. Mr. Atiyeh may address that issue.

Mr. VENTO. A donation of an easement, you mean. In other words, a qualified donation, a covenant.

Mr. KOPETSKI. Right, yes. I don't know if I should address the three proposed changes that I assume are from the Forest Service. One has to do with the management plan on Section 33. Where the term, "management plan," means the management plan for the preserve developed pursuant to Section 5–B. The key there is that the term, "cooperative," has been deleted. I don't have a problem with that.

The second change is the preserve shall be established on publication after notice in the Federal Register by the Secretary of sufficient rights-of-way for certain roads that have been acquired for the U.S. by donation. This one I have some problems with because it holds up the whole notion and protection of the preserve until this publication and the question of what is sufficient rights-of-way, you know.

It is up to interpretation and essentially it would be left to the Forest Service in determining what is sufficient. So with this one change, we are able to give total power to the Forest Service of whether or not there is going to be a preserve and what we are trying to do here is legislate this preserve. So that is sort of inconsistent with the purpose of legislating it.

And the third item is the development of the management plan. The Secretary shall prepare a conference of a management plan for the preserve; the preserve shall have public involvements. That is a nonsignificant amendment to the two National Forest Service Resource Management Plans. I don't have any problem with this. I think it actually could be report language that says this. I don't think we need to put that in the legislation.

Mr. VENTO. Well, I think we could put some reasonable time limits on the development of the management plan in order to carry it out. I think the concern here is to find something that is suitable before you can begin to implement it. I would like to yield to the chief so he could explain the basis on the management plan or the other provisions or the other questions that Congressman Kopetski raised.

Mr. JACK THOMAS. All right. There are two—or three that I heard in the discussion I would like to address. The first one is part of the problem is caused by some confusion, I think, that we could work out about condemnation authority as is mentioned in two different places. They seem to be a little contradictory. I think that could be worked out.

In terms of the access, the Forest Service, as a general course of action in dealing with these sorts of things, would press for full public access to public property. And that is one of our contentions about negotiating access just to have access for Forest Service vehicles and for certain private vehicles. We would press very hard for a full public access on those roads to the preserve.

There was one other point you asked.

Mr. VENTO. The management plan. The issue of the management plan.

Mr. JACK THOMAS. As I am sure everybody in this room is aware that probably the biggest barrier to us moving ahead with nearly anything in the Pacific Northwest is FACA. And we are very hesitant to enter into some piecemeal exemption from FACA or the mandate to have more advisory committees that we have to perform under FACA which is very, very difficult to do satisfactorily. So basically as a general principle, the Department of Agriculture is trying to get out of the myriad of advisory committees and we do have some concerns about the precedent of an exemption from FACA.

Mr. VENTO. You know, I think that it was his section, if you look at your amendments on page 7, maybe I misunderstood this. I haven't read this before the hearing. Obviously, it says Section 5–B you have a development of management plan to achieve the purposes of the act and the Secretary shall prepare a comprehensive management plan for the preserve.

The plan should be prepared with public involvement as a nonsignificant. Your point here is this amendment simply eliminates the advisory committee. I think that Congressman Kopetski implied that the designation wouldn't take effect until the management plan had been concluded; is that correct.

Mr. KOPETSKI. That is correct.

Mr. VENTO. His question wasn't that I think he raised the question that he wanted the designation to occur. But that the management plan obviously would delay such designation; is that correct?

Mr. KOPETSKI. That is correct and also in terms of the establishment of the preserve under Section 4–A would be held in abeyance until sufficient rights-of-way for forest roads were done. Actually, we want to close the roads to vehicles eventually. We don't want to restrict pedestrian access.

Mr. VENTO. I understand the chief is, of course, concerned about the general right-of-way of individuals, that they wouldn't be used exclusively for one group or another Do you want to articulate why you don't want the establishment or why the management plan is important.

Mr. JACK THOMAS. It is in terms of an advisory committee that we are concerned about. It is an administration position and Department of Agriculture position and we do not want a proliferation of advisory committees performing under FACA. In fact, there has been an effort that has been continuing over the last number of years to eliminate as many designated advisory committees as we could.

That is a matter of position. Just to clarify, the management plan completion wouldn't hold anything up. But the rights-of-way could hold things up.

Mr. KOPETSKI. Well, let me ask——

Mr. VENTO. Is it possible to get a time limitation resolved before for that chief? Would that be helpful? I mean you have to resolve it. Why is it so important to resolve it? Because you are asking for limited utilization of those roads for some groups or for some purposes. I would be happy to yield to Congressman Kopetski.

Mr. KOPETSKI. Well, Mr. Chairman, I think we can work this out before the bill becomes law, number one. And there is a meeting scheduled on this very issue, I think it was in the middle of August, but now that Mr. Atiyeh is here in Washington today perhaps they can work this out in the next day or two.

In terms of the advisory commission and the FACA issue, I am curious where we have special places, whether it is Bagby or whether it is the Pacific Crest Trails and the Appalachian Trails, certainly we are not going to get rid of those kinds of advisory committees, chief.

Mr. JACK THOMAS. Again, let's differentiate between the specific issue over FACA and the issue of advisory committees in general, which are really quite separate. There has been a determined effort over the last decade to reduce the number of advisory committees and to very stringently limit the creation of new ones.

FACA merely exacerbates that problem. So basically there are really two issues. One is a general principle or policy and the other is the FACA question involving any new committee.

Mr. KOPETSKI. So are you comfortable, then? It is the advisory committee that you are having problems with. It is not how we treat FACA in this bill that you have a problem with.

Mr. JACK THOMAS. No, both of them. One of them is the creation of an additional advisory committee as a matter of policy. The second is if it is indeed done, we should do it in context of FACA rather than with an exemption form. We should do it as prescribed under the law.

Mr. VENTO. Let me get back to some of the specifics here. There is considerable language in the bill dealing with the rights of

inholders. It is pretty clear from the reading both on roads and on issues, access to lands and mining claims. Now, do they mean claims or do you mean patented land?

Mr. KOPETSKI. These would be patented.

Mr. VENTO. Actually, I think that is helpful. I think maybe it is my question the way I wrote it. Are these provisions compatible with the existing Forest Service policy? In other words, where you have someone with an inholder for whatever purpose I guess the mining patent, these mines, first of all, are not active, I assume?

They are nonactive mines so that is sort of helpful in terms of the fact we are doing a preserve here. So we are talking about the origin of the ownership, I guess, and the fact that they run into the mining laws. But is it compatible when we have a single inholder to provide access to them and not to provide access to others in a preserve? I take it this is one of the concerns that really is a road question, but there are other provisions in the same sense.

I would yield to the chief.

Mr. JACK THOMAS. It is not uncommon for us to deal with inholdings. We have inholdings in wilderness. We have inholdings internal to national forests. Those people who have those holdings have access.

Mr. VENTO. I mean the concern here is that you have got specific language in here whereas the Forest Service's general policy is in terms of the forests and it already deals with the problem; is that accurate to say that?

Mr. JACK THOMAS. Well, basically, the language in this bill is compatible with the language of Section 1323 of ANILCA, the Alaska National Interest Lands Conservation Act. That guarantees inholders access as deemed adequate by the Secretary to give the owner reasonable use and enjoyment of their property.

Mr. VENTO. So it is consistent with the ANILCA that, of course, is not for the lower 48. Otherwise, it applies to the lower 48, as well. So this is just a repeat of that language; is that correct?

Mr. JACK THOMAS. That is correct and ANILCA does apply to the lower 48 and it is consistent.

Mr. VENTO. This is consistent and these do represent a problem. This language is a repeat, then, of something that may not be absolutely essential because in the absence of language here, you would follow what is in the generic law; is that correct?

Mr. JACK THOMAS. That is correct.

Mr. VENTO. The problem is if there is ever any change to the generic law, there may or may not be a change here as problems occur. But that is a question I guess of construction. The ownership of the inholdings I guess is well known, the Friends of Opal Creek. It is the State owns a parcel. And I yield to the gentleman.

Mr. KOPETSKI. Yes, Mr. Chairman. At some point I want to go back to the FACA issue.

Mr. VENTO. I want to go back to that.

Mr. KOPETSKI. Yes.

Mr. VENTO. Let me proceed on the road issue. I have one more question.

The bill closes three roads to the general public that are open today. But not to the inholder, which is the Friends of Opal Creek. Is there a problem with that——

Mr. KOPETSKI. Mr. Chairman, they are not open to the general public today.

Mr. VENTO. Those roads are not open formally, but informally. They are used by the general public.

Mr. KOPETSKI. No.

Mr. VENTO. They are not. I think the concern would be if they were that you would be dealing with trying to differentiate and it might be difficult to do. If the roads had been open to the general public, are there any laws or rules in construction that apply to them in terms of their continued use, Chief Thomas?

Mr. JACK THOMAS. There are rights, existing rights that are very common. For example, rights to access to inholdings that would not be our concern. Those roads are not now open, and they are not open because Friends has a gate across the road. We don't have right-of-way and our primary concern is that when we are looking at that right-of-way, that with an unlimited right-of-way we can control public access one way or the other. And then we contend that the public planning process ought to determine what that road use is. And, of course, Friends would be a part of that process.

Mr. VENTO. Let me just ask another question. Congressman Kopetski would like to go back to talk about the FACA issue. The latest boundary for Opal Creek adopted by the Agriculture Committee is different from the boundary from the late successional forest preserve in the administration's plan. It includes this private inholding and quite a bit of land about six or seven thousand acres to the South. Are there any problems with this new boundary? Have you examined the boundary, chief, or have been advised to the changes as to how it fits in?

Mr. JACK THOMAS. Yes, we have. In terms of the boundary, the new boundary, most of it, is on very clearly definable geographical features. However, there are few sections of it that run on quarter section and half section lines that would have to be surveyed and that is a little expensive, but, of course, it can be done.

Mr. VENTO. But this is, of course, part of your own work in terms of watersheds, in terms of those section lines. Congressman Kopetski mentioned to me that the effort here was to stick within the watershed. I had commented about the fact that it recommended a little North Fork watershed.

The other point I would make out is that apparently the substitute from agriculture didn't have the date on the map, which is important. I think, one of the concerns that arise in the committee here especially among staff is when they don't have a date on the map, so we do have a dated map at the Forest Service now, I presume; I guess without violating the watershed concept, you ought to talk about whether you want these sections in or out. I mean that most of them may violate the watershed, but it may be from a standpoint of expense here, no reason for us to be——

Mr. JACK THOMAS. No. Just as a matter of correction, I believe that at Mr. Kopetski's request, we didn't date the maps. We can date the maps whenever we decide to do that.

Mr. VENTO. Well, when we get——

Mr. JACK THOMAS. My point only was, Congressman, that where the boundaries run on geographic features, that is a fairly simple thing to do. Where they run on half sections and quarter sections,

it will require us to use a ground crew to survey them and that runs about $20,000 a mile.

Mr. VENTO. Well, I think that is something to think about in terms of running them into the sections. I didn't know. I expect that the reason you didn't date the maps is because you thought that somebody might fiddle with them over here.

Mr. KOPETSKI. That is right. But it is my understanding also that on the new boundary lines, that where there is no watershed ridge, that these are existing Forest Service boundaries.

Mr. VENTO. Congressman Hansen has joined us. I wish you good morning, Chief. In any case, it is a pleasure to have you here.

Congressman Kopetski, without objection, I would recognize him so he can continue his testimony. Have we concluded the issue with the map and the boundaries now? Are there any more comments on that?

Congressman Kopetski had a question.

Mr. KOPETSKI. Mr. Chairman, as I had mentioned, we had a number of meetings with the Forest Service. I am going back to the FACA issue, the language that we put in the bill which states in the event the Secretary decides to establish a committee to advise on the development of the proper management plan, such committee shall not be subjected to the requirements of the Federal Advisory Committee Act. This was language that the Forest Service asked us to put in the bill. So—and——

Mr. VENTO. Now they want to change it some more?

Mr. KOPETSKI. Right.

Mr. JACK THOMAS. Let's be perfectly clear. The Department of Agriculture, speaking for the administration, says what I just said. Is that clear enough?

Mr. VENTO. If we are going to put something in, this is workable. I think you have this little matter on the Federal Advisory. I guess I would look at the Advisory Committee as something that probably would be established informally.

This really gets back to some of my overall questions on the preserve and how it is going to be managed, and this is obviously where the conflicts will arise.

Do you want to proceed to——

Mr. KOPETSKI. Just to say, Mr. Chairman, that, you know, we keep going through this line by line in the bill, and with all due deference to the Chief, the Department of Agriculture and the administration support the bill as reported out of the Agriculture Committee. So that, to me, says that they have looked at all of these sections and they are willing to make the exception for FACA and the management scheme that is developed in the bill. So I am sort of——

Mr. VENTO. Okay. Well, I think I heard what the Chief said and so I think you should rest easy on that point.

Mr. KOPETSKI. I get very nervous, sorry.

Mr. VENTO. We are not an advisory committee. I think it gets back to the issue, though, that is raised here through my staff providing me with some questions.

Chief, how would Opal Creek be managed as a late successional forest preserve under the President's current plan?

Mr. JACK THOMAS. If it were managed under the President's current plan, it would allow for salvage in case of catastrophic events, subject to approval of the review committee set up to do that.

It would also allow thinning of stands up to age 80 in order to accelerate, if deemed necessary or acceptable to accelerate, those stands toward old growth condition. This bill is more restrictive than that, and neither of those things are allowed.

Mr. VENTO. So the point really is that the salvage would not be allowed. The thinning up to age 80 would not be allowed. What is the status of the President's plan as it affects Opal Creek?

Mr. JACK THOMAS. It has been put into action and we are still waiting for some court decisions, but that is our plan. It is under way.

Mr. VENTO. Let me ask this: It seemed to me in the early bill, and Mike, you can correct me if I am wrong because, as you say, you have gone over it line by line.

I just gave the substitute from Agriculture a cursory review, but are there existing timber sales in this area at all now? There are none? There are no existing timber sales?

Mr. KOPETSKI. That is correct.

Mr. VENTO. Is this part of the Forest Service base, what we would call a base in terms of some board feet produced, Chief Thomas?

Mr. JACK THOMAS. Yes, sir. There is 1,433 acres within the preserve boundaries that were in the timber base.

Mr. VENTO. This is the current boundary on the 22,000 acres your staff indicates is the current base. So it is a small amount of the total, but in board feet it might be more significant. But it is a very small amount.

Mr. KOPETSKI. Mr. Chairman, I may note that in the original bill that I introduced, there is about 3,400 acres that was in the base and now it is 14——

Mr. VENTO. Were there some sales? There seemed to be some language in the original bill on sales.

What about the research language in this particular bill, Chief? It says nondestructive research. I wasn't aware that this research was always so destructive, but I guess it can be. I am just curious what the nature of the research at Opal Creek is.

Is it private research? Is it Forest Service research? I know Congressman Kopetski has placed in particular definitions and restrictions, and they are in the substitute too.

So if you cannot explain it, I will yield to my colleague to give me further reason for that language.

Mr. KOPETSKI. I think Mr. Atiyeh can address this better than I. This is a very accessible area to people in the valley that—any tourists for that matter, and because there has been some harvesting in this area and there is some regeneration of trees going on, and this is a place where people can come learn. However, the kind of research we don't want is, to see how clear cuts, for example——

Mr. VENTO. Cut down the trees to see how——

Mr. KOPETSKI. So that is what we mean by nondestructive and activities not inconsistent with the purpose of the act.

Mr. VENTO. But there is some specific provisions in here that go into some detail in terms of nondestructive research, and I was just wondering the utility of it.

Maybe Mr. Atiyeh wants it in the bill, I don't know what its function is. If we are going to have something in there, there ought to be a purpose. There ought to be a problem. It ought to be solving something or it ought to be out of there because I don't think we want language that we don't need.

For another provision, the bill prohibits campfires in the preserve. And I note that language still remains in there.

Mr. KOPETSKI. Except in designated areas.

Mr. VENTO. These are not prescribed burns, are they?

Mr. KOPETSKI. No.

Mr. VENTO. Is that language necessary in the bill, Chief?

Mr. JACK THOMAS. In our opinion, no. I think that we have been managing land for a long time with the idea in mind of not burning it up unintentionally. We would prefer that that type of prescriptive language be removed and merely let us decide——

Mr. VENTO. I guess you didn't mention the issue of the research language either. Do you have any comments on that or has your staff advised you on this at all?

Mr. JACK THOMAS. Yes, sir. I have no objection to the language. I essentially don't think that it is necessary.

Mr. VENTO. Do you have a policy with regards to cooperation or other types of research? Generally is there anything in this bill objectionable? Whenever we get into some nomenclature here in terms of talking about a preserve, I don't know what it necessarily means.

One of the concerns I have is this seems to set it aside from the general forest practices and various laws that apply to the Forest Service. We are not doing a national recreation area or a special management area which have some track record as far as I know.

How many preserves do we have in the Forest Service?

Mr. JACK THOMAS. I don't know.

Mr. VENTO. There may be one down in Oklahoma or something that we named specially. I am just wondering, because it seems to me that we ought to at least have something that suggests that if we don't reference something as in the preserve, that then the general forest powers prevail, you know, some sort of catch-all that it would fall into. I would feel more comfortable myself, I guess.

Mr. JACK THOMAS. I have two general statements. One is, I know no reason why research could not continue being done in such an area if it were not precluded.

Mr. VENTO. Well, that would be my observation.

Mr. JACK THOMAS. That would be the first one. And the other one is, the bill would be cleaner in our opinion and our management job easier if those sorts of prescriptive things were not there. Just tell us to do the job.

Mr. VENTO. If there is a reason for these being in the bill, if they are necessary, I understand. The Forest Service always wants all the flexibility and whatever money they can get, so they don't like to be told by us what to do. So basically, whenever we put in a preserve or we do something, I am on your side here.

Mr. KOPETSKI. Right. Mr. Chairman, if you examine the bill that was introduced and the version that came out of the Agriculture Committee, you will see that we have made significant deletions of micromanaging the Forest Service, but there is still some of these items in there, such as making certain that the management plan addresses the issue of campfires. The reason for this and many others is because this bill is a compromise and with all due deference to my good friend, the Chief here, there is an element of trust, and like it or not, the environmental community in many areas does not trust the Forest Service. In crafting this legislation, we were very mindful of that, and there were just some things that the environmental community were willing to do on one hand and they weren't on another and I think we accommodated the Forest Service and their general policy of letting us manage the lands.

Well, the fact is, a lot of the environmental community doesn't appreciate how the Forest Service has managed some of the lands, and that is why you see some of these items still in there. It was part of this compromise, if you will.

Mr. VENTO. Well, if there is a purpose for them being there I understand that having more prescriptive language in legislation makes it clearer. I guess I would prefer to——

Mr. JACK THOMAS. Just without belaboring the point, think of what that says about fire. Not only does it tell you we are going to have fires in fire rings, not only where and under what circumstances, but in fire rings. That seems a bit——

Mr. VENTO. I mean, from the standpoint of wilderness, they don't want to be able to see any fire rings. They don't want those sort of scars. They put down an asbestos blanket, burn on that, and when you get done, there is no trace.

So the point is that the Forest Service may well describe this from a standpoint of a conservation or wilderness point of view, is actually in conflict. I don't know if you are saying you don't want it managed as wilderness with respect to campfires, or you are saying you don't want the Forest Service doing prescriptive burning, or you don't want an arbitrary location of campsites.

If you are talking about campsite location and not a proliferation of them, I don't know that this does it. I don't see anything in here about that. It is a small point, but I think it points out the issue that I am trying to make, and the Chief, I think, is going to say the same thing.

Mr. KOPETSKI. I think Mr. Atiyeh can address some of these issues as well.

Mr. VENTO. Well, if they are, there ought to be a reason. If you are doing nondestructive research and you are putting it in there. Clearly, if we are suggesting that research that takes place ought to be compatible with the purposes of the act, I understand that.

But that is on a general basis, and then I think we would be giving some direction. But if we are saying nondestructive research, this to me doesn't seem to have the clarity that I would need if I were going to manage it. I mean, it is not my job, but it seems to me it has the same sort of result here in the Forest Service, if I am not misspeaking, Chief.

Mr. JACK THOMAS. No. I understand what Congressman Kopetski is saying, but I don't know that we have ever lost any particular trust in where we allow fires and don't allow fires.

There are standard processes and procedures for that and many of these things should be worked out in the plan that we are going to develop for the area, rather than being told to do it in the bill. That is why we have forest management plans, or in this case, this is why we would have a plan for Opal Creek for which all the public, all the public, would be allowed to participate in the process.

Mr. VENTO. Isn't this preserve more akin to a special management area under the rubric of the Forest Service?

Mr. JACK THOMAS. Yes, but it would still have a plan, and that plan would occur fully under the requirements of the National Forest Management Act in terms of public participation and fully in compliance with the National Environmental Policy Act in terms of——

Mr. VENTO. You interpret this to be under the Forest Management Practices Act, whatever the plan is devised here; is that correct?

Mr. JACK THOMAS. I determine that everything we have to do on the lands that are under our jurisdiction are carried out under NEPA, yes.

Mr. VENTO. So that would still apply. That is the intention. You understand that would be the result of this?

Mr. KOPETSKI. Yes.

Mr. VENTO. So there is no ambiguity concerning it. Well, my concern really dealt with using the phrase whether you wanted to use that phrase, and if we don't use it. I understand there is a certain attractiveness in terms of identifying it, in fact, in terms of writing legislation. We had used it in the Pacific Northwest ourselves on occasion. Should this be recognized as the proper nomenclature or should we be talking about a special management area which will be known as the Opal Creek preserve?

I have no objection to having it known as such, but whether or not we want to use that term here, I mean, I note that, for instance, we went through quite a contest with the Forest Service before we did the first scenic area, which was Mono Lake, and that was not. So I am just talking about the nomenclature used here and whether or not the Forest Service wanted to put this tag on and identify it.

Once we get down the road utilizing it, it makes it very difficult. Then we will have other proposals. Do we really want to speak of this as a special management area and try to recognize it?

Mr. JACK THOMAS. I have a personal preference in the sense that it is a management area and the fact that we are going to manage it for particular purposes and under particular constraints and under particular guidelines set out in the plan that we would develop as opposed to a preserve as such. In essence, the statement is very clear about what it should be and what should occur there, but basically it is an area of special management emphasis.

Mr. VENTO. We could, without changing the name of the area, refer to it as the Opal Creek Preserve or whatever they want to call it. We will get into this in a little bit, but at least from the viewpoint of the Forest Service, it should be a management area.

I don't know that we have any generic laws other than the basic provisions that the Chief articulated with regards to planning. We have never written a generic law with regard to special management areas.

Mr. JACK THOMAS. It is not something that, in the context of all the things we have discussed today, it is not one that rises to the surface of the most important, but my personal preference is that it be called a management area and is managed for very specific purposes. I think there is an unfortunate dichotomy in the language where some things are preserves and some things are managed, when in effect all things are managed unless we just walk off and say, nobody is going in there to do anything. So it is management, but it is management aimed at a specific purpose.

Mr. VENTO. No, I understand. The concern we have is that people will pick this up and use it again. Whether it is wilderness, a recreation area, or a management area, and preserve. The Mono Lake scenic area as we referred to it is one that we have used out there for a couple of years.

Mr. JACK THOMAS. Just to make a point, the constraints on this particular area are more stringent than those in the Wilderness Act.

Mr. VENTO. That is interesting. No, I am sure that Congressman Kopetski did not intend that, motorized use here for one thing.

Mr. JACK THOMAS. It is not only motorized use. For example, I told you how this compared with the President's plan. The Wilderness Act allows active entry into the wilderness to deal with such things as insect infestation or fire——

Mr. KOPETSKI. Those kinds of activities are very rarely used, and I think we have addressed the insect issue.

Mr. VENTO. You want to reference the Wilderness Act here?

Mr. KOPETSKI. No. Actually, Mr. Chairman, this area was—when they did Boulder Woods, there is a huge controversy over whether this particular area should be part of Boulder Woods, which they want to talk about as well, and then at the last minute this area was dropped from the woods.

Mr. VENTO. What did you say?

Mr. KOPETSKI. Boulder Woods Wilderness Area.

Mr. VENTO. Okay. That is a wilderness area. Well, I don't want to spend an entire life talking about nomenclature, but I think just like the recreation area, we don't have any generic language for that, and that would be helpful because we try to be consistent. Management areas are much more flexible.

We have all sorts of restrictions, but there are some differences here with the Wilderness Act, and obviously Congressman Kopetski is trying to point those out.

Well, Chief, I have no further questions. We could go on for quite a time, but it is obvious that we have to do some work on this. Hopefully it will be done in an expeditious manner, and we appreciate very much your presence and that of your assistant. Thank you.

STATEMENTS OF GEORGE ATIYEH, FRIENDS OF OPAL CREEK, LYONS, OR, AND ROSS MICKEY, NORTHWEST FORESTRY ASSOCIATION, PORTLAND, OR

Mr. VENTO. We are pleased to welcome the next panel here, of course, are George Atiyeh, Friends of Opal Creek, Lyons, Oregon, and Mr. Ross Mickey, Northwest Forestry Association, Portland, Oregon.

We appreciate your presence and appearance on short notice here this morning, and trying to get through or conclude most of our hearing work; Congressman Kopetski has been very persistent, his advocacy of this, no doubt being motivated by his constituents that are here this morning. Did you have any special words of welcome to your witnesses, Mr. Kopetski?

Mr. KOPETSKI. Well, certainly I do appreciate George coming out here. I think he spent four or five hours in New York to get here, and he was willing to come at last minute notice literally. It is because of his commitment to this special area that he is here this morning.

I think all of America will appreciate his efforts these past few decades, if we are successful with this legislation. I certainly appreciate Mr. Mickey coming from the association as well. I know also this was last minute and schedules had to be changed. These are very busy people and I do appreciate them coming out here.

Mr. VENTO. Well, thanks for being here. Your statements will be made part of the record when we receive them. You can proceed now with your oral statements, Mr. Atiyeh, George.

STATEMENT OF GEORGE ATIYEH

Mr. ATIYEH. Chairman Vento and Congressman Kopetski, thank you for having me here, even though it is a long flight, it is always nice to get back here and at least deal with Opal Creek.

I am going to just kind of summarize my testimony because I noticed when—when you had questions for the Chief, there were a lot of questions in there that I could probably answer for you. The battle for Opal Creek has raged for over 25 years and this battle has gone from confrontation and political action to now hopefully cooperation in an effort to resolve this magnificent forest.

Most of the threat of logging Opal Creek was removed by Option 9. In a lot of ways, maybe the new threats that we are facing in protection of this ecosystem is looking at how recreation is going to impact it, and maybe the people that are coming up there are going to at some point love it to death, and that is one of the reasons we need a set of rules and some regulations in order to work with the Forest Service on how this is managed in the future.

Opal Creek has been the conservation community's flagship during the ancient forest debate, and it is now time for us to remake the Opal Creek flagship into a model for cooperation between old adversaries. The proposal to create the Opal Creek Preserve just recognizes what is right now, and sets up a framework and set of rules for all interested parties. And by that, I mean everybody in that community and that canyon should have a stake in whatever property management plan is developed.

I believe the result would create a world class scientific and educational facility, and the facility will be an example of cooperation rather than confrontation.

The group I represent, Friends of Opal Creek, is a 501(c)(3) nonprofit and our mission is to provide stewardship and management in cooperation with the Forest Service on the Opal Creek ancient forest and to further understanding of old growth ecosystems through education and scientific research.

The organization is also dedicated to bringing individuals with diverse opinions on environmental issues to Opal Creek to meet and stay together at the facility in an effort to foster understanding, establish common ground to resolve future environmental problems.

Opal Creek is probably the most scenic piece of forest in the United States. It is estimated that worldwide over 220 million people have seen Opal Creek either on their television sets or read about it in books, magazines. It has been on the front page of the New York Times travel section, Smithsonian, Boston Globe, U.S. News and World Report, Time Magazine, all the local newspapers.

There has been four major national documentaries done on this particular place. Friends of Opal Creek was very fortunate in December of 1970—or 1992 to receive a gift of this land from Shiny Rock Mining, which is a subsidiary of Pursess Corporation. We believe it is probably the largest gift; it was valued at $2.6 million. Most of that value was in the value of timber and mineral interests there, plus the entire mining camp. We ended up with a whole town that is set up to be able to do research and education.

I am sure you have heard what a magnificent forest it is and we have the figures from the Forest Service on size and how much private lands that are in there. The two major in-holders at this point are Times-Mirror Corporation and Friends of Opal Creek, and Friends of Opal Creek really would like to hold on to most of its lands in order to run its programs, but is more than willing to work with the Forest Service and cooperate in doing easements, whatever it is. Our whole goal here is to cooperate with the agency so we can have a really mutually beneficial preserve when this legislation passes.

We have a lot of support from the scientific community. Dr. Franklin, Dr. Trappi at Oregon State, Sara Green at the Ranger Experiment Station, Dr. Joy Belsky, Natural Resources Council, Dr. Spoonmaker, Ecotrust, Dr. Evan Stone, who is a plant physiologist, all have expressed they think this area should be set aside and used for scientific study.

We also have a lot of programs that are already up and running at Opal Creek. We work with a lot of school groups, Oregon Museum of Science and Industry was just up there and they bring groups of kids up. We have the Oregon Governor's School. We work with the Chemehueyi Indian School, and high school groups and grade school groups come in all summer long.

The other thing we do is we have educator retreats where we bring in teachers from all over the State, they are starting to come from all over the country. It is accredited through Lewis and Clarke and this educators' retreat brings on speakers on both sides of all environmental issues.

We have had some of our fiercest opposition in the timber industry invited up and sat on panels so we could sit and make sure the teachers get a full understanding of all these issues, and we found that it has also been very productive for the opposing sides to sit down and get to know each other, and find out that we spend a lot of time vilifying each other and each side, and when we sit around and have dinner together in a place like Opal Creek, a lot of the issues and common ground comes to light that we didn't really realize was there.

I am going to skip over here. What this bill does is recognize what is happening at the preserve and sets up a format to resolve conflicts between the forest plan that we have now and the new forest plan that we have under Option 9, and the reality of what is going on on the ground.

We just want a set of rules. We want a set of regulations and a common understanding with the agency so we can both be going the same direction and we all have a clear understanding of where we are going.

As far as the nondestructive research, we want to see that happen. That is the basis. We have a watershed. We are losing watershed boundaries on most of the preserve and by nondestructive research, what we were asking for and talking about, we don't want to do what we have at H.J. Andrews where we have research which is sometimes destructive, where they do clear cuts, thinning, certain types of road building and look on the impact on the land.

We are looking at the forest as it is now rather than actually manipulating it, and that is what we are talking about, doing research without actually manipulating the forest, but just looking at how the forest is functioning at this point in time.

We have research projects going on right now. Actually they are now going to go under permit. We are working with the Forest Service to put these projects into permit. One of them is with Dr. Trappi of Oregon State who is doing research and has been doing it for the last few years up there, and he was actually featured in the January issue of Smithsonian, and we are working with Dr. Tricstein and talked to the Forest Service, and we would like to do canopy research up there and actually build research facilities in the canopy, and we are doing some of the preliminary planning which of course will go by the Forest Service and be permitted, and look at the best and safest way to do that.

As far as the educational programs, half the student population of Oregon is within 60 miles of Opal Creek, and it is a place where students can get hands-on experience and education right there, and that is why we have such a large amount of buses, school buses coming up to the facility and hiking, and we have an interpretative tour program where we put laymen with these groups and give them a guided hike that talks about forest and ecosystems, but also about the history of the area, going back to some of the aboriginal history.

I think the best thing about this legislation though is the Federal Government can take advantage, through cooperative agreements, of the ability to expand the science and education programs with minimal investment by the taxpayers. Much of the groundwork has

already been done by the nonprofits. Much of the infrastructure is in place.

By expanding the Federal Government's ability to work with the nonprofits, you create true synergy. By working together with the public, we will also get a lot more—the public will get a lot more for every dollar invested by either group going it alone.

The proposal also fits with the new draft paper recently issued by the Forest Service called Reinventing the Forest Service. This paper encourages exactly the kind of cooperation that this—with programs that this bill provides for. So we encourage the House committee to pass 3905 and protect the Opal Creek Forest once and for all. It really deserves no less, and doing so will really create a win/win for all the parties involved.

Thank you.

Mr. VENTO. Thanks for your oral statement, Mr. Atiyeh.

[The material submitted may be found at end of hearing.]

Mr. VENTO. We are pleased to welcome Ross Mickey. Mr. Mickey, please proceed with your comments.

STATEMENT OF ROSS MICKEY

Mr. MICKEY. Yes. Thank you very much, Chairman Vento and Congressman Kopetski, for allowing me to come and share some of my insights and concerns about the amendment in the nature of a substitute to H.R. 3905 as offered by Congressman Volkmer.

My name is Ross Mickey. I am Western Oregon Manager of the Northwest Forestry Association, a regional trade association which represents the majority of the primary wood manufacturers in Oregon and Washington.

I would like to start my testimony briefly reviewing the current situation in the Pacific Northwest, which should be intimately familiar with Chairman Vento, but just as a review, the present forest plan has been adopted by the Forest Service and will soon be adopted by the Bureau of Land Management.

This plan was specifically developed to protect and restore old growth ecosystems and the species which rely upon them and those who enjoy them for their beauty and aesthetic values. A 7.431 million acre network of old growth reserves were added to the already existing 7.321 million acre wilderness park system, and the 1.477 million acre special interest areas to form the basis for a permanent old growth ecosystem complex.

To augment this and link this system together, a 2.628 million acre—acres associated with riparian ecosystems was added. Most of the 1.522 million acres within the adaptive management areas can only be managed if such management would enhance the development of old growth.

All told, over 20 million acres of the 24 million acres owned by the Federal Government has been set aside for the sole purpose of either protecting or enhancing old growth ecosystems. Over 85 percent of the existing old growth in the Pacific Northwest is protected by the President's plan.

According to the administration, this plan received extensive peer review and was found by the scientific community to meet the highest evaluation standards for the protection of the old growth ecosystem. With such an extensive old growth preservation system

in place, I am at a loss to understand why this bill is even being considered.

The values expressed in the first five findings of the bill are all being provided for within the 20 million acre reserve system which already exists within the President's plan. The majority of the old growth within the area under consideration in this bill is, in fact, already being protected.

Any management concerns interested publics have regarding this area will more than be adequately addressed through the FMA process required by the President's plan before management can happen in this area. A written plan must be done already before anything occurs in late successional reserves, and within these management plans, as it is written today, any management that is considered in this area can only be done if it is found to enhance the old growth characteristics of the area. So even though some people say that salvage can be done and thinning can be done, it can only be done if it is found by—through the process of a management plan to enhance old growth ecosystems.

The last five findings listed in the bill are based on the assumption that the old growth found in Opal Creek is somehow different than that which lies within the 20 million acre reserve which already exists, which encompasses over 6 million acres of old growth.

I submit that if this committee had the time to visit the old growth already protected by the plan, it would not be able to distinguish the Opal Creek old growth from it. Currently it is not, Congressman Vento, in the timber base. The old growth existing in Opal Creek is not in the timber base of the Forest Service.

The second major assumption on which this bill is based is that the Pacific Northwest lacks old growth areas available for scientific and educational research. Nothing could be further from the truth. Within a 50-mile radius of Opal Creek are eight wilderness areas totaling 327,000 acres, 60 percent of which are old growth forests. There are also 63,000 acres dedicated to research natural areas, including the world famous H.J. Andrews Experimental Forest, who do nondestructive research in many of their research projects. It is just a matter of the form in which they do it.

The limiting factor to increasing research and education programs in old growth ecosystems in the Northwest is funding. Protected ecosystems abound, but funding for research is limited. If the committee desires to increase research and educational programs in old growth ecosystems, one way to do this is to support more funding for the research branch of the Forest Service.

One of the most disturbing aspects of the bill, however, is the special relationship it establishes with the Friends of Opal Creek. These are Federal lands owned by and for the American people. Why should one special interest group receive special privileges to utilize this area as no other group can?

The Memorandums of Understanding which have been mentioned earlier in this hearing all have been done, or most of them have been done without any help of legislation by Congress. Memorandums of Understanding are reached every day almost with the Forest Service and interested parties who are already performing a service which the Forest Service deems valuable. This can continue to do so under the current situation.

I believe setting up this type of special relationship in legislation is bad policy, bad precedence, and should be avoided at all cost. Let me end by stating that the forest products community stands ready to work with you, other committees, and the administration in crafting a plan which will protect necessary elements of old growth in a protected system.

If this area is truly special, I think that it should be added to the wilderness system as some have indicated here. I believe that this is the proper process by which to protect an area if it is so special. We are eager to enter into a dialogue and would be—that would result in a scientifically justified system which protects the valuable old growth ecosystems in the Northwest, as well as the economic and cultural heritage of the timber dependent communities of the Northwest.

I believe if this area is an exception to the President's plan, that we can open up this dialogue to include other areas in the forest plan that may not be as special and maybe relieve them from the old growth reserve system and do some minor changes.

With that, I thank you very much.

Mr. VENTO. Why not put it in a park, Mr. Mickey?

Mr. MICKEY. That would be another example. Boulder Woods Wilderness is right next door.

Mr. VENTO. Different department problem there. So your suggestion is that you don't favor the type of special management area being designed for this.

One of the concerns of course is that if something is in a rule or regulation and not in law, it can be changed down the road to a different type of utilization. Wouldn't that be a basis? Unless there isn't some conflict. You said this wasn't in the timber base. The Chief said about 1,000 acres of it is.

Mr. MICKEY. Right now I don't see anything——

Mr. VENTO. You are not quibbling about the 1,000 acres, I guess.

Mr. MICKEY. The majority of it isn't, no. But the things I am looking at is I don't see anything in this bill that can't occur under the current situation.

Mr. VENTO. Except I think the permanency in terms of having something in law so you don't have a moving target.

This raises a question with me, Mr. Atiyeh there is sort of this presumption I think, as I stated before, that because we acquire new information or insights with regards to, for instance, late successional old growth areas, that we have set in place a policy five, six years ago. And all of a sudden, the Dr. Franklins and Johnsons and Thomases come to us and say, well, you know, we did our best at that time. We tried to use the best information we had, but now we have learned something more about the related species. It isn't even the owl.

I always said I thought it was a mistake to pile too big a load on an owl. They can't get lift if they have too big a load. But the problem is that we have acquired new information and then we have to change the forest management practices and the plans and so forth to, in fact, utilize and put that information into effect.

And so one of the concerns I have here, do you think that this act, by putting this in law, we in fact are taking the best information we have in 1994, but it may not be applicable in the year

2000? We are in a real growth area here with regards to understanding more about the biota and flora in this area.

Mr. ATIYEH. Our whole purpose in setting up this bill is to develop more information, and make this place available in order to develop the very information that you are talking about, like Mr. Franklin had developed in the past.

We wrote the specific guidelines, the primary guidelines of the bill broad enough so that as things change, we are really not doing much other than saying, these are a set of priorities. One will be the protection of the ecosystem. Two to do research in this area, and third, to do education, and fourth, to do recreation, but with the protection of the ecosystem being the primary.

We have some specific guidelines as far as—I mean, we don't know enough, for example, about biodynamics, so we gave the Forest Service the ability to put out a fire if they need to put out fire in this particular area. But what we want to do is let nature take its course in this preserve and look at what happens and try to learn from that. And that is why we wrote it as broad as we have.

The management plan, I don't see any reason why this management plan can't be revised over time. I look at it as being part of the NEPA process and that is how it should be, and maybe it should be revised like it is part of the forest planning cycle. I don't see a management plan being developed that is set in stone for all time afterwards.

The idea is not to legislate the plan, but just set the legislative process in order so the plan can actually happen.

Mr. VENTO. Yes. Well, I think that the intent of some of the provisions in the bill may have ramifications in terms of limitation. But it is not your intent to limit the integration of new information and scientific understandings with regards to the life forms and the responsiveness of this area in terms of using that information, putting it into effect.

Now, I know what the goal is, but it is something we have been accused of here as policy-makers. I would like to do some of the scientific research, but I have a different job here. So what I have to do is take that information and try to use it the best I can.

So we really are just taking what comes to us or at least we should be. I understand that not all science is political.

Mr. ATIYEH. I would be pleased to discuss any specific thing in the legislation that you felt would be maybe limiting and for the future create some problem because it is certainly not our intent, and we are trying to make it as open as possible.

Mr. VENTO. I think the shortcomings are clear, certainly with regard to the fire issue.

Mr. ATIYEH. The fires, campfires came about because there is real concern about man-made fires would increase. We had 14,000 people visit the preserve last year, and it looks like we are going to have about up to 18,000 this year.

A lot of these people are camping and all this recreation going on out there, and we are starting to see that impact and we were trying to limit that impact in the forest, and so we didn't have campfires all over. We went to the Forest Service, said, can we limit, is there a way to limit campfires in this particular area? And

they said, we don't—the whole forest, the way it is under the plan is open, and we can't do it, we don't have the regulations.

We talked to the recreation planners and that is why this got put in because of in our discussion with the Forest Service, they thought this would actually help us get a handle on some of these things.

Mr. VENTO. I don't know. I would have to look at it more closely, but I think you might want to give them direction to limit the number of campsites and fires.

Mr. ATIYEH. It says designated campfires and that was put in because there are some designated Forest Service campgrounds within the preserve boundaries, and they wanted to make accommodation for those that already had the concrete blocks with the little grills over the top of them. We didn't want to limit people from being able to use those.

Mr. VENTO. I think it is probably possible to address it in terms of the constructed areas and maybe then suggesting that they attempt to put in place no impact type of fire activity in other areas and that they be limited.

Mr. ATIYEH. Our goal is just to be able to accommodate as many people as possible and have a pristine experience by having low-impact camping.

Mr. VENTO. It is possible to use no-trace type of activities and not have impact, if you can get folks to do it. But even when you go into wilderness, even though they have those rules, you see the fire rings all over.

Mr. ATIYEH. We just need a set of rules in order to do anything with it.

Mr. VENTO. How many visitors a year do you have go through the Opal Creek area now? You are doing it your foundation. Do you have any ideas? You have teachers, you have classes, you have some university research graduate, undergraduate students I guess. Do you have any idea? Can you know.

Mr. ATIYEH. Yes. I left that part out of my testimony.

Mr. VENTO. I was just wondering in terms of numbers, because if we are going to set this apart as a special management area, you talked about impact and I was going to get——

Mr. ATIYEH. Most of our impact is fairly well localized at the——

Mr. VENTO. So we talked about the education school groups and so forth.

Mr. ATIYEH. Year-to-date, we had in the high school groups, we have had 235 adults and 549 students. We have also provided interpretative tours for about 358 people. The 14,000 figure—number of visitors, that is general public that are visiting the preserve, and the way we keep track of that is we have a people counter, and that is really the area on this road that we would like to remain closed, 2209, because it is being used as a major hiking trail, and the whole goal has been to limit the traffic.

Mr. VENTO. Keep the cars out of there?

Mr. ATIYEH. Right. And we self-limit—like on the heavy days, we actually close it to ourselves during the periods where the most people are going to be on that roads so we are not driving.

Mr. VENTO. You used to have a piece of it that you are looking at. Obviously the use of this area would be probably greater for the

overall general forest with people camping and doing other activities. Are there any formal campgrounds that the Forest Service——

Mr. ATIYEH. There is one formal campground at Shady Cove, which is at the west end of the preserve.

Mr. VENTO. How many campsites are there?

Mr. ATIYEH. I am just guessing, probably about 20, 25. Not a large number. There could be more developed campgrounds, which we wouldn't really have a problem. It depends on where it is and what the road access is whether we were going to develop more. I think that should come out with the management plan.

Mr. VENTO. That is popular area to camp in, I presume.

Mr. ATIYEH. I think that—and I am not sure of the Forest Service figures, but my guess is it is probably the second or third most heavily used area on the Detroit Ranger District behind the Detroit Reservoir and probably some parts of the Jefferson Wilderness.

Mr. VENTO. So what arrangements do you have now with scientists? You obviously are seeking permits, you said, that scientists are seeking permits to use the forest and do certain type of research work.

Obviously Dr. Franklin has been foremost in articulating in my mind anyway. I mean, I don't have the whole picture. I am trying to inventory the entire invertebrate and other types of populations that are hardly recognized now or not well recognized as being part of the fauna or flora in the old growth areas.

In other words, we know a lot about some of these sort of spectacular species like the owl or the marbled murrelet or the Douglas firs, but we don't know about some of the less conspicuous elements that are there, and so he is interested in doing a lot of work like this.

I assume some of this research work that you mentioned can—touch on these less conspicuous elements. For instance, they found in Washington, Oregon States, the largest living thallus organism was a fungus that actually was interrelated and connected, so it ended up being the largest living organism that they had identified. They thought they had found a big one in Michigan but then Oregon and Washington took the prize.

You know, I guess as a thallus, the body of this was very, very large. It occupied hundreds of acres, as I recall, but what is the nature of the research contracts or agreements? You have obviously set up a format. Do you give grants?

Mr. ATIYEH. Yes, what we have been working with is when somebody comes to us with a research project, if they can self-fund, that is the best of all worlds, if they have already got some funding, through Oregon State or if they have got themselves a grant. If they don't, we try to help them, work with them cooperatively and see if we can secure grants for their work.

Our primary mission is just to provide infrastructure there where they have—there is cabin facilities, places for them to stay in the forest while they are doing the research, then we expect them to go out there, get the permits from the Forest Service to do the project.

We would like to look at the project and what they are doing. We have—and then try to help them as much as possible. But it is

really going to be the scientists' research projects and we are more in a support role in doing that.

There is one research project that we would like to take on ourselves, and we would like to have the area do a baseline study of how the area is now as far as where it is ecologically and the impact of camping to this State and recreation and then from that baseline, be able to measure as visitor use increases and make sure that there is not real significant impacts to the ecosystem in the future, and give us a handle on that, and we have got grants out to be able to do some baseline research just on the riparian corridors and the hearings that are starting to be impacted right now.

Mr. VENTO. You don't have any other problems there? There is no grazing in this area?

Mr. ATIYEH. No, there is no grazing. There is really—right now it is pretty much pristine. It has had some past impacts from mining and some logging, but the way the basin is now, it is pretty much stable, and we would like to just find out where we are at.

Mr. VENTO. Congressman Kopetski, do you have any questions of your witnesses?

Mr. KOPETSKI. Yes, thank you, Mr. Chairman. I do have a question for Mr. Mickey.

To summarize your testimony, first, its opposition is based on philosophy, if you will. We have got enough lands preserved in this Nation and we don't need to add 22,000 more acres.

Second, that it is really a governance structure. If we are going to do this, why not make it a wilderness or make it a national park? That is a governance question. For some reason you object to a preserve.

And the third, which was really your first, is that this area is governed under the President's forest plan, Option 9, so why even do it? That tells me, that you want to see Option 9 put into implementation.

Mr. MICKEY. Well, I didn't say that, no.

Mr. KOPETSKI. Well, you said that.

Mr. MICKEY. Under the current plan, this is the situation.

Mr. KOPETSKI. So why do it, we don't need to. So that means that you support Option 9?

Mr. MICKEY. I didn't say that, no. I said if for some reason Option 9 changes, maybe the situation will change in terms of needing this, in which case we can look at the whole system and see how this area fits in with the bigger system of old growth protection and ecosystem management.

You know, this whole thing of forest management I think should be done in a holistic manner, looking at all of the parts and how they interrelate. This is what I understand that the FEMAT people did. They left this area out of that system.

You know, they have created a 20 million acre old growth ecosystem plan and for some reason they left this out. Well, if they made a mistake, then let's go back and look at that old growth ecosystem plan in its entirety and see if this needs to be put in and other areas taken out.

I don't believe that this area should be taken out and treated special without going back and relooking at the whole plan, if the plan is in error.

Mr. KOPETSKI. It is not left out, number one. But number two, let's go back. What you are saying therefore is, A, you don't support Option 9, and therefore I assume that you would like to see it changed. I assume to allow for more harvesting of timber; is that correct?

Mr. MICKEY. Yes. In general, yes.

Mr. KOPETSKI. And what you are saying also is that even if that situation can change and this ought to be rereviewed at some future date, which is my point, is that in reality there is no permanent protection for Opal Creek area under the President's plan. Will you agree with that?

Mr. MICKEY. That there is no permanent protection?

Mr. KOPETSKI. Permanent protection.

Mr. MICKEY. I would say there is no permanent protection. My retort to that is do we really want that? As Chairman Vento pointed out, the study and research that is going on in old growth ecosystems, ecosystems as a whole and really as they relate is really at its infancy and is it wise to use the information we have today to make something quote, unquote, "permanent"?

Maybe those situations will change in the future and people will not feel the same way about it in 10 years. If it is going to be protected for the next 10 years, then we can reevaluate the situation at that time.

Mr. KOPETSKI. Do you think we ought to do that with wilderness areas?

Mr. MICKEY. I am not advocating that, no.

Mr. KOPETSKI. Why wouldn't we evaluate the worthiness of a wilderness area every 10 years?

Mr. MICKEY. We should consider it in the entire functioning of the ecosystem. The wilderness areas were done, under great compromise, a lot of debate and everything, and they were set aside.

I believe there is a place for a permanent set aside that is not touched by human hands. I believe in that system. I believe that we have one. Also, though, in reviewing the whole how an ecosystem functions, I do not believe that we have to ignore them.

I believe in terms of looking at how ecosystems function and all that, we should look at the wilderness areas, not to consider whether we should harvest in them or not, but to see what their relationship in terms of the total ecosystem is, what is their contribution to the whole thing, how is the interaction, how do they interrelate to the other lands.

Mr. KOPETSKI. So you do believe in the concept of a wilderness area?

Mr. MICKEY. Absolutely.

Mr. KOPETSKI. And with that the concept of a permanent preservation of land?

Mr. MICKEY. And it is in place.

Mr. KOPETSKI. Thank you.

Mr. VENTO. But it is suffering a lot, I will tell you. Even the wilderness areas are being impacted by air quality, for instance. I think in my own boundary waters, I think of it as being mine, but it is really ours.

Mr. VENTO. And it is getting mercury and other types of problems to the point where I can't eat as many fish as I catch and I

am not that good a fisherman. So we have all sorts of these pristine areas and, of course, that is a factor that needs to be monitored. I think there is a high degree of certainty. I am certain that Mr. Mickey wouldn't advocate timber harvests in Opal Creek, would you?

Mr. MICKEY. I would not advocate doing it today. I would say that you know we should look at it. The President's plan calls for a management plan to be created today to look at that system——

Mr. VENTO. That is where you part, I guess, everyone saying it shouldn't be done today and Mr. Atiyeh and Mr. Kopetski, my colleague, Mr. Congressman Kopetski, is saying it needs to be set aside. This is important enough and distinctive enough there shouldn't be a debate about that. It should be taken off the table. You are saying it shouldn't be taken off the table. It should be managed with the other lands at this moment.

Mr. MICKEY. Or, you know, one of the things I don't understand, if it was so special, you know, why wasn't it designated so in the plan in terms of a special thing? You know there are mechanisms that exist today in the wilderness—not wilderness, within the FEMAT or within the Forest Service document. They have ways in which they can do like Chief Thomas said, a special management area in which they dedicate or manage specified different standards and deadlines.

Mr. VENTO. I think the plan was probably trying to deal with the existing problems of late successional old growth and they didn't want to. You don't solve a problem by expanding it, by putting in more definitions and so forth.

As far as I know, they didn't. They did what we call adaptive management areas, not special management areas which are a different matter. Then they had the late successional old growth areas which were set aside. So in essence it is my understanding this received the highest degree of protection that was accorded in the overall plan; is that correct, Mr. Mickey.

Mr. MICKEY. It is, but there is still opportunity as there was with the Willamette National Forest Plan within the record of decision and this could have been done in the record of decision of the FSEIS and could actually be done as an amendment today as to is that record of decision?

Mr. VENTO. This has the highest degree of protection.

Mr. MICKEY. There could be special language as there was in the Willamette National Forest, which specifies different standards and guidelines for the Opal Creek area than any other place in the Willamette National Forest. It could still happen within the record of decision of the mechanism—my point is I think the——

Mr. VENTO. There are some administrative mechanisms that should be exhausted. Your feeling is that they should be exhausted before we do anything else.

Mr. MICKEY. Absolutely. I believe that the mechanisms exist to do what it says in here without going through legislation. And the only question is this permanency issue which I think is a—is open for debate in terms of scientific community.

Mr. VENTO. Well, I think it is. Obviously, I raised the issue about how to manage it and what we do in terms of whether we provide for an ability to be responsive. And Mr. Atiyeh has testified that

he is fully cognizant of the fact that the management plan may well have to change and he doesn't mean, at least his testimony is that he doesn't mean, to limit the efforts to not be able to integrate new knowledge into the system.

This is a real dilemma for most of us as the policymakers or as people that use the forest when we have new information trying to integrate it into the system because very often that message has been not a pleasant one in terms of those that are dependent upon the raw materials and resource issues, but we are left with arguments and to some extent some scientists. And as I said they are not apolitical. They also include some value judgments, which I am well aware of.

You have how much land? Let me just get off of that for a moment and not editorialize any further on my colleague's comments. How much acreage does the Friends of Opal Creek have and manage today through whatever means that you have acquired it, Mr. Atiyeh?

Mr. ATIYEH. Friends of Opal Creek now owns approximately 155 acres and we also own 133 mining claims that cover about 2,660 acres and then we have a mineral leasehold interest on 80 acres that Times-Mirror owns in fee.

Mr. VENTO. So less than 3,000 acres. You have some interest in something like a little less than 3,000 acres.

Mr. ATIYEH. Less then 3,000. As far as the mining claims, the mining claims are held by the nonprofit primarily because the land has not been withdrawn for mineral entry and there is some major concerns there are minerals there and we were concerned other mining claimants.

Mr. VENTO. What were the nature of the minerals? I am not familiar with that.

Mr. ATIYEH. There are a variety of lead, zinc, copper, and silver.

Mr. VENTO. So they are——

Mr. ATIYEH. They are base metals.

Mr. VENTO [continuing]. Types of metals or at least mining that I am familiar with, some that can cause environmental damage.

Mr. ATIYEH. Yes, and more than that, we were concerned about having a lot of different mining claimants pick up the land and then create in a lot of ways an administrative nightmare for both the Forest Service and ourselves in order to try to protect this area.

Mr. VENTO. From the standpoint of the Forest Service, you have done the legwork on this. You have control of most of the mining patented lands, right.

Mr. ATIYEH. Yes. In the core part of the drainage we have pretty much all of it.

Mr. VENTO. What is the case with claims? Are there any claims outstanding that have not——

Mr. ATIYEH. That we don't own?

Mr. VENTO. Or that you know about.

Mr. ATIYEH. There are some other mining claimants outside of the core area. Most of them are recreation-type miners. There was a mining project on the south end of the preserve called the Bornite Project and that project is now out of the preserve with the change in the boundaries so——

Mr. VENTO. You have some unpatented claims as well.

Mr. ATIYEH. Yes. Like I said, we had 133 unpatented mining claims.

Mr. VENTO. I'm sorry. I missed that.

Mr. ATIYEH. What we would like to do when the area is withdrawn is give them back to you.

Mr. VENTO. Right. Resolve in the favor of the Forest Service to yield those claims. I guess you can do that.

Mr. ATIYEH. Absolutely.

Mr. VENTO. You have this problem with fair market value, you know. The actions of the people against a government, a Federal Government, is a well-known trait representing our Constitution and in our laws. So we protect ourselves from it and that is the concern as you heard the chief talk about this fair market value issue. Donation, I guess, is all right, but if we are going to get into purchase, it raises some special problems.

Mr. ATIYEH. As far as the mining claims, the unpatented mining claims, we don't have a problem with just giving them back to the government. We don't—we aren't asking for anything. We already did that. We gave 100 back to the government in the wilderness area in cooperation with Congressman Kopetski and Senator Hatfield and that is our intent when the rest of the area is withdrawn.

Mr. VENTO. We went through quite a discussion on roads here so I won't belabor that point unless you want to add a comment.

Mr. ATIYEH. Other than the fact that we are very—I have a meeting with the forest supervisor and the district ranger on the 18th. We have been discussing issues as far as right-of-way. It is not our intent to prevent the Forest Service from having right-of-way across our lands.

In fact, we have never denied them or the public access across the land. We do not want to see the road opened up to the vehicular traffic and it is primarily from an ecological perspective and also conflicts with recreation. We just don't think it is an appropriate road. It is very steep.

Mr. VENTO. Again, I think any type of property right, any type of ownership you have is a question of whether or not appropriate covenants could be donated to the Forest Service in order to retain what utilization you need and then yield the management to the Forest Service. I think this would clarify the issue, but I am not in your shoes and I don't know the full breadth of what uses there are in this situation.

Mr. ATIYEH. Congressman, I think we are very close. Passage of this bill will give us a lot more comfort in giving the Forest Service access across some of those lands, because this bill sets out the parameters how the management and priority of management would be in the future. The—we would be less comfortable without the passage of this bill because in a way it is kind of the leverage that we have used in working with the Forest Service in order to hopefully have the kind of management that we as an organization, we envision.

Mr. VENTO. We want to do what we have to do in the legislation in order to build the type of assurances that are necessary. But obviously if we go too far, then we get into dealing with details that do not allow the flexibility from your perspective or the Forest Service to arrive at common sense management decisions.

And so we end up with a sort of skewed result. Do you intend to build new structures or facilities on your lands?

Mr. ATIYEH. There is a possibility we would put some new structures on the area at Jawbone Flats. We have looked at doing additional facilities in order to work on programs. We don't have the funding right now and so I think the camp gets filled up. When we have, for example, 80 kids from the Governor's School, it is just too tight and we would like to have additional sleeping facilities for some of the programs, but primarily right now what we are doing is looking at remodeling the existing structures that we have and doing that.

I don't see any huge expanse to what we have. I think we are—the amount of land that we even have available is limited. There is also another proposal that we have talked to the Forest Service about of possibly building some type of a cabin out there on the Santiam 1 claim and hopefully manning it with a Forest Service employee to act as kind of a wilderness guard or somebody who could deal with the public and talk to the public and we have been talking about doing some cooperative arrangement like that, but that is pretty much the extent of it.

Mr. VENTO. Do you know if there are any guards from some of these former mining claims you talked about. I think that you talked about one particular town. You picked up an old mining town and the archeological or the historic or cultural values that are inherent in that particular community. How old is it?

Mr. ATIYEH. It was built in 1930, between 1930 and 1933. It took three years to build it.

Mr. VENTO. It is sitting there and is it something that gives the attraction for folks looking to knock the windows out with rocks as they walk by, or what is the status?

Mr. ATIYEH. Actually, people have been very respectful and it has been very well-maintained and they realize it is not a ghost town.

Mr. VENTO. This is property you now are in ownership of.

Mr. ATIYEH. Right, this is actually the center of the facility that we use for research and educational programs.

Mr. VENTO. So the buildings are being used, then, and right now they are being maintained in terms of their historic character.

Mr. ATIYEH. Absolutely.

Mr. VENTO. You are doing what we call an adaptive use.

Mr. ATIYEH. Yes. And it has also been declared eligible for the National Historic Register. We have literally thousand and thousands of hikers hike right through the center of the camp there.

Mr. VENTO. How many buildings are there?

Mr. ATIYEH. I should know that off the top of my head. I guess there is probably about 20.

Mr. VENTO. Twenty buildings. So you keep them up and keep the roofs on them.

Mr. ATIYEH. Roofs on and we are redoing foundations and constantly fixing them. They are ongoing.

Mr. VENTO. You are using them. Okay. Are you aware of any environmental problems stemming from these such as hazardous or other types of materials.

Mr. ATIYEH. Prior to getting the property, we were working with the Nature Conservancy and we had the mining company do an en-

vironmental audit of the entire property. They looked at the property and said, yes, there was some environmental problems. One of them was some mine tailings that were left over from the Shiny Rock mining operation. And they made a decision to go ahead and clean this up.

They also had some tanks that had leaked over time and had some diesel leakage into the soil. They took the mine tailings, mixed it with some ash and cement and made blocks out of it and shipped all of that out and removed all the mine tailings.

Mr. VENTO. To someplace, I guess.

Mr. ATIYEH. They cleaned the entire area. They dug up all the diesel. It is going through bioremediation right now and they spent about a million-and-a-half dollars doing the cleanup and it should be completed. It is under the Volunteer Cleanup Program of the Department of Environmental Quality in Oregon and we believe it should all be done this fall.

The only other outstanding environmental issue on the property is a place call the amalgamated mine site. That was owned by one of the predecessors in title to Shiny Rock mining. They never actually operated it and the Forest Service is now doing a study and they have an appropriation this year to look at what they are going to do. That is not on our property.

In fact, we did not take that piece of property from Shiny Rock, but it is an outstanding environmental issue in the area, but I think it is to be fairly easily cleaned up once they figure out who is going to be responsible under CERCLA.

Mr. VENTO. I notice there is release language in the bill on liability that limits the authority of the Secretary for responsibility of a party to address the questions of liability related to such cleanups. So, obviously, they are very careful about that.

Mr. Kopetski, do you have any further questions of your witnesses.

Mr. KOPETSKI. Again, I want to thank you, Mr. Chairman and our witnesses for taking the time to come here.

Mr. VENTO. Thank you very much for your effort. I regret what happened, but I am sure they won't charge you anything for your visit to New York; at least LaGuardia is still there. Sorry you had that experience, Mr. Mickey. Thanks for your comments and input and with no further questions, the meeting stands adjourned.

[Whereupon, at 11:18 a.m., the subcommittee was adjourned; and the following was submitted for the record:]

I

103D CONGRESS
2D SESSION

H. R. 3905

To provide for the establishment and management of the Opal Creek Forest Preserve in the State of Oregon.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1994

Mr. KOPETSKI introduced the following bill; which was referred jointly to the Committees on Natural Resources and Agriculture

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A BILL

To provide for the establishment and management of the Opal Creek Forest Preserve in the State of Oregon.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Opal Creek Forest Preserve Act of 1994".

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Definitions.
Sec. 4. Opal Creek Forest Preserve.
Sec. 5. Administration of the Preserve.
Sec. 6. Prohibitions regarding the management of the Preserve.
Sec. 7. Access to and acquisition of non-Federal land.
Sec. 8. Bornite Project Area.

Sec. 9. Authority of the Secretary and responsible parties to conduct environmental response actions or pursue liability.
Sec. 10. Grandfather clause.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Old-growth forests are unique ecosystems
4 that serve as critical habitat for hundreds of verte-
5 brate and invertebrate animals, plants, and fungi.

6 (2) Old-growth forests provide clean and plenti-
7 ful water and support streams and rivers containing
8 runs of anadromous and resident cold water fish,
9 which are wholly dependent on high quantity and
10 quality water for migration, spawning, rearing, and
11 cover.

12 (3) The high quantity and quality of water in
13 streams and rivers in old-growth forests can only be
14 maintained by protecting the watersheds of these
15 streams and rivers.

16 (4) Old-growth forests provide unique and out-
17 standing opportunities for educational study, sci-
18 entific research, and recreation.

19 (5) The establishment of a watershed and forest
20 preserve to protect areas of old-growth forests and
21 surface waters can contribute significantly to the
22 quality of life for the residents of the State of Or-
23 egon through education, recreation, and a protected
24 water supply.

(6) The area known as the Opal Creek Forest, located on the upper Little North Fork of the Santiam River in the State of Oregon, contains one of the largest remaining intact old-growth forest ecosystems in the Western Oregon Cascades. Although the landscape mosaic in the Opal Creek Forest may reflect some past logging, young stands of trees in the area mainly owe their existence to natural disturbances, chiefly wildfire.

(7) The Opal Creek Forest contains outstanding geological and botanical features and contains attributes of historic and prehistoric importance.

(8) The recreational use of the Opal Creek Forest, typically in the form of hiking, sightseeing, and the general enjoyment of the outdoor environment, is significant and likely to increase.

(9) It is desirable to limit the human-related disturbances and development of the Opal Creek Forest in order to protect fully the special features of the forest and maintain the full potential of its watershed for scientific, educational, and nondestructive research purposes.

(10) Preservation of the Opal Creek Forest provides outstanding opportunities for scientists to conduct nondestructive research regarding old-growth

1 forests and for educators to provide scientifically
2 credible information to the public.
3 (b) PURPOSES.—The purposes of this Act are—
4 (1) to protect and preserve the forests and wa-
5 tersheds contained in the Opal Creek Forest Pre-
6 serve;
7 (2) consistent with paragraph (1), to promote
8 and conduct—
9 (A) nondestructive research in the Preserve
10 regarding old-growth forests; and
11 (B) educational programs in the Preserve
12 regarding old-growth forests and cultural and
13 historic resources in the Preserve; and
14 (3) consistent with paragraphs (1) and (2), to
15 permit and regulate recreation in the Preserve.
16 **SEC. 3. DEFINITIONS.**
17 For purposes of this Act:
18 (1) PRESERVE.—The term "Preserve" means
19 the Opal Creek Forest Preserve established in sec-
20 tion 4(a).
21 (2) NONDESTRUCTIVE RESEARCH.—The term
22 "nondestructive research" means research conducted
23 in the Preserve that does not involve the harvesting
24 of timber or otherwise damage the ecosystem.

1 (3) COOPERATIVE MANAGEMENT PLAN.—The
2 term "cooperative management plan" means the
3 management plan for the Preserve developed pursu-
4 ant to section 5(b).
5 (4) BORNITE PROJECT AREA.—The term
6 "Bornite Project Area" means the area known as
7 the Bornite Project Area, which is excluded from the
8 Preserve as depicted on the map described in section
9 4(b).
10 (5) SECRETARY.—The term "Secretary" means
11 the Secretary of Agriculture.
12 **SEC. 4. OPAL CREEK FOREST PRESERVE.**
13 (a) ESTABLISHMENT OF PRESERVE.—There is here-
14 by established the Opal Creek Forest Preserve in order
15 to protect and preserve the forests and watersheds in the
16 Preserve and to promote the research, educational, and
17 recreational purposes of this Act.
18 (b) DESCRIPTION OF PRESERVE.—The Preserve shall
19 consist of those Federal lands located in the Willamette
20 and Mt. Hood National Forests in the State of Oregon
21 that are generally depicted on the map dated October 10,
22 1993, and entitled the "Opal Creek Preserve Area". The
23 Preserve shall also include such lands as may be added
24 under section 7 or 8 of this Act. The map referred to in
25 this subsection shall be kept on file and made available

1 for public inspection in the Office of the Chief of the For-
2 est Service, Department of Agriculture.

3 **SEC. 5. ADMINISTRATION OF THE PRESERVE.**

4 (a) IN GENERAL.—The Secretary shall administer
5 the Preserve in accordance with this Act and with the
6 laws, rules, and regulations applicable to National Forest
7 System lands in a manner that will further the purposes
8 of this Act.

9 (b) DEVELOPMENT OF COOPERATIVE MANAGEMENT
10 PLAN.—The Secretary, acting through the Forest Service,
11 shall develop a cooperative management plan for the Pre-
12 serve that is consistent with the requirements specified in
13 this Act and other laws applicable to the Preserve. The
14 cooperative management plan shall be prepared in con-
15 sultation with, and with significant input from, interested
16 individuals and organizations. The Secretary is strongly
17 encouraged to enter into memoranda of understanding
18 with interested parties to accomplish the purposes of this
19 Act.

20 (c) PROTECTION OF CULTURAL AND HISTORIC RE-
21 SOURCES.—Not later than one year after the date of the
22 enactment of this Act, the Secretary shall review and re-
23 vise the inventory of the cultural and historic resources
24 in the area covered by the Preserve, which was originally
25 developed pursuant to the Oregon Wilderness Act of 1984

1 (Public Law 98–328; 16 U.S.C. 1131 note). The Secretary
2 shall submit a report to Congress describing the results
3 of the review of such inventory.

4 (d) WITHDRAWAL.—Subject to valid existing rights,
5 Federal lands in the Preserve are hereby withdrawn from
6 disposition under the public land laws, from location,
7 entry, and patent under the mining laws of the United
8 States, from the operation of the mineral leasing laws of
9 the United States, and from operation of the Geothermal
10 Steam Act of 1970 (30 U.S.C. 1001 et seq.). The with-
11 drawal provided by this subsection shall also apply to any
12 Federal lands added to the Preserve after the date of the
13 enactment of this Act, including lands in the Bornite
14 Project Area added to the Preserve pursuant to section
15 8, except that the withdrawal shall apply to such lands
16 only upon addition to the Preserve.

17 (e) PRIVATE INHOLDINGS.—The Secretary shall co-
18 operate with, and provide technical assistance to, private
19 landowners, organizations, and other entities holding pri-
20 vate lands within the boundaries of the Preserve to pro-
21 mote the use and management of such lands in a manner
22 consistent with the purposes of this Act.

1 **SEC. 6. PROHIBITIONS REGARDING THE MANAGEMENT OF**
2 **THE PRESERVE.**

3 (a) PROHIBITION ON LOGGING OR OTHER TIMBER
4 HARVESTING.—

5 (1) PROHIBITION.—Except as provided in para-
6 graph (2), the cutting of trees in the Preserve is
7 prohibited.

8 (2) EXCEPTIONS.—The prohibition contained in
9 paragraph (1) shall not apply to the extent that the
10 Secretary determines that the cutting of specific
11 trees in the Preserve is necessary—

12 (A) for public safety, such as to control the
13 spread of a forest fire in actual existence in the
14 Preserve or on lands adjacent to the Preserve;

15 (B) for administrative use related to activi-
16 ties permitted in the Preserve; or

17 (C) for collection of dead and downed wood
18 to be used for firewood in the Preserve.

19 (3) LIMITATION ON EXCEPTION.—The cutting
20 of trees authorized under paragraph (2) may not in-
21 clude salvage sales or harvests of commercial quan-
22 tities of timber in the Preserve.

23 (b) PROHIBITION ON OPEN FIRES.—The Secretary
24 shall prohibit open fires in the Preserve except in des-
25 ignated fire rings.

(c) PROHIBITION ON OFF ROAD MOTORIZED TRAVEL.—

(1) PROHIBITION.—Except as provided in paragraph (2) and subject to valid existing rights, the use of motor vehicles off or outside of the established roadbed of roads in the Preserve is prohibited.

(2) EXCEPTION.—The prohibition contained in paragraph (1) shall not apply to the extent that the Secretary determines that the use of a motor vehicle off or outside of the established roadbed of a road in the Preserve is necessary to respond to an emergency.

(d) PROHIBITION ON USE OF CERTAIN ROADS.—

(1) PROHIBITION.—Except as provided in paragraph (2) and subject to valid existing rights, the use of motor vehicles is prohibited on the following roads located in the Preserve:

(A) Forest road 2209 from the gate in existence on the date of the enactment of this Act eastward to the intersection of the road with the wilderness boundary.

(B) Forest roads 290 and 330, which are spur roads to the road described in subparagraph (A).

1 (2) EXCEPTIONS.—The prohibition contained in
2 paragraph (1) shall not apply to the extent that the
3 Secretary determines that the use of the roads de-
4 scribed in such paragraph is necessary for admini-
5 trative purposes or to respond to an emergency.
6 (3) RULE OF CONSTRUCTION.—Nothing in this
7 subsection shall be construed to prohibit inholders
8 and the possessors of valid claims from using the
9 roads described in paragraph (1) for ingress and
10 egress to their inholdings or in connection with the
11 exercise of their valid claims, subject to such reason-
12 able terms and conditions, consistent with the pur-
13 poses of this Act, as the Secretary may prescribe.
14 Nothing in this subsection shall be construed to pro-
15 hibit motor vehicle traffic on other roads established
16 in the Preserve.
17 (e) PROHIBITION ON ROAD CONSTRUCTION.—
18 (1) PROHIBITION.—Except as provided in para-
19 graph (2) and section 8(d), and subject to valid ex-
20 isting rights, the construction of new roads is pro-
21 hibited in the Preserve.
22 (2) EXCEPTIONS.—The prohibition contained in
23 paragraph (1) shall not apply to the extent that the
24 Secretary determines that the construction of new
25 roads in the Preserve is necessary to accomplish the

1 purposes of this Act or to provide access to
2 inholdings. The Secretary may maintain or improve
3 roads in the Preserve to the extent the Secretary de-
4 termines that such maintenance or improvements
5 are necessary to accomplish the purposes of this Act,
6 to provide for the protection of the natural resources
7 of the Preserve, or to provide for public safety.
8 (3) LIMITATION ON EXCEPTION.—The con-
9 struction or improvement of roads in the Preserve
10 pursuant to paragraph (2) may not include paving.

11 **SEC. 7. ACCESS TO AND ACQUISITION OF NON-FEDERAL**
12 **LAND.**

13 (a) INVENTORY AND ACQUISITION OF NON-FEDERAL
14 LANDS.—The Secretary shall conduct an inventory of all
15 non-Federal lands and interests in lands within the bound-
16 aries of the Preserve. The Secretary may acquire such
17 inventoried lands (or interests in such lands) for inclusion
18 in the Preserve by purchase at not more than fair market
19 value, by donation, or by exchange. The Secretary may
20 not acquire, for inclusion in the Preserve, any lands or
21 interests in lands within the boundaries of the Preserve
22 without the consent of the owner, unless the Secretary de-
23 termines that the land is being developed or managed (or
24 is proposed to be developed or managed) in a manner in-
25 consistent with the purposes of this Act.

(b) SPECIAL RULE FOR SANTIAM NO. 1 LODE MINING CLAIM.—Notwithstanding subsection (a), the parcel of real property located within the boundaries of the Preserve that is known as the Santiam No. 1 lode mining claim and identified in section 8140 of the Department of Defense Appropriations Act, 1992 (Public Law 102–172; 105 Stat. 1213), may be acquired by the Secretary only—

(1) by purchase for an amount equal to not more than the sum of—

(A) the amount that the original patentee of the parcel paid for the parcel; and

(B) the cost of any improvements made to the parcel by the patentee; or

(2) by donation.

(c) RIGHTS-OF-WAY.—Nothing in this section shall be construed to affect the authority of the Secretary to acquire road and trail rights-of-way on lands in the Preserve under existing authorities.

(d) ACCESS AND UTILITIES TO INHOLDINGS.—

(1) IN GENERAL.—In the case of private inholdings located within the boundaries of the Preserve, the Secretary shall authorize the use of Federal land in the Preserve by the holder of the

1 inholding to assure adequate access to the inholding
2 under applicable law.
3 (2) JAWBONE FLATS.—With respect to the
4 inholding known as the Jawbone Flats area, the Sec-
5 retary shall authorize the use of Federal land in the
6 Preserve by the organization known as the Friends
7 of Opal Creek to provide for access and utilities for
8 a facility in the inholding if the Secretary determines
9 that the facility (and use of the facility) is consistent
10 with the purposes of this Act.
11 (3) TERMS AND CONDITIONS.—The use of Fed-
12 eral land in the Preserve under this subsection shall
13 be subject to such reasonable terms and conditions,
14 consistent with the purposes of this Act, as the Sec-
15 retary may prescribe.
16 **SEC. 8. BORNITE PROJECT AREA.**
17 (a) ADDITION OF BORNITE PROJECT AREA.—Lands
18 that are located within the Bornite Project Area shall be
19 added to the Preserve upon the occurrence of either of
20 the following events:
21 (1) The determination by the Director of the
22 Bureau of Land Management that the mining claims
23 on the lands are no longer valid and the conclusion
24 of all appeals, if any, resulting from the determina-
25 tion.

1 (2) The determination by the Director of the
2 Bureau of Land Management that all exploration,
3 mining, and reclamation activities, including the re-
4 lease of all reclamation bonds, on the mining claims
5 on the lands are completed.

6 (b) PROHIBITION ON PATENTS.—After the date of
7 the enactment of this Act, and subject to valid existing
8 rights, no patent shall be issued for any mining claim lo-
9 cated under the general mining laws within the Bornite
10 Project Area.

11 (c) SPECIAL USE PERMITS.—Nothing in this Act
12 shall be construed to interfere with the ability of the Sec-
13 retary to issue a special use permit in connection with ex-
14 ploration, mining, and mining-related activities in the
15 Bornite Project Area.

16 (d) ROADS, STRUCTURES, AND UTILITIES.—Roads,
17 structures, and utilities (including power lines and water
18 lines) shall be allowed inside the Preserve to serve activi-
19 ties conducted on land within the Bornite Project Area.

20 (e) EFFECT ON EXISTING ACTIVITIES.—Nothing in
21 this Act shall be construed to interfere with any explo-
22 ration, mining, or mining-related activity in the Bornite
23 Project Area conducted in accordance with applicable
24 laws.

1 **SEC. 9. AUTHORITY OF THE SECRETARY AND RESPONSIBLE**
2 **PARTIES TO CONDUCT ENVIRONMENTAL RE-**
3 **SPONSE ACTIONS OR PURSUE LIABILITY.**

4 (a) REMEDIATION ACTIVITIES.—Nothing in this Act
5 shall be construed to limit the authority of the Secretary
6 or a responsible party to conduct environmental remedi-
7 ation activities in the Preserve or the Bornite Project Area
8 in connection with the release, threatened release, or clean
9 up of any hazardous substance or pollutant or contami-
10 nant, including response actions conducted pursuant to
11 the Comprehensive Environmental Response, Compensa-
12 tion, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

13 (b) LIABILITY.—Nothing in this Act shall be con-
14 strued to limit the authority of the Secretary or a respon-
15 sible party to address questions of liability related to the
16 release, threatened release, or clean up of any hazardous
17 substance or pollutant or contaminant in the Preserve or
18 the Bornite Project Area.

19 **SEC. 10. GRANDFATHER CLAUSE.**

20 Nothing in this Act shall be construed to affect the
21 operation of any timber sale contract entered into, or
22 interfere with any activity for which a special use permit
23 has been issued (and not revoked), before the date of the
24 enactment of this Act, subject to the terms of the contract
25 or permit.

○

OPENING STATEMENT
of
THE HONORABLE JAY DICKEY
Fourth District - Arkansas
Regarding
National Park, Forests and Public Lands Subcommittee
Hearing on
H.R. 3905, Opal Creek Forest Preserve

August 2, 1994

Mr. Chairman, thanks for holding this hearing today. I am familiar with this legislation because it was reported by the House Committee on Agriculture on July 13, 1994.

Even with the amendments adopted in the Agriculture Committee to reduce the size of the proposed forest preserve on the Western side of the Oregon Cascades, I still have concerns about the prohibitions on logging of salvage timber such as infested, dead or dying trees. It seems to me the ability of the Forest Service to go in and cut at least those trees serves only to promote a healthy and more vigorous forest, which this legislation proposes to want to protect.

To the extent any proposed amendments may reduce the size of the proposal and not affect private property inholdings, that is a positive move. My hope is more consideration can be given to allowing at least salvage sales within the proposed forest preserve.

I look forward to reviewing the testimony.

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STATEMENT OF
JACK WARD THOMAS, CHIEF
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Before the
Subcommittee on National Parks, Forests and Public Lands
Committee on Natural Resources
United States House of Representatives

Concerning H.R. 3905, the
"Opal Creek Forest Preserve Act of 1994"

AUGUST 2, 1994

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to offer our views on H.R. 3905, a bill "To provide for the establishment and management of the Opal Creek Forest Preserve in the State of Oregon."

The Department of Agriculture agrees with the objectives of H.R. 3905. The amendments ordered reported out by the Committee on Agriculture on July 12, 1994, have addressed our earlier concerns and after reconsideration we would support enactment of H.R. 3905.

H.R. 3905 would legislate many of the goals and objectives that were established for the Opal Creek area in the President's Forest Plan for the Pacific Northwest.

H.R. 3905 would establish the "Opal Creek Forest Preserve" on the Willamette and Mt. Hood National Forests in Oregon for the

purposes of protecting and preserving the forests and watersheds, promoting non-destructive research and educational programs, and providing for recreation within the Preserve. The bill would require the Secretary of Agriculture to: (1) develop a cooperative management plan, (2) inventory cultural and historic resources, (3) inventory all non-Federal lands and interests in lands which would serve as a basis for the acquisition of these lands and interests in lands, and (4) authorize the use by Friends of Opal Creek of Federal land for access and utilities for a facility in the area known as Jawbone Flats, if the Secretary determines that the facility is consistent with the purposes of the Act.

The bill would also: (1) prohibit the cutting of trees within the Preserve except to provide for public safety, such as the control of a forest fire in actual existence, for administrative use related to activities permitted in the Preserve, or for collection of dead and downed wood for firewood, (2) withdraw the lands, subject to valid existing rights, from disposition under the public land laws, from entry location, and patent under the general mining laws and from operation of the mineral leasing laws and the Geothermal Steam Act, (3) prohibit the use by motor vehicles of a primary access road by the general public, (4) prohibit new road construction, with some exceptions, and (5) and authorize the Secretary to provide technical assistance to landowners, organizations, and other entities holding private lands within the boundaries of the Preserve.

The Preserve would encompass approximately 22,300 acres of National Forest. State and private land totaling about 256 acres would be located within the Preserve boundaries, but would not be part of the Preserve unless the Secretary subsequently acquired the lands.

The Opal Creek drainage, which is the heart of the proposed Preserve, has excellent natural resource attributes and protection of this area has long been an important regional issue. There are excellent examples of low elevation old-growth forest within the Preserve and the area provides habitat for the threatened northern spotted owl. The area includes a resident fishery and provides essential water quality for downstream anadromous salmon and steelhead fisheries. A wide array of outdoor recreation opportunities exist within the proposed Preserve.

The President's Plan designates approximately 87 percent of the Federal land within the proposed Preserve as a Late-Successional Reserve. Late-Successional Reserves are managed to protect and enhance conditions of late-successional and old-growth forest ecosystems and thereby serve as habitat for late-successional and old-growth related species including the northern spotted owl. The reserve encompassing the Opal Creek area is one portion of a late-successional reserve system which contains 7,430,800 acres and is designed to maintain a functional, interacting, late-successional and old-growth

forest ecosystems. H.R. 3905 is designed to provide for preservation of about 19,400 acres of this area plus protect an additional 2,870 acres.

Section 5(b) of the bill would require that the Secretary develop a cooperative management plan for the Preserve in consultation with, and with significant input from, interested individuals and organizations and would exempt any committee established for the purpose of providing advise on the development of the plan from the requirements of the Federal Advisory Committee Act (FACA). The bill clearly contemplates that the Secretary would utilize the advice and recommendations of the interested parties in developing a consensus plan for the Preserve. To the extent that these parties would include non-Federal members and would provide advice on a regular basis, they would likely be considered to be advisory committees under FACA.

The Administration generally does not support provisions that establish new advisory committees or seek to exempt groups from the requirements of FACA. We recommend that section 5(b) be amended to provide simply that the Secretary develop a management plan for the Preserve "with public participation." Accordingly, the Secretary would receive input from interested parties through traditional public involvement mechanisms which rely on notice and provide for total public access.

Sections 6(a) and (b) would restrict the use of fires and firewood within the preserve. We recognize the protection of the Preserve is important but we would prefer to deal with the issues of firewood and open fires through public participation in the development of the Preserve's management plan.

Section 6(d) would prohibit, subject to valid existing rights, the use of motor vehicles on forest roads 2209, 290, and 330 by anyone other than the agency, mining claimants, and owners of private property within the Preserve. These roads would provide one of the primary means of access to the Preserve. They cross several tracts of private property. Limiting public access to the Preserve on these roads raises concerns about appropriate public use. We recommend that section 6(d) be deleted. We would prefer to deal with the subject of appropriate access with full public participation in the management plan.

Further, the Federal government does not have rights-of-way over these properties. Although the bill would provide for the use of motor vehicles for administrative or emergency purposes and other limited access, motor vehicle and pedestrian use of the roads by the general public effectively would be prohibited. Public access to the Preserve is contingent on acquisition of, at a minimum, a right-of-way over these inholdings. The Friends of Opal Creek recognize the need for public rights-of-way across their lands and have indicated a willingness toward granting a limited right-of-way.

Discussions between the Forest Service and Friends of Opal Creek are continuing on the subject of access and other matters relating to Opal Creek. We would like to work with the Subcommittee to clarify the acquisition authority in section 7. All of the inholdings owned by Friends of Opal Creek were patented in 1991 and then donated to the organization by the patentee. We are concerned with the potential cost of acquiring the land at fair market value and would prefer that the bill be amended to provide for the establishment of the Preserve upon the acquisition through donation of the adequate rights-of-way over these inholdings.

In summary, Mr. Chairman, the forest lands in question contain some of the premium old-growth areas of the Pacific Northwest, as well as other resource attributes, and they deserve protection. The President's plan for the Pacific Northwest provides administrative protection for Opal Creek and we would support legislated protection for the area. We would be happy to work with the Subcommittee to develop mutually acceptable language to address those concerns.

This concludes my prepared statement. I would be pleased to answer the Subcommittee's questions.

Supplemental Statement
Recommended
Amendments to
H.R. 3905 as amended on July 12, 1994

Section 3(3) MANAGEMENT PLAN--The term "management plan" means the management plan for the Preserve developed pursuant to section 5(b).

Section 4(a) ESTABLISHMENT OF PRESERVE.--The Preserve shall be established upon publication of a notice in the Federal Register by the Secretary that sufficent rights-of-way for forest roads 2209, 290, and 330 have been acquired by the United States by donation.

Section 5(b) DEVELOPMENT OF MANAGEMENT PLAN.--To achieve the purposes of this Act, the Secretary shall prepare a comprehensive management plan for the Preserve. The plan shall be prepared with public involvement as a nonsignificant amendment to the Willamette and Mt. Hood Forest Land and Resource Management Plans.

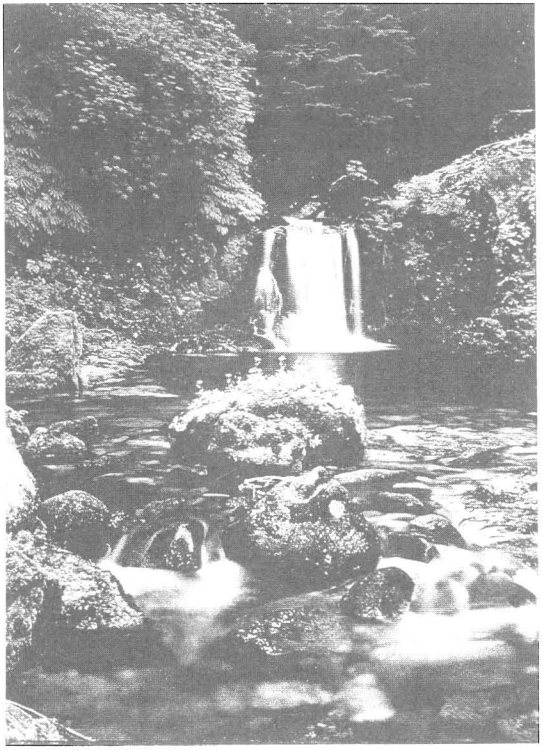
Supplemental Statement
Comparison of
President's Forest Plan Designation
To H.R. 3905 as amended on July 12, 1994

	Acres
Total acres within the Proposed Preserve Boundary	22,542
Private/State Ownership	256
Federal Ownership	22,286
Late-Successional Reserve (LSR)	19,413
Administratively Withdrawn Areas	1,440
Matrix	1,433

NOTE: These calculations are based on Forest Service GIS interpretation.

OPAL CREEK ANCIENT FOREST

Scientific and Educational Preserve



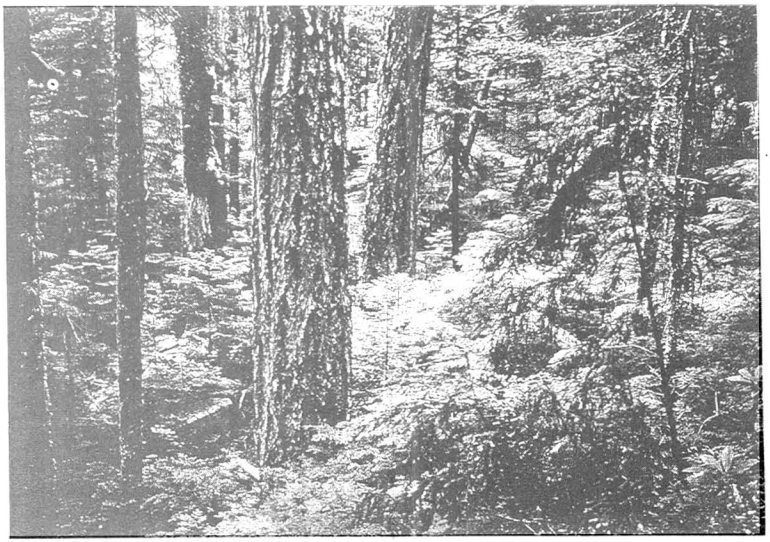
Larry Olson

Friends of Opal Creek
Elkhorn, Oregon
June 1993

OPAL CREEK ANCIENT FOREST SCIENTIFIC AND EDUCATIONAL PRESERVE
June 1993

FRIENDS OF OPAL CREEK

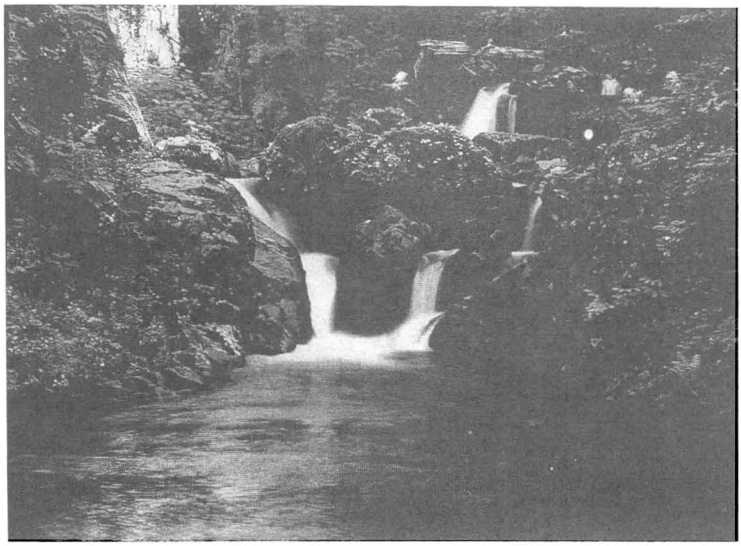
Friends of Opal Creek is a non-profit organization committed to the protection of the Opal Creek Ancient Forest through environmental education. Our primary objective is the protection of the 35,000 acre Western Cascades old growth forest ecosystem surrounding Opal Creek and the Little North Fork of the Santiam River.



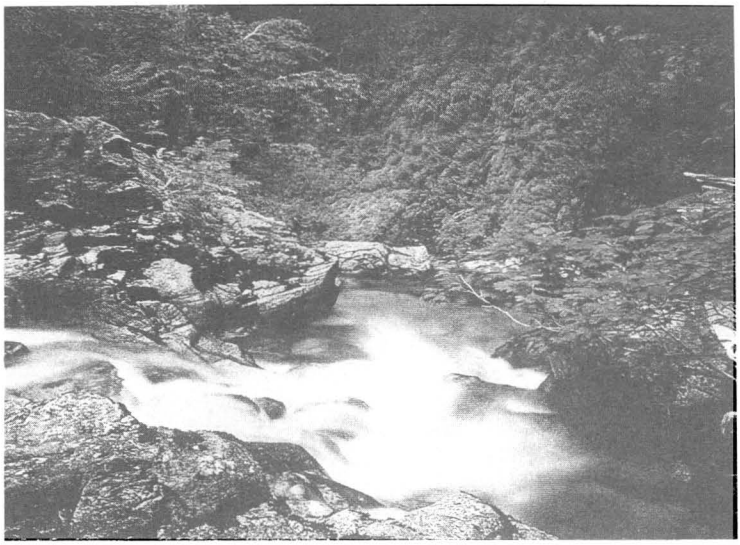
Larry Olson

THE OPAL CREEK ANCIENT FOREST

The 35,000 acre watershed of the Little North Fork of the Santiam River is known as the Opal Creek Ancient Forest. It is located approximately 42 miles east of Salem, Oregon. Within this watershed is the largest contiguous stand of old growth forest in the Western Cascades of the Pacific Northwest. This forest is a thriving example of low elevation Douglas fir/hemlock ecosystem with trees ranging from 350 to 1,000 years old.

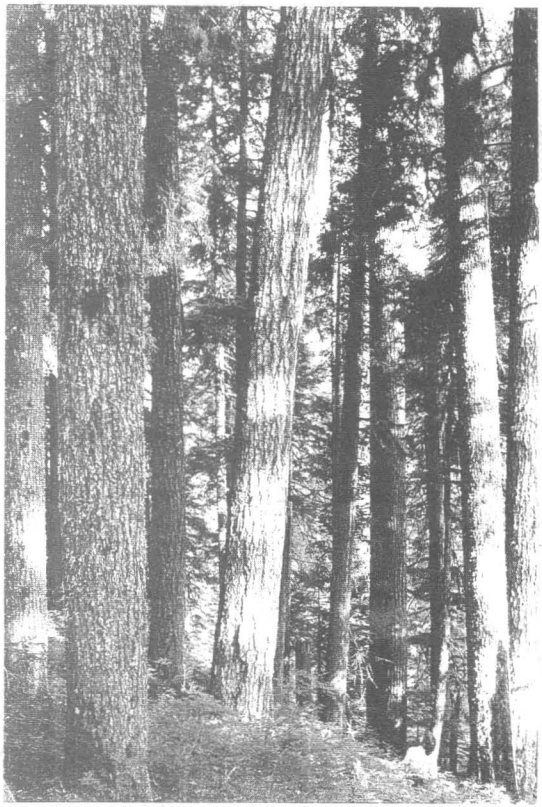


There are numerous clear streams, crystalline aqua pools, and cascading waterfalls making Opal Creek one of the most beautiful coniferous forests in the nation. Elevation within the watershed ranges from 1500 to 5000 feet. There are steep valley slopes, pristine riparian areas, glacial cirques, sub-alpine lakes, and high narrow ridge lines.



Photos by Larry Olson

Common trees in the old growth Douglas fir/hemlock forest ecosystem include: Douglas-fir, western hemlock, western red cedar, Pacific yew, grand fir, big leaf maple, and red alder. The higher elevations are dominated by Pacific silver fir and contain excellent examples of a number of rare plant communities.



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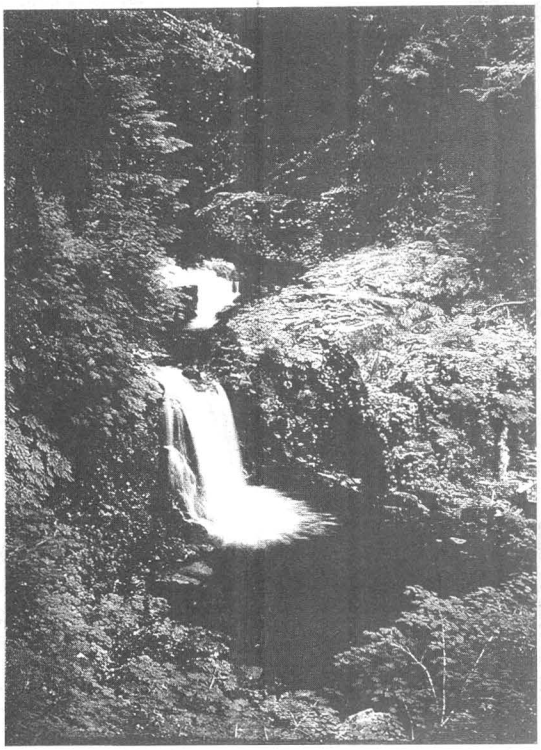


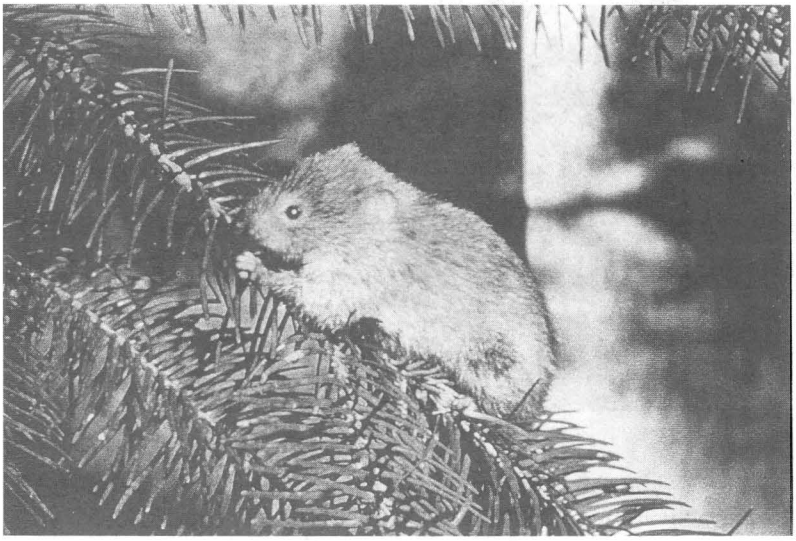
Larry Olson

Most of this unique forest is within the Willamette National Forest and is managed by the United States Forest Service. Approximately 720 acres are in private ownership by two timber companies, Times Mirror and Roseboro Lumber. The Opal Creek Preserve now owns 155 acres of private forest land, the historical mining town of Jawbone Flats, 133 mining claims, and a lease-hold interest on 80 acres of the Times Mirror property.

Friends of Opal Creek acquired the property through a donation by Shiny Rock Mining Company, a subsidiary of Persis Corporation. This is believed to be the largest gift to conservation by a private corporation in United States History. This gift originally included 265 mining claims which covered over 3200 acres. In coordination with The Nature Conservancy, Senator Hatfield and Congressman Kopetski, the Preserve gave 132 mining claims in the Bull of the Woods Wilderness Area back to the government. These returned claims are protected from mining development by the mineral withdrawal provision in the Wilderness Act.

BIOLOGICAL SIGNIFICANCE

The magnificent low elevation Douglas fir/hemlock forest located within the Opal Creek Ancient Forest is the largest remaining example of this forest type that is substantially undisturbed. It is of unique ecological significance because the entire watershed is as yet minimally impacted by logging, recreation, and road construction. Included within this forest are excellent examples of many Western Cascades forest types and a number of rare plant communities. The many first and second order streams within the watershed are unique in the nation because of the purity of the water.



red-backed vole *Chris Maser*

A number of wildlife species find optimal habitat in the old growth forest. These include goshawks, Vaux's swifts, red-backed voles, pileated-woodpeckers, Pacific giant salamanders and red-legged frogs. Critical habitat is provided for several species of rare plants and animals, including the Townsend's big-eared bat, California wolverine, northern spotted owl, tailed frog, and Gorman's Aster. The streams maintain native steelhead trout and salmon runs. The vast majority of species (85%) are insects and other invertebrates. The distribution, abundance, and rarity of these species has not been determined.

STATUS OF PROTECTION

Efforts to preserve this pristine old growth forest have been on-going for the past twenty years. A new book titled *Showdown at Opal Creek, the Battle for America's Last Wilderness* has recently been released describing the effort to save the Opal Creek Ancient Forest. Friends of Opal Creek has been successful in protecting this forest for the past five years. National and international attention has been drawn to the importance of saving this unique area resulting in the proposal of protective legislation in Congress. Friends of Opal Creek continues to advocate for the federally mandated designation of entire watershed as a scientific and educational preserve. The Opal Creek Ancient Forest is still unprotected. Sixty-four percent of the 35,000 acres could be cut under the current Forest Service management plans. Efforts are on-going to encourage the Forest Service to agree to stop plans for logging and reclassify the watershed as a protected area. Friends of Opal Creek is currently working with the Nature Conservancy to acquire the private forest lands within the Opal Creek Ancient Forest.

Trygue Steen

THE OPAL CREEK ANCIENT FOREST PRESERVE

The Opal Creek Ancient Forest Preserve is operated by Friends of Opal Creek. The Preserve provides protection for the Opal Creek Ancient Forest and advocates protection of the remaining native forest ecosystem in the Pacific Northwest through scientific research and environmental education. The Preserve believes that by sharing accurate knowledge about forest ecosystems we will be able to secure protection for virgin or relatively undisturbed forest ecosystems worldwide.

Larry Olson

Educational programs include: Docent Tours (interpretive group hikes); Volunteer Greeters (information for visitors about low impact wilderness use); an Educator's Retreat (curriculum training for teachers on forest and stream ecology); and an International Forest Exchange Program. Individualized presentations are provided for local or national leaders and for international guests. Flights over the Opal Creek Preserve and adjacent clearcuts provide a breathtaking illustration of the urgency of the need to preserve our forest heritage. A slide show on the Opal Preserve is available to schools, community groups, and businesses. The Opal Creek Preserve has a sister forest which is the Bosque Eterno de los Ninos (The Eternal Rain Forest of the Children) in Monteverde, Costa Rica. An exchange of high school students with the Monteverde community is being planned for 1994.

Scientific research programs are coordinated and funded through Oregon State University and the University of Oregon. Current research projects include the study of the symbiotic relationships of mycorrhizal fungi by Dr. John Trappe from Oregon State University. Projects planned for 1993-1994 will include canopy work and species inventory. Research is only allowed which is non-destructive and has low impact on the ecology of the watershed.

Cheri Lovre

JAWBONE FLATS

Friends of Opal Creek owns the historical mining town of Jawbone Flats, located in the heart of the Opal Creek Ancient Forest. This property provides an unique location for environmental education programs and a base for scientific study of the surrounding forests. Jawbone Flats contains 22 buildings, including a lodge, dining area, and 11 cabins. The proximal areas of the ancient forest and the nearby Little North Fork of the Santiam River create a living classroom, where young and old can witness the blueprint of life. When Jawbone Flats is not being used for Preserve programs, the facility is made available for conservation programs for schools and environmental groups.

Gorman's aster *Priscilla Easterman*

LIST OF RARE PLANTS

Aster gormanii (Gorman's aster)
Erigeron cascadensis (Cascade fleabane)
Botrychium lunaria (moonwort)
Lycopodium inundatum (bog clubmoss)

LIST OF RARE ANIMALS

Strix occidentalis (northern spotted owl)
Gulo gulo luteus (California wolverine)
Martes americana (pine martin)
Plecotus townsendii townsendii (Townsend's big-eared bat)
Ascaphus truei (tailed frog)

LIST OF RARE COMMUNITY TYPES

1st-3rd order stream segment West Cascades
Sub-alpine lake
Western hemlock/salal-rhododendron
Western hemlock/rhododendron-Alaska huckleberry
Western red cedar/dwarf Oregon grape/twinflower
Silver fir/salal-Oregon grape
Silver fir/rhododendron
Silver fir/Alaska huckleberry
Silver fir/Devil's club

HISTORIC/CULTURAL RESOURCES

The area designated as the Opal Creek Ancient Forest was a sacred ceremonial site and meeting area for Native Americans before the arrival of the settlers. Prehistoric sites have been discovered in a number of areas with lithic scatter dated at over 2,000 years.

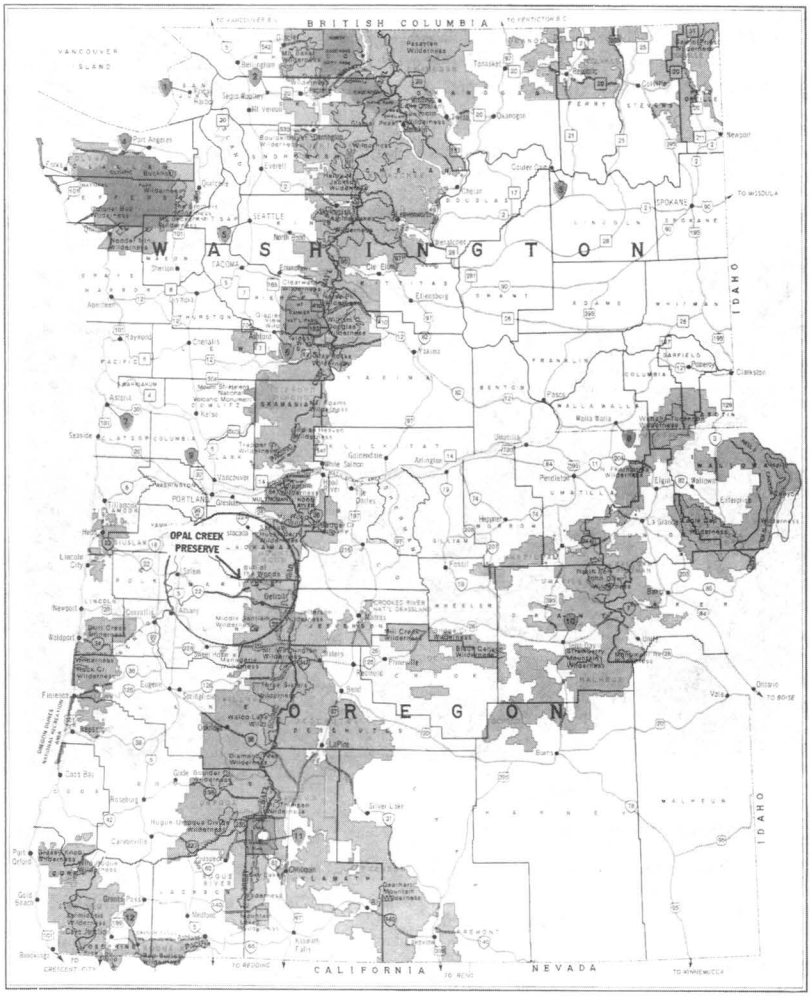
Jawbone Flats is the last intact historical mining district in Oregon. The area has been declared eligible for the National Historical Registry

Trygue Steen

LOCATION AND ACCESSIBILITY

To reach the Opal Creek Preserve, drive 22.8 miles east of Salem on Highway 22 to Mehama, turn left on the Little North Fork Road for 16 miles to Elkhorn. Continue 1.5 miles on Road 2207, a rough Forest Service access road. Then keep left on Forest Service Road 2209 another 4.5 miles to a locked gate. Walk or bicycle three miles on a jeep trail along the Little North Fork of the Santiam River, past 700 year old Douglas Firs and interesting mining remnants to Jawbone Flats. There is a 3.5 mile trail along the Little North Fork of the Santiam River and along Opal Creek to Opal Pool. This trail passes by the magnificent stands of old growth forest, picturesque waterfalls and the crystalline aqua pools for which the stream is famous. For adventurous hikers, the rugged bear trail continues upstream towards Opal Lake. There is an arduous 4.5 mile trail up Whetstone Mountain from which there are excellent panoramic views.

Equipment transport to Jawbone Flats is provided for program participants and scientists, during designated low use hours. Transportation is also provided for program participants who are physically unable to walk to Jawbone Flats.

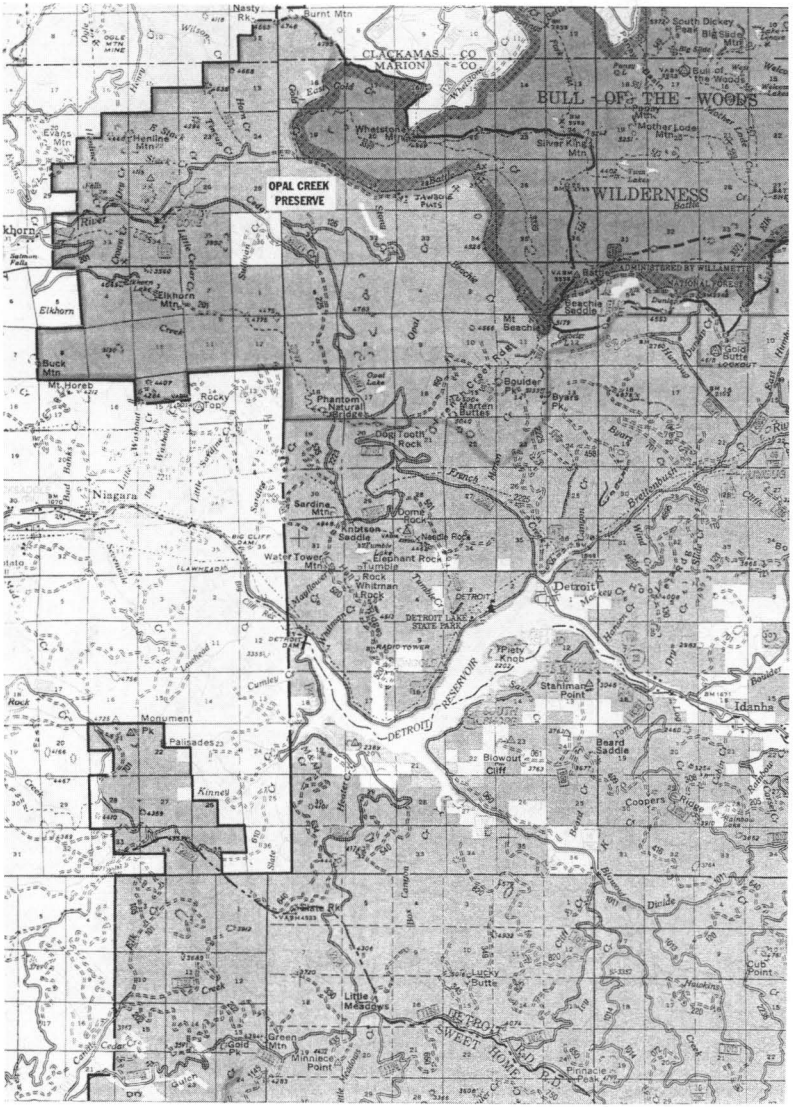


NATIONAL FOREST
NATIONAL FOREST WILDERNESS
MOUNT ST. HELENS NATIONAL VOLCANIC MONUMENT
NATIONAL PARK
NATIONAL PARK SERVICE HEADQUARTERS

Scale of Miles

U.S. HIGHWAY
INTERSTATE HIGHWAY
OREGON STATE HIGHWAY
WASHINGTON STATE HIGHWAY
COUNTY LINE
PACIFIC CREST NATIONAL SCENIC TRAIL

NATIONAL FORESTS and NATIONAL PARKS
of
PACIFIC NORTHWEST


OPAL CREEK
PRESERVE
BULL OF THE WOODS
WILDERNESS
CLACKAMAS CO
MARION CO
Nasty Rk
Burnt Mtn
South Dickey Peak
Big Sawtooth Mtn
Bull of the Woods
Wheatstone Mtn
Silver King Mtn
Mother Lode Mtn
Evans Mtn
Henline Mtn
Elkhorn Mtn
Elkhorn
Buck Mtn
Mt Horeb
Rocky Top
Mt Beachie
Beachie Saddle
Gold Butte LOOKOUT
Boulder Pk
Byars Pk
Phantom Natural Bridges
Dog Tooth Rock
Niagara
Sardine Mtn
Dome Rock
Knutson Saddle
Needle Rock
Water Tower Mtn
Elephant Rock
Tumble Rock
Whitman Rock
Detroit
DETROIT LAKE STATE PARK
RADIO TOWER
DETROIT RESERVOIR
Piety Knob
Stahlman Point
Idanha
Monument Pk
Palisades
Kinney
Blowout Cliff
Beard Saddle
Coopers
Divide
Cub Point
Lucky Butte
Little Meadows
Green Mtn
Minniece Point
Gold Pk
SWEET HOME RD
Pinnacle Peak

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