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DEVIL'S STAIRCASE WILDERNESS ACT

JANUARY 13, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of December 17, 2011

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

R E P O R T

[To accompany S. 766]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 766) to provide for the designation of the Devil's Staircase Wilderness Area in the State of Oregon, to designate segments of Wasson and Franklin Creeks in the State of Oregon as wild rivers, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 766 is to designate approximately 30,540 acres of Federal land in the State of Oregon as the Devil's Staircase Wilderness and to amend the Wild and Scenic Rivers Act to designate approximately 10.1 miles of Wasson Creek and 4.5 miles of Franklin Creek in the State of Oregon as "wild rivers."

BACKGROUND AND NEED

The Devil's Staircase area is part of the Oregon Coast Range on the west coast of Oregon, northwest of Elkton. The terrain is steep, wild, and remote, and is home to two threatened bird species: the northern spotted owl and the marbled murrelet. The name "Devil's Staircase" comes from a stair-step waterfall on Wasson Creek.

Approximately 23,660 acres of the land proposed for wilderness designation are managed by the Forest Service as Late Successional Reserves in the Siuslaw National Forest. The Bureau of Land Management ("BLM") manages approximately 6,880 acres of

the land proposed for wilderness designation, most of which is re-vested Oregon and California Railroad land. The BLM land currently is administratively protected as an Area of Critical Environmental Concern and through other protective classifications.

The creeks proposed for designation under the Wild and Scenic Rivers Act are characterized by outstanding scenic, recreational, and ecological values, and have been identified as critical habitat for coho salmon, a threatened species under the Endangered Species Act.

LEGISLATIVE HISTORY

S. 766 was introduced by Senators Wyden and Merkley on April 7, 2011. The Subcommittee on Public Lands and Forests held a hearing on the bill on May 18, 2011 (S. Hrg. 112–39). At its business meeting on November 10, 2011, the Committee on Energy and Natural Resources ordered S. 766 favorably reported without amendment. The Committee reported an identical bill (S. 1272, as amended) by voice vote in the 111th Congress.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on November 10, 2011, by a voice vote of a quorum present, recommends that the Senate pass S. 766. Senators Risch, Lee and Paul asked to be recorded as opposing the measure.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill, the “Devil’s Staircase Wilderness Act of 2011.”

Section 2 defines key terms used in the bill.

Section 3(a) designates approximately 30,540 acres of Federal land managed by the Forest Service and BLM as the Devil’s Staircase Wilderness.

Subsection (b) directs the Secretary to prepare a map and legal description of the Wilderness and to make it publically available.

Subsection (c) provides that the designation of the Devil’s Staircase Wilderness shall be administered in accordance with the Wilderness Act, except as provided in paragraphs (1) and (2) and subject to valid existing rights. The Committee is aware that the Forest Service’s records indicate that some parcels of National Forest land within the proposed wilderness are subject to an existing undeveloped easement, including in sec. 15, T. 21 S., R. 10 W. This provision reiterates that the application of the Wilderness Act to the Federal land is subject to and would not interfere with the exercise of any valid existing easements.

Subsection (d) clarifies that the wilderness designation does not affect the State of Oregon’s jurisdiction with respect to fish and wildlife.

Subsection (e) clarifies that the wilderness designation does not create a buffer or preclude non-wilderness activities outside of the wilderness.

Subsection (f) confirms that the wilderness designation does not diminish any tribal treaty rights.

Subsection (g) transfers administrative jurisdiction over approximately 49 acres of BLM land to the Forest Service, to be adminis-

tered in accordance with the Weeks Law (16 U.S.C. 480 et seq.) and other laws applicable to the National Forest System.

Section 4 amends the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) to add approximately 4.5 miles of Franklin Creek and approximately 10.1 miles in two segments of Wasson Creek to be administered by the Secretaries of Agriculture and the Interior as wild rivers.

COST AND BUDGETARY CONSIDERATIONS

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

S. 766—Devil’s Staircase Wilderness Act of 2011

S. 766 would designate about 30,520 acres of federal land in Oregon as the Devil’s Staircase Wilderness. The bill also would designate about 15 miles of creeks in the area as wild rivers under the Wild and Scenic Rivers Act. Based on information provided by the agencies that administer those areas, CBO estimates that implementing S. 766 would have no significant impact on the federal budget. Enacting S. 766 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

The acreage and waterways to be added by S. 766 to the National Wilderness Preservation System or the Wild and Scenic Rivers System are already owned by the federal government and are currently administered by either the Forest Service or the Bureau of Land Management (BLM) for conservation purposes. CBO expects that designating those areas as wilderness would not raise the costs of managing or protecting them. We estimate that any costs to revise brochures, maps, and signs to reflect the new designations would be minimal because most such revisions would take place in conjunction with scheduled reprinting and routine maintenance.

The lands that would be designated as wilderness under the bill are already managed for conservation purposes and produce no income from commercial activities. Therefore, CBO estimates that enacting S. 766 would have no effect on offsetting receipts.

S. 766 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 766.

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

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

Little, if any, additional paperwork would result from the enactment of S. 766, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 766, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The views of the Department of Agriculture and the Department of the Interior were included in testimony received by the Committee at the May 18, 2011, hearing (S. Hrg. 112–39), which is provided below.

STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Honorable Ranking Member and distinguished members of the Committee, I am Mary Wagner, Associate Chief of the Forest Service. Thank you for the opportunity to speak with you today about a bill that addresses Wilderness designation in the coastal Douglas-fir forests of Oregon.

S. 766 would designate an area known as the Devil's Staircase as wilderness under the National Wilderness Preservation System. In addition, S. 766 would designate segments of Wasson and Franklin Creeks in the State of Oregon and within the proposed Devil's Staircase Wilderness as wild rivers under the Wild and Scenic Rivers Act.

The Department supports the designation of the Devil's Staircase Wilderness as well as the Wild and Scenic River designations on National Forest System lands. We would like to offer minor modifications to S. 766 that would enhance wilderness values and improve our ability to manage resources in the area.

The Devil's Staircase area lies in the central Oregon Coast Range, north of the Umpqua River and south of the Smith River. Elevations in the area range from near sea level to about 1,600 feet. The area is characterized by steep, highly dissected terrain. It is quite remote and difficult to access. A stair step waterfall on Wasson Creek is the source of the name Devil's Staircase.

The area that would be designated as wilderness by S. 766 encompasses approximately 30,540 acres of National Forest System (NFS) and Bureau of Land Management (BLM) lands. NFS lands are approximately 24,000 acres, and BLM lands are approximately 6,500 acres.

All NFS lands that would be designated as wilderness are classified as Late Successional Reserve under the Northwest Forest Plan, which amended the Siuslaw National Forest LRMP in 1994. This land allocation provides for the preservation of old growth (late successional) habitat and is compatible with a wilderness designation. There are no planned resource management or developed recre-

ation projects within the NFS portion of the lands to be designated as wilderness.

Most of the area is forested with older stands of Douglas-fir and western hemlock, and red alder in riparian areas. All three tree species are under-represented in the National Wilderness Preservation System, relative to their abundance on NFS lands in Washington and Oregon. These older stands provide critical habitat and support nesting pairs of the northern spotted owl and marbled murrelet, which are listed as threatened species under the Endangered Species Act.

The proposed Devil's Staircase Wilderness provides an outstanding representation of the Oregon Coast Range and would enhance the National Wilderness Preservation System. The Oregon Coast Range has been largely modified with development, roads, and logging. Three small wilderness areas currently exist along the Oregon portion of the Pacific Coast Range, and the proposed Devil's Staircase Wilderness would more than double the acres of old-growth coastal rainforest in a preservation status. Wilderness designation would also preserve the Devil's Staircase, which is a unique landscape feature.

There are approximately 24 miles of National Forest System roads within the proposed boundary, 10.5 miles of which are not needed for administrative use and would be decommissioned and obliterated. The remainder would be converted to a trail as discussed below. The Department recognizes that decommissioning and obliteration of this magnitude may require the use of motorized equipment to remove road related structures and grading. We anticipate analyzing such use under the Forest Service's minimum requirements analysis process.

The remaining 13.5 miles of road comprise Forest Service Road 4100, which bisects the proposed wilderness. The Department recommends that this road be converted and managed as a non-motorized, foot and/or horse trail compatible with wilderness uses. The Forest Service would use a minimum requirement analysis process to determine the appropriate tools necessary to complete activities associated with the road.

The bill would transfer administrative jurisdiction over 49 acres of BLM land to the Forest Service. The Forest Service supports the transfer of jurisdiction.

S. 766 also would designate approximately 10.4 miles of streams on National Forest System lands as part of the National Wild and Scenic Rivers System: 5.9 miles of Wasson Creek and 4.5 miles of Franklin Creek, both on the Siuslaw National Forest.

Both Wasson and Franklin Creeks have been identified by the National Marine Fisheries Service (NMFS) as critical habitat for coho salmon (Oregon Coast ESU [Evolutionarily Significant Unit] of coho salmon), a threatened species under the Endangered Species Act. While the critical habitat portion of Wasson Creek is below the Devil's Staircase waterfall and thus largely outside the proposed

wild and scenic designation, the designation will nevertheless help ensure that the lower portion of the creek remains suitable as coho habitat.

The Department defers to, and agrees with, the Department of the Interior concerning the proposal to designate the 4.2-mile segment of Wasson Creek flowing on lands administered by BLM.

The Forest Service conducted an evaluation of the Wasson and Franklin Creeks to determine their eligibility for wild and scenic rivers designation as part of the forest planning process for the Siuslaw National Forest. However, the agency has not conducted a wild and scenic river suitability study, which provides the basis for determining whether to recommend a river as an addition to the National Wild and Scenic Rivers System. Wasson Creek was found eligible as it is both free-flowing and possesses outstandingly remarkable scenic, recreational and ecological values. The Department supports designation of the 5.9 miles of the Wasson Creek on NFS lands based on the segment's eligibility.

At the time of the evaluation in 1990, Franklin Creek, although free flowing, was found not to possess river-related values significant at a regional or national scale and was therefore determined ineligible for designation. Subsequent to the 1990 eligibility study, the Forest Service has found that Franklin Creek provides critical habitat for coho salmon, currently listed as threatened under the Endangered Species Act, and also serves as a reference stream for research because of its relatively pristine character, which is rare in the Oregon Coast Range. Due to the presence of coho salmon and the pristine character the Department does not oppose its designation. Designation of the proposed segments of both Wasson and Franklin Creeks is consistent with the proposed designation of the area as wilderness. The actual Devil's Staircase landmark is located on Wasson Creek.

Mr. Chairman, this concludes my testimony. I am happy to answer any questions that you may have on Devil's Staircase Wilderness Act.

STATEMENT OF MIKE POOL, DEPUTY DIRECTOR, BUREAU OF
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for inviting the Department of the Interior to testify on S. 766, the Devil's Staircase Wilderness Act of 2011. The Bureau of Land Management (BLM) supports S. 766 as it applies to lands we manage.

Background

The proposed Devil's Staircase Wilderness, near the coast of southwestern Oregon, is not for the faint of heart. Mostly wild land and difficult to access, the Devil's Staircase reminds us of what much of this land looked like hundreds of years ago. A multi-storied forest of Douglas fir and western hemlock towers over underbrush of giant ferns, providing critical habitat for the threatened North-

ern Spotted Owl and Marbled Murrelet. The remote and rugged nature of this area provides a truly wild experience for any hiker.

S. 766

S. 766 proposes to designate over 30,000 acres as wilderness, as well as portions of both Franklin Creek and Wasson Creek as components of the Wild and Scenic Rivers System. The majority of these designations are on lands managed by the U.S. Forest Service. The Department of the Interior defers to the U.S. Department of Agriculture on those designations.

Approximately 6,830 acres of the proposed Devil's Staircase Wilderness and 4.2 miles of the Wasson Creek proposed designation are within lands managed by the BLM. The Department of the Interior supports these designations.

We note that while the vast majority of the acres proposed for designation are Oregon & California (O&C) lands, identified under the 1937 O&C Lands Act for timber production, the BLM currently restricts timber production on these lands. These lands are administratively withdrawn from timber production by the BLM through various administrative classifications. Additionally, the BLM estimates that nearly 90 percent of the area proposed for designation is comprised of forest stands that are over 100 years old, and provides critical habitat for the threatened Marbled Murrelet and Northern Spotted Owl.

The 4.2 miles of Wasson Creek would be designated as a wild river to be managed by the BLM under S. 766. The majority of the acres protected through this designation would be within the proposed Devil's Staircase wilderness designation, though 376 acres would be outside the proposed wilderness on adjacent BLM lands.

The designations identified on BLM-managed lands under S. 766 would result in only minor modification of current management of the area and would preserve these wild lands for future generations.

Conclusion

Thank you for the opportunity to testify in support of these important Oregon designations. The Department of the Interior looks forward to welcoming these units into the BLM's National Landscape Conservation System.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 766, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

(Public Law 90-542; Approved October 2, 1968)

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes.

* * * * *

SEC. 3.(a) The following rivers and the land adjacent thereto are hereby designed as components of the national wild and scenic rivers system:

* * * * *

(210) *FRANKLIN CREEK, OREGON.—The 4.5-mile segment from its headwaters to the line of angle points within sec. 8, T. 22 S., R. 10 W., shown on the survey recorded in the Official Records of Douglas County, Oregon, as M64-62, to be administered by the Secretary of Agriculture as a wild river.*

(211) *WASSON CREEK, OREGON.—The 10.1-mile segment in the following classes:*

(A) *The 4.2-mile segment from the eastern boundary of sec. 17, T. 21 S., R. 9 W., downstream to the western boundary of sec. 12, T. 21 S., R. 10 W., to be administered by the Secretary of the Interior as a wild river.*

(B) *The 5.9-mile segment from the western boundary of sec. 12, T. 21 S., R. 10 W., downstream to the eastern boundary of the northwest quarter of sec. 22, T. 21 S., R. 10 W., to be administered by the Secretary of Agriculture as a wild river.*

* * * * *

APPENDIX

