

109TH CONGRESS
2D SESSION

S. 2633

To grant rights-of-way to owners of dams located in the Bitterroot National Forest in the State of Montana, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2006

Mr. BURNS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To grant rights-of-way to owners of dams located in the Bitterroot National Forest in the State of Montana, and for other purposes.

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.**

4 This Act may be cited as the “Bitterroot National
5 Forest Dam and Reservoir Maintenance Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the wilderness dams in the Bitterroot Na-
9 tional Forest in the State of Montana provide nu-

1 merous benefits to the people living in the Bitterroot
2 Valley; and

3 (2) those benefits include—

4 (A) groundwater recharge;

5 (B) maintenance of open space by permit-
6 ting sustainable family ranches and farms,
7 rather than subdividing ranches and farms;

8 (C) increased late summer streamflows
9 that support riparian and fishery habitat needs;
10 and

11 (D) flood control.

12 (b) PURPOSES.—The purposes of this Act are—

13 (1) to grant rights-of-way to owners of dams lo-
14 cated in the Bitterroot National Forest in the State
15 of Montana; and

16 (2) to continue to provide the benefits described
17 in subsection (a).

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) DAM.—The term “dam” means a dam, in-
21 cluding any reservoirs and appurtenances to the
22 dam, that is located in the Forest as of the date of
23 enactment of this Act.

24 (2) FOREST.—The term “Forest” means the
25 Bitterroot National Forest in the State.

1 (3) OWNER.—The term “owner” means—

2 (A) the owner of a dam;

3 (B) the owner of a water storage right for
4 a dam; or

5 (C) the owner of rights-of-way under this
6 Act or other Federal law.

7 (4) SECRETARIES.—The term “Secretaries”
8 means the Secretary of Agriculture and the Sec-
9 retary of Interior.

10 (5) STATE.—The term “State” means the State
11 of Montana.

12 (6) TRAIL.—The term “trail” means a trail, ac-
13 cess route, or primitive road in the Forest in exist-
14 ence on the date of enactment of this Act.

15 **SEC. 4. RIGHTS-OF-WAY.**

16 (a) IN GENERAL.—Notwithstanding the Wilderness
17 Act (16 U.S.C. 1131 et seq.), the National Environmental
18 Policy Act of 1969 (42 U.S.C. 4321 et seq.), or any other
19 provision of law, the Secretaries shall, on the date of en-
20 actment of this Act, grant to the owners, for no consider-
21 ation, rights-of-way—

22 (1) to the trails, for purposes of providing ac-
23 cess to any dams owned by the owner; and

24 (2) to areas of the Forest adjacent to any dams
25 owned by the owner, for purposes of the construc-

1 tion, reconstruction, maintenance, repair, and oper-
2 ation of the dam.

3 (b) BOUNDARIES.—

4 (1) IN GENERAL.—As soon as practicable after
5 the date of enactment this Act, the owners shall,
6 subject to paragraphs (2) and (3), prepare a map
7 establishing the boundaries of the rights-of-way
8 granted under subsection (a).

9 (2) TRAILS.—A right-of-way granted under
10 subsection (a)(1) shall extend at least 8 feet but not
11 more than 60 feet in width from the center of the
12 trail.

13 (3) ADJACENT AREAS.—A right-of-way granted
14 under subsection (a)(2)—

15 (A) shall be to areas of the Forest that are
16 located not less than 50 feet nor more than 500
17 feet and further than 500 feet from the
18 highwater mark and downstream dam toe to in-
19 clude additional area determined as necessary
20 by the owner; and

21 (B) shall include the least amount of land
22 that is necessary, as determined by the State
23 and owner, for the owner to construct, recon-
24 struct, maintain, repair, and operate the dam,
25 including borrow material, camp sites, pasture

1 for pack and work animals, and tool and equip-
2 ment storage sites.

3 (c) CONSTRUCTION, MAINTENANCE, AND REPAIR.—

4 An owner granted a right-of-way under subsection (a)(1)
5 may construct, maintain, and repair the right-of-way.

6 (d) AUTHORIZED USES.—

7 (1) MOTOR VEHICLES.—Notwithstanding sec-
8 tion 4(c) of the Wilderness Act (16 U.S.C. 1113), an
9 owner may use motor vehicles, motorized and
10 mechanized equipment, and other forms of mecha-
11 nized transport—

12 (A) on the rights-of-way granted under
13 subsection (a); and

14 (B) at the owner's dam.

15 (2) AIRCRAFT.—An owner may operate aircraft
16 in the airspace over the Forest to access the dam
17 and may land the aircraft on the rights-of-way.

18 (e) APPLICABLE LAW.—Any activities that are car-
19 ried out by an owner in a right-of-way granted under sub-
20 section (a) or for the purposes referred to in subsection
21 (a)(2)—

22 (1) shall be regulated by the State, in accord-
23 ance with State law; and

24 (2) shall not be subject to—

1 (A) the Wilderness Act (16 U.S.C. 1131 et
2 seq.);

3 (B) the National Environmental Policy Act
4 of 1969 (42 U.S.C. 4321 et seq.);

5 (C) the National Dam Safety Program Act
6 (33 U.S.C. 467 et seq.);

7 (D) any other Federal law establishing en-
8 gineering and construction standards for dams;
9 or

10 (E) any other provision of Federal law to
11 protect fish and wildlife or maintain water qual-
12 ity standards.

13 (f) LIMITATION ON LIABILITY.—An owner of a dam
14 shall not be liable for any claim or damage that may arise
15 from the conduct of activities to construct, maintain, re-
16 pair, and operate the dam, except any claim or damage
17 that arises from the negligence of the owner.

18 (g) SUBSEQUENT CONVEYANCE.—The rights-of-way
19 granted under subsection (a) may be subsequently con-
20 veyed by the owner without the consent of the Secretaries.

21 (h) TERMINATION.—A right-of-way granted to an
22 owner under subsection (a) shall terminate if the State
23 determines, after notice to the owner and a hearing, that
24 the owner has not accessed or conducted activities at the
25 dam for 10 consecutive years.

1 (i) EFFECT.—

2 (1) WATER RIGHTS.—Nothing in this Act af-
3 fects or in any way interferes with laws of the State
4 relating to the control, appropriation, use, or dis-
5 tribution of water used in irrigation or other bene-
6 ficial purposes, or any vested right acquired under
7 State law, and the Secretaries shall proceed in con-
8 formity with such laws in all land and water man-
9 agement activities under all authorities.

10 (2) EXISTING RIGHTS-OF-WAY.—The rights-of-
11 way granted under this Act shall be in addition to
12 any rights-of-way granted to an owner under section
13 18 of the Act of March 3, 1891 (43 U.S.C. 946),
14 sections 2339 and 2340 of the Revised Statutes (43
15 U.S.C. 661), or any other provision of law.

16 (3) COMPENSABLE CLAIMS.—Any land and
17 water management activities taken by the Secre-
18 taries which interfere with the access to or exercise
19 of water rights or rights-of-way of the owner shall
20 create in the owner a valid and compensable takings
21 claim.

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