

## Union Calendar No. 235

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3538

**[Report No. 111–398]**

To authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2009

Mr. SIMPSON (for himself and Mr. MINNICK) introduced the following bill;  
which was referred to the Committee on Natural Resources

JANUARY 19, 2010

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on September 8, 2009]

# **A BILL**

To authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, 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 “Idaho Wilderness Water*  
 5       *Facilities Act”.*

6       **SEC. 2. TREATMENT OF EXISTING WATER DIVERSIONS IN**  
 7               **FRANK CHURCH-RIVER OF NO RETURN WIL-**  
 8               **DERNESS AND SELWAY-BITTERROOT WILDER-**  
 9               **NESS, IDAHO.**

10       *(a) AUTHORIZATION FOR CONTINUED USE.—The Sec-*  
 11       *retary of Agriculture shall issue a special use authorization*  
 12       *to each of the 20 owners of a water storage, transport, or*  
 13       *diversion facility (in this section referred to as a “facility”)*  
 14       *located on National Forest System land in the Frank*  
 15       *Church-River of No Return Wilderness or the Selway-Bit-*  
 16       *terroot Wilderness (as identified on the map titled “Unau-*  
 17       *thorized Private Water Diversions located within the Frank*  
 18       *Church River of No Return Wilderness”, dated December*  
 19       *14, 2009, or the map titled “Unauthorized Private Water*  
 20       *Diversions located within the Selway-Bitterroot Wilder-*  
 21       *ness”, dated December 11, 2009) for the continued oper-*  
 22       *ation, maintenance, and reconstruction of the facility if the*  
 23       *Secretary determines that—*

24               *(1) the facility was in existence on the date on*  
 25       *which the land upon which the facility is located was*

1 *designated as part of the National Wilderness Preser-*  
2 *vation System (in this section referred to as “the date*  
3 *of designation”);*

4 *(2) the facility has been in substantially contin-*  
5 *uous use to deliver water for the beneficial use on the*  
6 *owner’s non-Federal land since the date of designa-*  
7 *tion;*

8 *(3) the owner of the facility holds a valid water*  
9 *right for use of the water on the owner’s non-Federal*  
10 *land under Idaho State law, with a priority date that*  
11 *predates the date of designation; and*

12 *(4) it is not practicable or feasible to relocate the*  
13 *facility to land outside of the wilderness and continue*  
14 *the beneficial use of water on the non-Federal land*  
15 *recognized under State law.*

16 *(b) TERMS AND CONDITIONS.—*

17 *(1) EQUIPMENT, TRANSPORT, AND USE TERMS*  
18 *AND CONDITIONS.—In a special use authorization*  
19 *issued under subsection (a), the Secretary shall—*

20 *(A) allow use of motorized equipment and*  
21 *mechanized transport for operation, mainte-*  
22 *nance, or reconstruction of a facility, if the Sec-*  
23 *retary determines that—*

24 *(i) the use is necessary to allow the fa-*  
25 *cility to continue delivery of water to the*

1           *non-Federal land for the beneficial uses rec-*  
2           *ognized by the water right held under Idaho*  
3           *State law; and*

4           (ii) *after conducting a minimum tool*  
5           *analysis for the facility, the use of non-*  
6           *motorized equipment and nonmechanized*  
7           *transport is impracticable or infeasible; and*

8           (B) *preclude use of the facility for the stor-*  
9           *age, diversion, or transport of water in excess of*  
10          *the water right recognized by the State of Idaho*  
11          *on the date of designation.*

12          (2) *ADDITIONAL TERMS AND CONDITIONS.—In a*  
13          *special use authorization issued under subsection (a),*  
14          *the Secretary may—*

15               (A) *require or allow modification or reloca-*  
16               *tion of the facility in the wilderness, as the Sec-*  
17               *retary determines necessary, to reduce impacts to*  
18               *wilderness values set forth in section 2 of the*  
19               *Wilderness Act (16 U.S.C. 1131) if the beneficial*  
20               *use of water on the non-Federal land is not di-*  
21               *minished; and*

22               (B) *require that the owner provide a recip-*  
23               *rocal right of access across the non-Federal prop-*  
24               *erty, in which case, the owner shall receive mar-*  
25               *ket value for any right-of-way or other interest*

1           *in real property conveyed to the United States,*  
2           *and market value may be paid by the Secretary,*  
3           *in whole or in part, by the grant of a reciprocal*  
4           *right-of-way, or by reduction of fees or other*  
5           *costs that may accrue to the owner to obtain the*  
6           *authorization for water facilities.*



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