

111TH CONGRESS
2D SESSION

S. 2966

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.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2010

Mr. RISCH (for himself and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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
5 Water Facilities Act”.

1 **SEC. 2. TREATMENT OF EXISTING WATER DIVERSIONS IN**
2 **FRANK CHURCH-RIVER OF NO RETURN WIL-**
3 **DERNESS AND SELWAY-BITTERROOT WIL-**
4 **DERNESS, IDAHO.**

5 (a) AUTHORIZATION FOR CONTINUED USE.—The
6 Secretary of Agriculture is authorized to issue a special
7 use authorization to each of the 20 owners of a water stor-
8 age, transport, or diversion facility (in this section referred
9 to as a “facility”) located on National Forest System land
10 in the Frank Church-River of No Return Wilderness or
11 the Selway-Bitterroot Wilderness (as identified on the
12 map titled “Unauthorized Private Water Diversions lo-
13 cated within the Frank Church River of No Return Wil-
14 derness”, dated December 14, 2009, or the map titled
15 “Unauthorized Private Water Diversions located within
16 the Selway-Bitterroot Wilderness”, dated December 11,
17 2009) for the continued operation, maintenance, and re-
18 construction of the facility if the Secretary determines
19 that—

20 (1) the facility was in existence on the date on
21 which the land upon which the facility is located was
22 designated as part of the National Wilderness Pres-
23 ervation System (in this section referred to as “the
24 date of designation”);

25 (2) the facility has been in substantially contin-
26 uous use to deliver water for the beneficial use on

1 the owner's non-Federal land since the date of des-
 2 ignation;

3 (3) the owner of the facility holds a valid water
 4 right for use of the water on the owner's non-Fed-
 5 eral land under Idaho State law, with a priority date
 6 that predates the date of designation; and

7 (4) it is not practicable or feasible to relocate
 8 the facility to land outside of the wilderness and
 9 continue the beneficial use of water on the non-Fed-
 10 eral land recognized under State law.

11 (b) TERMS AND CONDITIONS.—

12 (1) EQUIPMENT, TRANSPORT, AND USE TERMS
 13 AND CONDITIONS.—In a special use authorization
 14 issued under subsection (a), the Secretary is author-
 15 ized to—

16 (A) allow use of motorized equipment and
 17 mechanized transport for operation, mainte-
 18 nance, or reconstruction of a facility, if the Sec-
 19 retary determines that—

20 (i) the use is necessary to allow the
 21 facility to continue delivery of water to the
 22 non-Federal land for the beneficial uses
 23 recognized by the water right held under
 24 Idaho State law; and

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

6 (B) preclude use of the facility for the
 7 storage, diversion, or transport of water in ex-
 8 cess of the water right recognized by the State
 9 of Idaho on the date of designation.

10 (2) ADDITIONAL TERMS AND CONDITIONS.—In
 11 a special use authorization issued under subsection
 12 (a), the Secretary is authorized to—

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

20 (B) require that the owner provide a recip-
 21 rocal right of access across the non-Federal
 22 property, in which case, the owner shall receive
 23 market value for any right-of-way or other in-
 24 terest in real property conveyed to the United
 25 States, and market value may be paid by the

1 Secretary, in whole or in part, by the grant of
2 a reciprocal right-of-way, or by reduction of fees
3 or other costs that may accrue to the owner to
4 obtain the authorization for water facilities.

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