

less we can help our economy and our budget more. This week the House Ways and Means Committee will report a tax reduction bill that creates a \$500-per-child tax credit for families and cuts the capital gains tax in half. In all likelihood, the House will approve these important tax reductions.

Some of our colleagues here in the Senate have suggested that we abandon tax cuts—and focus exclusively on reducing the budget deficit. Having lost the vote on the balanced budget amendment, I can understand their desire to put spending cuts first in order to produce a balanced budget plan.

But as Governor Engler has demonstrated, cutting spending and taxes is the best way to reduce the deficit and encourage economic growth. We must have confidence that the American people, if allowed to keep their own money and spend it as they choose, will fuel the engine that runs our economy, producing more jobs, greater prosperity, and a balanced budget.

Mr. President, I yield the floor. I also suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THOMPSON). The clerk will call the roll. The bill clerk proceeded to call the roll.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

(During the session of the Senate, the following morning business was transacted.)

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents which were referred as indicated:

EC-497. A communication from the Chairman of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, the annual report of the Board for fiscal year 1994; to the Committee on Governmental Affairs.

EC-498. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report relative to the escheated estate fund; to the Committee on Governmental Affairs.

EC-499. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report relative to the District's Emergency Assistance Services; to the Committee on Governmental Affairs.

EC-500. A communication from the Chief Financial Officer of the Export-Import, transmitting, pursuant to law, the annual management report for 1994; to the Committee on Governmental Affairs.

EC-501. A communication from the Officer of the Nuclear Waste Negotiator, transmitting, pursuant to law, a report relative to the Federal Managers' Financial Integrity Act; to the Committee on Governmental Affairs.

EC-502. A communication from the Chairman of the Board of the National Credit Union Administration, transmitting, pursuant to law, a report relative to schedules of compensation; to the Committee on Governmental Affairs.

EC-503. A communication from the Chairman of the Commission on Intergovernmental Relations, transmitting, pursuant to law, a report relative to unfunded mandates; to the Committee on Governmental Affairs.

EC-504. A communication from the Acting Inspector General of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions;" to the Committee on Governmental Affairs.

EC-505. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative Federal Managers' Financial Integrity Act; to the Committee on Governmental Affairs.

EC-506. A communication from the Chair of the Administrative Conference of the United States, transmitting, pursuant to law, a report relative to the Inspector General Act Amendments; to the Committee on Governmental Affairs.

EC-507. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, the semiannual report of the Inspector General and the Director's Report on Audit Resolution and Management for the period April 1, 1994 through September 30, 1994; to the Committee on Governmental Affairs.

EC-508. A communication from the Director of the Office of Management and Budget, transmitting, a draft of proposed legislation to revise and streamline the acquisition laws of the Federal Government, and for other purposes; to the Committee on Governmental Affairs.

EC-509. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report relative to the assignment or detail of General Accounting Office employees; to the Committee on Governmental Affairs.

EC-511. A communication from the Comptroller General of the United States, transmitting, pursuant to law, an overview report of the high risk areas of the General Accounting Office; to the Committee on Governmental Affairs.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CONRAD:

S. 542. A bill to amend the Solid Waste Disposal Act to allow States to regulate the disposal of municipal solid waste generated outside of the State, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATFIELD:

S. 543. A bill to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BRYAN (for himself and Mr. REID):

S. 544. A bill to establish a Presidential commission on nuclear waste, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BUMPERS (for himself and Mr. GRAHAM):

S. 545. A bill to authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property; to the Committee on Finance.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CONRAD:

S. 542. A bill to amend the Solid Waste Disposal Act to allow States to regulate the disposal of municipal solid waste generated outside of the State, and for other purposes; to the Committee on Environment and Public Works.

#### INTERSTATE SHIPMENTS OF MUNICIPAL SOLID WASTE

Mr. CONRAD. Mr. President, today I am introducing legislation that would give States and local governments the power to regulate and, if they choose, reject interstate shipments of municipal solid waste.

This is a problem Congress has grappled with now for years and it only grows more and more serious. An estimated 18 million tons of municipal solid waste travels across State lines each year. Landfills are filling up around the country and communities are searching for new places to send their trash.

Where are they searching? Mr. President, they are searching in rural areas like my home State of North Dakota and, no doubt, they are looking in the State of the distinguished occupant of the chair, the State of Idaho.

Mr. President, rural States like ours, where pollution has not spoiled the land, where small communities may be willing to take large amounts of money from a waste company in exchange for landfill space, are the places they are looking. Whether they want this imported waste or not, States are almost powerless to stop the flow of garbage across their borders.

Mr. President, I can remember very well being involved in a debate on this matter a number of years ago, and the trash merchants had their lobbyists lining the Halls. I have never seen so many people off the Chamber of the Senate. The trash merchants want to ship this stuff someplace, and they are looking for States that are willing to take it.

Mr. President, States ought to have an ability to say "no." Waste is already coming to my State of North Dakota. We take industrial waste from General Motors plants from all around the country. We take municipal solid waste incinerator ash from Minnesota. A waste company continues its efforts to open a superdump in my State that would take garbage from Minneapolis-St. Paul. This one landfill, Mr. President, would receive almost twice as much garbage as is produced in my entire State. This situation is not unique. It is happening all over the country.

States should be able to do something about it. They should be able to

regulate how much solid waste comes into the State so they can implement effective waste disposal policy. The Federal Government requires the States to manage and oversee solid waste disposal programs. States are required to issue permits, monitor existing sites, and enforce landfill regulation. Why, then, should States not also be able to regulate how much waste comes in from out of State? It only makes sense that they have this power.

Mr. President, imported waste not only takes up precious landfill space, but it also puts a strain on services of the importing State without properly compensating that State. Waste trucks from out of State wear down the roads of the importing State, but the exporting community pays nothing. Similarly, States must spend money to run their solid waste program, but they get no additional payments for accepting out-of-State wastes. In other words, exporting communities are passing their waste problems, and the costs associated with them, on to importing States. This is not fair, and it should be changed.

The bill I am introducing today takes strong steps to address the problems of interstate waste. First, it gives States the authority to regulate interstate waste. If a State wants to reject new solid waste shipments, my bill would allow that.

Second, it requires that affected local governments formally approve of any waste import. This gives the communities the ability to veto proposed shipments of out-of-State wastes. Why should not those communities that are affected by waste shipments have the ability to say no?

Third, it provides the opportunity for the area surrounding the host community to be involved in the decision to accept out-of-State wastes. A decision on siting a solid waste landfill, especially one that will take large amounts of imported waste, must be a collective one, and a small community alone should not be able to make a decision that will affect a much larger surrounding area.

Finally, my bill requires that waste companies publicly release all of the relevant information about their proposed landfill before a community makes a decision on it. This information should include estimated environmental impacts and mitigation, economic impacts, planned expansion, financial disclosure, and records of past violations by the owner and operator of the disposal site. Waste companies hold up the promise of jobs and economic incentives, but they do not want to reveal the potential risks involved in their plan. In many cases, they may not even reveal their overall plans until it is too late to stop them. One practice I have seen involves having a local developer purchase the site and get a permit to dispose of modest amounts of solid waste. A big waste company then buys out the local party and aggressively expands the site's permit. The local community does not

have a chance. This is not fair and cannot be allowed to continue. Communities must be able to make informed choices.

Mr. President, how often have we seen it, where one of these trash merchants comes into a State and they spend lots of money up front, talking about the opportunities, talking about the jobs, talking about the good things, but failing to reveal the real plan, failing to tell how big the operation is really going to be? They fail to tell of past violations. We have seen companies go into States that are bad operators, that have a bad record, that have a bad reputation, but they do not reveal that. They do not talk about that before the community has a chance to vote.

Mr. President, many of us believe that a local community ought to have a choice and it ought to be an informed choice. They ought to know the record, they ought to know the plan before they make a final decision.

We have been working on the interstate waste problem in the Senate for many years now. During the years we have been debating this issue, the problem has not gone away. It has simply gotten bigger. The trash is still moving, and States and communities are almost powerless to stop it. It is time to enact interstate waste legislation into law.

Congress came very close to passing an interstate waste bill in 1994. I hope we can build on the work that has been done and take quick action in 1995.

I look forward to working with Chairman CHAFEE, Senator BAUCUS, Senator COATS, and others to move this matter forward.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 542

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. AUTHORITY TO REGULATE OUT-OF-STATE WASTE.**

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

**"SEC. 4011. AUTHORIZATION FOR STATES TO REGULATE MUNICIPAL SOLID WASTE GENERATED IN ANOTHER STATE.**

"(a) DEFINITIONS.—In this section:

"(1) AFFECTED LOCAL GOVERNMENT.—The term 'affected local government' means the elected officials of a political subdivision of a State in which a facility for the treatment, incineration, or disposal of municipal solid waste is located (as designated by the State pursuant to subsection (d)).

"(2) AFFECTED LOCAL SOLID WASTE PLANNING UNIT.—The term 'affected local solid waste planning unit' means a planning unit, established pursuant to State law, that has—

"(A) jurisdiction over the geographic area in which a facility for the treatment, incineration, or disposal of municipal waste is located; and

"(B) authority relating to solid waste management planning.

"(3) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste'—

"(A) means refuse, and any nonhazardous residue generated from the combustion of the refuse, generated by—

"(i) the general public;

"(ii) a residential, commercial, or industrial source (or any combination of the sources); or

"(iii) a municipal solid waste incinerator facility; and

"(B) includes refuse that consists of paper, wood, yard waste, plastic, leather, rubber, or other combustible or noncombustible material such as metal or glass (or any combination of the materials); but

"(C) does not include—

"(i) hazardous waste identified under section 3001;

"(ii) waste resulting from an action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604, 9606);

"(iii) material collected for the purpose of recycling or reclamation;

"(iv) waste generated in the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(v) industrial waste (including debris from construction or demolition) that is not identical to municipal solid waste in composition and physical and chemical characteristics; or

"(vi) medical waste that is segregated from municipal solid waste.

"(b) AUTHORITY TO REGULATE.—

"(1) IN GENERAL.—Each State is authorized to enact and enforce a State law that regulates the treatment, incineration, and disposal of municipal solid waste generated in another State.

"(2) AUTHORITIES.—A State law described in paragraph (1) may include provisions for—

"(A) the imposition of a ban or limit on the importation of municipal solid waste generated outside of the State; and

"(B) the collection of differential fees or other charges for the treatment, incineration, or disposal of municipal solid waste generated in another State.

"(c) LOCAL GOVERNMENT APPROVAL.—

"(1) IN GENERAL.—Except as provided in paragraph (2) or as otherwise provided under State law, the owner or operator of a landfill, incinerator, or other waste disposal facility in a State may not accept for treatment, incineration, or disposal any municipal solid waste generated outside of the State unless the owner or operator has obtained a written authorization to accept the waste from—

"(A) the affected local government; and

"(B) any affected local solid waste planning unit established under State law.

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—Paragraph (1) shall not apply with respect to an owner or operator of a landfill, incinerator, or other waste disposal facility that—

"(i) otherwise complies with all applicable laws of the State in which the facility is located relating to the treatment, incineration, or disposal of municipal solid waste; and

"(ii) prior to the date of enactment of this section, accepted for treatment, incineration, or disposal municipal solid waste generated outside of the State.

"(B) EXISTING AUTHORIZATIONS.—An owner or operator of a facility described in paragraph (1) that, prior to the date of enactment of this section, obtained a written authorization from—

"(i) the appropriate official of a political subdivision of the State (as determined by the State); and

"(ii) any affected local solid waste planning unit established pursuant to the law of the State,

to carry out the treatment, incineration, or disposal of municipal solid waste generated outside of the State shall, during the period of authorization, be considered to be in compliance with the requirements of paragraph (1).

"(C) FACILITIES UNDER CONSTRUCTION.—If, prior to the date of enactment of this section, an appropriate political subdivision of a State (as determined by the State) and any affected local solid waste planning unit established under the law of the State issued a written authorization for a facility that is under construction, or is to be constructed, to accept for treatment, incineration, or disposal municipal solid waste generated outside the State, the owner or operator of the facility, when construction is completed, shall be considered to be in compliance with paragraph (1) during the period of authorization.

"(3) EXPANSION OF FACILITIES.—An owner or operator that expands a landfill, incinerator, or other waste disposal facility shall be required to obtain the authorizations required under paragraph (1) prior to accepting for treatment, incineration, or disposal municipal solid waste that is generated outside the State.

"(4) PRIOR DISCLOSURE.—Prior to formal action with respect to an authorization to receive municipal solid waste or incinerator ash generated outside the State, the affected local government and the affected local solid waste planning unit shall—

"(A) require from the owner or operator of the facility seeking the authorization and make readily available to the Governor, adjoining Indian tribes, and other interested persons for inspection and copying—

"(i) a brief description of the planned facility, including a description of the facility size, ultimate waste capacity, and anticipated monthly and yearly waste quantity to be handled;

"(ii) a map of the facility site that discloses—

"(I) the location of the facility in relation to the local road system and topographical and hydrological features; and

"(II) any buffer zones and facility units that are to be acquired by the owner or operator of the facility;

"(iii) a description of the then current environmental characteristics of the site, including information regarding—

"(I) ground water resources; and

"(II) alterations that may be necessitated by or occur as a result of the facility;

"(iv) a description of—

"(I) appropriate environmental controls to be used at the site, including run-on or run-off management, air pollution control devices, source separation procedures, methane monitoring and control, landfill covers, liners, leachate collection systems, and monitoring and testing programs; and

"(II) any waste residuals generated by the facility, including leachate or ash, and the planned management of the residuals;

"(v) a description of the site access controls to be employed and roadway improvements to be made by the owner or operator and an estimate of the timing and extent of increased local truck traffic;

"(vi) a list of all required Federal, State, and local permits required to operate the landfill and receive waste generated outside of the State;

"(vii) estimates of the personnel requirements of the facility, including information regarding the probable skill and education levels required for jobs at the facility that distinguishes between employment statistics

for pre-operational levels and those for post-operational levels;

"(viii)(I) information with respect to any violations of regulations by the owner or operator, or subsidiaries;

"(II) the disposition of enforcement proceedings taken with respect to the violations; and

"(III) corrective action and rehabilitation measures taken as a result of the proceedings;

"(ix) information required by State law to be provided with respect to gifts, contributions, and contracts by the owner or operator to any elected or appointed public official, agency, institution, business, or charity located within the affected local area to be served by the facility;

"(x) information required by State law to be provided by the owner or operator with respect to compliance by the owner or operator with the State solid waste management plan in effect pursuant to section 4007;

"(xi) information with respect to the source and amount of capital required to construct and operate the facility in accordance with the information provided under clauses (i) through (vii); and

"(xii) information with respect to the source and amount of insurance, collateral, or bond secured by the applicant to meet all Federal and State requirements;

"(B) provide opportunity for public comment, including at least 1 public hearing; and

"(C) not less than 30 days prior to formal action—

"(i) publish notice of the action in a newspaper of general circulation; and

"(ii) notify the Governor, adjoining local governments, and adjoining Indian tribes.

"(d) DESIGNATION OF AFFECTED LOCAL GOVERNMENT.—Not later than 90 days after the date of enactment of this section, the Governor of each State shall, for the purpose of this section, designate the type of political subdivision of the State that shall serve as the affected local government with respect to authorizing a facility to accept for treatment, incineration, or disposal of municipal solid waste generated outside of the State. If the Governor of a State fails to make a designation by the date specified in this subsection, the affected local government shall be the public body with primary jurisdiction over the land or use of the land on which the facility is located."

(b) TABLE OF CONTENTS.—The table of contents for subtitle D of the Solid Waste Disposal Act is amended by adding after the item relating to section 4010 the following new item:

"Sec. 4011. Authorization for States to regulate municipal solid waste generated in another State."

By Mr. HATFIELD:

S. 543. A bill to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

EUGENE WATER & ELECTRIC BOARD FERC  
LICENSE EXTENSION

Mr. HATFIELD. Mr. President, today I am introducing legislation to allow the Federal Energy Regulatory Commission to grant the Eugene Water & Electric District, in Lane County, OR, an extension of its hydro project construction completion deadline.

The subject of this license is a 21 megawatt hydroelectric project at the Blue River Dam, an existing Corps of

Engineers flood control project. The Federal Energy Regulatory Commission granted the license for the project in November 1989. The deadline for completion is October 31, 1995. Construction has begun and EWEB has invested \$4.5 million to date.

The Eugene Water & Electric Board, also known as EWEB, has asked for an extension to the construction completion deadline because its ability to complete construction has been, and will continue for some time to be, impeded by the ongoing fish mitigation efforts of the Corps of Engineers. These efforts are focused on minimizing temperature variations in the McKenzie River caused by both the Blue River and Cougar Dams. The corps' work will entail drawing down reservoirs to very low levels.

I support this temperature control work being done by the corps. However, until the corps completes these fish mitigation improvements on Blue River Dam, the hydroelectric project currently licensed and being pursued by EWEB will be untenable. The corps is expected to first construct temperature control improvements at nearby Cougar Dam. This project is not expected to be completed until 2001. At that time, the corps will begin work on similar improvements at Blue River Dam, which it expects to finish by 2005.

The legislation I am introducing today is designed to accommodate both the beneficial fish mitigation efforts being pursued by the corps and the ongoing hydroelectric project being pursued by EWEB. My legislation directs FERC, at the request of EWEB, to extend the time for completion of construction to the later of October 31, 2002, or a date 1 year after the corps completes construction of temperature control structures on the Blue River Dam. The legislation also requires EWEB to file a construction completion progress report with FERC each year until construction is completed.

I look forward to working with members of the Senate Energy and Natural Resources Committee to ensure that this proposal receives prompt and thorough attention.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 543

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# **SECTION 1. EXTENSION OF DEADLINE FOR BLUE RIVER PROJECT.**

(a) EXTENSION.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 3109, the Commission shall, at the request of the licensee for the project, extend the time for completion of the construction of the project to the later of—

(1) October 31, 2002; or

(2) the date that is 1 year after the date on which the Army Corps of Engineers completes construction of water temperature control structures at the Blue River Dam.

(b) **REPORTS.**—The licensee for the project described in subsection (a) shall file with the Federal Energy Regulatory Commission, on October 31 of each year until construction of the project is completed, a report on progress toward completion of the project and of water temperature control structures at the Blue River Dam.

EUGENE WATER & ELECTRIC BOARD,  
Eugene, OR, February 20, 1995.

Hon. MARK O. HATFIELD,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATFIELD: The Eugene Water & Electric Board requests your help in seeking Congressional action which will allow us to extend, by eleven years, the construction completion deadline required by FERC on our Blue River hydroelectric project. The Blue River Dam is one of two facilities on the McKenzie River for which you have introduced legislation to facilitate and clarify financing for temperature control work by the Corps of Engineers. Due to the Corps' construction schedule and recent changes in BPA financing we are unable to meet the construction deadline of October, 1995 as required in our FERC license. For us to complete this project we will need additional time to coordinate our construction schedule with that of the Corps.

This is not a standard extension request and it is unlike other legislation to extend construction deadlines for hydroelectric projects. Timing problems, financial and environmental considerations necessitate a longer extension than those which have been granted to other licensees. Also, unlike other licensees, EWEB has already started construction on the project and seeks only an extension of the completion deadline.

#### THE PROPOSED PROJECT

For over a decade EWEB has been pursuing development of a hydroelectric project at the existing Corps of Engineer's flood control dam at Blue River. The project would generate 21 Mw, enough to provide power for 2000 homes annually. Our license for the project was granted in November, 1989. The deadline for completion is October 31, 1995. Construction began with the fabrication of the turbine and other associated equipment. Our investment to date is \$4.5 million and the license has a duration of 50 years. The attached Briefing Document of January 26th describes the project in detail.

#### FEDERAL ACTIONS BEYOND OUR CONTROL

The existing Corps flood control dams at Cougar and Blue River Reservoir will be modified to alter temperature variations (caused by the dams) which severely threaten salmon fry. This will be accomplished by installing multi-level release port towers. Construction is scheduled first a Cougar Reservoir as this is the larger project and it has a greater impact on fish mortality. After completion of the Cougar project in 2001 the Corps will begin work on Blue River with a scheduled completion date of 2005. Each year, over this four year construction period, the Corps will have to draw down the reservoir to very low levels. Generation from EWEB's power plant would be substantially reduced as would the revenue and operational benefits during the early years of the project's operation. Also, EWEB's design for the hydroelectric facility may have to be modified based on the Corps design and operating plan.

Our Blue River project was also accepted as a billing credit project by BPA. Billing credits is a financial benefit awarded by BPA

in response to the Northwest Regional Power Act to help utilities overcome the negative short-term economics associated with developing new resources during the early life of the project. Due to market changes and BPA's growing financial problems negotiations on our billing credit's contract was cancelled.

The timing and sequence of the Corps projects along with the loss of billing credits will make the project untenable.

#### ENVIRONMENTAL BENEFITS

A settlement agreement, approved by FERC and incorporated into the license, was reached between EWEB, the Oregon Department of Fish and Wildlife, the National Marine Fisheries Service and the U.S. Fish & Wildlife Service. The original fish mitigation plans for Blue River called for a fish screen and bypass facility. The agencies determined that only a fish barrier was needed at Blue River and the McKenzie River could be better served by investing screen and bypass costs into improving salmon habitat. As a result, EWEB will contribute \$2,200,000 to a trust fund for fish enhancement rather than building a screen and bypass facility. (Settlement Agreement attached).

In addition, the project itself will benefit fish simply through its construction. Currently, water released from the reservoir passes through an outlet tunnel many feet below the reservoir's surface. This results in rapid water depressurization causing a fish mortality rate of 60%. We would pressurize the tunnel by installing outlet gates downstream. The transition from pressurized to depressurized water will be slowed enough to reduce fish mortality by more than half resulting in an overall survival rate exceeding 70%.

#### CONSULTATION WITH FERC

Before approaching your office with this extension request we spoke with Fred Springer, Director, Office of Hydropower Licensing and Mark Robinson, Director, Division of Project Compliance and Administration at FERC. They were clear that although the Commission has the authority to extend completion dates, an extension of an 11 year duration is unusual. Extensions are usually granted when the applicant can show diligence or continuous progress toward project completion. We would be unable to make that showing, especially while the Corps work is underway. Additionally, 11 years is a lengthy extension compared to other extension requests which have been granted by either legislative or administrative means. In terms of financial factors, extensions may be granted when the licensee needs more time to secure a power sales contract or another means of financing. FERC acknowledges the revenue losses we would incur by completing a project we could only operate part time is a serious concern. However, this too is an uncommon situation which falls outside the generally accepted rationale for granting construction extensions. According to FERC staff, these circumstances are so unusual, that the Commission would be hard pressed to give us a favorable ruling. FERC would need a legislative directive to grant us the extension we request.

Consistent with the Regional Act, EWEB has aggressively pursued conservation and renewable resources. As you consider helping us with the Blue River project we ask you to note that we have three others, all renewable resource projects, with existing agreements or contracts with BPA. EWEB recently learned that all three projects are at risk of being abandoned by BPA due to continuing budget constraints. We have made substantial investments in two of them. Regional funding from BPA for conservation will also likely end requiring EWEB to sustain local

conservation investments alone. Additionally, we are facing yet to be determined rate impacts from BPA's reinvention. The combination of all these actions at BPA and the Corps shifts significant obligations to EWEB and its ratepayers. The increased financial obligation for conservation and renewable resource development makes it economically imprudent to proceed with the Blue River Project under the current schedule even though it may be one of the few resource options remaining at this time.

We thank you for your serious consideration of our request.

RANDY L. BERGGREN.

By Mr. BUMPERS (for himself  
and Mr. GRAHAM):

S. 545. A bill to authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property; to the Committee on Finance.

#### CONSUMER AND MAIN STREET PROTECTION ACT

Mr. BUMPERS. Mr. President, I come today to introduce a bill dealing with the mail-order catalog business. This issue has become almost an obsession with me over the past 2 years, and one of the reasons for that obsession is that, before I became Governor of Arkansas, I was a hardware, furniture, and appliance dealer, practicing law in a small town, raising cattle, doing anything to put bread on the table. And the biggest competitor I had was the Sears, Roebuck catalog. Sears, Roebuck was tough competition for me because they were big, had a much bigger variety of goods, and were reasonably cheap by comparative standards.

But while Sears, Roebuck was tough competition, it was also fair competition. They bore the same burdens of doing business that I did. One of those burdens was collecting sales taxes. Because Sears, Roebuck had stores in every State in the Nation, they had to collect sales taxes on everything they sold through their catalog operation, just like I had to collect sales taxes on everything I sold in my hardware store. The reason Sears, Roebuck had to collect those taxes was that, under the law, if you have a physical presence in any State, you must collect sales tax on goods shipped into that State, even if the goods are sold through a catalog.

Over the past few years, however, an entirely new situation has been developing in the competition between Main Street retailers and catalog operations. And that situation is not one of fair competition. What has been developing is that the catalog operations often limit their physical operations to one State, or a few States, and refuse to collect the taxes that are due on goods shipped into other States. This is increasingly significant because catalog sales are \$100 billion a year. Fingerhut, one of the biggest mail-order houses in America, has annual sales in excess of \$1 billion a year. They sent out 476 million catalogs in 1993 alone. Mr. President, bear in mind that Fingerhut is only one of several very large mail order operations. Lands' End, L.L.

Bean, some of the big ones, have similar sales figures. In all, there are around 7,500 mail-order houses in this country, and they are growing like mad.

I daresay that on an average day, I get somewhere between 4 and 10 catalogs in my mail chute every night. If you live in my home State of Arkansas and order something from L.L. Bean or Lands' End, the company collects no sales tax. That does not mean there is no sales tax in my State, because there is. But do you know who has the responsibility for remitting the tax to the State revenue department, Mr. President? The consumer. If you buy a \$10,000 fur coat from a mail-order house, you are personally responsible for remitting the \$500 tax on that purchase to the State revenue department. And it is not just mail-order houses that play this game. Sometimes, if you buy it in New York City, they will say, "You have a southern accent; are you not from New York?" "No, I am not; I am from Arkansas." "Would you like for us to mail this to your home and save you \$500?" Of course, the consumer is going to say, "Yes, I would like that." The company will then mail it to your home and not charge you one red cent of sales tax. But what the unsuspecting consumer does not know is that he or she does owe tax on that purchase, and that he or she is personally responsible for paying it to the State.

My State imposes its sales tax on all goods, regardless of whether they are purchased in State or out of State. The 44 other States which have sales taxes also apply those taxes to both in-State and out-of-State purchases. Technically, the tax on out-of-State goods is called a use tax, while the tax on in-State goods is called a sales tax. But for all intents and purposes, the use tax is identical to the sales tax. But because out-of-State companies usually refuse to collect the applicable use tax, the consumer does not even know there is a tax when purchasing merchandise via mail order.

The Presiding Officer is from the great State of Idaho. Idaho has a sales tax, and Idaho applies that sales tax to goods shipped into the State, just like it does to goods sold by Idaho department stores. So if Idaho's sales tax is 4 or 5 percent, the person who buys a \$10,000 fur coat via mail order would be liable for \$400 or \$500 in sales taxes.

Some people say, "There is already a tax on mail-order sales. It is the use tax. What are you trying to do?"

What I am trying to do is make sure that mail-order companies do not blind-side their customers. Consumers buy from mail-order companies thinking their sales are tax free, and then they learn otherwise after the fact. Last year in Florida, 19,000 people got notices in the mail that goods they bought from direct marketers were not tax free, as the company had lead them to believe. The furniture they bought in North Carolina or the merchandise

they bought from Lands' End or L.L. Bean, they owed a tax on it. Admittedly, not every mail-order customer gets caught. Sometimes the State finds out about the purchase, and sometimes they do not. But when they do, the consumer has to pay.

This is not a new tax. Of course, it is not. Think about it for a second. Why would any State have a tax structure that required Main Street merchants to collect sales tax and allowed out-of-State companies to ship the same merchandise into the State and collect nothing? No State would ever do that, and no State does it.

Oh, how everybody's heart bleeds around here for the poor, small town, Main Street businessman. But when it comes to catalog operations, we give them a huge advantage, 5 to 8 percent or more, and nobody wants to stand up for the Main Street businessman.

Recently the argument was made by one of the Senators from Maine that Maine does not have the problem I am describing because they have something that says on the State income tax return in Maine, "List all your catalog purchases from last year."

Now, who knows what all they bought from catalogs last year? There are a lot of people who order something every other day from a mail-order house, and of course they do not take the time to keep a record of every purchase. People just do not keep up with it.

Do you know what Maine collected last year on that? You guessed it. Not much. Only around \$1 million of the total \$13 million they should have collected on out-of-State mail order purchases. But Maine is fat and happy because L.L. Bean is located there and L.L. Bean does around \$1 billion a year in sales and they pay sales tax on every dime of merchandise sold to customers living in the State of Maine. It is those other 49 States that do not get anything.

The direct marketing industry says, "Oh, this is such a burden, Senator. You have got a city tax, you have got a county tax, you have got a State tax. Do you expect me to keep up with all of that?"

No, I do not. And this legislation would allow mail-order companies the option of collecting a single blended rate for each State where they do business. Then the mail-order companies would simply send a quarterly payment to the State revenue department and let them distribute it to the local jurisdictions that have a sales tax.

Do you want to hear a true anecdote? One of the finest Republican Senators to come to the U.S. Senate since I have been here is Senator BOB BENNETT from the great State of Utah. Senator BENNETT founded a mail-order company years ago. In a Small Business Committee hearing last year on this legislation, he said, "The people in the company with me sat around the table with me and we debated this issue. Shall we or shall we not collect sales tax on our

sales made to other States?" He said the decision was almost unanimous, "Yes, let's be good citizens and let's collect a sales tax."

Anybody who wants to make the argument about what a terrible burden this is on these mail-order houses, talk to BOB BENNETT. He says, "We punch a computer button at the end of the month, and that is it. It is no problem whatever to collect this sales tax. We do it and we do millions in business a year." So much for the burden. Another argument they make is, "But, Senator, we do not require fire protection, law enforcement, all those things that your sales taxes go for."

That is true. But I will tell you what burden you do impose on other States. You contribute almost 4 million tons of waste to the landfills of this country annually. Talk to any mayor: "Mayor, what is the biggest problem you have?" "Trying to find enough landfill to take care of our garbage." And here is a contributor of around 4 million tons a year that mayors have to find some method of disposing of. And the mail-order houses do not contribute one penny, except companies like BOB BENNETT's.

"Well, we don't want to have to do this every month." Fine. My bill says you only have to remit every 3 months.

Now, if that "ain't" a deal. I wish I had had that kind of opportunity when I was in business. If I did not pay my sales tax by the 20th of each succeeding month, I did not get a 2-percent discount.

Mr. President, I have gone even further than that. In order to take care of some of these smaller mail-order houses, we have exempted in this bill, in the interest of being for small, fledgling businesses—and, I must say, \$3 million a year is not exactly my idea of small—we say, "If you do less than \$3 million a year of business, you do not have to mess with this bill." Of the 7,500 catalog companies in the United States, not very many of them do more than \$3 million of business a year. Only 825 of the 7,500 mail-order houses in this country that would be covered by this bill.

Mr. President, there is another element of unfairness besides the competitive advantage that these mail-order houses get. Some of them do advertising that is very offensive to me and I think it would be to any Senator.

Here are a couple of charts. I do not know the name of this company. But here is what their ad says. "Nobody beats our deal." "No sales tax added outside of North Carolina."

Now, technically, that is correct. They do not add any sales tax. The poor consumer who buys that yacht, or whatever, is subject to a tax, but he is misled by this ad into believing that he will never have to pay any sales tax.

Here it is, "No sales tax added." Now, it is true they do not add it, but if a State you live in happens to catch you buying that, they can assess a sales tax against you.

I have some letters that I will put in the RECORD in a moment, Mr. President, from people from all over the country who have gotten the sad news that they thought they were buying \$10,000 worth of furniture tax free. And the clerk that sold them assured them, "We will ship this from North Carolina to Florida, and you will not have to pay sales tax on it."

But think about this. Wallcovering, Inc.—I blocked out the address of this company—here is their advertising: "Discount wallcovering, the phone way." Now, all these mail order houses have their 1-800 number listed on every page of their catalog. "The phone way, save 33 to 66 percent."

And what do you think? No sales tax outside of Pennsylvania. That is not the worst of it. A lot of them have advertised "No sales tax." They do not say, "No sales tax added," as they do here. They just say "No sales tax." A person getting ready to order wall covering, I promise, would assume that there is no sales tax.

But that is not the worst of this firm. Listen to this: "Stop in your neighborhood, write down the pattern number, and then call us." Use that poor stiff down on Main Street. Go into his store and shop. Get the model number, get the cover number, whatever, and then call our 800 number and save the sales tax.

I have never introduced a piece of legislation in this body, Mr. President, that I thought was more meritorious than this. When I offered this amendment on the unfunded mandates bill these mail order houses started sending telegrams to every single person they had ever sold 10 cents worth to and said "Write your Senator. Tell them you don't want any more taxes. Tell them Senator BUMPERS' proposal will cost them an arm and a leg." And a lot of people bought into that business about it being a new tax, and scared to death they will get a 30-second spot running against them the next time they run, being a taxpayer and a spender.

Ask the little shopkeeper in your hometown on Main Street what he thinks about it. Ask your Governor or your mayor how he or she feels about it.

We had a music dealer in North Little Rock testify. This music dealer said, "People come into our shop all the time, get model numbers off our musical instruments so they can order from a mail order house. They get it from a mail order house, it does not work, and then they bring it in here for repair, and they think we ought to repair it free because we sell that same product."

Now, Mr. President, if the Presiding Officer will pardon this odious comparison, it is just like mining law reform. It may not happen this year, may not even happen next year, but this is going to happen.

Do Senators know who collects taxes in every single State? The Boy Scouts. When ordering Scout uniforms out of

their catalog, order it from Florida, they collect the tax and send it to the State of Florida. If the Boy Scouts can do it, surely the Lands' End and L.L. Bean and all the others can do it.

I am not going to bore Members with a bunch of catalogs. I keep a couple hundred in the office just for amusement. I am not going to bore Members with them, but that argument about how complex it is, it would take a Philadelphia lawyer to decipher the instructions on some of these mail order houses. Some of them do business in 25 States. If you live in this State, this State and this State, add 5 percent for sales tax; if you live in this State, add 4 percent sales tax, plus sales tax on the shipping charges; if you live in this State, allow 3 days for delivery; if you live in this State allow 2 days for delivery. And they talk about this being complicated.

Mr. President, the reason I say this is an idea whose time has come, and it will pass ultimately, is because this business is growing a lot faster than the retail business in your hometown.

So I always want to say to these people who say this is too burdensome, it is a new tax. All of those arguments we will hear when we debate this, they are the most specious arguments I have ever heard. I want to say to those people, what if everybody in the country decides to start ordering from mail order houses? Who will educate our children? Who will provide for fire protection and law enforcement and the landfills? If they continue to grow as fast as they are growing right now, compared to Main Street merchants, that is where we are headed.

The Senator from Maine—do not misunderstand me—I am not quarreling with the Senator from Maine. They have L.L. Bean in their State doing almost \$1 million a year. I understand we all protect our own local interests, but you want to say to a lot of those people, "You are getting your sales tax from the biggest mail order house in the country, but nobody else is."

Is it fair for people to get this sudden notice when they thought they bought merchandise with no sales tax? Is it fair for them to suddenly get a notice from the State Revenue Department because their next door neighbor squealed on them for buying that oriental rug out of New York? It is patently unfair to the purchaser to suddenly find out that he owes a big tax bill that he was told by the mail order house that he would not have to pay.

So far as the burden is concerned, I want Senators to listen to this. These are not my words. These are Fingerhut's words, last quarter of 1993, Fingerhut in their annual report to their stockholders:

To the extent that any States are successful in requiring use tax collection the cost of the company's business, doing business, could be increased although it does not believe any increase would be material.

Lands' End, probably the first quarterly report of 1994,

Although collecting use taxes would likely influence the buying decisions of some customers, the company believes there would be no material adverse affects on financial results.

They are two of the biggest ones in the United States saying, "We do not think the imposition of the collection of these sales taxes will affect our profits."

Finally, why are we doing this now? Because until 1992, we could not. In 1967 the Supreme Court said in the famous case of *Bellas Hess*, a big mail order catalog house, the Supreme Court said the States may not impose a tax on mail order catalog houses because it would constitute an undue burden on commerce, interstate commerce, as prohibited by the Constitution, and would also be a violation of the due process clause of the 14th amendment. That was in 1967. Nobody can do anything because the Supreme Court said they could not.

In 1992 in the case of *Quill versus North Dakota*, the Supreme Court reversed half of that and said, "We no longer believe that the imposition of a tax by the States on mail order houses is a violation of due process." Since the determination as to what burdens interstate commerce can be determined by Congress, it is now up to Congress to pass a law, if they choose, that allows the States to impose this tax on this roughly 825 mail order houses.

So in 1992, the Supreme Court said, "Congress, it's up to you. If you want to help the States and the States want to impose this sales tax collection burden on the mail order houses, like they do on that poor Main Street merchant, Congress is going to have to pass a law enabling them to do it."

So it has only been since that 1992 Supreme Court decision that we have had the authority to allow the States to do this.

Mr. President, if we cannot pass this, I hope I do not hear anymore whining, groaning, moaning, and gnashing of teeth about unfunded mandates on the States when you refuse to help the States collect a legitimate tax to deal with unfunded mandates and a whole host of other problems.

And if this bill does not pass, I hope I do not hear any moaning about the poor small business people in this country, how we ought to do something for the small business people. Everybody is always willing to do something for small business people as long as it does not affect big business people.

Mr. President, I ask unanimous consent that a letter from Ray Jones, owner of Long Beach Yacht Sales, Long Beach, CA; a letter from Mamie R. Willis, Portland, TN, the sad recipient of a pretty good sized order only to find out that she owed the sales tax; White Furniture Co. in my own home State from Debbie White, who talks about how competitively unfair it is for her to have to charge sales tax on furniture sold all over town and people ordering furniture from mail order

houses and paying no sales tax; and finally a letter from an ordinary citizen, John Dix, who bought a house full of furniture in North Carolina, almost \$10,000 worth, and suddenly was slapped with a tax bill of \$700 that he and his wife never dreamed even existed. If you want to stop all of that, fine.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

LONG BEACH YACHT SALES,  
Long Beach, CA, January 18, 1994.  
Attention: Mr. Stan Fendley, Tax Council  
Hon. SENATOR BUMPERS,  
Chairman, Committee on Small Business,  
Russell Senate Office Building, Washington,  
DC.

Thank you, in advance, for your sponsorship of legislation regarding the collection of interstate sales tax. This week we lost a \$240,000 deal as a result of a sales tax issue. They buyer bought a boat in Oregon to avoid our local and state sales tax. The vessel will be kept out of state for the required period of time and will be subsequently brought into California after the waiting period has elapsed. Based on our local tax rate of 8.25% the resulting tax would have been \$19,800.

Not only did we (and the State) lose this deal, but we also lost the time and expenses involved in upselling the customer to a more expensive boat (from \$140,000 to \$240,000), sea trialing the boat and providing extensive consultation regarding the product. The customer thanked us but basically said for \$19,800 he would have to make an economic choice to buy elsewhere. We did not have the margin to discount the product further to even attempt to compete.

In todays economic environment it is tough enough to succeed but without some form of a fair interstate sales tax collection program we, as a responsible and law abiding dealership, can not compete fairly against some of our out of state competitors that are not required to collect sales tax or tax at a significantly lower rate.

Again, thank you for sponsoring this important piece of legislation. Hopefully this will create a fair arena in which we can compete. As always, please feel free to contact me with any questions or comments that you may have.

Sincerely,

RAY JONES,  
Owner.

Portland, TN, September 8, 1994.  
Senator DALE BUMPERS,  
Russell Senate Office Building, Washington,  
DC.

DEAR SENATOR BUMPERS: When I moved from Nashville to a small town a number of years ago, I discovered the convenience of mail-order buying. I buy several hundred dollars worth of merchandise per year. I am 75 years old and can no longer drive to the city to shop. I know there are probably thousands in my situation.

Several months ago I heard on our local news that people purchasing goods from mail order catalogs must pay State sales and use tax on these items. That was news to me. I, and I know many others, have always thought that merchandise purchased outside our state was not subject to sales tax unless such a vendor had a store within our state.

Since I have always tried to be a law-abiding citizen, I added up from my records all purchases made in recent years, figured the sales tax, and mailed a check to the State Department of Revenue. But what about those many people who still do not know they are liable for these taxes? This situa-

tion makes it unfair to those who are paying.

I once ordered many Christmas gifts from catalogs. Now I am inclined to send money to my out-of-town relatives, avoiding the hassle of tax-record keeping.

I believe it is the duty of mail order companies to collect sales taxes due, just as other stores and grocers do. Modern-day computers certainly make it easy for them.

I understand you are working on legislation to correct this situation. I hope you will succeed.

Sincerely yours,

MAMIE R. WILLIS.

WHITE FURNITURE CO.,  
January 19, 1994.

Senator DALE BUMPERS,  
Dirksen Building, Washington, DC.

DEAR SENATOR BUMPERS: I want to make you aware of an unfair tax situation that has been occurring for years in the furniture business. For quite some time we tried to ignore this, but when you see or hear the results every day of the week you have to finally stop and take notice.

My family has a small retail furniture business in Arkansas. We have paid taxes in the same small town for years. Now we have customers who are being educated by advertisers to shop their local retail stores for model numbers and prices—then call North Carolina and order and avoid paying our state sales taxes.

I have personally lost individual sales in my area for fifteen to twenty thousand dollars. We have found that the larger sales are the ones that people do out of state because of the high percentage of tax.

I'm not crying about the prices; I would just like to have a level playing field. We service our clients with free delivery; we furnish the showrooms where they can touch and feel the merchandise; we finance the merchandise locally, and we employ Arkansas people to sell and deliver the furniture.

Last year NBC did a travel segment and, on over 200 stations across our country, showed people how to take their vacations in North Carolina, shop while they are there and save enough in sales tax to pay for their vacation. Then CBS did a week long special on "Good Morning America," devoting one day to furniture, one to cars, and another to clothes, etc.

I don't know about the other 49 states, but I do know that our state could use the revenue from those lost sales taxes for our schools, roads, and local government.

I will be proud to support you in any effort you can make to help our state collect these unpaid taxes.

Thank you.

DEBBIE WHITE.

Hilton Head, SC, September 12, 1994.  
Hon. DALE BUMPERS,  
Chairman, Committee on Small Business,  
U.S. Senate, Washington, DC.

DEAR SENATOR BUMPERS: While on a trip to North Carolina a few years ago, my wife and I visited a furniture store to look for items for our winter home in Hilton Head, South Carolina. As you are no doubt aware, North Carolina is the furniture center of America. People come from all over America to buy furniture in North Carolina, drawn by word of mouth and various means of advertising.

As we shopped at one store in High Point, my wife and I found a number of furniture pieces that we were interested in buying. While considering the purchase, we were told by the sales staff that if this furniture were delivered to our home in South Carolina, no sales tax would be collected. This represented a savings of several hundred dollars, and became one factor in our decision to

make the purchase. Subsequently, we concluded the purchase agreement, and the furniture was delivered to our home in South Carolina a short time later.

Approximately four years after making that purchase, we were surprised to receive a letter from the South Carolina Department of Revenue informing us that the furniture we had purchased in North Carolina was subject to South Carolina's use tax. (South Carolina had learned about the purchase when North Carolina audited the furniture company and shared the audit information with South Carolina.) In addition to the 5 percent tax, we owed interest and penalties because we had failed to pay the tax promptly. On our furniture of some \$10,000, the total we owed for tax, interest and penalties was approximately \$700.

As you can imagine, we were shocked and upset at this news. We had no idea that we owed tax on this purchase. Like most consumers, we were accustomed to having sales taxes collected at the time of purchase, and it seemed odd to expect the customer to know when, where and how much tax to pay. And because the furniture salesman had told us that no tax would be "collected," we assumed that no tax existed.

I am not complaining about the tax itself. I certainly do not enjoy paying taxes, but had we known about this tax at the time of purchase, it wouldn't have been so bad. In that case, we could have considered the tax as part of the cost of the transaction and then made an informed decision about whether to make the purchase or not. Indeed, it's quite possible that we would still have bought the furniture. But we were blindsided. We were led to believe that there was no tax, then told four years later that there was a tax. That simply is not fair.

The worst part of this situation is that we were expected to pay interest and penalties. As I told the South Carolina Department of Revenue, I felt that this was particularly unreasonable since we didn't even know we owed the tax—and they didn't know we owed the taxes for four years. In the end, I won half the battle: they agreed to waive the penalties, but we still had to pay the interest.

I understand that the State of South Carolina cannot control what North Carolina merchants tell their customers. But the United States Congress can and should do so. I urge you to pass legislation immediately correcting this situation so that other consumers do not have the same bad experience we had.

In my opinion, you should require merchants who ship goods to other states to inform those customers that taxes may apply. The disclosure should be in writing, and the customer's signature should be required. Any merchant who fails to give the disclosure should have to pay 50 percent of any penalties or interest that occur. I believe this would discourage companies from failing to share important information with the consumer.

Thank you for the opportunity to share my thoughts with you on this issue. I hope that you will move quickly to ensure that other consumers aren't misled the way my wife and I were.

Sincerely,

JOHN DIX.

## NOTICE OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL  
RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been