

103^D CONGRESS
2^D SESSION

H. R. 3905

To provide for the establishment and management of the Opal Creek Forest Preserve in the State of Oregon.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1994

Mr. KOPETSKI introduced the following bill; which was referred jointly to the Committees on Natural Resources and Agriculture

A BILL

To provide for the establishment and management of the Opal Creek Forest Preserve in the State of Oregon.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Opal Creek Forest Preserve Act of 1994”.

6 (b) TABLE OF CONTENTS.—The table of contents for

7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Definitions.
- Sec. 4. Opal Creek Forest Preserve.
- Sec. 5. Administration of the Preserve.
- Sec. 6. Prohibitions regarding the management of the Preserve.
- Sec. 7. Access to and acquisition of non-Federal land.
- Sec. 8. Bornite Project Area.

Sec. 9. Authority of the Secretary and responsible parties to conduct environmental response actions or pursue liability.

Sec. 10. Grandfather clause.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Old-growth forests are unique ecosystems
4 that serve as critical habitat for hundreds of verte-
5 brate and invertebrate animals, plants, and fungi.

6 (2) Old-growth forests provide clean and plenti-
7 ful water and support streams and rivers containing
8 runs of anadromous and resident cold water fish,
9 which are wholly dependent on high quantity and
10 quality water for migration, spawning, rearing, and
11 cover.

12 (3) The high quantity and quality of water in
13 streams and rivers in old-growth forests can only be
14 maintained by protecting the watersheds of these
15 streams and rivers.

16 (4) Old-growth forests provide unique and out-
17 standing opportunities for educational study, sci-
18 entific research, and recreation.

19 (5) The establishment of a watershed and forest
20 preserve to protect areas of old-growth forests and
21 surface waters can contribute significantly to the
22 quality of life for the residents of the State of Or-
23 egon through education, recreation, and a protected
24 water supply.

1 (6) The area known as the Opal Creek Forest,
2 located on the upper Little North Fork of the
3 Santiam River in the State of Oregon, contains one
4 of the largest remaining intact old-growth forest
5 ecosystems in the Western Oregon Cascades. Al-
6 though the landscape mosaic in the Opal Creek For-
7 est may reflect some past logging, young stands of
8 trees in the area mainly owe their existence to natu-
9 ral disturbances, chiefly wildfire.

10 (7) The Opal Creek Forest contains outstand-
11 ing geological and botanical features and contains
12 attributes of historic and prehistoric importance.

13 (8) The recreational use of the Opal Creek For-
14 est, typically in the form of hiking, sightseeing, and
15 the general enjoyment of the outdoor environment, is
16 significant and likely to increase.

17 (9) It is desirable to limit the human-related
18 disturbances and development of the Opal Creek
19 Forest in order to protect fully the special features
20 of the forest and maintain the full potential of its
21 watershed for scientific, educational, and non-
22 destructive research purposes.

23 (10) Preservation of the Opal Creek Forest pro-
24 vides outstanding opportunities for scientists to con-
25 duct nondestructive research regarding old-growth

1 forests and for educators to provide scientifically
2 credible information to the public.

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

4 (1) to protect and preserve the forests and wa-
5 tersheds contained in the Opal Creek Forest Pre-
6 serve;

7 (2) consistent with paragraph (1), to promote
8 and conduct—

9 (A) nondestructive research in the Preserve
10 regarding old-growth forests; and

11 (B) educational programs in the Preserve
12 regarding old-growth forests and cultural and
13 historic resources in the Preserve; and

14 (3) consistent with paragraphs (1) and (2), to
15 permit and regulate recreation in the Preserve.

16 **SEC. 3. DEFINITIONS.**

17 For purposes of this Act:

18 (1) PRESERVE.—The term “Preserve” means
19 the Opal Creek Forest Preserve established in sec-
20 tion 4(a).

21 (2) NONDESTRUCTIVE RESEARCH.—The term
22 “nondestructive research” means research conducted
23 in the Preserve that does not involve the harvesting
24 of timber or otherwise damage the ecosystem.

1 (3) COOPERATIVE MANAGEMENT PLAN.—The
2 term “cooperative management plan” means the
3 management plan for the Preserve developed pursu-
4 ant to section 5(b).

5 (4) BORNITE PROJECT AREA.—The term
6 “Bornite Project Area” means the area known as
7 the Bornite Project Area, which is excluded from the
8 Preserve as depicted on the map described in section
9 4(b).

10 (5) SECRETARY.—The term “Secretary” means
11 the Secretary of Agriculture.

12 **SEC. 4. OPAL CREEK FOREST PRESERVE.**

13 (a) ESTABLISHMENT OF PRESERVE.—There is here-
14 by established the Opal Creek Forest Preserve in order
15 to protect and preserve the forests and watersheds in the
16 Preserve and to promote the research, educational, and
17 recreational purposes of this Act.

18 (b) DESCRIPTION OF PRESERVE.—The Preserve shall
19 consist of those Federal lands located in the Willamette
20 and Mt. Hood National Forests in the State of Oregon
21 that are generally depicted on the map dated October 10,
22 1993, and entitled the “Opal Creek Preserve Area”. The
23 Preserve shall also include such lands as may be added
24 under section 7 or 8 of this Act. The map referred to in
25 this subsection shall be kept on file and made available

1 for public inspection in the Office of the Chief of the For-
2 est Service, Department of Agriculture.

3 **SEC. 5. ADMINISTRATION OF THE PRESERVE.**

4 (a) IN GENERAL.—The Secretary shall administer
5 the Preserve in accordance with this Act and with the
6 laws, rules, and regulations applicable to National Forest
7 System lands in a manner that will further the purposes
8 of this Act.

9 (b) DEVELOPMENT OF COOPERATIVE MANAGEMENT
10 PLAN.—The Secretary, acting through the Forest Service,
11 shall develop a cooperative management plan for the Pre-
12 serve that is consistent with the requirements specified in
13 this Act and other laws applicable to the Preserve. The
14 cooperative management plan shall be prepared in con-
15 sultation with, and with significant input from, interested
16 individuals and organizations. The Secretary is strongly
17 encouraged to enter into memoranda of understanding
18 with interested parties to accomplish the purposes of this
19 Act.

20 (c) PROTECTION OF CULTURAL AND HISTORIC RE-
21 SOURCES.—Not later than one year after the date of the
22 enactment of this Act, the Secretary shall review and re-
23 vise the inventory of the cultural and historic resources
24 in the area covered by the Preserve, which was originally
25 developed pursuant to the Oregon Wilderness Act of 1984

1 (Public Law 98–328; 16 U.S.C. 1131 note). The Secretary
2 shall submit a report to Congress describing the results
3 of the review of such inventory.

4 (d) WITHDRAWAL.—Subject to valid existing rights,
5 Federal lands in the Preserve are hereby withdrawn from
6 disposition under the public land laws, from location,
7 entry, and patent under the mining laws of the United
8 States, from the operation of the mineral leasing laws of
9 the United States, and from operation of the Geothermal
10 Steam Act of 1970 (30 U.S.C. 1001 et seq.). The with-
11 drawal provided by this subsection shall also apply to any
12 Federal lands added to the Preserve after the date of the
13 enactment of this Act, including lands in the Bornite
14 Project Area added to the Preserve pursuant to section
15 8, except that the withdrawal shall apply to such lands
16 only upon addition to the Preserve.

17 (e) PRIVATE INHOLDINGS.—The Secretary shall co-
18 operate with, and provide technical assistance to, private
19 landowners, organizations, and other entities holding pri-
20 vate lands within the boundaries of the Preserve to pro-
21 mote the use and management of such lands in a manner
22 consistent with the purposes of this Act.

1 **SEC. 6. PROHIBITIONS REGARDING THE MANAGEMENT OF**
2 **THE PRESERVE.**

3 (a) PROHIBITION ON LOGGING OR OTHER TIMBER
4 HARVESTING.—

5 (1) PROHIBITION.—Except as provided in para-
6 graph (2), the cutting of trees in the Preserve is
7 prohibited.

8 (2) EXCEPTIONS.—The prohibition contained in
9 paragraph (1) shall not apply to the extent that the
10 Secretary determines that the cutting of specific
11 trees in the Preserve is necessary—

12 (A) for public safety, such as to control the
13 spread of a forest fire in actual existence in the
14 Preserve or on lands adjacent to the Preserve;

15 (B) for administrative use related to activi-
16 ties permitted in the Preserve; or

17 (C) for collection of dead and downed wood
18 to be used for firewood in the Preserve.

19 (3) LIMITATION ON EXCEPTION.—The cutting
20 of trees authorized under paragraph (2) may not in-
21 clude salvage sales or harvests of commercial quan-
22 tities of timber in the Preserve.

23 (b) PROHIBITION ON OPEN FIRES.—The Secretary
24 shall prohibit open fires in the Preserve except in des-
25 ignated fire rings.

1 (c) PROHIBITION ON OFF ROAD MOTORIZED TRAV-
2 EL.—

3 (1) PROHIBITION.—Except as provided in para-
4 graph (2) and subject to valid existing rights, the
5 use of motor vehicles off or outside of the estab-
6 lished roadbed of roads in the Preserve is prohibited.

7 (2) EXCEPTION.—The prohibition contained in
8 paragraph (1) shall not apply to the extent that the
9 Secretary determines that the use of a motor vehicle
10 off or outside of the established roadbed of a road
11 in the Preserve is necessary to respond to an emer-
12 gency.

13 (d) PROHIBITION ON USE OF CERTAIN ROADS.—

14 (1) PROHIBITION.—Except as provided in para-
15 graph (2) and subject to valid existing rights, the
16 use of motor vehicles is prohibited on the following
17 roads located in the Preserve:

18 (A) Forest road 2209 from the gate in ex-
19 istence on the date of the enactment of this Act
20 eastward to the intersection of the road with
21 the wilderness boundary.

22 (B) Forest roads 290 and 330, which are
23 spur roads to the road described in subpara-
24 graph (A).

1 (2) EXCEPTIONS.—The prohibition contained in
2 paragraph (1) shall not apply to the extent that the
3 Secretary determines that the use of the roads de-
4 scribed in such paragraph is necessary for adminis-
5 trative purposes or to respond to an emergency.

6 (3) RULE OF CONSTRUCTION.—Nothing in this
7 subsection shall be construed to prohibit inholders
8 and the possessors of valid claims from using the
9 roads described in paragraph (1) for ingress and
10 egress to their inholdings or in connection with the
11 exercise of their valid claims, subject to such reason-
12 able terms and conditions, consistent with the pur-
13 poses of this Act, as the Secretary may prescribe.
14 Nothing in this subsection shall be construed to pro-
15 hibit motor vehicle traffic on other roads established
16 in the Preserve.

17 (e) PROHIBITION ON ROAD CONSTRUCTION.—

18 (1) PROHIBITION.—Except as provided in para-
19 graph (2) and section 8(d), and subject to valid ex-
20 isting rights, the construction of new roads is pro-
21 hibited in the Preserve.

22 (2) EXCEPTIONS.—The prohibition contained in
23 paragraph (1) shall not apply to the extent that the
24 Secretary determines that the construction of new
25 roads in the Preserve is necessary to accomplish the

1 purposes of this Act or to provide access to
2 inholdings. The Secretary may maintain or improve
3 roads in the Preserve to the extent the Secretary de-
4 termines that such maintenance or improvements
5 are necessary to accomplish the purposes of this Act,
6 to provide for the protection of the natural resources
7 of the Preserve, or to provide for public safety.

8 (3) LIMITATION ON EXCEPTION.—The con-
9 struction or improvement of roads in the Preserve
10 pursuant to paragraph (2) may not include paving.

11 **SEC. 7. ACCESS TO AND ACQUISITION OF NON-FEDERAL**
12 **LAND.**

13 (a) INVENTORY AND ACQUISITION OF NON-FEDERAL
14 LANDS.—The Secretary shall conduct an inventory of all
15 non-Federal lands and interests in lands within the bound-
16 aries of the Preserve. The Secretary may acquire such
17 inventoried lands (or interests in such lands) for inclusion
18 in the Preserve by purchase at not more than fair market
19 value, by donation, or by exchange. The Secretary may
20 not acquire, for inclusion in the Preserve, any lands or
21 interests in lands within the boundaries of the Preserve
22 without the consent of the owner, unless the Secretary de-
23 termines that the land is being developed or managed (or
24 is proposed to be developed or managed) in a manner in-
25 consistent with the purposes of this Act.

1 (b) SPECIAL RULE FOR SANTIAM NO. 1 LODGE MIN-
2 ING CLAIM.—Notwithstanding subsection (a), the parcel
3 of real property located within the boundaries of the Pre-
4 serve that is known as the Santiam No. 1 lode mining
5 claim and identified in section 8140 of the Department
6 of Defense Appropriations Act, 1992 (Public Law 102-
7 172; 105 Stat. 1213), may be acquired by the Secretary
8 only—

9 (1) by purchase for an amount equal to not
10 more than the sum of—

11 (A) the amount that the original patentee
12 of the parcel paid for the parcel; and

13 (B) the cost of any improvements made to
14 the parcel by the patentee; or

15 (2) by donation.

16 (c) RIGHTS-OF-WAY.—Nothing in this section shall
17 be construed to affect the authority of the Secretary to
18 acquire road and trail rights-of-way on lands in the Pre-
19 serve under existing authorities.

20 (d) ACCESS AND UTILITIES TO INHOLDINGS.—

21 (1) IN GENERAL.—In the case of private
22 inholdings located within the boundaries of the Pre-
23 serve, the Secretary shall authorize the use of Fed-
24 eral land in the Preserve by the holder of the

1 inholding to assure adequate access to the inholding
2 under applicable law.

3 (2) JAWBONE FLATS.—With respect to the
4 inholding known as the Jawbone Flats area, the Sec-
5 retary shall authorize the use of Federal land in the
6 Preserve by the organization known as the Friends
7 of Opal Creek to provide for access and utilities for
8 a facility in the inholding if the Secretary determines
9 that the facility (and use of the facility) is consistent
10 with the purposes of this Act.

11 (3) TERMS AND CONDITIONS.—The use of Fed-
12 eral land in the Preserve under this subsection shall
13 be subject to such reasonable terms and conditions,
14 consistent with the purposes of this Act, as the Sec-
15 retary may prescribe.

16 **SEC. 8. BORNITE PROJECT AREA.**

17 (a) ADDITION OF BORNITE PROJECT AREA.—Lands
18 that are located within the Bornite Project Area shall be
19 added to the Preserve upon the occurrence of either of
20 the following events:

21 (1) The determination by the Director of the
22 Bureau of Land Management that the mining claims
23 on the lands are no longer valid and the conclusion
24 of all appeals, if any, resulting from the determina-
25 tion.

1 (2) The determination by the Director of the
2 Bureau of Land Management that all exploration,
3 mining, and reclamation activities, including the re-
4 lease of all reclamation bonds, on the mining claims
5 on the lands are completed.

6 (b) PROHIBITION ON PATENTS.—After the date of
7 the enactment of this Act, and subject to valid existing
8 rights, no patent shall be issued for any mining claim lo-
9 cated under the general mining laws within the Bornite
10 Project Area.

11 (c) SPECIAL USE PERMITS.—Nothing in this Act
12 shall be construed to interfere with the ability of the Sec-
13 retary to issue a special use permit in connection with ex-
14 ploration, mining, and mining-related activities in the
15 Bornite Project Area.

16 (d) ROADS, STRUCTURES, AND UTILITIES.—Roads,
17 structures, and utilities (including power lines and water
18 lines) shall be allowed inside the Preserve to serve activi-
19 ties conducted on land within the Bornite Project Area.

20 (e) EFFECT ON EXISTING ACTIVITIES.—Nothing in
21 this Act shall be construed to interfere with any explo-
22 ration, mining, or mining-related activity in the Bornite
23 Project Area conducted in accordance with applicable
24 laws.

1 **SEC. 9. AUTHORITY OF THE SECRETARY AND RESPONSIBLE**
2 **PARTIES TO CONDUCT ENVIRONMENTAL RE-**
3 **SPONSE ACTIONS OR PURSUE LIABILITY.**

4 (a) REMEDIATION ACTIVITIES.—Nothing in this Act
5 shall be construed to limit the authority of the Secretary
6 or a responsible party to conduct environmental remedi-
7 ation activities in the Preserve or the Bornite Project Area
8 in connection with the release, threatened release, or clean
9 up of any hazardous substance or pollutant or contami-
10 nant, including response actions conducted pursuant to
11 the Comprehensive Environmental Response, Compensa-
12 tion, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

13 (b) LIABILITY.—Nothing in this Act shall be con-
14 strued to limit the authority of the Secretary or a respon-
15 sible party to address questions of liability related to the
16 release, threatened release, or clean up of any hazardous
17 substance or pollutant or contaminant in the Preserve or
18 the Bornite Project Area.

19 **SEC. 10. GRANDFATHER CLAUSE.**

20 Nothing in this Act shall be construed to affect the
21 operation of any timber sale contract entered into, or
22 interfere with any activity for which a special use permit
23 has been issued (and not revoked), before the date of the
24 enactment of this Act, subject to the terms of the contract
25 or permit.

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