

103^D CONGRESS
2^D SESSION

H. R. 4063

To establish a special protection unit for the Bull Run River and Little Sandy River watersheds in the Mt. Hood National Forest in the State of Oregon to maintain and protect the forest resources of the watersheds and the natural purity of the water resources of the watersheds through restrictions on timber activities in and human access into the unit.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1994

Mr. WYDEN (for himself and Ms. FURSE) introduced the following bill; which was referred jointly to the Committees on Natural Resources and Agriculture

A BILL

To establish a special protection unit for the Bull Run River and Little Sandy River watersheds in the Mt. Hood National Forest in the State of Oregon to maintain and protect the forest resources of the watersheds and the natural purity of the water resources of the watersheds through restrictions on timber activities in and human access into the unit.

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 “Bull Run and Little Sandy Watershed Protection Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Establishment of the Bull Run Watershed Protection Unit.
- Sec. 5. Protection of Unit.
- Sec. 6. Access to Unit.
- Sec. 7. Withdrawal.
- Sec. 8. Cooperation between the Secretary and the city.
- Sec. 9. Citizen advisory committee.
- Sec. 10. Effect on other laws.
- Sec. 11. Civil penalties and citizen suits.
- Sec. 12. Authorization of appropriations.

3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

5 (1) An area of land in the State of Oregon
6 known as the Bull Run Watershed Management
7 Unit is, and has been for more than 100 years, the
8 primary source of municipal water supply for the
9 city of Portland, Oregon, and other local govern-
10 mental units and persons in the metropolitan area of
11 the city.

12 (2) An area larger than the current manage-
13 ment unit, including all of the upper drainage basin
14 of the Bull Run River and much of the drainage
15 basin of the Little Sandy River, a tributary to the
16 Bull Run River, was reserved for the city for water
17 supply purposes and protected from unauthorized
18 human entry by a Presidential proclamation issued
19 in 1892.

1 (3) The Bull Run River furnishes an extremely
2 valuable resource of pure clear raw potable water,
3 and the Little Sandy River could furnish additional
4 high quality drinking water if the current manage-
5 ment unit were expanded to again protect Federal
6 lands within the Little Sandy River watershed up-
7 stream from Aschoff Creek near Marmot.

8 (4) The use of the purest water available is of
9 great importance in protecting citizens from diseases
10 associated with drinking water, and the city is fortu-
11 nate to have a water supply that can be protected
12 from contamination by bacteria, viruses, industrial
13 waste, sewage, herbicides, pesticides, and nuclear
14 waste through restrictions on human entry into, and
15 human activities in, the Bull Run River and Little
16 Sandy River watersheds.

17 (5) The current management unit is managed
18 pursuant to the provisions of Public Law 95-200
19 (91 Stat. 1425; 16 U.S.C. 482b note), which does
20 not fully address the present and future needs and
21 opportunities for the protection, management, and
22 utilization of the water resources contained in the
23 current management unit and nearby lands.

24 (6) The city and the metropolitan area sur-
25 rounding the city are rapidly growing at a time when

1 pure drinking water supplies are becoming more dif-
2 ficult to locate and develop and when health stand-
3 ards for drinking water are becoming increasingly
4 strict.

5 (7) The water supply from the current manage-
6 ment unit is unfiltered and currently meets all legal
7 criteria to remain unfiltered and meets or exceeds all
8 Federal and State drinking water regulations.

9 (8) The Bull Run River and Little Sandy River
10 watersheds constitute an urban water supply source
11 unique in the country for its purity and for its po-
12 tential to retain that purity through a system of wa-
13 tershed protection and restrictions on human entry.

14 (9) In 1909, the Oregon Legislature enacted
15 Oregon Revised Statute (ORS) 538.420, which pro-
16 vides that “exclusive right to the use of waters of
17 Bull Run and Little Sandy River is granted to the
18 city of Portland.”

19 (10) Because of the unique characteristics and
20 value of the current management unit to the city
21 and the metropolitan area surrounding the city, the
22 principal management objective in an expanded Bull
23 Run Watershed Protection Unit should be the con-
24 tinued and expanded production of pure clear raw
25 potable water.

1 **SEC. 3. DEFINITIONS.**

2 For purposes of this Act:

3 (1) **CITIZEN ADVISORY COMMITTEE.**—The term
4 “citizen advisory committee” means the citizen advi-
5 sory committee established pursuant to section 9 to
6 monitor compliance with the Act.

7 (2) **CITY.**—The term “city” means the city of
8 Portland, Oregon.

9 (3) **ECOLOGICAL INTEGRITY.**—The term “eco-
10 logical integrity” means—

11 (A) the intricate linkages associated with
12 natural structure, function, and composition;

13 (B) the capacity for self-renewal in soil,
14 water, plants, and animals; and

15 (C) the resilience of an ecosystem or the
16 ability of an ecosystem to resist dramatic
17 change and to recover from dramatic change.

18 (4) **SECRETARY.**—The term “Secretary” means
19 the Secretary of Agriculture.

20 (5) **UNIT.**—The term “Unit” means the Bull
21 Run Watershed Protection Unit in the Mt. Hood
22 National Forest established under section 4.

23 (6) **WATER QUALITY.**—The term “water qual-
24 ity” means the physical, chemical, and biological in-
25 tegrity of water.

1 (7) WATER QUANTITY.—The term “water
2 quantity” means that volume of water produced, and
3 the timing of water production, in the Unit by var-
4 ious forms of precipitation (such as rain, snow, and
5 fog drip) interacting with the physical characteristics
6 of the land. The type, amount, distribution, and tim-
7 ing of precipitation, as well as the land form, types
8 and distribution of any roads, vegetative cover, and
9 soil type influence the volume and timing of water
10 flowing in Unit.

11 **SEC. 4. ESTABLISHMENT OF THE BULL RUN WATERSHED**
12 **PROTECTION UNIT.**

13 (a) ESTABLISHMENT OF UNIT.—

14 (1) ESTABLISHMENT.—Subject to valid existing
15 rights, there is hereby established a special resources
16 protection unit in the State of Oregon to be known
17 as the “Bull Run Watershed Protection Unit”.

18 (2) LANDS INCLUDED.—The Unit shall consist
19 of approximately 108,000 acres of Federal and city
20 lands that are—

21 (A) included (or to be included) within the
22 Mt. Hood National Forest in the State of Or-
23 egon; and

1 (B) depicted on a map dated April _____,
2 1994, and entitled “Bull Run Watershed Pro-
3 tection Unit Mt. Hood National Forest”.

4 (3) LANDS EXCLUDED.—Privately owned par-
5 cels of land located within the boundaries of the
6 Unit shall not be considered a part of the Unit un-
7 less the lands are acquired by the Secretary as pro-
8 vided in subsection (b) or (d).

9 (b) INCLUSION OF ADDITIONAL LANDS.—

10 (1) IN GENERAL.—The Unit shall also include
11 such other lands as may be added to the Unit by the
12 Secretary under the authority of this subsection.

13 (2) INITIAL STUDY OF POTENTIAL EXPAN-
14 SION.—Not later than one year after the date of the
15 enactment of this Act, the Secretary shall complete
16 a study evaluating the expansion of the Unit to pro-
17 vide additional buffers for the Bull Run River and
18 Little Sandy River watersheds from human and nat-
19 ural disturbances. The Secretary shall prepare the
20 study in cooperation with the city.

21 (3) ACQUISITION OF ADDITIONAL LANDS.—
22 Based upon the results of the study required under
23 paragraph (2), the Secretary shall use the authority
24 under paragraph (4) to acquire additional lands for
25 inclusion in the Unit to reflect the conclusions

1 reached in the study, except that the Secretary is
2 not required to expand the Unit to include land cur-
3 rently in private ownership.

4 (4) METHODS OF ACQUISITION.—The Secretary
5 may acquire (by gift, exchange, purchase, or dona-
6 tion) non-Federal lands and non-Federal interests in
7 land within or contiguous with the boundaries of the
8 Unit for purposes of adding such lands or interests
9 in land to the Unit.

10 (5) CONDEMNATION PROHIBITED.—The Sec-
11 retary may not acquire lands or interests in lands
12 under paragraph (3) or subsection (d) by condemna-
13 tion proceedings.

14 (c) TRANSFER OF JURISDICTION OF CERTAIN BLM
15 LANDS.—Not later than 90 days after the date of the en-
16 actment of this Act, the Secretary of the Interior shall
17 transfer to the Secretary of Agriculture jurisdiction over
18 those lands under the jurisdiction of the Bureau of Land
19 Management that are depicted on the map referred to in
20 subsection (a) as part of the Unit. The transfer of such
21 lands shall be made without reimbursement. The Sec-
22 retary shall protect and manage the transferred lands as
23 part of the Unit in accordance with this Act and the laws
24 and regulations pertaining to the National Forest System

1 and shall adjust the boundaries of the Mt. Hood National
2 Forest to include such lands.

3 (d) MINOR ENLARGEMENTS OF UNIT.—The Sec-
4 retary may from time to time make minor boundary en-
5 largements to the Unit after consultation with the city and
6 appropriate public notice and hearings.

7 (e) AVAILABILITY AND REVISION OF UNIT MAP.—
8 The map referred to in subsection (a) shall be kept on
9 file and made available for public inspection in the Office
10 of the Chief of the Forest Service, Department of Agri-
11 culture, the Office of the Regional Forester-Pacific North-
12 west Region of the Forest Service, and the Office of the
13 Forest Supervisor of the Mt. Hood National Forest. Upon
14 any enlargements of the Unit, the Secretary shall amend
15 the map, within 30 days of such change, to reflect those
16 changes and to describe accurately the new boundaries of
17 the Unit.

18 (f) EFFECT ON EXISTING MANAGEMENT UNIT.—The
19 Bull Run Watershed Protection Unit established pursuant
20 to subsection (a) shall supersede the special resources
21 management unit established pursuant to section 1 of
22 Public Law 95–200 (91 Stat. 1425; 16 U.S.C. 482b note).

23 **SEC. 5. PROTECTION OF UNIT.**

24 (a) PROTECTION GENERALLY.—The Secretary shall
25 protect the Unit as a drinking water supply watershed of

1 the National Forest System pursuant to the directions
2 contained in this Act and in accordance with such laws
3 and regulations applicable to National Forest System
4 lands as are consistent with the directions contained in
5 this Act.

6 (b) PURPOSES OF PROTECTION AND MANAGE-
7 MENT.—

8 (1) PROTECTION AND MAINTENANCE OF WATER
9 QUALITY AND QUANTITY.—The Secretary shall at all
10 times pursue the purposes of protecting and main-
11 taining the quality of water produced on the Unit
12 and maintaining and allowing the expansion of the
13 quantity of water from the Unit available for the use
14 of the city and other local government units and per-
15 sons using such water under agreements with the
16 city.

17 (2) TERMINATION OF ADVERSE FEDERAL MAN-
18 AGEMENT PRACTICES.—If any management plan,
19 practice, policy, use, or regulation of the Federal
20 Government with respect to the Unit is found by the
21 Secretary to have violated (or to have a significant
22 potential for violating) a water quality standard
23 adopted pursuant to subsection (e), then the Sec-
24 retary shall alter or terminate such management
25 plan, practice, policy, use, or regulation (and all rel-

1 evant leases, permits, contracts, rights-of-way, or
2 other rights or authorizations issued pursuant to
3 such plan, practice, policy, use, or regulation) to
4 eliminate such violation or potential violation. The
5 Secretary may undertake an alteration or termi-
6 nation authorized by this paragraph notwithstanding
7 any other provision of law, except for the Endan-
8 gered Species Act of 1973 (16 U.S.C. 1531 et seq.).
9 In determining whether a violation or potential viola-
10 tion of a water quality standard exists, the Secretary
11 shall measure water quality by using the water qual-
12 ity standards developed pursuant to subsection (e)
13 and, as required under subsection (f)(2)(B), by
14 using project monitoring. The Secretary shall also
15 take into consideration the cumulative effect of indi-
16 vidually insignificant impacts.

17 (3) EXISTING ENERGY PRODUCTION AND
18 TRANSMISSION.—The existing use of water in the
19 Unit for the production of energy and the existing
20 transmission of energy through and over the Unit
21 may not be restricted by the Secretary. The rights-
22 of-way heretofore granted to the Bonneville Power
23 Administration by the Forest Service through and
24 over the Unit and the permits heretofore granted to
25 the city by the Forest Service for power production

1 are validated and confirmed and deemed consistent
2 with the purposes specified in paragraph (1).

3 (4) RESTRICTION ON NEW ENERGY FACILI-
4 TIES.—Subject to valid existing rights, the Unit is
5 unavailable for the development or operation of hy-
6 droelectric power facilities, except that the develop-
7 ment and operation of new hydroelectric facilities as-
8 sociated with water facilities of the city shall be al-
9 lowed if the operation of such hydroelectric facilities
10 would not significantly degrade water quality in the
11 Unit for drinking water purposes and is consistent
12 with the Federal Power Act (16 U.S.C. 791a et seq.)
13 and the purposes specified in paragraph (1).

14 (c) ACCOMPLISHING PURPOSES.—In consultation
15 with the city, the Secretary shall accomplish the purposes
16 specified in subsection (b)(1) through—

17 (1) the development, maintenance, and periodic
18 revision of a land protection plan or plans for the
19 Unit, developed and revised in accordance with pro-
20 cedures set forth in section 6 of the Forest and
21 Rangeland Renewable Resources Planning Act of
22 1974 (16 U.S.C. 1604) and the special requirements
23 of this Act;

24 (2) the maintenance of systems for monitoring
25 and evaluating water quality in the Unit;

1 (3) the restriction of human access to the Unit
2 under rules adopted by the Secretary under section
3 6; and

4 (4) the support (in coordination with the city)
5 of such scientific research regarding the Unit and
6 water quality and water quantity in the Unit as the
7 Secretary may consider to be necessary.

8 (d) ELEMENTS OF PROTECTION PLANS.—

9 (1) PENDING DEVELOPMENT OF PLANS.—Pend-
10 ing development of the initial land protection plan
11 required under subsection (c)(1) for the Unit, the
12 Secretary shall cease and prohibit any activity in the
13 Unit inconsistent with the provisions of this Act.

14 (2) DEVELOPMENT REQUIRED.—In the develop-
15 ment and revision of the land protection plan re-
16 quired under subsection (c)(1) for the Unit, the Sec-
17 retary shall—

18 (A) use an interdisciplinary team to pre-
19 pare the plan;

20 (B) consult and coordinate with appro-
21 priate officials and advisers of the city and the
22 citizen advisory committee;

23 (C) use the best scientific information
24 available;

1 (D) consider such data and research as the
2 city may collect through its own monitoring sys-
3 tems and scientific efforts;

4 (E) provide for public participation; and

5 (F) embody draft and final plans in appro-
6 priate written material, including maps and
7 other descriptive documents.

8 (3) MINIMUM REQUIREMENTS.—The protection
9 plan or plans developed for the Unit shall be consist-
10 ent with the provisions of this Act and designed to
11 accomplish the purposes specified in subsection
12 (b)(1). The plan shall include, at a minimum, a pro-
13 hibition on any management activities in the Unit
14 unrelated to the maintenance and enhancement of
15 water quality or water quantity and a prohibition on
16 timber cutting and timber management activities in
17 the Unit unless such activities are specifically per-
18 mitted by other provisions of this Act. The plan
19 shall also include a prohibition on smoking in the
20 Unit and on the use of pesticides and herbicides in
21 the Unit. The plan shall also include a fire manage-
22 ment plan designed to eliminate, to the greatest ex-
23 tent possible, any human-caused fire in the Unit and
24 to immediately confine and suppress any fire in the
25 Unit or adjacent to the Unit.

1 (e) WATER QUALITY STANDARDS.—

2 (1) PURPOSE AND INCLUSION OF STAND-
3 ARDS.—The protection plan or plans developed for
4 the Unit shall contain water quality standards devel-
5 oped by the Secretary in consultation with the city
6 and the citizen advisory committee. The purpose of
7 the water quality standards shall be to allow mon-
8 itoring and evaluation of short-term and long-term
9 changes to water quality, to provide a basis upon
10 which to document site-specific and cumulative im-
11 pacts of past and current Federal management ac-
12 tivities, to determine natural sources of water qual-
13 ity fluctuations, to determine the interaction of Fed-
14 eral management activities and natural processes
15 that affect water quality, and to be responsive to
16 changes in technology and information on public
17 health. The Secretary shall develop and maintain the
18 standards using the best available data and the best
19 practical water monitoring technology.

20 (2) MINIMUM REQUIREMENTS.—At a minimum,
21 the water quality standards shall address all con-
22 taminants regulated under the Safe Drinking Water
23 Act (42 U.S.C. 300f et seq.) at their entry into the
24 distribution system and such other standards as are
25 required to maintain the water quality in the Unit

1 at a level at least equal to the quality reflected in
2 data from a base period to be selected by the city,
3 after consultation with the citizen advisory commit-
4 tee.

5 (3) MONITORING.—In carrying out this sub-
6 section, the Secretary shall compare current data to
7 historical data (as identified in paragraph (2)) at
8 least annually for the purpose of evaluating degrada-
9 tion of water quality and determining—

10 (A) compliance with the water quality
11 standards (unless the Safe Drinking Water Act
12 calls for monitoring less often than once a year
13 for a particular standard);

14 (B) the source and significance of any de-
15 viation from such standards; and

16 (C) any changes to policies or programs re-
17 quired to correct or forestall compliance prob-
18 lems.

19 (4) EXCLUSION OF CERTAIN DEVIATIONS.—Any
20 deviations from water quality standards occurring
21 solely due to natural phenomena unrelated to and
22 not interactive with past or current Federal manage-
23 ment activities, and any deviations occurring from
24 the operation, maintenance, alteration, or construc-
25 tion of water storage or electrical generation and

1 transmission facilities, shall be excluded in determin-
2 ing compliance with such standards and the policies
3 or programs required to correct or forestall compli-
4 ance problems.

5 (5) REVISION.—The Secretary may revise the
6 water quality standards applicable to the Unit peri-
7 odically to reflect changes and additions in State
8 and Federal drinking water regulations or changes
9 in conditions of, or knowledge about, water quality
10 in the Unit. Any revision shall be made in consulta-
11 tion with the city and the citizen advisory commit-
12 tee.

13 (f) EXCEPTIONS TO TIMBER CUTTING PROHIBI-
14 TION.—

15 (1) TIMBER MANAGEMENT ACTIVITIES AUTHOR-
16 IZED.—Notwithstanding subsection (d)(3), the Sec-
17 retary may permit limited timber cutting or timber
18 management activities in the Unit under the follow-
19 ing circumstances:

20 (A) Such minimum cutting or other timber
21 management activity that the Secretary deter-
22 mines is necessary for the construction of new
23 municipal water reservoirs or other water sup-
24 ply facilities in the Unit, if the proposals for
25 such construction comply with all applicable

1 Federal environmental laws and are preceded
2 by the best practical water conservation pro-
3 gram available. The Secretary shall appoint, in
4 consultation with the city, a committee to deter-
5 mine whether a water conservation program is
6 the best practical program available. The com-
7 mittee shall consist of Federal, State, and city
8 officials and representatives of environmental
9 groups with expertise regarding water conserva-
10 tion.

11 (B) Such timber management activities
12 that the Secretary determines are the only ef-
13 fective method available to protect water quality
14 and quantity in the Unit and have long-term
15 benefits greater than any short-term risks.

16 (2) MANNER OF CONDUCTING ACTIVITIES.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), a timber management activ-
19 ity permitted under paragraph (1)(B) shall be
20 carried out only by the Forest Service without
21 selling timber from the Unit.

22 (B) EXTENSIVE TREE MORTALITY.—If the
23 director of the Pacific Research Station of the
24 Forest Service finds that extensive tree mortal-
25 ity has occurred in the Unit, which poses a cat-

1 astrophic and long-term threat to water quality
2 in the Unit, a timber management activity per-
3 mitted under paragraph (1)(B) may be con-
4 tracted out by the Secretary to commercial enti-
5 ties under terms and conditions acceptable to
6 the city. The director may make such a finding
7 only after conducting a scientifically credible re-
8 view, including independent peer review. The
9 Secretary shall ensure, to the greatest extent
10 practicable, that the director completes the re-
11 view necessary to make such a finding within
12 six months of the occurrence of the tree mortal-
13 ity subject to the review. If the Secretary exer-
14 cises the authority to contract out to commer-
15 cial entities any timber management activity
16 permitted under paragraph (1)(B), the Sec-
17 retary shall obtain fair market value payments
18 from such entities for all timber removed from
19 the Unit under the contract and all payments
20 received by the Secretary for such timber shall
21 be deposited into the United States Treasury.
22 The Secretary shall ensure that project mon-
23 itoring shall be conducted for all such timber
24 management activities.

1 (3) CONDITIONS.—All timber management ac-
2 tivities permitted under subparagraphs (A) or (B) of
3 paragraph (1) shall be carried out under standards
4 and guidelines that are based on the best available
5 scientific information and are protective of the eco-
6 logical integrity and water quality and water quan-
7 tity of the Unit. Such activities shall be carried out
8 only after compliance with all Federal environmental
9 laws. In the development and implementation of
10 such activities, the Secretary shall provide for public
11 participation, consult with the citizen advisory com-
12 mittee, and obtain the approval of the City Council
13 of the city after appropriate public hearings.

14 (g) DATE OF COMPLETION.—The initial land protec-
15 tion plan required under subsection (c)(1) for the Unit
16 shall be completed by the end of the two-year period begin-
17 ning on the date of the enactment of this Act.

18 **SEC. 6. ACCESS TO UNIT.**

19 (a) RESTRICTIONS ON ACCESS.—Access to the Unit
20 shall be prohibited, except for those persons described in
21 subsection (b). In consultation with the city, the Secretary
22 shall issue regulations for controlling entry into the Unit
23 by such persons.

1 (b) PERSONS ALLOWED ACCESS.—The persons re-
2 ferred to in subsection (a) who are authorized to enter
3 the Unit are as follows:

4 (1) Federal, State, and local government offi-
5 cers and employees acting in an official capacity.

6 (2) Federal, State, and local government per-
7 mittees and contractors conducting authorized activi-
8 ties, including contractors of the city engaged in the
9 inspection, maintenance, construction, or improve-
10 ment of facilities of the city in the Unit.

11 (3) Members of advisory groups formed pursu-
12 ant to this Act, the Federal Advisory Committee Act
13 (5 U.S.C. App.), or ordinances of the city in the per-
14 formance of their official duties.

15 (4) Those persons authorized by the Lenart
16 Acres Water District to maintain and protect that
17 community water system located in the Unit in
18 Township 2 South, Range 6 East, Section 15.

19 (5) Those persons authorized by the Corbett
20 Water District to maintain and protect that municipi-
21 pal water system located in the Unit in Township 1
22 North, Range 6 East, Sections 29, 30, 31, and 32,
23 and Township 1 South, Range 6 East, Sections 5,
24 6, and 7, and Township 1 South, Range 5 East Sec-
25 tions 1 and 12.

1 (6) Persons on the Pacific Crest National Scenic Trail, the spur trail to Buck Peak, Number 615, 2 and Lost Lake Trail, Number 656. 3

4 (7) Persons conducting unobtrusive and observational scientific research reviewed and authorized 5 by the Secretary. 6

7 (8) Persons who are authorized by the Secretary to enter the Unit to accomplish the purposes 8 specified in section 5(b)(1), to engage in the activities 9 allowed under this Act, or to protect the forest 10 and the water resources of the Unit. 11

12 (9) Such other persons if the Secretary, after 13 consulting with the citizen advisory committee, finds 14 that they have a legitimate interest in entering the 15 Unit and that their activities will not adversely affect 16 accomplishment of the purposes specified in section 17 5(b)(1).

18 (c) RULE OF CONSTRUCTION.—Subsection (a), and 19 any regulation issued by the Secretary pursuant to such 20 subsection, shall not prohibit ingress or egress—

21 (1) to private inholdings located within the 22 boundaries of the Unit; or

23 (2) to authorized occupancies on, or uses of, 24 Federal lands, which are in effect on the date of the 25 enactment of this Act.

1 **SEC. 7. WITHDRAWAL.**

2 (a) WITHDRAWAL.—Except as provided in subsection
3 (b) and subject to valid existing rights, Federal lands in
4 the Unit are hereby withdrawn from location, leasing, sale,
5 entry, and patent under the mining laws of the United
6 States, from the operation of the mineral leasing laws of
7 the United States, and from operation of the Geothermal
8 Steam Act of 1970 (30 U.S.C. 1001 et seq.).

9 (b) EXCEPTION.—Nothing in subsection (a) shall
10 prevent the Secretary from using mineral or aggregate re-
11 sources of the Unit in the use and management of the
12 Unit or prevent the city from using such resources for the
13 construction of water facilities in the Unit, authorized
14 under section 5(f)(1)(A), or for the construction or main-
15 tenance of roads in the Unit associated with city water
16 facilities.

17 **SEC. 8. COOPERATION BETWEEN THE SECRETARY AND THE**
18 **CITY.**

19 (a) ANNUAL REVIEW.—Upon request by the city and
20 at least annually, the Secretary shall meet with appro-
21 priate officials of the city for the purpose of reviewing
22 planned management programs for the Unit and the im-
23 pact of such programs on the quality and quantity of the
24 water produced on the Unit and assuring that their re-
25 spective management and operational activities within the
26 Unit are appropriately coordinated. The Secretary shall

1 negotiate in good faith cooperative agreements with appro-
2 priate officials of the city to effectuate activity coordina-
3 tion.

4 (b) ARBITRATION BOARD.—

5 (1) CONDITIONS FOR ESTABLISHMENT.—An ar-
6 bitration board shall be established pursuant to this
7 subsection whenever necessary for resolving such sci-
8 entific or technical disagreements as may arise be-
9 tween the city and the Secretary with respect to—

10 (A) the development or revision of the
11 water quality standards provided for in section
12 5(e) and compliance with such standards;

13 (B) the effect (or the significance of such
14 effect) of one or more proposed or existing pro-
15 grams, practices, uses, or regulations on the
16 water quantity or water quality of the water
17 produced on or available to the city from the
18 Unit;

19 (C) the necessity for an alteration or ter-
20 mination of any policy, program, practice, use,
21 or regulation under section 5(b)(2); or

22 (D) the applicability of the exception to the
23 timber cutting prohibition provided in para-
24 graph (1)(B) of section 5(f) and the standards

1 and guidelines regarding such cutting provided
2 in paragraphs (2) and (3) of such section.

3 (2) APPOINTMENT.—The Secretary and the city
4 shall each appoint one member to the board and
5 those two members shall select a third member. In
6 the event agreement cannot be reached on the third
7 member within seven days after the appointment of
8 the first two members, the third member shall be
9 appointed by the presiding judge of the United
10 States District Court for the District of Oregon
11 within seven days after being notified of such dis-
12 agreement by either of the first two members. All of
13 the members shall be qualified to make a scientific
14 determination of the facts in the case for which the
15 board is established.

16 (3) CONSIDERATION.—The contentions of the
17 city and the Secretary shall be submitted to the
18 board in the form of written contentions of fact to-
19 gether with the evidence and analysis that tends to
20 support the position being presented. The board may
21 also provide for oral presentations or examination, in
22 its discretion, or at the request of either of the par-
23 ties. The board shall consider and decide, on a sci-
24 entific basis, the issues in disagreement by majority
25 vote, taking into consideration the evidence and data

1 presented by the parties and such other tests and
2 data which the board by majority vote may require.

3 (4) DECISION.—The decision of the board shall
4 be in the form of written findings of fact and conclu-
5 sions based on such findings of fact. The factual,
6 technical, and scientific findings and conclusions
7 shall be final and binding on the parties.

8 (5) COMPENSATION.—The Secretary and the
9 city shall compensate their designees and share
10 equally the compensation of the third member and
11 shall provide such technical and administrative sup-
12 port as required.

13 (c) EFFECT ON OTHER LEGAL PROCEEDINGS.—
14 Nothing in this section shall deny to the city, the Sec-
15 retary, or any other person the right to pursue legal dis-
16 putes over the proper interpretation or implementation of
17 this Act or any other Federal law in Federal court, except
18 that, in any such case, the relevant factual, technical, and
19 scientific findings and conclusions, if any, reached by the
20 arbitration board shall be binding on the city and on the
21 Secretary.

22 **SEC. 9. CITIZEN ADVISORY COMMITTEE.**

23 (a) ESTABLISHMENT.—The Secretary shall establish
24 a citizen advisory committee to monitor compliance with
25 this Act.

1 (b) APPOINTMENT.—The members of the citizen ad-
2 visory committee shall be appointed as follows:

3 (1) One member appointed by each Senator
4 from the State of Oregon.

5 (2) One member appointed by each Member of
6 the House of Representatives who represents any
7 portion of the city.

8 (3) Three members appointed by the City
9 Council of the city.

10 (4) One member appointed by the governing
11 body of Multnomah County, Oregon.

12 (5) One member appointed by the governing
13 body of Washington County, Oregon.

14 (6) One member appointed by the Corbett
15 Water District.

16 (c) CHAIRPERSON.—The citizen advisory com-
17 mittee shall annually select a chairperson from
18 among its members.

19 (d) PURPOSE OF AND REPORTING BY THE COMMIT-
20 TEE.—The purpose of the citizen advisory committee is
21 to monitor the compliance with and enforcement of this
22 Act and to report their findings from time to time and
23 upon request to the persons or entities appointing mem-
24 bers under subsection (b). The citizen advisory committee
25 shall consult with and make recommendations to the Sec-

1 reitary, the Forest Service, and the City Council of the city
2 on actions to ensure implementation of, and compliance
3 with, this Act.

4 (e) COOPERATION.—The Secretary shall cooperate
5 with the citizen advisory committee and shall make every
6 effort to facilitate the performance by the citizen advisory
7 committee of the functions described in subsection (d).

8 **SEC. 10. EFFECT ON OTHER LAWS.**

9 (a) SAVINGS PROVISION.—Nothing in this Act shall
10 terminate or affect any lease, permit, contract, patent,
11 right-of-way, or other land use right or authorization ex-
12 isting on the date of the enactment of this Act.

13 (b) TRIBAL RIGHTS.—Nothing in this Act shall affect
14 or modify any treaty or other rights of any Indian tribe.

15 (c) WATER RIGHTS.—Nothing in this Act shall in
16 any way affect any law governing appropriation or use of,
17 or Federal right to, water on National Forest System
18 lands. Nothing in this Act shall be construed to expand
19 or diminish Federal, State, or local jurisdiction, respon-
20 sibility, interests, or rights in water resources development
21 or control, including rights in and current uses of water
22 resources in the Unit by community water systems.

23 (d) REPEAL OF CURRENT MANAGEMENT LAW.—
24 Public Law 95–200 (91 Stat. 1425; 16 U.S.C. 482b), re-
25 lating to the establishment and management of a special

1 resources management unit within the Mt. Hood National
2 Forest in the State of Oregon, is hereby repealed.

3 (e) PREEMPTION.—Except as otherwise provided for
4 in this Act, within the Unit, this Act shall take precedence
5 over and supersede all State and local laws dealing with
6 land use planning and management, watershed planning
7 and management, timber management, and water quality.

8 **SEC. 11. CIVIL PENALTIES AND CITIZEN SUITS.**

9 (a) CIVIL PENALTIES.—

10 (1) VIOLATION OF ACCESS RESTRICTIONS.—

11 Any person who violates the restrictions on access to
12 the Unit prescribed pursuant to section 6(a) shall be
13 liable to the United States for a civil penalty as-
14 sessed under paragraph (3) in an amount not to ex-
15 ceed \$1,000 for each violation.

16 (2) OTHER VIOLATIONS.—Any person who vio-
17 lates any prohibition or restriction imposed by this
18 Act (other than section 6(a)) or the protection plan
19 for the Unit required by section 5(c)(1) shall be lia-
20 ble to the United States for a civil penalty assessed
21 under paragraph (3) in an amount not to exceed
22 \$10,000 for each violation.

23 (3) ASSESSMENT.—A civil penalty payable
24 under this subsection may be assessed by the Sec-

1 retary only on the record after an opportunity for a
2 hearing.

3 (b) CITIZEN SUITS.—Any person may commence a
4 civil action—

5 (1) against any person (including the United
6 States and any other governmental instrumentality
7 or agency to the extent permitted by the eleventh
8 amendment to the Constitution) who is alleged to be
9 in violation of this Act or any standard, regulation,
10 condition, requirement, or order which has become
11 effective pursuant to this Act; or

12 (2) against the Secretary where there is alleged
13 to be a failure of the Secretary to perform any act
14 or duty under this Act which is not discretionary
15 with the Secretary.

16 (c) JURISDICTION.—The district courts shall have ju-
17 risdiction, without regard to the amount in controversy or
18 the citizenship of the parties, to enforce any provision of
19 this Act (or any standard, regulation, condition, require-
20 ment, or order which has become effective pursuant to this
21 Act) or to order the Secretary to perform any act or duty
22 under this Act which is not discretionary with the Sec-
23 retary, as the case may be, and to apply any appropriate
24 civil penalties.

1 (d) NOTICE.—No action may be commenced under
2 subsection (b)(1) before the end of the 60-day period be-
3 ginning on the date the Secretary and any alleged violator
4 of any provision of this Act (or any standard, regulation,
5 condition, requirement, or order which has become effec-
6 tive pursuant to this Act) receives notice of the alleged
7 violation. No action may be commenced under subsection
8 (b)(2) before the end of the 60-day period beginning on
9 the date the Secretary receives notice of the alleged fail-
10 ure, except that such action may be brought immediately
11 after such notification if the plaintiff shows imminent ir-
12 reparable harm to the forest environment, water quality,
13 or water quantity of the Unit.

14 (e) VENUE; INTERVENTION BY SECRETARY.—Any
15 action under subsection (b) may be brought in the judicial
16 district for Oregon. In such an action under such sub-
17 section, the Secretary, if not a party, may intervene as
18 a matter of right.

19 (f) LITIGATION COSTS.—In issuing any final order
20 in any action brought pursuant to subsection (b), the court
21 shall award costs of litigation (including reasonable attor-
22 ney and expert witness fees) to any prevailing party. If
23 a temporary restraining order or preliminary injunction
24 is sought, the court may require a filing of a bond or

1 equivalent security in accordance with the Federal Rules
2 of Civil Procedure.

3 (g) STATUTORY OR COMMON LAW RIGHTS NOT RE-
4 STRICTED.—Nothing in this section shall restrict any
5 right which any person (or class of persons) may have
6 under any statute or common law to seek enforcement of
7 any standard, regulation, condition, requirement, or order
8 which has become effective pursuant to this Act or to seek
9 any other relief.

10 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

11 There is authorized to be appropriated to the Sec-
12 retary \$1,000,000 for fiscal year 1995 and each fiscal year
13 thereafter—

14 (1) for acquisition of lands for inclusion in the
15 Unit;

16 (2) for funding the activities of the citizen advi-
17 sory committee; and

18 (3) to conduct monitoring of, and scientific re-
19 search regarding, water quality, water quantity, and
20 forest conditions in the Unit, including monitoring
21 suggested by the Task Force Final Report: Water
22 Quality Monitoring in the Bull Run Watershed,
23 Oregon (July 19, 1989).

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HR 4063 IH—2

HR 4063 IH—3