

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5236

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

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7 (legislative day, OCTOBER 6), 1994

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

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

1 surface waters can contribute significantly to the  
2 quality of life for the residents of the State of Or-  
3 egon through education, recreation, and a protected  
4 water supply.

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

14 (7) The Opal Creek Forest contains outstand-  
15 ing geological and botanical features and contains  
16 attributes of historic and prehistoric importance.

17 (8) The recreational use of the Opal Creek For-  
18 est, typically in the form of hiking, sightseeing, and  
19 the general enjoyment of the outdoor environment, is  
20 significant and likely to increase.

21 (9) It is desirable to limit the human-related  
22 disturbances and development of the Opal Creek  
23 Forest in order to protect fully the special features  
24 of the forest and maintain the full potential of its

1 watershed for scientific, educational, and research  
2 purposes.

3 (10) Preservation of the Opal Creek Forest pro-  
4 vides outstanding opportunities for scientists to con-  
5 duct research regarding old-growth forests and for  
6 educators to provide scientifically credible informa-  
7 tion to the public.

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

9 (1) to protect and preserve the forests and wa-  
10 tersheds contained in the Opal Creek Forest Pre-  
11 serve;

12 (2) consistent with paragraph (1), to promote  
13 and conduct—

14 (A) research in the Preserve regarding old-  
15 growth forests in a manner that does not in-  
16 clude the harvesting of timber or otherwise  
17 damage the ecosystem; and

18 (B) educational programs in the Preserve  
19 on old-growth forests and cultural and historic  
20 resources in the Preserve; and

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

23 **SEC. 3. DEFINITIONS.**

24 For purposes of this Act:

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

4           (2) MANAGEMENT PLAN.—The term “manage-  
5           ment plan” means the management plan for the  
6           Preserve developed pursuant to section 5(b).

7           (3) SECRETARY.—The term “Secretary” means  
8           the Secretary of Agriculture.

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

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

15          (b) DESCRIPTION OF PRESERVE.—The Preserve shall  
16          consist of those Federal lands located in the Willamette  
17          and Mt. Hood National Forests in the State of Oregon  
18          that are generally depicted on the map dated August  
19          1994, and entitled the “Opal Creek Preserve Area”. The  
20          Preserve shall also include such lands as may be added  
21          under section 7 of this Act. The map referred to in this  
22          subsection shall be kept on file and made available for  
23          public inspection in the Office of the Chief of the Forest  
24          Service, United States Department of Agriculture.

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

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

7 (b) MANAGEMENT PLAN.—The Secretary shall pre-  
8 pare a comprehensive management plan for the Preserve  
9 to achieve the purposes of this Act. The management plan  
10 shall be considered to be a nonsignificant amendment to  
11 the Willamette and Mt. Hood Forest Land and Resource  
12 Management Plans. The management plan shall be pre-  
13 pared with public involvement which shall include con-  
14 sultation with interested individuals and organizations.  
15 The Secretary may enter into memoranda of understand-  
16 ing with interested parties to accomplish the purposes of  
17 this Act. The management plan shall include analysis and  
18 direction on the use of campfires within the Preserve.

19 (c) PROTECTION OF CULTURAL AND HISTORIC RE-  
20 SOURCES.—Not later than one year after the date of the  
21 enactment of this Act, the Secretary shall review and re-  
22 vise the inventory of the cultural and historic resources  
23 in the area covered by the Preserve, which was originally  
24 developed pursuant to the Oregon Wilderness Act of 1984  
25 (Public Law 98–328; 16 U.S.C. 1131 note). The Secretary

1 shall submit a report to Congress describing the results  
2 of the review of such inventory.

3 (d) APPLICABILITY OF MINING, MINERAL LEASING,  
4 AND DISPOSAL LAWS.—

5 (1) RESTRICTION.—After the date of the enact-  
6 ment of this Act—

7 (A) lands within the Preserve shall not be  
8 open to the location of mining claims and mill  
9 and tunnel sites under the general mining laws  
10 of the United States;

11 (B) the Secretary shall not issue any lease  
12 under the Mineral Leasing Act (30 U.S.C. 181  
13 and following) or the Geothermal Steam Act of  
14 1970 (30 U.S.C. 100 and following) for lands  
15 within the Preserve; and

16 (C) lands within the Preserve shall not be  
17 available for disposal of mineral materials under  
18 the Act of July 31, 1947, commonly known as  
19 the Materials Act of 1947 (30 U.S.C. 601 and  
20 following).

21 (2) ACQUIRED LANDS.—The restriction pro-  
22 vided by paragraph (1) shall also apply to any Fed-  
23 eral lands added to the Preserve after the date of  
24 the enactment of this Act, except that the restriction

1 shall apply to such lands only upon addition to the  
2 Preserve.

3 (e) PRIVATE INHOLDINGS.—The Secretary may co-  
4 operate with, and provide technical assistance to, private  
5 landowners, organizations, and other entities holding pri-  
6 vate lands within the boundaries of the Preserve to pro-  
7 mote the use and management of such lands in a manner  
8 consistent with the purposes of this Act.

9 **SEC. 6. PROHIBITIONS REGARDING THE MANAGEMENT OF**  
10 **THE PRESERVE.**

11 (a) PROHIBITION ON LOGGING OR OTHER TIMBER  
12 HARVESTING.—

13 (1) PROHIBITION.—Except as provided in para-  
14 graph (2), the cutting of trees in the Preserve is  
15 prohibited.

16 (2) EXCEPTIONS.—The prohibition contained in  
17 paragraph (1) shall not apply to the extent that the  
18 Secretary determines that the cutting of specific  
19 trees in the Preserve is necessary—

20 (A) for public safety, such as to control the  
21 spread of a forest fire in the Preserve or on  
22 lands adjacent to the Preserve; or

23 (B) for administrative use related to activi-  
24 ties permitted in the Preserve.

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

5           (4) COLLECTION OF DOWNED WOOD.—The col-  
6 lection of downed wood for firewood by permit may  
7 be allowed in a manner consistent with the purposes  
8 of this Act.

9           (b) PROHIBITION ON OFF ROAD MOTORIZED TRAV-  
10 EL.—

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

15           (2) EXCEPTION.—The prohibition contained in  
16 paragraph (1) shall not apply to the extent that the  
17 Secretary determines that the use of a motor vehicle  
18 off or outside of the established roadbed of a road  
19 in the Preserve is necessary for administrative pur-  
20 poses or to respond to an emergency.

21           (c) PROHIBITION ON USE OF CERTAIN ROADS.—

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

1           (A) Forest road 2209 from the gate in ex-  
2           istence on the date of the enactment of this Act  
3           eastward to the intersection of the road with  
4           the wilderness boundary.

5           (B) Forest roads 290 and 330, which are  
6           spur roads to the road described in subpara-  
7           graph (A).

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

13          (3) RULE OF CONSTRUCTION.—Nothing in this  
14          subsection shall be construed to prohibit inholders  
15          and claim holders of valid mining claims from using  
16          the roads described in paragraph (1) for ingress and  
17          egress to their inholdings or valid mining claims,  
18          subject to such reasonable terms and conditions,  
19          consistent with the purposes of this Act, as the Sec-  
20          retary may prescribe. Nothing in this subsection  
21          shall be construed to prohibit motor vehicle traffic  
22          on other roads established in the Preserve, in par-  
23          ticular those forest roads providing access for claim  
24          holders of valid mining claims for the use of lands  
25          in the Preserve or within the Cedar Creek watershed

1 within two miles outside of the boundaries of the  
2 Preserve.

3 (d) PROHIBITION ON ROAD CONSTRUCTION.—

4 (1) PROHIBITION.—Except as provided in para-  
5 graph (2) and subsection (e), and subject to valid  
6 existing rights, the construction of new roads is pro-  
7 hibited in the Preserve.

8 (2) EXCEPTIONS.—The prohibition contained in  
9 paragraph (1) shall not apply to the extent that the  
10 Secretary determines that the construction of new  
11 roads, or the improvement of existing roads, in the  
12 Preserve is necessary to accomplish the purposes of  
13 this Act or to provide access to inholdings or for  
14 claim holders of valid mining claims for the use of  
15 lands in the Preserve or within the Cedar Creek wa-  
16 tershed within two miles outside of the boundaries of  
17 the Preserve. The Secretary may maintain or im-  
18 prove roads in the Preserve to the extent the Sec-  
19 retary determines that such maintenance or im-  
20 provements are necessary to accomplish the purposes  
21 of this Act, to provide for the protection of the natu-  
22 ral resources of the Preserve, to provide for public  
23 safety, or to ensure access for inholders and claims  
24 holders of valid mining claims for the use of lands  
25 in the Preserve or within the Cedar Creek watershed

1 within two miles outside of the boundaries of the  
2 Preserve.

3 (3) LIMITATION ON EXCEPTION.—The con-  
4 struction or improvement of roads in the Preserve  
5 pursuant to paragraph (2) or subsection (e) may not  
6 include paving or any work beyond 50 feet on either  
7 side of the centerline of the road bed.

8 (e) UTILITIES AND ACCOMPANYING ROAD.—In com-  
9 pliance with applicable laws and the Willamette National  
10 Forest Land and Resource Management Plan, the Sec-  
11 retary may allow the installation and maintenance of  
12 power lines and water lines (and an accompanying service  
13 road) through the Preserve to serve authorized activities  
14 conducted on land within the Cedar Creek watershed with-  
15 in two miles outside of the boundaries of the Preserve.

16 **SEC. 7. ACCESS TO AND ACQUISITION OF NON-FEDERAL**  
17 **LAND.**

18 (a) INVENTORY AND ACQUISITION OF NON-FEDERAL  
19 LANDS.—The Secretary shall conduct an inventory of all  
20 non-Federal lands and interests in lands within the bound-  
21 aries of the Preserve. The Secretary may acquire such  
22 inventoried lands (or interests in such lands) for inclusion  
23 in the Preserve. The Secretary may not acquire, for inclu-  
24 sion in the Preserve, any lands or interests in lands within  
25 the boundaries of the Preserve without the consent of the

1 owner, unless the Secretary determines that the land is  
2 being developed or managed (or is proposed to be devel-  
3 oped or managed) in a manner inconsistent with the pur-  
4 poses of this Act. Nothing in this Act may be construed  
5 to prevent the Secretary from increasing the size of the  
6 Preserve.

7 (b) SPECIAL RULE FOR SANTIAM NO. 1 LODGE MIN-  
8 ING CLAIM.—Notwithstanding subsection (a), the parcel  
9 of real property located within the boundaries of the Pre-  
10 serve that is known as the Santiam No. 1 lode mining  
11 claim and identified in section 8140 of the Department  
12 of Defense Appropriations Act, 1992 (Public Law 102-  
13 172; 105 Stat. 1213), may be acquired by the Secretary  
14 only—

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

17 (A) the amount that the original patentee  
18 of the parcel paid for the parcel; and

19 (B) the cost of any improvements made to  
20 the parcel by the patentee; or

21 (2) by donation.

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

1 (d) ACCESS AND UTILITIES TO INHOLDINGS.—

2 (1) IN GENERAL.—In the case of private  
3 inholdings located within the boundaries of the Pre-  
4 serve, the Secretary shall authorize the use of Fed-  
5 eral land in the Preserve by the holder of the  
6 inholding to assure adequate access to the inholding  
7 under applicable law.

8 (2) JAWBONE FLATS.—With respect to the  
9 inholding known as the Jawbone Flats area, the Sec-  
10 retary shall authorize the use of Federal land in the  
11 Preserve by the owners of the inholding to provide  
12 for access and utilities for a facility in the inholding  
13 if the Secretary determines that the facility (and use  
14 of the facility) is consistent with the purposes of this  
15 Act.

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

21 **SEC. 8. AUTHORITY OF THE SECRETARY AND RESPONSIBLE**  
22 **PARTIES TO CONDUCT ENVIRONMENTAL RE-**  
23 **SPONSE ACTIONS OR PURSUE LIABILITY.**

24 (a) REMEDIATION ACTIVITIES.—Nothing in this Act  
25 shall be construed to limit the authority of the Secretary

1 or a responsible party to conduct environmental remedi-  
2 ation activities in the Preserve in connection with the re-  
3 lease, threatened release, or clean up of any hazardous  
4 substance or pollutant or contaminant, including response  
5 actions conducted pursuant to the Comprehensive Envi-  
6 ronmental Response, Compensation, and Liability Act of  
7 1980 (42 U.S.C. 9601 et seq.).

8 (b) LIABILITY.—Nothing in this Act shall be con-  
9 strued to limit the authority of the Secretary or a respon-  
10 sible party to address questions of liability related to the  
11 release, threatened release, or clean up of any hazardous  
12 substance or pollutant or contaminant in the Preserve.

13 **SEC. 9. GRANDFATHER CLAUSE.**

14 Nothing in this Act shall be construed to affect the  
15 operation of any timber sale contract entered into, or  
16 interfere with any activity for which a special use permit  
17 has been issued (and not revoked), before the date of the  
18 enactment of this Act, subject to the terms of the contract  
19 or permit.

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