

111TH CONGRESS
1ST SESSION

H. R. 3538

To authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2009

Mr. SIMPSON (for himself and Mr. MINNICK) introduced the following bill;
which was referred to the Committee on Natural Resources

A BILL

To authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Idaho Wilderness
5 Water Resources Protection Act”.

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

5 (a) AUTHORIZATION FOR CONTINUED USE.—The
6 Secretary of Agriculture shall issue a special use author-
7 ization to the owners of a water storage, transport, or di-
8 version facility (in this section referred to as a “facility”)
9 located on National Forest System land in the Frank
10 Church-River of No Return Wilderness and the Selway-
11 Bitterroot Wilderness for the continued operation, mainte-
12 nance, and reconstruction of the facility if the Secretary
13 determines that—

14 (1) the facility was in existence on the date on
15 which the land upon which the facility is located was
16 designated as part of the National Wilderness Pres-
17 ervation System (in this section referred to as “the
18 date of designation”);

19 (2) the facility has been in substantially contin-
20 uous use to deliver water for the beneficial use on
21 the owner’s non-Federal land since the date of des-
22 ignation;

23 (3) the owner of the facility holds a valid water
24 right for use of the water on the owner’s non-Fed-
25 eral land under Idaho State law, with a priority date
26 that predates the date of designation; and

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

5 (b) TERMS AND CONDITIONS.—

6 (1) REQUIRED TERMS AND CONDITIONS.—In a
7 special use authorization issued under subsection
8 (a), the Secretary shall—

9 (A) allow use of motorized equipment and
10 mechanized transport for operation, mainte-
11 nance, or reconstruction of a facility, if the Sec-
12 retary determines that—

13 (i) the use is necessary to allow the
14 facility to continue delivery of water to the
15 non-Federal land for the beneficial uses
16 recognized by the water right held under
17 Idaho State law; and

18 (ii) the use of nonmotorized equip-
19 ment and nonmechanized transport is im-
20 practicable or infeasible; and

21 (B) preclude use of the facility for the
22 storage, diversion, or transport of water in ex-
23 cess of the water right recognized by the State
24 of Idaho on the date of designation.

1 (2) DISCRETIONARY TERMS AND CONDI-
2 TIONS.—In a special use authorization issued under
3 subsection (a), the Secretary may—

4 (A) require or allow modification or reloca-
5 tion of the facility in the wilderness, as the Sec-
6 retary determines necessary, to reduce impacts
7 to wilderness values set forth in section 2 of the
8 Wilderness Act (16 U.S.C. 1131) if the bene-
9 ficial use of water on the non-Federal land is
10 not diminished; and

11 (B) require that the owner provide a recip-
12 rocal right of access across the non-Federal
13 property, in which case, the owner shall receive
14 market value for any right-of-way or other in-
15 terest in real property conveyed to the United
16 States, and market value may be paid by the
17 Secretary, in whole or in part, by the grant of
18 a reciprocal right-of-way, or by reduction of fees
19 or other costs that may accrue to the owner to
20 obtain the authorization for water facilities.

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