

## Calendar No. 66

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SENATE

{ REPORT  
109-47

### NORTHERN CALIFORNIA COASTAL WILD HERITAGE WILDERNESS ACT

MARCH 30, 2005.—Ordered to be printed

Filed, under authority of the order of the Senate of MARCH 17, 2005

Mr. DOMENICI, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 128]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 128) to designate certain public land in Humboldt, Del Norte, Mendocino, Lake, and Napa Counties in the State of California as wilderness, to designate certain segments of the Black Butte River in Mendocino County, California as a wild or scenic river, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purposes of S. 128 are to designate approximately 300,000 acres of lands administered by the Forest Service and Bureau of Land Management in Humboldt, Del Norte, Mendocino, Lake, and Napa counties in northern California as wilderness; to release approximately 2,222 acres of lands from wilderness study status; to designate the 9,655-acre Elkhorn Ridge Potential Wilderness Area; to designate a 21-mile segment of the Black Butte River in northern California as a component of the Wild and Scenic Rivers System; and to modify the boundaries of the King Range National Conservation Area.

#### BACKGROUND AND NEED

S. 128 would designate over 300,000 acres of wilderness on lands in northern California. The areas designated as wilderness by this Act represent some of the most outstanding wild areas in the State,

encompassing both National Forests and public lands administered by the Bureau of Land Management.

Among the BLM areas designated as wilderness by S. 128 is over 42,000 acres within the King Range National Conservation Area. The King Range Wilderness includes the “Lost Coast,” the wildest portion of the California coast and the longest stretch of undeveloped coastline in the continental United States.

The bill includes significant additions to four existing wilderness areas in the Mendocino and Six Rivers National Forests, the Snow Mountain, Yolla Bolly—Middle Eel, Siskiyou, and Trinity Alps wilderness as well as the creation of nine new wilderness areas. These areas offer spectacular vistas and diverse scenery. While the existing wilderness areas include higher elevation lands, many of the areas added by this bill include lower elevation areas featuring pine and fir forests, meadows, oak woodlands, and river canyons. The Trinity Alps additions shelter the third-largest swath of unprotected old-growth in northern California.

The designated wilderness areas also provide important wildlife and fish habitat, including many species of raptors, black bears, elk, and salmon. The Middle Fork Eel River, which flows through the Yuki Wilderness, supports up to one-half of California’s remaining summer steelhead trout run and the Cedar Roughts Wilderness supports the last wild black bear population in Napa County. The wilderness areas designated by S. 128 are also popular recreational areas, and are heavily used for hunting, fishing, hiking and camping.

#### LEGISLATIVE HISTORY

S. 128 was introduced by Senators Boxer and Feinstein on January 24, 2005. Similar legislation, S. 738, was sponsored by Senators Boxer and Feinstein in the 108th Congress. The Subcommittee on Public Lands and Forests held a hearing on S. 738 on July 21, 2004 (S. Hrg. 108–714). The Senate adopted an amendment to an unrelated bill, H.R. 620, that included a Northern California Wilderness title. The language included in the Senate amendment (S. Amdt. 4048) contained several modifications to the original S. 738 language, to address issues raised at the subcommittee hearing. H.R. 620 passed the Senate, as amended, on December 7, 2004. The House of Representatives did not consider the amended version of H.R. 620 prior to the sine die adjournment of the 108th Congress.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on February 16, 2005, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 128.

#### SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title.

Section 2 defines the term “Secretary” to mean the Secretary of Agriculture with respect to wilderness areas on National Forest System lands or the Secretary of the Interior, for Bureau of Land Management-administered areas.

Section 3 designates approximately 189,448 acres of lands on the Mendocino and Six Rivers National Forests and approximately

111,356 acres of lands administered by the Bureau of Land Management as components of the National Wilderness Preservation System.

The areas to be designated include:

(1) a 23,312-acre addition, in two areas, to the Snow Mountain Wilderness in the Mendocino National Forest;

(2) the 10,571-acre Sanhedrin Wilderness in the Mendocino National Forest.

(3) the 54,087-acre Yuki Wilderness in the Mendocino National Forest. The Yuki Wilderness consists of 36,185 acres of National Forest lands and 17,902 acres of Bureau of Land Management (BLM) administered lands.

(4) a 25,806-acre addition to the Yolla Bolly—Middle Eel Wilderness in the Mendocino National Forest. The addition includes 734 acres of BLM lands.

(5) the 6,494-acre Mad River Buttes Wilderness in the Six Rivers National Forest.

(6) a 48,754 addition, in 5 areas, to the Siskiyou Wilderness in the Six Rivers National Forest.

(7) the 7,279-acre Mount Lassic Wilderness in the Six Rivers National Forest.

(8) a 28,805-acre addition, in 4 areas, to the Trinity Alps Wilderness in the Six Rivers National Forest.

(9) the 2,977-acre Underwood Wilderness in the Six Rivers National Forest.

(10) the 30,870-acre Cache Creek Wilderness, administered by the BLM.

(11) the 6,350-acre Cedar Roughs Wilderness, administered by the BLM.

(12) the 12,915-acre South Fork Eel River Wilderness, administered by the BLM.

(13) the 42,585-acre King Range Wilderness, administered by the BLM and within the boundaries of the King Range National Conservation Area.

(14) all Federally-owned rocks, islets, and islands located above mean high tide and within 3 miles off the coast of the King Range National Conservation Area.

Section 4(a) directs the Secretary of Agriculture, for National Forest System lands, and the Secretary of the Interior, for BLM-administered lands, to administer the wilderness areas designated by this Act in accordance with the Wilderness Act, subject to valid existing rights.

Many of the wilderness areas designated by this Act are enjoyed by hikers, people on horseback, hunters and fishermen. In addition, many visitors access these wilderness areas using commercial outfitters. Most of these outfitters use horses as pack animals. The Committee understands that the areas designated as wilderness by this Act are not heavily used by horses at this time, and consistent with the land managers' responsibilities to monitor visitor use and protect against resource damage from overuse, notes that the current level of horsepacking use in these areas is consistent with wilderness designation.

At the Committee hearings on a similar bill during the 108th Congress, the Forest Service provided the Committee with information on the need to develop a plan to restore the late successional

reserve (LSR) of the Sanhedrin Wilderness. The Committee agrees that wilderness designation can be fully compatible with such restoration treatments.

The Committee notes that this area has been altered by human influences, including the suppression of natural burning. As the Forest Service develops its plan in accordance with this Act and with the goal of LSR restoration, the Committee believes the Old Growth characteristics of the LSR are a primary value of the wilderness. The Committee expects that the Forest Service can achieve its goal of LSR restoration in accordance with this Act and the Forest Service's manual on wilderness management. Specifically, the relevant portion of the manual (FSM 2323.35a) states:

"Manipulation of Wildlife Habitat. The objective of all projects must be to perpetuate the wilderness resource; projects must be necessary to sustain a primary value of a given wilderness or to perpetuate a federally-listed threatened or endangered species. To qualify for approval by the Chief, habitat manipulation projects must satisfy the following criteria:

"1. The condition needing change is a result of abnormal human influence.

"2. The project can be accomplished with assurance with there will be no serious or lasting damage to wilderness values.

"3. There is reasonable assurance that the project will accomplish the desired objectives \* \* \*."

Subsection (b) directs the Secretary to file a map and legal description of each area designated by this Act with the House and Senate authorizing committees as soon as practicable after the date of enactment. The subsection also gives the Secretary authority to correct technical errors in the maps and legal descriptions and requires that they be made available for public inspection.

Subsection (c) provides that any land within the boundary of a wilderness area designated by this Act is acquired by the Federal Government, the land shall become part of that wilderness area and be administered in accordance with the Wilderness Act.

Subsection (d) withdraws, subject to valid existing rights, the Federal land designated as wilderness from entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the mining laws; and from disposition under all laws pertaining to mineral or geothermal leasing or mineral materials.

Subsection (e) pertains to management activities necessary to prevent or control fire, insects or diseases within the wilderness areas designated by this Act. The subsection states that the Secretary may take such measures in the wilderness areas as are necessary for the control and prevention of fire, insects, and diseases in accordance with the Wilderness Act and the report of the House of Representatives Committee on Interior and Insular Affairs (now Committee on Resources) in the 98th Congress accompanying H.R. 1437, the California Wilderness Act of 1983 (H. Rept. 98-40). The Secretary is directed to review existing policies applicable to the wilderness areas designated by this Act within one year to ensure that authorized approval procedures for fire management measures allow a timely and efficient response to fire emergencies in the wilderness areas.

The Committee notes that this Act provides the land management agencies with the necessary flexibility to conduct fire sup-

pression activities to protect human life and property. For example, in the King Range Honeydew fire in 2003, which resulted in 14,000 acres of fire damage in the King Range National Conservation Area, the Bureau of Land Management authorized a fire truck and a 3-member crew to be stationed at the bottom of Telegraph Ridge, within a 4-mile range of the Franklin property in order to allow easy, quick access to the Franklin property in the event that fire suppression activities were warranted. As a result, firefighters were able to fend off the fire and prevent damage to the Franklin property. The Committee observes that nothing in this Act would prevent BLM from continuing this practice when so warranted by fire danger.

Subsection (f) directs the Secretary to provide the owner of any private property within the boundaries of a wilderness area designated by this Act with adequate access to their property to ensure its reasonable use and enjoyment by the owner.

The subsection clarifies that within the King Range Wilderness, the route depicted on the map as the access route for private landowners within wilderness shall also be available for invitees of the landowners, except that the Secretary is not required to provide access to the landowners or their invitees beyond the access that would be available if the wilderness had not been designated.

The Committee notes that since the establishment of the King Range National Conservation Area, property owners Linda Franklin, Mary Smith Etter, and others have been granted access to their land within the conservation area by the Bureau of Land Management via the Smith-Etter Road. The Committee intends that nothing in this Act should in any way alter the access currently authorized to Franklin, Etter and others under existing policies.

Subsection (g) clarifies that nothing in this Act prevents the installation and maintenance of hydrologic, meteorologic, or climatological instrumentation within the wilderness areas if the Secretary determines they are appropriate to further the scientific, educational, and conservation purposes of the wilderness areas.

Subsection (h) contains language making clear that nothing in this Act precludes low-level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas designated by this Act.

Subsection (i) provides that livestock grazing and the maintenance of existing facilities within wilderness areas designated by this Act, where established before the date of enactment, shall be permitted to continue in accordance with section 4(d)(4) of the Wilderness Act and the grazing management guidelines printed in Appendix A of the report of the House of Representatives Committee on Interior and Insular Affairs (now Committee on Resources) in the 101st Congress accompanying H.R. 2570, the Arizona Desert Wilderness Act (H. Rept. 101-405).

Subsection (j) states that nothing in this Act affects the jurisdiction of the State of California with respect to fish and wildlife on public land located in the State. The Committee notes that nothing in this Act alters the jurisdiction of the State of California over the management of wildlife in the areas designated as wilderness, including the issuance of hunting and fishing licenses.

Subsection (k) directs the Secretary to ensure that Indian tribes have access to the wilderness areas designated by this Act for traditional cultural and religious purposes. The Secretary is authorized to temporarily close a portion of a wilderness area to the public to protect the privacy of tribal members during traditional cultural and religious activities. Access to a wilderness area for the purpose of this subsection shall be in accordance with the American Indian Religious Freedom Act and the Wilderness Act.

Subsection (l) clarifies that nothing in this Act creates buffer zones around any wilderness area designated by this Act.

Section 5 releases those portions of the King Range Wilderness Study Area, Chemise Mountain Instant Study Area, Red Mountain Wilderness Study Area, and Cedar Roughs Wilderness Study Area not designated as wilderness from further wilderness study status under section 603 of the Federal Land Policy and Management Act. The subsection also releases those portions of the Rocky Creek/Cache Creek Wilderness Study Area in Lake County, California not designated as wilderness. The combined acreage of the areas released totals approximately 2,222 acres.

Section 6(a) establishes the 9,655-acre Elkhorn Ridge Potential Wilderness Area, administered by the Bureau of Land Management.

Subsection (b) directs the Secretary to manage the area as wilderness, subject to valid existing rights, and except as provided in subsection (c), until it is designated as wilderness in accordance with subsection (d).

Subsection (c) authorizes the Secretary to undertake ecological restoration activities in the potential wilderness area, including the elimination of non-native species, removal of certain roads, repair of skid tracks, and other activities necessary to restore the area's natural ecosystems. The Secretary is directed to use the minimum tool or administrative practice necessary to accomplish the restoration with the least amount of impact on the area's wilderness character and resources. However, while the area is designated as potential wilderness, the Secretary is authorized to use motorized equipment and mechanized transport in the area.

Subsection (d) provides that the area shall be designated as the Elkhorn Ridge Wilderness upon a finding by the Secretary that the conditions in the area which are incompatible with wilderness have been removed or five years after the date of enactment of this Act, whichever is earlier.

Section 7(a) designates a 21-mile segment of the Black Butte River as a component of the Wild and Scenic Rivers System. Two stretches of the river, totaling approximately 17.5 miles, are designated as a "wild" river and a 3.5-mile portion is designated as a "scenic" river. The river is to be administered by the Secretary of Agriculture.

Subsection (b) directs the Secretary to submit a report to Congress within 18 months after the date of enactment containing a fire management plan for the river and a report on the historical and cultural resources along the river corridor. The report is also to be transmitted to the Mendocino County Board of Supervisors.

Section 8 amends the enabling legislation for the King Range National Conservation Area to include additional Bureau of Land Management-administered lands within the boundary of the con-

servation area. The boundary addition along the northern portion of the conservation area conforms with the boundary of the King Range Wilderness designated by this Act.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

##### *S. 128—Northern California Coastal Wild Heritage Wilderness Act*

S. 128 would add approximately 300,000 acres of federal land located primarily in the Mendocino National Forest and the Six Rivers National Forest to the National Wilderness Preservation System. Subject to valid existing rights, each new area designated as wilderness would be withdrawn from programs to develop mineral or geothermal resources. The legislation also would allow five existing wilderness study areas to be released from consideration for wilderness status. In addition, S. 128 would designate the Elkhorn Ridge Potential Wilderness Area as wilderness after appropriate ecological restoration of the land.

Based on information provided by the U.S. Forest Service and the Bureau of Land Management (BLM), CBO estimates that implementing S. 128 would cost \$1 million over the next three years, subject to the availability of appropriated funds. This amount would be used by the agencies to restore damaged lands to be added to the wilderness system and to complete various studies and resource surveys required by the legislation. We estimate that additional planning and administrative costs to manage the new wilderness areas would be less than \$500,000 annually.

By designating federal lands as wilderness areas (and thus unavailable for timber harvesting), enacting S. 128 would result in forgone offsetting receipts (a credit against direct spending). Based on information provided by the Forest Service and BLM, CBO estimates that enacting S. 128 would result in forgone offsetting receipts of less than \$500,000 in any year, but totaling about \$5 million over the 2006–2015 period. (Enacting the bill would not affect revenues.)

S. 128 also would make other changes affecting public lands in northern California, including releasing certain land from consideration as potential wilderness and designating new areas for wilderness study, but CBO estimates that none of these changes would have any significant effect on the federal budget.

S. 128 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Because this bill is expected to result in forgone federal timber receipts in California, it also would result in forgone receipts for that state. The federal government pays a portion of timber receipts to the state where those receipts are generated.

The CBO staff contacts for this estimate are Deborah Reis and Matthew Pickford. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation

of the regulatory impact which would be incurred in carrying out S. 128.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 128.

#### EXECUTIVE COMMUNICATIONS

The Committee did not request Executive agency views on S. 128. The Department of Agriculture and the Department of the Interior provided testimony on a similar measure, S. 738, at the Subcommittee hearing on July 21, 2004 (S. Hrg. 108-714):

##### STATEMENT OF CHAD CALVERT, ASSISTANT SECRETARY FOR LANDS AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

S. 738 proposes to designate as wilderness nearly 120,000 acres of BLM-managed lands in California's 1st Congressional District. Because wilderness boundaries do not follow Congressional District boundaries, this has resulted in a few awkward provisions in the legislation that we will point out. Overall, we support the designations, but recommend some changes to the management language which we hope the committee will consider.

The areas proposed for designation include stunning landscapes, dramatic coastlines, and unique habitats. Taken together, these proposed wilderness areas include pristine Pacific Coast, steep inland canyons, rushing whitewater and mountainous terrain. The array of wildlife is incredibly diverse. Large mammals such as elk, sea lions, and black bear populate these areas. Various raptors including the endangered northern spotted owl, peregrine falcons and eagles nest here. Additionally, the areas provide significant habitat for steelhead, coho, and Chinook salmon, all listed endangered species. Recreational use is varied and scattered throughout the area including rafting, fishing, hiking, camping, and hunting, all of which will continue after designation.

A brief description of each proposed wilderness designation is in order:

**King Range Wilderness**—41,614 acres encompassing both the Chimney Mountain WSA and the King Range WSA would be designated wilderness. This area truly would be a crown jewel of the wilderness system. Its 26 miles of pristine and undeveloped coastline is the longest in the continental United States. Referred to as California's "Lost Coast," this dramatic wilderness area is within the King Range National Conservation Area (NCA) established by Congress in 1970.

**Yuki Wilderness**—51,790 acres are proposed for wilderness designation including approximately 17,200 acres of

BLM-managed lands which include a steep, rugged river corridor. The larger acreage, approximately 35,000 acres, is managed by the Forest Service. We support the designation of the BLM acres (which encompass most of the Thatcher Ridge WSA) as a portion of the overall Yuki Wilderness.

Yolla Bolly-Middle Eel Wilderness additions—expands the existing 153,000-acre Yolla Bolly—Middle Eel Wilderness Area by approximately 26,760 acres (the existing area includes over 7,000 acres of BLM-managed lands). However, only 780 acres of the wilderness addition is BLM-managed land. We support the designation of these 780 acres as a part of the much larger Forest Service addition.

Cache Creek Wilderness—the legislation cites 38,970 acres of BLM-managed lands for wilderness. However, if the bill's intention is only to designate lands within Congressional District 1, this designation may be reduced to approximately 31,000 acres. Waters rushing through this area's steep canyons provide popular whitewater rafting venues while the surrounding oak woodlands are home to several herds of tule elk. We support this designation that falls within the Congressional District.

Blue Ridge Wilderness—a small 760-acre area is proposed for designation by the bill. While it is our understanding that a larger 10,000-acre wilderness is envisioned in this area, only 760 acres of it is within Congressional District 1. We oppose designating such a small area as wilderness because it is too small to manage properly for wilderness values unless land in the adjacent district is included in the wilderness designation.

Cedar Roughs Wilderness—5,880 acres of BLM WSA is designated as wilderness. We support this designation. The BLM has administratively designated this land as an Area of Critical Environmental Concern (ACEC) in recognition of its significant Sargent cypress stand and important black bear population.

South Fork Eel Wilderness—14,000 acres to be designated encompassing the Red Mountain WSA. The area is home to a number of endangered species including the northern spotted owl and several salmon species as well as some unique and rare geological features. The designation is supported by the BLM.

Elkhorn Ridge Potential Wilderness Area—8,000 acres of BLM-managed lands are proposed for a “potential wilderness area.” Under the terms of the legislation, the area would become wilderness within 5 years, or earlier, if determined by the Secretary of the Interior that appropriate ecological restoration had taken place. This area contains a portion of the Eel River headwaters and provides significant endangered species habitat. While such a designation is unique for the BLM, the National Park Service has experience with such designations and we think it is reasonable.

For those areas in the bill not identified as WSAs, and for the areas in the bill that were determined by the BLM

to be non-suitable for wilderness, we note that Congress has plenary authority over the disposition of public lands. Except as otherwise specified, if Congress ultimately approves the bill, we do not see any additional management impediments to their inclusion.

We would like the opportunity to work with the sponsors and the Committee to perfect boundaries in a few cases, and release from WSA status those areas, primarily small bits and pieces of WSAs (our current estimate is around 2,200 acres), that are not designated wilderness by S. 738. Leaving those pieces unaddressed creates potential management problems.

We would also like the opportunity to work with the sponsors and the Committee on the management language in the bill. Specifically, we recommend adding standard language on the management of newly-acquired lands within the wilderness area and a full withdrawal of the lands designated as wilderness. The Department strongly recommends the legislation be amended to clarify that the wilderness designation not constitute or be construed to constitute either an express or implied reservation of any water rights. Additional technical matters on maps should also be addressed.

Thank you for the opportunity to testify on the sections of S. 738 which apply to BLM-managed lands. The resolution of these longstanding WSA questions is a priority for the Department and we welcome the opportunity to move this debate forward.

I would be happy to answer any questions.

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STATEMENT OF MARK REY, NATIONAL FOREST SYSTEM,  
FOREST SERVICE, DEPARTMENT OF AGRICULTURE

S. 738—NORTHERN CALIFORNIA COASTAL WILD HERITAGE  
WILDERNESS ACT

I will limit my remarks to the provisions of the bill related to lands managed by the U.S. Forest Service and will defer to the Department of the Interior on provisions relating to the Bureau of Land Management managed lands. S. 738 would designate certain public lands in Humboldt, Del Norte, Mendocino, Lake, Napa, and Yolo Counties in the State of California as wilderness and to designate certain segments of the Black Butte River in Mendocino County, California as a wild and scenic river. In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), this bill would designate as wilderness, 109,670 acres in the Mendocino National Forest and 85,040 acres in the Six Rivers National Forest in the State of California, as components of the National Wilderness Preservation System (NWPS) or as additions to existing components of the NWPS. S. 738 would also designate 3 sections (21 miles) of the Black Butte River in California as part of the Wild and Scenic River system.

The following briefly describes each of the proposed wilderness designations:

**Snow Mountain Wilderness (SNW) Area Addition (Mendocino NF)**—20,960 acres of National Forest System lands would be designated as wilderness. As proposed, the Bear Creek and Deafy Glade Units would make good additions to the existing SNWA given their remoteness and opportunity for solitude. However, as proposed, the Skelton Glade Unit has several roads running through it which compromise wilderness attributes and hinder manageability. In addition designation would complicate and hinder habitat improvement for Tule Elk and hazardous fuel management in order to protect adjacent Refuge Late Successional Reserve. The Department is not opposed to the designation of the Bear Creek and Deafy Glade Units as additions to the SNW.

**Sanhedrin Wilderness Area—Proposed (Mendocino NF)**—10,196 acres of National Forest System lands would be designated as wilderness. As proposed designation would complicate and hinder habitat and risk management of the Sanhedrin Late Successional Reserve. The Department does not support the designation as proposed.

**Yuki Wilderness Area—Proposed (Mendocino NF)**—approximately 35,000 acres of National Forest System lands would be designated as wilderness. The current Mendocino Forest Plan direction assigned management area prescriptions of Back Country and wilderness to this area. The Department is not opposed to the designation of the Yuki Wilderness Area as proposed.

**Yolla Bolly—Middle Eel Wilderness (YBMEW) Area Additions (Mendocino NF)**—25,980 acres on National Forest System lands would be designated as wilderness. The Smokehouse Unit portion of the YBMEW addition contains important late successional habitat for connectivity from the Buttermilk Late Successional Reserve and the existing Yolla Bolly—Middle Eel Wilderness. In addition, the Smokehouse Unit has high scenic quality. The Eel River Unit portion of the YBMEW is proposed with extensive “cherry stemming” of roads on the west side of the Middle Fork Eel River which compromise wilderness attributes and manageability in the center of the unit. The area west of road 24N21 has high scenic quality and the current Mendocino Forest Plan direction assigned a management area prescription of Back Country Area to a portion of the area. The Department is not opposed to the designation if boundary adjustments to the proposed YBMEW Area Additions could be made to avoid the road “cherry stemming” as described above.

**Mad River Buttes Wilderness Area—Proposed (Six-Rivers NF)**—5,740 acres of National Forest System lands would be designated as wilderness. The Six Rivers Forest Plan management area prescription for the area is Late Successional Reserve and Adaptive Management. The area is bordered on 3 sides by private land which hinders manageability. The opportunity for solitude and primitive

recreation is low due to the small size of the area. Most existing trails are on ridges which have little vegetative screening and allow view of adjacent cutover non-federal land. The Department does not support designation as proposed.

**Siskiyou Wilderness Area Additions—Proposed (Six Rivers NF)**—42,190 acres of National Forest System lands would be designated as wilderness. The Six Rivers Forest Plan management area prescription for the area is Late Successional Reserve and Matrix in the southern portion. The northern portion is within the Smith River National Recreation Upper South Fork management Area, where emphasis is on wild river and roadless backcountry recreation. The terrain is very steep and rugged with numerous important cultural sites found in the area. The naturalness of the area has been modified very little. The Department is not opposed to the designation if modifications of boundaries to better follow land features could be made to enhance manageability.

**Mt. Lassic Wilderness Area—Proposed (Six Rivers NF)**—7,100 acres of National Forest System lands would be designated as wilderness. The Six Rivers Forest Plan management area prescription for the area is Late Successional Reserve. The Forest Fire Plan identified this as a Resource Priority Fuel Treatment Area that showed high to very high susceptibility to stand replacing fire. This area is bisected by three major roads with moderate dispersed motorized recreation presently occurring. A state wide designated California Back Country motorized route traverses the area. The Department does not support the designation as proposed.

**Trinity Alps Wilderness Area Addition—Proposed (Six Rivers NF)**—26,510 acres of National Forest System land would be designated as wilderness. The Six Rivers Forest Plan management area prescription for the area is Late Successional Reserve. The natural integrity of the Horse Linto, East Fork and Red Cap portions have all generally been maintained and offer an opportunity for solitude and remoteness. These areas burned during the Megram Fire. The Orleans Mountain portion of the area is not contiguous to the Trinity Alps Wilderness Area and is located approximately six miles southeast from the town of Orleans (a Community at Risk). The area has been altered by land management practices. The Department would not support the designation of the Orleans Mountain portion as an addition to the Trinity Alps Wilderness. The Department is not opposed to the Horse Linto, East Fork and Red Cap additions if boundary adjustment would be made to facilitate the removal of hazard trees where roads border the proposed wilderness.

**Underwood Wilderness Area—Proposed (Six Rivers NF)**—3,500 acres of National Forest System Lands would be designated as wilderness. The Six Rivers Forest Plan management area prescription for the area is Adaptive Management Area and is located adjacent to the 1.5 mile

threat zone for a Community at Risk. Approximately one-third of the western portion of the area is currently managed under a wild river designation (Trinity River). The Department does not support the designation as proposed.

The Black Butte River Wild and Scenic River Designation (Mendocino NF)—16.0 miles of the Black Butte River and 1.5 miles of its tributary Cold Creek would be designated as a wild river. 3.5 miles of the Black Butte River would be designated as a scenic river. The 1995 Mendocino Forest Plan and Final Environmental Impact Statement found the Black Butte River eligible for designation and recommended 21.6 miles as wild and scenic river due to its outstanding cultural and fisheries habitat resources. The Department is not opposed to the designation as proposed.

In addition, the Department would also like the opportunity to work with the bill sponsors, the committee, and the Department of the Interior on the submission of amendments dealing with fire management activities and fire use as the Forest Service already has developed protocols for delegating responses during a fire emergency.

Section 102(o) and 210(d) would require the Secretary, upon request of an Indian tribe or Indian religious community, to temporarily close to the general public the use of portions of areas designated by the bill to protect the privacy of traditional cultural and religious activities in the area by members of the Indian Tribe or Indian religious community. We have several concerns with this provision. The provision removes the discretion of the Secretary to determine whether the requested closure is appropriate. The lack of discretion is inconsistent with the approach used in existing statutory authorizing temporary closure to certain federal lands, such as the Jemez National Recreation Area on the Santa Fe National Forest for exclusive use by Indian Tribes for traditional and cultural purposes. We believe a more effective approach will be included in forthcoming tribal authorities legislation that is proposed in the President's FY 2005 Budget. We will be sending this proposed legislation in the near future. In addition, we understand the Department of Justice would like to consult with the committee and bill sponsors regarding constitutional issues related to sections 102(o) and 210(d). We also would like to work with the committee, bill sponsors and the Department of Interior on amendments that address additional concerns we have with the above mentioned sections.

Finally, the Department would also like the opportunity to work with the sponsors and the committee on the submission of amendments pertaining to Titles II and III in the bill which would require a fire management plan and report on the cultural and historical resources within the Black Butte River segments designated in the bill to insure these provisions are aligned with current policies and laws and are not duplicative. S. 2334—Caribbean National Forest Act of 2004.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 128, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## Public Law 90-542, 90th Congress

AN ACT To provide for a National Wild and Scenic Rivers System, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) this Act may be cited as the “Wild and Scenic Rivers Act”.

\* \* \* \* \*

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) CLEARWATER, MIDDLE FORK, IDAHO.—The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway river from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

\* \* \* \* \*

(167) BLACK BUTTE RIVER, CALIFORNIA.—*The following segments of the Black Butte River in the State of California, to be administered by the Secretary of Agriculture:*

(A) *The 16 miles of Black Butte River, from the Mendocino County Line to its confluence with Jumpoff Creek, as a wild river.*

(B) *The 3.5 miles of Black Butte River from its confluence with Jumpoff Creek to its confluence with Middle Eel River, as a scenic river.*

(C) *The 1.5 miles of Cold Creek from the Mendocino County Line to its confluence with Black Butte River, as a wild river.*

## Public Law 91-476, 91st Congress

AN ACT To provide for the establishment of the King Range National Conservation Area in the State of California

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior (hereinafter referred to as the “Secretary”) is hereby authorized and directed, after compliance with sections 3 and 4 of this Act, to establish, within the boundaries described in section 9 of this Act, the King Range National Conservation Area in the State of California (hereinafter referred to as the “Area”), and to consolidate and manage the public lands in the Area with the purpose of conserving and developing, for the use and benefit

of the people of the United States, the lands and other resources therein under a program of multiple usage and of sustained yield.

\* \* \* \* \*

SEC. 9. (a) The survey and investigation area referred to in the first section of this Act is described as follows:

\* \* \* \* \*

*(d) In addition to the land described in subsections (a) and (c), the land identified as the King Range National Conservation Area Additions on the map entitled "King Range Wilderness" and dated November 12, 2004, is included in the Area.*

