

this Act and all other applicable Federal, State, and local laws.

(f) **RIGHTS AND DUTIES OF NON-FEDERAL PARTIES.**—All right and title to, and interest in, any fish passage and screening facilities constructed or funded pursuant to the authority of this Act shall be held by the non-Federal party or parties who own, operate, and maintain the non-Federal water diversion and storage project, and any associated lands, involved. The operation, maintenance, and replacement of such facilities shall be the sole responsibility of such party or parties and shall not be a project cost assignable to any Federal reclamation project.

**SEC. 4. OTHER REQUIREMENTS.**

(a) **PERMITS.**—The Secretary may assist a non-Federal party who owns, operates, or maintains a non-Federal water diversion or storage project, and any associated lands, to obtain and comply with any required State, local, or tribal permits.

(b) **FEDERAL LAW.**—In carrying out this Act, the Secretary shall be subject to all Federal laws applicable to activities associated with the construction of a fish passage and screening facility or habitat improvements.

(c) **STATE WATER LAW.**—

(1) In carrying out this Act, the Secretary shall comply with any applicable State water laws.

(2) Nothing in this Act affects any water or water-related right of a State, an Indian tribe, or any other entity or person.

(d) **REQUIRED COORDINATION.**—The Secretary shall coordinate with the Northwest Power and Conservation Council; appropriate agencies of the States of Idaho, Oregon, and Washington; and appropriate federally recognized Indian tribes in carrying out the program authorized by this Act.

**SEC. 5. INAPPLICABILITY OF FEDERAL RECLAMATION LAW.**

(a) **IN GENERAL.**—The Reclamation Act of 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto, shall not apply to the non-Federal water projects at which the fish passage and screening facilities authorized by this Act are located, nor to the lands which such projects irrigate.

(b) **NONREIMBURSABLE AND NONRETURNABLE EXPENDITURES.**—Notwithstanding any provision of law to the contrary, the expenditures made by the Secretary pursuant to this Act shall not be a project cost assignable to any Federal reclamation project (either as a construction cost or as an operation and maintenance cost) and shall be non-reimbursable and non-returnable to the United States Treasury.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such amounts as are necessary for the purposes of this Act.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1307), as amended, was read the third time and passed.

**WALLOWA LAKE DAM REHABILITATION AND WATER MANAGEMENT ACT OF 2004**

The Senate proceeded to consider the bill (S. 1355) to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1355

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

[This Act may be cited as the “Wallowa Lake Dam Rehabilitation and Water Management Act of 2003”.]

**SEC. 2. DEFINITIONS.**

[In this Act:

(1) **ASSOCIATED DITCH COMPANIES, INCORPORATED.**—The term “Associated Ditch Companies, Incorporated” means the non-profit corporation by that name (as established under the laws of the State of Oregon) that operates Wallowa Lake Dam.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(3) **WALLOWA LAKE DAM REHABILITATION PROGRAM.**—The term “Wallowa Lake Dam Rehabilitation Program” means the program for the rehabilitation of the Wallowa Lake Dam in Oregon, as contained in the engineering document entitled, “Phase I Dam Assessment and Preliminary Engineering Design”, dated October 2001, and on file with the Bureau of Reclamation.

(4) **WALLOWA VALLEY WATER MANAGEMENT PLAN.**—The term “Wallowa Valley Water Management Plan” means the program developed for the Wallowa River watershed, as contained in the document entitled “Wallowa Lake Dam Rehabilitation and Water Management Plan Vision Statement”, dated February 2001, and on file with the Bureau of Reclamation.

**SECTION 3. AUTHORIZATION TO PARTICIPATE IN PROGRAM.**

(a) **AUTHORIZATION.**—The Secretary—

(1) may provide funding to the Associated Ditch Companies, Incorporated, in order for the Associated Ditch Companies, Incorporated, to plan, design and construct facilities needed to implement the Wallowa Lake Dam Rehabilitation Program; and

(2) in cooperation with tribal, State and local governmental entities, may participate in planning, design and construction of facilities needed to implement the Wallowa Valley Water Management Plan.

(b) **COST SHARING.**—

(1) **IN GENERAL.**—The Federal share of the costs of activities authorized under this Act shall not exceed 80 percent.

(2) **EXCLUSIONS FROM FEDERAL SHARE.**—There shall not be credited against the Federal share of such costs—

(A) any expenditure by the Bonneville Power Administration in the Wallowa River watershed; and

(B) expenditures made by individual farmers in any Federal farm or conservation program.

(c) **COMPLIANCE WITH STATE LAW.**—The Secretary, in carrying out this Act, shall comply with otherwise applicable State water law.

(d) **PROHIBITION ON HOLDING TITLE.**—The Federal Government shall not hold title to any facility rehabilitated or constructed under this Act.

(e) **PROHIBITION ON OPERATION AND MAINTENANCE.**—The Federal Government shall not be responsible for the operation and maintenance of any facility constructed or rehabilitated under this Act.

(f) **OWNERSHIP AND OPERATION OF FISH PASSAGE FACILITY.**—Any facility located at Wallowa Lake Dam for trapping and transportation of migratory adult salmon may be owned and operated only by the Nez Perce Tribe.

**SECTION 4. RELATIONSHIP TO OTHER LAW.**

[Activities funded under this Act shall not be considered a supplemental or additional benefit under the Act of June 17, 1902 (32

Stat. 388), and all Acts amendatory thereof or supplementary thereto.]

**SECTION 5. APPROPRIATIONS.**

[There is authorized to be appropriated to the Secretary \$32,000,000 for the Federal share of the costs of activities authorized under this Act.]

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Wallowa Lake Dam Rehabilitation and Water Management Act of 2004”.]

**SEC. 2. DEFINITIONS.**

In this Act:

(1) **ASSOCIATED DITCH COMPANIES, INCORPORATED.**—The term “Associated Ditch Companies, Incorporated” means the nonprofit corporation established under the laws of the State of Oregon that operates Wallowa Lake Dam.

(2) **PHASE II AND PHASE III OF THE WALLOWA VALLEY WATER MANAGEMENT PLAN.**—The term “Phase II and Phase III of the Wallowa Valley Water Management Plan” means the Phase II program for fish passage improvements and water conservation measures, and the Phase III program for implementation of water exchange infrastructure, developed for the Wallowa River watershed, as contained in the document entitled “Wallowa Lake Dam Rehabilitation and Water Management Plan Vision Statement”, dated February 2001, and on file with the Bureau of Reclamation.

(3) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(4) **WALLOWA LAKE DAM REHABILITATION PROGRAM.**—The term “Wallowa Lake Dam Rehabilitation Program” means the program for the rehabilitation of the Wallowa Lake Dam in Oregon, as contained in the engineering document entitled, “Phase I Dam Assessment and Preliminary Engineering Design”, dated December 2002, and on file with the Bureau of Reclamation.

**SECTION 3. AUTHORIZATION TO PARTICIPATE IN PROGRAM.**

(a) **GRANTS AND COOPERATIVE AGREEMENTS.**—The Secretary may provide grants to, or enter into cooperative or other agreements with, tribal, State, and local governmental entities and the Associated Ditch Companies, Incorporated, to plan, design, and construct facilities needed to implement the Wallowa Lake Dam Rehabilitation Program and Phase II and Phase III of the Wallowa Valley Water Management Plan.

(b) **CONDITIONS.**—As a condition of providing funds under subsection (a), the Secretary shall ensure that—

(1) the Wallowa Lake Dam Rehabilitation Program meets the standards of the dam safety program of the State of Oregon;

(2) the Associated Ditch Companies, Incorporated, agrees to assume liability for any work performed, or supervised, with funds provided to it under this Act; and

(3) the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to a facility rehabilitated or constructed under this Act.

(c) **COST SHARING.**—

(1) **IN GENERAL.**—The Federal share of the costs of activities authorized under this Act shall not exceed 80 percent.

(2) **EXCLUSIONS FROM FEDERAL SHARE.**—There shall not be credited against the Federal share of such costs—

(A) any expenditure by the Bonneville Power Administration in the Wallowa River watershed; and

(B) expenditures made by individual agricultural producers in any Federal commodity or conservation program.

(d) **COMPLIANCE WITH STATE LAW.**—The Secretary, in carrying out this Act, shall comply with otherwise applicable State water law.

(e) **PROHIBITION ON HOLDING TITLE.**—The Federal Government shall not hold title to any facility rehabilitated or constructed under this Act.

(f) *PROHIBITION ON OPERATION AND MAINTENANCE.*—The Federal Government shall not be responsible for the operation and maintenance of any facility constructed or rehabilitated under this Act.

(g) *OWNERSHIP AND OPERATION OF FISH PASSAGE FACILITY.*—Any facility constructed using Federal funds authorized by this Act located at Wallowa Lake Dam for trapping and transportation of migratory adult salmon may be owned and operated only by the Nez Perce Tribe.

#### SEC. 4. RELATIONSHIP TO OTHER LAW.

Activities funded under this Act shall not be considered a supplemental or additional benefit under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)).

#### SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary to the pay the Federal share of the costs of activities authorized under this Act \$25,600,000.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1355), as amended, was read the third time and passed.

### ALASKA NATIVE ALLOTMENT SUBDIVISION ACT

The Senate proceeded to consider the bill (S. 1421) to authorize the subdivision and dedication of restricted land owned by Alaska Natives, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1421

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

[This Act may be cited as the “Alaska Native Allotment Subdivision Act”].

#### SEC. 2. FINDINGS.

[Congress finds that—

[(1) Alaska Natives that own land subject to Federal restrictions against alienation and taxation need to be able to subdivide the restricted land for the purposes of—

[(A) transferring by gift, sale, or devise separate interests in the land; or

[(B) severing, by mutual consent, tenancies in common;

[(2) for the benefit of the Alaska Native restricted landowners, any persons to which the restricted land is transferred, and the public in general, the Alaska Native restricted landowners should be authorized to dedicate—

[(A) rights-of-way for public access;

[(B) easements for utility installation, use, and maintenance; and

[(C) additional land for other public purposes;

[(3)(A) the lack of an explicit authorization by Congress with respect to the subdivision and dedication of Alaska Native land that is subject to Federal restrictions has called into question whether such subdivision and dedication is legal; and

[(B) this legal uncertainty has been detrimental to the rights of Alaska Native restricted landowners to use or dispose of the restricted land in the same manner as other landowners are able to use and dispose of land;

[(4) extending to Alaska Native restricted land owners the same authority that other

landowners have to subdivide and dedicate land should be accomplished without depriving the Alaska Native restricted landowners of any of the protections associated with restricted land status;

[(5) confirming the right and authority of Alaska Native restricted land owners, subject to the approval of the Secretary of the Interior, to subdivide their land and to dedicate their interests in the restricted land, should be accomplished without affecting the laws relating to whether tribal governments or the State of Alaska (including political subdivisions of the State) have authority to regulate land use;

[(6) Alaska Native restricted land owners, persons to which the restricted land is transferred, State and local platting authorities, and members of the general public have formed expectations in reliance on past subdivisions and dedications; and

[(7) those expectations should be fulfilled by ratifying the validity under Federal law of the subdivisions and dedications.

#### SEC. 3. DEFINITIONS.

[In this Act:

[(1) *RESTRICTED LAND.*—The term “restricted land” means land in the State that is subject to Federal restrictions against alienation and taxation.

[(2) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior.

[(3) *STATE.*—The term “State” means the State of Alaska.

#### SEC. 4. SUBDIVISION AND DEDICATION OF ALASKA NATIVE RESTRICTED LAND.

[(a) *IN GENERAL.*—An Alaska Native owner of restricted land may, subject to the approval of the Secretary—

[(1) subdivide the restricted land in accordance with the laws of the—

[(A) State; or

[(B) applicable local platting authority; and

[(2) execute a certificate of ownership and dedication with respect to the restricted land subdivided under paragraph (1) with the same effect under State law as if the restricted land subdivided and dedicated were held by unrestricted fee simple title.

[(b) *RATIFICATION OF PRIOR SUBDIVISIONS AND DEDICATIONS.*—Any subdivision or dedication of restricted land executed before the date of enactment this Act that has been approved by the Secretary and by the relevant State or local platting authority, as appropriate, shall be considered to be ratified and confirmed by Congress as of the date on which the Secretary approved the subdivision or dedication.

#### SEC. 5. EFFECT.

[(a) *IN GENERAL.*—Nothing in this Act validates or invalidates any assertion—

[(1) that a Federally recognized Alaska Native tribe has or lacks jurisdiction with respect to any land in the State;

[(2) that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist in the State; or

[(3) that, except as provided in section 4, the State or any political subdivision of the State does or does not have the authority to regulate the use of any individually owned restricted land.

[(b) *EFFECT ON STATUS OF LAND NOT DEDICATED.*—Except in a case in which a specific interest in restricted land is dedicated under section (4)(a)(2), nothing in this Act terminates, diminishes, or otherwise affects the continued existence and applicability of Federal restrictions against alienation and taxation on restricted land or interests in restricted land (including restricted land subdivided under section 4(a)(1)).]

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the “Alaska Native Allotment Subdivision Act”.*

#### SEC. 2. DEFINITIONS.

*In this Act:*

(1) *RESTRICTED LAND.*—The term “restricted land” means land in the State that is subject to Federal restrictions against alienation and taxation.

(2) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior.

(3) *STATE.*—The term “State” means the State of Alaska.

#### SEC. 3. SUBDIVISION AND DEDICATION OF ALASKA NATIVE RESTRICTED LAND.

(a) *IN GENERAL.*—An Alaska Native owner of restricted land may, subject to the approval of the Secretary—

(1) subdivide the restricted land in accordance with the laws of the—

(A) State; or

(B) applicable local platting authority; and

(2) execute a certificate of ownership and dedication with respect to the restricted land subdivided under paragraph (1) with the same effect under State law as if the restricted land subdivided and dedicated were held by unrestricted fee simple title.

(b) *RATIFICATION OF PRIOR SUBDIVISIONS AND DEDICATIONS.*—Any subdivision or dedication of restricted land executed before the date of enactment of this Act that has been approved by the Secretary and by the relevant State or local platting authority, as appropriate, shall be considered to be ratified and confirmed by Congress as of the date on which the Secretary approved the subdivision or dedication.

#### SEC. 4. EFFECT ON STATUS OF LAND NOT DEDICATED.

*Except in a case in which a specific interest in restricted land is dedicated under section 3(a)(2), nothing in this Act terminates, diminishes, or otherwise affects the continued existence and applicability of Federal restrictions against alienation and taxation on restricted land or interests in restricted land (including restricted land subdivided under section 3(a)(1)).*

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1421), as amended, was read the third time and passed.

### SOUTHWEST FOREST HEALTH AND WILDFIRE PREVENTION ACT OF 2004

The bill (H.R. 2696) to establish Institutes to demonstrate and promote the use of adaptive ecosystem management to reduce the risk of wildfires, and restore the health of fire-adapted forest and woodland ecosystems of the interior West was considered, ordered to a third reading, read the third time, and passed.

### ARCH HURLEY CONSERVANCY DISTRICT WATER CONSERVATION PROJECT FEASIBILITY STUDY

The Senate proceeded to consider the bill (S. 1071) to authorize the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study on a water conservation project within the Arch Hurley Conservancy District in the State of New Mexico, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1071

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*