

**Calendar No. 443**

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 638**

[Report No. 105-229]

---

---

**A BILL**

To provide for the expeditions completion of the acquisition of private mineral interests within the Mount St. Helens National Volcanic Monument mandated by the 1982 Act that established the Monument, and for other purposes.

---

---

JUNE 26, 1998

Reported with an amendment

# Calendar No. 443

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 638

[Report No. 105-229]

To provide for the expeditious completion of the acquisition of private mineral interests within the Mount St. Helens National Volcanic Monument mandated by the 1982 Act that established the Monument, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

APRIL 23, 1997

Mr. GORTON (for himself and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 26, 1998

Reported by Mr. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

---

## A BILL

To provide for the expeditious completion of the acquisition of private mineral interests within the Mount St. Helens National Volcanic Monument mandated by the 1982 Act that established the Monument, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Mount St. Helens Na-  
3 tional Volcanic Monument Completion Act”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) **FINDINGS.**—Congress finds that—

6 (1) the Act entitled “An Act to designate the  
7 Mount St. Helens National Volcanic Monument in  
8 the State of Washington, and for other purposes”,  
9 approved August 26, 1982 (96 Stat. 301; 16 U.S.C.  
10 431 note), required the United States to acquire all  
11 land and interests in land in the Mount St. Helens  
12 National Volcanic Monument;

13 (2) the Act directed the Secretary of Agri-  
14 culture to acquire the surface interests and the min-  
15 eral and geothermal interests by separate exchanges  
16 and expressed the sense of Congress that the ex-  
17 changes be completed by November 24, 1982, and  
18 August 26, 1983, respectively; and

19 (3) the surface interests exchange was con-  
20 summated timely, but the exchange of all mineral  
21 and geothermal interests has not yet been completed  
22 a decade and a half after the Act’s enactment.

23 (b) **PURPOSE.**—The purpose of this Act is to provide  
24 for the expeditious completion of the previously mandated  
25 Federal acquisition of private mineral and geothermal in-

1 terests within the Mount St. Helens National Volcanic  
2 Monument.

3 **SEC. 3. ACQUISITION OF MINERAL RIGHTS WITHIN THE NA-**  
4 **TIONAL VOLCANIC MONUMENT.**

5 Section 3 of the Act entitled “An Act to designate  
6 the Mount St. Helens National Volcanic Monument in the  
7 State of Washington, and for other purposes”, approved  
8 August 26, 1982 (96 Stat. 302; 16 U.S.C. 431 note), is  
9 amended—

10 (1) in subsection (a), by striking “and except  
11 that the Secretary may acquire mineral and geo-  
12 thermal interests only by exchange. It is the sense  
13 of the Congress that in the case of mineral and geo-  
14 thermal interests such exchanges should be com-  
15 pleted within one year after the date of enactment  
16 of this Act”, and

17 (2) by adding at the end the following:

18 “(g) **EXPEDITIOUS COMPLETION OF MINERAL AND**  
19 **GEOHERMAL INTERESTS.—**

20 “(1) **DEFINITION OF HOLDER.—**In this sub-  
21 section, the term ‘holder’ means a company, or its  
22 successor, referred to in subsection (c).

23 “(2) **IN GENERAL.—**Within the period described  
24 in paragraph (7), the Secretary of the Interior shall

1 acquire by exchange the mineral and geothermal in-  
2 terests in the Monument of each holder.

3 ~~“(3) MONETARY CREDITS.—~~

4 ~~“(A) ISSUANCE.—In exchange for the min-~~  
5 ~~eral and geothermal interests acquired by the~~  
6 ~~Secretary of the Interior from a holder under~~  
7 ~~paragraph (2), the Secretary of the Interior~~  
8 ~~shall issue to the holder monetary credits that~~  
9 ~~may be exercised by the holder for payment~~  
10 ~~of—~~

11 ~~“(i) not more than 50 percent of the~~  
12 ~~bonus or other payments made by success-~~  
13 ~~ful bidders in any sales of mineral, oil, gas,~~  
14 ~~or geothermal leases under the Mineral~~  
15 ~~Leasing Act (30 U.S.C. 181 et seq.); the~~  
16 ~~Outer Continental Shelf Lands Act (43~~  
17 ~~U.S.C. 1331 et seq.); or the Geothermal~~  
18 ~~Steam Act of 1970 (30 U.S.C. 1001 et~~  
19 ~~seq.); or~~

20 ~~“(ii) not more than 50 percent of any~~  
21 ~~royalty, rental, or advance royalty payment~~  
22 ~~made to the United States to maintain any~~  
23 ~~mineral, oil or gas, or geothermal lease~~  
24 ~~issued under the Acts listed in clause (i).~~

1           “(B) VALUE OF CREDITS.—The credits  
2 issued under subparagraph (A) shall equal the  
3 fair market value of all mineral and geothermal  
4 interests conveyed in the exchange as deter-  
5 mined under paragraph (4).

6           “(C) ACCEPTANCE OF CREDITS.—The Sec-  
7 retary of the Interior shall accept credits issued  
8 under subparagraph (A) in the same manner as  
9 cash for the payments described in subpara-  
10 graph (A). The use and exercise of the credits  
11 shall be subject to the laws (including regula-  
12 tions) governing such payments, to the extent  
13 the laws are consistent with this subsection.

14           “(4) VALUATION OF INTERESTS.—

15           “(A) IN GENERAL.—Not later than 120  
16 days after the date of enactment of this sub-  
17 section, the mineral and geothermal interests to  
18 be conveyed by each holder in the exchanges re-  
19 quired by paragraph (2) shall be valued by 1 of  
20 the following methods, as selected by the Sec-  
21 retary of the Interior:

22           “(i) USE OF APPRAISAL REPORT.—

23           The 1982 value established by the report  
24 of the third party appraisal completed on  
25 September 11, 1991, shall be adjusted to

1 reflect changes in the consumer price index  
2 for all urban consumers published by the  
3 Department of Labor as of the date on  
4 which the exchange is to be consummated  
5 pursuant to paragraph (7), or such other  
6 value as shall be mutually agreed to by the  
7 Secretary of the Interior and the holders  
8 not later than 30 days after the date of en-  
9 actment of this subsection.

10 “(ii) NEW APPRAISAL.—

11 “(I) SELECTION OF AP-  
12 PRAISER.—Not later than 30 days  
13 after the date of enactment of this  
14 subsection, the Secretary of the Inte-  
15 rior and the holders shall mutually  
16 agree on the selection of a qualified  
17 appraiser to conduct an appraisal of  
18 the mineral and geothermal interests.

19 “(II) NO AGREEMENT ON AP-  
20 PRAISER.—If no appraiser is mutually  
21 agreed to under subclause (I), not  
22 later than 60 days after the date of  
23 enactment of this subsection—

24 “(aa) the Secretary of the  
25 Interior and the holders shall

1 each designate a qualified ap-  
2 praiser; and

3 “(bb) the 2 designated ap-  
4 praisers shall select a third  
5 qualified appraiser to perform  
6 the appraisal with the advice and  
7 assistance of the designated ap-  
8 praisers and in accordance with  
9 the instructions that were mutu-  
10 ally agreed on for the September  
11 11, 1991, third party appraisal.

12 “(III) DATE OF VALUATION.—

13 The value of the mineral and geo-  
14 thermal interests to be conveyed by  
15 each holder shall be calculated as of  
16 August 26, 1982, adjusted to reflect  
17 changes in the consumer price index  
18 for all urban consumers published by  
19 the Department of Labor as of the  
20 date on which the exchange is to be  
21 consummated pursuant to paragraph  
22 (7).

23 “(IV) COSTS.—The Secretary of  
24 the Interior shall bear the costs of the  
25 process established by this clause.

1           “(B) ~~TIMELY APPRAISAL REPORT.~~—The  
2 appraisal report resulting from subparagraph  
3 (A) shall be presented to the Secretary of the  
4 Interior timely to permit the Secretary of the  
5 Interior to determine the value of the mineral  
6 and geothermal interests to be conveyed by each  
7 holder. Not later than the 120 days after the  
8 date of enactment of this subsection, the Sec-  
9 retary of the Interior shall notify each holder of  
10 the determination.

11           “(C) ~~FAILURE OF PROCESS.~~—If the Sec-  
12 retary of the Interior fails to make a determina-  
13 tion under subparagraph (B) by the date that  
14 is 120 days after the date of enactment of this  
15 subsection or if any holder does not agree with  
16 the value determined by the Secretary of the  
17 Interior under subparagraph (B), 1 or more of  
18 the holders may petition the United States  
19 Court of Federal Claims for a determination of  
20 the value of the mineral and geothermal inter-  
21 ests to be conveyed by the holders in accordance  
22 with this subsection. Subject to the right of ap-  
23 peal, a determination by the Court shall be  
24 binding for purposes of this subsection on all  
25 parties.

1           “(5) EXCHANGE ACCOUNT.—

2           “(A) IN GENERAL.—Notwithstanding any  
3 other provision of law, not later than 30 days  
4 after the completion of each exchange with a  
5 holder required by this subsection, the Sec-  
6 retary of the Treasury, in consultation with the  
7 Secretary of the Interior, shall establish an ex-  
8 change account for the holder for monetary  
9 credits described in paragraph (3).

10           “(B) INITIAL BALANCE.—The initial bal-  
11 ance of credits in each holder’s account shall be  
12 equal to the value as determined under para-  
13 graph (4) of the mineral and geothermal inter-  
14 ests conveyed by the holder in the exchange.

15           “(C) USE OF CREDITS.—The balance of  
16 credits in a holder’s account shall be available  
17 to the holder or its assigns for the purposes of  
18 paragraph (3). The Secretary of the Treasury  
19 shall adjust the balance of credits in the ac-  
20 count to reflect payments made pursuant to  
21 paragraph (3).

22           “(D) TRANSFER OF CREDITS.—

23           “(i) IN GENERAL.—A holder may  
24 transfer or sell any credits in the holder’s  
25 account to another person.

1           ~~“(ii) USE OF TRANSFERRED CRED-~~  
2           ~~ITS.—Credits transferred under clause (i)~~  
3           ~~may be used in accordance with this sub-~~  
4           ~~section only by a person that is qualified to~~  
5           ~~bid on, or that holds, a mineral, oil, or gas~~  
6           ~~lease under the Mineral Leasing Act (30~~  
7           ~~U.S.C. 181 et seq.), the Outer Continental~~  
8           ~~Shelf Lands Act (43 U.S.C. 1331 et seq.),~~  
9           ~~or the Geothermal Steam Act of 1970 (30~~  
10           ~~U.S.C. 1001 et seq.).~~

11           ~~“(iii) NOTIFICATION.—A holder shall~~  
12           ~~notify the Secretary of the Interior and the~~  
13           ~~Secretary of the Treasury of any transfer~~  
14           ~~or sale under this subparagraph promptly~~  
15           ~~after the transfer or sale.~~

16           ~~“(E) TIME LIMIT ON USE OF CREDITS.—~~  
17           ~~On the date that is 5 years after an account is~~  
18           ~~created under subparagraph (A), the Secretary~~  
19           ~~of the Treasury shall terminate the account and~~  
20           ~~any remaining credits in the account shall be-~~  
21           ~~come unusable.~~

22           ~~“(6) TITLE TO INTERESTS.—On the date of the~~  
23           ~~establishment of an exchange account for a holder~~  
24           ~~under paragraph (5)(A), title to any mineral and~~  
25           ~~geothermal interests that are held by the holder and~~

1 are to be acquired by the Secretary under paragraph  
2 ~~(2)~~ shall transfer to the United States.

3 ~~“(7) COMPLETION OF EXCHANGES.—The Sec-~~  
4 ~~retary of the Interior shall complete the exchanges~~  
5 ~~under paragraph (2) not later than 180 days after~~  
6 ~~the date of enactment of this subsection or as soon~~  
7 ~~as practicable after completion of the process de-~~  
8 ~~scribed in paragraph (4)(C).”.~~

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Mount St. Helens Na-*  
11 *tional Volcanic Monument Completion Act”.*

12 **SEC. 2. FINDINGS AND PURPOSE.**

13 *(a) FINDINGS.—Congress finds that—*

14 *(1) the Act entitled “An Act to designate the*  
15 *Mount St. Helens National Volcanic Monument in the*  
16 *State of Washington, and for other purposes”, ap-*  
17 *proved August 26, 1982 (96 Stat. 301; 16 U.S.C. 431*  
18 *note), required the United States to acquire all land*  
19 *and interests in land in the Mount St. Helens Na-*  
20 *tional Volcanic Monument;*

21 *(2) the Act directed the Secretary of Agriculture*  
22 *to acquire the surface interests and the mineral and*  
23 *geothermal interests by separate exchanges and ex-*  
24 *pressed the sense of Congress that the exchanges be*

1       *completed by November 24, 1982, and August 26,*  
2       *1983, respectively; and*

3             (3) *the surface interests exchange was con-*  
4       *summated timely, but the exchange of all mineral and*  
5       *geothermal interests has not yet been completed a dec-*  
6       *ade and a half after the Act's enactment.*

7       (b) *PURPOSE.*—*The purpose of this Act is to provide*  
8       *for the expeditious completion of the previously mandated*  
9       *Federal acquisition of private mineral and geothermal in-*  
10       *terests within the Mount St. Helens National Volcanic*  
11       *Monument.*

12       **SEC. 3. ACQUISITION OF MINERAL RIGHTS WITHIN THE NA-**  
13                               **TIONAL VOLCANIC MONUMENT.**

14       *Section 3 of the Act entitled “An Act to designate the*  
15       *Mount St. Helens National Volcanic Monument in the State*  
16       *of Washington, and for other purposes”, approved August*  
17       *26, 1982 (96 Stat. 302; 16 U.S.C. 431 note), is amended—*

18             (1) *in subsection (a), by striking “and except*  
19       *that the Secretary may acquire mineral and geo-*  
20       *thermal interests only by exchange. It is the sense of*  
21       *the Congress that in the case of mineral and geo-*  
22       *thermal interests such exchanges should be completed*  
23       *within one year after the date of enactment of this*  
24       *Act”; and*

25             (2) *by adding at the end the following:*

1       “(g) *EXPEDITIOUS COMPLETION OF MINERAL AND*  
2 *GEOHERMAL INTERESTS.*—

3               “(1) *DEFINITION OF HOLDER.*—*In this sub-*  
4 *section, the term ‘holder’ means a company, or its*  
5 *successor, referred to in subsection (c).*

6               “(2) *IN GENERAL.*—*Within the period described*  
7 *in paragraph (7), the Secretary of the Interior shall*  
8 *acquire by exchange the mineral and geothermal in-*  
9 *terests in the Monument of each holder.*

10              “(3) *MONETARY CREDITS.*—

11                      “(A) *ISSUANCE.*—*In exchange for the min-*  
12 *eral and geothermal interests acquired by the*  
13 *Secretary of the Interior from a holder under*  
14 *paragraph (2), the Secretary of the Interior shall*  
15 *issue to the holder monetary credits that may be*  
16 *exercised by the holder for payment of—*

17                              “(i) *not more than 50 percent of the*  
18 *bonus or other payments made by successful*  
19 *bidders in any sales of mineral, oil, gas, or*  
20 *geothermal leases under the Mineral Leasing*  
21 *Act (30 U.S.C. 181 et seq.), the Outer Con-*  
22 *tinental Shelf Lands Act (43 U.S.C. 1331 et*  
23 *seq.), or the Geothermal Steam Act of 1970*  
24 *(30 U.S.C. 1001 et seq.); or*

1           “(ii) not more than 50 percent of any  
2           royalty, rental, or advance royalty payment  
3           made to the United States to maintain any  
4           mineral, oil or gas, or geothermal lease  
5           issued under the Acts listed in clause (i).

6           “(B) VALUE OF CREDITS.—The credits  
7           issued under subparagraph (A) shall equal the  
8           fair market value of all mineral and geothermal  
9           interests conveyed in the exchange as determined  
10          under paragraph (4).

11          “(C) ACCEPTANCE OF CREDITS.—The Sec-  
12          retary of the Interior shall accept credits issued  
13          under subparagraph (A) in the same manner as  
14          cash for the payments described in subparagraph  
15          (A). The use and exercise of the credits shall be  
16          subject to the laws (including regulations) gov-  
17          erning such payments, to the extent the laws are  
18          consistent with this subsection.

19          “(D) TREATMENT OF CREDITS FOR DIS-  
20          TRIBUTION TO STATES.—All amounts in the  
21          form of credits accepted by the Secretary of the  
22          Interior under subparagraph (C) for the pay-  
23          ments described in subparagraph (A) shall be  
24          considered to be money received for the purpose  
25          of section 35 of the Mineral Leasing Act (30

1           *U.S.C. 191) and section 20 of the Geothermal*  
2           *Steam Act of 1970 (30 U.S.C. 1019).*

3           “(4) *VALUATION OF INTERESTS.*—

4                   “(A) *IN GENERAL.*—*Not later than 120*  
5           *days after the date of enactment of this sub-*  
6           *section, the mineral and geothermal interests to*  
7           *be conveyed by each holder in the exchanges re-*  
8           *quired by paragraph (2) shall be valued by one*  
9           *of the following methods, as selected by the Sec-*  
10           *retary of the Interior:*

11                   “(i) *USE OF APPRAISAL REPORT.*—*The*  
12           *1982 value established by the report of the*  
13           *third party appraisal completed on Septem-*  
14           *ber 11, 1991, shall be adjusted to reflect*  
15           *changes in the consumer price index for all*  
16           *urban consumers published by the Depart-*  
17           *ment of Labor as of the date on which the*  
18           *exchange is to be consummated pursuant to*  
19           *paragraph (7), or such other value as shall*  
20           *be mutually agreed to by the Secretary of*  
21           *the Interior and the holders not later than*  
22           *30 days after the date of enactment of this*  
23           *subsection.*

24                   “(ii) *NEW APPRAISAL.*—

1                   “(I) *SELECTION OF APPRAISER.*—  
2                   *Not later than 30 days after the date*  
3                   *of enactment of this subsection, the*  
4                   *Secretary of the Interior and the hold-*  
5                   *ers shall mutually agree on the selec-*  
6                   *tion of a qualified appraiser to conduct*  
7                   *an appraisal of the mineral and geo-*  
8                   *thermal interests.*

9                   “(II) *NO AGREEMENT ON AP-*  
10                   *PRAISER.*—*If no appraiser is mutually*  
11                   *agreed to under subclause (I), not later*  
12                   *than 60 days after the date of enact-*  
13                   *ment of this subsection—*

14                   “(aa) *the Secretary of the In-*  
15                   *terior and the holders shall each*  
16                   *designate a qualified appraiser;*  
17                   *and*

18                   “(bb) *the two designated ap-*  
19                   *praisers shall select a third quali-*  
20                   *fied appraiser to perform the ap-*  
21                   *praisal with the advice and assist-*  
22                   *ance of the designated appraisers*  
23                   *and in accordance with the in-*  
24                   *structions that were mutually*

1                   *agreed on for the September 11,*  
2                   *1991, third part appraisal.*

3                   “(III) *DATE OF VALUATION.*—*The*  
4                   *value of the mineral and geothermal*  
5                   *interests to be conveyed by each holder*  
6                   *shall be calculated as of August 26,*  
7                   *1982, adjusted to reflect changes in the*  
8                   *consumer price index for all urban*  
9                   *consumers published by the Depart-*  
10                  *ment of Labor as of the date on which*  
11                  *the exchange is to be consummated*  
12                  *pursuant to paragraph (7).*

13                  “(IV) *COSTS.*—*The Secretary of*  
14                  *the Interior shall bear the costs of the*  
15                  *process established by this clause.*

16                  “(B) *TIMELY APPRAISAL REPORT.*—*The ap-*  
17                  *praisal report resulting from subparagraph (A)*  
18                  *shall be presented to the Secretary of the Interior*  
19                  *timely to permit the Secretary of the Interior to*  
20                  *determine the value of the mineral and geo-*  
21                  *thermal interests to be conveyed by each holder.*  
22                  *Not later than the date that is 180 days after the*  
23                  *date of enactment of this subsection, the Sec-*  
24                  *retary of the Interior shall notify each holder of*  
25                  *the determination.*

1           “(C) *FAILURE OF PROCESS.*—If the Sec-  
2           retary of the Interior fails to make a determina-  
3           tion under subparagraph (B) by the date that is  
4           180 days after the date of enactment of this sub-  
5           section or if any holder does not agree with the  
6           value determined by the Secretary of the Interior  
7           under subparagraph (B), one or more of the  
8           holders may petition the United States Court of  
9           Federal Claims for a determination of the value  
10          of the mineral and geothermal interests to be  
11          conveyed by the holders in accordance with this  
12          subsection. Subject to the right of appeal, a de-  
13          termination by the Court shall be binding for  
14          purposes of this subsection on all parties.

15          “(5) *EXCHANGE ACCOUNT.*—

16               “(A) *IN GENERAL.*—Notwithstanding any  
17               other provision of law, not later than 30 days  
18               after the completion of each exchange with a  
19               holder required by this subsection, the Secretary  
20               of the Interior shall establish, with the Minerals  
21               Management Service of the Department of the  
22               Interior, an exchange account for the holder for  
23               monetary credits described in paragraph (3).

24               “(B) *INITIAL BALANCE.*—The initial bal-  
25               ance of credits in each holder’s account shall be

1           *equal to the value as determined under para-*  
2           *graph (4) of the mineral and geothermal inter-*  
3           *ests conveyed by the holder in the exchange.*

4           “(C) *USE OF CREDITS.*—*The balance of*  
5           *credits in a holder’s account shall be available to*  
6           *the holder or its assigns for the purposes of para-*  
7           *graph (3). The Secretary of the Interior shall ad-*  
8           *just the balance of credits in the account to re-*  
9           *fect payments made pursuant to paragraph (3).*

10          “(D) *TRANSFER OF CREDITS.*—

11           “(i) *IN GENERAL.*—*A holder may*  
12           *transfer or sell any credits in the holder’s*  
13           *account to another person.*

14           “(ii) *USE OF TRANSFERRED CRED-*  
15           *ITS.*—*Credits transferred under clause (i)*  
16           *may be used in accordance with this sub-*  
17           *section only by a person that is qualified to*  
18           *bid on, or that holds, a mineral, oil, or gas*  
19           *lease under the Mineral Leasing Act (30*  
20           *U.S.C. 181 et seq.), the Outer Continental*  
21           *Shelf Lands Act (43 U.S.C. 1331 et seq.), or*  
22           *the Geothermal Steam Act of 1970 (30*  
23           *U.S.C. 1001 et seq.).*

24           “(iii) *NOTIFICATION.*—*A holder shall*  
25           *notify the Secretary of the Interior of any*

1           *transfer or sale under this subparagraph*  
2           *promptly after the transfer or sale.*

3           “(E) *TIME LIMIT ON USE OF CREDITS.*—*On*  
4           *the date that is 5 years after an account is cre-*  
5           *ated under subparagraph (A), the Secretary of*  
6           *the Interior shall terminate the account and any*  
7           *remaining credits in the account shall become*  
8           *unusable.*

9           “(6) *TITLE TO INTERESTS.*—*On the date of the*  
10          *establishment of an exchange account for a holder*  
11          *under paragraph (5)(A), title to any mineral and*  
12          *geothermal interests that are held by the holder and*  
13          *are to be acquired by the Secretary of the Interior*  
14          *under paragraph (2) shall transfer to the United*  
15          *States.*

16          “(7) *COMPLETION OF EXCHANGES.*—*The Sec-*  
17          *retary of the Interior shall complete the exchanges*  
18          *under paragraph (2) not later than 180 days after the*  
19          *date of enactment of this subsection or as soon as*  
20          *practicable after completion of the process described*  
21          *in paragraph (4)(C).”.*