

113TH CONGRESS
1ST SESSION

S. 1771

To amend the Wild and Scenic Rivers Act to adjust the Crooked River boundary, to provide water certainty for the City of Prineville, Oregon, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2013

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

A BILL

To amend the Wild and Scenic Rivers Act to adjust the Crooked River boundary, to provide water certainty for the City of Prineville, Oregon, 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 “Crooked River Collabo-
5 rative Water Security Act of 2013”.

6 **SEC. 2. WILD AND SCENIC RIVER; CROOKED, OREGON.**

7 Section 3(a) of the Wild and Scenic Rivers Act (16
8 U.S.C. 1274(a)) is amended by striking paragraph (72)
9 and inserting the following:

1 “(72) CROOKED, OREGON.—

2 “(A) IN GENERAL.—The 14.75-mile seg-
3 ment from the National Grassland boundary to
4 Dry Creek, to be administered by the Secretary
5 of the Interior in the following classes:

6 “(i) The 7-mile segment from the Na-
7 tional Grassland boundary to River Mile 8
8 south of Opal Spring, as a recreational
9 river.

10 “(ii) The 7.75-mile segment from a
11 point $\frac{1}{4}$ -mile downstream from the center
12 crest of Bowman Dam, as a recreational
13 river.

14 “(B) HYDROPOWER.—In any license appli-
15 cation relating to hydropower development (in-
16 cluding turbines and appurtenant facilities) at
17 Bowman Dam, the applicant, in consultation
18 with the Director of the Bureau of Land Man-
19 agement, shall—

20 “(i) analyze any impacts to the scenic,
21 recreational, and fishery resource values of
22 the Crooked River from the center crest of
23 Bowman Dam to a point $\frac{1}{4}$ -mile down-
24 stream that may be caused by the pro-
25 posed hydropower development, including

1 the future need to undertake routine and
2 emergency repairs;

3 “(ii) propose measures to minimize
4 and mitigate any impacts analyzed under
5 clause (i); and

6 “(iii) propose designs and measures to
7 ensure that any access facilities associated
8 with hydropower development at Bowman
9 Dam shall not impede the free-flowing na-
10 ture of the Crooked River below Bowman
11 Dam.”.

12 **SEC. 3. CITY OF PRINEVILLE WATER SUPPLY.**

13 Section 4 of the Act of August 6, 1956 (70 Stat.
14 1058; 73 Stat. 554; 78 Stat. 954), is amended—

15 (1) by striking “during those months” and all
16 that follows through “purpose of the project”; and

17 (2) by adding at the end the following: “With-
18 out further action by the Secretary of the Interior,
19 beginning on the date of enactment of the Crooked
20 River Collaborative Water Security Act of 2013,
21 5,100 acre-feet of water shall be annually released
22 from the project to serve as mitigation for City of
23 Prineville groundwater pumping, pursuant to and in
24 a manner consistent with Oregon State law, includ-
25 ing any shaping of the release of the water. The City

1 of Prineville shall make payments to the Secretary
2 for the water, in accordance with applicable Bureau
3 of Reclamation policies, directives, and standards.
4 Consistent with the National Environmental Policy
5 Act of 1969 (42 U.S.C. 4321 et seq.), the Endan-
6 gered Species Act of 1973 (16 U.S.C. 1531 et seq.),
7 and other applicable Federal laws, the Secretary
8 may contract exclusively with the City of Prineville
9 for additional quantities of water, at the request of
10 the City of Prineville.”.

11 **SEC. 4. ADDITIONAL PROVISIONS.**

12 The Act entitled “An Act to authorize construction
13 by the Secretary of the Interior of the Crooked River Fed-
14 eral reclamation project, Oregon”, approved August 6,
15 1956 (70 Stat. 1058; chapter 980; 73 Stat. 554; 78 Stat.
16 954), is amended by adding at the end the following:

17 **“SEC. 6. FIRST FILL STORAGE AND RELEASE.**

18 “(a) IN GENERAL.—Other than the 10 cubic feet per
19 second release provided for in section 4, and subject to
20 compliance with the flood curve requirements of the Corps
21 of Engineers, the Secretary shall, on a ‘first fill’ priority
22 basis, store in and when called for in any year release from
23 Prineville Reservoir, whether from carryover, infill, or a
24 combination of both, the following:

1 “(1) 68,273 acre-feet of water annually to fulfill
2 all 16 Bureau of Reclamation contracts existing as
3 of January 1, 2011.

4 “(2) Not more than 2,740 acre-feet of water
5 annually to supply the McKay Creek land, in accord-
6 ance with section 5 of the Crooked River Collabo-
7 rative Water Security Act of 2013.

8 “(3) 10,000 acre-feet of water annually, to be
9 made available first to the North Unit Irrigation
10 District, and subsequently to any other holders of
11 Reclamation contracts existing as of January 1,
12 2011 (in that order), pursuant to Temporary Water
13 Service Contracts, on the request of the North Unit
14 Irrigation District or the contract holders, consistent
15 with the same terms and conditions as prior such
16 contracts between the Bureau of Reclamation and
17 District or contract holders, as applicable.

18 “(4) 5,100 acre-feet of water annually to miti-
19 gate the City of Prineville groundwater pumping
20 under section 4, with the release of this water to
21 occur not based on an annual call, but instead pur-
22 suant to section 4 and the release schedule developed
23 pursuant to section 7(c).

24 “(b) CARRYOVER.—Except for water that may be
25 called for and released after the end of the irrigation sea-

1 son (either as City of Prineville groundwater pumping
 2 mitigation or as a voluntary release, in accordance with
 3 section 4 of this Act and section 6(c) of the Crooked River
 4 Collaborative Water Security Act of 2013, respectively),
 5 any water stored under this section that is not called for
 6 and released by the end of the irrigation season in a given
 7 year shall be—

8 “(1) carried over to the subsequent water year,
 9 which, for accounting purposes, shall be considered
 10 to be the 1-year period beginning October 1 and
 11 ending September 30, consistent with Oregon State
 12 law; and

13 “(2) accounted for as part of the ‘first fill’ stor-
 14 age quantities of the subsequent water year, but not
 15 to exceed the maximum ‘first fill’ storage quantities
 16 described in subsection (a).

17 **“SEC. 7. STORAGE AND RELEASE OF REMAINING STORED**
 18 **WATER QUANTITIES.**

19 “(a) AUTHORIZATION.—

20 “(1) IN GENERAL.—Other than the quantities
 21 provided for in section 4 and the ‘first fill’ quantities
 22 provided for in section 6, and subject to compliance
 23 with the flood curve requirements of the Corps of
 24 Engineers, the Secretary shall store in and release
 25 from Prineville Reservoir all remaining stored water

1 quantities for the benefit of downstream fish and
2 wildlife.

3 “(2) REQUIREMENT.—The Secretary shall re-
4 lease the remaining stored water quantities under
5 paragraph (1) consistent with subsection (c).

6 “(b) APPLICABLE LAW.—If a consultation under the
7 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
8 or an order of a court in a proceeding under that Act re-
9 quires releases of stored water from Prineville Reservoir
10 for fish and wildlife downstream of Bowman Dam, the
11 Secretary shall use uncontracted stored water.

12 “(c) ANNUAL RELEASE SCHEDULE.—

13 “(1) IN GENERAL.—The Commissioner of Rec-
14 lamation shall develop annual release schedules for
15 the remaining stored water quantities in subsection
16 (a) and the water serving as mitigation for City of
17 Prineville groundwater pumping pursuant to section
18 4.

19 “(2) GUIDANCE.—To the maximum extent
20 practicable and unless otherwise prohibited by law,
21 the Commissioner of Reclamation shall develop and
22 implement the annual release schedules consistent
23 with the guidance provided by the Confederated
24 Tribes of the Warm Springs Reservation of Oregon
25 and the State of Oregon to maximize biological ben-

1 efit for downstream fish and wildlife, after taking
2 into consideration multiyear water needs of down-
3 stream fish and wildlife.

4 “(3) COMMENTS FROM FEDERAL FISH MANAGE-
5 MENT AGENCIES.—The National Marine Fisheries
6 Service and the United States Fish and Wildlife
7 Service shall have the opportunity to provide advice
8 with respect to, and comment on, the annual release
9 schedule developed by the Commissioner of Reclama-
10 tion under this subsection.

11 “(d) REQUIRED COORDINATION.—The Commissioner
12 of Reclamation shall perform traditional and routine ac-
13 tivities in a manner that coordinates with the efforts of
14 the Confederated Tribes of the Warm Springs Reservation
15 of Oregon and the State of Oregon to monitor and request
16 adjustments to releases for downstream fish and wildlife
17 on an in-season basis as the Confederated Tribes of the
18 Warm Springs Reservation of Oregon and the State of Or-
19 egon determine downstream fish and wildlife needs re-
20 quire.

21 “(e) CARRYOVER.—

22 “(1) IN GENERAL.—Any water stored under
23 subsection (a) in 1 water year that is not released
24 during the water year—

1 “(A) shall be carried over to the subse-
2 quent water year; and

3 “(B)(i) may be released for downstream
4 fish and wildlife resources, consistent with sub-
5 sections (c) and (d), until the reservoir reaches
6 maximum capacity in the subsequent water
7 year; and

8 “(ii) once the reservoir reaches maximum
9 capacity under clause (i), shall be credited to
10 the ‘first fill’ storage quantities, but not to ex-
11 ceed the maximum ‘first fill’ storage quantities
12 described in section 6(a).

13 “(f) EFFECT.—Nothing in this section affects the au-
14 thority of the Commissioner of Reclamation to perform all
15 other traditional and routine activities of the Commis-
16 sioner of Reclamation.

17 **“SEC. 8. RESERVOIR LEVELS.**

18 “The Commissioner of Reclamation shall—

19 “(1) project reservoir water levels over the
20 course of the year; and

21 “(2) make the projections under paragraph (1)
22 available to—

23 “(A) the public (including fisheries groups,
24 recreation interests, and municipal and irriga-
25 tion stakeholders);

1 “(B) the Director of the National Marine
2 Fisheries Service; and

3 “(C) the Director of the United States
4 Fish and Wildlife Service.

5 **“SEC. 9. EFFECT.**

6 “Except as otherwise provided in this Act, nothing
7 in this Act—

8 “(1) modifies contractual rights that may exist
9 between contractors and the United States under
10 Reclamation contracts;

11 “(2) amends or reopens contracts referred to in
12 paragraph (1); or

13 “(3) modifies any rights, obligations, or require-
14 ments that may be provided or governed by Federal
15 or Oregon State law.”.

16 **SEC. 5. OCHOCO IRRIGATION DISTRICT.**

17 (a) EARLY REPAYMENT.—

18 (1) IN GENERAL.—Notwithstanding section 213
19 of the Reclamation Reform Act of 1982 (43 U.S.C.
20 390mm), any landowner within Ochoco Irrigation
21 District, Oregon (referred to in this section as the
22 “district”), may repay, at any time, the construction
23 costs of the project facilities allocated to the land of
24 the landowner within the district.

1 (2) EXEMPTION FROM LIMITATIONS.—Upon
2 discharge, in full, of the obligation for repayment of
3 the construction costs allocated to all land of the
4 landowner in the district, the land shall not be sub-
5 ject to the ownership and full-cost pricing limitations
6 of Federal reclamation law (the Act of June 17,
7 1902 (32 Stat. 388, chapter 1093), and Acts supple-
8 mental to and amendatory of that Act (43 U.S.C.
9 371 et seq.)).

10 (b) CERTIFICATION.—Upon the request of a land-
11 owner who has repaid, in full, the construction costs of
12 the project facilities allocated to the land of the landowner
13 within the district, the Secretary of the Interior shall pro-
14 vide the certification described in section 213(b)(1) of the
15 Reclamation Reform Act of 1982 (43 U.S.C.
16 390mm(b)(1)).

17 (c) CONTRACT AMENDMENT.—On approval of the
18 district directors and notwithstanding project authorizing
19 authority to the contrary, the Reclamation contracts of the
20 district are modified, without further action by the Sec-
21 retary of the Interior—

22 (1) to authorize the use of water for instream
23 purposes, including fish or wildlife purposes, in order
24 for the district to engage in, or take advantage of,

1 conserved water projects and temporary instream
2 leasing as authorized by Oregon State law;

3 (2) to include within the district boundary ap-
4 proximately 2,742 acres in the vicinity of McKay
5 Creek, resulting in a total of approximately 44,937
6 acres within the district boundary;

7 (3) to classify as irrigable approximately 685
8 acres within the approximately 2,742 acres of in-
9 cluded land in the vicinity of McKay Creek, with
10 those approximately 685 acres authorized to receive
11 irrigation water pursuant to water rights issued by
12 the State of Oregon if the acres have in the past re-
13 ceived water pursuant to State water rights; and

14 (4) to provide the district with stored water
15 from Prineville Reservoir for purposes of supplying
16 up to the approximately 685 acres of land added
17 within the district boundary and classified as irri-
18 gable under paragraphs (2) and (3), with the stored
19 water to be supplied on an acre-per-acre basis con-
20 tingent on the transfer of existing appurtenant
21 McKay Creek water rights to instream use and the
22 issuance of water rights by the State of Oregon for
23 the use of stored water.

24 (d) LIMITATION.—Except as otherwise provided in
25 subsections (a) and (c), nothing in this section—

1 (1) modifies contractual rights that may exist
2 between the district and the United States under the
3 Reclamation contracts of the district;

4 (2) amends or reopens the contracts referred to
5 in paragraph (1); or

6 (3) modifies any rights, obligations, or relation-
7 ships that may exist between the district and any
8 owner of land within the district, as may be provided
9 or governed by Federal or Oregon State law.

10 **SEC. 6. DRY-YEAR MANAGEMENT PLANNING AND VOL-**
11 **UNTARY RELEASES.**

12 (a) **PARTICIPATION IN DRY-YEAR MANAGEMENT**
13 **PLANNING MEETINGS.**—The Bureau of Reclamation shall
14 participate in dry-year management planning meetings
15 with the State of Oregon, the Confederated Tribes of the
16 Warm Springs Reservation of Oregon, municipal, agricul-
17 tural, conservation, recreation, and other interested stake-
18 holders to plan for dry-year conditions.

19 (b) **DRY-YEAR MANAGEMENT PLAN.**—

20 (1) **IN GENERAL.**—Not later than 3 years after
21 the date of enactment of this Act, the Bureau of
22 Reclamation shall develop a dry-year management
23 plan in coordination with the participants referred to
24 in subsection (a).

1 (2) REQUIREMENTS.—The plan developed
2 under paragraph (1) shall only recommend strate-
3 gies, measures, and actions that the irrigation dis-
4 tricts and other Bureau of Reclamation contract
5 holders voluntarily agree to implement.

6 (3) LIMITATIONS.—Nothing in the plan devel-
7 oped under paragraph (1) shall be mandatory or
8 self-implementing.

9 (c) VOLUNTARY RELEASE.—In any year, if North
10 Unit Irrigation District or other eligible Bureau of Rec-
11 lamation contract holders have not initiated contracting
12 with the Bureau of Reclamation for any quantity of the
13 10,000 acre feet of water described in subsection (a)(3)
14 of section 6 of the Act of August 6, 1956 (70 Stat. 1058)
15 (as added by section 4), by June 1 of any calendar year,
16 with the voluntary agreement of North Unit Irrigation
17 District and other Bureau of Reclamation contract holders
18 referred to in that paragraph, the Secretary may release
19 that quantity of water for the benefit of downstream fish
20 and wildlife as described in section 7 of that Act.

21 **SEC. 7. RELATION TO EXISTING LAWS AND STATUTORY OB-**
22 **LIGATIONS.**

23 Nothing in this Act (or an amendment made by this
24 Act)—

1 (1) provides to the Secretary the authority to
2 store and release the “first fill” quantities provided
3 for in section 6 of the Act of August 6, 1956 (70
4 Stat. 1058) (as added by section 4), for any pur-
5 poses other than the purposes provided for in that
6 section, except for—

7 (A) the potential instream use resulting
8 from conserved water projects and temporary
9 instream leasing as provided for in section
10 5(e)(1);

11 (B) the potential release of additional
12 amounts that may result from voluntary actions
13 agreed to through the dry-year management
14 plan developed under section 6(b); and

15 (C) the potential release of the 10,000 acre
16 feet for downstream fish and wildlife as pro-
17 vided for in section 6(e);

18 (2) alters any responsibilities under Oregon
19 State law or Federal law, including section 7 of the
20 Endangered Species Act (16 U.S.C. 1536); or

21 (3) alters the authorized purposes of the Crook-
22 ed River Project provided in the first section of the
23 Act of August 6, 1956 (70 Stat. 1058; 73 Stat. 554;
24 78 Stat. 954).

○