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S. 3483

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

AUGUST 2, 2012

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

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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.

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 ''Crooked River Collaborative Water Security Act''.

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

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

"(72) CROOKED, OREGON.—

"(A) IN GENERAL.—The 14.75-mile segment from the National Grassland boundary to Dry Creek, to be administered by the Secretary of the Interior in the following classes:

"(i) The 7-mile segment from the National Grassland boundary to River Mile 8 south of Opal Spring, as a recreational river.

"(ii) The 7.75-mile segment from a point ¼-mile downstream from the center crest of Bowman Dam, as a recreational river.

"(B) HYDROPOWER.—In any license application submitted to the Federal Energy Regulatory Commission relating to hydropower development (including turbines and appurtenant facilities) at Bowman Dam, the applicant, in consultation with the Director of the Bureau of Land Management, shall—

"(i) analyze any impacts to the scenic, recreational, and fishery resource values of the Crooked River from the center crest of Bowman Dam to a point ¼-mile downstream that may be caused by the pro-

posed hydropower development, including the future need to undertake routine and emergency repairs;

''(ii) propose measures to minimize and mitigate any impacts analyzed under clause (i); and

''(iii) propose designs and measures to ensure that any access facilities associated with hydropower development at Bowman Dam shall not impede the free-flowing nature of the Crooked River below Bowman Dam.''.

SEC. 3. CITY OF PRINEVILLE WATER SUPPLY.

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

(1) by striking ''during those months'' and all that follows through ''purpose of the project''; and

(2) by adding at the end the following: ''Without further action by the Secretary of the Interior, beginning on the date of enactment of the Crooked River Collaborative Water Security Act, 5,100 acre-feet of water shall be annually released from the project to serve as mitigation for City of Prineville groundwater pumping, pursuant to and in a manner consistent with Oregon State law, including any

shaping of the release of the water. The City of Prineville shall make payments to the Secretary for the water, in accordance with the Bureau of Reclamation document entitled 'Water and Related Contract and Repayment Principles and Requirements', the Bureau of Reclamation Manual Directives and Standards numbered PEC 05–01 and dated September 12, 2006, and the document entitled 'Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies' and dated March 10, 1983. Consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable Federal laws, the Secretary may contract exclusively with the City of Prineville for additional quantities of water, at the request of the City of Prineville.''.

SEC. 4. ADDITIONAL PROVISIONS.

The Act entitled ''An Act to authorize construction by the Secretary of the Interior of the Crooked River Federal reclamation project, Oregon'', approved August 6, 1956 (70 Stat. 1058; chapter 980; 73 Stat. 554; 78 Stat. 954), is amended by adding at the end the following:

"SEC. 6. FIRST FILL STORAGE AND RELEASE.

"Other than the 10 cubic feet per second release provided for in section 4, and subject to compliance with the flood curve requirements of the Corps of Engineers, the Secretary shall, on a 'first fill' priority basis, store in and release from Prineville Reservoir, whether from carryover, infill, or a combination of both, the following:

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

"(2) Not more than 2,740 acre-feet of water annually to supply the McKay Creek land, in accordance with section 5 of the Crooked River Collaborative Water Security Act.

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

"(4) 5,100 acre-feet of water annually to mitigate the City of Prineville groundwater pumping under section 4.

"SEC. 7. STORAGE AND RELEASE OF REMAINING STORED WATER QUANTITIES.

"(a) IN GENERAL.—Other than the quantities provided for in section 4 and the 'first fill' quantities provided for in section 6, and subject to compliance with the flood curve requirements of the Corps of Engineers, the Secretary shall store in and release from Prineville Reservoir all remaining stored water quantities for the benefit of downstream fish and wildlife.

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

"(c) ANNUAL RELEASE SCHEDULE.—

"(1) IN GENERAL.—The Commissioner of Reclamation shall develop annual release schedules for the remaining stored water quantities and the water serving as mitigation for City of Prineville groundwater pumping.

"(2) GUIDANCE.—To the maximum extent practicable and unless otherwise prohibited by law, the Commissioner of Reclamation shall develop and implement the annual release schedules consistent with the guidance provided by the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon to maximize biological benefit for downstream resources, based on consideration of the multiyear water needs of downstream fish and wildlife.

"(3) COMMENTS FROM FEDERAL FISH MANAGEMENT AGENCIES.—The National Marine Fisheries Service and the United States Fish and Wildlife Service shall have the opportunity to provide advice with respect to, and comment on, the annual release schedule developed by the Commissioner of Reclamation under this subsection.

"(d) REQUIRED COORDINATION.—The Commissioner of Reclamation shall perform traditional and routine activities in a manner that coordinates with and assists the Confederated Tribes of the Warm Springs Reservation of Oregon and the ability of the State of Oregon to monitor and request adjustments to releases for downstream fish and wildlife on an in-season basis as the Confederated Tribes of the Warm Springs Reservation of Oregon and

the State of Oregon determine downstream fish and wildlife needs require.

"(e) EFFECT.—Nothing in this section affects the authority of the Commissioner of Reclamation to perform all other traditional and routine activities of the Commissioner of Reclamation.

"SEC. 8. EFFECT.

"Except as otherwise provided in this Act, nothing in this Act—

"(1) modifies contractual rights that may exist between contractors and the United States under Reclamation contracts;

"(2) amends or reopens contracts referred to in paragraph (1); or

"(3) modifies any rights, obligations, or requirements that may be provided or governed by Federal or Oregon State law.".

SEC. 5. OCHOCO IRRIGATION DISTRICT.

(a) EARLY REPAYMENT.—

(1) IN GENERAL.—Notwithstanding section 213 of the Reclamation Reform Act of 1982 (43 U.S.C. 390mm), any landowner within Ochoco Irrigation District, Oregon (referred to in this section as the "district"), may repay, at any time, the construction

costs of the project facilities allocated to the land of the landowner within the district.

(2) EXEMPTION FROM LIMITATIONS.—Upon discharge, in full, of the obligation for repayment of the construction costs allocated to all land of the landowner in the district, the land shall not be subject to the ownership and full-cost pricing limitations of 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.).

(b) CERTIFICATION.—Upon the request of a landowner who has repaid, in full, the construction costs of the project facilities allocated to the land of the landowner within the district, the Secretary of the Interior shall provide the certification described in section 213(b)(1) of the Reclamation Reform Act of 1982 (43 U.S.C. 390mm(b)(1)).

(c) CONTRACT AMENDMENT.—On approval of the district directors and notwithstanding project authorizing authority to the contrary, the Reclamation contracts of the district are modified, without further action by the Secretary of the Interior—

(1) to authorize the use of water for instream purposes, including fish or wildlife purposes, in order

for the district to engage in, or take advantage of, conserved water projects and temporary instream leasing as authorized by Oregon State law;

(2) to include within the district boundary approximately 2,742 acres in the vicinity of McKay Creek, resulting in a total of approximately 44,937 acres within the district boundary;

(3) to classify as irrigable approximately 685 acres within the approximately 2,742 acres of included land in the vicinity of McKay Creek, with those approximately 685 acres authorized to receive irrigation water pursuant to water rights issued by the State of Oregon if the acres have in the past received water pursuant to State water rights; and

(4) to provide the district with stored water from Prineville Reservoir for purposes of supplying up to the approximately 685 acres of land added within the district boundary and classified as irrigable under paragraphs (2) and (3), with the stored water to be supplied on an acre-per-acre basis contingent on the transfer of existing appurtenant McKay Creek water rights to instream use and the issuance of water rights by the State of Oregon for the use of stored water.

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

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

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

(3) modifies any rights, obligations, or relationships that may exist between the district and any owner of land within the district, as may be provided or governed by Federal or Oregon State law.

SEC. 6. DRY-YEAR MANAGEMENT PLANNING AND VOLUNTARY RELEASES.

(a) PARTICIPATION IN DRY-YEAR MANAGEMENT PLANNING MEETINGS.—The Bureau of Reclamation shall participate in dry-year management planning meetings with the State of Oregon, the Confederated Tribes of the Warm Springs Reservation of Oregon, irrigation districts, and other interested stakeholders, to plan for dry-year conditions.

(b) FREQUENCY OF MEETINGS.—The Bureau of Reclamation, in coordination with the parties referred to in subsection (a), shall participate in dry-year management planning meetings each year, in early spring and late summer, and as needed at other times.

(c) DRY-YEAR MANAGEMENT PLAN.—

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

(2) REQUIREMENTS.—The plan developed under paragraph (1) shall only recommend strategies, measures, and actions that all parties referred to in subsection (a) voluntarily agree to implement.

(3) LIMITATIONS.—Nothing in the plan developed under paragraph (1) shall be mandatory or self-implementing.

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

SEC. 7. RELATION TO EXISTING LAWS AND STATUTORY OBLIGATIONS.

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

(1) provides to the Secretary the authority to store and release the ''first fill'' amounts provided for in section 6 of the Act of August 6, 1956 (70 Stat. 1058) (as added by section 4) for any purposes other than the purposes provided for in that section, except for—

(A) the potential instream use resulting from conserved water projects and temporary instream leasing as provided for in section 5(c)(1);

(B) the potential release of additional amounts that may result from voluntary actions agreed to through the dry-year Management developed under section 6(c); and

(C) the potential release of the 10,000 acre-feet for downstream fish and wildlife as provided for in section 6(d);

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

(3) alters the authorized purposes of the Crooked River Project provided in the first section of the

Act of August 6, 1956 (70 Stat. 1058; 73 Stat. 554; 78 Stat. 954).

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