

112TH CONGRESS  
2D SESSION

# 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.

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## 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.

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”.

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 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 submitted to the Federal Energy Regu-  
16 latory Commission relating to hydropower de-  
17 velopment (including turbines and appurtenant  
18 facilities) at Bowman Dam, the applicant, in  
19 consultation with the Director of the Bureau of  
20 Land Management, shall—

21 “(i) analyze any impacts to the scenic,  
22 recreational, and fishery resource values of  
23 the Crooked River from the center crest of  
24 Bowman Dam to a point 1/4-mile down-  
25 stream that may be caused by the pro-

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

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

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

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

14 Section 4 of the Act of August 6, 1956 (70 Stat.  
 15 1058; 73 Stat. 554; 78 Stat. 954) is amended—

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

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

1 shaping of the release of the water. The City of  
2 Prineville shall make payments to the Secretary for  
3 the water, in accordance with the Bureau of Rec-  
4 lamation document entitled ‘Water and Related Con-  
5 tract and Repayment Principles and Requirements’,  
6 the Bureau of Reclamation Manual Directives and  
7 Standards numbered PEC 05–01 and dated Sep-  
8 tember 12, 2006, and the document entitled ‘Eco-  
9 nomic and Environmental Principles and Guidelines  
10 for Water and Related Land Resources Implementa-  
11 tion Studies’ and dated March 10, 1983. Consistent  
12 with the National Environmental Policy Act of 1969  
13 (42 U.S.C. 4321 et seq.), the Endangered Species  
14 Act of 1973 (16 U.S.C. 1531 et seq.), and other ap-  
15 plicable Federal laws, the Secretary may contract ex-  
16 clusively with the City of Prineville for additional  
17 quantities of water, at the request of the City of  
18 Prineville.”.

19 **SEC. 4. ADDITIONAL PROVISIONS.**

20 The Act entitled “An Act to authorize construction  
21 by the Secretary of the Interior of the Crooked River Fed-  
22 eral reclamation project, Oregon”, approved August 6,  
23 1956 (70 Stat. 1058; chapter 980; 73 Stat. 554; 78 Stat.  
24 954), is amended by adding at the end the following:

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

2 “Other than the 10 cubic feet per second release pro-  
3 vided for in section 4, and subject to compliance with the  
4 flood curve requirements of the Corps of Engineers, the  
5 Secretary shall, on a ‘first fill’ priority basis, store in and  
6 release from Prineville Reservoir, whether from carryover,  
7 infill, or a combination of both, the following:

8 “(1) 68,273 acre-feet of water annually to fulfill  
9 all 16 Bureau of Reclamation contracts existing as  
10 of January 1, 2011.

11 “(2) Not more than 2,740 acre-feet of water  
12 annually to supply the McKay Creek land, in accord-  
13 ance with section 5 of the Crooked River Collaborative  
14 Water Security Act.

15 “(3) 10,000 acre-feet of water annually, to be  
16 made available first to the North Unit Irrigation  
17 District, and subsequently to any other holders of  
18 Reclamation contracts existing as of January 1,  
19 2011 (in that order), pursuant to Temporary Water  
20 Service Contracts, on the request of the North Unit  
21 Irrigation District or the contract holders, consistent  
22 with the same terms and conditions as prior such  
23 contracts between the Bureau of Reclamation and  
24 District or contract holders, as applicable.

1           “(4) 5,100 acre-feet of water annually to miti-  
2           gate the City of Prineville groundwater pumping  
3           under section 4.

4   **“SEC. 7. STORAGE AND RELEASE OF REMAINING STORED**  
5                           **WATER QUANTITIES.**

6           “(a) IN GENERAL.—Other than the quantities pro-  
7           vided for in section 4 and the ‘first fill’ quantities provided  
8           for in section 6, and subject to compliance with the flood  
9           curve requirements of the Corps of Engineers, the Sec-  
10          retary shall store in and release from Prineville Reservoir  
11          all remaining stored water quantities for the benefit of  
12          downstream fish and wildlife.

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

19          “(c) ANNUAL RELEASE SCHEDULE.—

20                  “(1) IN GENERAL.—The Commissioner of Rec-  
21          lamation shall develop annual release schedules for  
22          the remaining stored water quantities and the water  
23          serving as mitigation for City of Prineville ground-  
24          water pumping.

1           “(2) GUIDANCE.—To the maximum extent  
2           practicable and unless otherwise prohibited by law,  
3           the Commissioner of Reclamation shall develop and  
4           implement the annual release schedules consistent  
5           with the guidance provided by the Confederated  
6           Tribes of the Warm Springs Reservation of Oregon  
7           and the State of Oregon to maximize biological ben-  
8           efit for downstream resources, based on consider-  
9           ation of the multiyear water needs of downstream  
10          fish and wildlife.

11           “(3) COMMENTS FROM FEDERAL FISH MANAGE-  
12          MENT AGENCIES.—The National Marine Fisheries  
13          Service and the United States Fish and Wildlife  
14          Service shall have the opportunity to provide advice  
15          with respect to, and comment on, the annual release  
16          schedule developed by the Commissioner of Reclama-  
17          tion under this subsection.

18           “(d) REQUIRED COORDINATION.—The Commissioner  
19          of Reclamation shall perform traditional and routine ac-  
20          tivities in a manner that coordinates with and assists the  
21          Confederated Tribes of the Warm Springs Reservation of  
22          Oregon and the ability of the State of Oregon to monitor  
23          and request adjustments to releases for downstream fish  
24          and wildlife on an in-season basis as the Confederated  
25          Tribes of the Warm Springs Reservation of Oregon and

1 the State of Oregon determine downstream fish and wild-  
2 life needs require.

3 “(e) EFFECT.—Nothing in this section affects the au-  
4 thority of the Commissioner of Reclamation to perform all  
5 other traditional and routine activities of the Commis-  
6 sioner of Reclamation.

7 **“SEC. 8. EFFECT.**

8 “Except as otherwise provided in this Act, nothing  
9 in this Act—

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

13 “(2) amends or reopens contracts referred to in  
14 paragraph (1); or

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

18 **SEC. 5. OCHOCO IRRIGATION DISTRICT.**

19 (a) EARLY REPAYMENT.—

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



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

3 (2) EXEMPTION FROM LIMITATIONS.—Upon  
4 discharge, in full, of the obligation for repayment of  
5 the construction costs allocated to all land of the  
6 landowner in the district, the land shall not be sub-  
7 ject to the ownership and full-cost pricing limitations  
8 of Federal reclamation law (the Act of June 17,  
9 1902 (32 Stat. 388, chapter 1093)), and Acts sup-  
10 plemental to and amendatory of that Act (43 U.S.C.  
11 371 et seq.).

12 (b) CERTIFICATION.—Upon the request of a land-  
13 owner who has repaid, in full, the construction costs of  
14 the project facilities allocated to the land of the landowner  
15 within the district, the Secretary of the Interior shall pro-  
16 vide the certification described in section 213(b)(1) of the  
17 Reclamation Reform Act of 1982 (43 U.S.C.  
18 390mm(b)(1)).

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

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

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

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

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

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

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

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

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

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

12 **SEC. 6. DRY-YEAR MANAGEMENT PLANNING AND VOL-**  
13 **UNTARY RELEASES.**

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

21 (b) FREQUENCY OF MEETINGS.—The Bureau of Rec-  
22 lamation, in coordination with the parties referred to in  
23 subsection (a), shall participate in dry-year management  
24 planning meetings each year, in early spring and late sum-  
25 mer, and as needed at other times.

1 (c) DRY-YEAR MANAGEMENT PLAN.—

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

7 (2) REQUIREMENTS.—The plan developed  
8 under paragraph (1) shall only recommend strate-  
9 gies, measures, and actions that all parties referred  
10 to in subsection (a) voluntarily agree to implement.

11 (3) LIMITATIONS.—Nothing in the plan devel-  
12 oped under paragraph (1) shall be mandatory or  
13 self-implementing.

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

1 **SEC. 7. RELATION TO EXISTING LAWS AND STATUTORY OB-**  
2 **LIGATIONS.**

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

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

11 (A) the potential instream use resulting  
12 from conserved water projects and temporary  
13 instream leasing as provided for in section  
14 5(c)(1);

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

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

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

25 (3) alters the authorized purposes of the Crook-  
26 ed River Project provided in the first section of the

- 1 Act of August 6, 1956 (70 Stat. 1058; 73 Stat. 554;
- 2 78 Stat. 954).

○