

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.

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## 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

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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 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 ¼-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 ¼-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(c)(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(c);

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).

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