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HOUSE OF REPRESENTATIVES
REPORT
112–438

CENTRAL OREGON JOBS AND WATER SECURITY ACT

APRIL 16, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2060]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2060) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Central Oregon Jobs and Water Security Act".

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

Section 3(a)(72) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(72)) is amended as follows:

(1) By striking "15-mile" and inserting "14.75-mile".

(2) In subparagraph (B)—

(A) by striking "8-mile" and all that follows through "Bowman Dam" and inserting "7.75-mile segment from a point one-quarter mile downstream from the toe of Bowman Dam"; and

(B) by adding at the end the following: "The developer for any hydropower development, including turbines and appurtenant facilities, at Bowman Dam, in consultation with the Bureau of Land Management, shall analyze any impacts to the Outstandingly Remarkable Values of the Wild and Scenic River that may be caused by such development, including the

future need to undertake routine and emergency repairs, and shall propose mitigation for any impacts as part of any license application submitted to the Federal Energy Regulatory Commission.".

SEC. 3. CITY OF PRINEVILLE WATER SUPPLY.

Section 4 of the Act of August 6, 1956 (70 Stat. 1058), (as amended by the Acts of September 14, 1959 (73 Stat. 554), and September 18, 1964 (78 Stat. 954)) is further amended as follows:

(1) By striking "ten cubic feet" the first place it appears and inserting "17 cubic feet".

(2) By striking "during those months when there is no other discharge therefrom, but this release may be reduced for brief temporary periods by the Secretary whenever he may find that release of the full ten cubic feet per second is harmful to the primary purpose of the project".

(3) By adding at the end the following: "Without further action by the Secretary, and as determined necessary for any given year by the City of Prineville, up to seven of the 17 cubic feet per second minimum release shall also 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 up to seven cubic feet per second to coincide with City of Prineville groundwater pumping as may be required by the State of Oregon. As such, the Secretary is authorized to make applications to the State of Oregon in conjunction with the City to protect these supplies instream. The City shall make payment to the Secretary for that portion of the minimum release that actually serves as mitigation pursuant to Oregon State law for the City in any given year, with the payment for any given year equal to the amount of mitigation in acre feet required to offset actual City groundwater pumping for that year in accordance with Reclamation 'Water and Related Contract and Repayment Principles and Requirements', Reclamation Manual Directives and Standards PEC 05–01, dated 09/12/2006, and guided by 'Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies', dated March 10, 1983. The Secretary is authorized to contract exclusively with the City for additional amounts in the future at the request of the City.".

SEC. 4. FIRST FILL PROTECTION.

The Act of August 6, 1956 (70 Stat. 1058), as amended by the Acts of September 14, 1959 (73 Stat. 554), and September 18, 1964 (78 Stat. 954), is further amended by adding at the end the following:

"SEC. 6. Other than the 17 cubic feet per second release provided for in section 4, and subject to compliance with the Army Corps of Engineers' flood curve requirements, the Secretary shall, on a 'first fill' priority basis, store in and release from Prineville Reservoir, whether from carryover, infill, or a combination thereof, the following:

"(1) 68,273 acre feet of water annually to fulfill all 16 Bureau of Reclamation contracts existing as of January 1, 2011, and up to 2,740 acre feet of water annually to supply the McKay Creek lands as provided for in section 5 of this Act.

"(2) Not more than 10,000 acre feet of water annually, to be made available to the North Unit Irrigation District pursuant to a Temporary Water Service Contract, upon the request of the North Unit Irrigation District, consistent with the same terms and conditions as prior such contracts between the District and the Bureau of Reclamation.

"SEC. 7. 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 Oregon State law.".

SEC. 5. OCHOCO IRRIGATION DISTRICT.

(a) EARLY REPAYMENT.—Notwithstanding section 213 of the Reclamation Reform Act of 1982 (43 U.S.C. 390mm), any landowner within Ochoco Irrigation District in Oregon, may repay, at any time, the construction costs of the project facilities allocated to that landowner's lands within the district. Upon discharge, in full, of the obligation for repayment of the construction costs allocated to all lands the landowner owns in the district, those lands shall not be subject to the ownership and full-cost pricing limitations of the Act of June 17, 1902 (43 U.S.C. 371 et seq.), and Acts supplemental to and amendatory of that Act, including the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.).

(b) CERTIFICATION.—Upon the request of a landowner who has repaid, in full, the construction costs of the project facilities allocated to that landowner's lands owned within the district, the Secretary of the Interior shall provide the certification provided for in subsection (b)(1) of section 213 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 legislation to the contrary, the district's reclamation contracts are modified, without further action by the Secretary of the Interior, to—

(1) 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) 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) classify as irrigable approximately 685 acres within the approximately 2,742 acres of included lands in the vicinity of McKay Creek, where the approximately 685 acres are authorized to receive irrigation water pursuant to water rights issued by the State of Oregon and have in the past received water pursuant to such State water rights; and

(4) provide the district with stored water from Prineville Reservoir for purposes of supplying up to the approximately 685 acres of lands added within the district boundary and classified as irrigable under paragraphs (2) and (3), with such 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 State's issuance of water rights for the use of stored water.

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

(1) modify contractual rights that may exist between the district and the United States under the district's Reclamation contracts;

(2) amend or reopen the contracts referred to in paragraph (1); or

(3) modify any rights, obligations or relationships that may exist between the district and its landowners as may be provided or governed by Oregon State law.

PURPOSE OF THE BILL

The purpose of H.R. 2060, as ordered reported, is to amend the Wild and Scenic Rivers Act to adjust the Crooked River boundary, and to provide water certainty for the City of Prineville, Oregon.

BACKGROUND AND NEED FOR LEGISLATION

The City of Prineville is located in Crook County, Oregon, and has had the State's highest unemployment rates (ranging from 15%–20%) for several consecutive years due to loss of traditional logging and natural resources jobs. The recent construction of Facebook's first custom-built data center within the City limits and the potential establishment of three other similar facilities could help reverse the economic situation. However, the lack of adequate water supplies could prevent this economic development.

Near the City, the Crooked River flows as a tributary of the Deschutes River. Both rivers serve as a valuable water supply source for irrigated agriculture in central Oregon. In fact, seven irrigation districts rely on water from these two rivers. The Arthur R. Bowman Dam, a Bureau of Reclamation-owned project on the River, plays a pivotal role in delivering some of that water. It is an earthen structure about 20 miles upstream from Prineville. The Dam's congressionally authorized purposes include flood control and irrigation. Water releases from the Dam also provide water for a cold-water fishery. Although the Dam impounds 160,000 acre feet of water at full capacity, approximately 80,000 acre feet of this water are not contracted for specific uses. However, the Bureau of

Reclamation annually releases some of the uncontracted water supplies for fish and wildlife purposes into the lower Crooked River and will continue to do so during good water years.

Like much of the West, central Oregon has experienced controversies over the Endangered Species Act as part of the larger Columbia basin. As a way to protect irrigation districts in the local watershed and to reintroduce steelhead on an experimental basis, various parties at the governmental and non-governmental levels have worked on a collaborative basis. This legislation, as amended, seeks to continue that collaborative partnership through provisions that provide a long-term water supply for the area, generate clean and emissions-free hydropower and allocate more water for fisheries purposes at no cost to the American taxpayer.

COMMITTEE ACTION

H.R. 2060 was introduced on May 31, 2011 by Congressman Greg Walden (R–OR). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power and the Subcommittee on National Parks, Forests and Public Lands. On June 23, 2011, the Subcommittee on Water and Power held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power and the Subcommittee on National Parks, Forests and Public Lands were discharged by unanimous consent. Congressman Tom McClintock (R–CA) offered en bloc amendment designated .068; the amendment was adopted by voice vote. The bill was then favorably reported, as amended, to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section designates the title of the bill as the "Central Oregon Jobs and Water Security Act."

Section 2. Wild and Scenic River; Crooked, Oregon

This section amends the Federal Wild and Scenic Rivers Act to re-designate the Wild and Scenic boundary of the Crooked River. Since the original congressional designation failed to specify the exact upper boundary line of the Crooked Wild and Scenic River, the Bureau of Land Management (BLM) established the upstream boundary at the crest of the Arthur R. Bowman Dam. Although BLM now states that this location was never intended to be the boundary, it has been unwilling to move the boundary at the administrative level. As such, this section moves the upper boundary line one quarter downstream of the Dam. This redesignation will allow up to six megawatts of hydropower development at the Dam. The section requires any future hydropower developer to analyze any related impacts to the river and propose mitigation for any impacts.

Section 3. City of Prineville water supply

This section allows an additional annual release of 5,100 acre feet (equivalent to seven cubic feet per second, year-round) of currently un-allocated water from the Dam to serve as a state mitiga-

tion credit for groundwater pumping by the City of Prineville. Since the water released would not actually be withdrawn from the Crooked River, the increased flows would also benefit prime trout fishing habitat. The section also ensures that base "fish" flows authorized by Congress in 1956 are permanent.

As amended, this section requires the City of Prineville to pay the federal government for the amount of water that serves as mitigation under Oregon law. The provision references federal documents used in making the water rate calculations. The intent of this provision is to provide water supply certainty to the City at reasonable and predictable water rates while adhering to the longtime "beneficiary pays" policy. For that reason, the Committee is concerned that the Bureau of Reclamation (BOR) has offered widely conflicting accounts of how much the water would cost and believes that BOR has failed to offer transparent and certain information to the City. The Committee expects BOR to consult and communicate substantively with the City in this rate-setting effort and believes that a temporary contract is necessary while contract negotiations are under way. The Committee also believes that BOR's water supply contract with the City is merely a paper exercise with no environmental impact. The Administration, in testimony on the bill, indicated the release will not actually increase flows below the Dam due to current reservoir operational practice. Additionally, the release is not an extraordinary circumstance which causes a significant and adverse environmental effect. As such, the Committee expects BOR to determine this paperwork requirement as a Categorical Exclusion under the National Environmental Policy Act.

Section 4. First fill protection

This section, as amended, ensures that existing water supply contracts held between various irrigation districts and the federal government are met prior to the use or release of stored water behind the Dam for any new or additional purposes. The provision also provides water for new lands identified as part of the McKay Creek exchange in Section 5. Nothing in this provision modifies existing contracts or any rights, obligations or requirements under Oregon law.

Section 5. Ochoco Irrigation District

This section allows the nearby Ochoco Irrigation District to prepay its capital repayment contract with the federal government and requires the Secretary of the Interior to certify that such amounts have been fully repaid. The provision also provides a mechanism for an exchange of water and lands so that more water is used for fish restoration on McKay Creek. This section also amends the water contracts to enable the District to participate in "Conserved Water Projects" under Oregon law, if it so chooses, as a way to provide more water for the environment.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 2060—Central Oregon Jobs and Water Security Act

H.R. 2060 would modify features of the Crooked River Project located in central Oregon, north of the City of Prineville, and prioritize the allocations of water from the project for different uses. Based on information from the Bureau of Reclamation, CBO estimates that enacting H.R. 2060 would have an insignificant impact on direct spending; therefore, pay-as-you-go procedures apply. The legislation would not affect revenues.

The main features of the Crooked River Project include Bowman Dam, Prineville Reservoir, and Ochoco Dam and Reservoir located in the Ochoco Irrigation District. Enacting two provisions of H.R. 2060 would have an insignificant impact on net direct spending over the next 10 years. Those provisions would:

- Require the city of Prineville to pay the Bureau of Reclamation for additional water to be released from the Prineville Reservoir. Based on information from the bureau, CBO estimates that those payments would average less than $40,000 annually.
- Authorize landowners in Ochoco Irrigation District to prepay construction costs of the Crooked River project allocated to their land. Those landowners owe the bureau $400,000, and CBO estimates that exercising the prepayment option would increase net receipts by less than $50,000 over the 2012–2021 period.

CBO estimates that implementing other provisions of the bill would have no significant effect on the federal budget.

H.R. 2060 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information from the Bureau of Reclamation, CBO estimates that enacting H.R. 2060 would have an insignificant impact on direct spending; therefore, pay-as-you-go procedures apply. The legislation would not affect revenues.

The main features of the Crooked River Project include Bowman Dam, Prineville Reservoir, and Ochoco Dam and Reservoir located in the Ochoco Irrigation District. Enacting two provisions of H.R. 2060 would have an insignificant impact on net direct spending over the next 10 years. Those provisions would first, require the City of Prineville to pay the Bureau of Reclamation for additional water to be released from the Prineville Reservoir. Based on information from the bureau, CBO estimates that those payments would average less than $40,000 annually. Second, the provisions authorize landowners in Ochoco Irrigation District to prepay construction costs of the Crooked River project allocated to their land. Those landowners owe the Bureau of Reclamation $400,000, and CBO estimates that exercising the prepayment option would increase net receipts by less than $50,000 over the 2012–2021 period.

CBO estimates that implementing other provisions of the bill would have no significant effect on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to amend the Wild and Scenic Rivers Act to adjust the Crooked River boundary, and to provide water certainty for the City of Prineville, Oregon.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

* * * * * * *

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) * * *

* * * * * * *

(72) CROOKED, OREGON.—The [15-mile] *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:

(A) * * *

(B) the [8-mile segment from Bowman Dam] *7.75-mile segment from a point one-quarter mile downstream from the toe of Bowman Dam* to Dry Creek as a recreational river. *The developer for any hydropower development, including turbines and appurtenant facilities, at Bowman Dam, in consultation with the Bureau of Land Management, shall analyze any impacts to the Outstandingly Remarkable Values of the Wild and Scenic River that may be caused by such development, including the future need to undertake routine and emergency repairs, and shall propose mitigation for any impacts as part of any license application submitted to the Federal Energy Regulatory Commission.*

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ACT OF AUGUST 6, 1956

AN ACT To authorize construction by the Secretary of the Interior of the Crooked River Federal reclamation project, Oregon.

* * * * * * *

SEC. 4. In order to promote the preservation and propagation of fish and wildlife in accordance with section 2 of the Act of August 14, 1946 (60 Stat. 1080, 16 U.S.C., sec. 661a), an appropriate screen and fish ladder shall be provided at the diversion canal headworks of the Crooked River project below Prineville Reservoir and a minimum release of [ten] *17* cubic feet per second shall be maintained from said reservoir for the benefit of downstream fishlife [during those months when there is no other discharge therefrom, but this release may be reduced for brief temporary periods by the Secretary whenever he may find that release of the full ten cubic feet per second is harmful to the primary purpose of the project]. *Without further action by the Secretary, and as determined necessary for any given year by the City of Prineville, up to seven of the 17 cubic feet per second minimum release shall also 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 up to seven cubic feet per second to coincide with City of Prineville groundwater pumping as may be required by the State of Oregon. As such, the Secretary is authorized to make applications to the State of Oregon in conjunction with the City to protect these supplies instream. The City shall make payment to the Secretary for that portion of the minimum release that actually serves as mitigation pursuant to Oregon State law for the City in any given year, with the payment for any given year equal to the amount of mitigation in acre feet required to offset actual City groundwater pumping for that year in accordance with Reclamation "Water and Related Contract and Repayment Principles and Requirements", Reclamation Manual Directives and Standards PEC 05–01, dated 09/12/2006, and guided by "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies", dated March 10, 1983. The Secretary is authorized to contract exclusively with the City for additional amounts in the future at the request of the City.*

* * * * * * *

SEC. 6. Other than the 17 cubic feet per second release provided for in section 4, and subject to compliance with the Army Corps of Engineers' flood curve requirements, the Secretary shall, on a "first fill" priority basis, store in and release from Prineville Reservoir, whether from carryover, infill, or a combination thereof, the following:

(1) 68,273 acre feet of water annually to fulfill all 16 Bureau of Reclamation contracts existing as of January 1, 2011, and up to 2,740 acre feet of water annually to supply the McKay Creek lands as provided for in section 5 of this Act.

(2) Not more than 10,000 acre feet of water annually, to be made available to the North Unit Irrigation District pursuant to a Temporary Water Service Contract, upon the request of the North Unit Irrigation District, consistent with the same terms and conditions as prior such contracts between the District and the Bureau of Reclamation.

SEC. 7. 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 Oregon State law.

* * * * * * *

DISSENTING VIEWS

H.R. 2060 would amend a Wild and Scenic River designation to move the boundary to allow for hydropower production at Bowman Dam; amend the Crooked River Project Act to provide the City of Prineville with 5,100 acre-feet of water as flow in the Crooked River to mitigate for the City's use of groundwater, pursuant to state groundwater law. This legislation would also create a first fill "priority" in meeting water deliveries; and allow for prepayment of debt on a project.

H.R. 2060 provides a unique opportunity to provide a balanced solution for the Crooked River that would benefit all stakeholders. We support the legislation's intent of providing water and economic certainty to the City of Prineville and the Ochoco Irrigation District. It does so in a way, however, that provides certainty for the city and agriculture, but not for the future needs of the environment.

Section 4 of the legislation amends the 1956 Act to add language that would provide the existing Ochoco Irrigation District contractors with a "first fill" priority basis. Currently, contracted (68,273 acre-feet) and uncontracted storage (approximately 80,000 acre-feet) space in the Prineville Reservoir are filled simultaneously. Language in Section 4 would require Reclamation to first fulfill the agricultural contracted amount before any other fill. This would mean that the agricultural contracted amounts would have priority over any future water required for the environment. In dry years, meeting the agricultural contract could result in no water being available for future environmental demands from the uncontracted storage. Section 4 also mandates how Reclamation is to operate and manage the Prineville Reservoir, and removes some flexibility on Reclamation's part to mitigate and adapt to changing conditions.

For these reasons, we do not support H.R. 2060 as reported.

EDWARD J. MARKEY.
RAÚL GRIJALVA.
RUSH HOLT.
JOHN GARAMENDI.
GRACE F. NAPOLITANO.
NIKI TSONGAS.
DALE E. KILDEE.