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115TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 115–643
Part 1

TO PROVIDE FOR OPERATIONS OF THE FEDERAL COLUMBIA RIVER POWER SYSTEM PURSUANT TO A CERTAIN OPERATION PLAN FOR A SPECIFIED PERIOD OF TIME, AND FOR OTHER PURPOSES

APRIL 18, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3144]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3144) to provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3144 is to provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time.

BACKGROUND AND NEED FOR LEGISLATION

To provide certainty over the reliable management of the Federal Columbia River Power System (FCRPS or System), H.R. 3144 requires federal agencies to operate the System in a manner that is consistent with the current operations plan, while also protecting existing hydropower resources in the Pacific Northwest.

Hydropower accounts for seven percent of all domestic (overall renewable and non-renewable) electricity generation, divided equally between federal and non-federal output, and about 48 percent of

all renewable generation.[1] For generations, it has provided millions of Americans with clean and low-cost energy and has formed the backbone of regional economies. In Washington State, hydropower accounts for almost 70 percent of electricity generation, almost 60 percent each for Oregon and Idaho, and more than one-third for Montana.[2] The Columbia Basin in the Pacific Northwest encompasses an area approximately the size of France, with 31 multipurpose federally-owned dams along the Columbia and Snake Rivers, many of which are Bureau of Reclamation dams.

Under the Bureau of Reclamation's policy, hydropower generated from its dams is first used to provide electricity to operate irrigation pumps. Any remaining Reclamation hydropower is then primarily sold by either of two federal agencies, the Bonneville Power Administration (Bonneville) or the Western Area Power Administration, to wholesale customers. The wholesale electricity rates are designed to repay the federal capital investment—plus interest—in federal electricity generation and transmission facilities, annual operation and maintenance costs of such facilities, and federal staffing.[3]

Compliance with environmental mandates and replacement power services resulting from environmental regulation and litigation are also reflected in federal power rates. Federal court-mandated "spills"—an operation when water is diverted around a hydropower-producing turbine to aid fish passage—have led to significant lost hydropower generation and associated replacement power purchases of mainly fossil-based, higher cost energy. At a Water, Power and Oceans Subcommittee hearing in 2016, Mr. Christopher Downen, Senior Policy Analyst at the Public Power Council, which represents consumer-owned utilities in the Pacific Northwest, testified "[a]t $757 million last year alone, this single category of costs accounted for about 30 percent of Bonneville's costs charged in rates."[4]

In 1945, Congress authorized the U.S. Army Corps of Engineers to construct four large dams along the lower Snake River—Ice Harbor, Lower Monumental, Little Goose and Lower Granite—as part of the FCRPS to provide a number of benefits, including hydropower.[5] Built in the 1960s and 1970s, the four dams on average produce enough energy to power a city the size of Seattle every year, with a total output capable of producing over 3,000 MW, enough energy to power 1.8 million homes.[6] It would take two nuclear, three coal-fired, or six gas-fired power plants to replace the average annual power produced by the four lower Snake River dams.[7]

Hydropower not only provides power for baseload (full-time) needs and peak times, but also serves as a backup generation source for intermittent wind and solar power.[8] It is generally low-cost compared to other generation sources.[9] While some believe hy-

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[1] https://www.ferc.gov/legal/staff-reports/2017/hydropower-primer.pdf.
[2] http://www.hydro.org/why-hydro/available/hydro-in-the-states/west/.
[3] *Id* at 2.
[4] Testimony of Mr. Christopher Downen, Senior Policy Analyst, Public Power Council, before the House Water, Power and Oceans Subcommittee, April 20, 2016.
[5] Flood Control Act of 1945, P.L. 79–14.
[6] http://nwriverpartners.org/value-of-snake-river-dams.
[7] *Id* at 6.
[8] https://www.vox.com/2015/6/19/8808545/wind-solar-grid-integration.
[9] http://www.hydro.org/why-hydro/affordable/.

dropower projects can have negative impacts on migratory fish, wildlife and their habitats as well as water quality,[10] others point out that the survival rate of species that migrate through the four Snake River dams is 99.5 percent for certain species, with an average of 97 percent.[11] In addition, the Snake River dams make possible an efficient transportation link that is one of the leading trade gateways in the United States, moving more than 50 tons of cargo in 2016 alone.[12]

Despite these benefits, some litigious groups have focused on removing these four dams. According to Bonneville, replacing the dams would increase power costs by $274 million to $372 million per year.[13] In addition, replacing this power with natural gas generation would still increase the region's carbon dioxide emissions by 2 to 2.6 million metric tons annually and force transportation of agriculture and other commodities through much less environmentally-friendly modes, such as diesel trucks.[14] Conservatively, this would be the equivalent of adding 421,000 passenger cars to the region's roads each year.[15]

For decades, there has been uncertainty over the operations of existing hydropower in the Pacific Northwest due to federal regulations, court orders and other administrative decisions. Long-standing litigation surrounding the FCRPS has caused major uncertainty concerning future power generation, rates, and reliability in the region. The litigation alone has cost taxpayers and Northwest ratepayers millions of dollars.

The Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) requires the Army Corps of Engineers, the Bureau of Reclamation, and Bonneville—the federal operators of the FCRPS (Action Agencies)—to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service on how project operations may impact ESA-protected species. Following this consultation, NMFS issues a biological opinion (BiOp) specifying with either a jeopardy or no-jeopardy finding for the 13 separate species of salmon and steelhead that NMFS listed for protection under the ESA beginning in 1991.[16] A finding of jeopardy requires NMFS to develop Reasonable and Prudent Alternatives (RPAs) to the proposed action.

NMFS issued the first of three "no jeopardy" BiOps for FCRPS beginning in April 1992. The District Court of Oregon in Idaho Department of Fish and Game v. National Marine Fisheries Service[17] found the 1993 and 1994 BiOps to be flawed, and ordered NMFS and the Action Agencies to revise the 1994 BiOp. In 1995, NMFS issued the first BiOp that concluded that FCRPS operations jeopardized the continued existence of ESA-listed species, and proposed RPAs to avoid this finding.

NMFS issued a new BiOp in December 2000, which again found that the operations of the FCRPS dams were likely to jeopardize

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[10] https://www.nwcouncil.org/history/DamsImpacts.
[11] http://nwriverpartners.org/value-of-snake-river-dams.
[12] http://www.pnwa.net/factsheets/Corps-ELC-Accomplishments.pdf.
[13] https://www.bpa.gov/news/pubs/FactSheets/fs-201603-A-Northwest-energy-solution-Regional-power-benefits-of-the-lower-Snake-River-dams.pdf.
[14] *Id* at 12.
[15] *Id* at 12.
[16] http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/.
[17] 850 F. Supp. 886 (D. OR. 1994).

the existence of certain ESA-listed species, and proposed RPAs to mitigate these impacts. It was determined that jeopardy would not be avoided even after implementing the RPAs. Eventually, the cumulative effect of the RPA, coupled with off-site measures including hatchery and habitat initiatives, was determined to be sufficient to warrant a "no-jeopardy" opinion.[18]

In 2001, the National Wildlife Federation and others sued the federal government, challenging whether the 2000 BiOp complied with the ESA.[19] In 2003, then-Judge James A. Redden ruled that the 2000 BiOp failed to provide reasonable certainty that the off-site mitigation measures were reasonably certain to occur, and ordered NMFS to issue a new BiOp by 2004.[20] In addition, the district court required the modification of the FCRPS dam operations during the spring and summer of 2006, requiring certain dams to bypass hydroelectric turbines and spill water during this period. Environmental organizations and others believe that spills aid in fish passage, while others (including water and power users) counter that spills, costing tens of millions of dollars, decrease hydropower production and provide little benefit to the few salmon that may be in the Columbia River system during the hottest months of the year.

Judge Redden would eventually go on to reject the 2004, 2008 and the 2010 Supplemental BiOps issued by NMFS.[21] In a 2011 decision, Judge Redden wrote:

> No later than January 1, 2014, [NMFS] shall produce a new biological opinion that reevaluates the efficacy of the RPAs in avoiding jeopardy . . . and considers whether more aggressive actions, such as dam removal and/or additional flow augmentation and reservoir modifications are necessary to avoid jeopardy.[22]

In addition, Judge Redden ordered the spills at the dams to continue during the spring and summer months, consistent with the court's annual spill orders. After Judge Redden retired in late 2011, the case was assigned to Judge Michael Simon who found the 2014 Supplemental BiOp flawed, but allowed it to stay in place until a new BiOp can be completed. The 2014 Supplemental BiOp supplements, without replacing, the 2008 and 2010 BiOps.

In addition, the court found that the Action Agencies had relied on an environmental impact statement (EIS) required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) that was "too stale" or too "narrowly focused," and the Action Agencies were granted an extension to complete a new EIS by March 26, 2021.[23] As part of this order, though not specifically mandating dam breaching, the judge charged that the federal government had avoided taking a "hard look" at breaching, bypassing and removal of the dams.[24] This is contrary to the more than $22 million spent

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[18] *National Wildlife Federation* v. *NMFS*.
[19] *National Wildlife Federation* v. *NMFS*, 254 F. Supp. 2d 1196.
[20] *National Wildlife Federation* v. *NMFS*, 254 F. Supp. 2d at 1216.
[21] https://www.salmonrecovery.gov/BiologicalOpinions/FCRPSBiOp.aspx.
[22] *National Wildlife Federation* v. *NMFS*, 839 F. Supp. 2d 1117, 1131.
[23] *Nat'l Wildlife Fed'n* v. *Nat'l Marine Fisheries Serv.*, No. 3:01–cv–00640, 2016 U.S. Dist. LEXIS 59195, at *24–25, *235–36.
[24] http://earthjustice.org/sites/default/files/files/1404%202065%20Opinion%20and%20Order.pdf.

for extensive studies by the Army Corps in 1999 and again in 2010 on the impacts of removing dams in the Snake River.[25]

Following arguments on environmental plaintiffs' motions to block capital and maintenance expenditures at the dams and force substantially more spills, Judge Simon on March 27, 2017, ordered "tailored injunctive relief" including additional spills, but ordered the federal agencies to test the impacts of these spills before deciding how much would be mandated at each dam in 2018. In addition, the judge ordered the federal agencies to disclose planned projects at the Snake River dams to the environmental plaintiffs in a "reasonable process and schedule."

In response to the court's order, four Members of Congress sent a bipartisan letter (See Appendix I) to Secretary of the Interior Ryan Zinke raising concerns over the impacts that additional spill requirements in the spring 2018 would cause, including increased power costs and actual harm to endangered fish species. Under the Obama administration, the Action Agencies concluded, "the 2008 BiOp [is] biologically and legally sound, is based on the best scientific information, and satisfies the ESA jeopardy standard."[26] Furthermore, the letter states that the 2008 BiOp "achieved consensus on a plan that has demonstrated for several years that it is working to improve salmon recovery while still allowing operation of the federal dams."[27] The current BiOp was defended in court, not just by the federal agencies, but also the States of Idaho, Montana, and Washington, several major utility customers of Bonneville, inland port associations, irrigation districts, and several Northwest tribes.

Despite this, a court-ordered spill in the FCRPS began on April 3, 2018, after the Ninth U.S. Circuit Court of Appeals rejected an appeal by the defendants to halt the order.[28] This action will continue to drastically increase power rates for ratepayers across the Pacific Northwest, while failing to provide the additional benefits of safe fish passage argued by the plaintiffs. Federal agencies estimate the spill will cost ratepayers in the Northwest $40 million in higher rates in 2018 alone.[29].

To that end, H.R. 3144 brings certainty to the operations of the FCRPS by requiring the System to be operated according to the 2014 Supplemental BiOp issued by NMFS until 2022, or until certain conditions are met. In addition, the bill prohibits any structural modification or removal of the FCRPS hydropower dams, unless specifically and expressly authorized by an Act of Congress.

H.R. 3144 is supported by: The Washington Farm Bureau, United Power Trades Organization, PNGC Power, Public Power Council, National Rural Electric Co-Op Association, Northwest RiverPartners, Inland Ports and Navigation Group, Cowlitz Power Utility District, Association of Washington Businesses, Tri-City Development Council, Port of Clarkston, Washington, Washington

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[25] http://www.nww.usace.army.mil/portals/28/docs/environmental/drew/social.pdf. From 1999 to 2002, the Army Corps spent $20.69 million on the impacts of alternatives relating to breaching the Snake River dams. In 2010, the Army Corps spent $274,254 on a study regarding lower Snake River dam breaching.

[26] Obama Administration Review and Guidance for the FCRPS BiOp, September 11, 2009. Link: https://www.salmonrecovery.gov/Files/BiologicalOpinions/Appendix%201_09_10_09%20.pdf.

[27] *Letter from Rep. McMorris Rodgers to Interior Secretary Ryan Zinke, May 2, 2017.*

[28] http://www.tri-cityherald.com/news/local/article207769934.html.

[29] https://newhouse.house.gov/media-center/press-releases/newhouse-secures-support-energy-secretary-perry-work-together-safeguard.

Power Utility Districts Association, Port of Morrow, Clatskanie People's Utility District, Port of Whitman County, Port of Pasco, Clearwater Power Company, Tidewater Transportation and Terminals, Washington State Potato Commission, Idaho Water Users and Blachly-Lane Electric Co-Op.

COMMITTEE ACTION

H.R. 3144 was introduced on June 29, 2017, by Congresswoman Cathy McMorris Rodgers (R–WA). The bill was referred primarily to the Committee on Natural Resources, and additionally to the Committee on Transportation and Infrastructure. Within the Natural Resources Committee, the bill was referred to the Subcommittee on Water, Power and Oceans. On October 12, 2017, the Subcommittee held a hearing on the legislation. On April 11, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Raúl M. Grijalva (D–AZ) offered an amendment designated 003. It was not adopted by a bipartisan roll call vote of 17 ayes to 23 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 04.11.18 Recorded Vote #:1

Meeting on / Amendment on: **FC Markup Grijalva amendment [003] to HR 3144 (Rep. Cathy McMorris Rodgers)**

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		**Mr. Cook, CA**		X	
Mr.Grijalva, AZ, Ranking Member	X			*Mr. Soto, FL*	X		
Mr. Young, AK, Chairman Emeritus		X		**Mr. Westerman, AR**		X	
Mrs. Napolitano, CA	X			*Mr. McEachin, VA*	X		
Mr. Gohmert, TX, Vice Chairman		X		**Mr. Graves, LA**		X	
Ms. Bordallo, Guam	X			*Mr. Brown, MD*	X		
Mr. Lamborn, CO		X		**Mr. Hice, GA**		X	
Mr. Costa, CA		X		*Mr. Clay, MO*	X		
Mr. Wittman, VA				**Mrs. Radewagen, AS**			
Mr. Sablan, CNMI	X			*Mr. Gomez, CA*	X		
Mr. McClintock, CA		X		**Mr. Webster, FL**		X	
Ms. Tsongas, MA	X			**Mr. Bergman, MI**		X	
Mr. Pearce, NM		X		**Ms. Cheney, WY**		X	
Mr. Huffman, CA	X			**Mr. Johnson, LA**		X	
Mr. Thompson, PA		X		**Ms. González-Colón, PR**		X	
Mr. Lowenthal, CA	X			**Mr. Gianforte, MT**		X	
Mr. Gosar, AZ		X		**Mr. Curtis, UT**		X	
Mr. Beyer, VA	X						
Mr. Labrador, ID		X					
Mrs. Torres, CA	X						
Mr. Tipton, CO		X					
Mr. Gallego, AZ	X						
Mr. LaMalfa, CA		X					
Ms. Hanabusa, HI	X						
Mr. Denham, CA							
Ms. Barragán, CA	X			**TOTAL:**	17	23	

No additional amendments were offered, and the bill was ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 23 ayes to 17 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 04.11.18 Recorded Vote #:2
Meeting on / Amendment on: **FC Markup Favorably Report HR 3144 (Rep. Cathy McMorris Rodgers)**

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			**Mr. Cook, CA**	X		
Mr.Grijalva, AZ, Ranking Member		X		*Mr. Soto, FL*		X	
Mr. Young, AK, Chairman Emeritus	X			**Mr. Westerman, AR**	X		
Mrs. Napolitano, CA		X		*Mr. McEachin, VA*		X	
Mr. Gohmert, TX, Vice Chairman	X			**Mr. Graves, LA**	X		
Ms. Bordallo, Guam		X		*Mr. Brown, MD*		X	
Mr. Lamborn, CO	X			**Mr. Hice, GA**	X		
Mr. Costa, CA	X			*Mr. Clay, MO*		X	
Mr. Wittman, VA				**Mrs. Radewagen, AS**			
Mr. Sablan, CNMI		X		*Mr. Gomez, CA*		X	
Mr. McClintock, CA	X			**Mr. Webster, FL**	X		
Ms. Tsongas, MA		X		**Mr. Bergman, MI**	X		
Mr. Pearce, NM	X			**Ms. Cheney, WY**	X		
Mr. Huffman, CA		X		**Mr. Johnson, LA**	X		
Mr. Thompson, PA	X			**Ms. González-Colón, PR**	X		
Mr. Lowenthal, CA		X		**Mr. Gianforte, MT**	X		
Mr. Gosar, AZ	X			**Mr. Curtis, UT**	X		
Mr. Beyer, VA		X					
Mr. Labrador, ID	X						
Mrs. Torres, CA		X					
Mr. Tipton, CO	X						
Mr. Gallego, AZ		X					
Mr. LaMalfa, CA	X						
Ms. Hanabusa, HI		X					
Mr. Denham, CA							
Ms. Barragán, CA		X		**TOTAL:**	23	17	

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 AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 18, 2018.

Hon. ROB BISHOP,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3144, a bill to provide for the operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3144—A bill to provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time, and for other purposes

Summary: H.R. 3144 would require certain federally owned hydropower facilities within the Federal Columbia River Power System (FCRPS) in the Pacific Northwest to be operated according to the salmon management plan adopted by the National Oceanic and Atmospheric Administration in 2014. The operations of those facilities are financed by the Bonneville Power Administration (BPA), which is required by law to set electricity prices sufficient to cover nearly all costs.

CBO estimates that enacting the legislation would reduce net direct spending by $16 million over the 2019–2028 period; therefore, pay-as-you-go procedures apply. Enacting the legislation would not affect revenues. Implementing the bill would have no significant effect on spending subject to appropriation.

CBO estimates that enacting H.R. 3144 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 3144 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 3144 is shown in the following table. The costs of the legislation fall within budget functions 270 (energy) and 300 (natural resources).

	By fiscal year, in millions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019–2023	2019–2028
DECREASES IN DIRECT SPENDING													
Estimated Budget Authority	0	−4	−4	−4	−4	0	0	0	0	0	0	−16	−16
Estimated Outlays	0	−4	−4	−4	−4	0	0	0	0	0	0	−16	−16

Basis of estimate: In response to recent judicial actions, the Bureau of Reclamation and the Army Corps of Engineers will release additional water over the spillways of certain FCRPS dams to allow for safe passage of fish during the migration season. Under current law, those prescribed spills will continue until federal agencies can implement alternative methods for reducing harm to endangered salmon. Releasing the additional water reduces the amount of hydroelectricity available for sale, resulting in lower receipts and higher costs for the BPA system. On the basis of information from BPA, CBO estimates that BPA's net costs will increase by about 1 percent, or by about $35 million a year, as a result of those releases.

H.R. 3144 would reverse that requirement by directing the agencies to operate dams in the FCRPS under the terms of the 2014 salmon management plan. The result would be a decline in the amount of water in the spillways, an increase in electricity generated and sold, and a reduction in BPA's costs, which are classified as fisheries-related expenses. Under the bill, the 2014 plan would remain in effect through the later of 2022 or until alternative measures are in place with no pending judicial review.

CBO estimates that enacting the bill would reduce BPA's net direct spending by $4 million a year through 2022, or by a total of $16 million over the 2019–2028 period. By law, BPA's expenses for fisheries are allocated between its customers and the federal government. CBO estimates that reducing costs otherwise payable by customers would have no significant net effect on direct spending because those savings would be passed on to customers to the form of lower electricity prices. Based on historical trends, CB0 estimates that customers' share of the estimated $35 million annual cost to BPA for the additional spills will total $31 million, or about 88 percent. For this estimate, CBO assumes that alternative mitigation measures for the fisheries will be adopted by the end of 2022.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3144 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES

	By fiscal year, in millions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2018–2023	2018–2028
	NET DECREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	−4	−4	−4	−4	0	0	0	0	0	0	−16	−16

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 3144 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 3144 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Kathleen Gramp (Bonneville Power Administration) and Aurora Swanson (Bureau of Reclamation and the Army Corps of Engineers); Mandates: Zach Byrum.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time.

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.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

This bill makes no changes to existing law.

APPENDIX I

CONGRESS OF THE UNITED STATES,
Washington, DC, May 2, 2017.

Secretary RYAN ZINKE,
Department of the Interior,
Washington, DC.

DEAR SECRETARY ZINKE, We are writing to express our deep concern regarding the management of the Federal Columbia River Power System (FCRPS) following Judge Michael Simon's March 27, 2017 court order on motions for injunctive relief in the FCRPS biological opinion. As you know, Judge Simon is ordering a significant increase in mandatory spill in the spring of 2018. Not only is additional spill a new policy affecting many congressionally-authorized projects in the Pacific Northwest, there will likely be unintended consequences that will hurt fish recovery while also greatly increasing power costs.

The three FCRPS Action Agencies are the U.S. Army Corps of Engineers, Bonneville Power Administration (BPA), and the U.S. Bureau of Reclamation, which have the knowledge and expertise to manage FCRPS. According to the Adaptive Management Implementation Plan, "the Obama Administration undertook an extensive effort to review the 2008 FCRPS Biological Opinion (BiOp)" and found "the 2008 BiOp is biologically and legally sound, is based on the best available scientific information, and satisfies the ESA jeopardy standard." This BiOp has been supported by states, tribal entities, utilities, ports, irrigation districts, and other Pacific Northwest water users. As such, the 9th Circuit Court continues to disagree with the best available science and continues to mandate new policies along the river system. Our constituents deserve to understand the proposed measures, as well as the expected impacts they will have on the region.

To provide more clarity regarding the current and ongoing efforts BPA has taken to mitigate damage to fish and wildlife and the cost to the ratepayers in the Pacific Northwest, we would like the following information from the BPA by June 2, 2017:

1. How much does BPA annually spend on fish and wildlife mitigation?
2. If these payments were reflective in a ratepayer's monthly bill, can you estimate this percentage in the statement?
3. Between the three Action Agencies referenced above, how much has the federal government spent on fish recovery and mitigation in the FCRPS?
4. What are fish survival percentages through each of the four lower Snake River Dams (Ice Harbor Dam, Lower Monumental Dam, Little Goose Dam, and Lower Granite Dam) and how do those compare to estimated survival of the fish before these dams were constructed?
5. What is the percentage of juvenile and adult fish lost to pinniped, predator fish, and bird predation?
6. What are the adverse consequences to increased spill?
7. By increasing spill, what would be the quantifiable benefit for fish recovery given the cost of increasing spill and all of the other current actions to increase fry passage?

8. How much are BPA, the Army Corps, and the Bureau of Reclamation budgeting for the National Environmental Policy Act review for the FCRPS in relation to the Court's 2016 order?

The Court ordered the plaintiffs and federal defendants "to consider an appropriate protocol and methodology for spill at each dam, incorporating the most beneficial spill patterns," and the Court "expects the parties, *amici*, and other regional experts to work together to reach consensus." We believe that the 2008 BiOp achieved consensus on a plan that has demonstrated for several years that it is working to improve salmon recovery while still allowing operation of the federal dams. We are concerned that plaintiffs' continued advocacy for additional spill or preventing needed maintenance of the dams (as requested in the injunctions) is not only unscientifically based, but is also likely to be counterproductive. Prior to any future status conferences or filings with the Court, we respectfully request that you inform us in advance of your discussions and any decisions regarding the appropriate protocol and methodology for spill at each dam. Thank you for your attention to this request and please do not hesitate to contact our congressional offices with any questions.

Sincerely,

CATHY MCMORRIS RODGERS,
Member of Congress.
DAN NEWHOUSE,
Member of Congress.
PETER DEFAZIO,
Member of Congress.
KURT SCHRADER,
Member of Congress.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC, April 12, 2018.

Hon. BILL SHUSTER,
Chairman, Committee on Transportation and Infrastructure, Washington, DC.

DEAR MR. CHAIRMAN: I write regarding H.R. 3144, to provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time, and for other purposes. The bill was referred primarily to the Committee on Natural Resources, with an additional referral to the Committee on Transportation and Infrastructure.

I ask that you allow the Committee on Transportation and Infrastructure to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Transportation and Infrastructure represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding.

Thank you for your consideration of my request and for the extraordinary cooperation shown by you and your staff over matters of shared jurisdiction. I look forward to further opportunities to work with you this Congress.

Sincerely,

ROB BISHOP,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, April 16, 2018.

Hon. ROB BISHOP,
Chairman, Committee on Natural Resources,
Washington, DC.

DEAR CHAIRMAN BISHOP: Thank you for your letter concerning H.R. 3144, to provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time, and for other purposes. As noted, the Committee on Transportation and Infrastructure received an additional referral on this legislation.

In order to expedite floor consideration of H.R. 3144, the Committee on Transportation and Infrastructure agrees to forgo action on this bill. However, as you noted, this is conditional on our mutual understanding that forgoing consideration of the bill would not prejudice the Committee with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation that fall within the Committee's Rule X jurisdiction. Further, it is our understanding that mutually agreed upon changes to the legislation will be incorporated into the bill via an amendment. Should a conference on the bill be necessary, I appreciate your agreement to support my request to have the Committee represented on the conference committee.

Thank you for your cooperation on this matter and for agreeing to place a copy of this letter and your response acknowledging our jurisdictional interest into the bill report and the *Congressional Record* during consideration of the measure on the House floor.

Sincerely,

BILL SHUSTER,
Chairman.

DISSENTING VIEWS

H.R. 3144 would mandate the use of an illegal operation plan for the Federal Columbia River Power System. The operation plan in question violates our nation's bedrock environmental laws, threatens the existence of several endangered salmon and steelhead populations, jeopardizes thousands of jobs in the commercial and recreational fishing industries and the outdoor recreation economy, contradicts judicial rulings, and harms tribal fishing interests throughout the Pacific Northwest. For these reasons, we oppose H.R. 3144.

H.R. 3144 fundamentally violates our nation's bedrock environmental laws, including the Endangered Species Act. Federal agencies and courts have concluded that the Federal Columbia River Power System causes significant harm to the Columbia River's native fisheries. The National Marine Fisheries Service of the U.S. Department of Commerce has found that the estimated "current annual salmon and steelhead production in the Columbia River Basin is more than 10 million fish below historical levels, with 8 million of this annual loss attributable to hydropower development and operation."[1] As a result, there are thirteen species or populations of Columbia or Snake River salmon and steelhead that are listed as either endangered or threatened under the Endangered Species Act. Instead of allowing responsive, science-based fisheries management that will recover these listed species, H.R. 3144 locks in a failing status quo operation plan that unquestionably harms some of our nation's most iconic fisheries.

The status quo operation plan for the Federal Columbia River Power System—which H.R. 3144 mandates the use of until 2022—also does not work for hydropower consumers. The status quo operation plan is enormously expensive and has cost taxpayers and regional energy consumers billions over the past two decades. For two decades, federal agencies have focused on essentially the same approach to saving listed species— modest hydro-mitigation efforts with a predominant focus on habitat restoration. These efforts have cost billions of dollars, yet they are failing.

If enacted, H.R. 3144 will also cause untold harm to Pacific Northwest tribes and tribal trust resources. Native peoples of the Pacific Northwest ceded most of their ancestral homeland to the United States in exchange for the right to catch salmon and steelhead at their accustomed places. The federal government has a long history of failing to protect these fishing rights. If enacted, H.R. 3144 would extend this failure and further harm tribal fisheries, which are a critically important source of food and are of great cultural and religious significance. During the Committee

[1] U.S. Congressional Research Service. Endangered Species Act Litigation Regarding Columbia Basin Salmon and Steelhead (R40169; August 8, 2016), by Stephen P. Mulligan and Harold F. Upton.

markup of H.R. 3144, Ranking Member Grijalva offered a modest amendment requiring the protection of tribal trust resources and meaningful tribal consultation. The amendment was voted down by Committee Republicans.

Furthermore, H.R. 3144 will harm numerous ecosystem-based businesses by blocking court-ordered water releases from federal dams, which have been shown by several scientific studies to significantly increase salmon survival. The Committee has received numerous letters from businesses and trade groups opposed to H.R. 3144 due to the harm it will cause to businesses dependent on Columbia Basin salmon and steelhead, including the commercial and recreational fishing industry, guiding and outdoor retail businesses, and restaurants and food industries based in the Pacific Northwest.

H.R. 3144 also represents a troubling attack on the legal process. If enacted, the bill would overturn lawfully-rendered court decisions—by both the Ninth Circuit Court of Appeals and Oregon U.S. District Court—simply because the bill's sponsors don't like them.

Given the significant harm that H.R. 3144 will cause, the bill is also opposed by the Governors of both Washington and Oregon who have indicated that the bill will thwart ongoing efforts to improve future salmon and dam management. Additionally, numerous conservation, business, and tribal interests oppose this bill, including the Northwest Sportfishing Industry Association, the Pacific Coast Federation of Fishermen's Associations, Northwest Guides and Anglers Association, American Whitewater, NW Energy Coalition, Trout Unlimited, American Rivers, the Save Our Wild Salmon Coalition, the Natural Resources Defense Council, Defenders of Wildlife, Oceana, the Coastal Trollers Association, the National Wildlife Federation, and the Nez Perce Tribe.

If enacted, H.R. 3144 will cause unacceptable harm to the tribes, environment, legal process, and Pacific Northwest businesses that support thousands of jobs. For these reasons, we oppose H.R. 3144 as written.

RAÚL M. GRIJALVA,
Ranking Member, Committee on Natural Resources.
JARED HUFFMAN.
DARREN SOTO.
GRACE F. NAPOLITANO.
DONALD S. BEYER, JR.
A. DONALD MCEACHIN.

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