

Statement of Grayford F. Payne
Deputy Commissioner for Policy, Administration and Budget
Bureau of Reclamation
U.S. Department of the Interior
before the
United States Senate
Committee on Energy and Natural Resources
Subcommittee on Water and Power
S. 3483 - Crooked River Collaborative Water Security Act
September 19, 2012

Madam Chair and members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 3483, the Crooked River Collaborative Water Security Act. The provisions of S. 3483 address the Crooked River Wild and Scenic River designation along with water supply concerns relating to Reclamation's Crooked River Project.

The Department supports the goals of correcting the Wild and Scenic River boundary near Bowman Dam and improving Reclamation project operations, where possible, to further enhance water use and availability. We also recognize refinements made since similar companion legislation was heard in the House in June of last year. We believe that some of the provisions of S. 3483 will advance the goal of water security on the Crooked River, and we offer the following recommendations for improvements to the bill. If the changes summarized below are incorporated to the bill, the Department can support S. 3483.

S. 3483 includes seven sections which address: the Wild and Scenic River designation near Bowman Dam; water supply for the City of Prineville; first fill protection for water in Prineville Reservoir; operating requirements "for the benefit of downstream fish and wildlife"; repayment contract provisions for the Ochoco Irrigation District (District); requirements that Reclamation participate in "dry-year management planning meetings"; and savings clause language clarifying the bill's effect on existing law. This statement summarizes the Department's interest in the most significant provisions of each section.

An eight-mile segment of the Lower Crooked River near Prineville, Oregon was designated as a National Wild and Scenic River in 1988 with enactment of the Omnibus Oregon Wild and Scenic Rivers Act (Public Law 100-557). The Lower Crooked River meanders through canyons of deeply eroded basalt and banks covered with riparian vegetation. A variety of wildlife including river otters, beaver, great blue herons and mule deer inhabit the corridor. A wide-range of recreation opportunities are available along the Lower Crooked River including native trout fishing, camping, hiking and boating.

When the Wild and Scenic River boundary was administratively finalized for this section of the Crooked River, the centerline of Bowman Dam was used as the upstream terminus of the designation. However, the placement of the beginning of the designation within this man-made

feature is both counterintuitive and cumbersome to administer. Section 2 of S. 3483 addresses this by moving that upper limit of the designated river one-quarter mile downstream. The Department of the Interior supports the proposed modification of the boundary as a reasonable solution consistent with the original intent of the Wild and Scenic designation. The Department is willing to work with the Sponsor and the Committee to determine the exact placement of the new boundary. Clearly the dam and related facilities were never intended to be included within the wild and scenic river designation.

Section 2 of S. 3483 also contains language anticipating applications for hydropower development at Bowman Dam through the Federal Energy Regulatory Commission (FERC). The Department believes that Reclamation has the authority to permit non-Federal power on the Crooked River Project pursuant to the language of Section 2406 of Public Law 102-486. Therefore, Section 2 (B) should be modified to add “or Bureau of Reclamation” after the words “Federal Energy Regulatory Commission.”

Section 3 of S. 3483 amends the Act of August 6, 1956 (70 Stat. 1058), by increasing the statutorily-required minimum release flows from Bowman Dam to serve as mitigation for groundwater pumping by the City of Prineville. The Department does not oppose the concept of providing releases to mitigate for municipal use of groundwater. We believe the bill’s language of “without further action by the Secretary...” and its references to a Reclamation Directive and Standard to be contradictory and subject to interpretation as to the need for NEPA compliance and a contract. The bill’s language also requires delivery of water prior to receiving payment from the City and it is unclear as to whether or not the 5100 acre-feet is part of the currently required 10 cfs releases. We recommend deleting the words “Without further action by the Secretary of the Interior, beginning on the date of enactment of the Crooked River Collaborative Water Security Act” and replacing it with, “Upon passage of the Crooked River Collaborative Water Supply Act, the Secretary of the Interior is authorized to contract with the City of Prineville for up to 5,100 acre-feet of water in Prineville Reservoir and upon receipt of required payments may release such water on an annual basis to serve as mitigation...” We recommend deleting the words ‘Water and Related Contract and Repayment Principles and Requirements’ as this does not refer to a Reclamation document and deleting the words ‘Directives and Standards PEC 05-01’ as this is currently under revision. Substituting “in accordance with Reclamation law and policy” would be more appropriate.

An additional concern with S. 3483 is the bill’s statement that “The Secretary is authorized to contract exclusively with the City for additional amounts in the future at the request of the City.” This language would preferentially benefit the City of Prineville and appears to close the door to any potential future irrigation or municipal water contractors of the Crooked River Project (Project).

First Fill Storage and Release

Section 4 of S. 3483 also proposes an entirely new addition to the 1956 Act. The proposed addition would provide existing contractors and others with a “first fill” priority basis, rather than the current situation where both contracted and uncontracted storage space in Prineville Reservoir fill simultaneously. While this provision is not likely to have any immediate effect, it

is possible under the proposed first fill priority system that in very dry water years the last fill entity could be shorted. This section also requires the release of all the contracted water in the reservoir every year. We recommend deleting the word ‘release’ and substituting the words ‘make available’ as it is common for irrigators to use less water than they have contracted in any given year.

Storage and Release of Remaining Stored Water Quantities

The Department supports the concept of providing some of the now uncontracted space in the reservoir for fish and wildlife purposes. However, the inserted Section 7(a) requirements to release all remaining stored water quantities for the benefit of downstream fish and wildlife will prevent Reclamation from issuing new contracts.

We note that the bill’s language also inserts a Section 7(b) to the 1956 Act which would require that if a consultation under the Endangered Species Act or an order of a court requires releases of stored water from Prineville Reservoir for fish and wildlife, the Secretary shall use uncontracted stored water. Reclamation would interpret this provision to set a new precedent in legislatively prescribing operation of the Crooked River Project. Reclamation interprets this section as altering but not eliminating agency discretion with respect to contract water supplies, therefore, sufficient discretion would remain with respect to the operation of the Project to warrant consultation under Section 7(a)(2) of the Endangered Species Act. The limit of Reclamation’s discretion is not entirely clear, and could be subject to contrary interpretations. Also, the additional quantity of water reserved for the City of Prineville is not addressed in this section, and Reclamation interprets the bill such that any future quantities of water made available to the City (beyond the 5,100 acre feet) will not be subject to first fill protection and may affect the use of water for the benefit of downstream fish and wildlife.

S. 3483 also includes amendments to the 1956 Act to coordinate the management of water for the benefit of fish and wildlife with the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon. Reclamation notes the role of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service with respect to the use of uncontracted water for the benefit of listed species is not entirely clear, resulting in a potential for conflict if the federal, state and tribal management priorities are not aligned. Likewise, the limitation of the use of the reservoir for downstream resources, could cause similar problems if a species were to be listed in or above the Reservoir. As drafted however, Reclamation would interpret the amended Section 7(c)(2) as not to alter Reclamation’s obligations under Section 7(a)(2) of the Endangered Species Act.

The “Required Coordination” language in the amended Section 7(d) continues to lack clarity with respect to the scope and purpose of the section. Specifically, striking the words “and assist” line 18 of page 7 would reduce the potential for conflict by clarifying the purpose of the section.

Section 5 of S. 3483 would provide for early repayment of project construction costs by landowners within the District and the District’s participation in conserved water projects of the State of Oregon. The Department fully supports these objectives and has no concerns regarding corresponding language in the bill.

The Department does not see the need for language in Section 6 of S. 3483 requiring that Reclamation participate in and prepare a report from meetings by a “Dry Year Management Planning” group. Reclamation already has standing authority to provide technical and planning assistance to state, local and tribal government entities under Title II of the Reclamation States Emergency Drought Relief Act (PL 102-250 as amended). This planning authority does not expire, and is not subject to a standing drought declaration being in place in the area of interest. The Drought Act authority is sufficiently broad to cover the topic areas proscribed in Section 6 of S. 3483, without creating a new Congressional reporting burden on the Department. However, if this language remains, we suggest deleting at the end of Section 6(d), “with the voluntary agreement of North Unit Irrigation District and other Bureau of Reclamation contract holders referred to in that paragraph, the Secretary may release that quantity of water for the benefit of downstream fish and wildlife as described in section 7 of that Act.” This language limits Reclamation’s authority and creates a burdensome requirement that could more efficiently be addressed by requiring entities to contact Reclamation prior to June 1 of any year or the water will be released downstream.

The Department also supports the McKay Creek Exchange Project which has been the subject of periodic discussions between the District and Reclamation and which would provide enhanced instream flows in McKay Creek in exchange for water from a portion of the District’s current contracted water supply from Prineville Reservoir. However, we have concerns with those portions of Section 5 of S. 3483 that address contract amendments relating to lands within the vicinity of McKay Creek. As written, the proposed legislation does not clearly identify the fundamental exchange element of the project. The language in Section 5 is unclear as to whether the proposed water supply would come from the District’s current contract supply or from uncontracted water in Prineville Reservoir, and the amount of water is not specified. As a result, the Department believes the McKay Creek Exchange Project would be implemented more effectively by proceeding with contracting processes that Reclamation has typically used for such situations, and which have been the subject of prior discussions with the District.

While the Department supports the goals of S. 3483, we believe that the bill would benefit from changes as outlined here. This concludes my written statement. I am pleased to answer questions at the appropriate time.