

SA 3288. Mr. MERKLEY (for himself and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 2953 proposed by Ms. MURKOWSKI to the bill S. 2012, to provide for the modernization of the energy policy of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle E of title IV, add the following:

SEC. 44__X. KLAMATH PROJECT WATER AND POWER.

(a) *Addressing Water Management and Power Costs for Irrigation.*--The Klamath Basin Water Supply Enhancement Act of 2000 (Public Law 106-498; 114 Stat. 2221) is amended--

(1) by redesignating sections 4 through 6 as sections 5 through 7, respectively; and

(2) by inserting after section 3 the following:

SEC. 4. POWER AND WATER MANAGEMENT.

(a) *Definitions.*--In this section:

(1) **COVERED POWER USE.**--The term 'covered power use' means a use of power to develop or manage water for irrigation, wildlife purposes, or drainage on land that is--

(A) associated with the Klamath Project, including land within a unit of the National Wildlife Refuge System that receives water due to the operation of Klamath Project facilities; or

(B) irrigated by the class of users covered by the agreement dated April 30, 1956, between the California Oregon Power Company and Klamath Basin Water Users Protective Association and within the Off Project Area (as defined in the Upper Basin Comprehensive Agreement entered into on April 18, 2014), only if each applicable owner and holder of a possessory interest of the land is a party to that agreement (or a successor agreement that the Secretary determines provides a comparable benefit to the United States).

(2) **KLAMATH PROJECT.**--

`` (A) **IN GENERAL.**--The term `Klamath Project' means the Bureau of Reclamation project in the States of California and Oregon.

`` (B) **INCLUSIONS.**--The term `Klamath Project' includes any dams, canals, and other works and interests for water diversion, storage, delivery, and drainage, flood control, and similar functions that are part of the project described in subparagraph (A).

`` (3) **POWER COST BENCHMARK.**--The term `power cost benchmark' means the average net delivered cost of power for irrigation and drainage at Reclamation projects in the area surrounding the Klamath Project that are similarly situated to the Klamath Project, including Reclamation projects that--

`` (A) are located in the Pacific Northwest; and

`` (B) receive project-use power.

`` (b) *Water, Environmental, and Power Activities.*--

`` (1) **IN GENERAL.**--Pursuant to the reclamation laws and subject to appropriations and required environmental reviews, the Secretary may carry out activities, including entering into an agreement or contract or otherwise making financial assistance available--

`` (A) to plan, implement, and administer programs to align water supplies and demand for irrigation water users associated with the Klamath Project, with a primary emphasis on programs developed or endorsed by local entities comprised of representatives of those water users;

`` (B) to plan and implement activities and projects that--

`` (i) avoid or mitigate environmental effects of irrigation activities; or

`` (ii) restore habitats in the Klamath Basin watershed, including restoring tribal fishery resources held in trust; and

`` (C) to limit the net delivered cost of power for covered power uses.

`` (2) **EFFECT.**--Nothing in subparagraph (A) or (B) of paragraph (1) authorizes the Secretary--

`` (A) to develop or construct new facilities for the Klamath Project without appropriate approval from Congress under section 9 of the Reclamation Projects Act of 1939 (43 U.S.C. 485h); or

`` (B) to carry out activities that have not otherwise been authorized.



`` (c) *Reducing Power Costs.*--



`` (1) **IN GENERAL.**--Not later than 180 days after the date of enactment of the Energy Policy Modernization Act of 2016, the Secretary, in consultation with interested irrigation interests that are eligible for covered power use and representative organizations of those interests, shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report that--

`` (A) identifies the power cost benchmark; and

`` (B) recommends actions that, in the judgment of the Secretary, are necessary and appropriate to ensure that the net delivered power cost for covered power use is equal to or less than the power cost benchmark, including a description of--

`` (i) actions to immediately reduce power costs and to have the net delivered power cost for covered power use be equal to or less than the power cost benchmark in the near term, while longer-term actions are being implemented;

`` (ii) actions that prioritize water and power conservation and efficiency measures and, to the extent actions involving the development or acquisition of power generation are included, renewable energy technologies (including hydropower);

`` (iii) the potential costs and timeline for the actions recommended under this subparagraph;

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`` (iv) provisions for modifying the actions and timeline to adapt to new information or circumstances; and

`` (v) a description of public input regarding the proposed actions, including input from water users that have covered power use and the degree to which those water users concur with the recommendations.

`` (2) **IMPLEMENTATION.**--Not later than 180 days after the date of submission of the report under paragraph (1), the Secretary shall implement those recommendations described in the report that the Secretary determines will ensure that the net delivered power cost for covered power use is equal to or less than the power cost benchmark, subject to availability of appropriations, on the fastest practicable timeline.

`` (3) **ANNUAL REPORTS.**--The Secretary shall submit to each Committee described in paragraph (1) annual reports describing progress achieved in meeting the requirements of this subsection.

`` (d) *Treatment of Power Purchases.*--

`` (1) **IN GENERAL.**--Any purchase of power by the Secretary under this section shall be considered to be an authorized sale for purposes of section 5(b)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839c(b)(3)).

`` (2) **EFFECT.**--Nothing in this section authorizes the Bonneville Power Administration to make a sale of power from the Federal Columbia River Power System at rates, terms, or conditions better than those afforded preference customers of the Bonneville Power Administration.

`` (e) *Goals.*--The goals of activities under subsections (b) and (c) shall include, as applicable--

`` (1) the short-term and long-term reduction and resolution of conflicts relating to water in the Klamath Basin watershed; and

`` (2) compatibility and utility for protecting natural resources throughout the Klamath Basin watershed, including the protection, preservation, and restoration of Klamath River tribal fishery resources, particularly through collaboratively developed agreements.

`` (f) *Pumping Plant D.*--The Secretary may enter into 1 or more agreements with the Tulelake Irrigation District to reimburse the Tulelake Irrigation District for not more than 69 percent of the cost incurred by the Tulelake Irrigation District for the operation and maintenance of Pumping Plant D, on the condition that the cost benefits the United States."

(b) *Conveyance of Non-Project Water; Replacement of C Canal.*--

(1) **DEFINITION OF KLAMATH PROJECT.**--In this subsection:

(A) **IN GENERAL.**--The term "Klamath Project" means the Bureau of Reclamation project in the States of California and Oregon.

(B) **INCLUSIONS.**--The term "Klamath Project" includes any dams, canals, and other works and interests for water diversion, storage, delivery, and drainage, flood control, and similar functions that are part of the project described in subparagraph (A).

(2) CONVEYANCE OF NON-PROJECT WATER.--

(A) **IN GENERAL.**--An entity operating under a contract entered into with the United States for the operation and maintenance of Klamath Project works or facilities, and an entity operating any work or facility not owned by the United States that receives Klamath Project water, may use any of the Klamath Project works or facilities to convey non-Klamath Project water for any authorized purpose of the Klamath Project, subject to subparagraphs (B) and (C).

(B) **PERMITS; MEASUREMENT.**--An addition, conveyance, and use of water pursuant to subparagraph (A) shall be subject to the requirements that--

(i) the applicable entity shall secure all permits required under State or local laws; and

(ii) all water delivered into, or taken out of, a Klamath Project facility pursuant to that subparagraph shall be measured.

(C) **EFFECT.**--A use of Klamath Project water under this paragraph shall not--

(i) adversely affect the delivery of water to any water user or land served by the Klamath Project; or

(ii) result in any additional cost to the United States.

(3) **REPLACEMENT OF C CANAL FLUME.**--The replacement of the C Canal flume within the Klamath Project shall be considered to be, and shall receive the treatment authorized for, emergency extraordinary operation and maintenance work in accordance with Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)).

(c) *Administration.*--

(1) **COMPLIANCE.**--In implementing this section and the amendments made by this section, the Secretary of the Interior shall comply with--

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) all other applicable laws.

(2) **EFFECT.**--Nothing in this section--

(A) modifies the authorities or obligations of the United States with respect to the tribal trust and treaty obligations of the United States; or

(B) creates or determines water rights or affects water rights or water right claims in existence on the date of enactment of this Act.