

112TH CONGRESS
1ST SESSION

S. _____

To authorize water settlements of the Klamath, Yurok, and Karuk Tribes of the Klamath Basin and the United States, including the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To authorize water settlements of the Klamath, Yurok, and Karuk Tribes of the Klamath Basin and the United States, including the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Klamath Basin Community and Economic Recovery Act
6 of 2011”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Approval of Indian water settlements.
- Sec. 4. Execution and implementation of Indian water settlements.
- Sec. 5. Actions by the Klamath Tribes.
- Sec. 6. Actions by the Karuk and Yurok Tribes.
- Sec. 7. Release of claims of Party Tribes against the United States.
- Sec. 8. Retention of rights of the Party Tribes.
- Sec. 9. Actions of the United States acting in capacity as trustee.
- Sec. 10. Further agreements of the Klamath Tribes and the United States.
- Sec. 11. Publication of notice; effect of publication.
- Sec. 12. Tribal management of fisheries programs.
- Sec. 13. Effects on tribes and the United States.
- Sec. 14. Judicial review of decision concerning tribal rights and obligations.
- Sec. 15. Agreements and funding.
- Sec. 16. Klamath Reclamation Project.
- Sec. 17. Hydroelectric Settlement.
- Sec. 18. Miscellaneous.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) BUREAU.—The term “Bureau” means the
6 Bureau of Indian Affairs.

7 (2) COMMISSION.—The term “Commission”
8 means the Federal Energy Regulatory Commission.

9 (3) DAM REMOVAL ENTITY.—The term “Dam
10 Removal Entity” means the entity designated by the
11 Secretary pursuant to section 17(a)(3).

12 (4) DEPARTMENT.—The term “Department”
13 means the Department of the Interior.

14 (5) DEFINITE PLAN.—The term “definite plan”
15 has the meaning given the term in section 1.4 of the
16 Hydroelectric Settlement.

1 (6) DETAILED PLAN.—The term “detailed
2 plan” has the meaning given the term in section 1.4
3 of the Hydroelectric Settlement.

4 (7) FACILITY.—The term “facility” means any
5 of the following hydropower developments (including
6 appurtenant works) licensed to PacifiCorp under the
7 Federal Power Act (16 U.S.C. 791a et seq.) as
8 Project No. 2082:

9 (A) Iron Gate Development.

10 (B) Copco 1 Development.

11 (C) Copco 2 Development.

12 (D) J.C. Boyle Development.

13 (8) FACILITIES REMOVAL.—The term “facilities
14 removal” means—

15 (A) physical removal of all or part of each
16 facility to achieve, at a minimum, a free-flowing
17 condition and volitional fish passage;

18 (B) site remediation and restoration, in-
19 cluding restoration of previously inundated
20 land;

21 (C) measures to avoid or minimize adverse
22 downstream impacts; and

23 (D) all associated permitting for the ac-
24 tions described in this paragraph.

1 (9) **FEDERALLY RECOGNIZED TRIBE.**—The
2 term “federally recognized tribe” means an Indian
3 tribe listed as federally recognized in—

4 (A) the Bureau of Indian Affairs publica-
5 tion entitled “Indian Entities Recognized and
6 Eligible to Receive Services from the United
7 States Bureau of Indian Affairs” (74 Fed. Reg.
8 40218 (Aug. 11, 2009)); or

9 (B) any list published in accordance with
10 section 104 of the Federally Recognized Indian
11 Tribe List Act of 1994 (25 U.S.C. 479a–1).

12 (10) **HYDROELECTRIC SETTLEMENT.**—

13 (A) **IN GENERAL.**—The term “Hydro-
14 electric Settlement” means the agreement enti-
15 tled “Klamath Hydroelectric Settlement Agree-
16 ment,” dated February 18, 2010, between—

17 (i) the Department;

18 (ii) the Department of Commerce;

19 (iii) the State of California;

20 (iv) the State of Oregon;

21 (v) PacifiCorp; and

22 (vi) other parties.

23 (B) **INCLUSIONS.**—The term “Hydro-
24 electric Settlement” includes any amendments

1 to the Agreement described in subparagraph

2 (A)—

3 (i) approved by the parties before the
4 date of enactment of this Act; or

5 (ii) approved pursuant to section
6 4(b)(2).

7 (11) KENO DEVELOPMENT.—The term “Keno
8 Development” means the Keno regulating facility
9 within the jurisdictional project boundary of FERC
10 Project No. 2082.

11 (12) KLAMATH BASIN.—

12 (A) IN GENERAL.—The term “Klamath
13 Basin” means the land tributary to the Klamath
14 River in the States.

15 (B) INCLUSIONS.—The term “Klamath
16 Basin” includes the Lost River and Tule Lake
17 Basins.

18 (13) KLAMATH PROJECT WATER USERS.—The
19 term “Klamath Project Water Users” means—

20 (A) the Tulelake Irrigation District;

21 (B) the Klamath Irrigation District;

22 (C) the Klamath Drainage District;

23 (D) the Klamath Basin Improvement Dis-
24 trict;

1 (E) the Ady District Improvement Com-
2 pany;

3 (F) the Enterprise Irrigation District;

4 (G) the Malin Irrigation District;

5 (H) the Midland District Improvement
6 District;

7 (I) the Pioneer District Improvement Com-
8 pany;

9 (J) the Shasta View Irrigation District;

10 (K) the Sunnyside Irrigation District;

11 (L) Don Johnston & Son;

12 (M) Bradley S. Luscombe;

13 (N) Randy Walthall;

14 (O) the Inter-County Title Company;

15 (P) the Reames Golf and Country Club;

16 (Q) the Winema Hunting Lodge, Inc.;

17 (R) Van Brimmer Ditch Company;

18 (S) Plevna District Improvement Com-
19 pany; and

20 (T) Collins Products, LLC.

21 (14) NET REVENUES.—

22 (A) IN GENERAL.—The term “net reve-
23 nues” has the meaning given the term “net
24 lease revenues” in Article 1(e) of Contract No.

1 14-06-200-5954 between Tulelake Irrigation
2 District and the United States.

3 (B) INCLUSIONS.—The term “net reve-
4 nues” includes revenues from the leasing of
5 land in—

6 (i) the Tule Lake National Wildlife
7 Refuge lying within the boundaries of the
8 Tulelake Irrigation District; and

9 (ii) the Lower Klamath National
10 Wildlife Refuge lying within the boundaries
11 of the Klamath Drainage District.

12 (15) NON-FEDERAL PARTIES.—The term “non-
13 Federal Parties” means each of the signatories to
14 the Restoration Agreement other than the Secre-
15 taries.

16 (16) OREGON KLAMATH BASIN ADJUDICA-
17 TION.—The term “Oregon Klamath Basin adjudica-
18 tion” means the proceeding to determine water
19 rights pursuant to chapter 539 of the Oregon Re-
20 vised Statutes entitled “In the matter of the deter-
21 mination of the relative rights of the waters of the
22 Klamath River, a tributary of the Pacific Ocean”.

23 (17) PACIFICORP.—The term “PacifiCorp”
24 means the owner and licensee of the Klamath Hy-
25 droelectric Project, FERC Project No. 2082.

1 (18) PARTY.—The term “Party” means each of
2 the signatories to the Restoration Agreement, in-
3 cluding the Secretaries.

4 (19) PARTY TRIBES.—The term “Party Tribes”
5 means—

6 (A) the Yurok Tribe;

7 (B) the Karuk Tribe; and

8 (C) the Klamath Tribes.

9 (20) RESTORATION AGREEMENT.—

10 (A) IN GENERAL.—The term “Restoration
11 Agreement” means the Agreement entitled
12 “Klamath Basin Restoration Agreement for the
13 Sustainability of Public and Trust Resources
14 and Affected Communities” dated February 18,
15 2010, which shall be on file and available for
16 public inspection in the appropriate offices of
17 the Secretaries.

18 (B) INCLUSIONS.—The term “Restoration
19 Agreement” includes any amendments to the
20 Agreement described in subparagraph (A)—

21 (i) approved by the Parties before the
22 date of enactment of this Act; or

23 (ii) approved pursuant to section
24 4(a)(1)(B).

1 (21) SECRETARIAL DETERMINATION.—The
2 term “Secretarial determination” means a deter-
3 mination of the Secretary made under section 17(a).

4 (22) SECRETARIES.—The term “Secretaries”
5 means—

6 (A) the Secretary of the Interior or des-
7 ignee;

8 (B) the Secretary of Commerce or des-
9 ignee; and

10 (C) the Secretary of Agriculture or des-
11 ignee.

12 (23) SECRETARY.—The term “Secretary”
13 means the Secretary of the Interior.

14 (24) STATES.—The term “States” means—

15 (A) the State of Oregon; and

16 (B) the State of California.

17 **SEC. 3. APPROVAL OF INDIAN WATER SETTLEMENTS.**

18 The United States approves the Restoration Agree-
19 ment and the Hydroelectric Settlement except to the ex-
20 tent the Restoration Agreement or the Hydroelectric Set-
21 tlement conflicts with this Act.

22 **SEC. 4. EXECUTION AND IMPLEMENTATION OF INDIAN**
23 **WATER SETTLEMENTS.**

24 (a) RESTORATION AGREEMENT.—

25 (1) IN GENERAL.—The Secretaries shall—

1 (A) sign and implement the Restoration
2 Agreement;

3 (B) implement any amendment to the Res-
4 toration Agreement approved by the Parties
5 after the date of enactment of this Act, unless
6 1 or more of the Secretaries determines, not
7 later than 90 days after the date the non-Fed-
8 eral Parties agree to the amendment, that the
9 amendment is inconsistent with this Act or
10 other provisions of law; and

11 (C) to the extent consistent with the Res-
12 toration Agreement, this Act, and other provi-
13 sions of law, perform all actions necessary to
14 carry out each responsibility of the Secretary
15 concerned under the Restoration Agreement.

16 (2) EFFECT OF SIGNING OF RESTORATION
17 AGREEMENT.—Signature by the Secretaries of the
18 Restoration Agreement does not constitute a major
19 Federal action under the National Environmental
20 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

21 (3) COMPLIANCE WITH EXISTING LAW.—In im-
22 plementing the Restoration Agreement, the Secre-
23 taries shall comply with—

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

1 (B) the Endangered Species Act of 1973
2 (16 U.S.C. 1531 et seq.); and

3 (C) all other applicable Federal environ-
4 mental laws (including regulations).

5 (b) HYDROELECTRIC SETTLEMENT.—The Secretary,
6 the Secretary of Commerce, and the Commission, or des-
7 ignees, shall implement, in consultation with other applica-
8 ble Federal agencies—

9 (1) the Hydroelectric Settlement; and

10 (2) any amendment to the Hydroelectric Settle-
11 ment, unless 1 or more of the Secretaries deter-
12 mines, not later than 90 days after the date the non-
13 Federal Parties agree to the amendment, that the
14 amendment is inconsistent with this Act.

15 **SEC. 5. ACTIONS BY THE KLAMATH TRIBES.**

16 In return for the resolution of the contests of the
17 Klamath Project Water Users related to the water rights
18 claims of the Klamath Tribes and of the United States
19 acting in a capacity as trustee for the Klamath Tribes and
20 members of the Klamath Tribes in the Oregon Klamath
21 Basin Adjudication and for other benefits covered by the
22 Restoration Agreement and this Act, the Klamath Tribes
23 (on behalf of the Klamath Tribes and members of the
24 Klamath Tribes) is authorized to make the commitments
25 contained in the Restoration Agreement, including the as-

1 surances described in section 15 of the Restoration Agree-
2 ment, and such commitments are confirmed as effective
3 and binding in accordance with the terms of the commit-
4 ments without further action by the Klamath Tribes.

5 **SEC. 6. ACTIONS BY THE KARUK AND YUROK TRIBES.**

6 In return for the commitments of the Klamath
7 Project Water Users related to water rights of the Karuk
8 Tribe and the Yurok Tribe as described in the Restoration
9 Agreement and for other benefits covered by the Restora-
10 tion Agreement and this Act, the Karuk Tribe and the
11 Yurok Tribe (on behalf of such Tribes and members of
12 such Tribes) are authorized to make the commitments
13 contained in the Restoration Agreement, including the as-
14 surances described in section 15 of the Restoration Agree-
15 ment, and such commitments are confirmed as effective
16 and binding in accordance with the terms of the commit-
17 ments without further action by the Karuk Tribe or the
18 Yurok Tribe.

19 **SEC. 7. RELEASE OF CLAIMS OF PARTY TRIBES AGAINST**
20 **THE UNITED STATES.**

21 (a) IN GENERAL.—Without affecting rights secured
22 by treaty, Executive order, or other law, the Party Tribes
23 (on behalf of the Party Tribes and members of the Party
24 Tribes) may relinquish and release certain claims against
25 the United States, Federal agencies, or Federal employees

1 described in sections 15.3.5.A, 15.3.6.B.i and 15.3.7.B.i
2 of the Restoration Agreement.

3 (b) CONDITIONS.—The relinquishments and releases
4 shall not be in force or effect until the terms described
5 in sections 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, and 33.2.1
6 of the Restoration Agreement have been fulfilled.

7 (c) TOLLING OF CLAIMS.—

8 (1) IN GENERAL.—Subject to paragraph (2),
9 the period of limitation and time-based equitable de-
10 fense relating to a claim described in this section
11 shall be tolled during the period—

12 (A) beginning on the date of enactment of
13 this Act; and

14 (B) ending on the earlier of—

15 (i) the date on which the Secretary
16 publishes the notice described in sections
17 15.3.5.C, 15.3.6.B.iii, and 15.3.7.B.iii of
18 the Restoration Agreement; or

19 (ii) December 1, 2030.

20 (2) EFFECT OF TOLLING.—Nothing in this sub-
21 section—

22 (A) revives any claim or tolls any period of
23 limitation or time-based equitable defense that
24 expired before the date of enactment of this
25 Act; or

1 (B) precludes the tolling of any period of
2 limitations or any time-based equitable defense
3 under any other applicable law.

4 **SEC. 8. RETENTION OF RIGHTS OF THE PARTY TRIBES.**

5 Notwithstanding the commitments and releases de-
6 scribed in sections 5, 6, and 7, the Party Tribes and the
7 members of the Party Tribes shall retain all claims de-
8 scribed in sections 15.3.5.B, 15.3.6.B.ii, and 15.3.7.B.ii
9 of the Restoration Agreement.

10 **SEC. 9. ACTIONS OF THE UNITED STATES ACTING IN CA-
11 PACITY AS TRUSTEE.**

12 In return for the commitments of the Klamath
13 Project Water Users relating to the water rights and
14 water rights claims of federally recognized tribes of the
15 Klamath Basin and of the United States as trustee for
16 such tribes and other benefits covered by the Restoration
17 Agreement and this Act, the United States, as trustee on
18 behalf of the federally recognized tribes of the Klamath
19 Basin and allottees of reservations of federally recognized
20 tribes of the Klamath Basin in California, is authorized
21 to make the commitments contained in the Restoration
22 Agreement, including the assurances described in section
23 15 of the Restoration Agreement, and such commitments
24 are confirmed as effective and binding in accordance with

1 the terms of the commitments without further action by
2 the United States.

3 **SEC. 10. FURTHER AGREEMENTS OF THE KLAMATH TRIBES**
4 **AND THE UNITED STATES.**

5 The United States and the Klamath Tribes may enter
6 into agreements consistent with section 16.2 of the Res-
7 toration Agreement.

8 **SEC. 11. PUBLICATION OF NOTICE; EFFECT OF PUBLICA-**
9 **TION.**

10 (a) PUBLICATION.—The Secretary shall publish the
11 notice required by section 15.3.4.A or 15.3.4.C of the Res-
12 toration Agreement in accordance with the Restoration
13 Agreement.

14 (b) EFFECT.—On publication of the notice described
15 in subsection (a), the Party Tribes, the United States as
16 trustee for the federally recognized tribes of the Klamath
17 Basin, and other Parties shall have the rights and obliga-
18 tions provided in the Restoration Agreement.

19 **SEC. 12. TRIBAL MANAGEMENT OF FISHERIES PROGRAMS.**

20 Consistent with section 15(a), the Secretaries shall
21 give priority to qualified Party Tribes in awarding grants,
22 contracts, or other agreements, consistent with section 15,
23 for purposes of implementing the fisheries programs de-
24 scribed in part III of the Restoration Agreement.

1 **SEC. 13. EFFECTS ON TRIBES AND THE UNITED STATES.**

2 (a) TRIBES OUTSIDE KLAMATH BASIN UNAF-
3 FECTED.—Nothing in this Act, the Restoration Agree-
4 ment, or the Hydroelectric Settlement affects the rights
5 of any Indian tribe outside the Klamath Basin.

6 (b) NONPARTY TRIBES OF THE KLAMATH BASIN UN-
7 AFFECTED.—Nothing in this Act, the Restoration Agree-
8 ment, or the Hydroelectric Settlement amends, alters, or
9 limits the authority of the federally recognized tribes of
10 the Klamath Basin, other than the Party Tribes, to exer-
11 cise any water rights the tribes hold or may be determined
12 to hold.

13 (c) EFFECT.—Nothing in this Act—

14 (1) affects the ability of the United States to
15 take actions—

16 (A) authorized by law to be taken in the
17 sovereign capacity of the United States, includ-
18 ing any laws relating to health, safety, or the
19 environment, including—

20 (i) the Federal Water Pollution Con-
21 trol Act (33 U.S.C. 1251 et seq.);

22 (ii) the Safe Drinking Water Act (42
23 U.S.C. 300f et seq.);

24 (iii) the Solid Waste Disposal Act (42
25 U.S.C. 6901 et seq.);

1 (iv) the Comprehensive Environmental
2 Response, Compensation, and Liability Act
3 of 1980 (42 U.S.C. 9601 et seq.); and

4 (v) regulations implementing the Acts
5 described in this subparagraph;

6 (B) as trustee for the benefit of federally
7 recognized tribes other than the federally recog-
8 nized tribes of the Klamath Basin;

9 (C) as trustee for the federally recognized
10 tribes of the Klamath Basin and the members
11 of the tribes that are consistent with the Res-
12 toration Agreement and this Act;

13 (D) as trustee for the Party Tribes to en-
14 force the Restoration Agreement and this Act
15 through such legal and equitable remedies as
16 may be available in the appropriate Federal or
17 State court or administrative proceeding, in-
18 cluding the Oregon Klamath Basin Adjudica-
19 tion;

20 (E) as trustee for the federally recognized
21 tribes of the Klamath Basin to acquire water
22 rights after the effective date of the Restoration
23 Agreement (as defined in section 1.5.1 of the
24 Restoration Agreement);

1 (F) as trustee for the federally recognized
2 tribes of the Klamath Basin to use and protect
3 water rights, including water rights acquired
4 after the effective date of the Restoration
5 Agreement (as defined in section 1.5.1 of the
6 Restoration Agreement), subject to the Restora-
7 tion Agreement; or

8 (G) as trustee for the federally recognized
9 tribes of the Klamath Basin to claim water
10 rights or continue to advocate for existing
11 claims for water rights in appropriate Federal
12 and State courts or administrative proceedings
13 with jurisdiction over the claims, subject to the
14 Restoration Agreement;

15 (2) affects the treaty fishing, hunting, trapping,
16 pasturing, or gathering rights of any Indian tribe ex-
17 cept to the extent expressly provided in this Act or
18 the Restoration Agreement; or

19 (3) affects any rights, remedies, privileges, im-
20 munities, and powers, and claims not specifically re-
21 linquished and released under, or limited by, this
22 Act or the Restoration Agreement.

1 **SEC. 14. JUDICIAL REVIEW OF DECISION CONCERNING**
2 **TRIBAL RIGHTS AND OBLIGATIONS.**

3 A decision of the Secretary concerning rights or obli-
4 gations under sections 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii,
5 15.3.8.B, and 15.3.9 of the Restoration Agreement shall
6 be considered a final Federal action for purposes of judi-
7 cial review under subchapter II of chapter 5, and chapter
8 7, of title 5, United States Code (commonly known as the
9 “Administrative Procedure Act”).

10 **SEC. 15. AGREEMENTS AND FUNDING.**

11 (a) AGREEMENTS.—

12 (1) IN GENERAL.—The Secretaries may enter
13 into such agreements and take such other measures
14 (including entering into contracts and financial as-
15 sistance agreements) as the Secretaries consider nec-
16 essary to carry out this Act.

17 (2) HYDROELECTRIC SETTLEMENT.—The Dam
18 Removal Entity may enter into agreements and con-
19 tracts as necessary to assist in the implementation
20 of the Hydroelectric Settlement.

21 (b) ACCEPTANCE AND EXPENDITURE OF NON-FED-
22 ERAL FUNDS.—

23 (1) RESTORATION AGREEMENT.—

24 (A) IN GENERAL.—Notwithstanding title
25 31, United States Code, the Secretaries may ac-
26 cept and expend, without further appropriation,

1 non-Federal funds (including donations or in-
2 kind services, or both) and accept by donation
3 or otherwise real or personal property or any
4 interest in the property, for the purposes of im-
5 plementing the Restoration Agreement.

6 (B) USE.—The funds may be expended,
7 and the property used, under subparagraph (A)
8 only for the purposes for which the funds and
9 property were provided, without further appro-
10 priation or authority.

11 (2) HYDROELECTRIC SETTLEMENT.—

12 (A) IN GENERAL.—Notwithstanding title
13 31, United States Code, if the Department is
14 designated as the Dam Removal Entity, the
15 Secretary may accept, expend without further
16 appropriation, and manage non-Federal funds
17 for the purpose of facilities removal in accord-
18 ance with sections 4 and 7 of the Hydroelectric
19 Settlement.

20 (B) REFUND.—The Secretary is author-
21 ized to administer and refund any funds de-
22 scribed in subparagraph (A) received from the
23 State of California in accordance with the re-
24 quirements established by the State.

1 (c) RIGHTS PROTECTED.—Notwithstanding any
2 other provision of law, this Act and implementation of the
3 Restoration Agreement shall not restrict or alter the eligi-
4 bility of any Party or Indian tribe for or receipt of funds,
5 or be considered an offset against any obligations or funds
6 in existence on the date of enactment of this Act, under
7 any Federal or State law.

8 (d) ESTABLISHMENT OF ACCOUNTS.—There are es-
9 tablished in the Treasury for the deposit of appropriations
10 and other funds (including non-Federal donated funds)
11 the following noninterest-bearing accounts:

12 (1) The On-Project Plan and Power for Water
13 Management Fund.

14 (2) The Water Use Retirement and Off-Project
15 Reliance Fund.

16 (3) The Klamath Drought Fund.

17 (e) MANAGEMENT.—The accounts established by
18 subsection (d) shall be managed in accordance with this
19 Act and section 14.3 of the Restoration Agreement.

20 (f) BUDGET REQUESTS.—When submitting annual
21 budget requests to Congress, the President may include
22 funding described in Appendix C–2 of the Restoration
23 Agreement with such adjustment as the President con-
24 sidered appropriate to maintain timely implementation of
25 the Restoration Agreement.

1 (g) NONREIMBURSABLE.—Except as provided in sub-
2 section (i), funds appropriated and expended for the im-
3 plementation of the Restoration Agreement shall be nonre-
4 imburseable and nonreturnable to the United States.

5 (h) FUNDS AVAILABLE UNTIL EXPENDED.—All
6 funds made available for the implementation of the Res-
7 toration Agreement shall remain available until expended.

8 (i) TERMINATION OF RESTORATION AGREEMENT.—
9 If the Restoration Agreement terminates—

10 (1) any appropriated Federal funds provided to
11 a Party by the Secretaries that are unexpended at
12 the time of the termination of the Restoration
13 Agreement shall be returned to the Treasury; and

14 (2) any appropriated Federal funds provided to
15 a Party by the Secretaries shall be treated as an off-
16 set against any claim for damages by the Party aris-
17 ing under the Restoration Agreement.

18 **SEC. 16. KLAMATH RECLAMATION PROJECT.**

19 (a) KLAMATH RECLAMATION PROJECT PURPOSES.—
20 The purposes of the Klamath Reclamation Project shall
21 be irrigation, reclamation, flood control, municipal, indus-
22 trial, power (as necessary to implement the Restoration
23 Agreement), National Wildlife Refuge, and fish and wild-
24 life.

25 (b) EFFECT OF FISH AND WILDLIFE PURPOSES.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the fish and wildlife and National Wildlife Refuge
3 purposes of the Klamath Reclamation Project shall
4 not adversely affect the irrigation purpose of the
5 Klamath Reclamation Project.

6 (2) WATER ALLOCATIONS AND DELIVERY.—The
7 provisions regarding water allocations and delivery
8 to the National Wildlife Refuges in section 15.1.2 of
9 the Restoration Agreement (including any additional
10 water made available under sections 15.1.2.E.ii and
11 18.3.2.B.v of the Restoration Agreement) shall not
12 be considered to have an adverse effect on the irriga-
13 tion purpose of the Klamath Reclamation Project.

14 (c) WATER RIGHTS ADJUDICATION.—Notwith-
15 standing subsections (a) and (b), for purposes of the de-
16 termination of water rights in Oregon Klamath Basin Ad-
17 judication, until Appendix E–1 to the Restoration Agree-
18 ment has been filed in the Oregon Klamath Basin Adju-
19 dication, the 1 or more purposes of the Klamath Reclama-
20 tion Project shall continue as in existence prior to the date
21 of enactment of this Act.

22 (d) DISPOSITION OF NET REVENUES FROM LEASING
23 OF TULE LAKE AND LOWER KLAMATH NATIONAL WILD-
24 LIFE REFUGE LAND.—Notwithstanding any other provi-
25 sion of law, net revenues from the leasing of refuge land

1 within the Tule Lake National Wildlife Refuge and the
2 Lower Klamath National Wildlife Refuge under section 4
3 of Public Law 88–567 (16 U.S.C. 695n) shall be provided,
4 without further appropriation, as follows:

5 (1) 10 percent of net revenues from land within
6 the Tule Lake National Wildlife Refuge that are
7 within the boundaries of Tulelake Irrigation District
8 shall be provided to the Tulelake Irrigation District
9 in accordance with article 4 of Contract No. 14–06–
10 200–5954 and section 2(a) of the Act of August 1,
11 1956 (70 Stat. 799, chapter 828).

12 (2) Such amounts as are necessary shall be
13 used to make payment to counties in lieu of taxes
14 in accordance with section 3 of Public Law 88–567
15 (16 U.S.C. 695m).

16 (3) 20 percent of net revenues shall be provided
17 directly to the United States Fish and Wildlife Serv-
18 ice for wildlife management purposes on the Tule
19 Lake National Wildlife Refuge and Lower Klamath
20 National Wildlife Refuge.

21 (4) 10 percent of net revenues from land within
22 Lower Klamath National Wildlife Refuge that are
23 within the boundaries of the Klamath Drainage Dis-
24 trict shall be provided directly to Klamath Drainage
25 District for operation and maintenance responsibility

1 for the Federal Reclamation water delivery and
2 drainage facilities within the boundaries of both
3 Klamath Drainage District and Lower Klamath Na-
4 tional Wildlife Refuge exclusive of the Klamath
5 Straits Drain, subject to the assumption by the
6 Klamath Drainage District of the operation and
7 maintenance duties of the Bureau of Reclamation
8 for Klamath Drainage District (Area K) lease land
9 exclusive of Klamath Straits Drain.

10 (5) The remainder of net revenues shall be pro-
11 vided directly to the Bureau of Reclamation for—

12 (A) operation and maintenance costs of
13 Link River and Keno Dams incurred by the
14 United States; and

15 (B) to the extent that the revenues re-
16 ceived under this paragraph for any year exceed
17 the costs described in subparagraph (A), future
18 capital costs of the Klamath Reclamation
19 Project.

20 **SEC. 17. HYDROELECTRIC SETTLEMENT.**

21 (a) SECRETARIAL DETERMINATION.—

22 (1) IN GENERAL.—The Secretary shall deter-
23 mine, consistent with section 3 of the Hydroelectric
24 Settlement, whether to proceed with facilities re-
25 moval and may determine to proceed with facilities

1 removal if, as determined by the Secretary, facilities
2 removal—

3 (A) will advance restoration of the
4 salmonid fisheries of the Klamath Basin; and

5 (B) is in the public interest, taking into ac-
6 count potential impacts on affected local com-
7 munities and federally recognized Indian tribes
8 among other factors.

9 (2) BASIS FOR SECRETARIAL DETERMINA-
10 TION.—To support the Secretarial determination,
11 the Secretary, in cooperation with the Secretary of
12 Commerce and other entities, shall—

13 (A) use existing information;

14 (B) conduct any necessary further appro-
15 priate studies;

16 (C) prepare an environmental document
17 under the National Environmental Policy Act of
18 1969 (42 U.S.C. 4321 et seq.); and

19 (D) take such other actions as the Sec-
20 retary determines to be appropriate.

21 (3) DESIGNATION OF DAM REMOVAL ENTITY.—

22 (A) IN GENERAL.—If the Secretarial deter-
23 mination provides for proceeding with facilities
24 removal, the Secretarial determination shall in-

1 clude the designation of a Dam Removal Enti-
2 ty.

3 (B) REQUIREMENTS.—

4 (i) IN GENERAL.—Subject to clause
5 (ii), the Dam Removal Entity designated
6 by the Secretary shall be the Department
7 if the Secretary determines, in the judg-
8 ment of the Secretary, that—

9 (I) the Department has the capa-
10 bilities and responsibilities for facili-
11 ties removal described in section 7 of
12 the Hydroelectric Settlement; and

13 (II) it is appropriate for the De-
14 partment to be the Dam Removal En-
15 tity.

16 (ii) NON-FEDERAL DAM REMOVAL EN-
17 TITY.—As determined by the Secretary
18 and consistent with section 3.3.4.E of the
19 Hydroelectric Settlement, the Secretary
20 may designate a non-Federal Dam Re-
21 moval Entity if—

22 (I) the Secretary finds that the
23 Dam Removal Entity-designate is
24 qualified and has the capabilities and
25 responsibilities for facilities removal

1 described in section 7 of the Hydro-
2 electric Settlement;

3 (II) the States have concurred in
4 the finding; and

5 (III) the Dam Removal Entity-
6 designate has committed, if so des-
7 ignated, to perform facilities removal
8 within the State Cost Cap described
9 in section 4.1.3 of the Hydroelectric
10 Settlement.

11 (4) CONDITIONS FOR SECRETARIAL DETER-
12 MINATION.—The Secretary may not make or publish
13 the Secretarial determination, unless the conditions
14 specified in section 3.3.4 of the Hydroelectric Settle-
15 ment have been satisfied.

16 (5) NOTICE.—The Secretary shall—

17 (A) publish notification of the Secretarial
18 determination in the Federal Register; and

19 (B) submit to the Committee on Energy
20 and Natural Resources of the Senate, the Com-
21 mittee on Indian Affairs of the Senate, and the
22 Committee on Natural Resources of the House
23 of Representatives a report on implementation
24 of the Hydroelectric Settlement.

1 (6) JUDICIAL REVIEW OF SECRETARIAL DETER-
2 MINATION.—

3 (A) IN GENERAL.—For purposes of judi-
4 cial review, the Secretarial determination shall
5 constitute a final agency action with respect to
6 whether or not to proceed with facilities re-
7 moval.

8 (B) PETITION FOR REVIEW.—

9 (i) FILING.—

10 (I) IN GENERAL.—Judicial re-
11 view of the Secretarial determination
12 and related actions to comply with en-
13 vironmental laws (including the Na-
14 tional Environmental Policy Act of
15 1969 (42 U.S.C. 4321 et seq), the
16 Endangered Species Act of 1973 (16
17 U.S.C. 1531 et seq), and the National
18 Historic Preservation Act (16 U.S.C.
19 470 et seq.)) may be obtained by an
20 aggrieved person or entity only as pro-
21 vided in this paragraph.

22 (II) JURISDICTION.—A petition
23 for review under this subparagraph
24 may be filed only in the United States
25 Court of Appeals for the District of

1 Columbia Circuit or in the Ninth Cir-
2 cuit Court of Appeals.

3 (III) LIMITATION.—A district
4 court of the United States shall not
5 have jurisdiction to review the Secre-
6 tarial determination or related actions
7 to comply with environmental laws de-
8 scribed in subclause (I).

9 (ii) DEADLINE.—

10 (I) IN GENERAL.—Except as pro-
11 vided in subclause (II), any petition
12 for review under this paragraph shall
13 be filed within 60 days after the date
14 of publication of the Secretarial deter-
15 mination in the Federal Register.

16 (II) SUBSEQUENT GROUNDS.—If
17 a petition is based solely on grounds
18 arising after the date that is 60 days
19 after the date of publication of the
20 Secretarial determination in the Fed-
21 eral Register, the petition for review
22 under this paragraph shall be filed not
23 later than 60 days after the grounds
24 arise.

1 (C) IMPLEMENTATION.—Any action of the
2 Secretary with respect to which review could
3 have been obtained under this paragraph shall
4 not be subject to judicial review in any action
5 relating to the implementation of the Secre-
6 tarial determination or in proceedings for en-
7 forcement of the Hydroelectric Settlement.

8 (D) APPLICABLE STANDARD AND SCOPE.—
9 Judicial review of the Secretarial determination
10 shall be in accordance with the standard and
11 scope of review under subchapter II of chapter
12 5, and chapter 7, of title 5, United States Code
13 (commonly known as the “Administrative Pro-
14 cedure Act”).

15 (E) NONTOLLING.—The filing of a petition
16 for reconsideration by the Secretary of an ac-
17 tion subject to review under this paragraph
18 shall not—

19 (i) affect the finality of the action for
20 purposes of judicial review;

21 (ii) extend the time within which a pe-
22 tition for judicial review under this para-
23 graph may be filed; or

24 (iii) postpone the effectiveness of the
25 action.

1 (b) FACILITIES TRANSFER AND REMOVAL.—

2 (1) FACILITIES REMOVAL PROCESS.—

3 (A) APPLICATION.—This paragraph shall
4 apply if—

5 (i) the Secretarial determination pro-
6 vides for proceeding with facilities removal;

7 (ii) the States concur in the Secre-
8 tarial determination in accordance with
9 section 3.3.5 of the Hydroelectric Settle-
10 ment;

11 (iii) the availability of non-Federal
12 funds for the purposes of facilities removal
13 is consistent with the Hydroelectric Settle-
14 ment; and

15 (iv) the Hydroelectric Settlement has
16 not terminated in accordance with section
17 8.11 of the Hydroelectric Settlement.

18 (B) FACILITIES REMOVAL.—

19 (i) IN GENERAL.—The Dam Removal
20 Entity shall, consistent with the Hydro-
21 electric Settlement—

22 (I) develop a definite plan for fa-
23 cilities removal, including a schedule
24 for facilities removal;

1 (II) obtain all permits, authoriza-
2 tions, entitlements, certifications, and
3 other approvals necessary to imple-
4 ment facilities removal, including a
5 permit under section 404 of the Fed-
6 eral Water Pollution Control Act (33
7 U.S.C. 1344); and

8 (III) implement facilities re-
9 moval.

10 (ii) STATE AND LOCAL LAWS.—Facili-
11 ties removal shall be subject to applicable
12 requirements of State and local laws re-
13 specting permits and other authorizations,
14 to the extent the requirements are not in
15 conflict with Federal law, including the
16 Secretarial determination and the detailed
17 plan (including the schedule) for facilities
18 removal authorized under this Act.

19 (iii) LIMITATIONS.—Clause (ii) shall
20 not affect—

21 (I) the authorities of the States
22 regarding concurrence with the Secre-
23 tarial determination in accordance
24 with State law; or

1 (II) the authority of a State pub-
2 lic utility commission regarding fund-
3 ing of facilities removal.

4 (iv) ACCEPTANCE OF TITLE TO FA-
5 CILITIES.—The Dam Removal Entity is
6 authorized to accept from PacifiCorp all
7 rights, titles, permits, and other interests
8 in the facilities and associated land, for fa-
9 cilities removal and for disposition of facil-
10 ity land (as provided in section 7.6.4 of the
11 Hydroelectric Settlement) upon the Dam
12 Removal Entity providing notice that the
13 Dam Removal Entity is ready to com-
14 mence facilities removal in accordance with
15 section 7.4.1 of the Hydroelectric Settle-
16 ment.

17 (v) CONTINUED POWER GENERA-
18 TION.—

19 (I) IN GENERAL.—In accordance
20 with an agreement negotiated under
21 subclause (II), on transfer of title
22 pursuant to clause (iv) and until the
23 Dam Removal Entity instructs
24 PacifiCorp to cease the generation of

1 power, PacifiCorp may, consistent
2 with State law—

3 (aa) continue generating and
4 retaining title to any power gen-
5 erated by the facilities in accord-
6 ance with section 7 of the Hydro-
7 electric Settlement; and

8 (bb) continue to transmit
9 and use the power for the benefit
10 of the customers of PacifiCorp
11 under the jurisdiction of applica-
12 ble State public utility commis-
13 sions and the Commission.

14 (II) AGREEMENT WITH DAM RE-
15 MOVAL ENTITY.—Before transfer of
16 title pursuant to clause (iv), the Dam
17 Removal Entity shall enter into an
18 agreement with PacifiCorp that pro-
19 vides for continued generation of
20 power in accordance with subclause
21 (I).

22 (2) JURISDICTION.—The United States district
23 courts shall have original jurisdiction over all claims
24 regarding the consistency of State and local laws re-
25 garding permits and other authorizations, and of

1 State and local actions pursuant to those laws, with
2 the Secretarial determination and the detailed plan
3 (including the schedule) for facilities removal author-
4 ized under this Act.

5 (3) NO PRIVATE RIGHT OF ACTION.—

6 (A) IN GENERAL.—Nothing in this Act
7 confers on any person or entity not a party to
8 the Hydroelectric Settlement a private right of
9 action or claim for relief to interpret or enforce
10 this Act or the Hydroelectric Settlement.

11 (B) OTHER LAW.—This paragraph does
12 not alter or curtail any right of action or claim
13 for relief under any other applicable law.

14 (c) TRANSFER OF KENO DEVELOPMENT.—

15 (1) IN GENERAL.—The Secretary shall accept
16 the transfer of title in the Keno Development to the
17 United States in accordance with section 7.5 of the
18 Hydroelectric Settlement.

19 (2) EFFECT OF TRANSFER.—On the transfer
20 and without further action by Congress—

21 (A) the Keno Development shall—

22 (i) become part of the Klamath Rec-
23 lamation Project; and

24 (ii) be operated and maintained in ac-
25 cordance with Federal reclamation law (the

1 Act of June 17, 1902 (32 Stat. 388, chap-
2 ter 1093), and Acts supplemental to and
3 amendatory of that Act (43 U.S.C. 371 et
4 seq.) and this Act; and

5 (B) Commission jurisdiction over the Keno
6 Development shall terminate.

7 (d) LIABILITY PROTECTION.—

8 (1) PACIFICORP.—Notwithstanding any other
9 Federal, State, local, or other law (including com-
10 mon law), PacifiCorp shall not be liable for any
11 harm to persons, property, or the environment, or
12 damages resulting from either facilities removal or
13 facility operation, arising from, relating to, or trig-
14 gered by actions associated with facilities removal,
15 including but not limited to any damage caused by
16 the release of any material or substance (including
17 but not limited to hazardous substances).

18 (2) FUNDING.—Notwithstanding any other
19 Federal, State, local, or other law, no person or enti-
20 ty contributing funds for facilities removal pursuant
21 to the Hydroelectric Settlement shall be held liable,
22 solely by virtue of that funding, for any harm to per-
23 sons, property, or the environment, or damages aris-
24 ing from either facilities removal or facility oper-
25 ation, arising from, relating to, or triggered by ac-

1 tions associated with facilities removal, including any
2 damage caused by the release of any material or
3 substance (including hazardous substances).

4 (3) PREEMPTION.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), notwithstanding section
7 10(c) of the Federal Power Act (16 U.S.C.
8 803(c)), protection from liability under this sec-
9 tion preempts the laws of any State to the ex-
10 tent the laws are inconsistent with this Act.

11 (B) OTHER PROVISIONS OF LAW.—This
12 Act does not limit any otherwise available im-
13 munity, privilege, or defense under any other
14 provision of law.

15 (4) APPLICATION.—Liability protection under
16 this section shall apply to any particular facility be-
17 ginning on the date of transfer of title to that facil-
18 ity from PacifiCorp to the Dam Removal Entity.

19 (e) LICENSES.—

20 (1) ANNUAL LICENSES.—

21 (A) IN GENERAL.—The Commission shall
22 issue annual licenses authorizing PacifiCorp to
23 continue to operate the facilities until
24 PacifiCorp transfers title to all of the facilities.

1 (B) TERMINATION.—The annual licenses
2 shall terminate with respect to a facility on
3 transfer of title for such facility from
4 PacifiCorp to the Dam Removal Entity.

5 (C) STAGED REMOVAL.—

6 (i) IN GENERAL.—On transfer of title
7 of any facility by PacifiCorp to the Dam
8 Removal Entity, annual license conditions
9 shall no longer be in effect with respect to
10 the facility.

11 (ii) NONTRANSFER OF TITLE.—An-
12 nual license conditions shall remain in ef-
13 fect with respect to any facility for which
14 PacifiCorp has not transferred title to the
15 Dam Removal Entity to the extent compli-
16 ance with the annual license conditions are
17 not prevented by the removal of any other
18 facility.

19 (2) JURISDICTION.—The jurisdiction of the
20 Commission under part I of the Federal Power Act
21 (16 U.S.C. 791a et seq.) shall terminate with re-
22 spect to a facility on the transfer of title for the fa-
23 cility from PacifiCorp to the Dam Removal Entity.

24 (3) RELICENSING.—

1 (A) IN GENERAL.—The Commission
2 shall—

3 (i) stay the proceeding of the Commis-
4 sion on the pending license application of
5 PacifiCorp for Project No. 2082 as long as
6 the Hydroelectric Settlement remains in ef-
7 fect; and

8 (ii) resume the proceeding and pro-
9 ceed to take final action on the new license
10 application only if the Hydroelectric Settle-
11 ment terminates pursuant to section 8.11
12 of the Hydroelectric Settlement.

13 (B) TERMINATION.—If the Hydroelectric
14 Settlement is terminated, the Commission, in
15 proceedings on the new license application, shall
16 not be bound by the record, findings, or deter-
17 mination of the Secretary under this section.

18 (4) EAST SIDE AND WEST SIDE DEVELOP-
19 MENTS.—On filing by PacifiCorp of an application
20 for surrender of the East Side and West Side Devel-
21 opments in Project No. 2082, the Commission shall
22 issue an order approving partial surrender of the li-
23 cense for Project No. 2082, including any reasonable
24 and appropriate conditions, as provided in section
25 6.4.1 of the Hydroelectric Settlement.

1 (5) FALL CREEK.—Notwithstanding paragraph
2 (2), not later than 60 days after the date of the
3 transfer of the Iron Gate Facility to the Dam Re-
4 moval Entity, the Commission shall resume timely
5 consideration of the pending licensing application for
6 the Fall Creek development pursuant to the Federal
7 Power Act (16 U.S.C. 791a et seq.), regardless of
8 whether PacifiCorp retains ownership of Fall Creek
9 or transfers ownership to a new licensee.

10 (6) IRON GATE HATCHERY.—Notwithstanding
11 section 8 of the Federal Power Act (16 U.S.C. 801),
12 the PacifiCorp Hatchery Facilities within the State
13 of California shall be transferred to the State of
14 California at the time of transfer to the Dam Re-
15 moval Entity of the Iron Gate Hydro Development
16 facility or such other time agreed by the Parties to
17 the Hydroelectric Settlement.

18 (7) TRANSFERS OF FACILITIES.—Notwith-
19 standing section 8 of the Federal Power Act (16
20 U.S.C. 801), the transfer of PacifiCorp facilities to
21 a non-Federal dam removal entity consistent with
22 the Hydroelectric Settlement and this Act is author-
23 ized.

24 **SEC. 18. MISCELLANEOUS.**

25 (a) WATER RIGHTS.—

1 (1) IN GENERAL.—Except as specifically pro-
2 vided in this Act and the Restoration Agreement or
3 the Hydroelectric Settlement, nothing in this Act,
4 the Restoration Agreement, or the Hydroelectric
5 Settlement creates or determines water rights or af-
6 fects water rights or water right claims in existence
7 on the date of enactment of this Act.

8 (2) NO STANDARD FOR QUANTIFICATION.—
9 Nothing in this Act, the Restoration Agreement, or
10 the Hydroelectric Settlement establishes any stand-
11 ard for the quantification of Federal reserved water
12 rights or any Indian water claims of any Indian
13 tribe in any judicial or administrative proceeding.

14 (b) LIMITATIONS.—

15 (1) IN GENERAL.—Nothing in this Act—

16 (A) confers on any person or entity who is
17 not a party to the Restoration Agreement a pri-
18 vate right of action or claim for relief to inter-
19 pret or enforce this Act or the Restoration
20 Agreement; or

21 (B) expands the jurisdiction of State
22 courts to review Federal agency actions or de-
23 termine Federal rights.

1 (2) EFFECT.—Nothing in this subsection alters
2 or curtails any right of action or claim for relief
3 under other applicable law.

4 (c) RELATIONSHIP TO CERTAIN OTHER FEDERAL
5 LAW.—

6 (1) IN GENERAL.—Nothing in this Act amends,
7 supersedes, modifies, or otherwise affects—

8 (A) Public Law 88–567 (16 U.S.C. 695k
9 et seq.);

10 (B) the National Wildlife Refuge System
11 Administration Act of 1966 (16 U.S.C. 668dd
12 et seq.);

13 (C) the Endangered Species Act of 1973
14 (16 U.S.C. 1531 et seq.);

15 (D) the Federal Water Pollution Control
16 Act (33 U.S.C. 1251 et seq.), except to the ex-
17 tent section 17(b) requires a permit under sec-
18 tion 404 of that Act (33 U.S.C. 1344) notwith-
19 standing section 404(r) of that Act (33 U.S.C.
20 1344(r)); or

21 (E) the Federal Land Policy and Manage-
22 ment Act of 1976 (43 U.S.C. 1701 et seq.).

23 (2) CONSISTENCY.—The Restoration Agree-
24 ment shall be considered consistent with subsections

1 (a) through (c) of section 208 of the Act of July 10,
2 1952 (66 Stat. 560, chapter 651; 43 U.S.C. 666).

3 (d) WILLING SELLERS.—Any acquisition of interests
4 in land or water pursuant to this Act or the Restoration
5 Agreement shall be from willing sellers.