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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Klamath Basin Community and Economic Recovery Act of 2011”.
(b) **TABLE OF CONTENTS.**—The table of contents of 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. 15. Agreements and funding.
- Sec. 16. Klamath Reclamation Project.
- Sec. 17. Hydroelectric Settlement.
- Sec. 18. Miscellaneous.

3 **SEC. 2. DEFINITIONS.**

In this Act:

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

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

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

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

5. (5) **DEFINITE PLAN.**—The term “definite plan” has the meaning given the term in section 1.4 of the Hydroelectric Settlement.
(6) **Detailed Plan.**—The term “detailed plan” has the meaning given the term in section 1.4 of the Hydroelectric Settlement.

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

(A) Iron Gate Development.

(B) Copco 1 Development.

(C) Copco 2 Development.

(D) J.C. Boyle Development.

(8) **Facilities Removal.**—The term “facilities removal” means—

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

(B) site remediation and restoration, including restoration of previously inundated land;

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

(D) all associated permitting for the actions described in this paragraph.
(9) **FEDERALLY RECOGNIZED TRIBE.**—The term “federally recognized tribe” means an Indian tribe listed as federally recognized in—

(A) the Bureau of Indian Affairs publication entitled “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs” (74 Fed. Reg. 40218 (Aug. 11, 2009)); or

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

(10) **HYDROELECTRIC SETTLEMENT.**—

(A) **IN GENERAL.**—The term “Hydroelectric Settlement” means the agreement entitled “Klamath Hydroelectric Settlement Agreement,” dated February 18, 2010, between—

(i) the Department;

(ii) the Department of Commerce;

(iii) the State of California;

(iv) the State of Oregon;

(v) PacifiCorp; and

(vi) other parties.

(B) **INCLUSIONS.**—The term “Hydroelectric Settlement” includes any amendments
to the Agreement described in subparagraph (A)—

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

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

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

(12) KLAMATH BASIN.—

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

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

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

(A) the Tulelake Irrigation District;

(B) the Klamath Irrigation District;

(C) the Klamath Drainage District;

(D) the Klamath Basin Improvement District;
(E) the Ady District Improvement Company;

(F) the Enterprise Irrigation District;

(G) the Malin Irrigation District;

(H) the Midland District Improvement District;

(I) the Pioneer District Improvement Company;

(J) the Shasta View Irrigation District;

(K) the Sunnyside Irrigation District;

(L) Don Johnston & Son;

(M) Bradley S. Luscombe;

(N) Randy Walthall;

(O) the Inter-County Title Company;

(P) the Reames Golf and Country Club;

(Q) the Winema Hunting Lodge, Inc.;

(R) Van Brimmer Ditch Company;

(S) Plevna District Improvement Company; and

(T) Collins Products, LLC.

(14) NET REVENUES.—

(A) IN GENERAL.—The term “net revenues” has the meaning given the term “net lease revenues” in Article 1(e) of Contract No.
14–06–200–5954 between Tulelake Irrigation District and the United States.

(B) INCLUSIONS.—The term “net revenues” includes revenues from the leasing of land in—

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

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

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

(16) OREGON KLAMATH BASIN ADJUDICATION.—The term “Oregon Klamath Basin adjudication” means the proceeding to determine water rights pursuant to chapter 539 of the Oregon Revised Statutes entitled “In the matter of the determination of the relative rights of the waters of the Klamath River, a tributary of the Pacific Ocean”.

(17) PACIFICORP.—The term “PacifiCorp” means the owner and licensee of the Klamath Hydroelectric Project, FERC Project No. 2082.
(18) PARTY.—The term “Party” means each of the signatories to the Restoration Agreement, including the Secretaries.

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

(A) the Yurok Tribe;

(B) the Karuk Tribe; and

(C) the Klamath Tribes.

(20) RESTORATION AGREEMENT.—

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

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

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

(ii) approved pursuant to section 4(a)(1)(B).
(21) **Secretarial determination.**—The term “Secretarial determination” means a determination of the Secretary made under section 17(a).

(22) **Secretaries.**—The term “Secretaries” means—

(A) the Secretary of the Interior or designee;

(B) the Secretary of Commerce or designee; and

(C) the Secretary of Agriculture or designee.

(23) **Secretary.**—The term “Secretary” means the Secretary of the Interior.

(24) **States.**—The term “States” means—

(A) the State of Oregon; and

(B) the State of California.

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

The United States approves the Restoration Agreement and the Hydroelectric Settlement except to the extent the Restoration Agreement or the Hydroelectric Settlement conflicts with this Act.

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

(a) **Restoration Agreement.**—

(1) **In general.**—The Secretaries shall—
(A) sign and implement the Restoration Agreement;

(B) implement any amendment to the Restoration Agreement approved by the Parties after the date of enactment of this Act, unless 1 or more of the Secretaries determines, not later than 90 days after the date the non-Federal Parties agree to the amendment, that the amendment is inconsistent with this Act or other provisions of law; and

(C) to the extent consistent with the Restoration Agreement, this Act, and other provisions of law, perform all actions necessary to carry out each responsibility of the Secretary concerned under the Restoration Agreement.

(2) Effect of signing of Restoration Agreement.—Signature by the Secretaries of the Restoration Agreement does not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) Compliance with existing law.—In implementing the Restoration Agreement, the Secretaries 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 Federal environmental laws (including regulations).

(b) HYDROELECTRIC SETTLEMENT.—The Secretary, the Secretary of Commerce, and the Commission, or designees, shall implement, in consultation with other applicable Federal agencies—

(1) the Hydroelectric Settlement; and
(2) any amendment to the Hydroelectric Settlement, unless 1 or more of the Secretaries determines, not later than 90 days after the date the non-Federal Parties agree to the amendment, that the amendment is inconsistent with this Act.

SEC. 5. ACTIONS BY THE KLAMATH TRIBES.

In return for the resolution of the contests of the Klamath Project Water Users related to the water rights claims of the Klamath Tribes and of the United States acting in a capacity as trustee for the Klamath Tribes and members of the Klamath Tribes in the Oregon Klamath Basin Adjudication and for other benefits covered by the Restoration Agreement and this Act, the Klamath Tribes (on behalf of the Klamath Tribes and members of the Klamath Tribes) is authorized to make the commitments contained in the Restoration Agreement, including the as-
surances described in section 15 of the Restoration Agree-
ment, and such commitments are confirmed as effective
and binding in accordance with the terms of the commit-
ments without further action by the Klamath Tribes.

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

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

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

(a) In General.—Without affecting rights secured
by treaty, Executive order, or other law, the Party Tribes
(on behalf of the Party Tribes and members of the Party
Tribes) may relinquish and release certain claims against
the United States, Federal agencies, or Federal employees
described in sections 15.3.5.A, 15.3.6.B.i and 15.3.7.B.i of the Restoration Agreement.

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

(c) TOLLING OF CLAIMS.—

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

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

(B) ending on the earlier of—

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

(ii) December 1, 2030.

(2) EFFECT OF TOLLING.—Nothing in this subsection—

(A) revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act; or
(B) precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

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

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

SEC. 9. ACTIONS OF THE UNITED STATES ACTING IN CAPACITY AS TRUSTEE.

In return for the commitments of the Klamath Project Water Users relating to the water rights and water rights claims of federally recognized tribes of the Klamath Basin and of the United States as trustee for such tribes and other benefits covered by the Restoration Agreement and this Act, the United States, as trustee on behalf of the federally recognized tribes of the Klamath Basin and allottees of reservations of federally recognized tribes of the Klamath Basin in California, is authorized to make the commitments contained in the Restoration Agreement, including the assurances described in section 15 of the Restoration Agreement, and such commitments are confirmed as effective and binding in accordance with
the terms of the commitments without further action by
the United States.

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

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

SEC. 11. PUBLICATION OF NOTICE; EFFECT OF PUBLICA-
TION.

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

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

SEC. 12. TRIBAL MANAGEMENT OF FISHERIES PROGRAMS.

Consistent with section 15(a), the Secretaries shall
give priority to qualified Party Tribes in awarding grants,
contracts, or other agreements, consistent with section 15,
for purposes of implementing the fisheries programs de-
scribed in part III of the Restoration Agreement.
SEC. 13. EFFECTS ON TRIBES AND THE UNITED STATES.

(a) Tribes Outside Klamath Basin Unaffected.—Nothing in this Act, the Restoration Agreement, or the Hydroelectric Settlement affects the rights of any Indian tribe outside the Klamath Basin.

(b) Nonparty Tribes of the Klamath Basin Unaffected.—Nothing in this Act, the Restoration Agreement, or the Hydroelectric Settlement amends, alters, or limits the authority of the federally recognized tribes of the Klamath Basin, other than the Party Tribes, to exercise any water rights the tribes hold or may be determined to hold.

(c) Effect.—Nothing in this Act—

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

(A) authorized by law to be taken in the sovereign capacity of the United States, including any laws relating to health, safety, or the environment, including—

(i) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

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

(iii) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).
(iv) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); and

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

(B) as trustee for the benefit of federally recognized tribes other than the federally recognized tribes of the Klamath Basin;

(C) as trustee for the federally recognized tribes of the Klamath Basin and the members of the tribes that are consistent with the Restoration Agreement and this Act;

(D) as trustee for the Party Tribes to enforce the Restoration Agreement and this Act through such legal and equitable remedies as may be available in the appropriate Federal or State court or administrative proceeding, including the Oregon Klamath Basin Adjudication;

(E) as trustee for the federally recognized tribes of the Klamath Basin to acquire water rights after the effective date of the Restoration Agreement (as defined in section 1.5.1 of the Restoration Agreement);
(F) as trustee for the federally recognized tribes of the Klamath Basin to use and protect water rights, including water rights acquired after the effective date of the Restoration Agreement (as defined in section 1.5.1 of the Restoration Agreement), subject to the Restoration Agreement; or

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

(2) affects the treaty fishing, hunting, trapping, pasturing, or gathering rights of any Indian tribe except to the extent expressly provided in this Act or the Restoration Agreement; or

(3) affects any rights, remedies, privileges, immunities, and powers, and claims not specifically relinquished and released under, or limited by, this Act or the Restoration Agreement.
SEC. 14. JUDICIAL REVIEW OF DECISION CONCERNING TRIBAL RIGHTS AND OBLIGATIONS.

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

SEC. 15. AGREEMENTS AND FUNDING.

(a) AGREEMENTS.—

(1) IN GENERAL.—The Secretaries may enter into such agreements and take such other measures (including entering into contracts and financial assistance agreements) as the Secretaries consider necessary to carry out this Act.

(2) HYDROELECTRIC SETTLEMENT.—The Dam Removal Entity may enter into agreements and contracts as necessary to assist in the implementation of the Hydroelectric Settlement.

(b) ACCEPTANCE AND EXPENDITURE OF NON-FEDERAL FUNDS.—

(1) RESTORATION AGREEMENT.—

(A) IN GENERAL.—Notwithstanding title 31, United States Code, the Secretaries may accept and expend, without further appropriation,
non-Federal funds (including donations or in-kind services, or both) and accept by donation or otherwise real or personal property or any interest in the property, for the purposes of implementing the Restoration Agreement.

(B) Use.—The funds may be expended, and the property used, under subparagraph (A) only for the purposes for which the funds and property were provided, without further appropriation or authority.

(2) HYDROELECTRIC SETTLEMENT.—

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

(B) REFUND.—The Secretary is authorized to administer and refund any funds described in subparagraph (A) received from the State of California in accordance with the requirements established by the State.
(c) Rights Protected.—Notwithstanding any other provision of law, this Act and implementation of the Restoration Agreement shall not restrict or alter the eligibility of any Party or Indian tribe for or receipt of funds, or be considered an offset against any obligations or funds in existence on the date of enactment of this Act, under any Federal or State law.

(d) Establishment of Accounts.—There are established in the Treasury for the deposit of appropriations and other funds (including non-Federal donated funds) the following noninterest-bearing accounts:

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

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

(3) The Klamath Drought Fund.

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

(f) Budget Requests.—When submitting annual budget requests to Congress, the President may include funding described in Appendix C–2 of the Restoration Agreement with such adjustment as the President considers appropriate to maintain timely implementation of the Restoration Agreement.
(g) NONREIMBURSABLE.—Except as provided in subsection (i), funds appropriated and expended for the implementation of the Restoration Agreement shall be nonreimbursable and nonreturnable to the United States.

(h) FUNDS AVAILABLE UNTIL EXPENDED.—All funds made available for the implementation of the Restoration Agreement shall remain available until expended.

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

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

(2) any appropriated Federal funds provided to a Party by the Secretaries shall be treated as an offset against any claim for damages by the Party arising under the Restoration Agreement.

SEC. 16. KLAMATH RECLAMATION PROJECT.

(a) KLAMATH RECLAMATION PROJECT PURPOSES.—The purposes of the Klamath Reclamation Project shall be irrigation, reclamation, flood control, municipal, industrial, power (as necessary to implement the Restoration Agreement), National Wildlife Refuge, and fish and wildlife.

(b) EFFECT OF FISH AND WILDLIFE PURPOSES.—
(1) In general.—Subject to paragraph (2), the fish and wildlife and National Wildlife Refuge purposes of the Klamath Reclamation Project shall not adversely affect the irrigation purpose of the Klamath Reclamation Project.

(2) Water allocations and delivery.—The provisions regarding water allocations and delivery to the National Wildlife Refuges in section 15.1.2 of the Restoration Agreement (including any additional water made available under sections 15.1.2.E.ii and 18.3.2.B.v of the Restoration Agreement) shall not be considered to have an adverse effect on the irrigation purpose of the Klamath Reclamation Project.

(c) Water rights adjudication.—Notwithstanding subsections (a) and (b), for purposes of the determination of water rights in Oregon Klamath Basin Adjudication, until Appendix E–1 to the Restoration Agreement has been filed in the Oregon Klamath Basin Adjudication, the 1 or more purposes of the Klamath Reclamation Project shall continue as in existence prior to the date of enactment of this Act.

(d) Disposition of net revenues from leasing of Tule Lake and Lower Klamath National Wildlife Refuge land.—Notwithstanding any other provision of law, net revenues from the leasing of refuge land
within the Tule Lake National Wildlife Refuge and the Lower Klamath National Wildlife Refuge under section 4 of Public Law 88–567 (16 U.S.C. 695n) shall be provided, without further appropriation, as follows:

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

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

(3) 20 percent of net revenues shall be provided directly to the United States Fish and Wildlife Service for wildlife management purposes on the Tule Lake National Wildlife Refuge and Lower Klamath National Wildlife Refuge.

(4) 10 percent of net revenues from land within Lower Klamath National Wildlife Refuge that are within the boundaries of the Klamath Drainage District shall be provided directly to Klamath Drainage District for operation and maintenance responsibility.
for the Federal Reclamation water delivery and drainage facilities within the boundaries of both Klamath Drainage District and Lower Klamath National Wildlife Refuge exclusive of the Klamath Straits Drain, subject to the assumption by the Klamath Drainage District of the operation and maintenance duties of the Bureau of Reclamation for Klamath Drainage District (Area K) lease land exclusive of Klamath Straits Drain.

(5) The remainder of net revenues shall be provided directly to the Bureau of Reclamation for—

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

(B) to the extent that the revenues received under this paragraph for any year exceed the costs described in subparagraph (A), future capital costs of the Klamath Reclamation Project.

SEC. 17. HYDROELECTRIC SETTLEMENT.

(a) SECRETARIAL DETERMINATION.—

(1) IN GENERAL.—The Secretary shall determine, consistent with section 3 of the Hydroelectric Settlement, whether to proceed with facilities removal and may determine to proceed with facilities
removal if, as determined by the Secretary, facilities removal—

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

(B) is in the public interest, taking into account potential impacts on affected local communities and federally recognized Indian tribes among other factors.

(2) BASIS FOR SECRETARIAL DETERMINATION.—To support the Secretarial determination, the Secretary, in cooperation with the Secretary of Commerce and other entities, shall—

(A) use existing information;

(B) conduct any necessary further appropriate studies;

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

(D) take such other actions as the Secretary determines to be appropriate.

(3) DESIGNATION OF DAM REMOVAL ENTITY.—

(A) IN GENERAL.—If the Secretarial determination provides for proceeding with facilities removal, the Secretarial determination shall in-
clude the designation of a Dam Removal Entity.

(B) REQUIREMENTS.—

(i) IN GENERAL.—Subject to clause (ii), the Dam Removal Entity designated by the Secretary shall be the Department if the Secretary determines, in the judgment of the Secretary, that—

(I) the Department has the capabilities and responsibilities for facilities removal described in section 7 of the Hydroelectric Settlement; and

(II) it is appropriate for the Department to be the Dam Removal Entity.

(ii) NON-FEDERAL DAM REMOVAL ENTITY.—As determined by the Secretary and consistent with section 3.3.4.E of the Hydroelectric Settlement, the Secretary may designate a non-Federal Dam Removal Entity if—

(I) the Secretary finds that the Dam Removal Entity-designate is qualified and has the capabilities and responsibilities for facilities removal
described in section 7 of the Hydro-
electric Settlement;

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

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

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

(5) NOTICE.—The Secretary shall—

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

(B) submit to the Committee on Energy
and Natural Resources of the Senate, the Com-
mittee on Indian Affairs of the Senate, and the
Committee on Natural Resources of the House
of Representatives a report on implementation
of the Hydroelectric Settlement.
(6) Judicial review of secretarial determination.—

(A) In general.—For purposes of judicial review, the Secretarial determination shall constitute a final agency action with respect to whether or not to proceed with facilities removal.

(B) Petition for review.—

(i) Filing.—

(I) In general.—Judicial review of the Secretarial determination and related actions to comply with environmental laws (including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq), and the National Historic Preservation Act (16 U.S.C. 470 et seq.)) may be obtained by an aggrieved person or entity only as provided in this paragraph.

(II) Jurisdiction.—A petition for review under this subparagraph may be filed only in the United States Court of Appeals for the District of
Columbia Circuit or in the Ninth Circuit Court of Appeals.

(III) LIMITATION.—A district court of the United States shall not have jurisdiction to review the Secretarial determination or related actions to comply with environmental laws described in subclause (I).

(ii) DEADLINE.—

(I) IN GENERAL.—Except as provided in subclause (II), any petition for review under this paragraph shall be filed within 60 days after the date of publication of the Secretarial determination in the Federal Register.

(II) SUBSEQUENT GROUNDS.—If a petition is based solely on grounds arising after the date that is 60 days after the date of publication of the Secretarial determination in the Federal Register, the petition for review under this paragraph shall be filed not later than 60 days after the grounds arise.
(C) IMPLEMENTATION.—Any action of the Secretary with respect to which review could have been obtained under this paragraph shall not be subject to judicial review in any action relating to the implementation of the Secretarial determination or in proceedings for enforcement of the Hydroelectric Settlement.

(D) APPLICABLE STANDARD AND SCOPE.—Judicial review of the Secretarial determination shall be in accordance with the standard and scope of review under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(E) NONTOLLING.—The filing of a petition for reconsideration by the Secretary of an action subject to review under this paragraph shall not—

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

(ii) extend the time within which a petition for judicial review under this paragraph may be filed; or

(iii) postpone the effectiveness of the action.
(b) Facilities Transfer and Removal.—

(1) Facilities Removal Process.—

(A) Application.—This paragraph shall apply if—

(i) the Secretarial determination provides for proceeding with facilities removal;

(ii) the States concur in the Secretarial determination in accordance with section 3.3.5 of the Hydroelectric Settlement;

(iii) the availability of non-Federal funds for the purposes of facilities removal is consistent with the Hydroelectric Settlement; and

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

(B) Facilities Removal.—

(i) In General.—The Dam Removal Entity shall, consistent with the Hydroelectric Settlement—

(I) develop a definite plan for facilities removal, including a schedule for facilities removal;
(II) obtain all permits, authorizations, entitlements, certifications, and other approvals necessary to implement facilities removal, including a permit under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); and

(III) implement facilities removal.

(ii) STATE AND LOCAL LAWS.—Facilities removal shall be subject to applicable requirements of State and local laws respecting permits and other authorizations, to the extent the requirements are not in conflict with Federal law, including the Secretarial determination and the detailed plan (including the schedule) for facilities removal authorized under this Act.

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

(I) the authorities of the States regarding concurrence with the Secretarial determination in accordance with State law; or
(II) the authority of a State public utility commission regarding funding of facilities removal.

(iv) ACCEPTANCE OF TITLE TO FACILITIES.—The Dam Removal Entity is authorized to accept from PacifiCorp all rights, titles, permits, and other interests in the facilities and associated land, for facilities removal and for disposition of facility land (as provided in section 7.6.4 of the Hydroelectric Settlement) upon the Dam Removal Entity providing notice that the Dam Removal Entity is ready to commence facilities removal in accordance with section 7.4.1 of the Hydroelectric Settlement.

(v) CONTINUED POWER GENERATION.—

(I) IN GENERAL.—In accordance with an agreement negotiated under subclause (II), on transfer of title pursuant to clause (iv) and until the Dam Removal Entity instructs PacifiCorp to cease the generation of
power, PacifiCorp may, consistent with State law—

   (aa) continue generating and retaining title to any power generated by the facilities in accordance with section 7 of the Hydroelectric Settlement; and

   (bb) continue to transmit and use the power for the benefit of the customers of PacifiCorp under the jurisdiction of applicable State public utility commissions and the Commission.

(II) AGREEMENT WITH DAM REMOVAL ENTITY.—Before transfer of title pursuant to clause (iv), the Dam Removal Entity shall enter into an agreement with PacifiCorp that provides for continued generation of power in accordance with subclause (I).

(2) JURISDICTION.—The United States district courts shall have original jurisdiction over all claims regarding the consistency of State and local laws regarding permits and other authorizations, and of
State and local actions pursuant to those laws, with
the Secretarial determination and the detailed plan
(including the schedule) for facilities removal author-
ized under this Act.

(3) No private right of action.—

(A) In general.—Nothing in this Act
confers on any person or entity not a party to
the Hydroelectric Settlement a private right of
action or claim for relief to interpret or enforce
this Act or the Hydroelectric Settlement.

(B) Other law.—This paragraph does
not alter or curtail any right of action or claim
for relief under any other applicable law.

(c) Transfer of Keno Development.—

(1) In general.—The Secretary shall accept
the transfer of title in the Keno Development to the
United States in accordance with section 7.5 of the
Hydroelectric Settlement.

(2) Effect of transfer.—On the transfer
and without further action by Congress—

(A) the Keno Development shall—

(i) become part of the Klamath Recl-
oration Project; and

(ii) be operated and maintained in ac-
cordance 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.) and this Act; and

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

(d) LIABILITY PROTECTION.—

(1) PACIFICORP.—Notwithstanding any other Federal, State, local, or other law (including common law), PacifiCorp shall not be liable for any harm to persons, property, or the environment, or damages resulting from either facilities removal or facility operation, arising from, relating to, or triggered by actions associated with facilities removal, including but not limited to any damage caused by the release of any material or substance (including but not limited to hazardous substances).

(2) FUNDING.—Notwithstanding any other Federal, State, local, or other law, no person or entity contributing funds for facilities removal pursuant to the Hydroelectric Settlement shall be held liable, solely by virtue of that funding, for any harm to persons, property, or the environment, or damages arising from either facilities removal or facility operation, arising from, relating to, or triggered by ac-
tions associated with facilities removal, including any
damage caused by the release of any material or
substance (including hazardous substances).

(3) Preemption.—

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

(B) Other provisions of law.—This
Act does not limit any otherwise available im-
munity, privilege, or defense under any other
provision of law.

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

(e) Licenses.—

(1) Annual licenses.—

(A) In general.—The Commission shall
issue annual licenses authorizing PacifiCorp to
continue to operate the facilities until
PacifiCorp transfers title to all of the facilities.
(B) TERMINATION.—The annual licenses shall terminate with respect to a facility on transfer of title for such facility from PacifiCorp to the Dam Removal Entity.

(C) STAGED REMOVAL.—

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

(ii) NONTRANSFER OF TITLE.—Annual license conditions shall remain in effect with respect to any facility for which PacifiCorp has not transferred title to the Dam Removal Entity to the extent compliance with the annual license conditions are not prevented by the removal of any other facility.

(2) JURISDICTION.—The jurisdiction of the Commission under part I of the Federal Power Act (16 U.S.C. 791a et seq.) shall terminate with respect to a facility on the transfer of title for the facility from PacifiCorp to the Dam Removal Entity.

(3) RELICENSING.—
(A) IN GENERAL.—The Commission shall—

(i) stay the proceeding of the Commission on the pending license application of PacifiCorp for Project No. 2082 as long as the Hydroelectric Settlement remains in effect; and

(ii) resume the proceeding and proceed to take final action on the new license application only if the Hydroelectric Settlement terminates pursuant to section 8.11 of the Hydroelectric Settlement.

(B) TERMINATION.—If the Hydroelectric Settlement is terminated, the Commission, in proceedings on the new license application, shall not be bound by the record, findings, or determination of the Secretary under this section.

(4) EAST SIDE AND WEST SIDE DEVELOPMENTS.—On filing by PacifiCorp of an application for surrender of the East Side and West Side Developments in Project No. 2082, the Commission shall issue an order approving partial surrender of the license for Project No. 2082, including any reasonable and appropriate conditions, as provided in section 6.4.1 of the Hydroelectric Settlement.
(5) FALL CREEK.—Notwithstanding paragraph (2), not later than 60 days after the date of the transfer of the Iron Gate Facility to the Dam Removal Entity, the Commission shall resume timely consideration of the pending licensing application for the Fall Creek development pursuant to the Federal Power Act (16 U.S.C. 791 et seq.), regardless of whether PacifiCorp retains ownership of Fall Creek or transfers ownership to a new licensee.

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

(7) TRANSFERS OF FACILITIES.—Notwithstanding section 8 of the Federal Power Act (16 U.S.C. 801), the transfer of PacifiCorp facilities to a non-Federal dam removal entity consistent with the Hydroelectric Settlement and this Act is authorized.

SEC. 18. MISCELLANEOUS.

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

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

(b) LIMITATIONS.—

(1) IN GENERAL.—Nothing in this Act—

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

(B) expands the jurisdiction of State
courts to review Federal agency actions or de-
termine Federal rights.
(2) EFFECT.—Nothing in this subsection alters or curtails any right of action or claim for relief under other applicable law.

(c) RELATIONSHIP TO CERTAIN OTHER FEDERAL LAW.—

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

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

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

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

(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), except to the extent section 17(b) requires a permit under section 404 of that Act (33 U.S.C. 1344) notwithstanding section 404(r) of that Act (33 U.S.C. 1344(r)); or


(2) CONSISTENCY.—The Restoration Agreement shall be considered consistent with subsections
(a) through (c) of section 208 of the Act of July 10, 1952 (66 Stat. 560, chapter 651; 43 U.S.C. 666).

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