

112TH CONGRESS
1ST SESSION

S. 1851

To authorize the restoration of the Klamath Basin and the settlement of the hydroelectric licensing of the Klamath Hydroelectric Project in accordance with the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement Agreement in the public interest and the interest of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 2011

Mr. MERKLEY (for himself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the restoration of the Klamath Basin and the settlement of the hydroelectric licensing of the Klamath Hydroelectric Project in accordance with the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement Agreement in the public interest and the interest of the United States, 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 Economic Restoration Act 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.

TITLE I—RESTORATION AGREEMENT

Sec. 101. Approval and execution of Restoration Agreement.
 Sec. 102. Agreements and non-Federal funds.
 Sec. 103. Rights protected.
 Sec. 104. Funding.
 Sec. 105. Klamath Reclamation Project.
 Sec. 106. Tribal commitments and actions.
 Sec. 107. Judicial review.
 Sec. 108. Miscellaneous.

TITLE II—HYDROELECTRIC SETTLEMENT

Sec. 201. Approval and execution of Hydroelectric Settlement.
 Sec. 202. Secretarial determination.
 Sec. 203. Facilities transfer and removal.
 Sec. 204. Transfer of Keno Development.
 Sec. 205. Liability protection.
 Sec. 206. Licenses.
 Sec. 207. Miscellaneous.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) COMMISSION.—The term “Commission”
 6 means the Federal Energy Regulatory Commission.

7 (2) DAM REMOVAL ENTITY.—The term “Dam
 8 Removal Entity” means the entity designated by the
 9 Secretary pursuant to section 202(e).

10 (3) DEPARTMENT.—The term “Department”
 11 means the Department of the Interior.

12 (4) DEFINITE PLAN.—The term “definite plan”
 13 has the meaning given the term in section 1.4 of the
 14 Hydroelectric Settlement.

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

4 (6) 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 (7) 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 (8) **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 (9) **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
6 201(b)(2).

7 (10) 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 (11) 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 (12) 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 (13) 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 (14) 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 (15) 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 Oregon Revised
20 Statutes entitled “In the matter of the determina-
21 tion of the relative rights of the waters of the Klam-
22 ath River, a tributary of the Pacific Ocean.”.

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

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

4 (18) 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 (19) RESTORATION AGREEMENT.—

10 (A) RESTORATION AGREEMENT.—The
11 term “Restoration Agreement” means the
12 Agreement entitled “Klamath Basin Restora-
13 tion Agreement for the Sustainability of Public
14 and Trust Resources and Affected Commu-
15 nities” dated February 18, 2010, which shall be
16 on file and available for public inspection in the
17 appropriate offices of 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
24 101(b)(2).

1 (20) SECRETARIAL DETERMINATION.—The
 2 term “Secretarial determination” means a deter-
 3 mination of the Secretary made under section
 4 202(a).

5 (21) SECRETARIES.—The term “Secretaries”
 6 means—

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

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

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

13 (22) SECRETARY.—The term “Secretary”
 14 means the Secretary of the Interior.

15 (23) STATES.—The term “States” means—

16 (A) the State of Oregon; and

17 (B) the State of California.

18 **TITLE I—RESTORATION**

19 **AGREEMENT**

20 **SEC. 101. APPROVAL AND EXECUTION OF RESTORATION**

21 **AGREEMENT.**

22 (a) IN GENERAL.—The United States approves the
 23 Restoration Agreement except to the extent the Restora-
 24 tion Agreement conflicts with this title.

1 (b) SIGNING AND IMPLEMENTATION OF THE RES-
2 TORATION AGREEMENT.—The Secretaries shall—

3 (1) sign and implement the Restoration Agree-
4 ment;

5 (2) implement any amendment to the Restora-
6 tion Agreement approved by the Parties after the
7 date of enactment of this title, unless 1 or more of
8 the Secretaries determines, not later than 90 days
9 after the date on which the non-Federal Parties
10 agree to the amendment, that the amendment is in-
11 consistent with this title or other provisions of law;
12 and

13 (3) to the extent consistent with the Restora-
14 tion Agreement, this title, and other provisions of
15 law, perform all actions necessary to carry out each
16 responsibility of the Secretary concerned under the
17 Restoration Agreement.

18 (c) EFFECT OF SIGNING OF RESTORATION AGREE-
19 MENT.—Signature by the Secretaries of the Restoration
20 Agreement does not constitute a major Federal action
21 under the National Environmental Policy Act of 1969 (42
22 U.S.C. 4321 et seq.).

23 (d) COMPLIANCE WITH EXISTING LAW.—In imple-
24 menting the Restoration Agreement, the Secretaries shall
25 comply with—

1 (1) the National Environmental Policy Act of
2 1969 (42 U.S.C. 4321 et seq.);

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

5 (3) all other applicable Federal environmental
6 laws (including regulations).

7 **SEC. 102. AGREEMENTS AND NON-FEDERAL FUNDS.**

8 (a) AGREEMENTS.—The Secretaries may enter into
9 such agreements and take such other measures (including
10 entering into contracts and financial assistance agree-
11 ments) as the Secretaries consider necessary to carry out
12 this title.

13 (b) ACCEPTANCE AND EXPENDITURE OF NON-FED-
14 ERAL FUNDS.—

15 (1) IN GENERAL.—Notwithstanding title 31,
16 United States Code, the Secretaries may accept and
17 expend, without further appropriation, non-Federal
18 funds (including donations or in-kind services, or
19 both) and accept by donation or otherwise real or
20 personal property or any interest in the property, for
21 the purposes of implementing the Restoration Agree-
22 ment.

23 (2) USE.—The funds may be expended, and the
24 property used, under paragraph (1) only for the pur-

1 poses for which the funds and property were pro-
2 vided, without further appropriation or authority.

3 **SEC. 103. RIGHTS PROTECTED.**

4 Notwithstanding any other provision of law, this Act
5 and implementation of the Restoration Agreement shall
6 not restrict or alter the eligibility of any Party or Indian
7 tribe for or receipt of funds, or be considered an offset
8 against any obligations or funds in existence on the date
9 of enactment of this Act, under any Federal or State law.

10 **SEC. 104. FUNDING.**

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

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

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

19 (3) The Klamath Drought Fund.

20 (b) MANAGEMENT.—The accounts established by
21 subsection (a) shall be managed in accordance with this
22 title and section 14.3 of the Restoration Agreement.

23 (c) BUDGET REQUESTS.—When submitting annual
24 budget requests to Congress, the President may include
25 funding described in Appendix C–2 of the Restoration

1 Agreement with such adjustment as the President con-
2 siders appropriate to maintain timely implementation of
3 the Restoration Agreement.

4 (d) NONREIMBURSABLE.—Except as provided in sec-
5 tion 108(d), funds appropriated and expended for the im-
6 plementation of the Restoration Agreement shall be nonre-
7 imburseable and nonreturnable to the United States.

8 (e) FUNDS AVAILABLE UNTIL EXPENDED.—All
9 funds made available for the implementation of the Res-
10 toration Agreement shall remain available until expended.

11 **SEC. 105. KLAMATH RECLAMATION PROJECT.**

12 (a) KLAMATH RECLAMATION PROJECT PURPOSES.—
13 The purposes of the Klamath Reclamation Project shall
14 be irrigation, reclamation, flood control, municipal, indus-
15 trial, power (as necessary to implement the Restoration
16 Agreement), National Wildlife Refuge, and fish and wild-
17 life.

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

19 (1) IN GENERAL.—Subject to paragraph (2),
20 the fish and wildlife and National Wildlife Refuge
21 purposes of the Klamath Reclamation Project shall
22 not adversely affect the irrigation purpose of the
23 Klamath Reclamation Project.

24 (2) WATER ALLOCATIONS AND DELIVERY.—The
25 provisions regarding water allocations and delivery

1 to the National Wildlife Refuges in section 15.1.2 of
2 the Restoration Agreement (including any additional
3 water made available under sections 15.1.2.E.ii and
4 18.3.2.B.v of the Restoration Agreement) shall not
5 be considered to have an adverse effect on the irriga-
6 tion purpose of the Klamath Reclamation Project.

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

15 (d) DISPOSITION OF NET REVENUES FROM LEASING
16 OF TULE LAKE AND LOWER KLAMATH NATIONAL WILD-
17 LIFE REFUGE LAND.—Notwithstanding any other provi-
18 sion of law, net revenues from the leasing of refuge land
19 within the Tule Lake National Wildlife Refuge and the
20 Lower Klamath National Wildlife Refuge under section 4
21 of Public Law 88–567 (16 U.S.C. 695n) shall be provided,
22 without further appropriation, as follows:

23 (1) 10 percent of net revenues from land within
24 the Tule Lake National Wildlife Refuge that are
25 within the boundaries of Tulelake Irrigation District

1 shall be provided to the Tulelake Irrigation District
2 in accordance with article 4 of Contract No. 14-06-
3 200-5954 and section 2(a) of the Act of August 1,
4 1956 (70 Stat. 799, chapter 828).

5 (2) Such amounts as are necessary shall be
6 used to make payment to counties in lieu of taxes
7 in accordance with section 3 of Public Law 88-567
8 (16 U.S.C. 695m).

9 (3) 20 percent of net revenues shall be provided
10 directly to the United States Fish and Wildlife Serv-
11 ice for wildlife management purposes on the Tule
12 Lake National Wildlife Refuge and Lower Klamath
13 National Wildlife Refuge.

14 (4) 10 percent of net revenues from land within
15 Lower Klamath National Wildlife Refuge that are
16 within the boundaries of the Klamath Drainage Dis-
17 trict shall be provided directly to Klamath Drainage
18 District for operation and maintenance responsibility
19 for the Federal Reclamation water delivery and
20 drainage facilities within the boundaries of both
21 Klamath Drainage District and Lower Klamath Na-
22 tional Wildlife Refuge exclusive of the Klamath
23 Straits Drain, subject to the assumption by the
24 Klamath Drainage District of the operation and
25 maintenance duties of the Bureau of Reclamation

1 for Klamath Drainage District (Area K) lease land
2 exclusive of Klamath Straits Drain.

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

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

8 (B) to the extent that the revenues re-
9 ceived under this paragraph for any year exceed
10 the costs described in subparagraph (A), future
11 capital costs of the Klamath Reclamation
12 Project.

13 **SEC. 106. TRIBAL COMMITMENTS AND ACTIONS.**

14 (a) **ACTIONS BY THE KLAMATH TRIBES.**—In return
15 for the resolution of the contests of the Klamath Project
16 Water Users related to the water rights claims of the
17 Klamath Tribes and of the United States acting in a ca-
18 pacity as trustee for the Klamath Tribes and members of
19 the Klamath Tribes in the Oregon Klamath Basin Adju-
20 dication and for other benefits covered by the Restoration
21 Agreement and this Act, the Klamath Tribes (on behalf
22 of the Klamath Tribes and members of the Klamath
23 Tribes) are authorized to make the commitments in the
24 Restoration Agreement, including the assurances con-
25 tained in section 15 of the Restoration Agreement, and

1 such commitments are confirmed as effective and binding
2 in accordance with the terms of the commitments without
3 further action by the Klamath Tribes.

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

18 (c) RELEASE OF CLAIMS AGAINST THE UNITED
19 STATES.—

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

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

3 (2) CONDITIONS.—The relinquishments and re-
4 leases shall not be in force or effect until the terms
5 described in sections 15.3.5.C, 15.3.6.B.iii,
6 15.3.7.B.iii, and 33.2.1 of the Restoration Agree-
7 ment have been fulfilled.

8 (d) RETENTION OF RIGHTS OF THE PARTY
9 TRIBES.—Notwithstanding the commitments and releases
10 described in subsections (a) through (c), the Party Tribes
11 and the members of the Party Tribes shall retain all
12 claims described in sections 15.3.5.B, 15.3.6.B.ii and
13 15.3.7.B.ii of the Restoration Agreement.

14 (e) TOLLING OF CLAIMS.—

15 (1) IN GENERAL.—Subject to paragraph (2),
16 the period of limitation and time-based equitable de-
17 fense relating to a claim described in subsection (c)
18 shall be tolled during the period—

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

21 (B) ending on the earlier of—

22 (i) the date the Secretary publishes
23 the notice described in sections 15.3.5.C,
24 15.3.6.B.iii and 15.3.7.B.iii of the Restora-
25 tion Agreement; or

1 (ii) December 1, 2030.

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

4 (A) revives any claim or tolls any period of
5 limitation or time-based equitable defense that
6 expired before the date of enactment of this
7 Act; or

8 (B) precludes the tolling of any period of
9 limitations or any time-based equitable defense
10 under any other applicable law.

11 (f) ACTIONS OF THE UNITED STATES ACTING IN CA-
12 PACITY AS TRUSTEE.—In return for the commitments of
13 the Klamath Project Water Users relating to the water
14 rights and water rights claims of federally recognized
15 tribes of the Klamath Basin and of the United States as
16 trustee for such tribes and other benefits covered by the
17 Restoration Agreement and this Act, the United States,
18 as trustee on behalf of the federally recognized tribes of
19 the Klamath Basin and allottees of reservations of feder-
20 ally recognized tribes of the Klamath Basin in California,
21 is authorized to make the commitments provided in the
22 Restoration Agreement, including the assurances con-
23 tained in section 15 of the Restoration Agreement, and
24 such commitments are confirmed as effective and binding

1 in accordance with the terms of the commitments, without
2 further action by the United States.

3 (g) FURTHER AGREEMENTS.—The United States
4 and the Klamath Tribes may enter into agreements con-
5 sistent with section 16.2 of the Restoration Agreement.

6 (h) EFFECT OF SECTION.—Nothing in this section—

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

9 (A) authorized by law to be taken in the
10 sovereign capacity of the United States, includ-
11 ing any laws relating to health, safety, or the
12 environment, including—

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

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

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

19 (iv) the Comprehensive Environmental
20 Response, Compensation, and Liability Act
21 of 1980 (42 U.S.C. 9601 et seq.); and

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

1 (B) as trustee for the benefit of federally
2 recognized tribes other than the federally recog-
3 nized tribes of the Klamath Basin;

4 (C) as trustee for the federally recognized
5 tribes of the Klamath Basin and the members
6 of the tribes that are consistent with the Res-
7 toration Agreement and this title;

8 (D) as trustee for the Party Tribes to en-
9 force the Restoration Agreement and this title
10 through such legal and equitable remedies as
11 may be available in the appropriate Federal or
12 State court or administrative proceeding, in-
13 cluding the Oregon Klamath Basin Adjudica-
14 tion;

15 (E) as trustee for the federally recognized
16 tribes of the Klamath Basin to acquire water
17 rights after the effective date of the Restoration
18 Agreement (as defined in section 1.5.1 of the
19 Restoration Agreement);

20 (F) as trustee for the federally recognized
21 tribes of the Klamath Basin to use and protect
22 water rights, including water rights acquired
23 after the effective date of the Restoration
24 Agreement (as defined in section 1.5.1 of the

1 Restoration Agreement), subject to the Restora-
2 tion Agreement; or

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

10 (2) affects the treaty fishing, hunting, trapping,
11 pasturing, or gathering rights of any Indian tribe ex-
12 cept to the extent expressly provided in this title or
13 the Restoration Agreement; or

14 (3) affects any rights, remedies, privileges, im-
15 munities, and powers, and claims not specifically re-
16 linquished and released under, or limited by, this
17 title or the Restoration Agreement.

18 (i) PUBLICATION OF NOTICE; EFFECT OF PUBLICA-
19 TION.—

20 (1) PUBLICATION.—The Secretary shall publish
21 the notice required by section 15.3.4.A or section
22 15.3.4.C of the Restoration Agreement in accord-
23 ance with the Restoration Agreement.

24 (2) EFFECT.—On publication of the notice de-
25 scribed in paragraph (1), the Party Tribes, the

1 United States as trustee for the federally recognized
2 tribes of the Klamath Basin, and other Parties shall
3 have the rights and obligations provided in the Res-
4 toration Agreement.

5 (j) FISHERIES PROGRAMS.—Consistent with section
6 102(a), the Secretaries shall give priority to qualified
7 Party Tribes in awarding grants, contracts, or other
8 agreements, consistent with section 102, for purposes of
9 implementing the fisheries programs described in part III
10 of the Restoration Agreement.

11 (k) TRIBES OUTSIDE KLAMATH BASIN UNAF-
12 FECTED.—Nothing in this Act or the Restoration Agree-
13 ment affects the rights of any Indian tribe outside the
14 Klamath Basin.

15 (l) NONPARTY TRIBES OF THE KLAMATH BASIN UN-
16 AFFECTED.—Nothing in this Act or the Restoration
17 Agreement amends, alters, or limits the authority of the
18 federally recognized tribes of the Klamath Basin, other
19 than the Party Tribes, to exercise any water rights the
20 tribes hold or may be determined to hold.

21 **SEC. 107. JUDICIAL REVIEW.**

22 Judicial review of a decision of the Secretary con-
23 cerning rights or obligations under sections 15.3.5.C,
24 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, and 15.3.9 of the Res-
25 toration Agreement shall be in accordance with the stand-

1 ard and scope of review under subchapter II of chapter
 2 5, and chapter 7, of title 5, United States Code (commonly
 3 known as the “Administrative Procedure Act”).

4 **SEC. 108. MISCELLANEOUS.**

5 (a) WATER RIGHTS.—

6 (1) IN GENERAL.—Except as specifically pro-
 7 vided in this title and the Restoration Agreement,
 8 nothing in this title or the Restoration Agreement
 9 shall create or determine water rights or affect
 10 water rights or water right claims in existence on
 11 the date of enactment of this Act.

12 (2) NO STANDARD FOR QUANTIFICATION.—

13 Nothing in this title or the Restoration Agreement
 14 establishes any standard for the quantification of
 15 Federal reserved water rights or any Indian water
 16 claims of any Indian tribe in any judicial or adminis-
 17 trative proceeding.

18 (b) LIMITATIONS.—

19 (1) IN GENERAL.—Nothing in this title—

20 (A) confers on any person or entity who is
 21 not a party to the Restoration Agreement a pri-
 22 vate right of action or claim for relief to inter-
 23 pret or enforce this title or the Restoration
 24 Agreement; or

1 (B) expands the jurisdiction of State
2 courts to review Federal agency actions or de-
3 termine Federal rights.

4 (2) EFFECT.—This subsection does not alter or
5 curtail any right of action or claim for relief under
6 other applicable law.

7 (c) RELATIONSHIP TO CERTAIN OTHER FEDERAL
8 LAW.—

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

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

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

16 (C) the Endangered Species Act of 1973
17 (16 U.S.C. 1531 et seq.);

18 (D) the Federal Water Pollution Control
19 Act (33 U.S.C. 1251 et seq.); or

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

22 (2) CONSISTENCY.—The Restoration Agree-
23 ment shall be considered consistent with subsections
24 (a) through (c) of section 208 of the Act of July 10,
25 1952 (66 Stat. 560, chapter 651; 43 U.S.C. 666).

1 (d) TERMINATION OF RESTORATION AGREEMENT.—

2 If the Restoration Agreement terminates—

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

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

11 (e) WILLING SELLERS.—Any acquisition of interests
12 in land and water pursuant to this title or the Restoration
13 Agreement shall be from willing sellers.

14 **TITLE II—HYDROELECTRIC**
15 **SETTLEMENT**

16 **SEC. 201. APPROVAL AND EXECUTION OF HYDROELECTRIC**
17 **SETTLEMENT.**

18 (a) IN GENERAL.—The United States approves the
19 Hydroelectric Settlement, except to the extent the Hydro-
20 electric Settlement conflicts with this title.

21 (b) IMPLEMENTATION.—The Secretary, the Sec-
22 retary of Commerce, and the Commission, or designees,
23 shall implement, in consultation with other applicable Fed-
24 eral agencies—

25 (1) the Hydroelectric Settlement; and

1 (2) any amendment to the Hydroelectric Settle-
2 ment, unless 1 or more of the Secretaries deter-
3 mines, not later than 90 days after the date the non-
4 Federal Parties agree to the amendment, that the
5 amendment is inconsistent with this title.

6 **SEC. 202. SECRETARIAL DETERMINATION.**

7 (a) IN GENERAL.—The Secretary shall determine,
8 consistent with section 3 of the Hydroelectric Settlement,
9 whether to proceed with facilities removal and may deter-
10 mine to proceed with facilities removal if, as determined
11 by the Secretary, facilities removal—

12 (1) will advance restoration of the salmonid
13 fisheries of the Klamath Basin; and

14 (2) is in the public interest, taking into account
15 potential impacts on affected local communities and
16 federally recognized Indian tribes among other fac-
17 tors.

18 (b) BASIS FOR SECRETARIAL DETERMINATION.—To
19 support the Secretarial determination, the Secretary, in
20 cooperation with the Secretary of Commerce and other en-
21 tities, shall—

22 (1) use existing information;

23 (2) conduct any necessary further appropriate
24 studies;

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

4 (4) take such other actions as the Secretary de-
5 termines to be appropriate.

6 (c) DESIGNATION OF DAM REMOVAL ENTITY.—

7 (1) IN GENERAL.—If the Secretarial determina-
8 tion provides for proceeding with facilities removal,
9 the Secretarial determination shall include the des-
10 ignation of a Dam Removal Entity.

11 (2) REQUIREMENTS.—

12 (A) IN GENERAL.—Subject to subpara-
13 graph (B), the Dam Removal Entity designated
14 by the Secretary shall be the Department if the
15 Secretary determines, in the judgment of the
16 Secretary, that—

17 (i) the Department has the capabili-
18 ties and responsibilities for facilities re-
19 moval described in section 7 of the Hydro-
20 electric Settlement; and

21 (ii) it is appropriate for the Depart-
22 ment to be the Dam Removal Entity.

23 (B) NON-FEDERAL DAM REMOVAL ENTI-
24 TY.—As determined by the Secretary consistent
25 with section 3.3.4.E of the Hydroelectric Settle-

1 ment, the Secretary may designate a non-Fed-
2 eral Dam Removal Entity if—

3 (i) the Secretary finds, based on the
4 judgment of the Secretary, that the Dam
5 Removal Entity-designate is qualified and
6 has the capabilities and responsibilities for
7 facilities removal described in section 7 of
8 the Hydroelectric Settlement;

9 (ii) the States have concurred in the
10 finding described in clause (i); and

11 (iii) the Dam Removal Entity-des-
12 ignate has committed, if so designated, to
13 perform facilities removal within the State
14 Cost Cap described in section 4.1.3 of the
15 Hydroelectric Settlement.

16 (d) CONDITIONS FOR SECRETARIAL DETERMINA-
17 TION.—The Secretary may not make or publish the Secre-
18 tarial determination, unless the conditions specified in sec-
19 tion 3.3.4 of the Hydroelectric Settlement have been satis-
20 fied.

21 (e) NOTICE.—The Secretary shall—

22 (1) publish notification of the Secretarial deter-
23 mination in the Federal Register; and

24 (2) submit to the Committee on Energy and
25 Natural Resources of the Senate and the Committee

1 on Natural Resources of the House of Representa-
2 tives a report on implementation of the Hydro-
3 electric Settlement.

4 (f) JUDICIAL REVIEW OF SECRETARIAL DETERMINA-
5 TION.—

6 (1) IN GENERAL.—For purposes of judicial re-
7 view, the Secretarial determination shall constitute a
8 final agency action with respect to whether or not to
9 proceed with facilities removal.

10 (2) PETITION FOR REVIEW.—

11 (A) FILING.—

12 (i) IN GENERAL.—Judicial review of
13 the Secretarial determination and related
14 actions to comply with environmental laws
15 (including the National Environmental
16 Policy Act of 1969 (42 U.S.C. 4321 et
17 seq.), the Endangered Species Act of 1973
18 (16 U.S.C. 1531 et seq.), and the National
19 Historic Preservation Act (16 U.S.C. 470
20 et seq.)) may be obtained by an aggrieved
21 person or entity only as provided in this
22 subsection.

23 (ii) JURISDICTION.—A petition for re-
24 view under this paragraph may be filed
25 only in the United States Court of Appeals

1 for the District of Columbia Circuit or in
2 the Ninth Circuit Court of Appeals.

3 (iii) LIMITATION.—Neither a district
4 court of the United States nor a State
5 court shall have jurisdiction to review the
6 Secretarial determination or related actions
7 to comply with environmental laws de-
8 scribed in clause (i).

9 (B) DEADLINE.—

10 (i) IN GENERAL.—Except as provided
11 in clause (ii), any petition for review under
12 this subsection shall be filed within 60
13 days after the date of publication of the
14 Secretarial determination in the Federal
15 Register.

16 (ii) SUBSEQUENT GROUNDS.—If a pe-
17 tition is based solely on grounds arising
18 after the date that is 60 days after the
19 date of publication of the Secretarial deter-
20 mination in the Federal Register, the peti-
21 tion for review under this subsection shall
22 be filed not later than 60 days after the
23 grounds arise.

24 (3) IMPLEMENTATION.—Any action of the Sec-
25 retary with respect to which review could have been

1 obtained under this paragraph shall not be subject
 2 to judicial review in any action relating to the imple-
 3 mentation of the Secretarial determination or in pro-
 4 ceedings for enforcement of the Hydroelectric Settle-
 5 ment.

6 (4) APPLICABLE STANDARD AND SCOPE.—Judi-
 7 cial review of the Secretarial determination shall be
 8 in accordance with the standard and scope of review
 9 under subchapter II of chapter 5, and chapter 7, of
 10 title 5, United States Code (commonly known as the
 11 “Administrative Procedure Act”).

12 (5) NON-TOLLING.—The filing of a petition for
 13 reconsideration by the Secretary of an action subject
 14 to review under this subsection shall not—

15 (A) affect the finality of the action for pur-
 16 poses of judicial review;

17 (B) extend the time within which a petition
 18 for judicial review under this subsection may be
 19 filed; or

20 (C) postpone the effectiveness of the ac-
 21 tion.

22 **SEC. 203. FACILITIES TRANSFER AND REMOVAL.**

23 (a) FACILITIES REMOVAL PROCESS.—

24 (1) APPLICATION.—This subsection shall apply
 25 if—

1 (A) the Secretarial determination provides
2 for proceeding with facilities removal;

3 (B) the States concur in the Secretarial
4 determination in accordance with section 3.3.5
5 of the Hydroelectric Settlement;

6 (C) the availability of non-Federal funds
7 for the purposes of facilities removal is con-
8 sistent with the Hydroelectric Settlement; and

9 (D) the Hydroelectric Settlement has not
10 terminated in accordance with section 8.11 of
11 the Hydroelectric Settlement.

12 (2) NON-FEDERAL FUNDS.—

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

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

1 (3) AGREEMENTS.—The Dam Removal Entity
2 may enter into agreements and contracts as nec-
3 essary to assist in the implementation of the Hydro-
4 electric Settlement.

5 (4) FACILITIES REMOVAL.—

6 (A) IN GENERAL.—The Dam Removal En-
7 tity shall, consistent with the Hydroelectric Set-
8 tlement—

9 (i) develop a definite plan for facilities
10 removal, including a schedule for facilities
11 removal;

12 (ii) obtain all permits, authorizations,
13 entitlements, certifications, and other ap-
14 provals necessary to implement facilities
15 removal, including a permit under section
16 404 of the Federal Water Pollution Con-
17 trol Act (33 U.S.C. 1344); and

18 (iii) implement facilities removal.

19 (B) STATE AND LOCAL LAWS.—Facilities
20 removal shall be subject to applicable require-
21 ments of State and local laws respecting per-
22 mits and other authorizations, to the extent the
23 requirements are not in conflict with Federal
24 law, including the Secretarial determination and

1 the detailed plan (including the schedule) for
2 facilities removal authorized under this Act.

3 (C) LIMITATIONS.—Subparagraph (B)
4 shall not affect—

5 (i) the authorities of the States re-
6 garding concurrence with the Secretarial
7 determination in accordance with State
8 law; or

9 (ii) the authority of a State public
10 utility commission regarding funding of fa-
11 cilities removal.

12 (D) ACCEPTANCE OF TITLE TO FACILI-
13 TIES.—The Dam Removal Entity is authorized
14 to accept from PacifiCorp all rights, titles, per-
15 mits, and other interests in the facilities and as-
16 sociated land, for facilities removal and for dis-
17 position of facility land (as provided in section
18 7.6.4 of the Hydroelectric Settlement) upon the
19 Dam Removal Entity providing notice that the
20 Dam Removal Entity is ready to commence fa-
21 cilities removal in accordance with section 7.4.1
22 of the Hydroelectric Settlement.

23 (E) CONTINUED POWER GENERATION.—

24 (i) IN GENERAL.—In accordance with
25 an agreement negotiated under clause (ii),

1 on transfer of title pursuant to subpara-
2 graph (D) and until the Dam Removal En-
3 tity instructs PacifiCorp to cease the gen-
4 eration of power, PacifiCorp may, con-
5 sistent with State law—

6 (I) continue generating and re-
7 taining title to any power generated
8 by the facilities in accordance with
9 section 7 of the Hydroelectric Settle-
10 ment; and

11 (II) continue to transmit and use
12 the power for the benefit of the cus-
13 tomers of PacifiCorp under the juris-
14 diction of applicable State public util-
15 ity commissions and the Commission.

16 (ii) AGREEMENT WITH DAM REMOVAL
17 ENTITY.—Before transfer of title pursuant
18 to subparagraph (D), the Dam Removal
19 Entity shall enter into an agreement with
20 PacifiCorp that provides for continued gen-
21 eration of power in accordance with clause

22 (i).

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

1 permits and other authorizations, and of State and local
 2 actions pursuant to those laws, with the Secretarial deter-
 3 mination and the detailed plan (including the schedule)
 4 for facilities removal authorized under this title.

5 (c) NO PRIVATE RIGHT OF ACTION.—

6 (1) IN GENERAL.—Nothing in this title confers
 7 on any person or entity not a party to the Hydro-
 8 electric Settlement a private right of action or claim
 9 for relief to interpret or enforce this title or the Hy-
 10 droelectric Settlement.

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

14 **SEC. 204. TRANSFER OF KENO DEVELOPMENT.**

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

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

21 (1) the Keno Development shall—

22 (A) become part of the Klamath Reclama-
 23 tion Project; and

24 (B) be operated and maintained in accord-
 25 ance with Federal reclamation law (the Act of

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

5 (2) Commission jurisdiction over the Keno De-
6 velopment shall terminate.

7 **SEC. 205. LIABILITY PROTECTION.**

8 (a) PACIFICORP.—Notwithstanding any other Fed-
9 eral, State, local, or other law (including common law),
10 PacifiCorp shall not be liable for any harm to persons,
11 property, or the environment, or damages resulting from
12 either facilities removal or facility operation, arising from,
13 relating to, or triggered by actions associated with facili-
14 ties removal, including but not limited to any damage
15 caused by the release of any material or substance, includ-
16 ing but not limited to hazardous substances.

17 (b) FUNDING.—Notwithstanding any other Federal,
18 State, local, or other law, no person or entity contributing
19 funds for facilities removal pursuant to the Hydroelectric
20 Settlement shall be held liable, solely by virtue of that
21 funding, for any harm to persons, property, or the envi-
22 ronment, or damages arising from either facilities removal
23 or facility operation, arising from, relating to, or triggered
24 by actions associated with facilities removal, including any

1 damage caused by the release of any material or sub-
2 stance, including hazardous substances.

3 (c) PREEMPTION.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), notwithstanding section 10(e) of the Fed-
6 eral Power Act (16 U.S.C. 803(e)), protection from
7 liability under this section preempts the laws of any
8 State to the extent the laws are inconsistent with
9 this title.

10 (2) OTHER PROVISIONS OF LAW.—This title
11 does not limit any otherwise available immunity,
12 privilege, or defense under any other provision of
13 law.

14 (d) APPLICATION.—Liability protection under this
15 section shall apply to any particular facility beginning on
16 the date of transfer of title to that facility from PacifiCorp
17 to the Dam Removal Entity.

18 **SEC. 206. LICENSES.**

19 (a) ANNUAL LICENSES.—

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

24 (2) TERMINATION.—The annual licenses shall
25 terminate with respect to a facility on transfer of

1 title for such facility from PacifiCorp to the Dam
2 Removal Entity.

3 (3) STAGED REMOVAL.—

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

8 (B) NONTRANSFER OF TITLE.—Annual li-
9 cense conditions shall remain in effect with re-
10 spect to any facility for which PacifiCorp has
11 not transferred title to the Dam Removal Enti-
12 ty to the extent compliance with the annual li-
13 cense conditions are not prevented by the re-
14 moval of any other facility.

15 (b) JURISDICTION.—The jurisdiction of the Commis-
16 sion under part I of the Federal Power Act (16 U.S.C.
17 791a et seq.) shall terminate with respect to a facility on
18 the transfer of title for the facility from PacifiCorp to the
19 Dam Removal Entity.

20 (c) RELICENSING.—

21 (1) IN GENERAL.—The Commission shall—

22 (A) stay the proceeding of the Commission
23 on the pending license application of PacifiCorp
24 for Project No. 2082 as long as the Hydro-
25 electric Settlement remains in effect; and

1 (B) resume the proceeding and proceed to
2 take final action on the new license application
3 only if the Hydroelectric Settlement terminates
4 pursuant to section 8.11 of the Hydroelectric
5 Settlement.

6 (2) TERMINATION.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), if the Hydroelectric Settlement is
9 terminated, the Secretarial determination under
10 section 202(a) and findings of fact contained in
11 the Secretarial determination shall not be ad-
12 missible or otherwise relied on in the pro-
13 ceedings of the Commission on the new license
14 application.

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

20 (d) EAST SIDE AND WEST SIDE DEVELOPMENTS.—
21 On filing by PacifiCorp of an application for surrender
22 of the East Side and West Side Developments in Project
23 No. 2082, the Commission shall issue an order approving
24 partial surrender of the license for Project No. 2082, in-

1 cluding any reasonable and appropriate conditions, as pro-
2 vided in section 6.4.1 of the Hydroelectric Settlement.

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

11 (f) IRON GATE HATCHERY.—Notwithstanding sec-
12 tion 8 of the Federal Power Act (16 U.S.C. 801), the
13 PacifiCorp Hatchery Facilities within the State of Cali-
14 fornia shall be transferred to the State of California at
15 the time of transfer to the dam removal entity of the Iron
16 Gate Hydro Development or such other time agreed by
17 the Parties to the Hydroelectric Settlement.

18 (g) TRANSFERS OF FACILITIES.—Notwithstanding
19 section 8 of the Federal Power Act (16 U.S.C. 801), the
20 transfer of PacifiCorp facilities to a non-Federal dam re-
21 moval entity consistent with the Hydroelectric Settlement
22 and this title is authorized.

23 **SEC. 207. MISCELLANEOUS.**

24 (a) WATER RIGHTS.—Except as specifically provided
25 in this title and the Hydroelectric Settlement, nothing in

1 this title or the Hydroelectric Settlement shall create or
2 determine water rights or affect water rights or water
3 right claims in existence on the date of enactment of this
4 Act.

5 (b) TRIBAL RIGHTS.—Nothing in this title affect the
6 rights of any Indian tribe secured by treaty, Executive
7 order, or other law of the United States.

8 (c) RELATIONSHIP TO OTHER FEDERAL LAWS.—
9 Nothing in this title amends, supersedes, modifies or oth-
10 erwise affects—

11 (1) the National Environmental Policy Act of
12 1969 (42 U.S.C. 4321 et seq.);

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

15 (3) the Federal Water Pollution Control Act
16 (33 U.S.C. 1251 et seq.), except to the extent sec-
17 tion 203 of this Act requires a permit under section
18 404 of that Act (33 U.S.C. 1344) notwithstanding
19 section 404(r) of that Act (33 U.S.C. 1344(r)).

○