

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 2379

To approve and implement the Klamath Basin agreements, to improve natural resource management, support economic development, and sustain agricultural production in the Klamath River Basin in the public interest and the interest of the United States, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Klamath Basin Water
5 Recovery and Economic Restoration Act of 2014”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) AGREEMENT.—The term “Agreement”
9 means each of—

10 (A) the Restoration Agreement; and

1 (B) the Upper Basin Agreement.

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

4 (3) FACILITIES REMOVAL.—The term “facilities
5 removal” means—

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

9 (B) site remediation and restoration, in-
10 cluding restoration of previously inundated
11 land;

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

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

16 (4) FACILITY.—The term “facility” means the
17 following 1 or more hydropower facilities (including
18 appurtenant works licensed to PacifiCorp) within the
19 jurisdictional boundary of the Klamath Hydroelectric
20 Project, FERC Project No. 2082 (as applicable):

21 (A) Iron Gate Dam.

22 (B) Copco No. 1 Dam.

23 (C) Copco No. 2 Dam.

24 (D) J.C. Boyle Dam.

1 (5) GOVERNORS.—The term “Governors”
2 means—

3 (A) the Governor of the State of Oregon;
4 and

5 (B) the Governor of the State of Cali-
6 fornia.

7 (6) HYDROELECTRIC SETTLEMENT.—The term
8 “Hydroelectric Settlement” means the agreement
9 entitled “Klamath Hydroelectric Settlement Agree-
10 ment” and dated February 18, 2010 (including any
11 amendments to that agreement approved pursuant
12 to section 3(a)).

13 (7) JOINT MANAGEMENT ENTITY.—The term
14 “Joint Management Entity” means the entity that—

15 (A) is comprised of the Landowner Entity,
16 the Klamath Tribes, the United States, and the
17 State of Oregon;

18 (B) represents the interests of the parties
19 to the Upper Basin Agreement; and

20 (C) is responsible for overseeing implemen-
21 tation of the Upper Basin Agreement, as de-
22 scribed in section 7 of the Upper Basin Agree-
23 ment.

24 (8) JOINT MANAGEMENT ENTITY TECHNICAL
25 TEAM.—The term “Joint Management Entity Tech-

1 nical Team” means the group of specialists ap-
2 pointed by the Joint Management Entity as provided
3 for in section 7.8 of the Upper Basin Agreement.

4 (9) KENO FACILITY.—The term “Keno Facil-
5 ity” means the dam located in Klamath County, Or-
6 egon, land underlying the dam, appurtenant facili-
7 ties, and PacifiCorp-owned property described as
8 Klamath County Map Tax Lot R-3907-03600-
9 00200-000.

10 (10) KLAMATH BASIN.—

11 (A) IN GENERAL.—The term “Klamath
12 Basin” means the land tributary to the Klam-
13 ath River in Oregon and California.

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

17 (11) KLAMATH PROJECT.—

18 (A) IN GENERAL.—The term “Klamath
19 Project” means the Bureau of Reclamation
20 project in the States of California and Oregon,
21 as authorized under the Act of June 17, 1902
22 (32 Stat. 388, chapter 1093).

23 (B) INCLUSIONS.—The term “Klamath
24 Project” includes any dams, canals, and other
25 works and interests for water diversion, storage,

1 delivery, and drainage, flood control, and simi-
2 lar functions that are part of the project de-
3 scribed in subparagraph (A).

4 (12) KLAMATH PROJECT WATER USERS.—The
5 term “Klamath Project Water Users” has the mean-
6 ing given the term in the Restoration Agreement.

7 (13) LANDOWNER ENTITY.—The term “Land-
8 owner Entity” means the entity established pursuant
9 to section 8 of the Upper Basin Agreement.

10 (14) OFF-PROJECT AREA.—The term “Off-
11 Project Area” means—

12 (A) the areas within the Sprague River,
13 Sycan River, Williamson River, and Wood Val-
14 ley (including the Wood River, Crooked Creek,
15 Sevenmile Creek, Fourmile Creek, and Crane
16 Creek) subbasins referred to in Exhibit B of the
17 Upper Basin Agreement; and

18 (B) to the extent provided for in the Upper
19 Basin Agreement, any other areas for which
20 claims described by section 1.3 or 2.5.1 of the
21 Upper Basin Agreement are settled as provided
22 for in section 2.5.1 of the Upper Basin Agree-
23 ment.

24 (15) OFF-PROJECT IRRIGATOR.—The term
25 “Off-Project Irrigator” means any person that is—

1 (A)(i) a claimant for water rights for irri-
2 gation uses in the Off-Project Area in Oregon's
3 Klamath Basin Adjudication; or

4 (ii) a holder of a State of Oregon water
5 right permit or certificate for irrigation use in
6 the Off-Project Area; and

7 (B) a Party to the Upper Basin Agree-
8 ment.

9 (16) OREGON'S KLAMATH BASIN ADJUDICA-
10 TION.—The term “Oregon's Klamath Basin adju-
11 dication” means the proceeding to determine surface
12 water rights pursuant to chapter 539 of the Oregon
13 Revised Statutes entitled “In the matter of the de-
14 termination of the relative rights of the waters of
15 the Klamath River, a tributary of the Pacific
16 Ocean”, in the Circuit Court of the State of Oregon
17 for the County of Klamath, numbered WA 1300001.

18 (17) PACIFICORP.—The term “PacifiCorp”
19 means the owner and licensee of the facility (as of
20 the date of enactment of this Act).

21 (18) PARTY TRIBES.—The term “Party tribes”
22 means—

23 (A) the Yurok Tribe;

24 (B) the Karuk Tribe;

25 (C) the Klamath Tribes; and

1 (D) such other federally recognized tribes
2 of the Klamath Basin as may become party to
3 the Restoration Agreement after the date of en-
4 actment of this Act.

5 (19) RESTORATION AGREEMENT.—The term
6 “Restoration Agreement” means the agreement enti-
7 tled “Klamath River Basin Restoration Agreement
8 for the Sustainability of Public and Trust Resources
9 and Affected Communities” and dated February 18,
10 2010 (including amendments adopted prior to the
11 date of enactment of this Act and any further
12 amendments to that agreement approved pursuant
13 to section 3(a)).

14 (20) RIPARIAN PROGRAM.—The term “Riparian
15 Program” means the program described in section 4
16 of the Upper Basin Agreement.

17 (21) SECRETARY.—The term “Secretary”
18 means the Secretary of the Interior.

19 (22) SECRETARIES.—The term “Secretaries”
20 means each of—

21 (A) the Secretary of the Interior;

22 (B) the Secretary of Commerce; and

23 (C) the Secretary of Agriculture.

24 (23) SETTLEMENTS.—The term “Settlements”
25 means each of—

- 1 (A) the Hydroelectric Settlement;
2 (B) the Restoration Agreement; and
3 (C) the Upper Basin Agreement.

4 (24) UPPER BASIN AGREEMENT.—The term
5 “Upper Basin Agreement” means the agreement en-
6 titled “Upper Klamath Basin Comprehensive Agree-
7 ment” and dated April 18, 2014 (including any
8 amendments to that agreement approved pursuant
9 to section 3(a)).

10 (25) WATER USE PROGRAM.—The term “Water
11 Use Program” means the program described in sec-
12 tion 3 of the Upper Basin Agreement and section
13 16.2 of the Restoration Agreement.

14 **SEC. 3. AUTHORIZATION, EXECUTION, AND IMPLEMENTA-**
15 **TION OF SETTLEMENTS.**

16 (a) RATIFICATION OF SETTLEMENTS.—

17 (1) IN GENERAL.—Except as modified by this
18 Act, and to the extent that the Settlements do not
19 conflict with this Act, the Settlements are author-
20 ized, ratified, and confirmed.

21 (2) AMENDMENTS CONSISTENT WITH THIS
22 ACT.—If any amendment is executed to make any of
23 the Settlements consistent with this Act, the amend-
24 ment is also authorized, ratified, and confirmed to

1 the extent the amendment is consistent with this
2 Act.

3 (3) FURTHER AMENDMENTS.—If any amend-
4 ment to any of the Settlements is executed by the
5 parties to the applicable Settlement after the date of
6 enactment of this Act, unless the Secretary, the Sec-
7 retary of Commerce, or Secretary of Agriculture de-
8 termines, not later than 90 days after the date on
9 which the non-Federal parties agree to the amend-
10 ment, that the amendment is inconsistent with this
11 Act or other provisions of law, the amendment is
12 also authorized, ratified, and confirmed to the extent
13 the amendment—

14 (A) is not inconsistent with this Act or
15 other provisions of law;

16 (B) is executed in a manner consistent
17 with the terms of the applicable Settlement; and

18 (C) does not require congressional approval
19 pursuant to section 2116 of the Revised Stat-
20 utes (25 U.S.C. 177) or other applicable Fed-
21 eral law.

22 (b) EXECUTION AND IMPLEMENTATION OF SETTLE-
23 MENTS.—

24 (1) THE AGREEMENTS.—

10

1 (A) IN GENERAL.—As authorized, ratified,
2 and confirmed pursuant to subsection (a)—

3 (i) the Secretary, the Secretary of
4 Commerce, and the Secretary of Agri-
5 culture shall promptly execute and imple-
6 ment the Restoration Agreement; and

7 (ii) the Secretary and the Secretary of
8 Commerce shall promptly execute and im-
9 plement the Upper Basin Agreement.

10 (B) EFFECT OF EXECUTING AGREE-
11 MENTS.—Notwithstanding subsection (l), execu-
12 tion by the applicable Secretaries under sub-
13 paragraph (A) of either Agreement shall not be
14 considered a major Federal action under the
15 National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.).

17 (C) PARTICIPATION IN THE UPPER BASIN
18 AGREEMENT.—As provided for in the Upper
19 Basin Agreement and as part of implementing
20 the Upper Basin Agreement, the Secretary and
21 the Secretary of Commerce may—

22 (i) participate in the Water Use Pro-
23 gram and in the Riparian Program; and

24 (ii) serve as members of the Joint
25 Management Entity representing the Bu-

1 reau of Indian Affairs, the United States
2 Fish and Wildlife Service, the United
3 States Geological Survey, and the National
4 Marine Fisheries Service of the Depart-
5 ment of Commerce, with the Secretary
6 serving as the voting member, as described
7 in section 7.1.5 of the Upper Basin Agree-
8 ment.

9 (2) HYDROELECTRIC SETTLEMENT.—To the ex-
10 tent that the Hydroelectric Settlement does not con-
11 flict with this Act, the Secretary, the Secretary of
12 Commerce, and the Commission shall implement the
13 Hydroelectric Settlement, in consultation with other
14 applicable Federal agencies.

15 (c) FEDERAL RESPONSIBILITIES.—To the extent
16 consistent with the Settlements, this Act, and other provi-
17 sions of law, the Secretary, the Secretary of Commerce,
18 the Secretary of Agriculture, and the Commission shall
19 perform all actions necessary to carry out each responsi-
20 bility of the Secretary, the Secretary of Commerce, the
21 Secretary of Agriculture, and the Commission, respec-
22 tively, under the Settlements.

23 (d) ENVIRONMENTAL COMPLIANCE.—In imple-
24 menting the Settlements, the Secretaries and the Commis-
25 sion shall 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 law.

6 (e) PUBLICATION OF NOTICE; EFFECT OF PUBLICA-
7 TION.—

8 (1) RESTORATION AGREEMENT.—

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

14 (B) EFFECT OF PUBLICATION.—Publica-
15 tion of the notice described in subparagraph (A)
16 shall have the effects on the commitments,
17 rights, and obligations of the Party tribes, the
18 United States (as trustee for the federally rec-
19 ognized tribes of the Klamath Basin), and other
20 parties to the Restoration Agreement provided
21 for in the Restoration Agreement.

22 (2) UPPER BASIN AGREEMENT.—

23 (A) PUBLICATION.—The Secretary shall
24 publish the notice required by section 10.1 of
25 the Upper Basin Agreement if all requirements

1 of section 10 of the Upper Basin Agreement
2 have been fulfilled, including the requirement
3 for notice by the Klamath Tribes of the willing-
4 ness of the Tribes to proceed with the Upper
5 Basin Agreement following enactment of au-
6 thorizing legislation as described in section
7 10.1.10 or 10.2 of the Upper Basin Agreement,
8 as applicable, in accordance with the Upper
9 Basin Agreement.

10 (B) EFFECT OF PUBLICATION.—

11 (i) PERMANENCY.—On publication of
12 the notice required under section 10.1 of
13 the Upper Basin Agreement, the Upper
14 Basin Agreement shall become permanent.

15 (ii) TERMINATION.—On publication of
16 the notice required under section 10.2 of
17 the Upper Basin Agreement, the Upper
18 Basin Agreement shall terminate, accord-
19 ing to the terms of that section.

20 (3) JUDICIAL REVIEW.—

21 (A) IN GENERAL.—Judicial review of a de-
22 cision of the Secretary pursuant to this sub-
23 section shall be in accordance with the standard
24 and scope of review under subchapter II of
25 chapter 5, and chapter 7, of title 5, United

1 States Code (commonly known as the “Admin-
2 istrative Procedure Act”).

3 (B) DEADLINE.—Any petition for review
4 under this subparagraph shall be filed not later
5 than 1 year after the date of publication of the
6 notice required under this paragraph.

7 (f) ELIGIBILITY FOR FUNDS PROTECTED.—Notwith-
8 standing any other provision of law, nothing in this Act
9 or the implementation of the Settlements, other than as
10 explicitly provided for in this Act or the Settlements—

11 (1) restricts or alters the eligibility of any party
12 to any of the Settlements, or of any Indian tribe, for
13 the receipt of funds; or

14 (2) shall be considered an offset against any ob-
15 ligations or funds in existence on the date of enact-
16 ment of this Act, under any Federal or State law.

17 (g) TRIBAL RIGHTS PROTECTED.—Nothing in this
18 Act or the Settlements—

19 (1) affects the rights of any Indian tribe out-
20 side the Klamath Basin; or

21 (2) amends, alters, or limits the authority of
22 the Indian tribes of the Klamath Basin to exercise
23 any water rights the Indian tribes hold or may be
24 determined to hold except as expressly provided in
25 the Agreements.

1 (h) WATER RIGHTS.—

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

8 (2) NO STANDARD FOR QUANTIFICATION.—
9 Nothing in this Act or the Settlements establishes
10 any standard for the quantification of Federal re-
11 served water rights or any water claims of any In-
12 dian tribe in any judicial or administrative pro-
13 ceeding.

14 (i) WILLING SELLERS.—Any acquisition of interests
15 in land or water pursuant to either Agreement shall be
16 from willing sellers.

17 (j) NO PRIVATE RIGHT OF ACTION.—

18 (1) IN GENERAL.—Nothing in this Act confers
19 on any person or entity not a party to the Settle-
20 ments a private right of action or claim for relief to
21 interpret or enforce this Act or the Settlements.

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

1 (k) STATE COURTS.—Nothing in this Act expands
2 the jurisdiction of State courts to review Federal agency
3 actions or determine Federal rights.

4 (l) 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.), except as provided in section 4(c);

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

17 (E) the Federal Water Pollution Control
18 Act (33 U.S.C. 1251 et seq.), except to the ex-
19 tent section 8(b)(4) of this Act requires a per-
20 mit under section 404 of that Act (33 U.S.C.
21 1344), notwithstanding section 404(r) of that
22 Act (33 U.S.C. 1344(r)); or

23 (F) the Federal Land Policy and Manage-
24 ment Act of 1976 (43 U.S.C. 1701 et seq.).

1 (G) the Treaty between the United States
2 and the Klamath and Moadoc Tribes and the
3 Yahooskin Band of Snake Indians dated Octo-
4 ber 14, 1864 (16 Stat. 707); or

5 (H) the Klamath Indian Tribe Restoration
6 Act (25 U.S.C. 566 et seq.).

7 (2) CONSISTENCY.—The Agreements shall be
8 considered consistent with subsections (a) through
9 (c) of section 208 of the Department of Justice Ap-
10 propriation Act, 1953 (43 U.S.C. 666).

11 (3) FEDERAL ADVISORY COMMITTEE ACT.—The
12 actions of the Joint Management Entity and the
13 Joint Management Entity Technical Team shall not
14 be subject to the Federal Advisory Committee Act (5
15 U.S.C. App.).

16 (m) WAIVER OF SOVEREIGN IMMUNITY BY THE
17 UNITED STATES.—Except as provided in subsections (a)
18 through (c) of section 208 of the Department of Justice
19 Appropriations Act, 1953 (43 U.S.C. 666), nothing in this
20 Act or the implementation of the Settlements waives the
21 sovereign immunity of the United States.

22 (n) WAIVER OF SOVEREIGN IMMUNITY BY THE
23 PARTY TRIBES.—Nothing in this Act waives or abrogates
24 the sovereign immunity of the Party tribes.

1 **SEC. 4. KLAMATH PROJECT AUTHORIZED PURPOSES.**

2 (a) KLAMATH PROJECT PURPOSES.—

3 (1) IN GENERAL.—Subject to paragraph (2)
4 and subsection (b), the purposes of the Klamath
5 Project include—

6 (A) irrigation;

7 (B) reclamation;

8 (C) flood control;

9 (D) municipal;

10 (E) industrial;

11 (F) power;

12 (G) fish and wildlife purposes; and

13 (H) National Wildlife Refuge purposes.

14 (2) EFFECT OF FISH AND WILDLIFE PUR-
15 POSES.—

16 (A) IN GENERAL.—Subject to subpara-
17 graph (B), the fish and wildlife and National
18 Wildlife Refuge purposes of the Klamath
19 Project authorized under paragraph (1) shall
20 not adversely affect the irrigation purpose of
21 the Klamath Project.

22 (B) WATER ALLOCATIONS AND DELIV-
23 ERY.—Notwithstanding subparagraph (A), the
24 water allocations and delivery to the National
25 Wildlife Refuges provided for in the Restoration
26 Agreement shall not constitute an adverse effect

1 on the irrigation purpose of the Klamath
2 Project for purposes of this paragraph.

3 (b) WATER RIGHTS ADJUDICATION.—For purposes
4 of the determination of water rights in Oregon’s Klamath
5 Basin adjudication, until the date on which the Appendix
6 E-1 to the Restoration Agreement is filed in Oregon’s
7 Klamath Basin adjudication pursuant to the Restoration
8 Agreement, the purposes of the Klamath Project shall be
9 the purposes in effect on the day before the date of enact-
10 ment of this Act.

11 (c) DISPOSITION OF NET REVENUES FROM LEASING
12 OF TULE LAKE AND LOWER KLAMATH NATIONAL WILD-
13 LIFE REFUGE LAND.—Net revenues from the leasing of
14 refuge land within the Tule Lake National Wildlife Refuge
15 and Lower Klamath National Wildlife Refuge under sec-
16 tion 4 of Public Law 88–567 (78 Stat. 851) (commonly
17 known as the “Kuchel Act”) shall be provided as follows:

18 (1) Directly, without further appropriation:

19 (A) 10 percent of net revenues from land
20 within the Tule Lake National Wildlife Refuge
21 that are within the boundaries of Tulelake Irri-
22 gation District to Tulelake Irrigation District,
23 as provided in article 4 of Contract No. 14–06–
24 200–5954 and section 2(a) of the Act of August
25 1, 1956 (70 Stat. 799, chapter 828).

1 (B) Such amounts as are necessary to
2 counties as payments in lieu of taxes as pro-
3 vided in section 3 of Public Law 88-567 (16
4 U.S.C. 695m).

5 (2) Subject to appropriation and, when so ap-
6 propriated, notwithstanding any other provision of
7 law:

8 (A) 20 percent of net revenues to the
9 Klamath Basin National Wildlife Refuge Com-
10 plex of the United States Fish and Wildlife
11 Service, for wildlife management purposes on
12 the Tule Lake National Wildlife Refuge and the
13 Lower Klamath National Wildlife Refuge.

14 (B) 10 percent of net revenues from land
15 within the Lower Klamath National Wildlife
16 Refuge that are within the boundaries of the
17 Klamath Drainage District to Klamath Drain-
18 age District, for operation and maintenance re-
19 sponsibility for the Federal reclamation water
20 delivery and drainage facilities within the
21 boundaries of the Klamath Drainage District
22 and the Lower Klamath National Wildlife Ref-
23 uge exclusive of the Klamath Straits Drain,
24 subject to a transfer agreement with the Bu-
25 reau of Reclamation under which the Klamath

1 Drainage District assumes the operation and
2 maintenance duties of the Bureau of Reclama-
3 tion for Klamath Drainage District (Area K)
4 lease land exclusive of Klamath Straits Drain.

5 (C) The remainder of net revenues after
6 application of paragraph (1) and subparagraphs
7 (A) and (B) of this paragraph to the Bureau of
8 Reclamation for—

9 (i) operation and maintenance costs of
10 Link River and Keno Dams incurred by
11 the United States; and

12 (ii) to the extent that the revenues re-
13 ceived under this paragraph for any year
14 exceed the costs described in clause (i)—

15 (I) future capital costs of the
16 Klamath Project; or

17 (II) the Renewable Power Pro-
18 gram described in section 17.7 of the
19 Restoration Agreement, pursuant to
20 an expenditure plan submitted to and
21 approved by the Secretary.

22 **SEC. 5. TRIBAL COMMITMENTS; RELEASE OF CLAIMS.**

23 (a) ACTIONS BY KLAMATH TRIBES.—

24 (1) RESTORATION AGREEMENT COMMITMENTS
25 ACKNOWLEDGED AND AGREED TO.—In consideration

1 for the resolution of any contest or exception of the
2 Klamath Project Water Users to the water rights
3 claims of the Klamath Tribes and the United States
4 (acting as trustee for the Klamath Tribes and mem-
5 bers of the Klamath Tribes in Oregon's Klamath
6 Basin adjudication), and for the other commitments
7 of the Klamath Project Water Users described in the
8 Restoration Agreement, and for other benefits de-
9 scribed in the Restoration Agreement and this Act,
10 the Klamath Tribes (on behalf of the Klamath
11 Tribes and the members of the Klamath Tribes)
12 may make the commitments provided in the Restora-
13 tion Agreement.

14 (2) UPPER BASIN AGREEMENT COMMITMENTS
15 ACKNOWLEDGED AND AGREED TO.—In consideration
16 for the resolution of any contest or exception of the
17 Off-Project Irrigators to the water rights claims of
18 the Klamath Tribes and the United States (acting
19 as trustee for the Klamath Tribes and members of
20 the Klamath Tribes in Oregon's Klamath Basin ad-
21 judication), and for the other commitments of the
22 Off-Project Irrigators described in the upper Basin
23 Agreement, and for other benefits described in the
24 Upper Basin Agreement and this Act, the Klamath
25 Tribes (on behalf of the Klamath Tribes and the

1 members of the Klamath Tribes) may make the
2 commitments provided in the Upper Basin Agree-
3 ment.

4 (3) NO FURTHER ACTION REQUIRED.—Except
5 as provided in subsection (c), the commitments de-
6 scribed in paragraphs (1) and (2) are confirmed as
7 effective and binding, in accordance with the terms
8 of the commitments, without further action by the
9 Klamath Tribes.

10 (4) ADDITIONAL COMMITMENTS.—The Klamath
11 Tribes (on behalf of the tribe and the members of
12 the tribe) may make additional commitments and as-
13 surances in exchange for the resolution of its claims
14 described in section 1.3.1 or 2.5.1 of the Upper
15 Basin Agreement, subject to the conditions that the
16 commitments and assurances shall be—

17 (A) consistent with this Act, the Settle-
18 ments, and other applicable provisions of law,
19 based on the totality of the circumstances; and

20 (B) covered by a written agreement signed
21 by the Klamath Tribes and the United States
22 (acting as trustee for the tribe and the mem-
23 bers of the tribe in Oregon’s Klamath Basin ad-
24 judication) pursuant to subsection (f).

1 (b) ACTIONS BY KARUK TRIBE AND YUROK
2 TRIBE.—

3 (1) COMMITMENTS ACKNOWLEDGED AND
4 AGREED TO.—In consideration for the commitments
5 of the Klamath Project Water Users described in the
6 Restoration Agreement, and other benefits described
7 in the Restoration Agreement and this Act, the
8 Karuk Tribe and the Yurok Tribe (on behalf of the
9 tribe and the members of the tribe) may make the
10 commitments provided in the Restoration Agree-
11 ment, .

12 (2) NO FURTHER ACTION REQUIRED.—Except
13 as provided in subsection (c), the commitments de-
14 scribed in paragraph (1) are confirmed as effective
15 and binding, in accordance with the terms of the
16 commitments, without further action by the Yurok
17 Tribe or Karuk Tribe.

18 (c) RELEASE OF CLAIMS BY PARTY TRIBES.—

19 (1) IN GENERAL.—Subject to paragraph (2),
20 subsection (d), and the Agreements, but without oth-
21 erwise affecting any right secured by a treaty, Exec-
22 utive order, or other law, the Party tribes (on behalf
23 of the tribes and the members of the tribes) may re-
24 linquish and release certain claims against the
25 United States (including any Federal agencies and

1 employees) described in sections 15.3.5.A,
2 15.3.6.B.i, and 15.3.7.B.i of the Restoration Agree-
3 ment and, in the case of the Klamath Tribes, section
4 2.5 of the Upper Basin Agreement.

5 (2) CONDITIONS.—The relinquishments and re-
6 leases under paragraph (1) shall not take force or
7 effect until the terms described in sections 15.3.5.C,
8 15.3.5.D, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.7.B.iv, and
9 33.2.1 of the Restoration Agreement and sections
10 2.4 and 10 of the Upper Basin Agreement have been
11 fulfilled.

12 (d) RETENTION OF RIGHTS OF PARTY TRIBES.—
13 Notwithstanding subsections (a) through (c) or any other
14 provision of this Act, the Party tribes (on behalf of the
15 tribes and the members of the tribes) and the United
16 States (acting as trustee for the Party tribes), shall re-
17 tain—

18 (1) all claims and rights described in sections
19 15.3.5.B, 15.3.6.B.ii, and 15.3.7.B.ii of the Restora-
20 tion Agreement; and

21 (2) any other claims and rights retained by the
22 Party Tribes in negotiations pursuant to section
23 15.3.5.D, 15.3.6.B.iv, and 15.3.7.B.iv of the Res-
24 toration Agreement.

25 (e) TOLLING OF CLAIMS.—

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

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

7 (B) ending on the earlier of—

8 (i) the date on which the Secretary
9 publishes the notice described in sections
10 15.3.5.C, 15.3.6.B.iii, and 15.3.7.B.iii of
11 the Restoration Agreement; or

12 (ii) December 1, 2030.

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

15 (A) revives any claim or tolls any period of
16 limitation or time-based equitable defense that
17 expired before the date of enactment of this
18 Act; or

19 (B) precludes the tolling of any period of
20 limitation or any time-based equitable defense
21 under any other applicable law.

22 (f) ACTIONS OF UNITED STATES AS TRUSTEE.—

23 (1) RESTORATION AGREEMENT COMMITMENTS
24 AUTHORIZED.—In consideration for the commit-
25 ments of the Klamath Project Water Users de-

1 scribed in the Restoration Agreement and for other
2 benefits described in the Restoration Agreement and
3 this Act, the United States, acting as trustee for the
4 federally recognized tribes of the Klamath Basin and
5 the members of such tribes, may make the commit-
6 ments provided in the Restoration Agreement.

7 (2) UPPER BASIN AGREEMENT COMMITMENTS
8 AUTHORIZED.—In consideration for the commit-
9 ments of the Off-Project Irrigators described in the
10 Upper Basin Agreement and for other benefits de-
11 scribed in the Upper Basin Agreement and this Act,
12 the United States, acting as trustee for the Klamath
13 Tribes and the members of the Klamath Tribes, may
14 make the commitments provided in the Upper Basin
15 Agreement.

16 (3) NO FURTHER ACTION.—The commitments
17 described in paragraphs (1) and (2) are confirmed
18 as effective and binding, in accordance with the
19 terms of the commitments, without further action by
20 the United States.

21 (4) ADDITIONAL COMMITMENTS.—The United
22 States, acting as trustee for the Klamath Tribes and
23 the members of the Klamath Tribes in Oregon's
24 Klamath Basin Adjudication, may make additional
25 commitments and assurances of rights in exchange

1 for the resolution of the tribal water right claims de-
2 scribed in section 1.3.1 or 2.5.1 of the Upper Basin
3 Agreement, subject to the conditions that the com-
4 mitments or assurances shall be—

5 (A) consistent with this Act, the Settle-
6 ments, and other applicable provisions of law,
7 based on the totality of the circumstances; and

8 (B) covered by a written agreement signed
9 by the Klamath Tribes and the United States
10 (acting as trustee for the Klamath Tribes and
11 the members of the tribe in Oregon’s Klamath
12 Basin adjudication) under subsection (a)(3)(B).

13 (g) JUDICIAL REVIEW.—Judicial review of a decision
14 of the Secretary concerning any right or obligation under
15 section 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, or
16 15.3.9 of the Restoration Agreement shall be in accord-
17 ance with the standard and scope of review under sub-
18 chapter II of chapter 5, and chapter 7, of title 5, United
19 States Code (commonly known as the “Administrative
20 Procedure Act”).

21 (h) EFFECT OF SECTION.—Nothing in this section—
22 (1) affects the ability of the United States to
23 take any action—

24 (A) authorized by law to be taken in the
25 sovereign capacity of the United States, includ-

1 ing any law relating to health, safety, or the en-
2 vironment, including—

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

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

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

9 (iv) the Comprehensive Environmental
10 Response, Compensation, and Liability Act
11 of 1980 (42 U.S.C. 9601 et seq.)

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

14 (vi) regulations implementing the Acts
15 described in this subparagraph; and

16 (B) as trustee for the benefit of any feder-
17 ally recognized Indian tribe other than an In-
18 dian tribe of the Klamath Basin;

19 (C) as trustee for the Party tribes to en-
20 force the Agreements and this Act through such
21 legal and equitable remedies as are available in
22 an appropriate United States court or State
23 court or administrative proceeding, including
24 Oregon's Klamath Basin adjudication; or

1 (D) as trustee for the federally recognized
2 Indian tribes of the Klamath Basin and the
3 members of the tribes, in accordance with the
4 Agreements and this Act—

5 (i) to acquire water rights after the
6 effective date of the Agreements (as de-
7 fined in section 1.5.1 of the Restoration
8 Agreement and section 14.3 of the Upper
9 Basin Agreement);

10 (ii) to use and protect water rights,
11 including water rights acquired after the
12 effective date of the Agreements (as de-
13 fined in section 1.5.1 of the Restoration
14 Agreement and section 14.3 of the Upper
15 Basin Agreement), subject to the Agree-
16 ments; or

17 (iii) to claim a water right or continue
18 to advocate for an existing claim for water
19 rights in an appropriate United States
20 court or State court or administrative pro-
21 ceeding, subject to the Agreements;

22 (2) affects the treaty fishing, hunting, trapping,
23 pasturing, or gathering right of any Indian tribe ex-
24 cept to the extent expressly provided in this Act or
25 the Agreements; or

1 (3) affects any right, remedy, privilege, immu-
2 nity, power, or claim not specifically relinquished
3 and released under, or limited by, this Act or the
4 Agreements.

5 **SEC. 6. WATER AND POWER PROVISIONS.**

6 The Klamath Basin Water Supply Enhancement Act
7 of 2000 (Public Law 106–498; 114 Stat. 2221) is amend-
8 ed—

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

11 (2) by inserting after section 3 the following:

12 **“SEC. 4. WATER MANAGEMENT AND PLANNING ACTIVITIES.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) OFF-PROJECT AREA.—The term ‘Off-
15 Project Area’ means—

16 “(A) the areas within the Sprague River,
17 Sycan River, Williamson River, and Wood Val-
18 ley (including Crooked Creek, Sevenmile Creek,
19 Fourmile Creek, and Crane Creek) subbasins
20 referred to in Exhibit B of the Upper Basin
21 Agreement; and

22 “(B) to the extent provided for in the
23 Upper Basin Agreement, any other areas for
24 which claims described by section 1.3 or 2.5.1
25 of the Upper Basin Agreement are settled as

1 provided for in section 2.5.1 of the Upper Basin
2 Agreement.

3 “(2) ON-PROJECT POWER USER.—The term
4 ‘On-Project Power User’ has the meaning given the
5 term in the Restoration Agreement.

6 “(3) RESTORATION AGREEMENT.—The term
7 ‘Restoration Agreement’ means the agreement enti-
8 tled ‘Klamath River Basin Restoration Agreement
9 for the Sustainability of Public and Trust Resources
10 and Affected Communities’ and dated February 18,
11 2010 (including any amendments adopted prior to
12 the date of enactment of this Act and any further
13 amendment to that agreement approved pursuant to
14 section 3(a) of the Klamath Basin Water Recovery
15 and Economic Restoration Act of 2014).

16 “(4) UPPER BASIN AGREEMENT.—The term
17 ‘Upper Basin Agreement’ means the agreement enti-
18 tled ‘Upper Klamath Basin Comprehensive Agree-
19 ment’ and dated April 18, 2014 (including any
20 amendment to that agreement).

21 “(b) ACTION BY SECRETARY.—

22 “(1) IN GENERAL.—The Secretary may carry
23 out any activities, including by entering into an
24 agreement or contract or otherwise making financial
25 assistance available—

1 “(A) to align water supplies with demand,
2 including activities to reduce water consumption
3 and demand, consistent with the Restoration
4 Agreement or the Upper Basin Agreement;

5 “(B) to limit the net costs of power used
6 to manage water (including by arranging for
7 delivery of Federal power, consistent with the
8 Restoration Agreement and the Upper Basin
9 Agreement) for—

10 “(i) the Klamath Project (within the
11 meaning of section 2);

12 “(ii) the On-Project Power Users;

13 “(iii) irrigators in the Off-Project
14 Area; and

15 “(iv) the Klamath Basin National
16 Wildlife Refuge Complex; and

17 “(C) to restore any ecosystem and other-
18 wise protect fish and wildlife in the Klamath
19 Basin watershed, including tribal fishery re-
20 sources held in trust, consistent with Restora-
21 tion Agreement and the Upper Basin Agree-
22 ment.

23 “(2) INCLUSION.—Purchases of power by the
24 Secretary under paragraph (1)(B) shall be consid-
25 ered an authorized sale under section 5(b)(3) of the

1 Pacific Northwest Electric Power Planning and Con-
2 servation Act (16 U.S.C. 839c(b)(3)).”.

3 **SEC. 7. KLAMATH TRIBES TRIBAL RESOURCE FUND.**

4 (a) ESTABLISHMENT.—There is established in the
5 Treasury of the United States a fund to be known as the
6 “Klamath Tribes Tribal Resource Fund” (referred to in
7 this section as the “Fund”), consisting of the amounts de-
8 posited in the Fund under subsection (b), together with
9 any interest earned on those amounts, to be managed, in-
10 vested, and administered by the Secretary for the benefit
11 of the Klamath Tribes in accordance with the terms of
12 section 2.4 of the Upper Basin Agreement, to remain
13 available until expended.

14 (b) TRANSFERS TO FUND.—The Fund shall consist
15 of such amounts as are appropriated to the Fund under
16 subsection (i), which shall be deposited in the Fund not
17 later than 60 days after the amounts are appropriated and
18 any interest under subsection (c) or (d).

19 (c) MANAGEMENT BY THE SECRETARY.—Absent an
20 approved tribal investment plan under subsection (d) or
21 an economic development plan under subsection (e), the
22 Secretary shall manage, invest, and distribute all amounts
23 in the Fund in a manner that is consistent with the invest-
24 ment authority of the Secretary under—

1 (1) the first section of the Act of June 24,
2 1938 (25 U.S.C. 162a);

3 (2) the American Indian Trust Fund Manage-
4 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.);
5 and

6 (3) this section.

7 (d) INVESTMENT BY THE KLAMATH TRIBES.—

8 (1) INVESTMENT PLAN.—

9 (A) IN GENERAL.—In lieu of the invest-
10 ment provided for in subsection (c), the Klam-
11 ath Tribes may submit a tribal investment plan
12 to the Secretary, applicable to all or part of the
13 Fund, excluding the amounts described in sub-
14 section (e)(4)(A).

15 (B) APPROVAL.—Not later than 60 days
16 after the date on which a tribal investment plan
17 is submitted under subparagraph (A), the Sec-
18 retary shall approve such investment plan if the
19 Secretary finds that the plan—

20 (i) is reasonable and sound;

21 (ii) meets the requirements of the
22 American Indian Trust Fund Management
23 Reform Act of 1994 (25 U.S.C. 4001 et
24 seq.); and

1 (iii) meets the requirements of this
2 section.

3 (C) DISAPPROVAL.—If the Secretary does
4 not approve the tribal investment plan, the Sec-
5 retary shall set forth in writing the particular
6 reasons for the disapproval.

7 (2) DISBURSEMENT.—If the tribal investment
8 plan is approved by the Secretary, the funds involved
9 shall be disbursed from the Fund to the Klamath
10 Tribes to be invested by the Klamath Tribes in ac-
11 cordance with the approved tribal investment plan,
12 subject to the requirements of this section.

13 (3) COMPLIANCE.—The Secretary may take
14 such steps as the Secretary determines to be nec-
15 essary to monitor the compliance of a Tribe with an
16 investment plan approved under paragraph (1)(B).

17 (4) LIMITATION ON LIABILITY.—The United
18 States shall not be—

19 (A) responsible for the review, approval, or
20 audit of any individual investment under an ap-
21 proved investment plan; or

22 (B) directly or indirectly liable with respect
23 to any such investment, including any act or
24 omission of the Klamath Tribes in managing or
25 investing amounts in the Fund.

1 (5) REQUIREMENTS.—The principal and income
2 derived from tribal investments carried out pursuant
3 to an investment plan approved under subparagraph
4 (B) shall be—

5 (A) subject to the requirements of this sec-
6 tion; and

7 (B) expended only in accordance with an
8 economic development plan approved under sub-
9 section (e).

10 (e) ECONOMIC DEVELOPMENT PLAN.—

11 (1) IN GENERAL.—The Klamath Tribes shall
12 submit to the Secretary an economic development
13 plan for the use of the Fund, including the expendi-
14 ture of any principal or income derived from man-
15 agement under subsection (c) or from tribal invest-
16 ments carried out under subsection (d).

17 (2) APPROVAL.—Not later than 60 days after
18 the date on which an economic development plan is
19 submitted under paragraph (1), the Secretary shall
20 approve the economic development plan if the Sec-
21 retary finds that the plan meets the requirements of
22 the American Indian Trust Fund Management Re-
23 form Act of 1994 (25 U.S.C. 4001 et seq.) and this
24 section.

1 (3) USE OF FUNDS.—The economic develop-
2 ment plan under this subsection shall—

3 (A) require that the Klamath Tribes spend
4 all amounts withdrawn from the Fund in ac-
5 cordance with this section; and

6 (B) include such terms and conditions as
7 are necessary to meet the requirements of this
8 section.

9 (4) RESOURCE ACQUISITION AND ENHANCE-
10 MENT PLAN.—The economic development plan shall
11 include a resource acquisition and enhancement
12 plan, which shall—

13 (A) require that not less than $\frac{1}{2}$ of the
14 amounts appropriated for each fiscal year to
15 carry out this section shall be used to enhance,
16 restore, and utilize the natural resources of the
17 Klamath Tribes, in a manner that also provides
18 for the economic development of the Klamath
19 Tribes and, as determined by the Secretary, di-
20 rectly or indirectly benefit adjacent non-Indian
21 communities; and

22 (B) be reasonably related to the protection,
23 acquisition, enhancement, or development of
24 natural resources for the benefit of the Klamath
25 Tribes and members of the Klamath Tribes.

1 (5) MODIFICATION.—Subject to the require-
2 ments of this Act and approval by the Secretary, the
3 Klamath Tribes may modify a plan approved under
4 this subsection.

5 (6) LIMITATION ON LIABILITY.—The United
6 States shall not be directly or indirectly liable for
7 any claim or cause of action arising from—

8 (A) the approval of a plan under this para-
9 graph; or

10 (B) the use or expenditure by the Klamath
11 Tribes of any amount in the Fund.

12 (f) LIMITATION ON PER CAPITA DISTRIBUTIONS.—
13 No amount in the Fund (including any income accruing
14 to the amount) and no revenue from any water use con-
15 tract may be distributed to any member of the Klamath
16 Tribes on a per capita basis.

17 (g) LIMITATION ON DISBURSEMENT.—

18 (1) IN GENERAL.—Subject to paragraph (2),
19 amounts in the Fund shall not be available for dis-
20 bursement under this section until the Klamath
21 Tribes—

22 (A) make the commitments set forth in the
23 Agreements; and

1 (B) are determined by the Secretary to be
2 in substantial compliance with those commit-
3 ments.

4 (2) EARLY DISBURSEMENT.—Based on the
5 unique history of the loss of reservation land by the
6 Klamath Tribes through termination of Federal rec-
7 ognition and acknowledging that restoration of tribal
8 land is essential to building the tribal economy and
9 achieving self-determination, the Secretary may dis-
10 burse funds to the Klamath Tribes prior to the sat-
11 isfaction of the requirements of paragraph (1) on a
12 determination by the Secretary that such funds are
13 available and that early disbursement will support
14 activities designed to increase employment opportu-
15 nities for members of the Klamath Tribes.

16 (3) AGREEMENTS.—Any such disbursement
17 shall be in accordance with a written agreement be-
18 tween the Secretary and the Klamath Tribes that
19 provides the following:

20 (A) For any disbursement to purchase land
21 that is to be placed in trust pursuant to section
22 6 of the Klamath Indian Tribe Restoration Act
23 (25 U.S.C. 566d), the written agreement shall
24 specify that if assurances made do not become
25 permanent as described in section 15.3.3 of the

1 Restoration Agreement and on publication of a
2 notice by the Secretary pursuant to section
3 15.3.4.C of the Restoration Agreement or sec-
4 tion 10.2 of the Upper Basin Agreement, any
5 land purchased with disbursements from the
6 Fund shall revert back to sole ownership by the
7 United States unless, prior to reversion, the
8 Klamath Tribes enter into a written agreement
9 to repay the purchase price to the United
10 States, without interest, in annual installments
11 over a period not to exceed 40 years.

12 (B) For any disbursement to support eco-
13 nomic activity and creation of tribal employ-
14 ment opportunities (including any rehabilitation
15 of existing properties to support economic ac-
16 tivities), the written agreement shall specify
17 that if assurances made do not become perma-
18 nent as described in section 15.3.3 of the Res-
19 toration Agreement and on publication of a no-
20 tice by the Secretary pursuant to section
21 15.3.4.C of the Restoration Agreement or sec-
22 tion 10.2 of the Upper Basin Agreement, any
23 amounts disbursed from the Fund shall be re-
24 paid to the United States, without interest, in

1 annual installments over a period not to exceed
2 40 years.

3 (h) PROHIBITION.—Amounts in the Fund may not
4 be made available for any purpose other than a purpose
5 described in this section.

6 (i) ANNUAL REPORTS.—

7 (1) IN GENERAL.—Not later than 60 days after
8 the end of each fiscal year beginning with fiscal year
9 2014, the Secretary shall submit to the Committee
10 on Appropriations of the House of Representatives,
11 the Committee on Appropriations of the Senate, and
12 the appropriate authorizing committees of the Sen-
13 ate and the House of Representatives a report on
14 the operation of the Fund during the fiscal year.

15 (2) CONTENTS.—Each report shall include, for
16 the fiscal year covered by the report, the following:

17 (A) A statement of the amounts deposited
18 into the Fund.

19 (B) A description of the expenditures made
20 from the Fund for the fiscal year, including the
21 purpose of the expenditures.

22 (C) Recommendations for additional au-
23 thorities to fulfill the purpose of the Fund.

24 (D) A statement of the balance remaining
25 in the Fund at the end of the fiscal year.

1 (j) NO THIRD PARTY RIGHTS.—This section does not
2 create or vest rights or benefits for any party other than
3 the Klamath Tribes and the United States.

4 (k) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to carry out this section
6 \$8,000,000 for each fiscal year, not to exceed a total
7 amount of \$40,000,000.

8 **SEC. 8. HYDROELECTRIC FACILITIES.**

9 (a) FACILITIES REMOVAL DETERMINATION.—

10 (1) IN GENERAL.—Subject to paragraph (3), in
11 accordance with section 3 of the Hydroelectric Set-
12 tlement, the Governors and the Secretary shall joint-
13 ly—

14 (A) as soon as practicable after the date of
15 enactment of this Act, determine whether to
16 proceed with facilities removal, based on but
17 not limited to factors identified in the Hydro-
18 electric Settlement; and

19 (B) if the Governors and the Secretary de-
20 termine under subparagraph (A) to proceed
21 with facilities removal, include in the deter-
22 mination the designation of a dam removal enti-
23 ty, subject to paragraph (6).

24 (2) BASIS FOR DETERMINATION TO PRO-
25 CEED.—For purposes of making a determination

1 under paragraph (1)(A), the Governors and the Sec-
2 retary, in cooperation with the Secretary of Com-
3 merce and other appropriate entities, shall—

4 (A) use existing information;

5 (B) conduct any necessary additional stud-
6 ies;

7 (C) comply with the National Environ-
8 mental Policy Act of 1969 (42 U.S.C. 4321 et
9 seq.); and

10 (D) take such other actions as the Gov-
11 ernors and the Secretary determine to be ap-
12 propriate to support the determination under
13 paragraph (1).

14 (3) CONDITIONS FOR DETERMINATION TO PRO-
15 CEED.—The Secretary and the Governors may not
16 make or publish the determination under this sub-
17 section, unless the conditions specified in section
18 3.3.4 of the Hydroelectric Settlement, as modified by
19 this Act as applicable, have been satisfied.

20 (4) PUBLICATION OF NOTICE.—The Secretary
21 shall publish notification of the determination under
22 this subsection in the Federal Register.

23 (5) JUDICIAL REVIEW OF DETERMINATION.—

24 (A) IN GENERAL.—For purposes of judi-
25 cial review, the determination of the Secretary

1 under paragraph (1) shall constitute a final
2 agency action with respect to whether or not to
3 proceed with facilities removal.

4 (B) PETITION FOR REVIEW.—

5 (i) FILING.—

6 (I) IN GENERAL.—Judicial re-
7 view of the determination and related
8 actions to comply with environmental
9 laws (including the National Environ-
10 mental Policy Act of 1969 (42 U.S.C.
11 4321 et seq.), the Endangered Species
12 Act of 1973 (16 U.S.C. 1531 et seq.),
13 and the National Historic Preserva-
14 tion Act (16 U.S.C. 470 et seq.)) may
15 be obtained by an aggrieved person
16 only as provided in this paragraph.

17 (II) JURISDICTION.—A petition
18 for review under this paragraph may
19 be filed only in the United States
20 Court of Appeals for the District of
21 Columbia Circuit or in the Ninth Cir-
22 cuit Court of Appeals.

23 (III) LIMITATION.—A district
24 court of the United States and a
25 State court shall not have jurisdiction

1 to review the determination of the
2 Secretary or related actions to comply
3 with environmental laws described in
4 subclause (I).

5 (ii) DEADLINE.—

6 (I) IN GENERAL.—Except as pro-
7 vided in subclause (II), any petition
8 for review under this paragraph shall
9 be filed not later than 60 days after
10 the date of publication of the deter-
11 mination in the Federal Register.

12 (II) SUBSEQUENT GROUNDS.—If
13 a petition is based solely on grounds
14 arising after the date that is 60 days
15 after the date of publication of the de-
16 termination in the Federal Register,
17 the petition for review under this sub-
18 section shall be filed not later than 60
19 days after the grounds arise.

20 (C) IMPLEMENTATION.—Any action of the
21 Secretary with respect to which review could
22 have been obtained under this paragraph shall
23 not be subject to judicial review in any action
24 relating to the implementation of the deter-

1 mination of the Secretary or in proceedings for
2 enforcement of the Hydroelectric Settlement.

3 (D) APPLICABLE STANDARD AND SCOPE.—
4 Judicial review of the determination of the Sec-
5 retary shall be in accordance with the standard
6 and scope of review under subchapter II of
7 chapter 5, and chapter 7, of title 5, United
8 States Code (commonly known as the “Admin-
9 istrative Procedure Act”).

10 (E) NONTOLLING.—The filing of a petition
11 for reconsideration by the Secretary of an ac-
12 tion subject to review under this subsection
13 shall not—

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

16 (ii) extend the time within which a pe-
17 tition for judicial review under this sub-
18 section may be filed; or

19 (iii) postpone the effectiveness of the
20 action.

21 (6) REQUIREMENTS FOR DAM REMOVAL ENTI-
22 TY.—A dam removal entity designated by the Gov-
23 ernors and the Secretary under paragraph (1)(B)
24 shall, in the sole judgment of the Governors and the
25 Secretary—

1 (A) have the capabilities for facilities re-
2 moval described in section 7.1.1 of the Hydro-
3 electric Settlement;

4 (B) be otherwise qualified to perform fa-
5 cilities removal; and

6 (C) have committed, if so designated, to
7 perform facilities removal within the State Cost
8 Cap as described in section 4.1.3 of the Hydro-
9 electric Settlement.

10 (7) RESPONSIBILITIES OF DAM REMOVAL ENTI-
11 TY.—The dam removal entity designated by the
12 Governors and the Secretary under paragraph
13 (1)(B) shall have the responsibilities described in
14 section 7.1.2 of the Hydroelectric Settlement.

15 (b) FACILITIES REMOVAL.—

16 (1) APPLICABILITY.—This subsection shall
17 apply if—

18 (A) the determination of the Governors
19 and the Secretary under subsection (a) provides
20 for proceeding with facilities removal;

21 (B) the availability of non-Federal funds
22 for the purposes of facilities removal is con-
23 sistent with the Hydroelectric Settlement; and

1 (C) the Hydroelectric Settlement has not
2 terminated in accordance with section 8.11 of
3 the Hydroelectric Settlement.

4 (2) NON-FEDERAL FUNDS.—

5 (A) IN GENERAL.—Notwithstanding title
6 31, United States Code, if the Department of
7 the Interior is designated as the dam removal
8 entity under subsection (a)(1)(B), the Secretary
9 may accept, manage, and expend, without fur-
10 ther appropriation, non-Federal funds for the
11 purpose of facilities removal in accordance with
12 sections 4 and 7 of the Hydroelectric Settle-
13 ment.

14 (B) REFUND.—The Secretary may admin-
15 ister and refund any amounts described in sub-
16 paragraph (A) received from the State of Cali-
17 fornia in accordance with the requirements es-
18 tablished by the State.

19 (C) INCLUSION.—The costs of dam re-
20 moval shall include, within the State Cost Cap
21 described in section 4.1.3 of the Hydroelectric
22 Settlement, reasonable compensation for prop-
23 erty owners whose property or property value is
24 directly damaged by facilities removal, con-
25 sistent with State, local, and Federal law.

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) PROCEEDING WITH FACILITIES REMOVAL.—

6 (A) IN GENERAL.—The dam removal enti-
7 ty shall, consistent with the Hydroelectric Set-
8 tlement—

9 (i) develop a definite plan for facilities
10 removal as described in section 7 of the
11 Hydroelectric Settlement, including a
12 schedule for facilities removal;

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

20 (iii) implement facilities removal.

21 (B) REPORT.—

22 (i) IN GENERAL.—The Governors and
23 the Secretary shall prepare and make pub-
24 lic a report on the determination and plan
25 for facilities removal.

1 (ii) INCLUSIONS.—The report shall, at
2 a minimum—

3 (I) provide a detailed explanation
4 of the basis for the determination to
5 proceed with facilities removal and for
6 the designation of the dam removal
7 entity, including relevant supporting
8 documents;

9 (II) include any comments re-
10 ceived from the Commission on the
11 determination and a written response
12 to the comments;

13 (III) state specific goals intended
14 to be achieved by facilities removal;

15 (IV) include specific performance
16 measures that will be used to show
17 achievements in meeting the goals;

18 (V) provide a detailed expla-
19 nation of factors that are unique to
20 facilities removal in the Klamath
21 Basin, including why the Federal role
22 is limited to the Klamath Basin and
23 sets no precedent for future Federal
24 action;

1 (VI) describe plans to address
2 any potential costs in excess of the
3 State Cost Cap described in section
4 4.1.3 of the Hydroelectric Settlement;

5 (VII) describe plans for address-
6 ing or mitigating intentional or unin-
7 tentional impacts on local commu-
8 nities and property owners; and

9 (VIII) describe how any potential
10 environmental or other liability con-
11 cerns will be addressed.

12 (iii) SUBMISSION.—The report re-
13 quired under this subparagraph shall be
14 submitted to—

15 (I) the Committee on Energy and
16 Natural Resources of the Senate;

17 (II) the Committee on Natural
18 Resources of the House of Represent-
19 atives; and

20 (III) the Commission.

21 (iv) COMMENT AND CONSULTATION
22 BY COMMISSION.—Not later than 180 days
23 before the publication of the report re-
24 quired by this subparagraph, the Gov-
25 ernors and the Secretary shall submit to

1 the Commission the section of the report
2 describing the basis of the determination
3 to proceed with dam removal for comment
4 and, as appropriate, consultation.

5 (v) DEADLINE.—The report required
6 under this subparagraph shall be made
7 public—

8 (I) not less than 1 year before
9 the date of implementation of facilities
10 removal; and

11 (II) not more than 2 years before
12 the date of implementation of facilities
13 removal.

14 (C) STATE AND LOCAL LAWS.—

15 (i) IN GENERAL.—Except as provided
16 in clause (ii), facilities removal shall be
17 subject to applicable requirements of State
18 and local laws relating to permits and
19 other authorizations, to the extent the re-
20 quirements are not in conflict with Federal
21 law, including the determination of the
22 Governors and the Secretary under sub-
23 section (a) and the definite plan (including
24 the schedule) for facilities removal author-
25 ized under this Act.

1 (ii) LIMITATIONS.—Clause (i) shall
2 not affect—

3 (I) the authorities of the States
4 regarding concurrence with the deter-
5 mination of the Secretary under sub-
6 section (a) in accordance with State
7 law; or

8 (II) the authority of a State pub-
9 lic utility commission regarding fund-
10 ing of facilities removal.

11 (iii) JURISDICTION.—The United
12 States district courts shall have original ju-
13 risdiction over all claims regarding the con-
14 sistency of State and local laws regarding
15 permits and other authorizations, and of
16 State and local actions pursuant to those
17 laws, with the definite plan (including the
18 schedule) for facilities removal authorized
19 under this Act.

20 (D) ACCEPTANCE OF TITLE TO FACILI-
21 TIES.—

22 (i) IN GENERAL.—The dam removal
23 entity may accept from PacifiCorp all
24 rights, titles, permits, and other interests
25 in the facilities and associated land, for fa-

1 facilities removal and for disposition of facil-
2 ity land (as provided in section 7.6.4 of the
3 Hydroelectric Settlement) on providing to
4 PacifiCorp a notice that the dam removal
5 entity is ready to commence facilities re-
6 moval in accordance with section 7.4.1 of
7 the Hydroelectric Settlement.

8 (ii) NON-FEDERAL DAM REMOVAL EN-
9 TITY.—Notwithstanding section 8 of the
10 Federal Power Act (16 U.S.C. 801), the
11 transfer of title to facilities from
12 PacifiCorp to a non-Federal dam removal
13 entity, in accordance with the Hydro-
14 electric Settlement and this Act, is author-
15 ized.

16 (E) CONTINUED POWER GENERATION.—

17 (i) IN GENERAL.—In accordance with
18 an agreement negotiated under clause (ii),
19 on transfer of title pursuant to subpara-
20 graph (C) and until the dam removal enti-
21 ty instructs PacifiCorp to cease the gen-
22 eration of power, PacifiCorp may continue,
23 consistent with State law—

24 (I) to generate, and retain title
25 to, any power generated by the facili-

1 ties in accordance with section 7 of
2 the Hydroelectric Settlement; and

3 (II) to transmit and use the
4 power for the benefit of the customers
5 of PacifiCorp under the jurisdiction of
6 applicable State public utility commis-
7 sions and the Commission.

8 (ii) AGREEMENT WITH DAM REMOVAL
9 ENTITY.—As a condition of transfer of
10 title pursuant to subparagraph (C), the
11 dam removal entity shall enter into an
12 agreement with PacifiCorp that provides
13 for continued generation of power in ac-
14 cordance with clause (i).

15 (F) REPORT.—Not later than 3 years after
16 the date of the completion of facilities removal,
17 the Governors and the Secretary shall submit to
18 the Committee on Energy and Natural Re-
19 sources of the Senate, the Committee on Nat-
20 ural Resources of the House of Representatives,
21 and the Commission—

22 (i) a detailed report describing the re-
23 sults of facilities removal, including the
24 status of achieving the performance meas-

1 ures and goals included in the report de-
2 scribed in subparagraph (B); and

3 (ii) such additional reports as the
4 Committees consider appropriate, to be
5 completed and submitted by the Secretary,
6 in consultation with the Governors.

7 (5) LICENSES AND JURISDICTION.—

8 (A) ANNUAL LICENSES.—

9 (i) IN GENERAL.—The Commission
10 shall issue annual licenses authorizing
11 PacifiCorp to continue to operate the fa-
12 cilities until PacifiCorp transfers title to all
13 of the facilities.

14 (ii) TERMINATION.—The annual li-
15 censes shall terminate with respect to a fa-
16 cility on transfer of title for the facility
17 from PacifiCorp to the dam removal entity.

18 (iii) STAGED REMOVAL.—

19 (I) IN GENERAL.—On transfer of
20 title of any facility by PacifiCorp to
21 the dam removal entity, annual license
22 conditions shall no longer be in effect
23 with respect to the facility.

24 (II) NONTRANSFER OF TITLE.—

25 Annual license conditions shall remain

1 in effect with respect to any facility
2 for which PacifiCorp has not trans-
3 ferred title to the dam removal entity
4 to the extent compliance with the an-
5 nual license conditions are not pre-
6 vented by the removal of any other fa-
7 cility.

8 (B) JURISDICTION.—The jurisdiction of
9 the Commission under part I of the Federal
10 Power Act (16 U.S.C. 792 et seq.) shall termi-
11 nate with respect to a facility on the transfer of
12 title for the facility from PacifiCorp to the dam
13 removal entity.

14 (C) RELICENSING.—

15 (i) IN GENERAL.—The Commission
16 shall—

17 (I) stay the proceeding of the
18 Commission regarding the pending li-
19 cense application of PacifiCorp for
20 Project No. 2082 for the period dur-
21 ing which the Hydroelectric Settle-
22 ment remains in effect; and

23 (II) resume the proceeding and
24 proceed to take final action on the
25 new license application only if the Hy-

1 droelectric Settlement terminates pur-
2 suant to section 8.11 of the Hydro-
3 electric Settlement.

4 (D) TERMINATION; LIMITATIONS.—If the
5 Hydroelectric Settlement is terminated pursu-
6 ant to section 8.11 of the Hydroelectric Settle-
7 ment, the Commission, in proceedings on the
8 application for relicensing, shall not be bound
9 by the record or findings of the Secretary relat-
10 ing to the determination of the Secretary or by
11 the determination of the Secretary.

12 (c) LIABILITY PROTECTION.—

13 (1) IN GENERAL.—Notwithstanding any other
14 Federal, State, local, or common law, PacifiCorp
15 shall not be liable for any harm to an individual or
16 entity, property, or the environment, or any damages
17 resulting from facilities removal or facility oper-
18 ations arising from, relating to, or triggered by ac-
19 tions associated with facilities removal under this
20 Act, including any damage caused by the release of
21 any material or substance (including a hazardous
22 substance).

23 (2) FUNDING.—Notwithstanding any other
24 Federal, State, local, or common law, no individual
25 or entity contributing funds for facilities removal

1 shall be held liable, solely by virtue of that funding,
2 for any harm to an individual or entity, property, or
3 the environment, or damages arising from facilities
4 removal or facility operations arising from, relating
5 to, or triggered by actions associated with facilities
6 removal under this Act, including any damage
7 caused by the release of any material or substance
8 (including a hazardous substance).

9 (3) PREEMPTION.—Notwithstanding section
10 10(c) of the Federal Power Act (16 U.S.C. 803(c)),
11 protection from liability pursuant to this section
12 shall preempt the laws of any State to the extent the
13 laws are inconsistent with this Act, except that this
14 Act shall not limit any otherwise-available immunity,
15 privilege, or defense under any other provision of
16 law.

17 (4) EFFECTIVE DATE.—Liability protection
18 under this subsection shall take effect as the protec-
19 tion relates to any particular facilities on transfer of
20 title to the facility from PacifiCorp to the dam re-
21 moval entity designated by the Secretary under sub-
22 section (a)(1)(B).

23 (d) FACILITIES NOT REMOVED.—

24 (1) KENO FACILITY.—

1 (A) TRANSFER.—On notice that the dam
2 removal entity is ready to commence removal of
3 the J.C. Boyle Dam, the Secretary shall accept
4 the transfer of title to the Keno Facility to the
5 United States in accordance with section 7.5 of
6 the Hydroelectric Settlement.

7 (B) EFFECT OF TRANSFER.—On the
8 transfer under subparagraph (A), and without
9 further action by Congress—

10 (i) the Keno Facility shall—

11 (I) become part of the Klamath
12 Reclamation Project; and

13 (II) be operated and maintained
14 in accordance with the Federal rec-
15 lamation laws and this Act; and

16 (ii) the jurisdiction of the Commission
17 over the Keno Facility shall terminate.

18 (2) 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 (3) FALL CREEK.—Not later than 60 days after
2 the date of the transfer of title to the Iron Gate Fa-
3 cility to the dam removal entity, the Commission
4 shall resume timely consideration of the pending li-
5 censing application for the Fall Creek development
6 pursuant to the Federal Power Act (16 U.S.C. 791a
7 et seq.), regardless of whether PacifiCorp retains
8 ownership of Fall Creek or transfers ownership to a
9 new licensee.

10 (4) IRON GATE HATCHERY.—Notwithstanding
11 section 8 of the Federal Power Act (16 U.S.C. 801),
12 consistent with section 7.6.6 of the Hydroelectric
13 Settlement title to the PacifiCorp hatchery facilities
14 within the State of California shall be transferred to
15 the State of California at—

16 (A) the time of transfer to the dam re-
17 moval entity of title to the Iron Gate Dam; or

18 (B) such other time as may be agreed to
19 by the parties to the Hydroelectric Settlement.

20 **SEC. 9. ADMINISTRATION AND FUNDING.**

21 (a) AGREEMENTS.—

22 (1) IN GENERAL.—The Secretaries may enter
23 into such agreements (including contracts, memo-
24 randa of understanding, financial assistance agree-
25 ments, cost sharing agreements, and other appro-

1 piate agreements) with State, tribal, and local gov-
2 ernment agencies or private individuals and entities
3 as the Secretary concerned consider to be necessary
4 to carry out this Act and the Settlements, subject to
5 such terms and conditions as the Secretary con-
6 cerned considers to be necessary.

7 (2) TRIBAL PROGRAMS.—Consistent with para-
8 graph (1) and section 32 of the Restoration Agree-
9 ment, the Secretaries shall give priority to qualified
10 Party tribes in awarding grants, contracts, or other
11 agreements for purposes of implementing the fish-
12 eries programs described in part III of the Restora-
13 tion Agreement.

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

18 (1) The On-Project Plan and Power for Water
19 Management Fund, to be administered by the Bu-
20 reau of Reclamation.

21 (2) The Water Use Retirement and Off-Project
22 Reliance Fund, to be administered by the United
23 States Fish and Wildlife Service.

24 (3) The Klamath Drought Fund, to be adminis-
25 tered by the National Fish and Wildlife Foundation.

1 (c) MANAGEMENT.—

2 (1) IN GENERAL.—The accounts established by
3 subsection (b) shall be managed in accordance with
4 this Act and section 14.3 of the Restoration Agree-
5 ment.

6 (2) TRANSFERS.—Notwithstanding section
7 1535 of title 31, United States Code, the Secretaries
8 are authorized to enter into interagency agreements
9 for the transfer of Federal funds between Federal
10 programs for the purpose of implementing this Act
11 and the Settlements.

12 (d) ACCEPTANCE AND EXPENDITURE OF NON-FED-
13 ERAL FUNDS.—

14 (1) IN GENERAL.—Notwithstanding title 31,
15 United States Code, the Secretaries may accept and
16 expend, without further appropriation, non-Federal
17 funds, in-kind services, or property for purposes of
18 implementing the Settlement.

19 (2) USE.—The funds and property described in
20 paragraph (1) may be expended or used, as applica-
21 ble, only for the purpose for which the funds or
22 property were provided.

23 (e) FUNDS AVAILABLE UNTIL EXPENDED.—All
24 funds made available for the implementation of the Settle-
25 ments shall remain available until expended.

1 (f) TERMINATION OF AGREEMENTS.—If any Agree-
2 ment terminates—

3 (1) any appropriated Federal funds provided to
4 a party that are unexpended at the time of the ter-
5 mination of the Agreement shall be returned to the
6 general fund of the Treasury; and

7 (2) any appropriated Federal funds provided to
8 a party shall be treated as an offset against any
9 claim for damages by the party arising under the
10 Agreement.

11 (g) BUDGET.—

12 (1) IN GENERAL.—The budget of the President
13 shall include such requests as the President con-
14 siders to be necessary for the level of funding for
15 each of the Federal agencies to carry out the respon-
16 sibilities of the agencies under the Settlements.

17 (2) CROSSCUT BUDGET.—Not later than the
18 date of submission of the budget of the President to
19 Congress for each fiscal year, the Director of the Of-
20 fice of Management and Budget shall submit to the
21 appropriate authorizing and appropriating commit-
22 tees of the Senate and the House of Representatives
23 a financial report containing—

24 (A) an interagency budget crosscut report
25 that displays the budget proposed for each of

1 the Federal agencies to carry out the Settle-
2 ments for the upcoming fiscal year, separately
3 showing funding requested under preexisting
4 authorities and new authorities provided by this
5 Act;

6 (B) a detailed accounting of all funds re-
7 ceived and obligated by all Federal agencies re-
8 sponsible for implementing the Settlements; and

9 (C) a budget for proposed actions to be
10 carried out in the upcoming fiscal year by the
11 applicable Federal agencies in the upcoming fis-
12 cal year.

13 (h) REPORT TO CONGRESS.—Not later than the date
14 of submission of the budget of the President to Congress
15 for each fiscal year, the Secretaries shall submit to the
16 appropriate authorizing committees of the Senate and the
17 House of Representatives a report that describes—

18 (1) the status of implementation of all of the
19 Settlements;

20 (2) expenditures during the preceding fiscal
21 year for implementation of all of the Settlements;

22 (3) the current schedule and funding levels that
23 are needed to complete implementation of each of
24 the Settlements;

1 (4) achievements in advancing the purposes of
2 complying with the Endangered Species Act of 1973
3 (16 U.S.C. 1531 et seq.) under the Settlements;

4 (5) additional achievements in restoring fish-
5 eries under the Settlements;

6 (6) the status of water deliveries for the pre-
7 ceding water year and projections for the upcoming
8 water year for—

9 (A) the Klamath Project and irrigators in
10 the Off-Project Area pursuant to the Agree-
11 ments; and

12 (B) the National Wildlife Refuges in areas
13 covered by the Agreements;

14 (7) the status of achieving the goals of sup-
15 porting sustainable agriculture production (including
16 the goal of limiting net power costs for water man-
17 agement) and general economic development in the
18 Klamath Basin;

19 (8) the status of achieving the goal of sup-
20 porting the economic development of the Party
21 tribes;

22 (9) the assessment of the Secretaries of the
23 progress being made toward completing implementa-
24 tion of all of the Settlements;

1 (10)(A) identification of performance measures
2 established for the goals of the Agreements and of
3 facilities removal as described in the report to Con-
4 gress required under section 8(b)(4)(B); and

5 (B) until achieved, the assessment of the Secre-
6 taries of the progress being made toward meeting
7 the performance measures; and

8 (11) the status of plans to address any poten-
9 tial cost in excess of the State cost cap as described
10 in the report to Congress required under section
11 8(b)(4)(B).