

112TH CONGRESS
1ST SESSION

H. R. 3398

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 HOUSE OF REPRESENTATIVES

NOVEMBER 10, 2011

Mr. THOMPSON of California (for himself, Mr. BLUMENAUER, Mr. DEFazio, Mr. DICKS, Ms. ESHOO, Mr. GARAMENDI, Ms. LEE of California, Ms. MATSUI, Mr. MCNERNEY, Mr. GEORGE MILLER of California, Mr. MORAN, Mrs. NAPOLITANO, Mr. SCHRADER, Ms. SPEIER, Mr. STARK, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Klamath Basin Economic Restoration Act of 2011”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of
5 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.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

10 (2) **DAM REMOVAL ENTITY.**—The term “Dam
11 Removal Entity” means the entity designated by the
12 Secretary pursuant to section 202(c).

13 (3) **DEPARTMENT.**—The term “Department”
14 means the Department of the Interior.

1 (4) DEFINITE PLAN.—The term “definite plan”
2 has the meaning given the term in section 1.4 of the
3 Hydroelectric Settlement.

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

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

12 (A) Iron Gate Development.

13 (B) Copco 1 Development.

14 (C) Copco 2 Development.

15 (D) J.C. Boyle Development.

16 (7) FACILITIES REMOVAL.—The term “facilities
17 removal” means—

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

21 (B) site remediation and restoration, in-
22 cluding restoration of previously inundated
23 land;

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

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

3 (8) **FEDERALLY RECOGNIZED TRIBE.**—The
4 term “federally recognized tribe” means an Indian
5 tribe listed as federally recognized in—

6 (A) the Bureau of Indian Affairs publica-
7 tion entitled “Indian Entities Recognized and
8 Eligible to Receive Services from the United
9 States Bureau of Indian Affairs” (74 Fed. Reg.
10 40218 (Aug. 11, 2009)); or

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

14 (9) **HYDROELECTRIC SETTLEMENT.**—

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

- 19 (i) the Department;
20 (ii) the Department of Commerce;
21 (iii) the State of California;
22 (iv) the State of Oregon;
23 (v) PacifiCorp; and
24 (vi) other parties.

1 (B) INCLUSIONS.—The term “Hydro-
2 electric Settlement” includes any amendments
3 to the Agreement described in subparagraph
4 (A)—

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

7 (ii) approved pursuant to section
8 201(b)(2).

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

13 (11) KLAMATH BASIN.—

14 (A) IN GENERAL.—The term “Klamath
15 Basin” means the land tributary to the Klam-
16 ath River in the States.

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

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

22 (A) the Tulelake Irrigation District;

23 (B) the Klamath Irrigation District;

24 (C) the Klamath Drainage District;

1 (D) the Klamath Basin Improvement Dis-
2 trict;

3 (E) the Ady District Improvement Com-
4 pany;

5 (F) the Enterprise Irrigation District;

6 (G) the Malin Irrigation District;

7 (H) the Midland District Improvement
8 District;

9 (I) the Pioneer District Improvement Com-
10 pany;

11 (J) the Shasta View Irrigation District;

12 (K) the Sunnyside Irrigation District;

13 (L) Don Johnston & Son;

14 (M) Bradley S. Luscombe;

15 (N) Randy Walthall;

16 (O) the Inter-County Title Company;

17 (P) the Reames Golf and Country Club;

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

19 (R) Van Brimmer Ditch Company;

20 (S) Plevna District Improvement Com-
21 pany; and

22 (T) Collins Products, LLC.

23 (13) NET REVENUES.—

24 (A) IN GENERAL.—The term “net reve-
25 nues” has the meaning given the term “net

1 lease revenues” in Article 1(e) of Contract No.
2 14–06–200–5954 between Tulelake Irrigation
3 District and the United States.

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

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

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

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

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

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

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

7 (18) PARTY TRIBES.—The term “Party Tribes”
8 means—

9 (A) the Yurok Tribe;

10 (B) the Karuk Tribe; and

11 (C) the Klamath Tribes.

12 (19) RESTORATION AGREEMENT.—

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

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

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

1 (ii) approved pursuant to section
2 101(b)(2).

3 (20) SECRETARIAL DETERMINATION.—The
4 term “Secretarial determination” means a deter-
5 mination of the Secretary made under section
6 202(a).

7 (21) SECRETARIES.—The term “Secretaries”
8 means—

9 (A) the Secretary of the Interior or des-
10 ignee;

11 (B) the Secretary of Commerce or des-
12 ignee; and

13 (C) the Secretary of Agriculture or des-
14 ignee.

15 (22) SECRETARY.—The term “Secretary”
16 means the Secretary of the Interior.

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

18 (A) the State of Oregon; and

19 (B) the State of California.

1 **TITLE I—RESTORATION**
2 **AGREEMENT**

3 **SEC. 101. APPROVAL AND EXECUTION OF RESTORATION**
4 **AGREEMENT.**

5 (a) **IN GENERAL.**—The United States approves the
6 Restoration Agreement except to the extent the Restora-
7 tion Agreement conflicts with this title.

8 (b) **SIGNING AND IMPLEMENTATION OF THE RES-**
9 **TORATION AGREEMENT.**—The Secretaries shall—

10 (1) sign and implement the Restoration Agree-
11 ment;

12 (2) implement any amendment to the Restora-
13 tion Agreement approved by the Parties after the
14 date of enactment of this title, unless 1 or more of
15 the Secretaries determines, not later than 90 days
16 after the date on which the non-Federal Parties
17 agree to the amendment, that the amendment is in-
18 consistent with this title or other provisions of law;
19 and

20 (3) to the extent consistent with the Restora-
21 tion Agreement, this title, and other provisions of
22 law, perform all actions necessary to carry out each
23 responsibility of the Secretary concerned under the
24 Restoration Agreement.

1 (c) EFFECT OF SIGNING OF RESTORATION AGREE-
2 MENT.—Signature by the Secretaries of the Restoration
3 Agreement does not constitute a major Federal action
4 under the National Environmental Policy Act of 1969 (42
5 U.S.C. 4321 et seq.).

6 (d) COMPLIANCE WITH EXISTING LAW.—In imple-
7 menting the Restoration Agreement, the Secretaries shall
8 comply with—

9 (1) the National Environmental Policy Act of
10 1969 (42 U.S.C. 4321 et seq.);

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

13 (3) all other applicable Federal environmental
14 laws (including regulations).

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

16 (a) AGREEMENTS.—The Secretaries may enter into
17 such agreements and take such other measures (including
18 entering into contracts and financial assistance agree-
19 ments) as the Secretaries consider necessary to carry out
20 this title.

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

23 (1) IN GENERAL.—Notwithstanding title 31,
24 United States Code, the Secretaries may accept and
25 expend, without further appropriation, non-Federal

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

6 (2) USE.—The funds may be expended, and the
7 property used, under paragraph (1) only for the pur-
8 poses for which the funds and property were pro-
9 vided, without further appropriation or authority.

10 **SEC. 103. RIGHTS PROTECTED.**

11 Notwithstanding any other provision of law, this Act
12 and implementation of the Restoration Agreement shall
13 not restrict or alter the eligibility of any Party or Indian
14 tribe for or receipt of funds, or be considered an offset
15 against any obligations or funds in existence on the date
16 of enactment of this Act, under any Federal or State law.

17 **SEC. 104. FUNDING.**

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

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

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

1 (3) The Klamath Drought Fund.

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

5 (c) BUDGET REQUESTS.—When submitting annual
6 budget requests to Congress, the President may include
7 funding described in Appendix C–2 of the Restoration
8 Agreement with such adjustment as the President con-
9 siders appropriate to maintain timely implementation of
10 the Restoration Agreement.

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

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

18 **SEC. 105. KLAMATH RECLAMATION PROJECT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (a) **ACTIONS BY THE KLAMATH TRIBES.**—In return
22 for the resolution of the contests of the Klamath Project
23 Water Users related to the water rights claims of the
24 Klamath Tribes and of the United States acting in a ca-
25 pacity as trustee for the Klamath Tribes and members of

1 the Klamath Tribes in the Oregon Klamath Basin Adju-
2 dication and for other benefits covered by the Restoration
3 Agreement and this Act, the Klamath Tribes (on behalf
4 of the Klamath Tribes and members of the Klamath
5 Tribes) are authorized to make the commitments in the
6 Restoration Agreement, including the assurances con-
7 tained in section 15 of the Restoration Agreement, and
8 such commitments are confirmed as effective and binding
9 in accordance with the terms of the commitments without
10 further action by the Klamath Tribes.

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

1 (c) RELEASE OF CLAIMS AGAINST THE UNITED
2 STATES.—

3 (1) IN GENERAL.—Without affecting rights se-
4 cured by treaty, Executive order, or other law, the
5 Party Tribes (on behalf of the Party Tribes and
6 members of the Party Tribes) may relinquish and
7 release certain claims against the United States,
8 Federal agencies, or Federal employees, described in
9 sections 15.3.5.A, 15.3.6.B.i and 15.3.7.B.i of the
10 Restoration Agreement.

11 (2) CONDITIONS.—The relinquishments and re-
12 leases shall not be in force or effect until the terms
13 described in sections 15.3.5.C, 15.3.6.B.iii,
14 15.3.7.B.iii, and 33.2.1 of the Restoration Agree-
15 ment have been fulfilled.

16 (d) RETENTION OF RIGHTS OF THE PARTY
17 TRIBES.—Notwithstanding the commitments and releases
18 described in subsections (a) through (c), the Party Tribes
19 and the members of the Party Tribes shall retain all
20 claims described in sections 15.3.5.B, 15.3.6.B.ii and
21 15.3.7.B.ii of the Restoration Agreement.

22 (e) TOLLING OF CLAIMS.—

23 (1) IN GENERAL.—Subject to paragraph (2),
24 the period of limitation and time-based equitable de-

1 fense relating to a claim described in subsection (c)
2 shall be tolled during the period—

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

5 (B) ending on the earlier of—

6 (i) the date the Secretary publishes
7 the notice described in sections 15.3.5.C,
8 15.3.6.B.iii and 15.3.7.B.iii of the Restora-
9 tion Agreement; or

10 (ii) December 1, 2030.

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

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

17 (B) precludes the tolling of any period of
18 limitations or any time-based equitable defense
19 under any other applicable law.

20 (f) ACTIONS OF THE UNITED STATES ACTING IN CA-
21 PACITY AS TRUSTEE.—In return for the commitments of
22 the Klamath Project Water Users relating to the water
23 rights and water rights claims of federally recognized
24 tribes of the Klamath Basin and of the United States as
25 trustee for such tribes and other benefits covered by the

1 Restoration Agreement and this Act, the United States,
2 as trustee on behalf of the federally recognized tribes of
3 the Klamath Basin and allottees of reservations of feder-
4 ally recognized tribes of the Klamath Basin in California,
5 is authorized to make the commitments provided in the
6 Restoration Agreement, including the assurances con-
7 tained in section 15 of the Restoration Agreement, and
8 such commitments are confirmed as effective and binding
9 in accordance with the terms of the commitments, without
10 further action by the United States.

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

14 (h) EFFECT OF SECTION.—Nothing in this section—
15 (1) affects the ability of the United States to
16 take actions—

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

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

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

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

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

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

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

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

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

22 (E) as trustee for the federally recognized
23 tribes of the Klamath Basin to acquire water
24 rights after the effective date of the Restoration

1 Agreement (as defined in section 1.5.1 of the
2 Restoration Agreement);

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

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

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

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

1 (i) PUBLICATION OF NOTICE; EFFECT OF PUBLICA-
2 TION.—

3 (1) PUBLICATION.—The Secretary shall publish
4 the notice required by section 15.3.4.A or section
5 15.3.4.C of the Restoration Agreement in accord-
6 ance with the Restoration Agreement.

7 (2) EFFECT.—On publication of the notice de-
8 scribed in paragraph (1), the Party Tribes, the
9 United States as trustee for the federally recognized
10 tribes of the Klamath Basin, and other Parties shall
11 have the rights and obligations provided in the Res-
12 toration Agreement.

13 (j) FISHERIES PROGRAMS.—Consistent with section
14 102(a), the Secretaries shall give priority to qualified
15 Party Tribes in awarding grants, contracts, or other
16 agreements, consistent with section 102, for purposes of
17 implementing the fisheries programs described in part III
18 of the Restoration Agreement.

19 (k) TRIBES OUTSIDE KLAMATH BASIN UNAF-
20 FECTED.—Nothing in this Act or the Restoration Agree-
21 ment affects the rights of any Indian tribe outside the
22 Klamath Basin.

23 (l) NONPARTY TRIBES OF THE KLAMATH BASIN UN-
24 AFFECTED.—Nothing in this Act or the Restoration
25 Agreement amends, alters, or limits the authority of the

1 federally recognized tribes of the Klamath Basin, other
2 than the Party Tribes, to exercise any water rights the
3 tribes hold or may be determined to hold.

4 **SEC. 107. JUDICIAL REVIEW.**

5 Judicial review of a decision of the Secretary con-
6 cerning rights or obligations under sections 15.3.5.C,
7 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, and 15.3.9 of the Res-
8 toration Agreement shall be in accordance with the stand-
9 ard and scope of review under subchapter II of chapter
10 5, and chapter 7, of title 5, United States Code (commonly
11 known as the “Administrative Procedure Act”).

12 **SEC. 108. MISCELLANEOUS.**

13 (a) WATER RIGHTS.—

14 (1) IN GENERAL.—Except as specifically pro-
15 vided in this title and the Restoration Agreement,
16 nothing in this title or the Restoration Agreement
17 shall create or determine water rights or affect
18 water rights or water right claims in existence on
19 the date of enactment of this Act.

20 (2) NO STANDARD FOR QUANTIFICATION.—

21 Nothing in this title or the Restoration Agreement
22 establishes any standard for the quantification of
23 Federal reserved water rights or any Indian water
24 claims of any Indian tribe in any judicial or adminis-
25 trative proceeding.

1 (b) LIMITATIONS.—

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

3 (A) confers on any person or entity who is
4 not a party to the Restoration Agreement a pri-
5 vate right of action or claim for relief to inter-
6 pret or enforce this title or the Restoration
7 Agreement; or

8 (B) expands the jurisdiction of State
9 courts to review Federal agency actions or de-
10 termine Federal rights.

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

14 (c) RELATIONSHIP TO CERTAIN OTHER FEDERAL
15 LAW.—

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

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

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

23 (C) the Endangered Species Act of 1973
24 (16 U.S.C. 1531 et seq.);

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

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

5 (2) CONSISTENCY.—The Restoration Agree-
6 ment shall be considered consistent with subsections
7 (a) through (c) of section 208 of the Act of July 10,
8 1952 (66 Stat. 560, chapter 651; 43 U.S.C. 666).

9 (d) TERMINATION OF RESTORATION AGREEMENT.—
10 If the Restoration Agreement terminates—

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

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

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

1 **TITLE II—HYDROELECTRIC**
2 **SETTLEMENT**

3 **SEC. 201. APPROVAL AND EXECUTION OF HYDROELECTRIC**
4 **SETTLEMENT.**

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

8 (b) IMPLEMENTATION.—The Secretary, the Sec-
9 retary of Commerce, and the Commission, or designees,
10 shall implement, in consultation with other applicable Fed-
11 eral agencies—

12 (1) the Hydroelectric Settlement; and

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

18 **SEC. 202. SECRETARIAL DETERMINATION.**

19 (a) IN GENERAL.—The Secretary shall determine,
20 consistent with section 3 of the Hydroelectric Settlement,
21 whether to proceed with facilities removal and may deter-
22 mine to proceed with facilities removal if, as determined
23 by the Secretary, facilities removal—

24 (1) will advance restoration of the salmonid
25 fisheries of the Klamath Basin; and

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

5 (b) BASIS FOR SECRETARIAL DETERMINATION.—To
6 support the Secretarial determination, the Secretary, in
7 cooperation with the Secretary of Commerce and other en-
8 tities, shall—

9 (1) use existing information;

10 (2) conduct any necessary further appropriate
11 studies;

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

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

17 (c) DESIGNATION OF DAM REMOVAL ENTITY.—

18 (1) IN GENERAL.—If the Secretarial determina-
19 tion provides for proceeding with facilities removal,
20 the Secretarial determination shall include the des-
21 ignation of a Dam Removal Entity.

22 (2) REQUIREMENTS.—

23 (A) IN GENERAL.—Subject to subpara-
24 graph (B), the Dam Removal Entity designated
25 by the Secretary shall be the Department if the

1 Secretary determines, in the judgment of the
2 Secretary, that—

3 (i) the Department has the capabilities
4 ties and responsibilities for facilities re-
5 moval described in section 7 of the Hydro-
6 electric Settlement; and

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

9 (B) NON-FEDERAL DAM REMOVAL ENTI-
10 TY.—As determined by the Secretary consistent
11 with section 3.3.4.E of the Hydroelectric Settle-
12 ment, the Secretary may designate a non-Fed-
13 eral Dam Removal Entity if—

14 (i) the Secretary finds, based on the
15 judgment of the Secretary, that the Dam
16 Removal Entity-designate is qualified and
17 has the capabilities and responsibilities for
18 facilities removal described in section 7 of
19 the Hydroelectric Settlement;

20 (ii) the States have concurred in the
21 finding described in clause (i); and

22 (iii) the Dam Removal Entity-des-
23 ignate has committed, if so designated, to
24 perform facilities removal within the State

1 Cost Cap described in section 4.1.3 of the
2 Hydroelectric Settlement.

3 (d) CONDITIONS FOR SECRETARIAL DETERMINA-
4 TION.—The Secretary may not make or publish the Secre-
5 tarial determination, unless the conditions specified in sec-
6 tion 3.3.4 of the Hydroelectric Settlement have been satis-
7 fied.

8 (e) NOTICE.—The Secretary shall—

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

11 (2) submit to the Committee on Energy and
12 Natural Resources of the Senate and the Committee
13 on Natural Resources of the House of Representa-
14 tives a report on implementation of the Hydro-
15 electric Settlement.

16 (f) JUDICIAL REVIEW OF SECRETARIAL DETERMINA-
17 TION.—

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

22 (2) PETITION FOR REVIEW.—

23 (A) FILING.—

24 (i) IN GENERAL.—Judicial review of
25 the Secretarial determination and related

1 actions to comply with environmental laws
2 (including the National Environmental
3 Policy Act of 1969 (42 U.S.C. 4321 et
4 seq.), the Endangered Species Act of 1973
5 (16 U.S.C. 1531 et seq.), and the National
6 Historic Preservation Act (16 U.S.C. 470
7 et seq.)) may be obtained by an aggrieved
8 person or entity only as provided in this
9 subsection.

10 (ii) JURISDICTION.—A petition for re-
11 view under this paragraph may be filed
12 only in the United States Court of Appeals
13 for the District of Columbia Circuit or in
14 the Ninth Circuit Court of Appeals.

15 (iii) LIMITATION.—Neither a district
16 court of the United States nor a State
17 court shall have jurisdiction to review the
18 Secretarial determination or related actions
19 to comply with environmental laws de-
20 scribed in clause (i).

21 (B) DEADLINE.—

22 (i) IN GENERAL.—Except as provided
23 in clause (ii), any petition for review under
24 this subsection shall be filed within 60
25 days after the date of publication of the

1 Secretarial determination in the Federal
2 Register.

3 (ii) SUBSEQUENT GROUNDS.—If a pe-
4 tition is based solely on grounds arising
5 after the date that is 60 days after the
6 date of publication of the Secretarial deter-
7 mination in the Federal Register, the peti-
8 tion for review under this subsection shall
9 be filed not later than 60 days after the
10 grounds arise.

11 (3) IMPLEMENTATION.—Any action of the Sec-
12 retary with respect to which review could have been
13 obtained under this paragraph shall not be subject
14 to judicial review in any action relating to the imple-
15 mentation of the Secretarial determination or in pro-
16 ceedings for enforcement of the Hydroelectric Settle-
17 ment.

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

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

4 (A) affect the finality of the action for pur-
5 poses of judicial review;

6 (B) extend the time within which a petition
7 for judicial review under this subsection may be
8 filed; or

9 (C) postpone the effectiveness of the ac-
10 tion.

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

12 (a) FACILITIES REMOVAL PROCESS.—

13 (1) APPLICATION.—This subsection shall apply
14 if—

15 (A) the Secretarial determination provides
16 for proceeding with facilities removal;

17 (B) the States concur in the Secretarial
18 determination in accordance with section 3.3.5
19 of the Hydroelectric Settlement;

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

23 (D) the Hydroelectric Settlement has not
24 terminated in accordance with section 8.11 of
25 the Hydroelectric Settlement.

1 (2) NON-FEDERAL FUNDS.—

2 (A) IN GENERAL.—Notwithstanding title
3 31, United States Code, if the Department is
4 designated as the Dam Removal Entity, the
5 Secretary may accept, expend without further
6 appropriation, and manage non-Federal funds
7 for the purpose of facilities removal in accord-
8 ance with sections 4 and 7 of the Hydroelectric
9 Settlement.

10 (B) REFUND.—The Secretary is author-
11 ized to administer and refund any funds de-
12 scribed in subparagraph (A) received from the
13 State of California in accordance with the re-
14 quirements established by the State.

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

19 (4) FACILITIES REMOVAL.—

20 (A) IN GENERAL.—The Dam Removal En-
21 tity shall, consistent with the Hydroelectric Set-
22 tlement—

23 (i) develop a definite plan for facilities
24 removal, including a schedule for facilities
25 removal;

1 (ii) obtain all permits, authorizations,
2 entitlements, certifications, and other ap-
3 provals necessary to implement facilities
4 removal, including a permit under section
5 404 of the Federal Water Pollution Con-
6 trol Act (33 U.S.C. 1344); and

7 (iii) implement facilities removal.

8 (B) STATE AND LOCAL LAWS.—Facilities
9 removal shall be subject to applicable require-
10 ments of State and local laws respecting per-
11 mits and other authorizations, to the extent the
12 requirements are not in conflict with Federal
13 law, including the Secretarial determination and
14 the detailed plan (including the schedule) for
15 facilities removal authorized under this Act.

16 (C) LIMITATIONS.—Subparagraph (B)
17 shall not affect—

18 (i) the authorities of the States re-
19 garding concurrence with the Secretarial
20 determination in accordance with State
21 law; or

22 (ii) the authority of a State public
23 utility commission regarding funding of fa-
24 cilities removal.

1 (D) ACCEPTANCE OF TITLE TO FACILI-
2 TIES.—The Dam Removal Entity is authorized
3 to accept from PacifiCorp all rights, titles, per-
4 mits, and other interests in the facilities and as-
5 sociated land, for facilities removal and for dis-
6 position of facility land (as provided in section
7 7.6.4 of the Hydroelectric Settlement) upon the
8 Dam Removal Entity providing notice that the
9 Dam Removal Entity is ready to commence fa-
10 cilities removal in accordance with section 7.4.1
11 of the Hydroelectric Settlement.

12 (E) CONTINUED POWER GENERATION.—
13 (i) IN GENERAL.—In accordance with
14 an agreement negotiated under clause (ii),
15 on transfer of title pursuant to subpara-
16 graph (D) and until the Dam Removal En-
17 tity instructs PacifiCorp to cease the gen-
18 eration of power, PacifiCorp may, con-
19 sistent with State law—

20 (I) continue generating and re-
21 taining title to any power generated
22 by the facilities in accordance with
23 section 7 of the Hydroelectric Settle-
24 ment; and

1 (II) continue to transmit and use
2 the power for the benefit of the cus-
3 tomers of PacifiCorp under the juris-
4 diction of applicable State public util-
5 ity commissions and the Commission.

6 (ii) AGREEMENT WITH DAM REMOVAL
7 ENTITY.—Before transfer of title pursuant
8 to subparagraph (D), the Dam Removal
9 Entity shall enter into an agreement with
10 PacifiCorp that provides for continued gen-
11 eration of power in accordance with clause
12 (i).

13 (b) JURISDICTION.—The United States district
14 courts shall have original jurisdiction over all claims re-
15 garding the consistency of State and local laws regarding
16 permits and other authorizations, and of State and local
17 actions pursuant to those laws, with the Secretarial deter-
18 mination and the detailed plan (including the schedule)
19 for facilities removal authorized under this title.

20 (c) NO PRIVATE RIGHT OF ACTION.—

21 (1) IN GENERAL.—Nothing in this title confers
22 on any person or entity not a party to the Hydro-
23 electric Settlement a private right of action or claim
24 for relief to interpret or enforce this title or the Hy-
25 droelectric Settlement.

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

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

5 (a) IN GENERAL.—The Secretary shall accept the
6 transfer of title in the Keno Development to the United
7 States in accordance with section 7.5 of the Hydroelectric
8 Settlement.

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

11 (1) the Keno Development shall—

12 (A) become part of the Klamath Reclama-
13 tion Project; and

14 (B) be operated and maintained in accord-
15 ance with Federal reclamation law (the Act of
16 June 17, 1902 (32 Stat. 388, chapter 1093)),
17 and Acts supplemental to and amendatory of
18 that Act (43 U.S.C. 371 et seq.) and this Act;
19 and

20 (2) Commission jurisdiction over the Keno De-
21 velopment shall terminate.

22 **SEC. 205. LIABILITY PROTECTION.**

23 (a) PACIFICORP.—Notwithstanding any other Fed-
24 eral, State, local, or other law (including common law),
25 PacifiCorp shall not be liable for any harm to persons,

1 property, or the environment, or damages resulting from
2 either facilities removal or facility operation, arising from,
3 relating to, or triggered by actions associated with facili-
4 ties removal, including but not limited to any damage
5 caused by the release of any material or substance, includ-
6 ing but not limited to hazardous substances.

7 (b) FUNDING.—Notwithstanding any other Federal,
8 State, local, or other law, no person or entity contributing
9 funds for facilities removal pursuant to the Hydroelectric
10 Settlement shall be held liable, solely by virtue of that
11 funding, for any harm to persons, property, or the envi-
12 ronment, or damages arising from either facilities removal
13 or facility operation, arising from, relating to, or triggered
14 by actions associated with facilities removal, including any
15 damage caused by the release of any material or sub-
16 stance, including hazardous substances.

17 (c) PREEMPTION.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), notwithstanding section 10(e) of the Fed-
20 eral Power Act (16 U.S.C. 803(c)), protection from
21 liability under this section preempts the laws of any
22 State to the extent the laws are inconsistent with
23 this title.

24 (2) OTHER PROVISIONS OF LAW.—This title
25 does not limit any otherwise available immunity,

1 privilege, or defense under any other provision of
2 law.

3 (d) APPLICATION.—Liability protection under this
4 section shall apply to any particular facility beginning on
5 the date of transfer of title to that facility from PacifiCorp
6 to the Dam Removal Entity.

7 **SEC. 206. LICENSES.**

8 (a) ANNUAL LICENSES.—

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

13 (2) TERMINATION.—The annual licenses shall
14 terminate with respect to a facility on transfer of
15 title for such facility from PacifiCorp to the Dam
16 Removal Entity.

17 (3) STAGED REMOVAL.—

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

22 (B) NONTRANSFER OF TITLE.—Annual li-
23 cense conditions shall remain in effect with re-
24 spect to any facility for which PacifiCorp has
25 not transferred title to the Dam Removal Enti-

1 ty to the extent compliance with the annual li-
2 cense conditions are not prevented by the re-
3 moval of any other facility.

4 (b) JURISDICTION.—The jurisdiction of the Commis-
5 sion under part I of the Federal Power Act (16 U.S.C.
6 791a et seq.) shall terminate with respect to a facility on
7 the transfer of title for the facility from PacifiCorp to the
8 Dam Removal Entity.

9 (c) RELICENSING.—

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

11 (A) stay the proceeding of the Commission
12 on the pending license application of PacifiCorp
13 for Project No. 2082 as long as the Hydro-
14 electric Settlement remains in effect; and

15 (B) resume the proceeding and proceed to
16 take final action on the new license application
17 only if the Hydroelectric Settlement terminates
18 pursuant to section 8.11 of the Hydroelectric
19 Settlement.

20 (2) TERMINATION.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), if the Hydroelectric Settlement is
23 terminated, the Secretarial determination under
24 section 202(a) and findings of fact contained in
25 the Secretarial determination shall not be ad-

1 missible or otherwise relied on in the pro-
2 ceedings of the Commission on the new license
3 application.

4 (B) LIMITATIONS.—If the Hydroelectric
5 Settlement is terminated, the Commission, in
6 proceedings on the new license application, shall
7 not be bound by the record, findings, or deter-
8 mination of the Secretary under this section.

9 (d) EAST SIDE AND WEST SIDE DEVELOPMENTS.—
10 On filing by PacifiCorp of an application for surrender
11 of the East Side and West Side Developments in Project
12 No. 2082, the Commission shall issue an order approving
13 partial surrender of the license for Project No. 2082, in-
14 cluding any reasonable and appropriate conditions, as pro-
15 vided in section 6.4.1 of the Hydroelectric Settlement.

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

24 (f) IRON GATE HATCHERY.—Notwithstanding sec-
25 tion 8 of the Federal Power Act (16 U.S.C. 801), the

1 PacifiCorp Hatchery Facilities within the State of Cali-
2 fornia shall be transferred to the State of California at
3 the time of transfer to the dam removal entity of the Iron
4 Gate Hydro Development or such other time agreed by
5 the Parties to the Hydroelectric Settlement.

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

11 **SEC. 207. MISCELLANEOUS.**

12 (a) WATER RIGHTS.—Except as specifically provided
13 in this title and the Hydroelectric Settlement, nothing in
14 this title or the Hydroelectric Settlement shall create or
15 determine water rights or affect water rights or water
16 right claims in existence on the date of enactment of this
17 Act.

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

21 (c) RELATIONSHIP TO OTHER FEDERAL LAWS.—
22 Nothing in this title amends, supersedes, modifies or oth-
23 erwise affects—

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

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

3 (3) the Federal Water Pollution Control Act
4 (33 U.S.C. 1251 et seq.), except to the extent sec-
5 tion 203 of this Act requires a permit under section
6 404 of that Act (33 U.S.C. 1344) notwithstanding
7 section 404(r) of that Act (33 U.S.C. 1344(r)).

○