

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 nation and for other purposes.

Be it enacted that [insert House or Senate enacting clause]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “The Klamath Basin Act of 2010”.

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

Sec. 1. Short title; table of contents.

TITLE I—KLAMATH BASIN RESTORATION AGREEMENT ACT

Sec. 101. Short Title.

Sec. 102. Definitions.

Sec. 103. Approval and Execution of Restoration Agreement.

Sec. 104. Contracts and Non-Federal Funds.

Sec. 105. Rights Protected.

Sec. 106. Authorization of Appropriations.

Sec. 107. Settlement Funds.

Sec. 108. Klamath Reclamation Project.

Sec. 109. Tribal Commitments.

Sec. 110. Judicial Review.

Sec. 111. Further Agreements by the Klamath Tribes and United States.

Sec. 112. Miscellaneous.

TITLE II—KLAMATH HYDROELECTRIC SETTLEMENT ACT

Sec. 201. Short Title and table of contents.

Sec. 202. Definitions.

Sec. 203. Approval of Hydroelectric Settlement; Implementation.

Sec. 204. Secretarial Determination.

Sec. 205. Facilities Transfer and Removal.

Sec. 206. Transfer of Keno.

Sec. 207. Liability Protection.

Sec. 208. Federal Power Act.

Sec. 209. Miscellaneous.

1 **Title I – KLAMATH BASIN RESTORATION AGREEMENT ACT**

2 **SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.**

3 (a) SHORT TITLE.—This title may be cited as the “Klamath Basin Restoration
4 Agreement Act of 2010”.

5 (b) TABLE OF CONTENTS.—The table of contents for this title shall be as follows:

6 Sec. 101. Short Title.

7 Sec. 102. Definitions.

8 Sec. 103. Approval and Execution of Restoration Agreement.

9 Sec. 104. Contracts and Non-Federal Funds.

10 Sec. 105. Rights Protected.

11 Sec. 106. Authorization of Appropriations.

12 Sec. 107. Settlement Funds.

13 Sec. 108. Klamath Reclamation Project.

14 Sec. 109. Tribal Commitments.

15 Sec. 110. Judicial Review.

16 Sec. 111. Further Agreements by the Klamath Tribes and United States.

17 Sec. 112. Miscellaneous.

18 **SEC. 102. DEFINITIONS.**

19 For purposes of this title:

20 (1) The term “Federally-recognized Indian tribes” means all Indian tribes
21 identified in the Notice of the United States Bureau of Indian Affairs with respect to
22 Indian Entities Recognized and Eligible to Receive Services from the United States
23 Bureau of Indian Affairs, published at pages 40218-40223 of Volume 74 of the Federal
24 Register (August 11, 2009), or in any list published in accordance with Section 104 of
25 Public Law 103-454 (108 Stat. 4792) (25 U.S.C. 479a-1).

26 (2) The term “inflation adjustment factor” means, with respect to a calendar year,
27 a fraction the numerator of which is the GDP implicit price deflator for the preceding
28 calendar year and the denominator of which is the GDP implicit price deflator for the
29 calendar year 2009. The term “GDP implicit price deflator” means the most recent
30 revision of the implicit price deflator for the gross domestic product as computed and
31 published by the Secretary of Commerce before March 15 of the calendar year.

32 (3) The term “Klamath Basin” means the lands tributary to the Klamath River in
33 Oregon and California. The term includes the Lost River and Tule Lake Basins.

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1 (4) The term “Klamath Project Water Users” means Tulelake Irrigation District,
2 Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement
3 District, Ady District Improvement Company, Enterprise Irrigation District, Malin
4 Irrigation District, Midland District Improvement District, Pine Grove Irrigation District,
5 Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View
6 Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S.
7 Luscombe, Randy Walthall and Inter-County Title Co., Reames Golf and Country Club,
8 Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement
9 Company, and Collins Products, LLC.

10 (5) The term “net revenues” has the meaning assigned in Article 1(e) of Contract
11 No. 14-06-200-5954 between Tulelake Irrigation District and the United States, and such
12 term shall apply to lands lying within Tulelake Irrigation District and Klamath Drainage
13 District, which shall be on file and available for public inspection in the appropriate
14 offices of the Secretaries.

15 (6) The term “Oregon’s Klamath Basin Adjudication” means the proceeding to
16 determine water rights pursuant to Or. Rev. Stats. ch. 539 entitled “In the matter of the
17 determination of the relative rights of the waters of the Klamath River, a tributary of the
18 Pacific Ocean.”

19 (7) The terms “Party” and “Parties” means those signatories to the Restoration
20 Agreement, including the Secretaries.

21 (8) The term “Party Tribes” means collectively the Yurok Tribe, the Karuk Tribe,
22 and the Klamath Tribes. If a specific Indian tribe is named in the Restoration Agreement
23 or this title, then the application is only to the named tribe.

24 (9) The term “Restoration Agreement” means the “Klamath River Basin
25 Restoration Agreement for the Sustainability of Public and Trust Resources and Affected
26 Communities” dated February 18, 2010, which shall be on file and available for public
27 inspection in the appropriate offices of the Secretaries

28 (10) The term “Secretary” means the Secretary of the Interior.

29 (11) The term “Secretaries” means the Secretaries of the Interior, Commerce, and
30 Agriculture or their designees.

1 **SEC. 103. APPROVAL AND EXECUTION OF RESTORATION AGREEMENT.**

2 (a) IN GENERAL.—The United States hereby approves the Restoration Agreement.
3 The Secretaries are authorized and directed to execute the Restoration Agreement and
4 any amendments thereto which: (1) are approved by the Parties after the date of
5 enactment of this title, and (2) the Secretaries determine are necessary to make the
6 Restoration Agreement consistent with this title. Each of the Secretaries shall implement
7 the Restoration Agreement, including any amendments, and shall perform all actions,
8 consistent with this title, necessary to carry out an obligation of the Secretary concerned
9 under the Restoration Agreement.

10 (b) ENVIRONMENTAL REVIEW AND COMPLIANCE WITH APPLICABLE LAW.—
11 Execution by the Secretaries of the Restoration Agreement does not constitute major
12 Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and
13 following). In implementing the Restoration Agreement, the Secretaries shall
14 expeditiously conduct all environmental review required by the National Environmental
15 Policy Act of 1969 (42 U.S.C. 4321 and following), and shall comply with all other
16 applicable law.

17 **SEC. 104. CONTRACTS AND NON-FEDERAL FUNDS.**

18 (a) CONTRACTS.—The Secretaries are authorized to enter into such agreements
19 and to take such measures as the Secretaries deem necessary or appropriate to fulfill the
20 provisions of this title.

21 (b) ACCEPTANCE AND EXPENDITURE OF NON-FEDERAL FUNDS.—Notwithstanding
22 any provision of title 31 of the United States Code, the Secretaries are authorized to
23 accept and expend, without further appropriation, non-federal funds including donations,
24 or in-kind services, or both, for the purposes of implementing the Restoration Agreement.
25 Such funds may be expended for those purposes only, without further appropriation or
26 authority.

27 **SEC. 105. RIGHTS PROTECTED.**

28 Notwithstanding any other provision of law, this Act and implementation of the
29 Restoration Agreement shall not restrict or alter any Party's or any Indian tribe's

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1 eligibility for or receipt of funds, or be construed as an offset against any obligations or
2 existing funds, under any Federal or State laws.

3 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) AUTHORIZATION.—In addition to the amounts in section 104, there is
5 authorized to be appropriated to the Secretaries to implement the Restoration Agreement,
6 and complete the programs and projects of the Restoration Agreement:

7 (1) \$991,724,900¹ for the 10 fiscal year period beginning October 1, 2012
8 including appropriation to the accounts established by section 107 of this title; and

9 (2) Such other amounts as are necessary to implement and complete the
10 programs and projects of the Restoration Agreement.

11 The amount specified in paragraph (1) shall be increased in each fiscal year by the
12 inflation adjustment factor.

13 (b) LIMITATION ON USE OF FUNDS.—Any use for acquisition of interests in land or
14 water of funds appropriated under the authorization of this title shall be from willing
15 sellers.

16 (c) NON-REIMBURSABLE.—Appropriations expended pursuant to the
17 authorizations under this title shall be non-reimbursable and non-returnable to the United
18 States except as provided in section 112(e) of this title.

19 (d) FUNDS AVAILABLE UNTIL EXPENDED.—All funds appropriated under authority
20 of this title shall remain available until expended.

21 **SEC. 107. SETTLEMENT FUNDS.**

22 There are hereby established in the Treasury of the United States for the deposit
23 of appropriations and other monies, including donated funds, non-interest bearing
24 accounts known as: the “On-Project Plan and Power for Water Management Fund”; the
25 “Water Use Retirement Fund and Off-Project Reliance Fund”; and “The Klamath
26 Drought Fund”. Management of such accounts shall be in accordance with this title and
27 section 14.3 of the Restoration Agreement.

28

¹ This amount is the total sum on page C-9 of the KBRA, less \$23,200,000 (sum of County programs),
adjusted to 2009 dollars. Discussion required.

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1 **SEC. 108. KLAMATH RECLAMATION PROJECT.**

2 (a) **KLAMATH RECLAMATION PROJECT PURPOSES.**—The purposes of the Federal
3 Klamath Reclamation Project include irrigation, reclamation, domestic, flood control,
4 municipal, industrial, power (as necessary to implement the Restoration Agreement),
5 National Wildlife Refuge, and fish and wildlife. Nothing in this section shall be deemed
6 to create a water right or affect existing water rights or water right claims. The fish and
7 wildlife and National Wildlife Refuge purposes of the Klamath Reclamation Project shall
8 not adversely affect the irrigation purpose of the Klamath Reclamation Project, except
9 that the provisions regarding water allocations and delivery to the National Wildlife
10 Refuges agreed upon in section 15.1.2 of the Restoration Agreement, including any
11 additional water made available under sections 15.1.2.E.ii and 18.3.2.B.v, of the
12 Restoration Agreement are hereby deemed not to constitute an adverse effect upon the
13 Klamath Reclamation Project’s irrigation purpose. For purposes of the determination of
14 water rights in Oregon’s Klamath Basin Adjudication, until Appendix E-1 to the
15 Restoration Agreement has been filed in Oregon’s Klamath Basin Adjudication, the
16 purpose or purposes of the Klamath Reclamation Project shall be as existed prior to the
17 enactment of this title.

18 (b) **DISPOSITION OF NET REVENUES FROM LEASING OF TULE LAKE AND LOWER**
19 **KLAMATH NATIONAL WILDLIFE REFUGE LANDS.**—Notwithstanding any other provision
20 of law, the disposition of net revenues from the leasing of refuge lands within the Tule
21 Lake National Wildlife Refuge and Lower Klamath National Wildlife Refuge, under
22 section 4 of Public Law 88-567, 78 Stat. 850 (Sept. 2, 1964) (commonly known as the
23 “Kuchel Act”) shall hereafter be as follows:

24 (1) Ten percent of net revenues from lands within Tule Lake National
25 Wildlife Refuge that are within the boundaries of Tulelake Irrigation District to
26 Tulelake Irrigation District, as provided in article 4 of Contract No. 14-06-200-
27 5954 and section 2(a) of the Act of August 1, 1956, ch. 828, 70 Stat. 799.

28 (2) Such amounts as are necessary to make payment to Counties in lieu of
29 taxes as provided in section 3 of Public Law 88-567 (16 U.S.C. 695m).

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1 (3) Twenty percent of said net revenues directly, without further
2 appropriation, to the U.S. Fish and Wildlife Service, Klamath Basin Refuges, for
3 wildlife management purposes on the Tule Lake National Wildlife Refuge and
4 Lower Klamath National Wildlife Refuge.

5 (4) Ten percent of net revenues from lands within Lower Klamath
6 National Wildlife Refuge that are within the boundaries of the Klamath Drainage
7 District directly, without further appropriation, to Klamath Drainage District for
8 operation and maintenance responsibility for the Federal Reclamation water
9 delivery and drainage facilities within the boundaries of both Klamath Drainage
10 District and Lower Klamath National Wildlife Refuge exclusive of the Klamath
11 Straits Drain, subject to Klamath Drainage District's assuming the Bureau of
12 Reclamation's Operation and Maintenance duties for Klamath Drainage District
13 (Area K) lease lands exclusive of Klamath Straits Drain; and,

14 (5) The remainder shall be covered to the Reclamation fund to be applied
15 as follows:

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

18 (B) with respect to such revenues received in any year in which the
19 remainder exceeds the United States' costs described in subparagraph (A),
20 to future capital costs of the Klamath Reclamation Project.

21 **SEC. 109. TRIBAL COMMITMENTS.**

22 (a) ACTIONS BY THE KLAMATH TRIBES.—In return for the resolution of the
23 Klamath Project Water Users' contests to the water rights claims of the Klamath Tribes
24 and the Bureau of Indian Affairs in trust for the Klamath Tribes in Oregon's Klamath
25 Basin Adjudication and other benefits as set forth in the Restoration Agreement and this
26 title, the Klamath Tribes on behalf of itself and its members is authorized to make the
27 commitments provided in the Restoration Agreement, including the assurances in section
28 15 of the Restoration Agreement. Such commitments are confirmed as effective and
29 binding according to their terms without further action by the Klamath Tribes.

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1 (b) ACTIONS BY THE KARUK TRIBE AND THE YUROK TRIBE.—In return for the
2 Klamath Project Water Users’ commitments related to water rights of the Karuk Tribe
3 and the Yurok Tribe as stated in the Restoration Agreement and other benefits as set forth
4 in the Restoration Agreement and this title, the Karuk Tribe and the Yurok Tribe, for
5 themselves and their members, are authorized to make the commitments provided in the
6 Restoration Agreement, including the assurances in section 15 of the Restoration
7 Agreement. Such commitments are confirmed as effective and binding according to their
8 terms without further action by the Yurok Tribe or Karuk Tribe.

9 (c) RELEASE OF CLAIMS AGAINST THE UNITED STATES.—Without affecting their
10 rights secured by treaty, executive order, or other law, the Party Tribes on behalf of
11 themselves and their members are authorized to relinquish and release certain claims
12 against the United States, its agencies, or employees, enumerated in sections 15.3.5.A,
13 15.3.6.B.i and 15.3.7.B.i of the Restoration Agreement.

14 (d) RETENTION OF RIGHTS OF THE PARTY TRIBES.—Notwithstanding the
15 commitments and releases set forth in sections 109(a) through 109(c), the Party Tribes
16 and their members retain all claims enumerated in sections 15.3.5.B, 15.3.6.B.ii and
17 15.3.7.B.ii of the Restoration Agreement.

18 (e) EVENTS THAT MUST OCCUR BEFORE RELINQUISHMENT OF PARTY TRIBES’
19 CLAIMS IS EFFECTIVE.—The relinquishment and release of claims by the Party Tribes
20 identified in subsection (c) of this section shall not be in force or effect until the terms in
21 sections 15.3.5.C, 15.3.6.B.iii and 15.3.7.B.iii of the Restoration Agreement have been
22 fulfilled.

23 (f) TOLLING OF CLAIMS.—The extent of tolling of any applicable period of
24 limitations and time-based equitable defenses relating to a claim described in subsection
25 (c) is as follows:

26 (1) Such period of limitation and time-based equitable defense shall be
27 tolled for the period beginning on the date of enactment of this Act and ending on
28 the earlier of the date the Secretary publishes the notice described in sections
29 15.3.5.C, 15.3.6.B.iii and 15.3.7.B.iii of the Restoration Agreement or December
30 1, 2030.

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1 (2) Nothing in this subsection revives any claim or tolls any period of
2 limitation or time-based equitable defense that expired before the date of
3 enactment of this Act.

4 (3) Nothing in this subsection precludes the tolling of any period of
5 limitations or any time-based equitable defense under any other applicable Law.

6 (g) ACTIONS OF THE UNITED STATES ACTING IN ITS CAPACITY AS SOVEREIGN OR
7 AS TRUSTEE FOR FEDERALLY-RECOGNIZED INDIAN TRIBES OF THE KLAMATH BASIN.—In
8 return for the Klamath Project Water Users' commitments related to the water rights and
9 water rights claims of Federally-recognized Indian tribes of the Klamath Basin and of the
10 United States as trustee for such tribes, and other benefits of as set forth in the
11 Restoration Agreement and this Act, the United States, as trustee on behalf of the
12 Federally-recognized Indian tribes of the Klamath Basin and allottees of reservations of
13 Federally-recognized Indian tribes of the Klamath Basin in California, is authorized to
14 make the commitments provided in the Restoration Agreement, including the assurances
15 in section 15 of the Restoration Agreement. Such commitments are confirmed as
16 effective and binding without further action by the United States.

17 (h) LIMITATIONS CONCERNING THE UNITED STATES ACTING IN ITS SOVEREIGN
18 CAPACITY OR AS TRUSTEE ON BEHALF OF INDIAN TRIBES OR ALLOTTEES.—Nothing in this
19 title—

20 (1) affects the ability of the United States acting in its sovereign capacity
21 to take actions authorized by law, including any laws relating to health, safety, or
22 the environment, including the Clean Water Act (33 U.S.C. 1251 and following)
23 ~~and; the Safe Drinking Water Act (42 U.S.C. 300f and following); the~~
24 ~~Comprehensive Environmental Response, Compensation, and Liability Act (42~~
25 ~~U.S.C. 9601 and following); the Solid Waste Disposal Act (42 U.S.C. 6901 and~~
26 ~~following);~~ and the regulations implementing such Acts;

27 (2) affects the ability of the United States as trustee to take actions for the
28 benefit of Federally-recognized Indian tribes other than the Federally-recognized
29 Indian tribes of the Klamath Basin;

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1 (3) affects the ability of the United States to take actions as trustee for the
2 Federally-recognized Indian tribes of the Klamath Basin and their members not
3 inconsistent with the Restoration Agreement or this title;

4 (4) affects the ability of the United States to take actions as trustee for the
5 Party Tribes to enforce the Restoration Agreement and this title, through such
6 legal and equitable remedies as may be available in the appropriate federal or
7 state court, including Oregon’s Klamath Basin Adjudication;

8 (5) affects the ability of the United States to take actions as trustee for the
9 Federally-recognized Indian tribes of the Klamath Basin to acquire water rights
10 after the Effective Date of the Restoration Agreement;

11 (6) affects the ability of the United States to take actions as trustee for the
12 Federally-recognized Indian tribes of the Klamath Basin to use and protect water
13 rights, including water rights acquired after the Effective Date of the Agreement,
14 subject to the terms of the Restoration Agreement;

15 (7) affects the ability of the United States to take actions as trustee for the
16 Federally-recognized Indian tribes of the Klamath Basin to claim water rights or
17 continue to advocate for existing claims for water rights in appropriate State and
18 Federal courts with jurisdiction over such claims, subject to the terms of the
19 Restoration Agreement; or

20 (8) affects any rights, remedies, privileges, immunities, and powers, and
21 claims not specifically relinquished and released under, or limited by, the terms of
22 this title or the Restoration Agreement.

23 (i) PUBLICATION OF STATEMENT OF FINDINGS; EFFECT OF NON-PUBLICATION.—

24 The Secretary shall publish the notice required by section 15.3.4.A or Section 15.3.4.C of
25 the Restoration Agreement in accordance with the terms of the Restoration Agreement,
26 and the rights of the Party Tribes, the United States as trustee for the Federally-
27 recognized Indian tribes of the Klamath Basin, and other Parties are thereafter as stated in
28 the Restoration Agreement.

29 (j) TRIBES OUTSIDE KLAMATH BASIN UNAFFECTED.—Nothing in this title or the
30 Restoration Agreement affects the rights of any Indian tribe outside the Klamath Basin.

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1 (k) NON-PARTY TRIBES OF THE KLAMATH BASIN UNAFFECTED.—None of the
2 provisions of this title or the Restoration Agreement shall be construed to amend, alter or
3 limit the authority of the Federally-recognized Indian tribes of the Klamath Basin, other
4 than the Party Tribes, to exercise any water rights they hold or ultimately may be
5 determined to hold.

6 **SEC. 110. JUDICIAL REVIEW.**

7 Any final actions by the Secretary or Secretaries, including decisions regarding
8 rights or obligations in sections 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, and 15.3.9 of
9 the Restoration Agreement, shall be subject to review in accordance with the
10 Administrative Procedure Act, chapter 7 of title 5, United States Code.

11 **SEC. 111. FURTHER AGREEMENTS BY THE KLAMATH TRIBES AND**
12 **UNITED STATES.**

13 The United States and the Klamath Tribes are authorized to enter into agreements
14 consistent with section 16.2 of the Restoration Agreement.

15 **SEC. 112. MISCELLANEOUS.**

16 (a) WATER RIGHTS.—Nothing in the Restoration Agreement or this title shall
17 determine existing water rights or, affect existing water rights except as specifically
18 provided in the Restoration Agreement and this title. Nothing in the Restoration
19 Agreement or this title establishes any standard for the quantification of Federal reserved
20 water rights or any Indian water claims of any Indian tribe in any judicial or
21 administrative proceeding. Nothing in the Restoration Agreement or this title impairs the
22 treaty fishing, hunting, trapping, pasturing, or gathering rights of any Indian tribe except
23 to the extent expressly provided in the Agreement or this title.

24 (b) LIMITATIONS.—Nothing in this title shall confer upon any person or entity not
25 a party to the Restoration Agreement a private right of action or claim for relief to
26 interpret or enforce the provisions of this title or the Restoration Agreement. This title
27 shall not expand the jurisdiction of State courts to review Federal agency actions or
28 determine Federal rights. This provision shall not alter or curtail any right of action or
29 claim for relief under other applicable law.

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1 (c) ELECTED OFFICIALS.—No member of or delegate to Congress, Resident
2 Commissioner, or elected official shall personally benefit from this title or from any
3 benefit that may arise from it.

4 (d) RELATIONSHIP TO CERTAIN OTHER FEDERAL LAW.—

5 (1) GENERAL.—Nothing in this title amends, supersedes, modifies or
6 otherwise affects the National Environmental Policy Act (42 U.S.C. 4321 and
7 following), the Endangered Species Act (16 U.S.C. 1531 and following), the
8 Clean Water Act (33 U.S.C. 1251 and following), Federal Land Policy and
9 Management Act (43 U.S.C. 1701 and following), National Wildlife Refuge
10 System Improvement Act of 1966, as amended (16 U.S.C. 668dd-668ee), or the
11 Act of September 2, 1964 (Pub. L. 88-567; 78 Stat. 850 (16 U.S.C. 695k-695r),
12 commonly known as the “Kuchel Act”.

13 (2) CONSISTENCY.—The provisions of the Restoration Agreement shall be
14 deemed to be consistent with section 208(a) through (c) of the Act of July 10,
15 1952, ch. 651, title II, (66 Stat. 560; 43 U.S.C. 666).

16 (e) TERMINATION OF THE RESTORATION AGREEMENT.—If the Restoration
17 Agreement terminates—

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

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

1 **Title II – KLAMATH HYDROELECTRIC SETTLEMENT ACT**

2 **SEC. 201. SHORT TITLE AND TABLE OF CONTENTS.**

3 (a) SHORT TITLE.—This title may be cited as the “Klamath Hydroelectric
4 Settlement Act of 2010”.

5 (b) TABLE OF CONTENTS.—The table of contents for this title shall be as follows:

6 Sec. 201. Short Title and table of contents.

7 Sec. 202. Definitions.

8 Sec. 203. Approval of Hydroelectric Settlement; Implementation.

9 Sec. 204. Secretarial Determination.

10 Sec. 205. Facilities Transfer and Removal.

11 Sec. 206. Transfer of Keno.

12 Sec. 207. Liability Protection.

13 Sec. 208. Federal Power Act.

14 Sec. 209. Miscellaneous.

15 **SEC. 202. DEFINITIONS.**

16 For purposes of this title:

17 (1) The term “Commission” means the Federal Energy Regulatory Commission.

18 (2) The term “Dam Removal Entity” means an entity designated by the Secretary
19 that has the legal, technical, and financial capacities to effect facilities removal, as set
20 forth in section 7 of the Hydroelectric Settlement.

21 (3) The term “decommissioning” means PacifiCorp’s physical removal from a
22 facility of any equipment and personal property that PacifiCorp determines has salvage
23 value and physical disconnection of the facility from PacifiCorp’s transmission grid.

24 (4) The term “Department” means the United States Department of the Interior.

25 (5) The terms “definite plan” and “detailed plan” have the same meanings as
26 provided by section 1.4 of the Hydroelectric Settlement.

27 (5) The term “facility” means each of the following specific hydropower
28 developments (including appurtenant works) licensed to PacifiCorp under the Federal
29 Power Act as Project No. 2082: Iron Gate Development, Copco 1 Development, Copco 2
30 Development, and J.C. Boyle Development.

31 (6) The term “facilities removal” means (A) physical removal of all or part of
32 each facility to achieve, at a minimum, a free-flowing condition and volitional fish
33 passage, (B) site remediation and restoration, including restoration of previously

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1 inundated lands, (C) measures to avoid or minimize adverse downstream impacts, and
2 (D) all associated permitting for such actions.

3 (7) The term “Hydroelectric Settlement” means the “Klamath Hydroelectric
4 Settlement Agreement,” dated February 18, 2010, among the United States Department
5 of the Interior and Commerce, State of California, State of Oregon, PacifiCorp, and other
6 parties, including any amendments to such Agreement approved by the parties prior to
7 the date of enactment of this Act.

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

10 (9) The term “PacifiCorp” means the owner and licensee of the Klamath
11 Hydroelectric Project, FERC Project No. 2082.

12 (10) The term “Secretarial determination” means the determination under section
13 204(a).

14 (11) The term “Secretary” means the Secretary of the Interior.

15 (12) The term “States” means the States of Oregon and California.

16 (13) The term “Tribes” means the Klamath Tribes, the Yurok Tribe, and the
17 Karuk Tribe.

18 **SEC. 203. APPROVAL OF HYDROELECTRIC SETTLEMENT;**
19 **IMPLEMENTATION.**

20 The United States hereby approves the Hydroelectric Settlement. The Secretary,
21 the Secretary of Commerce and the Commission, or their designees, shall implement, in
22 consultation with other relevant Federal agencies, the Hydroelectric Settlement, including
23 any amendments thereto which (1) are approved by the parties after the date of enactment
24 of this title and (2) the Secretary determines are necessary to make the Hydroelectric
25 Settlement consistent with this title.

26 **SEC. 204. SECRETARIAL DETERMINATION.**

27 (a) IN GENERAL.—The Secretary shall determine, consistent with section 3 of the
28 Hydroelectric Settlement, whether, in his judgment, facilities removal will advance
29 restoration of the salmonid fisheries of the Klamath Basin and is in the public interest.
30 Such determination shall include consideration of potential impacts on affected local

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1 communities and Tribes. The Secretary shall undertake to complete this determination by
2 March 31, 2012, consistent with section 3.3 of the Hydroelectric Settlement.

3 (b) BASIS FOR DETERMINATION.—The Secretary, in cooperation with the
4 Secretary of Commerce and other entities, and following the science process set forth in
5 appendix J of the Hydroelectric Settlement, shall use existing information, conduct any
6 necessary further studies, prepare an environmental document under the National
7 Environmental Policy Act (42 U.S.C. 4321 and following), and take such other actions as
8 the Secretary determines to be appropriate to support the Secretarial determination.

9 (c) DESIGNATION OF DAM REMOVAL ENTITY.—

10 (1) IN GENERAL.—The Secretarial determination, if it provides for
11 facilities removal, shall include the designation of the Dam Removal Entity which
12 shall have the capabilities and responsibilities (as set forth in section 7 of the
13 Hydroelectric Settlement) for facilities removal. The Secretary shall designate the
14 Department of the Interior as that entity unless the Secretary, in his sole judgment
15 and discretion, but consistent with the requirements of section 3.3.4.E of the
16 Hydroelectric Settlement, designates a non-federal entity.

17 (2) CONDITIONS.—The Secretary may designate a non-Federal Dam
18 Removal Entity if all of the following conditions are met:

19 (A) The Secretary has found that the Dam Removal Entity-
20 designate is qualified.

21 (B) The States have concurred in such finding.

22 (C) The Dam Removal Entity-designate has committed, if so
23 designated, to perform facilities removal within the State Cost Cap as
24 described in section 4.1.3 of the Hydroelectric Settlement.

25 (d) CONDITIONS PRECEDENT TO SECRETARIAL DETERMINATION.—The Secretary
26 may not make or publish the Secretarial determination, unless the conditions specified in
27 section 3.3.4 of the Hydroelectric Settlement have been satisfied.

28 (e) NOTICE.—The Secretary shall publish notification of the Secretarial
29 determination in the Federal Register and report to the Committee on Energy and Natural
30 Resources of the United States Senate and the Committee on Natural Resources of the

1 United States House of Representatives on implementation of the Hydroelectric
2 Settlement .

3 (f) JUDICIAL REVIEW OF SECRETARIAL DETERMINATION.—

4 (1) IN GENERAL.—For purposes of judicial review, the Secretarial
5 determination shall constitute a final agency action.

6 (2) Review.—A petition for review of action of the Secretary in issuing
7 the Secretarial determination may be filed only in the United States Court of
8 Appeals for the District of Columbia Circuit or in the Ninth Circuit Court of
9 Appeals. Any petition for review under this paragraph shall be filed within 60
10 days from the date of publication of such determination in the Federal Register,
11 except that if such petition is based solely on grounds arising after such sixtieth
12 day, then any petition for review under this subsection shall be filed within 60
13 days after such grounds arise. The filing of a petition for reconsideration by the
14 Secretary of any otherwise final action shall not affect the finality of such action
15 for purposes of judicial review nor extend the time within which a petition for
16 judicial review of such rule or action under this subsection may be filed, nor shall
17 such filing postpone the effectiveness of such rule or action. Action of the
18 Secretary with respect to which review could have been obtained under this
19 paragraph shall not be subject to judicial review in any action relating to the
20 implementation of the Secretarial determination or in proceedings for
21 enforcement of the Hydroelectric Settlement.

22 **SEC. 205. FACILITIES TRANSFER AND REMOVAL.**

23 (a) FEDERAL DAM REMOVAL ENTITY AUTHORIZATIONS.—

24 (1) IN GENERAL.—If all of the following conditions are met, the provisions
25 of paragraphs (2), (3), and (4) shall apply:

26 (A) The Secretarial determination provides for facilities removal.

27 (B) The States concur in such determination as set forth in section
28 3.3.5 of the Hydroelectric Settlement.

29 (C) The Hydroelectric Settlement has not terminated as provided in
30 section 8.11 therein.

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1 (D) The Department is designated as the Dam Removal Entity.

2 (2) NON-FEDERAL FUNDS.—Notwithstanding the provisions of title 31 of
3 the United States Code, the Secretary is authorized to accept, expend without
4 further appropriation, and manage non-federal funds for the purpose of facilities
5 removal, as provided in sections 4 and 7 of the Hydroelectric Settlement.

6 (3) AGREEMENTS.—The Secretary may enter into agreements as necessary
7 to assist in the implementation of the Hydroelectric Settlement.

8 (4) AUTHORIZATIONS.—The Secretary shall, consistent with the
9 Hydroelectric Settlement, develop a definite plan for facilities removal, obtain all
10 permits, authorizations, entitlements, certifications, and other approvals necessary
11 to implement facilities removal, including but not limited to a permit under
12 section 404 of the Clean Water Act (33 U.S.C. 1344), and implement facilities
13 removal. Facilities removal shall be subject to applicable requirements of State
14 and local laws respecting permits and other authorizations, to the extent such
15 requirements are consistent with the Secretarial determination and the detailed
16 plan (including the schedule for facilities removal). The preceding sentence shall
17 not affect (A) the authorities of the States regarding concurrence with the
18 Secretarial determination in accordance with State laws, or (B) the authority of a
19 State public utility commission regarding funding of facilities removal.

20 (5) ACCEPTANCE OF TITLE TO FACILITIES.—The Secretary is authorized to
21 accept from PacifiCorp all rights, title, and other interests in the facilities upon its
22 providing notice that it is ready to commence facilities removal as provided in
23 section 7.4.1 of the Hydroelectric Settlement.

24 (b) NON-FEDERAL DAM REMOVAL ENTITY AUTHORIZATIONS.—

25 (1) IN GENERAL. If all of the following conditions are met, the provisions
26 of paragraphs (2), (3), and (4) shall apply:

27 (A) The Secretarial determination provides for facilities removal.

28 (B) The States concur in such determination as set forth in section
29 3.3.5 of the Hydroelectric Settlement.

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1 (C) The Hydroelectric Settlement has not terminated as provided in
2 section 8.11 of the Hydroelectric Settlement.

3 (D) A non-Federal entity is designated as the Dam Removal Entity,
4 pursuant to section 204(c) of this title and sections 3.3.4.E and 3.3.5.A. of
5 the Hydroelectric Settlement.

6 (2) AGREEMENTS.—The non-Federal Dam Removal Entity may enter into
7 agreements as necessary to assist in the implementation of the Hydroelectric
8 Settlement.

9 (3) AUTHORIZATIONS.—The non-Federal Dam Removal Entity shall,
10 consistent with the Hydroelectric Settlement, develop a definite plan for facilities
11 removal, obtain all permits, authorizations, entitlements, certifications, and other
12 approvals necessary to implement facilities removal, including but not limited to a
13 permit under section 404 of the Clean Water Act (33 U.S.C. 1344), and
14 implement facilities removal. Facilities removal shall be subject to applicable
15 requirements of State and local laws respecting permits and other authorizations,
16 to the extent such requirements are consistent with the Secretarial determination
17 and detailed plan (including the schedule for facilities removal). The preceding
18 sentence shall not affect (A) the authorities of the States regarding concurrence
19 with the Secretarial determination in accordance with State laws, or (B) the
20 authority of a State public utility commission regarding funding of facilities
21 removal.

22 (4) ACCEPTANCE OF TITLE TO FACILITIES.—The non-Federal Dam
23 Removal Entity is authorized to accept from PacifiCorp all rights, title, and other
24 interests in the facilities upon its providing notice that it is ready to commence
25 with facilities removal as provided in section 7.4.1 of the Hydroelectric
26 Settlement.

27 (c) INTERIM OBLIGATIONS.—

28 (1) CONDITIONS.—If all of the following conditions are met, the
29 provisions of paragraph (2) shall apply:

30 (A) The Secretarial determination provides for facilities removal.

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1 (B) The States concur in such determination as set forth in section
2 3.3.5 of the Hydroelectric Settlement.

3 (C) The Hydroelectric Settlement has not terminated as provided in
4 section 8.11 therein.

5 (2) CONTRACT FOR CONTINUED POWER GENERATION.—In accordance with
6 the conditions set forth in paragraph (1), the Secretary or a non-federal Dam
7 Removal Entity shall enter into a contract with PacifiCorp which provides that,
8 upon transfer of title pursuant to subsection (a)(5) or subsection (b)(4) and until
9 notified by the Dam Removal Entity to cease generation of electric power,
10 PacifiCorp may, consistent with State law—

11 (A) continue such generation and retain title to any and all power
12 so generated by the facilities, as provided in section 7 of the Hydroelectric
13 Settlement; and

14 (B) continue to transmit and use the output of the facilities for the
15 benefit of its customers under the jurisdiction of relevant State public
16 utility commissions and the Commission.

17 (d) JUDICIAL REVIEW OF IMPLEMENTATION ACTIONS.—The United States district
18 courts shall have exclusive jurisdiction over the question whether requirements of State
19 and local laws respecting permits and other authorizations, and State and local actions
20 pursuant to such laws, are consistent with the Secretarial determination and detailed plan
21 (including the schedule for facilities removal).

22 (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this title shall confer upon any
23 person or entity not a party to the Hydroelectric Settlement a private right of action or
24 claim for relief to interpret or enforce the provisions of this title or the Hydroelectric
25 Settlement. This subsection shall not alter or curtail any right of action or claim for relief
26 under any other applicable law.

27 **SEC. 206. TRANSFER OF KENO**

28 Upon notice that the Dam Removal Entity is ready to perform removal of that
29 portion of the facilities known as J.C. Boyle Development, the Secretary is directed to
30 accept the transfer of title in the Keno Development from PacifiCorp as provided in

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1 section 7.5 of the Hydroelectric Settlement. Upon such transfer and without further action
2 by Congress, the Keno Development shall be deemed an irrigation work in the Klamath
3 Reclamation Project, and Commission jurisdiction over the Keno Development shall
4 terminate.

5 **SEC. 207. LIABILITY PROTECTION.**

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

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

19 (c) PREEMPTION.—Notwithstanding section 10(c) of the Federal Power Act (16
20 U.S.C. 803(c)), protection from liability pursuant to this section preempts the laws of any
21 State to the extent such laws are inconsistent with this title, except that this title shall not
22 be construed to limit any otherwise available immunity, privilege, or defense under any
23 other provision of law.

24 (d) EFFECTIVE DATE.—Liability protection pursuant to subsections (a) through (c)
25 shall take effect as it relates to any particular facility upon transfer of title to that facility
26 from PacifiCorp to the Dam Removal Entity.

27 **SEC. 208. FEDERAL POWER ACT.**

28 (a) ANNUAL LICENSES.—The Commission shall issue annual licenses authorizing
29 PacifiCorp to continue to operate Project No. 2082 until PacifiCorp transfers title to the
30 facilities. Such annual licenses, and the Commission's jurisdiction under Part I of the

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1 Federal Power Act (16 U.S.C. 791 and following), shall terminate with respect to a given
2 facility upon PacifiCorp's transfer of title for such facility to the Dam Removal Entity. If
3 the facilities are removed in a staged manner, (1) annual FERC license conditions
4 applying to the facility being removed shall no longer be in effect, and (2) PacifiCorp
5 shall continue to comply with license conditions pertaining to any facility still in place to
6 the extent such compliance is not prevented by the removal of any other facility.

7 (b) RELICENSING.—The Commission shall stay its proceeding on PacifiCorp's
8 pending license application for Project No. 2082 as long as the Hydroelectric Settlement
9 remains in effect. The Commission shall resume such proceeding, and shall proceed to
10 take final action on the new license application, only if the Hydroelectric Settlement
11 terminates pursuant to section 8.11 therein. In that event, the Secretarial determination
12 and findings of fact under section 204 shall not be relied upon by any party to the
13 Hydroelectric Settlement for purposes other than implementation of the Hydroelectric
14 Settlement, nor shall they be admissible or otherwise relied upon in the Commission's
15 proceedings on the new license application.

16 (c) EAST AND WEST SIDE DEVELOPMENTS.—Upon PacifiCorp's filing an
17 application for surrender of the East Side and West Side Developments in Project No.
18 2082, the Commission shall issue an order approving partial surrender of the license for
19 Project No. 2082, including any reasonable and appropriate conditions, as provided in
20 section 6.4.1 of the Hydroelectric Settlement.

21 (d) FALL CREEK.—Notwithstanding section 208(b) of this title, within 60 days of
22 the transfer of the Iron Gate Facility to the Dam Removal Entity, the Commission shall
23 resume timely consideration of the pending licensing application for the Fall Creek
24 development pursuant to the Federal Power Act (16 U.S.C. 792 and following). The
25 Commission shall do so whether PacifiCorp retains ownership of Fall Creek or transfers
26 ownership to a new licensee.

27 (e) IRON GATE HATCHERY.—Notwithstanding section 8 of the Federal Power Act
28 (16 U.S.C. 801), the PacifiCorp Hatchery Facilities within the State of California shall be
29 transferred to the State of California at the time of transfer to the dam removal entity of
30 the Iron Gate Hydro Development or such other time agreed by the Parties.

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

4 **SEC. 209. MISCELLANEOUS.**

5 (a) WATER RIGHTS.—Nothing in this title shall modify existing water rights in the
6 Klamath River and its tributaries.

7 (b) TRIBAL RIGHTS.—Nothing in this title shall affect the rights of any Indian
8 Tribe secured by Treaty, Executive Order, or other law of the United States.

9 (c) RELATIONSHIP TO CERTAIN OTHER FEDERAL LAW.—Nothing in this title
10 amends, supersedes, modifies or otherwise affects the National Environmental Policy Act
11 (42 U.S.C. 4321 and following), the Endangered Species Act (16 U.S.C. 1531 and
12 following), or the Clean Water Act (33 U.S.C. 1251 and following), except as expressly
13 provided in section 205(a)(4) and (b)(3) of this title.

14 (d) ELECTED OFFICIALS.—No member of or delegate to Congress, Resident
15 Commissioner, or elected official shall personally benefit from this title or from any
16 benefit that may arise from it.

17