[DISCUSSION DRAFT]

1 111TH CONGRESS  H.R. _____
2 2D SESSION
3
4 To authorize the restoration of the Klamath Basin and the settlement of the
5 hydroelectric licensing of the Klamath Hydroelectric Project in accordance
6 with the Klamath Basin Restoration Agreement and the Klamath
7 Hydroelectric Settlement Agreement in the public interest and the interest
8 of the nation and for other purposes.
9
10 _________________
11
12 IN THE HOUSE OF REPRESENTATIVES
13
14 Mr. Thompson of California introduced the following bill; which was
15 referred to the Committee on____________________________
16
17 _________________
18
19 A BILL
20
21 To authorize the restoration of the Klamath Basin and the
22 settlement of the hydroelectric licensing of the Klamath
23 Hydroelectric Project in accordance with the Klamath Basin
24 Restoration Agreement and the Klamath Hydroelectric
25 Settlement Agreement in the public interest and the interest of
26 the nation and for other purposes.
27
28 Be it enacted by the Senate and House of Representatives of
29 the United States of America in Congress assembled,
30 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
31 (a) SHORT TITLE.—This Act may be cited as the “The
32 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 and table of contents.
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. 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. 209. Miscellaneous.

Title I – KLAMATH BASIN

RESTORATION AGREEMENT ACT

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

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

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

Sec. 101. Short Title and table of contents.
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 Purposes and Disposition of Net Lease Revenues from National Wildlife Refuge Lands.

Sec. 109. Tribal Commitments.

Sec. 110. Judicial Review.

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

Sec. 112. Miscellaneous.

SEC. 102. DEFINITIONS.

For purposes of this title:

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

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

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

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

(5) NET REVENUES.—The term “net revenues” has the meaning assigned in Article 1(e) of Contract No. 14-06-200-5954 between Tulelake Irrigation District and the United States, and such term shall apply to said net revenues from the leasing of lands of the Tule Lake National Wildlife Refuge lying within the boundaries of the Tulelake Irrigation District, and the Lower Klamath National Wildlife Refuge lying within the boundaries of the Klamath Drainage District.

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

(7) PARTY; PARTIES.—The terms “Party” and “Parties” means those signatories to the Restoration Agreement, including the Secretaries.

(8) PARTY TRIBES.—The term “Party Tribes” means collectively the Yurok Tribe, the Karuk Tribe, and the Klamath Tribes.
(9) **RESTORATION AGREEMENT.**—The term “Restoration Agreement” means the “Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities” dated February 18, 2010, which shall be on file and available for public inspection in the appropriate offices of the Secretaries.

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

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

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

(a) In General.—The United States hereby approves the Restoration Agreement except to the extent it conflicts with this title. The Secretaries are authorized and directed to sign and implement the Restoration Agreement and any amendments thereto which: (1) are approved by the Parties after the date of enactment of this title, and (2) the Secretaries determine are necessary to make the Restoration Agreement consistent with this title. Each of the Secretaries is authorized to perform all actions, consistent with this title, necessary to carry out a responsibility of the Secretary concerned under the Restoration Agreement.

(b) **EFFECT OF SIGNING OF RESTORATION AGREEMENT.**—Execution by the Secretaries of the Restoration Agreement does not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and following).

(c) **ENVIRONMENTAL COMPLIANCE.**—In implementing the Restoration Agreement, the Secretaries shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and following), the Endangered Species Act of 1973 (16 U.S.C. 1531...
and following), and all other applicable environmental Acts and regulations.

SEC. 104. CONTRACTS AND NON-FEDERAL FUNDS.

(a) CONTRACTS.—The Secretaries are authorized to enter into such agreements, including financial assistance, and to take such measures as the Secretaries deem necessary and appropriate to fulfill the provisions of this title.

(b) ACCEPTANCE AND EXPENDITURE OF NON-FEDERAL FUNDS.—Notwithstanding the provisions of title 31 of the United States Code, the Secretaries are authorized to accept and expend, without further appropriation, non-federal funds including donations, or in-kind services, or both, and to accept by donation or otherwise real or personal property or interests therein, for the purposes of implementing the Restoration Agreement. Such funds may be expended and such property used for those purposes for which they were provided only, without further appropriation or authority.

SEC. 105. RIGHTS PROTECTED.

Notwithstanding any other provision of law, this Act and implementation of the Restoration Agreement shall not restrict or alter any Party’s or any Indian tribe’s eligibility for or receipt of funds, or be construed as an offset against any obligations or funds in existence on the date of enactment of this title under any Federal or State laws. Consistent with applicable law, the Party Tribes shall be priority recipients of federal grants and funds for fisheries programs described in Part III of the Restoration Agreement.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—

(1) IN GENERAL.—In addition to the amounts in section 104, there is authorized to be appropriated to the Secretaries to implement the Restoration Agreement, and
complete the programs and projects described in the
Restoration Agreement $1,006,970,019 for the period of
fiscal years 2012 through 2022, including appropriation to
the accounts established by section 107 of this title, as
adjusted under paragraph (2).

(2) ADJUSTMENT FOR INFLATION.—For any fiscal
year, the dollar amount under paragraph (1) shall be equal
to the product of such dollar amount and the inflation
adjustment factor.

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

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

SEC. 107. SETTLEMENT FUNDS.

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

SEC. 108. KLAMATH RECLAMATION PROJECT PURPOSES AND
DISPOSITION OF NET LEASE REVENUES FROM
NATIONAL WILDLIFE REFUGE LANDS.

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

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

(1) Ten percent of net revenues from lands within Tule Lake National Wildlife Refuge that are within the boundaries of Tulelake Irrigation District to Tulelake Irrigation District, as provided in article 4 of Contract No.

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

(3) In addition to the requirements under paragraphs (1) and (2):

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

(B) Ten percent of net revenues from lands within Lower Klamath National Wildlife Refuge that are within the boundaries of the Klamath Drainage District directly, without further appropriation, to Klamath Drainage District for operation and maintenance responsibility for the Federal Reclamation water delivery and drainage facilities within the boundaries of both Klamath Drainage District and Lower Klamath National Wildlife Refuge exclusive of the Klamath Straits Drain, subject to Klamath Drainage District’s assuming the Bureau of Reclamation’s operation and maintenance duties for the Lower Klamath National Wildlife Refuge’s (Area K) lease lands within the boundaries of Klamath Drainage District, exclusive of Klamath Straits Drain; and,
(C) The remainder of net revenues directly, without further appropriation, to the Bureau of Reclamation to be applied as follows:

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

(ii) with respect to such revenues received in any year in which the remainder exceeds the United States’ costs described in subparagraph (i), to future capital costs of the Klamath Reclamation Project.

SEC. 109. TRIBAL COMMITMENTS.

(a) ACTIONS BY THE KLAMATH TRIBES.—In return for the resolution of the Klamath Project Water Users’ contests to the water rights claims of the Klamath Tribes and of the United States acting in its capacity as trustee for the Klamath Tribes and its members in Oregon’s Klamath Basin Adjudication, and other benefits as set forth in the Restoration Agreement, this title, and title II of this Act, the Klamath Tribes on behalf of itself and its members is authorized to make the commitments provided in the Restoration Agreement, including the assurances in section 15 of the Restoration Agreement. Such commitments are confirmed as effective and binding according to their terms without further action by the Klamath Tribes.

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

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

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

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

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

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

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

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

(g) ACTIONS OF THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE.—In return for the Klamath Project Water Users’ commitments related to the water rights and water rights claims of Federally-recognized tribes of the Klamath Basin and of the United States as trustee for such tribes, and other benefits of as set forth in the Restoration Agreement and this Act, the United States, as trustee on behalf of the Federally-recognized tribes of the Klamath Basin and allottees of reservations of Federally-recognized tribes of the Klamath Basin in California, is authorized to make the commitments provided in the Restoration Agreement, including the assurances in section 15 of the Restoration Agreement. Such commitments are confirmed as effective and binding without further action by the United States.

(h) EFFECT OF RESTORATION AGREEMENT AND TITLE.—Nothing in this title—

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

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

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

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

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

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

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

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

(i) PUBLICATION OF NOTICE; EFFECT OF NON-PUBLICATION.—The Secretary shall publish the notice required by section 15.3.4.A or Section 15.3.4.C of the Restoration Agreement in accordance with the terms of the Restoration Agreement, and the rights of the Party Tribes, the United States as trustee for the Federally-recognized tribes of the Klamath Basin, and other Parties are thereafter as stated in the Restoration Agreement.

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

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

SEC. 110. JUDICIAL REVIEW.

Judicial review of a Secretarial decision regarding 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 the Restoration Agreement shall be in accordance with the Administrative Procedure Act, chapter 7 of title 5, United States Code, §§ 701-706.
SEC. 111. FURTHER AGREEMENTS BY THE KLAMATH TRIBES AND UNITED STATES.

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

SEC. 112. MISCELLANEOUS.

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

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

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

(d) RELATIONSHIP TO CERTAIN OTHER FEDERAL LAW.—

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

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

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

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

(f) WILLING SELLERS.—Any acquisition of interests in land or water under the authorization of this title shall be from willing sellers.
Title II – Klamath Hydroelectric Settlement Act

SEC. 201. SHORT TITLE AND TABLE OF CONTENTS.

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

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

Sec. 201. Short Title and table of contents.
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. 209. Miscellaneous.

SEC. 202. DEFINITIONS.

For purposes of this title:

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

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

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

(4) DEPARTMENT.—The term “Department” means the United States Department of the Interior.
(5) DEFINITE PLAN; DETAILED PLAN.—The terms “definite plan” and “detailed plan” have the same meanings as provided by section 1.4 of the Hydroelectric Settlement.

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

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

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

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

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

(D) all associated permitting for such actions.

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

(9) KENO DEVELOPMENT.—The term “Keno Development” means the Keno regulating facility within the jurisdictional project boundary of FERC Project No. 2082.
(10) PACIFICORP.—The term “PacifiCorp” means the owner and licensee of the Klamath Hydroelectric Project, FERC Project No. 2082.

(11) SECRETARIAL DETERMINATION.—The term “Secretarial determination” means the determination under section 204(a).

(12) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(13) STATES.—The term “States” means the States of Oregon and California.

(14) TRIBES.—The term “Tribes” means the Klamath Tribes, the Yurok Tribe, and the Karuk Tribe.

SEC. 203. APPROVAL OF HYDROELECTRIC SETTLEMENT; IMPLEMENTATION.

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

SEC. 204. SECRETARIAL DETERMINATION.

(a) IN GENERAL.—The Secretary shall determine, consistent with section 3 of the Hydroelectric Settlement, whether, in his judgment, facilities removal

(1) will advance restoration of the salmonid fisheries of the Klamath Basin, and
(2) is in the public interest, which includes, but is not limited to, consideration of potential impacts on affected local communities and Tribes.

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

(b) BASIS FOR DETERMINATION.—The Secretary, in cooperation with the Secretary of Commerce and other entities, shall use existing information, conduct any further appropriate studies, prepare an environmental document under the National Environmental Policy Act (42 U.S.C. 4321 and following), and take such other actions as the Secretary determines to be appropriate to support the Secretarial determination.

c) DESIGNATION OF DAM REMOVAL ENTITY.—

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

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

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

(B) The States have concurred in such finding.
(C) The Dam Removal Entity-designate has committed, if so designated, to perform facilities removal within the State Cost Cap as described in section 4.1.3 of the Hydroelectric Settlement.

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

(e) **NOTICE.**—The Secretary shall publish notification of the Secretarial determination in the Federal Register and report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives on implementation of the Hydroelectric Settlement.

(f) **JUDICIAL REVIEW OF SECRETARIAL DETERMINATION.**—

(1) **IN GENERAL.**—For purposes of judicial review, the Secretarial determination shall constitute a final agency action with respect to whether or not to proceed with facilities removal. Judicial review of the Secretarial determination shall be in accordance with the standard and scope of review under the Administrative Procedure Act, chapter 7 of title 5, United States Code.

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

SEC. 205. FACILITIES TRANSFER AND REMOVAL.

(a) FEDERAL DAM REMOVAL ENTITY AUTHORIZATIONS.—

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

(A) The Secretarial determination provides for facilities removal.

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

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

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

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

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

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

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

(6) INTERSTATE EXCHANGE AUTHORIZED.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) in which
the general exchange authority is limited to lands located in the same State, if PacifiCorp submits to the Secretary a request to exchange the non-Federal land for the Federal land or a portion of the Federal land, the Secretary may convey to PacifiCorp the right, title, and interest of the United States in and to the Federal land or the applicable portion of the Federal land.

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

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

(A) The Secretarial determination provides for facilities removal.

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

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

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

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

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

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

(c) INTERIM OBLIGATIONS.—

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

(A) The Secretarial determination provides for facilities removal.

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

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

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

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

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

(d) JUDICIAL REVIEW OF IMPLEMENTATION ACTIONS.— The
United States district courts shall have exclusive jurisdiction over
all claims challenging whether requirements of State and local
laws respecting permits and other authorizations, and State and
local actions pursuant to such laws, are consistent with the
Secretarial determination and detailed plan (including the schedule
for facilities removal). In reviewing any such claims, the district
courts shall apply the standard and scope of review of the
Administrative Procedure Act, chapter 7 of title 5, United States
Code, §§ 701-706.

(e) NO PRIVATE RIGHT OF ACTION.—Nothing in this title
shall confer upon any person or entity not a party to the
Hydroelectric Settlement a private right of action or claim for relief
to interpret or enforce the provisions of this title or the
Hydroelectric Settlement. This subsection shall not alter or curtail
any right of action or claim for relief under any other applicable
law.
SEC. 206. TRANSFER OF KENO

The Secretary is authorized to accept transfer of the Keno Development in accordance with section 7.5 of the Hydroelectric Settlement. Upon such transfer and without further action by Congress, the Keno Development shall be deemed a federal Reclamation facility within the Klamath Reclamation Project, and Commission jurisdiction over the Keno Development shall terminate.

SEC. 207. LIABILITY PROTECTION.

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

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

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

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

SEC. 208. FEDERAL POWER ACT.

(a) ANNUAL LICENSES.—The Commission shall issue annual licenses authorizing PacifiCorp to continue to operate Project No. 2082 until PacifiCorp transfers title to the facilities. Such annual licenses, and the Commission’s jurisdiction under Part I of the Federal Power Act (16 U.S.C. 791a and following), shall terminate with respect to a given facility upon PacifiCorp’s transfer of title for such facility to the Dam Removal Entity. If the facilities are removed in a staged manner,

(1) annual FERC license conditions applying to the facility being removed shall no longer be in effect, and

(2) PacifiCorp shall continue to comply with license conditions pertaining to any facility still in place to the extent such compliance is not prevented by the removal of any other facility.

(b) RELICENSING.—The Commission shall stay its proceeding on PacifiCorp’s pending license application for Project No. 2082 as long as the Hydroelectric Settlement remains in effect. The Commission shall resume such proceeding and shall proceed to take final action on the new license application only if the Hydroelectric Settlement terminates pursuant to section 8.11 therein. In that event, the Secretarial determination and its conclusions under section 204 shall not be relied upon by any non-federal party to the Hydroelectric Settlement for purposes other than implementation of the Hydroelectric Settlement.
(c) EAST SIDE AND WEST SIDE DEVELOPMENTS.—Upon PacifiCorp’s filing an application for surrender of the East Side and West Side Developments in Project No. 2082, the Commission shall issue an order approving partial surrender of the license for Project No. 2082, including any reasonable and appropriate conditions, as provided in section 6.4.1 of the Hydroelectric Settlement.

(d) FALL CREEK.—Notwithstanding section 208(b) of this title, within 60 days of the transfer of the Iron Gate Facility to the Dam Removal Entity, the Commission shall resume timely consideration of the pending licensing application for the Fall Creek development pursuant to the Federal Power Act (16 U.S.C. 791a and following). The Commission shall do so whether PacifiCorp retains ownership of Fall Creek or transfers ownership to a new licensee.

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

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

SEC. 209. MISCELLANEOUS.

(a) WATER RIGHTS.—Nothing in this title shall modify water rights in the Klamath River and its tributaries existing on the date of enactment of this title.
(b) TRIBAL RIGHTS.—Nothing in this title shall affect the rights of any Indian tribe secured by Treaty, Executive Order, or other law of the United States.

(c) RELATIONSHIP TO CERTAIN OTHER FEDERAL LAW.—Nothing in this title amends, supersedes, modifies or otherwise affects the National Environmental Policy Act (42 U.S.C. 4321 and following), the Endangered Species Act (16 U.S.C. 1531 and following), or the Clean Water Act (33 U.S.C. 1251 and following), except to the extent sections 205(a)(4) and (b)(3) of this title require a permit under section 404 of the Clean Water Act (33 U.S.C. 1344) notwithstanding section 404(r) of the Clean Water Act (33 U.S.C. 1344(r)).

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