

## Calendar No. 639

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SENATE

{ REPORT  
{ 113-299

### KLAMATH BASIN WATER RECOVERY AND ECONOMIC RESTORATION ACT

DECEMBER 10, 2014.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 2379]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2379) to approve and implement the Klamath Basin agreements, to improve natural resource management, support economic development, and sustain agricultural production in the Klamath River Basin in the public interest and the interest of the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

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

#### SEC. 2. DEFINITIONS.

In this Act:

- (1) AGREEMENT.—The term “Agreement” means each of—
  - (A) the Restoration Agreement; and
  - (B) the Upper Basin Agreement.
- (2) COMMISSION.—The term “Commission” means the Federal Energy Regulatory Commission.
- (3) 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 land;
  - (C) measures to avoid or minimize adverse downstream impacts; and
  - (D) all associated permitting for the actions described in this paragraph.
- (4) FACILITY.—The term “facility” means the following 1 or more hydropower facilities (including appurtenant works licensed to PacifiCorp) within the juris-

dictional boundary of the Klamath Hydroelectric Project, FERC Project No. 2082 (as applicable):

- (A) Iron Gate Dam.
  - (B) Copco No. 1 Dam.
  - (C) Copco No. 2 Dam.
  - (D) J.C. Boyle Dam.
- (5) GOVERNORS.—The term “Governors” means—
- (A) the Governor of the State of Oregon; and
  - (B) the Governor of the State of California.
- (6) HYDROELECTRIC SETTLEMENT.—The term “Hydroelectric Settlement” means the agreement entitled “Klamath Hydroelectric Settlement Agreement” and dated February 18, 2010 (including any amendments to that agreement approved pursuant to section 3(a)).
- (7) JOINT MANAGEMENT ENTITY.—The term “Joint Management Entity” means the entity that—
- (A) is comprised of the Landowner Entity, the Klamath Tribes, the United States, and the State of Oregon;
  - (B) represents the interests of the parties to the Upper Basin Agreement; and
  - (C) is responsible for overseeing implementation of the Upper Basin Agreement, as described in section 7 of the Upper Basin Agreement.
- (8) JOINT MANAGEMENT ENTITY TECHNICAL TEAM.—The term “Joint Management Entity Technical Team” means the group of specialists appointed by the Joint Management Entity as provided for in section 7.8 of the Upper Basin Agreement.
- (9) KENO FACILITY.—The term “Keno Facility” means the dam located in Klamath County, Oregon, land underlying the dam, appurtenant facilities, and PacifiCorp-owned property described as Klamath County Map Tax Lot R-3907-03600-00200-000.
- (10) KLAMATH BASIN.—
- (A) IN GENERAL.—The term “Klamath Basin” means the land tributary to the Klamath River in Oregon and California.
  - (B) INCLUSIONS.—The term “Klamath Basin” includes the Lost River and Tule Lake Basins.
- (11) KLAMATH PROJECT.—
- (A) IN GENERAL.—The term “Klamath Project” means the Bureau of Reclamation project in the States of California and Oregon, as authorized under the Act of June 17, 1902 (32 Stat. 388, chapter 1093).
  - (B) INCLUSIONS.—The term “Klamath Project” includes any dams, canals, and other works and interests for water diversion, storage, delivery, and drainage, flood control, and similar functions that are part of the project described in subparagraph (A).
- (12) KLAMATH PROJECT WATER USERS.—The term “Klamath Project Water Users” has the meaning given the term in the Restoration Agreement.
- (13) LANDOWNER ENTITY.—The term “Landowner Entity” means the entity established pursuant to section 8 of the Upper Basin Agreement.
- (14) OFF-PROJECT AREA.—The term “Off-Project Area” means—
- (A) the areas within the Sprague River, Sycan River, Williamson River, and Wood Valley (including the Wood River, Crooked Creek, Sevenmile Creek, Fourmile Creek, and Crane Creek) subbasins referred to in Exhibit B of the Upper Basin Agreement; and
  - (B) to the extent provided for in the Upper Basin Agreement, any other areas for which claims described by section 1.3 or 2.5.1 of the Upper Basin Agreement are settled as provided for in section 2.5.1 of the Upper Basin Agreement.
- (15) OFF-PROJECT IRRIGATOR.—The term “Off-Project Irrigator” means any person that is—
- (A)(i) a claimant for water rights for irrigation uses in the Off-Project Area in Oregon’s Klamath Basin Adjudication; or
  - (ii) a holder of a State of Oregon water right permit or certificate for irrigation use in the Off-Project Area; and
  - (B) a Party to the Upper Basin Agreement.
- (16) OREGON’S KLAMATH BASIN ADJUDICATION.—The term “Oregon’s Klamath Basin adjudication” means the proceeding to determine surface water rights pursuant to chapter 539 of the Oregon Revised Statutes entitled “In the matter of the determination of the relative rights of the waters of the Klamath River, a tributary of the Pacific Ocean”, in the Circuit Court of the State of Oregon for the County of Klamath, numbered WA 1300001.

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

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

- (A) the Yurok Tribe;
- (B) the Karuk Tribe;
- (C) the Klamath Tribes; and

(D) such other federally recognized tribes of the Klamath Basin as may become party to the Restoration Agreement after the date of enactment of this Act.

(19) **RESTORATION AGREEMENT.**—The term “Restoration Agreement” means the agreement entitled “Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities” and dated February 18, 2010 (including amendments adopted prior to the date of enactment of this Act and any further amendments to that agreement approved pursuant to section 3(a)).

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

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

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

- (A) the Secretary of the Interior;
- (B) the Secretary of Commerce; and
- (C) the Secretary of Agriculture.

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

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

(24) **UPPER BASIN AGREEMENT.**—The term “Upper Basin Agreement” means the agreement entitled “Upper Klamath Basin Comprehensive Agreement” and dated April 18, 2014 (including any amendments to that agreement approved pursuant to section 3(a)).

(25) **WATER USE PROGRAM.**—The term “Water Use Program” means the program described in section 3 of the Upper Basin Agreement and section 16.2 of the Restoration Agreement.

### **SEC. 3. AUTHORIZATION, EXECUTION, AND IMPLEMENTATION OF SETTLEMENTS.**

#### **(a) RATIFICATION OF SETTLEMENTS.—**

(1) **IN GENERAL.**—Except as modified by this Act, and to the extent that the Settlements do not conflict with this Act, the Settlements are authorized, ratified, and confirmed.

(2) **AMENDMENTS CONSISTENT WITH THIS ACT.**—If any amendment is executed to make any of the Settlements consistent with this Act, the amendment is also authorized, ratified, and confirmed to the extent the amendment is consistent with this Act.

(3) **FURTHER AMENDMENTS.**—If any amendment to any of the Settlements is executed by the parties to the applicable Settlement after the date of enactment of this Act, unless the Secretary, the Secretary of Commerce, or Secretary of Agriculture determines, not later than 90 days after the date on which the non-Federal parties agree to the amendment, that the amendment is inconsistent with this Act or other provisions of law, the amendment is also authorized, ratified, and confirmed to the extent the amendment—

- (A) is not inconsistent with this Act or other provisions of law;
- (B) is executed in a manner consistent with the terms of the applicable Settlement; and

(C) does not require congressional approval pursuant to section 2116 of the Revised Statutes (25 U.S.C. 177) or other applicable Federal law.

#### **(b) EXECUTION AND IMPLEMENTATION OF SETTLEMENTS.—**

##### **(1) THE AGREEMENTS.—**

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

(i) the Secretary, the Secretary of Commerce, and the Secretary of Agriculture shall promptly execute and implement the Restoration Agreement; and

(ii) the Secretary and the Secretary of Commerce shall promptly execute and implement the Upper Basin Agreement.

(B) **EFFECT OF EXECUTING AGREEMENTS.**—Notwithstanding subsection (1), execution by the applicable Secretaries under subparagraph (A) of either Agreement shall not be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

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

(i) participate in the Water Use Program and in the Riparian Program; and

(ii) serve as members of the Joint Management Entity representing the Bureau of Indian Affairs, the United States Fish and Wildlife Service, the United States Geological Survey, and the National Marine Fisheries Service of the Department of Commerce, with the Secretary serving as the voting member, as described in section 7.1.5 of the Upper Basin Agreement.

(2) HYDROELECTRIC SETTLEMENT.—To the extent that the Hydroelectric Settlement does not conflict with this Act, the Secretary, the Secretary of Commerce, and the Commission shall implement the Hydroelectric Settlement, in consultation with other applicable Federal agencies.

(c) FEDERAL RESPONSIBILITIES.—To the extent consistent with the Settlements, this Act, and other provisions of law, the Secretary, the Secretary of Commerce, the Secretary of Agriculture, and the Commission shall perform all actions necessary to carry out each responsibility of the Secretary, the Secretary of Commerce, the Secretary of Agriculture, and the Commission, respectively, under the Settlements.

(d) ENVIRONMENTAL COMPLIANCE.—In implementing the Settlements, the Secretaries and the Commission shall comply with—

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

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

(3) all other applicable law.

(e) PUBLICATION OF NOTICE; EFFECT OF PUBLICATION.—

(1) RESTORATION AGREEMENT.—

(A) PUBLICATION.—The Secretary shall publish the notice required by section 15.3.4.A or section 15.3.4.C of the Restoration Agreement, as applicable, in accordance with the Restoration Agreement.

(B) EFFECT OF PUBLICATION.—Publication of the notice described in subparagraph (A) shall have the effects on the commitments, rights, and obligations of the Party tribes, the United States (as trustee for the federally recognized tribes of the Klamath Basin), and other parties to the Restoration Agreement provided for in the Restoration Agreement.

(2) UPPER BASIN AGREEMENT.—

(A) PUBLICATION.—The Secretary shall publish the notice required by section 10.1 of the Upper Basin Agreement if all requirements of section 10 of the Upper Basin Agreement have been fulfilled, including the requirement for notice by the Klamath Tribes of the willingness of the Tribes to proceed with the Upper Basin Agreement following enactment of authorizing legislation as described in section 10.1.10 or 10.2 of the Upper Basin Agreement, as applicable, in accordance with the Upper Basin Agreement.

(B) EFFECT OF PUBLICATION.—

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

(ii) TERMINATION.—On publication of the notice required under section 10.2 of the Upper Basin Agreement, the Upper Basin Agreement shall terminate, according to the terms of that section.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Judicial review of a decision of the Secretary pursuant to this subsection shall be in accordance with the standard and scope of review under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

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

(f) ELIGIBILITY FOR FUNDS PROTECTED.—Notwithstanding any other provision of law, nothing in this Act or the implementation of the Settlements, other than as explicitly provided for in this Act or the Settlements—

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

(2) shall be considered an offset against any obligations or funds in existence on the date of enactment of this Act, under any Federal or State law.

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

(1) affects the rights of any Indian tribe outside the Klamath Basin; or

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

(h) WATER RIGHTS.—

(1) IN GENERAL.—Except as specifically provided in this Act and the Settlements, nothing in this Act or the Settlements creates or determines water rights or affects water rights or water right claims in existence on the date of enactment of this Act.

(2) NO STANDARD FOR QUANTIFICATION.—Nothing in this Act or the Settlements establishes any standard for the quantification of Federal reserved water rights or any water claims of any Indian tribe in any judicial or administrative proceeding.

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

(j) NO PRIVATE RIGHT OF ACTION.—

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

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

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

(l) RELATIONSHIP TO CERTAIN OTHER FEDERAL LAW.—

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

(A) Public Law 88–567 (16 U.S.C. 695k et seq.), except as provided in section 4(c);

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

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

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

(E) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), except to the extent section 8(b)(4) of this Act requires a permit under section 404 of that Act (33 U.S.C. 1344), notwithstanding section 404(r) of that Act (33 U.S.C. 1344(r)); or

(F) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(G) the Treaty between the United States and the Klamath and Moadoc Tribes and the Yahooskin Band of Snake Indians dated October 14, 1864 (16 Stat. 707); or

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

(2) CONSISTENCY.—The Agreements shall be considered consistent with subsections (a) through (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666).

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

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

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

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

(a) KLAMATH PROJECT PURPOSES.—

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

(A) irrigation;

(B) reclamation;

(C) flood control;

(D) municipal;

(E) industrial;

(F) power;

(G) fish and wildlife purposes; and

(H) National Wildlife Refuge purposes.

(2) EFFECT OF FISH AND WILDLIFE PURPOSES.—

(A) IN GENERAL.—Subject to subparagraph (B), the fish and wildlife and National Wildlife Refuge purposes of the Klamath Project authorized under paragraph (1) shall not adversely affect the irrigation purpose of the Klamath Project.

(B) WATER ALLOCATIONS AND DELIVERY.—Notwithstanding subparagraph (A), the water allocations and delivery to the National Wildlife Refuges provided for in the Restoration Agreement shall not constitute an adverse effect on the irrigation purpose of the Klamath Project for purposes of this paragraph.

(b) WATER RIGHTS ADJUDICATION.—For purposes of the determination of water rights in Oregon's Klamath Basin adjudication, until the date on which the Appendix E-1 to the Restoration Agreement is filed in Oregon's Klamath Basin adjudication pursuant to the Restoration Agreement, the purposes of the Klamath Project shall be the purposes in effect on the day before the date of enactment of this Act.

(c) DISPOSITION OF NET REVENUES FROM LEASING OF TULE LAKE AND LOWER KLAMATH NATIONAL WILDLIFE REFUGE LAND.—Net revenues from the leasing of refuge land within the Tule Lake National Wildlife Refuge and Lower Klamath National Wildlife Refuge under section 4 of Public Law 88-567 (78 Stat. 851) (commonly known as the "Kuchel Act") shall be provided as follows:

(1) Directly, without further appropriation:

(A) 10 percent of net revenues from land within the 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. 14-06-200-5954 and section 2(a) of the Act of August 1, 1956 (70 Stat. 799, chapter 828).

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

(2) Subject to appropriation and, when so appropriated, notwithstanding any other provision of law:

(A) 20 percent of net revenues to the Klamath Basin National Wildlife Refuge Complex of the United States Fish and Wildlife Service, for wildlife management purposes on the Tule Lake National Wildlife Refuge and the Lower Klamath National Wildlife Refuge.

(B) 10 percent of net revenues from land within the Lower Klamath National Wildlife Refuge that are within the boundaries of the Klamath Drainage District to Klamath Drainage District, for operation and maintenance responsibility for the Federal reclamation water delivery and drainage facilities within the boundaries of the Klamath Drainage District and the Lower Klamath National Wildlife Refuge exclusive of the Klamath Straits Drain, subject to a transfer agreement with the Bureau of Reclamation under which the Klamath Drainage District assumes the operation and maintenance duties of the Bureau of Reclamation for Klamath Drainage District (Area K) lease land exclusive of Klamath Straits Drain.

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

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

(ii) to the extent that the revenues received under this paragraph for any year exceed the costs described in clause (i)—

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

(II) the Renewable Power Program described in section 17.7 of the Restoration Agreement, pursuant to an expenditure plan submitted to and approved by the Secretary.

#### SEC. 5. TRIBAL COMMITMENTS; RELEASE OF CLAIMS.

(a) ACTIONS BY KLAMATH TRIBES.—

(1) RESTORATION AGREEMENT COMMITMENTS ACKNOWLEDGED AND AGREED TO.—In consideration for the resolution of any contest or exception of the Klamath Project Water Users to the water rights claims of the Klamath Tribes and the United States (acting as trustee for the Klamath Tribes and members of the Klamath Tribes in Oregon's Klamath Basin adjudication), and for the other commitments of the Klamath Project Water Users described in the Restoration Agreement, and for other benefits described in the Restoration Agreement and this Act, the Klamath Tribes (on behalf of the Klamath Tribes and the members of the Klamath Tribes) may make the commitments provided in the Restoration Agreement.

(2) UPPER BASIN AGREEMENT COMMITMENTS ACKNOWLEDGED AND AGREED TO.—In consideration for the resolution of any contest or exception of the Off-

Project Irrigators to the water rights claims of the Klamath Tribes and the United States (acting as trustee for the Klamath Tribes and members of the Klamath Tribes in Oregon's Klamath Basin adjudication), and for the other commitments of the Off-Project Irrigators described in the upper Basin Agreement, and for other benefits described in the Upper Basin Agreement and this Act, the Klamath Tribes (on behalf of the Klamath Tribes and the members of the Klamath Tribes) may make the commitments provided in the Upper Basin Agreement.

(3) NO FURTHER ACTION REQUIRED.—Except as provided in subsection (c), the commitments described in paragraphs (1) and (2) are confirmed as effective and binding, in accordance with the terms of the commitments, without further action by the Klamath Tribes.

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

(A) consistent with this Act, the Settlements, and other applicable provisions of law, based on the totality of the circumstances; and

(B) covered by a written agreement signed by the Klamath Tribes and the United States (acting as trustee for the tribe and the members of the tribe in Oregon's Klamath Basin adjudication) pursuant to subsection (f).

(b) ACTIONS BY KARUK TRIBE AND YUOK TRIBE.—

(1) COMMITMENTS ACKNOWLEDGED AND AGREED TO.—In consideration for the commitments of the Klamath Project Water Users described in the Restoration Agreement, and other benefits described in the Restoration Agreement and this Act, the Karuk Tribe and the Yurok Tribe (on behalf of the tribe and the members of the tribe) may make the commitments provided in the Restoration Agreement, .

(2) NO FURTHER ACTION REQUIRED.—Except as provided in subsection (c), the commitments described in paragraph (1) are confirmed as effective and binding, in accordance with the terms of the commitments, without further action by the Yurok Tribe or Karuk Tribe.

(c) RELEASE OF CLAIMS BY PARTY TRIBES.—

(1) IN GENERAL.—Subject to paragraph (2), subsection (d), and the Agreements, but without otherwise affecting any right secured by a treaty, Executive order, or other law, the Party tribes (on behalf of the tribes and the members of the tribes) may relinquish and release certain claims against the United States (including any Federal agencies and employees) described in sections 15.3.5.A, 15.3.6.B.i, and 15.3.7.B.1 of the Restoration Agreement and, in the case of the Klamath Tribes, section 2.5 of the Upper Basin Agreement.

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

(d) RETENTION OF RIGHTS OF PARTY TRIBES.—Notwithstanding subsections (a) through (c) or any other provision of this Act, the Party tribes (on behalf of the tribes and the members of the tribes) and the United States (acting as trustee for the Party tribes), shall retain—

(1) all claims and rights described in sections 15.3.5.B, 15.3.6.B.ii, and 15.3.7.B.ii of the Restoration Agreement; and

(2) any other claims and rights retained by the Party Tribes in negotiations pursuant to section 15.3.5.D, 15.3.6.B.iv, and 15.3.7.B.iv of the Restoration Agreement.

(e) TOLLING OF CLAIMS.—

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

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

(B) ending on the earlier of—

(i) the date on which 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

(ii) December 1, 2030.

(2) EFFECT OF TOLLING.—Nothing in this subsection—

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

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

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

(1) RESTORATION AGREEMENT COMMITMENTS AUTHORIZED.—In consideration for the commitments of the Klamath Project Water Users described in the Restoration Agreement and for other benefits described in the Restoration Agreement and this Act, the United States, acting as trustee for the federally recognized tribes of the Klamath Basin and the members of such tribes, may make the commitments provided in the Restoration Agreement.

(2) UPPER BASIN AGREEMENT COMMITMENTS AUTHORIZED.—In consideration for the commitments of the Off-Project Irrigators described in the Upper Basin Agreement and for other benefits described in the Upper Basin Agreement and this Act, the United States, acting as trustee for the Klamath Tribes and the members of the Klamath Tribes, may make the commitments provided in the Upper Basin Agreement.

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

(4) ADDITIONAL COMMITMENTS.—The United States, acting as trustee for the Klamath Tribes and the members of the Klamath Tribes in Oregon's Klamath Basin Adjudication, may make additional commitments and assurances of rights in exchange for the resolution of the tribal water right claims described in section 1.3.1 or 2.5.1 of the Upper Basin Agreement, subject to the conditions that the commitments or assurances shall be—

(A) consistent with this Act, the Settlements, and other applicable provisions of law, based on the totality of the circumstances; and

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

(g) JUDICIAL REVIEW.—Judicial review of a decision of the Secretary concerning any right or obligation under section 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, or 15.3.9 of the Restoration Agreement shall be in accordance with the standard and scope of review under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act").

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

(1) affects the ability of the United States to take any action—

(A) authorized by law to be taken in the sovereign capacity of the United States, including any law relating to health, safety, or the environment, including—

(i) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

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

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

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

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

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

(B) as trustee for the benefit of any federally recognized Indian tribe other than an Indian tribe of the Klamath Basin;

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

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

(i) to acquire water rights after the effective date of the Agreements (as defined in section 1.5.1 of the Restoration Agreement and section 14.3 of the Upper Basin Agreement);

(ii) to use and protect water rights, including water rights acquired after the effective date of the Agreements (as defined in section 1.5.1 of the Restoration Agreement and section 14.3 of the Upper Basin Agreement), subject to the Agreements; or

(iii) to claim a water right or continue to advocate for an existing claim for water rights in an appropriate United States court or State court or administrative proceeding, subject to the Agreements;

(2) affects the treaty fishing, hunting, trapping, pasturing, or gathering right of any Indian tribe except to the extent expressly provided in this Act or the Agreements; or



(3) affects any right, remedy, privilege, immunity, power, or claim not specifically relinquished and released under, or limited by, this Act or the Agreements.

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

The Klamath Basin Water Supply Enhancement Act of 2000 (Public Law 106–498; 114 Stat. 2221) is amended—

- (1) by redesignating sections 4 through 6 as sections 5 through 7, respectively; and
- (2) by inserting after section 3 the following:

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

“(a) **DEFINITIONS.**—In this section:

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

“(A) the areas within the Sprague River, Sycan River, Williamson River, and Wood Valley (including Crooked Creek, Sevenmile Creek, Fourmile Creek, and Crane Creek) subbasins referred to in Exhibit B of the Upper Basin Agreement; and

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

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

“(3) **RESTORATION AGREEMENT.**—The term ‘Restoration Agreement’ means the agreement entitled ‘Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities’ and dated February 18, 2010 (including any amendments adopted prior to the date of enactment of this Act and any further amendment to that agreement approved pursuant to section 3(a) of the Klamath Basin Water Recovery and Economic Restoration Act of 2014).

“(4) **UPPER BASIN AGREEMENT.**—The term ‘Upper Basin Agreement’ means the agreement entitled ‘Upper Klamath Basin Comprehensive Agreement’ and dated April 18, 2014 (including any amendment to that agreement).

“(b) **ACTION BY SECRETARY.**—

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

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

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

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

“(ii) the On-Project Power Users;

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

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

“(C) to restore any ecosystem and otherwise protect fish and wildlife in the Klamath Basin watershed, including tribal fishery resources held in trust, consistent with Restoration Agreement and the Upper Basin Agreement.

“(2) **INCLUSION.**—Purchases of power by the Secretary under paragraph (1)(B) shall be considered an authorized sale under section 5(b)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839c(b)(3)).”.

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

(a) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “Klamath Tribes Tribal Resource Fund” (referred to in this section as the “Fund”), consisting of the amounts deposited in the Fund under subsection (b), together with any interest earned on those amounts, to be managed, invested, and administered by the Secretary for the benefit of the Klamath Tribes in accordance with the terms of section 2.4 of the Upper Basin Agreement, to remain available until expended.

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

(c) **MANAGEMENT BY THE SECRETARY.**—Absent an approved tribal investment plan under subsection (d) or an economic development plan under subsection (e), the Sec-

retary shall manage, invest, and distribute all amounts in the Fund in a manner that is consistent with the investment authority of the Secretary under—

- (1) the first section of the Act of June 24, 1938 (25 U.S.C. 162a);
  - (2) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and
  - (3) this section.
- (d) INVESTMENT BY THE KLAMATH TRIBES.—
- (1) INVESTMENT PLAN.—
    - (A) IN GENERAL.—In lieu of the investment provided for in subsection (c), the Klamath Tribes may submit a tribal investment plan to the Secretary, applicable to all or part of the Fund, excluding the amounts described in subsection (e)(4)(A).
    - (B) APPROVAL.—Not later than 60 days after the date on which a tribal investment plan is submitted under subparagraph (A), the Secretary shall approve such investment plan if the Secretary finds that the plan—
      - (i) is reasonable and sound;
      - (ii) meets the requirements of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and
      - (iii) meets the requirements of this section.
    - (C) DISAPPROVAL.—If the Secretary does not approve the tribal investment plan, the Secretary shall set forth in writing the particular reasons for the disapproval.
  - (2) DISBURSEMENT.—If the tribal investment plan is approved by the Secretary, the funds involved shall be disbursed from the Fund to the Klamath Tribes to be invested by the Klamath Tribes in accordance with the approved tribal investment plan, subject to the requirements of this section.
  - (3) COMPLIANCE.—The Secretary may take such steps as the Secretary determines to be necessary to monitor the compliance of a Tribe with an investment plan approved under paragraph (1)(B).
  - (4) LIMITATION ON LIABILITY.—The United States shall not be—
    - (A) responsible for the review, approval, or audit of any individual investment under an approved investment plan; or
    - (B) directly or indirectly liable with respect to any such investment, including any act or omission of the Klamath Tribes in managing or investing amounts in the Fund.
  - (5) REQUIREMENTS.—The principal and income derived from tribal investments carried out pursuant to an investment plan approved under subparagraph (B) shall be—
    - (A) subject to the requirements of this section; and
    - (B) expended only in accordance with an economic development plan approved under subsection (e).
- (e) ECONOMIC DEVELOPMENT PLAN.—
- (1) IN GENERAL.—The Klamath Tribes shall submit to the Secretary an economic development plan for the use of the Fund, including the expenditure of any principal or income derived from management under subsection (c) or from tribal investments carried out under subsection (d).
  - (2) APPROVAL.—Not later than 60 days after the date on which an economic development plan is submitted under paragraph (1), the Secretary shall approve the economic development plan if the Secretary finds that the plan meets the requirements of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) and this section.
  - (3) USE OF FUNDS.—The economic development plan under this subsection shall—
    - (A) require that the Klamath Tribes spend all amounts withdrawn from the Fund in accordance with this section; and
    - (B) include such terms and conditions as are necessary to meet the requirements of this section.
  - (4) RESOURCE ACQUISITION AND ENHANCEMENT PLAN.—The economic development plan shall include a resource acquisition and enhancement plan, which shall—
    - (A) require that not less than  $\frac{1}{2}$  of the amounts appropriated for each fiscal year to carry out this section shall be used to enhance, restore, and utilize the natural resources of the Klamath Tribes, in a manner that also provides for the economic development of the Klamath Tribes and, as determined by the Secretary, directly or indirectly benefit adjacent non-Indian communities; and
    - (B) be reasonably related to the protection, acquisition, enhancement, or development of natural resources for the benefit of the Klamath Tribes and members of the Klamath Tribes.

(5) MODIFICATION.—Subject to the requirements of this Act and approval by the Secretary, the Klamath Tribes may modify a plan approved under this subsection.

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

(A) the approval of a plan under this paragraph; or

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

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

(g) LIMITATION ON DISBURSEMENT.—

(1) IN GENERAL.—Subject to paragraph (2), amounts in the Fund shall not be available for disbursement under this section until the Klamath Tribes—

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

(B) are determined by the Secretary to be in substantial compliance with those commitments.

(2) EARLY DISBURSEMENT.—Based on the unique history of the loss of reservation land by the Klamath Tribes through termination of Federal recognition and acknowledging that restoration of tribal land is essential to building the tribal economy and achieving self-determination, the Secretary may disburse funds to the Klamath Tribes prior to the satisfaction of the requirements of paragraph (1) on a determination by the Secretary that such funds are available and that early disbursement will support activities designed to increase employment opportunities for members of the Klamath Tribes.

(3) AGREEMENTS.—Any such disbursement shall be in accordance with a written agreement between the Secretary and the Klamath Tribes that provides the following:

(A) For any disbursement to purchase land that is to be placed in trust pursuant to section 6 of the Klamath Indian Tribe Restoration Act (25 U.S.C. 566d), the written agreement shall specify that if assurances made do not become permanent as described in section 15.3.3 of the Restoration Agreement and on publication of a notice by the Secretary pursuant to section 15.3.4.C of the Restoration Agreement or section 10.2 of the Upper Basin Agreement, any land purchased with disbursements from the Fund shall revert back to sole ownership by the United States unless, prior to reversion, the Klamath Tribes enter into a written agreement to repay the purchase price to the United States, without interest, in annual installments over a period not to exceed 40 years.

(B) For any disbursement to support economic activity and creation of tribal employment opportunities (including any rehabilitation of existing properties to support economic activities), the written agreement shall specify that if assurances made do not become permanent as described in section 15.3.3 of the Restoration Agreement and on publication of a notice by the Secretary pursuant to section 15.3.4.C of the Restoration Agreement or section 10.2 of the Upper Basin Agreement, any amounts disbursed from the Fund shall be repaid to the United States, without interest, in annual installments over a period not to exceed 40 years.

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

(i) ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year beginning with fiscal year 2014, the Secretary shall submit to the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, and the appropriate authorizing committees of the Senate and the House of Representatives a report on the operation of the Fund during the fiscal year.

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

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

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

(C) Recommendations for additional authorities to fulfill the purpose of the Fund.

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

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

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

**SEC. 8. HYDROELECTRIC FACILITIES.**

(a) FACILITIES REMOVAL DETERMINATION.—

(1) IN GENERAL.—Subject to paragraph (3), in accordance with section 3 of the Hydroelectric Settlement, the Governors and the Secretary shall jointly—

(A) as soon as practicable after the date of enactment of this Act, determine whether to proceed with facilities removal, based on but not limited to factors identified in the Hydroelectric Settlement; and

(B) if the Governors and the Secretary determine under subparagraph (A) to proceed with facilities removal, include in the determination the designation of a dam removal entity, subject to paragraph (6).

(2) BASIS FOR DETERMINATION TO PROCEED.—For purposes of making a determination under paragraph (1)(A), the Governors and the Secretary, in cooperation with the Secretary of Commerce and other appropriate entities, shall—

(A) use existing information;

(B) conduct any necessary additional studies;

(C) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(D) take such other actions as the Governors and the Secretary determine to be appropriate to support the determination under paragraph (1).

(3) CONDITIONS FOR DETERMINATION TO PROCEED.—The Secretary and the Governors may not make or publish the determination under this subsection, unless the conditions specified in section 3.3.4 of the Hydroelectric Settlement, as modified by this Act as applicable, have been satisfied.

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

(5) JUDICIAL REVIEW OF DETERMINATION.—

(A) IN GENERAL.—For purposes of judicial review, the determination of the Secretary under paragraph (1) shall constitute a final agency action with respect to whether or not to proceed with facilities removal.

(B) PETITION FOR REVIEW.—

(i) FILING.—

(I) IN GENERAL.—Judicial review of the determination and related actions to comply with environmental laws (including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the National Historic Preservation Act (16 U.S.C. 470 et seq.)) may be obtained by an aggrieved person only as provided in this paragraph.

(II) JURISDICTION.—A petition for review under this paragraph 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.

(III) LIMITATION.—A district court of the United States and a State court shall not have jurisdiction to review the determination of the Secretary or related actions to comply with environmental laws described in subclause (I).

(ii) DEADLINE.—

(I) IN GENERAL.—Except as provided in subclause (II), any petition for review under this paragraph shall be filed not later than 60 days after the date of publication of the determination in the Federal Register.

(II) SUBSEQUENT GROUNDS.—If a petition is based solely on grounds arising after the date that is 60 days after the date of publication of the determination in the Federal Register, the petition for review under this subsection shall be filed not later than 60 days after the grounds arise.

(C) IMPLEMENTATION.—Any 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 determination of the Secretary or in proceedings for enforcement of the Hydroelectric Settlement.

(D) APPLICABLE STANDARD AND SCOPE.—Judicial review of the determination of the Secretary shall be in accordance with the standard and scope of review under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

- (E) NONTOLLING.—The filing of a petition for reconsideration by the Secretary of an action subject to review under this subsection shall not—
- (i) affect the finality of the action for purposes of judicial review;
  - (ii) extend the time within which a petition for judicial review under this subsection may be filed; or
  - (iii) postpone the effectiveness of the action.
- (6) REQUIREMENTS FOR DAM REMOVAL ENTITY.—A dam removal entity designated by the Governors and the Secretary under paragraph (1)(B) shall, in the sole judgment of the Governors and the Secretary—
- (A) have the capabilities for facilities removal described in section 7.1.1 of the Hydroelectric Settlement;
  - (B) be otherwise qualified to perform facilities removal; and
  - (C) have committed, if so designated, to perform facilities removal within the State Cost Cap as described in section 4.1.3 of the Hydroelectric Settlement.
- (7) RESPONSIBILITIES OF DAM REMOVAL ENTITY.—The dam removal entity designated by the Governors and the Secretary under paragraph (1)(B) shall have the responsibilities described in section 7.1.2 of the Hydroelectric Settlement.
- (b) FACILITIES REMOVAL.—
- (1) APPLICABILITY.—This subsection shall apply if—
    - (A) the determination of the Governors and the Secretary under subsection (a) provides for proceeding with facilities removal;
    - (B) the availability of non-Federal funds for the purposes of facilities removal is consistent with the Hydroelectric Settlement; and
    - (C) the Hydroelectric Settlement has not terminated in accordance with section 8.11 of the Hydroelectric Settlement.
  - (2) NON-FEDERAL FUNDS.—
    - (A) IN GENERAL.—Notwithstanding title 31, United States Code, if the Department of the Interior is designated as the dam removal entity under subsection (a)(1)(B), the Secretary may accept, manage, and expend, without further appropriation, non-Federal funds for the purpose of facilities removal in accordance with sections 4 and 7 of the Hydroelectric Settlement.
    - (B) REFUND.—The Secretary may administer and refund any amounts described in subparagraph (A) received from the State of California in accordance with the requirements established by the State.
    - (C) INCLUSION.—The costs of dam removal shall include, within the State Cost Cap described in section 4.1.3 of the Hydroelectric Settlement, reasonable compensation for property owners whose property or property value is directly damaged by facilities removal, consistent with State, local, and Federal law.
  - (3) AGREEMENTS.—The dam removal entity may enter into agreements and contracts as necessary to assist in the implementation of the Hydroelectric Settlement.
  - (4) PROCEEDING WITH FACILITIES REMOVAL.—
    - (A) IN GENERAL.—The dam removal entity shall, consistent with the Hydroelectric Settlement—
      - (i) develop a definite plan for facilities removal as described in section 7 of the Hydroelectric Settlement, including a schedule for facilities removal;
      - (ii) obtain all permits, authorizations, entitlements, certifications, and other approvals necessary to implement facilities removal, including a permit under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), notwithstanding subsection (r) of that section; and
      - (iii) implement facilities removal.
    - (B) REPORT.—
      - (i) IN GENERAL.—The Governors and the Secretary shall prepare and make public a report on the determination and plan for facilities removal.
      - (ii) INCLUSIONS.—The report shall, at a minimum—
        - (I) provide a detailed explanation of the basis for the determination to proceed with facilities removal and for the designation of the dam removal entity, including relevant supporting documents;
        - (II) include any comments received from the Commission on the determination and a written response to the comments;
        - (III) state specific goals intended to be achieved by facilities removal;
        - (IV) include specific performance measures that will be used to show achievements in meeting the goals;

(V) provide a detailed explanation of factors that are unique to facilities removal in the Klamath Basin, including why the Federal role is limited to the Klamath Basin and sets no precedent for future Federal action;

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

(VII) describe plans for addressing or mitigating intentional or unintentional impacts on local communities and property owners; and

(VIII) describe how any potential environmental or other liability concerns will be addressed.

(iii) SUBMISSION.—The report required under this subparagraph shall be submitted to—

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

(II) the Committee on Natural Resources of the House of Representatives; and

(III) the Commission.

(iv) COMMENT AND CONSULTATION BY COMMISSION.—Not later than 180 days before the publication of the report required by this subparagraph, the Governors and the Secretary shall submit to the Commission the section of the report describing the basis of the determination to proceed with dam removal for comment and, as appropriate, consultation.

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

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

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

(C) STATE AND LOCAL LAWS.—

(i) IN GENERAL.—Except as provided in clause (ii), facilities removal shall be subject to applicable requirements of State and local laws relating to permits and other authorizations, to the extent the requirements are not in conflict with Federal law, including the determination of the Governors and the Secretary under subsection (a) and the definite plan (including the schedule) for facilities removal authorized under this Act.

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

(I) the authorities of the States regarding concurrence with the determination of the Secretary under subsection (a) in accordance with State law; or

(II) the authority of a State public utility commission regarding funding of facilities removal.

(iii) JURISDICTION.—The United States district courts shall have original jurisdiction over all claims regarding the consistency of State and local laws regarding permits and other authorizations, and of State and local actions pursuant to those laws, with the definite plan (including the schedule) for facilities removal authorized under this Act.

(D) ACCEPTANCE OF TITLE TO FACILITIES.—

(i) IN GENERAL.—The dam removal entity may accept from PacifiCorp all rights, titles, permits, and other interests in the facilities and associated land, for facilities removal and for disposition of facility land (as provided in section 7.6.4 of the Hydroelectric Settlement) on providing to PacifiCorp a notice that the dam removal entity is ready to commence facilities removal in accordance with section 7.4.1 of the Hydroelectric Settlement.

(ii) NON-FEDERAL DAM REMOVAL ENTITY.—Notwithstanding section 8 of the Federal Power Act (16 U.S.C. 801), the transfer of title to facilities from PacifiCorp to a non-Federal dam removal entity, in accordance with the Hydroelectric Settlement and this Act, is authorized.

(E) CONTINUED POWER GENERATION.—

(i) IN GENERAL.—In accordance with an agreement negotiated under clause (ii), on transfer of title pursuant to subparagraph (C) and until the dam removal entity instructs PacifiCorp to cease the generation of power, PacifiCorp may continue, consistent with State law—

(I) to generate, and retain title to, any power generated by the facilities in accordance with section 7 of the Hydroelectric Settlement; and

(II) to transmit and use the power for the benefit of the customers of PacifiCorp under the jurisdiction of applicable State public utility commissions and the Commission.

(ii) AGREEMENT WITH DAM REMOVAL ENTITY.—As a condition of transfer of title pursuant to subparagraph (C), the dam removal entity shall enter into an agreement with PacifiCorp that provides for continued generation of power in accordance with clause (i).

(F) REPORT.—Not later than 3 years after the date of the completion of facilities removal, the Governors and the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Commission—

(i) a detailed report describing the results of facilities removal, including the status of achieving the performance measures and goals included in the report described in subparagraph (B); and

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

(5) LICENSES AND JURISDICTION.—

(A) ANNUAL LICENSES.—

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

(ii) TERMINATION.—The annual licenses shall terminate with respect to a facility on transfer of title for the facility from PacifiCorp to the dam removal entity.

(iii) STAGED REMOVAL.—

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

(II) NONTRANSFER OF TITLE.—Annual license conditions shall remain in effect with respect to any facility for which PacifiCorp has not transferred title to the dam removal entity to the extent compliance with the annual license conditions are not prevented by the removal of any other facility.

(B) JURISDICTION.—The jurisdiction of the Commission under part I of the Federal Power Act (16 U.S.C. 792 et seq.) shall terminate with respect to a facility on the transfer of title for the facility from PacifiCorp to the dam removal entity.

(C) RELICENSING.—

(i) IN GENERAL.—The Commission shall—

(I) stay the proceeding of the Commission regarding the pending license application of PacifiCorp for Project No. 2082 for the period during which the Hydroelectric Settlement remains in effect; and

(II) resume the proceeding and proceed to take final action on the new license application only if the Hydroelectric Settlement terminates pursuant to section 8.11 of the Hydroelectric Settlement.

(D) TERMINATION; LIMITATIONS.—If the Hydroelectric Settlement is terminated pursuant to section 8.11 of the Hydroelectric Settlement, the Commission, in proceedings on the application for relicensing, shall not be bound by the record or findings of the Secretary relating to the determination of the Secretary or by the determination of the Secretary.

(c) LIABILITY PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other Federal, State, local, or common law, PacifiCorp shall not be liable for any harm to an individual or entity, property, or the environment, or any damages resulting from facilities removal or facility operations arising from, relating to, or triggered by actions associated with facilities removal under this Act, including any damage caused by the release of any material or substance (including a hazardous substance).

(2) FUNDING.—Notwithstanding any other Federal, State, local, or common law, no individual or entity contributing funds for facilities removal shall be held liable, solely by virtue of that funding, for any harm to an individual or entity, property, or the environment, or damages arising from facilities removal or facility operations arising from, relating to, or triggered by actions associated

with facilities removal under this Act, including any damage caused by the release of any material or substance (including a hazardous substance).

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

(4) **EFFECTIVE DATE.**—Liability protection under this subsection shall take effect as the protection relates to any particular facilities on transfer of title to the facility from PacifiCorp to the dam removal entity designated by the Secretary under subsection (a)(1)(B).

(d) **FACILITIES NOT REMOVED.**—

(1) **KENO FACILITY.**—

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

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

(i) the Keno Facility shall—

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

(II) be operated and maintained in accordance with the Federal reclamation laws and this Act; and

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

(2) **EAST SIDE AND WEST SIDE DEVELOPMENTS.**—On filing by PacifiCorp of 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.

(3) **FALL CREEK.**—Not later than 60 days after the date of the transfer of title to 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 et seq.), regardless of whether PacifiCorp retains ownership of Fall Creek or transfers ownership to a new licensee.

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

(A) the time of transfer to the dam removal entity of title to the Iron Gate Dam; or

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

#### **SEC. 9. ADMINISTRATION AND FUNDING.**

(a) **AGREEMENTS.**—

(1) **IN GENERAL.**—The Secretaries may enter into such agreements (including contracts, memoranda of understanding, financial assistance agreements, cost sharing agreements, and other appropriate agreements) with State, tribal, and local government agencies or private individuals and entities as the Secretary concerned consider to be necessary to carry out this Act and the Settlements, subject to such terms and conditions as the Secretary concerned considers to be necessary.

(2) **TRIBAL PROGRAMS.**—Consistent with paragraph (1) and section 32 of the Restoration Agreement, the Secretaries shall give priority to qualified Party tribes in awarding grants, contracts, or other agreements for purposes of implementing the fisheries programs described in part III of the Restoration Agreement.

(b) **ESTABLISHMENT OF ACCOUNTS.**—There are established in the Treasury for the deposit of appropriations and other funds (including non-Federal donated funds) the following noninterest-bearing accounts:

(1) The On-Project Plan and Power for Water Management Fund, to be administered by the Bureau of Reclamation.

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

(3) The Klamath Drought Fund, to be administered by the National Fish and Wildlife Foundation.

(c) **MANAGEMENT.**—



- (1) IN GENERAL.—The accounts established by subsection (b) shall be managed in accordance with this Act and section 14.3 of the Restoration Agreement.
- (2) TRANSFERS.—Notwithstanding section 1535 of title 31, United States Code, the Secretaries are authorized to enter into interagency agreements for the transfer of Federal funds between Federal programs for the purpose of implementing this Act and the Settlements.
- (d) ACCEPTANCE AND EXPENDITURE OF NON-FEDERAL FUNDS.—
- (1) IN GENERAL.—Notwithstanding title 31, United States Code, the Secretaries may accept and expend, without further appropriation, non-Federal funds, in-kind services, or property for purposes of implementing the Settlement.
- (2) USE.—The funds and property described in paragraph (1) may be expended or used, as applicable, only for the purpose for which the funds or property were provided.
- (e) FUNDS AVAILABLE UNTIL EXPENDED.—All funds made available for the implementation of the Settlements shall remain available until expended.
- (f) TERMINATION OF AGREEMENTS.—If any Agreement terminates—
- (1) any appropriated Federal funds provided to a party that are unexpended at the time of the termination of the Agreement shall be returned to the general fund of the Treasury; and
- (2) any appropriated Federal funds provided to a party shall be treated as an offset against any claim for damages by the party arising under the Agreement.
- (g) BUDGET.—
- (1) IN GENERAL.—The budget of the President shall include such requests as the President considers to be necessary for the level of funding for each of the Federal agencies to carry out the responsibilities of the agencies under the Settlements.
- (2) CROSSCUT BUDGET.—Not later than the date of submission of the budget of the President to Congress for each fiscal year, the Director of the Office of Management and Budget shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report containing—
- (A) an interagency budget crosscut report that displays the budget proposed for each of the Federal agencies to carry out the Settlements for the upcoming fiscal year, separately showing funding requested under pre-existing authorities and new authorities provided by this Act;
- (B) a detailed accounting of all funds received and obligated by all Federal agencies responsible for implementing the Settlements; and
- (C) a budget for proposed actions to be carried out in the upcoming fiscal year by the applicable Federal agencies in the upcoming fiscal year.
- (h) REPORT TO CONGRESS.—Not later than the date of submission of the budget of the President to Congress for each fiscal year, the Secretaries shall submit to the appropriate authorizing committees of the Senate and the House of Representatives a report that describes—
- (1) the status of implementation of all of the Settlements;
- (2) expenditures during the preceding fiscal year for implementation of all of the Settlements;
- (3) the current schedule and funding levels that are needed to complete implementation of each of the Settlements;
- (4) achievements in advancing the purposes of complying with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) under the Settlements;
- (5) additional achievements in restoring fisheries under the Settlements;
- (6) the status of water deliveries for the preceding water year and projections for the upcoming water year for—
- (A) the Klamath Project and irrigators in the Off-Project Area pursuant to the Agreements; and
- (B) the National Wildlife Refuges in areas covered by the Agreements;
- (7) the status of achieving the goals of supporting sustainable agriculture production (including the goal of limiting net power costs for water management) and general economic development in the Klamath Basin;
- (8) the status of achieving the goal of supporting the economic development of the Party tribes;
- (9) the assessment of the Secretaries of the progress being made toward completing implementation of all of the Settlements;
- (10)(A) identification of performance measures established for the goals of the Agreements and of facilities removal as described in the report to Congress required under section 8(b)(4)(B); and
- (B) until achieved, the assessment of the Secretaries of the progress being made toward meeting the performance measures; and

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

#### PURPOSE

The purpose of S. 2379 is to approve and implement the Klamath Basin agreements to improve natural resource management, support economic development, and sustain agricultural production in the Klamath River Basin in the public interest and the interest of the United States.

#### BACKGROUND AND NEED

The Klamath River Basin drains a 16,000 square mile area in Oregon and California. The Klamath River originates in southern Oregon and flows 253 miles through northern California to the Pacific Ocean. The Basin is divided into two parts: the Upper Basin, which lies upriver and east of Iron Gate Dam and where the Upper Klamath Lake is found; and the Lower Basin, which includes that portion of the river between Iron Gate Dam and the Pacific Ocean.

#### THE UPPER BASIN

Located in the Upper Klamath Basin is Upper Klamath Lake, which contains 50,000 acre feet of water storage and is naturally high in nutrients given its shallow depth. In addition, agricultural use has impacted the lake conditions over the past century.

The Klamath Project, built in 1905, is a federal water project managed by the Bureau of Reclamation (BoR) in the Upper Basin. The project provides irrigation water for approximately 210,000 acres. The project does not have a hydroelectricity component, so power is purchased from PacifiCorp, an investor-owned utility which serves the region.

There are also 180,000 acres of irrigated agriculture that do not use water delivered from the Klamath Project. The land (mostly ranches) of these so-called “off-project users” is primarily to the north of Upper Klamath Lake and is located on tributaries to the Lake.

The Klamath Basin National Wildlife Refuge (comprised of six wildlife refuges administered by the U.S. Fish and Wildlife Service) is located in the Upper Klamath Basin. The wetlands in these refuges are a stopping place for nearly three-quarters of the migratory birds on the Pacific flyway. Some of the Klamath Basin Project water is released downstream for the benefit of the two additional federal wildlife refuges, the Lower Klamath Wildlife Refuge and the Tule Lake Wildlife Refuge. Both of these refuges allow land to be leased out for farming (“lease-land farming”).

Two fish species listed as endangered under the Endangered Species Act—the Lost River sucker and the shortnose sucker—are found in Upper Klamath Lake. Members of the Klamath Tribe use these fish for ceremonial purposes and historically relied on them for sustenance. Fish populations declined for a variety of reasons, such as low lake levels and related high nutrients and poor water quality, agricultural development, habitat degradation, and dams located on tributaries to the lake.

## THE LOWER BASIN

The Lower Klamath Basin is located below Iron Gate Dam. The Klamath River runs through the Lower Basin to the Pacific Ocean. There are 13 anadromous fish species in the Lower Basin, including three types of salmon. One of these, the coho salmon, is listed as threatened under the Endangered Species Act. Much of the land area is irrigated agriculture or National Forest System land. Three Lower Basin tribes—the Hoopa Valley, Karuk, and Yurok Tribes—consider salmon to be an important resource, both economic and cultural. The presence of salmon has declined in the Lower Basin.

## KLAMATH DAMS

The Klamath Hydroelectric Project is comprised of six dams located on the Klamath River and is owned by PacifiCorp. These dams provide approximately 160 megawatts of hydroelectricity to 170,000 homes and for power users in the Basin, including irrigators. One additional non-hydroelectric dam (Link River Dam) is owned by the Bureau of Reclamation and is operated to regulate flows for the production of hydropower downstream. The dams owned by PacifiCorp are: Keno Dam (a non-hydroelectric dam operated to regulate flows and as a diversion structure for irrigation); J.C. Boyle Dam; Copco Dams 2 and 1; and Iron Gate Dam. In addition, PacifiCorp operates a small dam on a tributary to the Klamath River.

There is currently a hydroelectric relicensing proceeding pending before the Federal Energy Regulatory Commission (FERC) for the Klamath Hydroelectric Project but the FERC proceeding is inactive because the negotiated settlement calls for the removal of PacifiCorps dams (see discussion of the KHSA below). The original license expired in 2006, and the project is operating on annual licenses which are granted as a matter of course until a new license is issued. FERC has issued a final environmental impact statement and has indicated the conditions that FERC staff recommend be met by PacifiCorp in a new license. The States of California and Oregon also have pending proceedings relating to water quality certification of the project under section 401 of the Clean Water Act. Both water quality proceedings have been held in abeyance due to the negotiated settlement. However, the FERC and State proceedings could become active again if progress on implementing the settlement is not made.

## THE WATER RIGHTS ADJUDICATION

On March 7, 2013, the Final Order of Determination in the Klamath River Basin Adjudication was delivered by the Oregon Water Resources Department (OWRD) to the Klamath County Circuit Court, marking the end of Phase I of the water rights adjudication which has been ongoing since 1975. During Phase I, the OWRD determined the validity of 730 claims for the use of surface water in the Klamath Basin. The Department also received and resolved 5,660 contests to these claims.

The key finding in the adjudication was that the most senior claims in the Klamath River Basin Adjudication are claims held by the United States in trust for the Klamath Tribes. These claims carry a priority date of “time immemorial.” The tribal claims were

recognized for certain reaches of major tributaries to Upper Klamath Lake and for the Lake itself. The next most senior rights holders are Indian Allottees (members of the Klamath Tribes who received allotments of land within the boundaries of the former reservation) and the so-called “Walton” claim holders, non-Indian purchasers of Indian allotments who hold lands that were once reservation lands and whose claims are based on the 1864 Klamath Treaty and carry a priority date of 1864. Under the Final Order of Determination, the United States holds the water rights for the Klamath Irrigation Project with a priority that dates to 1905, and users of the Project water hold the Project water rights for the purpose beneficial use of the water.

#### KBRA AND KHSA AGREEMENTS

In February 2010, a negotiated settlement was reached by a number of parties in the Klamath River Basin on two related agreements—the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydropower Settlement Agreement (KHSA). However, Congress must authorize these two agreements before every provision of the agreements can be implemented. The KBRA provides for measures to address resource issues in the Basin and includes agreement on the allocation of water when shortage occurs. The KHSA provides for the removal of four Klamath River Dams owned by PacifiCorp.

The KBRA is divided into sections designed to achieve three major goals: (1) restore and sustain natural production of fish species throughout the Basin; (2) establish reliable water and power supplies for agricultural users, communities, and wildlife refuges; and (3) contribute to the public welfare and sustainability of communities. The KBRA would have expired at the end of 2012 by its own terms since Congress had not acted to ratify it. The parties to the agreement each voted to extend the agreement in December 2012, so the agreement remains in force.

The second agreement, the KHSA, provides for dam removal and measures to restore fish runs. This agreement was reached with PacifiCorp, the owner of the four downstream hydroelectric dams, in the context of a relicensing proceeding before the Federal Energy Regulatory Commission. This agreement provides that the dams would be removed beginning in the year 2020.

The KHSA calls on ratepayers and taxpayers in Oregon and California to pay up to \$450 million to remove the dams. Of this amount, \$200 million is to come from PacifiCorp’s ratepayers through a dam removal surcharge—up to \$184 million from Oregon customers and \$16 million from California customers. The remaining \$250 million will come from a bond issued by the State of California. A recent estimate by the Department of the Interior suggests that the cost of dam removal could be less than \$300 million. Oregon has already approved an increase to the ratepayers.

The KHSA also calls for indemnification of PacifiCorp for any damages from dam removal and calls for the designation by the Secretary of the Interior of a “dam removal entity” to be responsible for the physical removal of the dams. This could be a government agency such as BoR. The agreement also allows PacifiCorp the right to the power generated from the dams up to the point they are actually removed.

The KHSA also includes provisions regarding the supply of power used for irrigation pumping. For example, the agreement anticipates that the Bonneville Power Administration (BPA) will sell power to the BoR who will sell it to Klamath irrigators to help lower irrigation power costs. However, the process to accomplish this has yet to be finalized.

Pursuant to the KHSA, the Secretary of the Interior released a final environmental impact statement that endorsed removal of all four dams as its preferred alternative. The Secretary cannot make a final determination on whether dam removal is in the public interest until Congress acts.

#### UPPER BASIN AGREEMENT

The final agreement, the Upper Basin Agreement, was signed on March 5, 2014, after a year-long Klamath Basin Task Force convened by Senator Wyden, Senator Merkley, Congressman Walden, and Governor Kitzhaber. The Agreement resolves water right disputes that were not addressed in the KBRA. The most senior water rights above Upper Klamath Lake are held by the Klamath Tribes and full exercise of those rights would preclude irrigation in many years.

The Upper Basin Agreement lays out water management and restoration measures for the Upper Basin, including a water use program that will increase stream flows into Upper Klamath Lake adding at least 30,000 acre feet annually to the lake, which allows for a more predictable future for agriculture in the Upper Basin, a riparian program that will improve and protect riparian conditions to help restore fisheries, and an economic development program for the Klamath Tribes.

Legislation is needed to implement the three settlement agreements.

#### LEGISLATIVE HISTORY

S. 2379 was introduced by Senator Wyden on May 21, 2014. Senators Merkley, Feinstein, and Boxer are original cosponsors. The Subcommittee on Power and Water held a hearing on S. 2379 on June 3, 2014. S. Hrg. 113–451. At its business meeting on November 13, 2014, the Committee ordered the bill favorably reported with an amendment in the nature of a substitute.

Similar legislation, S. 2727, was introduced by Senators Wyden and Merkley on July 31, 2014 and was referred to the Committee on Finance. The Committee on Energy and Natural Resources held an oversight hearing on water resource issues in the Klamath River Basin on June 20, 2013. Similar legislation (S. 1851 and H.R. 3398) was also introduced in both the House and the Senate in the 112th Congress, but was not acted upon.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on November 13, 2014, by a voice vote of a quorum present, recommends that the Senate pass S. 2379, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas and 5 nays, as follows:

## YEAS

Ms. Landrieu\*  
 Mr. Wyden  
 Mr. Johnson  
 Ms. Cantwell  
 Mr. Sanders  
 Ms. Stabenow\*  
 Mr. Udall  
 Mr. Franken  
 Mr. Manchin  
 Mr. Schatz  
 Mr. Heinrich  
 Ms. Baldwin  
 Ms. Murkowski  
 Mr. Heller\*  
 Mr. Flake  
 Mr. Portman  
 Mr. Hoeven\*

## NAYS

Mr. Barrasso\*  
 Mr. Risch\*  
 Mr. Lee\*  
 Mr. Scott\*  
 Mr. Alexander\*

\*Indicates vote by proxy.

## COMMITTEE AMENDMENT

During its consideration of S. 2379, the Committee adopted an amendment in the nature of a substitute. The amendment is described in the section-by-section analysis.

## SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title, the “Klamath Basin Water Recovery and Economic Restoration Act of 2014.”

*Section 2* defines key terms used in the bill.

*Section 3(a)(1)* approves and ratifies the Klamath Basin Restoration Agreement (KBRA), Klamath Hydroelectric Settlement (KHSA), and the Upper Klamath Basin Comprehensive Agreement (Upper Basin Agreement, collectively “the Settlements”). Subsection (a)(3) establishes a process for future amendments, requiring that they be consistent with the Act.

Subsection (b) provides for the Settlements’ execution and implementation by the Departments of the Interior (all three settlements) and Agriculture (KBRA only), the National Marine Fisheries service (all three), and the Federal Energy Regulatory Commission (KHSA only). Subsection (b)(1)(C) authorizes the relevant agencies to participate in the implementing programs of the Upper Basin Agreement.

Subsection (c) requires the Secretary of the Interior to publish notice when all the commitments and actions agreed to in the KBRA and Upper Basin Agreement have happened, which would make official the legal settlements and releases of claims, or alternately, publication of notice if it is determined that they cannot happen and no other path to resolution can be agreed upon. Subsection (c)(3) limits, to one year, the time period in which judicial

review of this final decision for the Upper Basin Agreement can be initiated.

*Section 4* updates the authorized purposes of the Klamath Reclamation Project to include irrigation, reclamation, flood control, municipal uses, industrial uses, power, and fish and wildlife purposes (including serving the National Wildlife Refuges). Subsection 4(a)(2) provides, consistent with the KBRA, that the fish and wildlife purposes, which are being established for the first time, cannot adversely affect the irrigation purposes (except for the agreed-upon water amounts to be delivered to the National Wildlife Refuges).

*Section 5* authorizes the Klamath, Karuk, and Yurok Tribes, and the United States acting as the trustee of federal tribes in the Klamath Basin, to make the series of commitments agreed upon in the Settlements, including settling certain water rights and waters claims (especially in the case of the Klamath Tribes) and otherwise agreeing not to pursue certain claims against the Project and Off-Project irrigators. Subsections (d) and (f) authorize the Klamath Tribes and the United States, acting as their trustee, to continue negotiating for settlement of certain water rights claims not yet settled. Subsection (c) authorizes the Tribes to release claims where as appropriate. Subsection (h) provides a series of savings clauses limiting the scope of rights, privileges, and powers released by the United States and the federally recognized Tribes of the Klamath Basin to only those explicitly described in the Settlements.

*Section 6* authorizes the Secretary of the Interior to implement the water, power, and ecosystem restoration programs agreed upon in the Settlements. These include—

- a water program to help irrigators align water supply and demand, including reducing total water consumption by both the Klamath Reclamation Project and the off-Project irrigators;
- a program to limit the total cost of power to irrigators, by delivering Federal power and assisting in the development of a local renewable power program; and
- various programs to restore ecosystems in the Klamath Basin to support recovery of endangered fish species.

*Section 7* establishes a Fund, as agreed upon in the Upper Basin Agreement, to provide for improved economic development for the Klamath Tribes, including primarily acquisition, restoration, and development of natural resources for the benefit of the Tribes.

*Section 8* directs the Secretary of the Interior to determine whether to proceed with removal of four facilities on the Klamath River—the J.C. Boyle, Iron Gate, Copco 1, and Copco 2 dams—based on whether removing the facilities would advance restoration of salmon fisheries and is in the public interest, taking into account potential impacts on local communities and federally recognized Tribes. Paragraphs (2) and (3) of subsection (a) requires that the determination comply with National Environmental Policy Act and happen only if certain conditions stipulated in the KHSA have been met. Subsection (a)(5) provides for judicial review of the Secretary's determination only in the United States Court of Appeals for the Ninth Circuit or the District of Columbia Circuit, and requires that a petition for review be filed within 60 days of the determination being published in the Federal Register.

*Section 9* authorizes the Secretaries to enter into appropriate agreements (including contracts, memoranda of understanding, and

financial agreements) with State, tribal, and local governments and private individuals and entities in order to implement the Act and the Settlements. Subsection (a)(3) directs that, in awarding grants or contracts to implement the fisheries restoration programs in the KBRA, priority be given to the Tribes that are parties to the Settlements.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of S. 2379 has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at [www.cbo.gov](http://www.cbo.gov).

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2379.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2379, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

Section 7(k) of S. 2379, as reported, authorizes appropriation of \$8 million per fiscal year, not to exceed a total of \$40 million, to the Secretary of the Interior to administer for the benefit of the Klamath Tribes in accordance with section 7 and the terms of the Upper Basin Agreement.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by John Bezdek, Senior Advisor to the Deputy Secretary at the Department of Interior, at the June 3, 2014, hearing on S. 2379 before the Subcommittee on Water and Power, follows:

##### STATEMENT OF JOHN C. BEZDEK, SENIOR ADVISOR TO THE DEPUTY SECRETARY, DEPARTMENT OF THE INTERIOR

Chairman Landrieu, Ranking Member Murkowski, and members of the Committee, I am John Bezdek, Senior Advisor to Department of the Interior Deputy Secretary Michael Connor. I began working on Klamath Basin issues in 1997 and since 2007 have had the privilege of working directly for the Department of the Interior (Department), alongside our interagency federal team, with the varied and diverse interests of the Klamath Basin regarding the Klamath Agreements (Agreements): the Klamath Hydroelectric Settlement Agreement (KHSA); the Klamath Basin Restoration Agreement (KBRA); and the Upper Klamath Basin Comprehensive Agreement (UKBCA). I am pleased



to provide the views of the Administration regarding S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014, which would authorize the Klamath Agreements. These agreements were envisioned to provide a comprehensive solution for water, fishery, and power issues in the Klamath Basin.

The Klamath Basin has a long history of conflict driven by scarce water resources that have been over-allocated among competing uses. While the conflict began generations ago, in the recent past we have seen the following: water deliveries to Reclamation's Klamath Project were shut off in 2001, which caused grave hardship for hundreds of farmers; over 30,000 adult salmon perished in the lower Klamath River (2002); closure of the commercial ocean fishery along the Oregon and California coasts due to poor Klamath Basin stocks in 2006; no surface water irrigation deliveries made to the upper basin ranching communities (2013); reductions in water supplies to the Klamath Reclamation Project (2010, 2013, and 2014); the continued voluntary tribal fishing ban, since 1986, for c'waam (Lost River Suckers) and Shortnose Suckers in Upper Klamath Lake; Endangered Species Act listings on declining populations of suckers in Upper Klamath Lake and Coho salmon in the Klamath River; limited water deliveries to wildlife refuges for a number of years, continuing today, for the water needed to support one of the most important stop over points on the Pacific Flyway; and a significant increase in the cost of power which makes it more expensive for irrigators to conserve and re-use water. All of these events continue to cast uncertainty and doubt upon the communities of the basin, including the continuation of the way of life of the tribes and the ranching communities and the \$600 million a year in agricultural products and jobs that contribute to the local economy.<sup>1</sup> Moreover, analysis shows all of these problems in the basin will likely worsen and may occur more frequently in the coming years due to impacts of climate change unless a long term solution is implemented.

Fortunately, the tools, in the form of the Klamath Agreements, are available and ready to be implemented to address these issues. Collectively, these three Agreements approach the restoration of resources, economies, and communities of the basin in a holistic manner instead of continuing the band-aid approach that oftentimes falls short of providing even short-term relief—much less addressing the underlying causes.

These agreements have broad and diverse support. There are currently 45 Parties to the KHSA and 43 Parties to the KBRA, representing Federal agencies, California and Oregon, three Indian tribes, two counties, irrigators,

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<sup>1</sup>Revised Cost Estimates for the Klamath Basin Restoration Agreement. June 17, 2011. <http://216.119.96.156/Klamath/2011/06/RevisedCostEstimates.pdf>.

and conservation and fishing groups.<sup>2</sup> There are sixteen parties to the Upper Basin Agreement, including the State of Oregon, the Klamath Tribes, and a broad coalition of Upper Klamath Basin irrigators.

The stakeholders of the Klamath Basin have made the courageous decision to set aside differences and generations of acrimony to find a better path forward. Implementing these agreements and accomplishing the parties' collective goals will take substantial resources. Yet the cost of inaction could easily be even higher, not just in the form of additional dollars to be expended in the future, but also in the form of additional stressors upon communities in the basin. Thus, we support S. 2379 and the Agreements that it will implement, including the provisions on costs provided that all parties understand that full implementation of the Klamath Agreements will need additional, meaningful, non-federal cost-share that will reduce the overall costs to the United States. Over the course of implementing S. 2379, the Administration will work closely with all the parties to secure additional non-federal sources of funding.

Despite the non-partisan development of this settlement framework over several federal and state administrations, the Administration acknowledges there are a handful of parties that have not signed the Klamath Agreements. We will continue our efforts to find common ground with these parties; however, it is important that the Committee understand that finding common ground has been difficult because some of the opponents have taken positions that would pose unacceptable risks to the farmers, and others oppose efforts to restore the fisheries that are important to the tribes and fishing communities. But we also believe the time is ripe for action and that we have a unique opportunity to heal and restore the basin in a lasting manner. We must not lose this opportunity.

#### UKBCA

In 2010 when the KBRA and KHSA were signed, many felt the job was done. The reality is that the parties' work was unfinished due to our inability to reach settlement with those many ranchers located on the tributaries to Upper Klamath Lake. With the execution of the UKBCA this past April, we now are able to address restoration of the resources and communities from the headwaters of the Klamath Basin all the way downstream by resolving claims surrounding the tribal water rights held in trust by the United States on behalf of the Klamath Tribes. We are able to do so by providing a framework for a balanced approach to management of water resources in the upper basin that comports seamlessly with the KBRA. In the UKBCA we have been able to simultaneously recognize the

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<sup>2</sup>The Department of the Interior and National Oceanic and Atmospheric Administration signed the KHSA; the federal agency parties are not signatories to the KBRA. The KBRA includes provisions that these agencies will become parties when Federal authorizing legislation is enacted. PacifiCorp signed the KHSA; it is not a Party to the KBRA.

seniority of the Tribal water rights, allocate sufficient water to restore and maintain the fisheries, and establish a framework for maintaining the majority of irrigation in the upper basin. All of this is accomplished through the establishment of certain specified instream flows in tributary streams above Upper Klamath Lake, the retirement of 30,000 acre-feet of water previously consumptively used for irrigation, and, through riparian agreements with private landowners, to restore habitat necessary to support the fishery, while also providing for a stable, sustainable basis for the continuation of irrigated agriculture in the upper basin. Just as importantly, these actions will be managed by local stakeholders through the establishment of a Landowner Entity and a Joint Management Entity.

S. 2379 also establishes tribal economic development funds to compensate the Klamath Tribes for additional commitments made in the UKBCA that were not made in the KBRA or KHSA, to implement a water management program in the upper basin. Since the beginning, the Klamath people have relied on the natural resources they needed to thrive in their traditional subsistence way; these resources, many of which require water to thrive, include the fish, animals, birds, and plants which have provided essential subsistence and economic resources to the Tribes, and which are deeply embedded in the Tribes' religious and cultural practice. All who are familiar with the Klamath Tribes understand the deep and long-term impact the past termination of its federally recognized status and the impacts on treaty resources have had upon the economic, religious, and cultural viability of the Klamath Tribes. The economic development funds authorized under S. 2379 will provide support to help the Tribes in their commitment to build a viable tribal economy, restore their homeland, and increase the opportunities for the exercise of tribal treaty and cultural rights. The funds will accomplish this through the purchase of timber and other lands to be brought back into Trust and the restoration of their subsistence fishery that is central to who they are as a people. This will also provide significant movement towards self-determination that has been so elusive since the restoration of federal recognition.

#### KHSA

The KHSA is a unique combination of environmental and economic interests striking an agreement that combines both business sense and protection of natural resources. It is an agreement to study the potential removal of four privately owned (PacifiCorp) hydroelectric facilities on the Klamath River and to determine, based on a host of scientific and engineering studies, whether removal of these facilities will advance restoration of fisheries and will be in the public interest. The KHSA calls for removal to occur in 2020, should the Secretary of the Interior determine that removal is in the public interest. Congressional authorization is necessary for the Secretary to make this

determination. If there is a decision to remove these facilities, the costs will be borne by a combination of PacifiCorp's electricity customers in Oregon and California through a minimal surcharge and a water bond from the state of California. Consequently, there would be no federal costs associated with facilities removal under the KHSA.

The KHSA also includes certain liability protections for PacifiCorp if these facilities are removed. The current cost estimate is below the cost cap included in the KHSA, though it remains uncertain at this point which non-federal entities would bear any costs in excess of those protections, should such a situation arise. The KHSA also provides a commitment for PacifiCorp to transmit and deliver federally generated power to the Klamath Project, which could provide savings to water users on power costs, making for efficient project operations, and opportunities to conserve water. On this point, discussions are ongoing between PacifiCorp, the Department, Bonneville Power Administration, Westem Area Power Administration, and the Klamath water users on ways to provide power at reduced costs to both the on and off-project communities. Analysis shows that purchasing Federal power could save larger irrigation loads three-quarters to one cent per kilowatt hours, or about 7 to 10 percent. The irrigators who could benefit comprise about half the irrigation loads in the basin; however, passage of S. 2379 would be needed to serve irrigators that are north of the Klamath Project. While these discussions may lead to near-term reductions in power costs, we also note that the KBRA includes programs that require S. 2379's authorization and budget to provide more substantial long-term power relief. Studies are currently underway analyzing the best possible paths forward in achieving the long-term power goal once S. 2379 is enacted.

#### KBRA

The KBRA is a restoration agreement that includes water allocation and fish habitat restoration actions, predicated on, and working in conjunction with dam removal. The KBRA includes agreements among tribal and non-tribal entities resolving water rights disputes and provides the means for Reclamation's Klamath Project to conserve water supplies and develop sources of power that will place the Project on par with other similarly sized irrigation projects in the West. The KBRA provides a reliable supply of water to the two national wildlife refuges that currently receive adequate water supplies in less than one out of 10 years. If funded, the KBRA will put tribal members to work on habitat restoration actions needed in the basin. Through the establishment of a Federal Advisory Committee Act charter, the KBRA will give parties in the Klamath Basin a major voice in the decision making process regarding the basin's resources.

To illustrate how the Klamath Agreements would change the impacts of the current water year, if fully authorized, involuntary shortages among Klamath Project irrigators could be avoided, the Lower Klamath National Wildlife Refuge would have a guaranteed supply of water (compared to no water being available this year), and upper basin irrigators might not be subject to having their diversions curtailed due to water rights administration. In addition, fishery resources would have a dedicated supply of water, in conjunction with an identified process for restoring degraded habitat. Without the KBRA, the Klamath Reclamation Project and the Klamath Tribes are likely to exercise the water rights recognized in the Klamath Basin Adjudication with increasing frequency, thereby creating uncertainty for and jeopardizing the livelihood of irrigators in the Upper Klamath Basin.

While most of the items in the KBRA, especially those involving tribal and fisheries programs, are presently authorized under existing law, items associated with making Reclamation's Klamath Project more efficient and flexible, such as in allocating funds received from the leasing of refuge lands to the wildlife refuges and irrigators and clarifying the Klamath Project's purposes, require this additional Congressional authorization. Legislation would also be needed to provide the power for water management benefits to irrigators and to supply Federal electricity to off-project irrigators.

#### KHSA/KBRA SCIENCE PROCESS

Between the signing of the Klamath agreements in early 2010 and today, many federal studies have been undertaken and completed that analyze the potential effects of Klamath River dam removal and implementation of KBRA on local communities, tribes, and the environment. A Final Environmental Impact Statement analyzed the proposed action to remove the four lower PacifiCorp dams on the Klamath River in 2020 and to implement the KBRA, as well as three alternatives where some or all of the dams would remain in place.

The process undertaken to develop new information for a Secretarial Determination was rigorous, open, and transparent; it provided multiple opportunities for stakeholder and public participation, included independent subject-matter experts to provide a breadth of perspectives, and relied on multiple levels of independent peer review to ensure objectivity and accuracy of findings.

Over 80 meetings and workshops were held throughout the basin over a period of two years that allowed for public and stakeholder participation in the science process for the KHSA and the KBRA. The public and stakeholders provided input on hypotheses to be tested, study designs, available sources of information, data analysis, and conclusions to be drawn from the analyses. The public involvement improved the quality of reports.

A summary of the findings from the science process is attached as an Appendix. All of these studies and materials are available to the public and can be found at <http://klamathrestoration.gov/>.

PARTIES WHO HAVE CONCERNS ABOUT THE KLAMATH  
AGREEMENTS

We acknowledge that there are a small number of parties who participated in the negotiations but have chosen not to sign the Klamath Agreements. We respect that each party has its own unique concerns and must make its own decisions as to what it believes is in its best interest. Some of those who oppose the Klamath Agreements want to maintain the status quo or have general concerns about dam removal; others believe their resources are being inappropriately harmed or their rights are being terminated, or that they are bearing an unfair share of the adverse consequences of the Klamath Agreements.

I wish to be clear that given the ongoing challenges and increasing demands for limited water resources, we should continue to evaluate opportunities to develop additional water storage and power generation opportunities where they make sense. But we should also not be afraid to evaluate reduction of water use or potential dam removal when the specific circumstances warrant. The KHSA, for example, reflects the unique circumstances of the Klamath Basin, where the owner of these private dams, in making a business decision that is in the best interests of its electricity customers and the company, has agreed to permit the Secretary of the Interior to evaluate whether their removal would advance fisheries and be in the overall public interest as part of a basin-wide restoration effort that addresses many of the systemic problems that continually plague the Klamath Basin.

There are others who favor dam removal but do not support the Klamath Agreements because they either want to remove or significantly limit irrigated agriculture from the basin or believe that the assurances in the Agreements regarding water supply and the connected issue of river flows terminate tribal rights. As to the former, irrigated agriculture is part of the societal fabric of the basin and, as mentioned earlier, provides significant jobs and economic support to all communities of the basin. While the KBRA does provide further funding for voluntary retirement of up to 30,000 acre-feet of irrigation water on a willing seller or buyer basis, total removal of the loss of most of the irrigated agriculture in the basin is simply not consistent with a comprehensive and durable restoration program meant to assist the communities of the basin and their respective economies and ways of life. As to the latter, the tribal parties, state and federal fishery agencies, and environmental and fishing groups concluded that the water and fisheries program would significantly improve basin fisheries. The agreements do not terminate any tribal rights.

We have also heard the concerns of those around the reservoirs whose properties and businesses may be most directly impacted by dam removal. On this point, we believe that if S. 2379 is enacted, there should be a fund established, managed by representatives in local communities, to recompense land owners for significant diminishment in property value that occurs as a result of dam removal. The cost of such a fund, we believe, should be deemed a cost of mitigation associated with dam removal, and thus borne by non-federal sources. Upon enactment of S. 2379 we will meet with representatives from California and Oregon, as well as the local governments most affected by dam removal to assess the potential for establishment of such a fund.

CONCLUSION

The Administration supports enactment of S. 2379, which is vital to the communities of the Klamath Basin provided that all parties understand that full implementation of the Klamath Agreements will need additional, meaningful, non-federal cost-share. Over the course of implementing S. 2379, the Administration will work closely with all the parties to secure additional non-federal sources of funding to offset the new federal costs and ensure timely implementation of the Klamath Agreements. This concludes my written statement. I am pleased to answer questions at the appropriate time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2379, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**KLAMATH BASIN WATER SUPPLY ENHANCEMENT ACT OF 2000**

Public Law 106-498

\* \* \* \* \*

**SEC. 3. ADDITIONAL STUDIES.**

\* \* \* \* \*

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

(a) *DEFINITIONS.—In this section:*

(1) *OFF-PROJECT AREA.—The term “Off-Project Area” means—*

- (A) *the areas within the Sprague River, Sycan River, Williamson River, and Wood Valley (including Crooked Creek, Sevenmile Creek, Fourmile Creek, and Crane Creek) subbasins referred to in Exhibit B of the Upper Basin Agreement; and*
- (B) *to the extent provided for in the Upper Basin Agreement, any other areas for which claims described by section*

1.3 or 2.5.1 of the Upper Basin Agreement are settled as provided for in section 2.5.1 of the Upper Basin Agreement.

(2) *ON-PROJECT POWER USER*.—The term “On-Project Power User” has the meaning given the term in the Restoration Agreement.

(3) *RESTORATION AGREEMENT*.—The term ‘Restoration Agreement’ means the agreement entitled ‘Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities’ and dated February 18, 2010 (including any amendments adopted prior to the date of enactment of this Act and any further amendment to that agreement approved pursuant to section 3(a) of the Klamath Basin Water Recovery and Economic Restoration Act of 2014).

(4) *UPPER BASIN AGREEMENT*.—The term ‘Upper Basin Agreement’ means the agreement entitled ‘Upper Klamath Basin Comprehensive Agreement’ and dated April 18, 2014 (including any amendment to that agreement).

(b) *ACTION BY SECRETARY*.—

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

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

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

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

(ii) the On-Project Power Users;

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

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

(C) to restore any ecosystem and otherwise protect fish and wildlife in the Klamath Basin watershed, including tribal fishery resources held in trust, consistent with Restoration Agreement and the Upper Basin Agreement.

(2) *INCLUSION*.—Purchases of power by the Secretary under paragraph (1)(B) shall be considered an authorized sale under section 5(b)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839c(b)(3)).

**SEC. [4] 5. LIMITATION.**

Activities funded under this Act shall not be considered a supplemental or additional benefit under the Act of June 17, 1902 (82 Stat. 388) and all Acts amendatory thereof or supplementary thereto.

**SEC. [5] 6. WATER RIGHTS.**

Nothing in this Act shall be construed to—

(1) create, by implication or otherwise, any reserved water right or other right to the use of water;

(2) invalidate, preempt, or create any exception to State water law or an interstate compact governing water;



(3) alter the rights of any State to any appropriated share of the waters of any body or surface or groundwater, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;

(4) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal; or

(5) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any groundwater resources.

**SEC. [6] 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized such sums as necessary to carry out the purposes of this Act. Activities conducted under this Act shall be nonreimbursable and nonreturnable.

## APPENDIX

### SUMMARY OF KEY FINDINGS REGARDING KLAMATH RIVER DAM REMOVAL AND IMPLEMENTATION OF KBRA

This document is intended to serve as a summary and, as such, numbers cited herein represent averages and/or aggregates which may include associated levels of uncertainty that are explained fully in the contributing studies. All of the scientific studies, which include the complete scientific analysis and associated uncertainties, are available at [klamathrestoration.gov](http://klamathrestoration.gov). Any language below that appears to be a statement of fact is the Department's best understanding and approximation of future events, based on extensive scientific study, but still subject to significant levels of uncertainty.

Dam removal, sediment processes, and impacts on flooding:

- The most probable cost for full dam removal, which is the preferred alternative identified in the FEIS, is about \$292 million in 2020 dollars and is under the State cost cap of \$450 million. There is a 99 percent probability that removal costs would be no more than \$493M and a 1 percent probability that removal costs could be less than \$238M.

- Dam removal would mobilize between one-third and two-thirds of the 13 million cubic yards of sediment behind the dams. The majority of the sediment is fine-grained material that would be readily transported to the Pacific Ocean 2 to 3 months following the drawdown of reservoirs in the winter of 2020.

- Extensive chemical testing of sediments behind the dams shows that human health would not be at risk due to contact with these sediments.

- Dam removal would immediately restore more natural water temperatures and dissolved oxygen concentrations important to downstream fish and fisheries.

- Dam removal would immediately eliminate toxic algae produced in the reservoirs; toxic algae create health concerns in the reservoirs and downstream in the Klamath River for people, fish, and wildlife.

- Long-term flood risks would increase slightly for about 18 miles downstream of the location of Iron Gate Dam. Analyses show that some additional structures currently outside the 100-year flood plain would be located in a new 100-year flood plain following dam removal. If dam removal were to proceed, the Dam Removal Entity would work with willing landowners to reduce or eliminate flood risk for these additional structures.

Impacts of dam removal and KBRA on fish and fisheries:

- The timing of reservoir drawdown in a single winter season was designed to minimize negative impacts of released

sediments on sensitive fish species, particularly federally listed Coho salmon.

- Basin-wide adult and juvenile salmon mortality is expected to be less than 10 percent in the year following dam removal, even under worst-case flow conditions.

- In the long run, opening up fish passage to the Upper Klamath Basin through dam removal and restoring aquatic habitat under the KBRA would increase salmon and steelhead production. For example, annual Chinook salmon production would increase about 80 percent (ranging from 40 to 190 percent among modeled years).

- The increased production would increase Chinook salmon harvest about 50 percent for commercial and sport ocean fisheries, as well as for in-river tribal fisheries.

- Coho salmon would be expected to access 68 miles of stream habitat upstream of Iron Gate Dam, including 23 miles currently inundated by the reservoirs, thereby advancing the recovery of this federally listed species.

- Steelhead trout would be able to migrate to historical habitat above Iron Gate Dam, including up to 420 additional miles of stream, and thereby advancing the most prized game fishery in the Basin.

- Dam removal would also expand the distribution and number of trophy redband rainbow trout, another prized game fishery, throughout the hydroelectric reach of the river.

- Dam removal would totally eliminate a large non-native game fishery on the reservoirs, which includes bass and yellow perch.

Climate change impacts on water temperatures, fish, and flows:

- Over a period of 50 years (2012 to 2061), climate change models show that water temperatures in the Klamath Basin would increase 1 to 3 degrees C (2 to 5 degrees F) and earlier snow melt would decrease summer flows.

- Removing the Klamath River dams would restore salmon access to critical cool-water habitat for spawning and rearing in the Upper basin, thereby helping to buffer against effects of climate change.

- Removing the dams would immediately improve late summer and fall water temperatures for salmon below this reach, thereby buffering against future impacts of climate change.

- Decreased summer flows will worsen already strained water supplies needed to support farms, refuges, and fisheries.

Impacts on jobs and regional economies:

- Dam removal and full KBRA implementation would create a number of full time, part time, and temporary jobs:

- Hundreds of commercial fishing jobs in five management areas from northern California to central Oregon;

- 1,400 jobs during the year of dam removal;

- 300 annual average jobs over 15 years for KBRA programs;

- 70 to 695 farm jobs in drought years depending on drought intensity.

Dam removal would also result in the loss of about 70 jobs associated with the operation and maintenance of the dams and

changes in the recreational industry (reductions in whitewater rafting and reservoir fishing/boating).

Tribal and cultural impacts:

- All of the native people residing in the Klamath River environment have spiritual beliefs and traditional practices that are inseparable from the River and surrounding homeland environments. Dam removal and implementation of the KBRA would help address tribal trust and social issues identified by the Klamath River Basin Tribes as detrimental to their traditional way of life. Dam removal would have beneficial effects on water quality, fisheries, terrestrial resources, and traditional cultural practices. Dam removal would enhance the ability of Indian tribes in the Klamath River Basin to conduct traditional ceremonies and other traditional practices.

- Dam removal and reservoir drawdown could affect Native American cultural resources sites reported to be currently submerged beneath the reservoirs. Human remains may be associated with these sites. Plans to identify cultural resources and to avoid, minimize, or mitigate impacts to those resources would be developed in consultations with the appropriate State Historic Preservation Office, Tribes, and other Native American organizations.

- The removal of the dams and associated facilities, all part of the Klamath Hydroelectric Project, would result in effects to those historic properties. Plans to avoid, minimize, or mitigate effects to historic era properties would be developed in consultation with the appropriate State Historic Preservation Office and other historic preservation entities.

Hydropower, green house gas emissions, and electricity customers:

- Dam removal would eliminate about 82 megawatts of hydropower in 2020 (enough power for 70,000 homes), which would be made up by a mix of other energy sources.

- Following dam removal in 2020, approximately 526,000 metric tons of carbon dioxide equivalents (MTCO<sub>2e</sub>) per year would be emitted to the atmosphere from replacement power assuming PacifiCorp's current resource generation mix. This number would decrease to approximately 451,000 MTCO<sub>2e</sub> per year assuming PacifiCorp met California's goal for replacement power sources.

- A 2010 analysis by PacifiCorp prepared for the Oregon and California PUCs demonstrates that dam removal as laid out in KHSA would be less costly for their customers (about \$251 million), and less risky, as compared to likely customer costs associated with relicensing the four dams, which would be in excess of \$460 million over a 40-year license term.

Wildlife refuges:

- Dam removal and KBRA implementation would allow the refuges associated with Reclamation's Klamath Project to have greater certainty about water deliveries with newly established allocations, even during drought years, and increased flexibility in the timing of water deliveries.

- Full refuge needs would likely be met in 88 percent of years; currently refuge needs for water are met in less than 10

percent of the years. These NWRs wetlands are critical components of the Pacific Flyway, the corridor for migrating birds from as far away as Alaska and Mexico.

- The additional water deliveries—and the increased predictability of those deliveries would mean that greater numbers of migratory waterfowl, non-game water birds, wintering bald eagles, and other sensitive species would be supported by the refuges and would increase recreational wildlife viewing.

- The estimated increase of over 190,000 waterfowl in the fall would result in an additional 3,600 hunting trips annually.

Real estate:

- Upstream of Iron Gate Dam studies identified 668 parcels near Copco 1 and Iron Gate reservoirs which either have water frontage, water access, or views of reservoirs. Of these 668 parcels, 127 include single family homes. These 668 land parcels would decline in value if dams were removed and reservoirs drained.

- Land values of parcels downstream of Iron Gate Dam, with river views and river access, may increase in the long-term because of restoration of the river, including improved water quality and more robust salmon and steelhead runs.

Flows:

- The differences in monthly average flows between dams remaining in place and dam removal options are relatively small; however, without the dams, pulse flows and other seasonal fluctuations beneficial to fish would occur more often.

- The absolute minimum flow target under the KBRA would be approximately 800 cubic feet per second (cfs) at the location of Iron Gate Dam. In most months and years, however, flows would be much greater. In extreme drought years, flows could drop slightly below this target, but never drop below 700 cfs owing to the water-management provisions in the KBRA.