

114TH CONGRESS
1ST SESSION

S. 133

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.

IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2015

Mr. WYDEN (for himself, Mr. MERKLEY, Mrs. BOXER, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Klamath Basin Water
5 Recovery and Economic Restoration Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

3 (A) the Restoration Agreement; and

4 (B) the Upper Basin Agreement.

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

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

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

12 (B) site remediation and restoration, in-
13 cluding restoration of previously inundated
14 land;

15 (C) measures to avoid or minimize adverse
16 downstream impacts; and

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

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

24 (A) Iron Gate Dam.

25 (B) Copco No. 1 Dam.

1 (C) Copco No. 2 Dam.

2 (D) J.C. Boyle Dam.

3 (5) GOVERNORS.—The term “Governors”
4 means—

5 (A) the Governor of the State of Oregon;
6 and

7 (B) the Governor of the State of Cali-
8 fornia.

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

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

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

20 (B) represents the interests of the parties
21 to the Upper Basin Agreement; and

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

1 (8) JOINT MANAGEMENT ENTITY TECHNICAL
2 TEAM.—The term “Joint Management Entity Tech-
3 nical Team” means the group of specialists ap-
4 pointed by the Joint Management Entity as provided
5 for in section 7.8 of the Upper Basin Agreement.

6 (9) KENO FACILITY.—The term “Keno Facil-
7 ity” means the dam located in Klamath County, Or-
8 egon, land underlying the dam, appurtenant facili-
9 ties, and PacifiCorp-owned property described as
10 Klamath County Map Tax Lot R-3907-03600-
11 00200-000.

12 (10) KLAMATH BASIN.—

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

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

19 (11) KLAMATH PROJECT.—

20 (A) IN GENERAL.—The term “Klamath
21 Project” means the Bureau of Reclamation
22 project in the States of California and Oregon,
23 as authorized under the Act of June 17, 1902
24 (32 Stat. 388, chapter 1093).

1 (B) INCLUSIONS.—The term “Klamath
 2 Project” includes any dams, canals, and other
 3 works and interests for water diversion, storage,
 4 delivery, and drainage, flood control, and simi-
 5 lar functions that are part of the project de-
 6 scribed in subparagraph (A).

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

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

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

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

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

1 for in section 2.5.1 of the Upper Basin Agree-
2 ment.

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

5 (A)(i) a claimant for water rights for irri-
6 gation uses in the Off-Project Area in Oregon’s
7 Klamath Basin Adjudication; or

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

11 (B) a Party to the Upper Basin Agree-
12 ment.

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

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

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

3 (A) the Yurok Tribe;

4 (B) the Karuk Tribe;

5 (C) the Klamath Tribes; and

6 (D) such other federally recognized tribes
7 of the Klamath Basin as may become party to
8 the Restoration Agreement after the date of en-
9 actment of this Act.

10 (19) RESTORATION AGREEMENT.—The term
11 “Restoration Agreement” means the agreement enti-
12 tled “Klamath River Basin Restoration Agreement
13 for the Sustainability of Public and Trust Resources
14 and Affected Communities” and dated February 18,
15 2010 (including amendments adopted prior to the
16 date of enactment of this Act and any further
17 amendments to that agreement approved pursuant
18 to section 3(a)).

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

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

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

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

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

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

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

15 (25) WATER USE PROGRAM.—The term “Water
 16 Use Program” means the program described in sec-
 17 tion 3 of the Upper Basin Agreement and section
 18 16.2 of the Restoration Agreement.

19 **SEC. 3. AUTHORIZATION, EXECUTION, AND IMPLEMENTA-**
 20 **TION OF SETTLEMENTS.**

21 (a) RATIFICATION OF SETTLEMENTS.—

22 (1) IN GENERAL.—Except as modified by this
 23 Act, and to the extent that the Settlements do not
 24 conflict with this Act, the Settlements are author-
 25 ized, ratified, and confirmed.

1 (2) AMENDMENTS CONSISTENT WITH THIS
2 ACT.—If any amendment is executed to make any of
3 the Settlements consistent with this Act, the amend-
4 ment is also authorized, ratified, and confirmed to
5 the extent the amendment is consistent with this
6 Act.

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

18 (A) is not inconsistent with this Act or
19 other provisions of law;

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

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

1 (b) EXECUTION AND IMPLEMENTATION OF SETTLE-
 2 MENTS.—

3 (1) THE AGREEMENTS.—

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

6 (i) the Secretary, the Secretary of
 7 Commerce, and the Secretary of Agri-
 8 culture shall promptly execute and imple-
 9 ment the Restoration Agreement; and

10 (ii) the Secretary and the Secretary of
 11 Commerce shall promptly execute and im-
 12 plement the Upper Basin Agreement.

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

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

1 (i) participate in the Water Use Pro-
 2 gram and in the Riparian Program; and

3 (ii) serve as members of the Joint
 4 Management Entity representing the Bu-
 5 reau of Indian Affairs, the United States
 6 Fish and Wildlife Service, the United
 7 States Geological Survey, and the National
 8 Marine Fisheries Service of the Depart-
 9 ment of Commerce, with the Secretary
 10 serving as the voting member, as described
 11 in section 7.1.5 of the Upper Basin Agree-
 12 ment.

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

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

1 Secretary of Agriculture, and the Commission, respec-
 2 tively, under the Settlements.

3 (d) ENVIRONMENTAL COMPLIANCE.—In imple-
 4 menting the Settlements, the Secretaries and the Commis-
 5 sion shall comply with—

6 (1) the National Environmental Policy Act of
 7 1969 (42 U.S.C. 4321 et seq.);

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

10 (3) all other applicable law.

11 (e) PUBLICATION OF NOTICE; EFFECT OF PUBLICA-
 12 TION.—

13 (1) RESTORATION AGREEMENT.—

14 (A) PUBLICATION.—The Secretary shall
 15 publish the notice required by section 15.3.4.A
 16 or section 15.3.4.C of the Restoration Agree-
 17 ment, as applicable, in accordance with the Res-
 18 toration Agreement.

19 (B) EFFECT OF PUBLICATION.—Publica-
 20 tion of the notice described in subparagraph (A)
 21 shall have the effects on the commitments,
 22 rights, and obligations of the Party tribes, the
 23 United States (as trustee for the federally rec-
 24 ognized tribes of the Klamath Basin), and other

1 parties to the Restoration Agreement provided
2 for in the Restoration Agreement.

3 (2) UPPER BASIN AGREEMENT.—

4 (A) PUBLICATION.—The Secretary shall
5 publish the notice required by section 10.1 of
6 the Upper Basin Agreement if all requirements
7 of section 10 of the Upper Basin Agreement
8 have been fulfilled, including the requirement
9 for notice by the Klamath Tribes of the willing-
10 ness of the Tribes to proceed with the Upper
11 Basin Agreement following enactment of au-
12 thorizing legislation as described in section
13 10.1.10 or 10.2 of the Upper Basin Agreement,
14 as applicable, in accordance with the Upper
15 Basin Agreement.

16 (B) EFFECT OF PUBLICATION.—

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

21 (ii) TERMINATION.—On publication of
22 the notice required under section 10.2 of
23 the Upper Basin Agreement, the Upper
24 Basin Agreement shall terminate, accord-
25 ing to the terms of that section.

1 (3) JUDICIAL REVIEW.—

2 (A) IN GENERAL.—Judicial review of a de-
3 cision of the Secretary pursuant to this sub-
4 section shall be in accordance with the standard
5 and scope of review under subchapter II of
6 chapter 5, and chapter 7, of title 5, United
7 States Code (commonly known as the “Admin-
8 istrative Procedure Act”).

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

13 (f) ELIGIBILITY FOR FUNDS PROTECTED.—Notwith-
14 standing any other provision of law, nothing in this Act
15 or the implementation of the Settlements, other than as
16 explicitly provided for in this Act or the Settlements—

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

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

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

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

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

8 (h) WATER RIGHTS.—

9 (1) IN GENERAL.—Except as specifically pro-
10 vided in this Act and the Settlements, nothing in
11 this Act or the Settlements creates or determines
12 water rights or affects water rights or water right
13 claims in existence on the date of enactment of this
14 Act.

15 (2) NO STANDARD FOR QUANTIFICATION.—
16 Nothing in this Act or the Settlements establishes
17 any standard for the quantification of Federal re-
18 served water rights or any water claims of any In-
19 dian tribe in any judicial or administrative pro-
20 ceeding.

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

24 (j) NO PRIVATE RIGHT OF ACTION.—

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

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

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

11 (l) RELATIONSHIP TO CERTAIN OTHER FEDERAL
 12 LAW.—

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

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

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

20 (C) the Endangered Species Act of 1973
 21 (16 U.S.C. 1531 et seq.);

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

24 (E) the Federal Water Pollution Control
 25 Act (33 U.S.C. 1251 et seq.), except to the ex-

1 tent section 8(b)(4) of this Act requires a per-
 2 mit under section 404 of that Act (33 U.S.C.
 3 1344), notwithstanding section 404(r) of that
 4 Act (33 U.S.C. 1344(r));

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

7 (G) the Treaty between the United States
 8 and the Klamath and Moadoc Tribes and the
 9 Yahooskin Band of Snake Indians dated Octo-
 10 ber 14, 1864 (16 Stat. 707); or

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

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

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

22 (m) WAIVER OF SOVEREIGN IMMUNITY BY THE
 23 UNITED STATES.—Except as provided in subsections (a)
 24 through (c) of section 208 of the Department of Justice
 25 Appropriations Act, 1953 (43 U.S.C. 666), nothing in this

1 Act or the implementation of the Settlements waives the
 2 sovereign immunity of the United States.

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

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

7 (a) KLAMATH PROJECT PURPOSES.—

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

- 11 (A) irrigation;
- 12 (B) reclamation;
- 13 (C) flood control;
- 14 (D) municipal;
- 15 (E) industrial;
- 16 (F) power;
- 17 (G) fish and wildlife purposes; and
- 18 (H) National Wildlife Refuge purposes.

19 (2) EFFECT OF FISH AND WILDLIFE PUR-
 20 POSES.—

21 (A) IN GENERAL.—Subject to subpara-
 22 graph (B), the fish and wildlife and National
 23 Wildlife Refuge purposes of the Klamath
 24 Project authorized under paragraph (1) shall

1 not adversely affect the irrigation purpose of
2 the Klamath Project.

3 (B) WATER ALLOCATIONS AND DELIV-
4 ERY.—Notwithstanding subparagraph (A), the
5 water allocations and delivery to the National
6 Wildlife Refuges provided for in the Restoration
7 Agreement shall not constitute an adverse effect
8 on the irrigation purpose of the Klamath
9 Project for purposes of this paragraph.

10 (b) WATER RIGHTS ADJUDICATION.—For purposes
11 of the determination of water rights in Oregon’s Klamath
12 Basin adjudication, until the date on which the Appendix
13 E–1 to the Restoration Agreement is filed in Oregon’s
14 Klamath Basin adjudication pursuant to the Restoration
15 Agreement, the purposes of the Klamath Project shall be
16 the purposes in effect on the day before the date of enact-
17 ment of this Act.

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

25 (1) Directly, without further appropriation:

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

8 (B) Such amounts as are necessary to
9 counties as payments in lieu of taxes as pro-
10 vided in section 3 of Public Law 88–567 (16
11 U.S.C. 695m).

12 (2) Subject to appropriation and, when so ap-
13 propriated, notwithstanding any other provision of
14 law:

15 (A) 20 percent of net revenues to the
16 Klamath Basin National Wildlife Refuge Com-
17 plex of the United States Fish and Wildlife
18 Service, for wildlife management purposes on
19 the Tule Lake National Wildlife Refuge and the
20 Lower Klamath National Wildlife Refuge.

21 (B) 10 percent of net revenues from land
22 within the Lower Klamath National Wildlife
23 Refuge that are within the boundaries of the
24 Klamath Drainage District to Klamath Drain-
25 age District, for operation and maintenance re-

1 sponsibility for the Federal reclamation water
2 delivery and drainage facilities within the
3 boundaries of the Klamath Drainage District
4 and the Lower Klamath National Wildlife Ref-
5 uge exclusive of the Klamath Straits Drain,
6 subject to a transfer agreement with the Bu-
7 reau of Reclamation under which the Klamath
8 Drainage District assumes the operation and
9 maintenance duties of the Bureau of Reclama-
10 tion for Klamath Drainage District (Area K)
11 lease land exclusive of Klamath Straits Drain.

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

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

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

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

24 (II) the Renewable Power Pro-
25 gram described in section 17.7 of the

1 Restoration Agreement, pursuant to
2 an expenditure plan submitted to and
3 approved by the Secretary.

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

5 (a) ACTIONS BY KLAMATH TRIBES.—

6 (1) RESTORATION AGREEMENT COMMITMENTS
7 ACKNOWLEDGED AND AGREED TO.—In consideration
8 for the resolution of any contest or exception of the
9 Klamath Project Water Users to the water rights
10 claims of the Klamath Tribes and the United States
11 (acting as trustee for the Klamath Tribes and mem-
12 bers of the Klamath Tribes in Oregon’s Klamath
13 Basin adjudication), and for the other commitments
14 of the Klamath Project Water Users described in the
15 Restoration Agreement, and for other benefits de-
16 scribed in the Restoration Agreement and this Act,
17 the Klamath Tribes (on behalf of the Klamath
18 Tribes and the members of the Klamath Tribes)
19 may make the commitments provided in the Restora-
20 tion Agreement.

21 (2) UPPER BASIN AGREEMENT COMMITMENTS
22 ACKNOWLEDGED AND AGREED TO.—In consideration
23 for the resolution of any contest or exception of the
24 Off-Project Irrigators to the water rights claims of
25 the Klamath Tribes and the United States (acting

1 as trustee for the Klamath Tribes and members of
2 the Klamath Tribes in Oregon's Klamath Basin ad-
3 judication), and for the other commitments of the
4 Off-Project Irrigators described in the upper Basin
5 Agreement, and for other benefits described in the
6 Upper Basin Agreement and this Act, the Klamath
7 Tribes (on behalf of the Klamath Tribes and the
8 members of the Klamath Tribes) may make the
9 commitments provided in the Upper Basin Agree-
10 ment.

11 (3) NO FURTHER ACTION REQUIRED.—Except
12 as provided in subsection (c), the commitments de-
13 scribed in paragraphs (1) and (2) are confirmed as
14 effective and binding, in accordance with the terms
15 of the commitments, without further action by the
16 Klamath Tribes.

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

1 (A) consistent with this Act, the Settle-
 2 ments, and other applicable provisions of law,
 3 based on the totality of the circumstances; and

4 (B) covered by a written agreement signed
 5 by the Klamath Tribes and the United States
 6 (acting as trustee for the tribe and the mem-
 7 bers of the tribe in Oregon's Klamath Basin ad-
 8 judication) pursuant to subsection (f).

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

11 (1) COMMITMENTS ACKNOWLEDGED AND
 12 AGREED TO.—In consideration for the commitments
 13 of the Klamath Project Water Users described in the
 14 Restoration Agreement, and other benefits described
 15 in the Restoration Agreement and this Act, the
 16 Karuk Tribe and the Yurok Tribe (on behalf of the
 17 tribe and the members of the tribe) may make the
 18 commitments provided in the Restoration Agree-
 19 ment.

20 (2) NO FURTHER ACTION REQUIRED.—Except
 21 as provided in subsection (c), the commitments de-
 22 scribed in paragraph (1) are confirmed as effective
 23 and binding, in accordance with the terms of the
 24 commitments, without further action by the Yurok
 25 Tribe or Karuk Tribe.

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

2 (1) IN GENERAL.—Subject to paragraph (2),
 3 subsection (d), and the Agreements, but without oth-
 4 erwise affecting any right secured by a treaty, Exec-
 5 utive order, or other law, the Party tribes (on behalf
 6 of the tribes and the members of the tribes) may re-
 7 linquish and release certain claims against the
 8 United States (including any Federal agencies and
 9 employees) described in sections 15.3.5.A,
 10 15.3.6.B.i, and 15.3.7.B.i of the Restoration Agree-
 11 ment and, in the case of the Klamath Tribes, section
 12 2.5 of the Upper Basin Agreement.

13 (2) CONDITIONS.—The relinquishments and re-
 14 leases under paragraph (1) shall not take force or
 15 effect until the terms described in sections 15.3.5.C,
 16 15.3.5.D, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.7.B.iv, and
 17 33.2.1 of the Restoration Agreement and sections
 18 2.4 and 10 of the Upper Basin Agreement have been
 19 fulfilled.

20 (d) RETENTION OF RIGHTS OF PARTY TRIBES.—

21 Notwithstanding subsections (a) through (c) or any other
 22 provision of this Act, the Party tribes (on behalf of the
 23 tribes and the members of the tribes) and the United
 24 States (acting as trustee for the Party tribes), shall re-
 25 tain—

1 (1) all claims and rights described in sections
 2 15.3.5.B, 15.3.6.B.ii, and 15.3.7.B.ii of the Restora-
 3 tion Agreement; and

4 (2) any other claims and rights retained by the
 5 Party Tribes in negotiations pursuant to section
 6 15.3.5.D, 15.3.6.B.iv, and 15.3.7.B.iv of the Res-
 7 toration Agreement.

8 (e) TOLLING OF CLAIMS.—

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

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

15 (B) ending on the earlier of—

16 (i) the date on which the Secretary
 17 publishes the notice described in sections
 18 15.3.5.C, 15.3.6.B.iii, and 15.3.7.B.iii of
 19 the Restoration Agreement; or

20 (ii) December 1, 2030.

21 (2) EFFECT OF TOLLING.—Nothing in this sub-
 22 section—

23 (A) revives any claim or tolls any period of
 24 limitation or time-based equitable defense that

1 expired before the date of enactment of this
2 Act; or

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

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

7 (1) RESTORATION AGREEMENT COMMITMENTS
8 AUTHORIZED.—In consideration for the commit-
9 ments of the Klamath Project Water Users de-
10 scribed in the Restoration Agreement and for other
11 benefits described in the Restoration Agreement and
12 this Act, the United States, acting as trustee for the
13 federally recognized tribes of the Klamath Basin and
14 the members of such tribes, may make the commit-
15 ments provided in the Restoration Agreement.

16 (2) UPPER BASIN AGREEMENT COMMITMENTS
17 AUTHORIZED.—In consideration for the commit-
18 ments of the Off-Project Irrigators described in the
19 Upper Basin Agreement and for other benefits de-
20 scribed in the Upper Basin Agreement and this Act,
21 the United States, acting as trustee for the Klamath
22 Tribes and the members of the Klamath Tribes, may
23 make the commitments provided in the Upper Basin
24 Agreement.

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

6 (4) ADDITIONAL COMMITMENTS.—The United
 7 States, acting as trustee for the Klamath Tribes and
 8 the members of the Klamath Tribes in Oregon’s
 9 Klamath Basin Adjudication, may make additional
 10 commitments and assurances of rights in exchange
 11 for the resolution of the tribal water right claims de-
 12 scribed in section 1.3.1 or 2.5.1 of the Upper Basin
 13 Agreement, subject to the conditions that the com-
 14 mitments or assurances shall be—

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

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

23 (g) JUDICIAL REVIEW.—Judicial review of a decision
 24 of the Secretary concerning any right or obligation under
 25 section 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, or

1 15.3.9 of the Restoration Agreement shall be in accord-
 2 ance with the standard and scope of review under sub-
 3 chapter II of chapter 5, and chapter 7, of title 5, United
 4 States Code (commonly known as the “Administrative
 5 Procedure Act”).

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

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

9 (A) authorized by law to be taken in the
 10 sovereign capacity of the United States, includ-
 11 ing any law relating to health, safety, or the en-
 12 vironment, including—

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

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

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

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

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

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

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

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

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

14 (i) to acquire water rights after the
 15 effective date of the Agreements (as de-
 16 fined in section 1.5.1 of the Restoration
 17 Agreement and section 14.3 of the Upper
 18 Basin Agreement);

19 (ii) to use and protect water rights,
 20 including water rights acquired after the
 21 effective date of the Agreements (as de-
 22 fined in section 1.5.1 of the Restoration
 23 Agreement and section 14.3 of the Upper
 24 Basin Agreement), subject to the Agree-
 25 ments; or

1 (iii) to claim a water right or continue
 2 to advocate for an existing claim for water
 3 rights in an appropriate United States
 4 court or State court or administrative pro-
 5 ceeding, subject to the Agreements;

6 (2) affects the treaty fishing, hunting, trapping,
 7 pasturing, or gathering right of any Indian tribe ex-
 8 cept to the extent expressly provided in this Act or
 9 the Agreements; or

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

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

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

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

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

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

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

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

1 “(A) the areas within the Sprague River,
 2 Sycan River, Williamson River, and Wood Val-
 3 ley (including Crooked Creek, Sevenmile Creek,
 4 Fourmile Creek, and Crane Creek) subbasins
 5 referred to in Exhibit B of the Upper Basin
 6 Agreement; and

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

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

16 “(3) RESTORATION AGREEMENT.—The term
 17 ‘Restoration Agreement’ means the agreement enti-
 18 tled ‘Klamath River Basin Restoration Agreement
 19 for the Sustainability of Public and Trust Resources
 20 and Affected Communities’ and dated February 18,
 21 2010 (including any amendments adopted prior to
 22 the date of enactment of this Act and any further
 23 amendment to that agreement approved pursuant to
 24 section 3(a) of the Klamath Basin Water Recovery
 25 and Economic Restoration Act of 2015).

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

6 “(b) ACTION BY SECRETARY.—

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

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

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

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

22 “(ii) the On-Project Power Users;

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

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

3 “(C) to restore any ecosystem and other-
4 wise protect fish and wildlife in the Klamath
5 Basin watershed, including tribal fishery re-
6 sources held in trust, consistent with Restora-
7 tion Agreement and the Upper Basin Agree-
8 ment.

9 “(2) INCLUSION.—Purchases of power by the
10 Secretary under paragraph (1)(B) shall be consid-
11 ered an authorized sale under section 5(b)(3) of the
12 Pacific Northwest Electric Power Planning and Con-
13 servation Act (16 U.S.C. 839c(b)(3)).”.

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

15 (a) ESTABLISHMENT.—There is established in the
16 Treasury of the United States a fund to be known as the
17 “Klamath Tribes Tribal Resource Fund” (referred to in
18 this section as the “Fund”), consisting of the amounts de-
19 posited in the Fund under subsection (b), together with
20 any interest earned on those amounts, to be managed, in-
21 vested, and administered by the Secretary for the benefit
22 of the Klamath Tribes in accordance with the terms of
23 section 2.4 of the Upper Basin Agreement, to remain
24 available until expended.

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

6 (c) MANAGEMENT BY THE SECRETARY.—Absent an
 7 approved tribal investment plan under subsection (d) or
 8 an economic development plan under subsection (e), the
 9 Secretary shall manage, invest, and distribute all amounts
 10 in the Fund in a manner that is consistent with the invest-
 11 ment authority of the Secretary under—

12 (1) the first section of the Act of June 24,
 13 1938 (25 U.S.C. 162a);

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

17 (3) this section.

18 (d) INVESTMENT BY THE KLAMATH TRIBES.—

19 (1) INVESTMENT PLAN.—

20 (A) IN GENERAL.—In lieu of the invest-
 21 ment provided for in subsection (c), the Klam-
 22 ath Tribes may submit a tribal investment plan
 23 to the Secretary, applicable to all or part of the
 24 Fund, excluding the amounts described in sub-
 25 section (e)(4)(A).

1 (B) APPROVAL.—Not later than 60 days
 2 after the date on which a tribal investment plan
 3 is submitted under subparagraph (A), the Sec-
 4 retary shall approve such investment plan if the
 5 Secretary finds that the plan—

6 (i) is reasonable and sound;

7 (ii) meets the requirements of the
 8 American Indian Trust Fund Management
 9 Reform Act of 1994 (25 U.S.C. 4001 et
 10 seq.); and

11 (iii) meets the requirements of this
 12 section.

13 (C) DISAPPROVAL.—If the Secretary does
 14 not approve the tribal investment plan, the Sec-
 15 retary shall set forth in writing the particular
 16 reasons for the disapproval.

17 (2) DISBURSEMENT.—If the tribal investment
 18 plan is approved by the Secretary, the funds involved
 19 shall be disbursed from the Fund to the Klamath
 20 Tribes to be invested by the Klamath Tribes in ac-
 21 cordance with the approved tribal investment plan,
 22 subject to the requirements of this section.

23 (3) COMPLIANCE.—The Secretary may take
 24 such steps as the Secretary determines to be nec-

1 essary to monitor the compliance of a Tribe with an
 2 investment plan approved under paragraph (1)(B).

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

5 (A) responsible for the review, approval, or
 6 audit of any individual investment under an ap-
 7 proved investment plan; or

8 (B) directly or indirectly liable with respect
 9 to any such investment, including any act or
 10 omission of the Klamath Tribes in managing or
 11 investing amounts in the Fund.

12 (5) REQUIREMENTS.—The principal and income
 13 derived from tribal investments carried out pursuant
 14 to an investment plan approved under subparagraph
 15 (B) shall be—

16 (A) subject to the requirements of this sec-
 17 tion; and

18 (B) expended only in accordance with an
 19 economic development plan approved under sub-
 20 section (e).

21 (e) ECONOMIC DEVELOPMENT PLAN.—

22 (1) IN GENERAL.—The Klamath Tribes shall
 23 submit to the Secretary an economic development
 24 plan for the use of the Fund, including the expendi-
 25 ture of any principal or income derived from man-

1 agement under subsection (c) or from tribal invest-
2 ments carried out under subsection (d).

3 (2) APPROVAL.—Not later than 60 days after
4 the date on which an economic development plan is
5 submitted under paragraph (1), the Secretary shall
6 approve the economic development plan if the Sec-
7 retary finds that the plan meets the requirements of
8 the American Indian Trust Fund Management Re-
9 form Act of 1994 (25 U.S.C. 4001 et seq.) and this
10 section.

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

13 (A) require that the Klamath Tribes spend
14 all amounts withdrawn from the Fund in ac-
15 cordance with this section; and

16 (B) include such terms and conditions as
17 are necessary to meet the requirements of this
18 section.

19 (4) RESOURCE ACQUISITION AND ENHANCE-
20 MENT PLAN.—The economic development plan shall
21 include a resource acquisition and enhancement
22 plan, which shall—

23 (A) require that not less than $\frac{1}{2}$ of the
24 amounts appropriated for each fiscal year to
25 carry out this section shall be used to enhance,

1 restore, and utilize the natural resources of the
 2 Klamath Tribes, in a manner that also provides
 3 for the economic development of the Klamath
 4 Tribes and, as determined by the Secretary, di-
 5 rectly or indirectly benefit adjacent non-Indian
 6 communities; and

7 (B) be reasonably related to the protection,
 8 acquisition, enhancement, or development of
 9 natural resources for the benefit of the Klamath
 10 Tribes and members of the Klamath Tribes.

11 (5) MODIFICATION.—Subject to the require-
 12 ments of this Act and approval by the Secretary, the
 13 Klamath Tribes may modify a plan approved under
 14 this subsection.

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

18 (A) the approval of a plan under this para-
 19 graph; or

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

22 (f) LIMITATION ON PER CAPITA DISTRIBUTIONS.—
 23 No amount in the Fund (including any income accruing
 24 to the amount) and no revenue from any water use con-

1 tract may be distributed to any member of the Klamath
 2 Tribes on a per capita basis.

3 (g) LIMITATION ON DISBURSEMENT.—

4 (1) IN GENERAL.—Subject to paragraph (2),
 5 amounts in the Fund shall not be available for dis-
 6 bursement under this section until the Klamath
 7 Tribes—

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

10 (B) are determined by the Secretary to be
 11 in substantial compliance with those commit-
 12 ments.

13 (2) EARLY DISBURSEMENT.—Based on the
 14 unique history of the loss of reservation land by the
 15 Klamath Tribes through termination of Federal rec-
 16 ognition and acknowledging that restoration of tribal
 17 land is essential to building the tribal economy and
 18 achieving self-determination, the Secretary may dis-
 19 burse funds to the Klamath Tribes prior to the sat-
 20 isfaction of the requirements of paragraph (1) on a
 21 determination by the Secretary that such funds are
 22 available and that early disbursement will support
 23 activities designed to increase employment opportu-
 24 nities for members of the Klamath Tribes.

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

5 (A) For any disbursement to purchase land
6 that is to be placed in trust pursuant to section
7 6 of the Klamath Indian Tribe Restoration Act
8 (25 U.S.C. 566d), the written agreement shall
9 specify that if assurances made do not become
10 permanent as described in section 15.3.3 of the
11 Restoration Agreement and on publication of a
12 notice by the Secretary pursuant to section
13 15.3.4.C of the Restoration Agreement or sec-
14 tion 10.2 of the Upper Basin Agreement, any
15 land purchased with disbursements from the
16 Fund shall revert back to sole ownership by the
17 United States unless, prior to reversion, the
18 Klamath Tribes enter into a written agreement
19 to repay the purchase price to the United
20 States, without interest, in annual installments
21 over a period not to exceed 40 years.

22 (B) For any disbursement to support eco-
23 nomic activity and creation of tribal employ-
24 ment opportunities (including any rehabilitation
25 of existing properties to support economic ac-

1 tivities), the written agreement shall specify
 2 that if assurances made do not become perma-
 3 nent as described in section 15.3.3 of the Res-
 4 toration Agreement and on publication of a no-
 5 tice by the Secretary pursuant to section
 6 15.3.4.C of the Restoration Agreement or sec-
 7 tion 10.2 of the Upper Basin Agreement, any
 8 amounts disbursed from the Fund shall be re-
 9 paid to the United States, without interest, in
 10 annual installments over a period not to exceed
 11 40 years.

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

15 (i) ANNUAL REPORTS.—

16 (1) IN GENERAL.—Not later than 60 days after
 17 the end of each fiscal year beginning with fiscal year
 18 2015, the Secretary shall submit to the Committee
 19 on Appropriations of the House of Representatives,
 20 the Committee on Appropriations of the Senate, and
 21 the appropriate authorizing committees of the Sen-
 22 ate and the House of Representatives a report on
 23 the operation of the Fund during the fiscal year.

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

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

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

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

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

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

13 (k) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to carry out this section
15 \$8,000,000 for each fiscal year, not to exceed a total
16 amount of \$40,000,000.

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

18 (a) FACILITIES REMOVAL DETERMINATION.—

19 (1) IN GENERAL.—Subject to paragraph (3), in
20 accordance with section 3 of the Hydroelectric Set-
21 tlement, the Governors and the Secretary shall joint-
22 ly—

23 (A) as soon as practicable after the date of
24 enactment of this Act, determine whether to
25 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 sub-

1 section, unless the conditions specified in section
 2 3.3.4 of the Hydroelectric Settlement, as modified by
 3 this Act as applicable, have been satisfied.

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

7 (5) JUDICIAL REVIEW OF DETERMINATION.—

8 (A) IN GENERAL.—For purposes of judi-
 9 cial review, the determination of the Secretary
 10 under paragraph (1) shall constitute a final
 11 agency action with respect to whether or not to
 12 proceed with facilities removal.

13 (B) PETITION FOR REVIEW.—

14 (i) FILING.—

15 (I) IN GENERAL.—Judicial re-
 16 view of the determination and related
 17 actions to comply with environmental
 18 laws (including the National Environ-
 19 mental Policy Act of 1969 (42 U.S.C.
 20 4321 et seq.), the Endangered Species
 21 Act of 1973 (16 U.S.C. 1531 et seq.),
 22 and the National Historic Preserva-
 23 tion Act (16 U.S.C. 470 et seq.)) may
 24 be obtained by an aggrieved person
 25 only as provided in this paragraph.

1 (II) JURISDICTION.—A petition
2 for review under this paragraph may
3 be filed only in the United States
4 Court of Appeals for the District of
5 Columbia Circuit or in the Ninth Cir-
6 cuit Court of Appeals.

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

14 (ii) DEADLINE.—

15 (I) IN GENERAL.—Except as pro-
16 vided in subclause (II), any petition
17 for review under this paragraph shall
18 be filed not later than 60 days after
19 the date of publication of the deter-
20 mination in the Federal Register.

21 (II) SUBSEQUENT GROUNDS.—If
22 a petition is based solely on grounds
23 arising after the date that is 60 days
24 after the date of publication of the de-
25 termination in the Federal Register,

1 the petition for review under this sub-
2 section shall be filed not later than 60
3 days after the grounds arise.

4 (C) IMPLEMENTATION.—Any action of the
5 Secretary with respect to which review could
6 have been obtained under this paragraph shall
7 not be subject to judicial review in any action
8 relating to the implementation of the deter-
9 mination of the Secretary or in proceedings for
10 enforcement of the Hydroelectric Settlement.

11 (D) APPLICABLE STANDARD AND SCOPE.—
12 Judicial review of the determination of the Sec-
13 retary shall be in accordance with the standard
14 and scope of review under subchapter II of
15 chapter 5, and chapter 7, of title 5, United
16 States Code (commonly known as the “Admin-
17 istrative Procedure Act”).

18 (E) NONTOLLING.—The filing of a petition
19 for reconsideration by the Secretary of an ac-
20 tion subject to review under this subsection
21 shall not—

22 (i) affect the finality of the action for
23 purposes of judicial review;

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

4 (iii) postpone the effectiveness of the
 5 action.

6 (6) REQUIREMENTS FOR DAM REMOVAL ENTI-
 7 TY.—A dam removal entity designated by the Gov-
 8 ernors and the Secretary under paragraph (1)(B)
 9 shall, in the sole judgment of the Governors and the
 10 Secretary—

11 (A) have the capabilities for facilities re-
 12 moval described in section 7.1.1 of the Hydro-
 13 electric Settlement;

14 (B) be otherwise qualified to perform fa-
 15 cilities removal; and

16 (C) have committed, if so designated, to
 17 perform facilities removal within the State Cost
 18 Cap as described in section 4.1.3 of the Hydro-
 19 electric Settlement.

20 (7) RESPONSIBILITIES OF DAM REMOVAL ENTI-
 21 TY.—The dam removal entity designated by the
 22 Governors and the Secretary under paragraph
 23 (1)(B) shall have the responsibilities described in
 24 section 7.1.2 of the Hydroelectric Settlement.

25 (b) FACILITIES REMOVAL.—

1 (1) APPLICABILITY.—This subsection shall
2 apply if—

3 (A) the determination of the Governors
4 and the Secretary under subsection (a) provides
5 for proceeding with facilities removal;

6 (B) the availability of non-Federal funds
7 for the purposes of facilities removal is con-
8 sistent with the Hydroelectric Settlement; and

9 (C) the Hydroelectric Settlement has not
10 terminated in accordance with section 8.11 of
11 the Hydroelectric Settlement.

12 (2) NON-FEDERAL FUNDS.—

13 (A) IN GENERAL.—Notwithstanding title
14 31, United States Code, if the Department of
15 the Interior is designated as the dam removal
16 entity under subsection (a)(1)(B), the Secretary
17 may accept, manage, and expend, without fur-
18 ther appropriation, non-Federal funds for the
19 purpose of facilities removal in accordance with
20 sections 4 and 7 of the Hydroelectric Settle-
21 ment.

22 (B) REFUND.—The Secretary may admin-
23 ister and refund any amounts described in sub-
24 paragraph (A) received from the State of Cali-

1 fornia in accordance with the requirements es-
 2 tablished by the State.

3 (C) INCLUSION.—The costs of dam re-
 4 moval shall include, within the State Cost Cap
 5 described in section 4.1.3 of the Hydroelectric
 6 Settlement, reasonable compensation for prop-
 7 erty owners whose property or property value is
 8 directly damaged by facilities removal, con-
 9 sistent with State, local, and Federal law.

10 (3) AGREEMENTS.—The dam removal entity
 11 may enter into agreements and contracts as nec-
 12 essary to assist in the implementation of the Hydro-
 13 electric Settlement.

14 (4) PROCEEDING WITH FACILITIES REMOVAL.—

15 (A) IN GENERAL.—The dam removal enti-
 16 ty shall, consistent with the Hydroelectric Set-
 17 tlement—

18 (i) develop a definite plan for facilities
 19 removal as described in section 7 of the
 20 Hydroelectric Settlement, including a
 21 schedule for facilities removal;

22 (ii) obtain all permits, authorizations,
 23 entitlements, certifications, and other ap-
 24 provals necessary to implement facilities
 25 removal, including a permit under section

1 404 of the Federal Water Pollution Con-
 2 trol Act (33 U.S.C. 1344), notwithstanding
 3 subsection (r) of that section; and

4 (iii) implement facilities removal.

5 (B) REPORT.—

6 (i) IN GENERAL.—The Governors and
 7 the Secretary shall prepare and make pub-
 8 lic a report on the determination and plan
 9 for facilities removal.

10 (ii) INCLUSIONS.—The report shall, at
 11 a minimum—

12 (I) provide a detailed explanation
 13 of the basis for the determination to
 14 proceed with facilities removal and for
 15 the designation of the dam removal
 16 entity, including relevant supporting
 17 documents;

18 (II) include any comments re-
 19 ceived from the Commission on the
 20 determination and a written response
 21 to the comments;

22 (III) state specific goals intended
 23 to be achieved by facilities removal;

1 (IV) include specific performance
2 measures that will be used to show
3 achievements in meeting the goals;

4 (V) provide a detailed expla-
5 nation of factors that are unique to
6 facilities removal in the Klamath
7 Basin, including why the Federal role
8 is limited to the Klamath Basin and
9 sets no precedent for future Federal
10 action;

11 (VI) describe plans to address
12 any potential costs in excess of the
13 State Cost Cap described in section
14 4.1.3 of the Hydroelectric Settlement;

15 (VII) describe plans for address-
16 ing or mitigating intentional or unin-
17 tentional impacts on local commu-
18 nities and property owners; and

19 (VIII) describe how any potential
20 environmental or other liability con-
21 cerns will be addressed.

22 (iii) SUBMISSION.—The report re-
23 quired under this subparagraph shall be
24 submitted to—

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

3 (II) the Committee on Natural
 4 Resources of the House of Represent-
 5 atives; and

6 (III) the Commission.

7 (iv) COMMENT AND CONSULTATION
 8 BY COMMISSION.—Not later than 180 days
 9 before the publication of the report re-
 10 quired by this subparagraph, the Gov-
 11 ernors and the Secretary shall submit to
 12 the Commission the section of the report
 13 describing the basis of the determination
 14 to proceed with dam removal for comment
 15 and, as appropriate, consultation.

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

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

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

25 (C) STATE AND LOCAL LAWS.—

1 (i) IN GENERAL.—Except as provided
2 in clause (ii), facilities removal shall be
3 subject to applicable requirements of State
4 and local laws relating to permits and
5 other authorizations, to the extent the re-
6 quirements are not in conflict with Federal
7 law, including the determination of the
8 Governors and the Secretary under sub-
9 section (a) and the definite plan (including
10 the schedule) for facilities removal author-
11 ized under this Act.

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

14 (I) the authorities of the States
15 regarding concurrence with the deter-
16 mination of the Secretary under sub-
17 section (a) in accordance with State
18 law; or

19 (II) the authority of a State pub-
20 lic utility commission regarding fund-
21 ing of facilities removal.

22 (iii) JURISDICTION.—The United
23 States district courts shall have original ju-
24 risdiction over all claims regarding the con-
25 sistency of State and local laws regarding

1 permits and other authorizations, and of
 2 State and local actions pursuant to those
 3 laws, with the definite plan (including the
 4 schedule) for facilities removal authorized
 5 under this Act.

6 (D) ACCEPTANCE OF TITLE TO FACILI-
 7 TIES.—

8 (i) IN GENERAL.—The dam removal
 9 entity may accept from PacifiCorp all
 10 rights, titles, permits, and other interests
 11 in the facilities and associated land, for fa-
 12 cilities removal and for disposition of facil-
 13 ity land (as provided in section 7.6.4 of the
 14 Hydroelectric Settlement) on providing to
 15 PacifiCorp a notice that the dam removal
 16 entity is ready to commence facilities re-
 17 moval in accordance with section 7.4.1 of
 18 the Hydroelectric Settlement.

19 (ii) NON-FEDERAL DAM REMOVAL EN-
 20 TITY.—Notwithstanding section 8 of the
 21 Federal Power Act (16 U.S.C. 801), the
 22 transfer of title to facilities from
 23 PacifiCorp to a non-Federal dam removal
 24 entity, in accordance with the Hydro-

1 electric Settlement and this Act, is author-
2 ized.

3 (E) CONTINUED POWER GENERATION.—

4 (i) IN GENERAL.—In accordance with
5 an agreement negotiated under clause (ii),
6 on transfer of title pursuant to subpara-
7 graph (C) and until the dam removal enti-
8 ty instructs PacifiCorp to cease the gen-
9 eration of power, PacifiCorp may continue,
10 consistent with State law—

11 (I) to generate, and retain title
12 to, any power generated by the facili-
13 ties in accordance with section 7 of
14 the Hydroelectric Settlement; and

15 (II) to transmit and use the
16 power for the benefit of the customers
17 of PacifiCorp under the jurisdiction of
18 applicable State public utility commis-
19 sions and the Commission.

20 (ii) AGREEMENT WITH DAM REMOVAL
21 ENTITY.—As a condition of transfer of
22 title pursuant to subparagraph (C), the
23 dam removal entity shall enter into an
24 agreement with PacifiCorp that provides

1 for continued generation of power in ac-
2 cordance with clause (i).

3 (F) REPORT.—Not later than 3 years after
4 the date of the completion of facilities removal,
5 the Governors and the Secretary shall submit to
6 the Committee on Energy and Natural Re-
7 sources of the Senate, the Committee on Nat-
8 ural Resources of the House of Representatives,
9 and the Commission—

10 (i) a detailed report describing the re-
11 sults of facilities removal, including the
12 status of achieving the performance meas-
13 ures and goals included in the report de-
14 scribed in subparagraph (B); and

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

19 (5) LICENSES AND JURISDICTION.—

20 (A) ANNUAL LICENSES.—

21 (i) IN GENERAL.—The Commission
22 shall issue annual licenses authorizing
23 PacifiCorp to continue to operate the fa-
24 cilities until PacifiCorp transfers title to all
25 of the facilities.

1 (ii) TERMINATION.—The annual li-
 2 censes shall terminate with respect to a fa-
 3 cility on transfer of title for the facility
 4 from PacifiCorp to the dam removal entity.

5 (iii) STAGED REMOVAL.—

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

11 (II) NONTRANSFER OF TITLE.—

12 Annual license conditions shall remain
 13 in effect with respect to any facility
 14 for which PacifiCorp has not trans-
 15 ferred title to the dam removal entity
 16 to the extent compliance with the an-
 17 nual license conditions are not pre-
 18 vented by the removal of any other fa-
 19 cility.

20 (B) JURISDICTION.—The jurisdiction of
 21 the Commission under part I of the Federal
 22 Power Act (16 U.S.C. 792 et seq.) shall termi-
 23 nate with respect to a facility on the transfer of
 24 title for the facility from PacifiCorp to the dam
 25 removal entity.

1 (C) RELICENSING.—

2 (i) IN GENERAL.—The Commission
3 shall—

4 (I) stay the proceeding of the
5 Commission regarding the pending li-
6 cense application of PacifiCorp for
7 Project No. 2082 for the period dur-
8 ing which the Hydroelectric Settle-
9 ment remains in effect; and

10 (II) resume the proceeding and
11 proceed to take final action on the
12 new license application only if the Hy-
13 droelectric Settlement terminates pur-
14 suant to section 8.11 of the Hydro-
15 electric Settlement.

16 (D) TERMINATION; LIMITATIONS.—If the
17 Hydroelectric Settlement is terminated pursu-
18 ant to section 8.11 of the Hydroelectric Settle-
19 ment, the Commission, in proceedings on the
20 application for relicensing, shall not be bound
21 by the record or findings of the Secretary relat-
22 ing to the determination of the Secretary or by
23 the determination of the Secretary.

24 (c) LIABILITY PROTECTION.—

1 (1) IN GENERAL.—Notwithstanding any other
2 Federal, State, local, or common law, PacifiCorp
3 shall not be liable for any harm to an individual or
4 entity, property, or the environment, or any damages
5 resulting from facilities removal or facility oper-
6 ations arising from, relating to, or triggered by ac-
7 tions associated with facilities removal under this
8 Act, including any damage caused by the release of
9 any material or substance (including a hazardous
10 substance).

11 (2) FUNDING.—Notwithstanding any other
12 Federal, State, local, or common law, no individual
13 or entity contributing funds for facilities removal
14 shall be held liable, solely by virtue of that funding,
15 for any harm to an individual or entity, property, or
16 the environment, or damages arising from facilities
17 removal or facility operations arising from, relating
18 to, or triggered by actions associated with facilities
19 removal under this Act, including any damage
20 caused by the release of any material or substance
21 (including a hazardous substance).

22 (3) PREEMPTION.—Notwithstanding section
23 10(c) of the Federal Power Act (16 U.S.C. 803(c)),
24 protection from liability pursuant to this section
25 shall preempt the laws of any State to the extent the

1 laws are inconsistent with this Act, except that this
 2 Act shall not limit any otherwise-available immunity,
 3 privilege, or defense under any other provision of
 4 law.

5 (4) EFFECTIVE DATE.—Liability protection
 6 under this subsection shall take effect as the protec-
 7 tion relates to any particular facilities on transfer of
 8 title to the facility from PacifiCorp to the dam re-
 9 moval entity designated by the Secretary under sub-
 10 section (a)(1)(B).

11 (d) FACILITIES NOT REMOVED.—

12 (1) KENO FACILITY.—

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

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

22 (i) the Keno Facility shall—

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

1 (II) be operated and maintained
 2 in accordance with the Federal rec-
 3 lamation laws and this Act; and
 4 (ii) the jurisdiction of the Commission
 5 over the Keno Facility shall terminate.

6 (2) EAST SIDE AND WEST SIDE DEVELOP-
 7 MENTS.—On filing by PacifiCorp of an application
 8 for surrender of the East Side and West Side Devel-
 9 opments in Project No. 2082, the Commission shall
 10 issue an order approving partial surrender of the li-
 11 cense for Project No. 2082, including any reasonable
 12 and appropriate conditions, as provided in section
 13 6.4.1 of the Hydroelectric Settlement.

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

23 (4) IRON GATE HATCHERY.—Notwithstanding
 24 section 8 of the Federal Power Act (16 U.S.C. 801),
 25 consistent with section 7.6.6 of the Hydroelectric

1 Settlement title to the PacifiCorp hatchery facilities
2 within the State of California shall be transferred to
3 the State of California at—

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

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

8 **SEC. 9. ADMINISTRATION AND FUNDING.**

9 (a) AGREEMENTS.—

10 (1) IN GENERAL.—The Secretaries may enter
11 into such agreements (including contracts, memo-
12 randa of understanding, financial assistance agree-
13 ments, cost sharing agreements, and other appro-
14 priate agreements) with State, tribal, and local gov-
15 ernment agencies or private individuals and entities
16 as the Secretary concerned consider to be necessary
17 to carry out this Act and the Settlements, subject to
18 such terms and conditions as the Secretary con-
19 cerned considers to be necessary.

20 (2) TRIBAL PROGRAMS.—Consistent with para-
21 graph (1) and section 32 of the Restoration Agree-
22 ment, the Secretaries shall give priority to qualified
23 Party tribes in awarding grants, contracts, or other
24 agreements for purposes of implementing the fish-

1 eries programs described in part III of the Restora-
2 tion Agreement.

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

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

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

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

15 (c) MANAGEMENT.—

16 (1) IN GENERAL.—The accounts established by
17 subsection (b) shall be managed in accordance with
18 this Act and section 14.3 of the Restoration Agree-
19 ment.

20 (2) TRANSFERS.—Notwithstanding section
21 1535 of title 31, United States Code, the Secretaries
22 are authorized to enter into interagency agreements
23 for the transfer of Federal funds between Federal
24 programs for the purpose of implementing this Act
25 and the Settlements.

1 (d) ACCEPTANCE AND EXPENDITURE OF NON-FED-
2 ERAL FUNDS.—

3 (1) IN GENERAL.—Notwithstanding title 31,
4 United States Code, the Secretaries may accept and
5 expend, without further appropriation, non-Federal
6 funds, in-kind services, or property for purposes of
7 implementing the Settlement.

8 (2) USE.—The funds and property described in
9 paragraph (1) may be expended or used, as applica-
10 ble, only for the purpose for which the funds or
11 property were provided.

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

15 (f) TERMINATION OF AGREEMENTS.—If any Agree-
16 ment terminates—

17 (1) any appropriated Federal funds provided to
18 a party that are unexpended at the time of the ter-
19 mination of the Agreement shall be returned to the
20 general fund of the Treasury; and

21 (2) any appropriated Federal funds provided to
22 a party shall be treated as an offset against any
23 claim for damages by the party arising under the
24 Agreement.

25 (g) BUDGET.—

1 (1) IN GENERAL.—The budget of the President
2 shall include such requests as the President con-
3 siders to be necessary for the level of funding for
4 each of the Federal agencies to carry out the respon-
5 sibilities of the agencies under the Settlements.

6 (2) CROSSCUT BUDGET.—Not later than the
7 date of submission of the budget of the President to
8 Congress for each fiscal year, the Director of the Of-
9 fice of Management and Budget shall submit to the
10 appropriate authorizing and appropriating commit-
11 tees of the Senate and the House of Representatives
12 a financial report containing—

13 (A) an interagency budget crosscut report
14 that displays the budget proposed for each of
15 the Federal agencies to carry out the Settle-
16 ments for the upcoming fiscal year, separately
17 showing funding requested under preexisting
18 authorities and new authorities provided by this
19 Act;

20 (B) a detailed accounting of all funds re-
21 ceived and obligated by all Federal agencies re-
22 sponsible for implementing the Settlements; and

23 (C) a budget for proposed actions to be
24 carried out in the upcoming fiscal year by the

1 applicable Federal agencies in the upcoming fis-
2 cal year.

3 (h) REPORT TO CONGRESS.—Not later than the date
4 of submission of the budget of the President to Congress
5 for each fiscal year, the Secretaries shall submit to the
6 appropriate authorizing committees of the Senate and the
7 House of Representatives a report that describes—

8 (1) the status of implementation of all of the
9 Settlements;

10 (2) expenditures during the preceding fiscal
11 year for implementation of all of the Settlements;

12 (3) the current schedule and funding levels that
13 are needed to complete implementation of each of
14 the Settlements;

15 (4) achievements in advancing the purposes of
16 complying with the Endangered Species Act of 1973
17 (16 U.S.C. 1531 et seq.) under the Settlements;

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

20 (6) the status of water deliveries for the pre-
21 ceding water year and projections for the upcoming
22 water year for—

23 (A) the Klamath Project and irrigators in
24 the Off-Project Area pursuant to the Agree-
25 ments; and

1 (B) the National Wildlife Refuges in areas
2 covered by the Agreements;

3 (7) the status of achieving the goals of sup-
4 porting sustainable agriculture production (including
5 the goal of limiting net power costs for water man-
6 agement) and general economic development in the
7 Klamath Basin;

8 (8) the status of achieving the goal of sup-
9 porting the economic development of the Party
10 tribes;

11 (9) the assessment of the Secretaries of the
12 progress being made toward completing implementa-
13 tion of all of the Settlements;

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

18 (B) until achieved, the assessment of the Secre-
19 taries of the progress being made toward meeting
20 the performance measures; and

21 (11) the status of plans to address any poten-
22 tial cost in excess of the State cost cap as described
23 in the report to Congress required under section
24 8(b)(4)(B).

○