

113TH CONGRESS  
2D SESSION

# S. 2727

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.

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IN THE SENATE OF THE UNITED STATES

JULY 31, 2014

Mr. WYDEN (for himself and Mr. MERKLEY) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## 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 2014”.

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) HYDROELECTRIC SETTLEMENT.—The term  
4 “Hydroelectric Settlement” means the agreement  
5 entitled “Klamath Hydroelectric Settlement Agree-  
6 ment” and dated February 18, 2010 (including any  
7 amendments to that agreement approved pursuant  
8 to section 3(a)).

9 (6) JOINT MANAGEMENT ENTITY.—The term  
10 “Joint Management Entity” means the entity that—

11 (A) is comprised of the Landowner Entity,  
12 the Klamath Tribes, the United States, and the  
13 State of Oregon;

14 (B) represents the interests of the parties  
15 to the Upper Basin Agreement; and

16 (C) is responsible for overseeing implemen-  
17 tation of the Upper Basin Agreement, as de-  
18 scribed in section 7 of the Upper Basin Agree-  
19 ment.

20 (7) JOINT MANAGEMENT ENTITY TECHNICAL  
21 TEAM.—The term “Joint Management Entity Tech-  
22 nical Team” means the group of specialists ap-  
23 pointed by the Joint Management Entity as provided  
24 for in section 7.8 of the Upper Basin Agreement.

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

7           (9) KLAMATH BASIN.—

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

11                (B) INCLUSIONS.—The term “Klamath  
 12          Basin” includes the Lost River and Tule Lake  
 13          Basins.

14           (10) KLAMATH PROJECT.—

15                 (A) IN GENERAL.—The term “Klamath  
 16          Project” means the Bureau of Reclamation  
 17          project in the States of California and Oregon,  
 18          as authorized under the Act of June 17, 1902  
 19          (32 Stat. 388, chapter 1093).

20                (B) INCLUSIONS.—The term “Klamath  
 21          Project” includes any dams, canals, and other  
 22          works and interests for water diversion, storage,  
 23          delivery, and drainage, flood control, and simi-  
 24          lar functions that are part of the project de-  
 25          scribed in subparagraph (A).

1           (11) KLAMATH PROJECT WATER USERS.—The  
 2           term “Klamath Project Water Users” has the mean-  
 3           ing given the term in the Restoration Agreement.

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

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

9                   (A) the areas within the Sprague River,  
 10                  Sycan River, Williamson River, and Wood Val-  
 11                  ley (including the Wood River, Crooked Creek,  
 12                  Sevenmile Creek, Fourmile Creek, and Crane  
 13                  Creek) subbasins referred to in Exhibit B of the  
 14                  Upper Basin Agreement; and

15                  (B) to the extent provided for in the Upper  
 16                  Basin Agreement, any other areas for which  
 17                  claims described by section 1.3 or 2.5.1 of the  
 18                  Upper Basin Agreement are settled as provided  
 19                  for in section 2.5.1 of the Upper Basin Agree-  
 20                  ment.

21           (14) OFF-PROJECT IRRIGATOR.—The term  
 22           “Off-Project Irrigator” means any person that is—

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

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

4 (B) a Party to the Upper Basin Agree-  
 5 ment.

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

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

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

20 (A) the Yurok Tribe;

21 (B) the Karuk Tribe;

22 (C) the Klamath Tribes; and

23 (D) such other federally recognized tribes  
 24 of the Klamath Basin as may become party to

1 the Restoration Agreement after the date of en-  
2 actment of this Act.

3 (18) RESTORATION AGREEMENT.—The term  
4 “Restoration Agreement” means the agreement enti-  
5 tled “Klamath River Basin Restoration Agreement  
6 for the Sustainability of Public and Trust Resources  
7 and Affected Communities” and dated February 18,  
8 2010 (including amendments adopted prior to the  
9 date of enactment of this Act and any further  
10 amendments to that agreement approved pursuant  
11 to section 3(a)).

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

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

17 (21) SECRETARIES.—The term “Secretaries”  
18 means each of—

19 (A) the Secretary of the Interior;

20 (B) the Secretary of Commerce; and

21 (C) the Secretary of Agriculture.

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

24 (A) the Hydroelectric Settlement;

25 (B) the Restoration Agreement; and

1 (C) the Upper Basin Agreement.

2 (23) UPPER BASIN AGREEMENT.—The term  
3 “Upper Basin Agreement” means the agreement en-  
4 titled “Upper Klamath Basin Comprehensive Agree-  
5 ment” and dated April 18, 2014 (including any  
6 amendments to that agreement approved pursuant  
7 to section 3(a)).

8 (24) WATER USE PROGRAM.—The term “Water  
9 Use Program” means the program described in sec-  
10 tion 3 of the Upper Basin Agreement and section  
11 16.2 of the Restoration Agreement.

12 **SEC. 3. AUTHORIZATION, EXECUTION, AND IMPLEMENTA-**  
13 **TION OF SETTLEMENTS.**

14 (a) RATIFICATION OF SETTLEMENTS.—

15 (1) IN GENERAL.—Except as modified by this  
16 Act, and to the extent that the Settlements do not  
17 conflict with this Act, the Settlements are author-  
18 ized, ratified, and confirmed.

19 (2) AMENDMENTS CONSISTENT WITH THIS  
20 ACT.—If any amendment is executed to make any of  
21 the Settlements consistent with this Act, the amend-  
22 ment is also authorized, ratified, and confirmed to  
23 the extent the amendment is consistent with this  
24 Act.



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

12                 (A) is not inconsistent with this Act or  
13                 other provisions of law;

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

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

20          (b) EXECUTION AND IMPLEMENTATION OF SETTLE-  
21          MENTS.—

22                 (1) THE AGREEMENTS.—

23                         (A) IN GENERAL.—As authorized, ratified,  
24                         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 (l), 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

1 States Geological Survey, and the National  
2 Marine Fisheries Service of the Depart-  
3 ment of Commerce, with the Secretary  
4 serving as the voting member, as described  
5 in section 7.1.5 of the Upper Basin Agree-  
6 ment.

7 (2) HYDROELECTRIC SETTLEMENT.—To the ex-  
8 tent that the Hydroelectric Settlement does not con-  
9 flict with this Act, the Secretary, the Secretary of  
10 Commerce, and the Commission shall implement the  
11 Hydroelectric Settlement, in consultation with other  
12 applicable Federal agencies.

13 (c) FEDERAL RESPONSIBILITIES.—To the extent  
14 consistent with the Settlements, this Act, and other provi-  
15 sions of law, the Secretary, the Secretary of Commerce,  
16 the Secretary of Agriculture, and the Commission shall  
17 perform all actions necessary to carry out each responsi-  
18 bility of the Secretary, the Secretary of Commerce, the  
19 Secretary of Agriculture, and the Commission, respec-  
20 tively, under the Settlements.

21 (d) ENVIRONMENTAL COMPLIANCE.—In imple-  
22 menting the Settlements, the Secretaries and the Commis-  
23 sion shall comply with—

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

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

3           (3) all other applicable law.

4       (e) PUBLICATION OF NOTICE; EFFECT OF PUBLICA-  
5   TION.—

6           (1) RESTORATION AGREEMENT.—

7           (A) PUBLICATION.—The Secretary shall  
8       publish the notice required by section 15.3.4.A  
9       or section 15.3.4.C of the Restoration Agree-  
10      ment, as applicable, in accordance with the Res-  
11      toration Agreement.

12          (B) EFFECT OF PUBLICATION.—Publica-  
13      tion of the notice described in subparagraph (A)  
14      shall have the effects on the commitments,  
15      rights, and obligations of the Party tribes, the  
16      United States (as trustee for the federally rec-  
17      ognized tribes of the Klamath Basin), and other  
18      parties to the Restoration Agreement as the  
19      rights and obligations that are provided for in  
20      the Restoration Agreement.

21          (2) UPPER BASIN AGREEMENT.—

22          (A) PUBLICATION.—The Secretary shall  
23      publish the notice required by section 10.1 of  
24      the Upper Basin Agreement if all requirements  
25      of section 10 of the Upper Basin Agreement

1 have been fulfilled, including the requirement  
 2 for notice by the Klamath Tribes of the willing-  
 3 ness of the Tribes to proceed with the Upper  
 4 Basin Agreement following enactment of au-  
 5 thorizing legislation as described in section  
 6 10.1.10 or 10.2 of the Upper Basin Agreement,  
 7 as applicable, in accordance with the Upper  
 8 Basin Agreement.

9 (B) EFFECT OF PUBLICATION.—

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

14 (ii) TERMINATION.—On publication of  
 15 the notice required under section 10.2 of  
 16 the Upper Basin Agreement, the Upper  
 17 Basin Agreement shall terminate, accord-  
 18 ing to the terms of that section.

19 (3) JUDICIAL REVIEW.—

20 (A) IN GENERAL.—Judicial review of a de-  
 21 cision of the Secretary pursuant to this sub-  
 22 section shall be in accordance with the standard  
 23 and scope of review under subchapter II of  
 24 chapter 5, and chapter 7, of title 5, United

1 States Code (commonly known as the “Admin-  
2 istrative Procedure Act”).

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

7 (f) ELIGIBILITY FOR FUNDS PROTECTED.—Notwith-  
8 standing any other provision of law, nothing in this Act  
9 or the implementation of the Settlements, other than as  
10 explicitly provided for in this Act or the Settlements—

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

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

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

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

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

1 (h) WATER RIGHTS.—

2 (1) IN GENERAL.—Except as specifically pro-  
3 vided in this Act and the Settlements, nothing in  
4 this Act or the Settlements creates or determines  
5 water rights or affects water rights or water right  
6 claims in existence on the date of enactment of this  
7 Act.

8 (2) NO STANDARD FOR QUANTIFICATION.—  
9 Nothing in this Act or the Settlements establishes  
10 any standard for the quantification of Federal re-  
11 served water rights or any water claims of any In-  
12 dian tribe in any judicial or administrative pro-  
13 ceeding.

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

17 (j) NO PRIVATE RIGHT OF ACTION.—

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

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

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

4       (l) RELATIONSHIP TO CERTAIN OTHER FEDERAL  
 5 LAW.—

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

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

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

13          (C) the Endangered Species Act of 1973  
 14 (16 U.S.C. 1531 et seq.);

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

17          (E) the Federal Water Pollution Control  
 18 Act (33 U.S.C. 1251 et seq.), except to the ex-  
 19 tent section 8(b)(4) of this Act requires a per-  
 20 mit under section 404 of that Act (33 U.S.C.  
 21 1344), notwithstanding section 404(r) of that  
 22 Act (33 U.S.C. 1344(r));

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



1 (G) the Treaty between the United States  
2 and the Klamath and Moadoc Tribes and the  
3 Yahooskin Band of Snake Indians dated Octo-  
4 ber 14, 1864 (16 Stat. 707); or

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

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

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

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

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

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

2 (a) KLAMATH PROJECT PURPOSES.—

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

6 (A) irrigation;

7 (B) reclamation;

8 (C) flood control;

9 (D) municipal;

10 (E) industrial;

11 (F) power;

12 (G) fish and wildlife purposes; and

13 (H) National Wildlife Refuge purposes.

14 (2) EFFECT OF FISH AND WILDLIFE PUR-  
15 POSES.—

16 (A) IN GENERAL.—Subject to subpara-  
17 graph (B), the fish and wildlife purposes of the  
18 Klamath Project authorized under paragraph  
19 (1) shall not adversely affect the irrigation pur-  
20 pose of the Klamath Project.

21 (B) WATER ALLOCATIONS AND DELIV-  
22 ERY.—Notwithstanding subparagraph (A), the  
23 water allocations and delivery to the National  
24 Wildlife Refuges provided for in the Restoration  
25 Agreement shall not constitute an adverse effect

1           on the irrigation purpose of the Klamath  
2           Project for purposes of this paragraph.

3       (b) WATER RIGHTS ADJUDICATION.—For purposes  
4 of the determination of water rights in Oregon’s Klamath  
5 Basin adjudication, until the date on which the Appendix  
6 E–1 to the Restoration Agreement is filed in Oregon’s  
7 Klamath Basin adjudication pursuant to the Restoration  
8 Agreement, the purposes of the Klamath Project shall be  
9 the purposes in effect on the day before the date of enact-  
10 ment of this Act.

11       (c) DISPOSITION OF NET REVENUES FROM LEASING  
12 OF TULE LAKE AND LOWER KLAMATH NATIONAL WILD-  
13 LIFE REFUGE LAND.—Notwithstanding any other provi-  
14 sion of law, net revenues from the leasing of refuge land  
15 within the Tule Lake National Wildlife Refuge and Lower  
16 Klamath National Wildlife Refuge under section 4 of Pub-  
17 lic Law 88–567 (78 Stat. 851) (commonly known as the  
18 “Kuchel Act”), shall be provided directly, without further  
19 appropriation, as follows:

20           (1) 10 percent of net revenues from land within  
21       the Tule Lake National Wildlife Refuge that are  
22       within the boundaries of Tulelake Irrigation District  
23       to Tulelake Irrigation District, as provided in article  
24       4 of Contract No. 14–06–200–5954 and section 2(a)

1 of the Act of August 1, 1956 (70 Stat. 799, chapter  
2 828).

3 (2) Such amounts as are necessary to counties  
4 as payments in lieu of taxes as provided in section  
5 3 of Public Law 88–567 (16 U.S.C. 695m).

6 (3) 20 percent of net revenues to the Klamath  
7 Basin National Wildlife Refuge Complex of the  
8 United States Fish and Wildlife Service, for wildlife  
9 management purposes on the Tule Lake National  
10 Wildlife Refuge and the Lower Klamath National  
11 Wildlife Refuge.

12 (4) 10 percent of net revenues from land within  
13 the Lower Klamath National Wildlife Refuge that  
14 are within the boundaries of the Klamath Drainage  
15 District to Klamath Drainage District, for operation  
16 and maintenance responsibility for the Federal rec-  
17 lamation water delivery and drainage facilities within  
18 the boundaries of the Klamath Drainage District  
19 and the Lower Klamath National Wildlife Refuge  
20 exclusive of the Klamath Straits Drain, subject to a  
21 transfer agreement with the Bureau of Reclamation  
22 under which the Klamath Drainage District assumes  
23 the operation and maintenance duties of the Bureau  
24 of Reclamation for Klamath Drainage District (Area  
25 K) lease land exclusive of Klamath Straits Drain.

1           (5) The remainder of net revenues to the Bu-  
2       reau of Reclamation for—

3           (A) operation and maintenance costs of  
4       Link River and Keno Dams incurred by the  
5       United States; and

6           (B) to the extent that the revenues re-  
7       ceived under this paragraph for any year exceed  
8       the costs described in subparagraph (A)—

9           (i) future capital costs of the Klamath  
10       Project; or

11          (ii) the Renewable Power Program de-  
12       scribed in section 17.7 of the Restoration  
13       Agreement, pursuant to an expenditure  
14       plan submitted to and approved by the  
15       Secretary.

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

17       (a) ACTIONS BY KLAMATH TRIBES.—

18           (1) RESTORATION AGREEMENT COMMITMENTS  
19       ACKNOWLEDGED AND AGREED TO.—In consideration  
20       for the resolution of any contest or exception of the  
21       Klamath Project Water Users to the water rights  
22       claims of the Klamath Tribes and the United States  
23       (acting as trustee for the Klamath Tribes and mem-  
24       bers of the Klamath Tribes in Oregon’s Klamath  
25       Basin adjudication), and for the other commitments

1 of the Klamath Project Water Users described in the  
2 Restoration Agreement, and for other benefits de-  
3 scribed in the Restoration Agreement and this Act,  
4 the Klamath Tribes (on behalf of the Klamath  
5 Tribes and the members of the Klamath Tribes)  
6 may make the commitments provided in the Restora-  
7 tion Agreement.

8 (2) UPPER BASIN AGREEMENT COMMITMENTS  
9 ACKNOWLEDGED AND AGREED TO.—In consideration  
10 for the resolution of any contest or exception of the  
11 Off-Project Irrigators to the water rights claims of  
12 the Klamath Tribes and the United States (acting  
13 as trustee for the Klamath Tribes and members of  
14 the Klamath Tribes in Oregon’s Klamath Basin ad-  
15 judication), and for the other commitments of the  
16 Off-Project Irrigators described in the upper Basin  
17 Agreement, and for other benefits described in the  
18 Upper Basin Agreement and this Act, the Klamath  
19 Tribes (on behalf of the Klamath Tribes and the  
20 members of the Klamath Tribes) may make the  
21 commitments provided in the Upper Basin Agree-  
22 ment.

23 (3) NO FURTHER ACTION REQUIRED.—Except  
24 as provided in subsection (c), the commitments de-  
25 scribed in paragraphs (1) and (2) are confirmed as

1 effective and binding, in accordance with the terms  
 2 of the commitments, without further action by the  
 3 Klamath Tribes.

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

11 (A) consistent with this Act, the Settle-  
 12 ments, and other applicable provisions of law,  
 13 based on the totality of the circumstances; and

14 (B) covered by a written agreement signed  
 15 by the Klamath Tribes and the United States  
 16 (acting as trustee for the tribe and the mem-  
 17 bers of the tribe in Oregon’s Klamath Basin ad-  
 18 judication) pursuant to subsection (f).

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

21 (1) COMMITMENTS ACKNOWLEDGED AND  
 22 AGREED TO.—In consideration for the commitments  
 23 of the Klamath Project Water Users described in the  
 24 Restoration Agreement, and other benefits described  
 25 in the Restoration Agreement and this Act, the

1 Karuk Tribe and the Yurok Tribe (on behalf of the  
2 tribe and the members of the tribe) may make the  
3 commitments provided in the Restoration Agree-  
4 ment.

5 (2) NO FURTHER ACTION REQUIRED.—Except  
6 as provided in subsection (c), the commitments de-  
7 scribed in paragraph (1) are confirmed as effective  
8 and binding, in accordance with the terms of the  
9 commitments, without further action by the Yurok  
10 Tribe or Karuk Tribe.

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

12 (1) IN GENERAL.—Subject to paragraph (2),  
13 subsection (d), and the Agreements, but without oth-  
14 erwise affecting any right secured by a treaty, Exec-  
15 utive order, or other law, the Party tribes (on behalf  
16 of the tribes and the members of the tribes) may re-  
17 linquish and release certain claims against the  
18 United States (including any Federal agencies and  
19 employees) described in sections 15.3.5.A,  
20 15.3.6.B.i, and 15.3.7.B.i of the Restoration Agree-  
21 ment and, in the case of the Klamath Tribes, section  
22 2.5 of the Upper Basin Agreement.

23 (2) CONDITIONS.—The relinquishments and re-  
24 leases under paragraph (1) shall not take force or  
25 effect until the terms described in sections 15.3.5.C,



1       15.3.5.D, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.7.B.iv, and  
 2       33.2.1 of the Restoration Agreement and sections  
 3       2.4 and 10 of the Upper Basin Agreement have been  
 4       fulfilled.

5       (d) RETENTION OF RIGHTS OF PARTY TRIBES.—  
 6       Notwithstanding subsections (a) through (c) or any other  
 7       provision of this Act, the Party tribes (on behalf of the  
 8       tribes and the members of the tribes) and the United  
 9       States (acting as trustee for the Party tribes), shall re-  
 10      tain—

11           (1) all claims and rights described in sections  
 12       15.3.5.B, 15.3.6.B.ii, and 15.3.7.B.ii of the Restora-  
 13       tion Agreement; and

14           (2) any other claims and rights retained by the  
 15       Party Tribes in negotiations pursuant to section  
 16       15.3.5.D, 15.3.6.B.iv, and 15.3.7.B.iv of the Res-  
 17       toration Agreement.

18      (e) TOLLING OF CLAIMS.—

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

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

25           (B) ending on the earlier of—

- 1 (i) the date on which the Secretary  
 2 publishes the notice described in sections  
 3 15.3.5.C, 15.3.6.B.iii, and 15.3.7.B.iii of  
 4 the Restoration Agreement; or  
 5 (ii) December 1, 2030.

6 (2) EFFECT OF TOLLING.—Nothing in this sub-  
 7 section—

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

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

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

16 (1) RESTORATION AGREEMENT COMMITMENTS  
 17 AUTHORIZED.—In consideration for the commit-  
 18 ments of the Klamath Project Water Users de-  
 19 scribed in the Restoration Agreement and for other  
 20 benefits described in the Restoration Agreement and  
 21 this Act, the United States, acting as trustee for the  
 22 federally recognized tribes of the Klamath Basin and  
 23 the members of such tribes, may make the commit-  
 24 ments provided in the Restoration Agreement.

1           (2) UPPER BASIN AGREEMENT COMMITMENTS  
2     AUTHORIZED.—In consideration for the commit-  
3     ments of the Off-Project Irrigators described in the  
4     Upper Basin Agreement and for other benefits de-  
5     scribed in the Upper Basin Agreement and this Act,  
6     the United States, acting as trustee for the Klamath  
7     Tribes and the members of the Klamath Tribes, may  
8     make the commitments provided in the Upper Basin  
9     Agreement.

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

15          (4) ADDITIONAL COMMITMENTS.—The United  
16     States, acting as trustee for the Klamath Tribes and  
17     the members of the Klamath Tribes in Oregon's  
18     Klamath Basin Adjudication, may make additional  
19     commitments and assurances of rights in exchange  
20     for the resolution of the tribal water right claims de-  
21     scribed in section 1.3.1 or 2.5.1 of the Upper Basin  
22     Agreement, subject to the conditions that the com-  
23     mitments or 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 Klamath Tribes and  
 7 the members of the tribe in Oregon’s Klamath  
 8 Basin adjudication) under subsection (a)(3)(B).

9 (g) JUDICIAL REVIEW.—Judicial review of a decision  
 10 of the Secretary concerning any right or obligation under  
 11 section 15.3.5.C, 15.3.6.B.iii, 15.3.7.B.iii, 15.3.8.B, or  
 12 15.3.9 of the Restoration Agreement shall be in accord-  
 13 ance with the standard and scope of review under sub-  
 14 chapter II of chapter 5, and chapter 7, of title 5, United  
 15 States Code (commonly known as the “Administrative  
 16 Procedure Act”).

17 (h) EFFECT OF SECTION.—Nothing in this section—  
 18 (1) affects the ability of the United States to  
 19 take any action—

20 (A) authorized by law to be taken in the  
 21 sovereign capacity of the United States, includ-  
 22 ing any law relating to health, safety, or the en-  
 23 vironment, including—

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

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

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

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

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

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

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

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

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

1 (i) to acquire water rights after the  
2 effective date of the Agreements (as de-  
3 fined in section 1.5.1 of the Restoration  
4 Agreement and section 14.3 of the Upper  
5 Basin Agreement);

6 (ii) to use and protect water rights,  
7 including water rights acquired after the  
8 effective date of the Agreements (as de-  
9 fined in section 1.5.1 of the Restoration  
10 Agreement and section 14.3 of the Upper  
11 Basin Agreement), subject to the Agree-  
12 ments; or

13 (iii) to claim a water right or continue  
14 to advocate for an existing claim for water  
15 rights in an appropriate United States  
16 court or State court or administrative pro-  
17 ceeding, subject to the Agreements;

18 (2) affects the treaty fishing, hunting, trapping,  
19 pasturing, or gathering right of any Indian tribe ex-  
20 cept to the extent expressly provided in this Act or  
21 the Agreements; or

22 (3) affects any right, remedy, privilege, immu-  
23 nity, power, or claim not specifically relinquished  
24 and released under, or limited by, this Act or the  
25 Agreements.

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

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

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

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

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

9 “(a) DEFINITIONS.—In this section:

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

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

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

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

1           “(3) RESTORATION AGREEMENT.—The term  
 2           ‘Restoration Agreement’ means the agreement enti-  
 3           tled ‘Klamath River Basin Restoration Agreement  
 4           for the Sustainability of Public and Trust Resources  
 5           and Affected Communities’ and dated February 18,  
 6           2010 (including any amendments adopted prior to  
 7           the date of enactment of this Act and any further  
 8           amendment to that agreement approved pursuant to  
 9           section 3(a) of the Klamath Basin Water Recovery  
 10          and Economic Restoration Act of 2014).

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

16          “(b) ACTION BY SECRETARY.—The Secretary may  
 17          carry out any activities, including by entering into an  
 18          agreement or contract or otherwise making financial as-  
 19          sistance available—

20                 “(1) to align water supplies with demand, in-  
 21                 cluding activities to reduce water consumption and  
 22                 demand, consistent with the Restoration Agreement  
 23                 or the Upper Basin Agreement;

24                 “(2) to limit the net costs of power used to  
 25                 manage water (including by arranging for delivery of



1 Federal power, consistent with the Restoration  
 2 Agreement and the Upper Basin Agreement) for—  
 3 “(A) the Klamath Project (within the  
 4 meaning of section 2);  
 5 “(B) the On-Project Power Users;  
 6 “(C) irrigators in the Off-Project Area;  
 7 and  
 8 “(D) the Klamath Basin National Wildlife  
 9 Refuge Complex; and  
 10 “(3) to restore any ecosystem and otherwise  
 11 protect fish and wildlife in the Klamath Basin wa-  
 12 tershed, including tribal fishery resources held in  
 13 trust, consistent with Restoration Agreement and  
 14 the Upper Basin Agreement.”.

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

16 (a) ESTABLISHMENT.—There is established in the  
 17 Treasury of the United States a fund to be known as the  
 18 “Klamath Tribes Tribal Resource Fund” (referred to in  
 19 this section as the “Fund”), consisting of the amounts de-  
 20 posited in the Fund under subsection (b), together with  
 21 any interest earned on those amounts, to be managed, in-  
 22 vested, and administered by the Secretary for the benefit  
 23 of the Klamath Tribes in accordance with the terms of  
 24 section 2.4 of the Upper Basin Agreement, to remain  
 25 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          2014, 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) SECRETARIAL DETERMINATION.—

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

22 (A) as soon as practicable after the date of  
23 enactment of this Act, determine whether to  
24 proceed with facilities removal, based on wheth-  
25 er facilities removal—

1 (i) would advance restoration of the  
2 salmonid fisheries of the Klamath Basin;  
3 and

4 (ii) is in the public interest, taking  
5 into account potential impacts on affected  
6 local communities and federally recognized  
7 Indian tribes; and

8 (B) if the Secretary determines under sub-  
9 paragraph (A) to proceed with facilities re-  
10 moval, include in the determination the designa-  
11 tion of a dam removal entity, subject to para-  
12 graph (6).

13 (2) BASIS FOR SECRETARIAL DETERMINATION  
14 TO PROCEED.—For purposes of making a deter-  
15 mination under paragraph (1)(A), the Secretary, in  
16 cooperation with the Secretary of Commerce and  
17 other appropriate entities, shall—

18 (A) use existing information;

19 (B) conduct any necessary additional stud-  
20 ies;

21 (C) comply with the National Environ-  
22 mental Policy Act of 1969 (42 U.S.C. 4321 et  
23 seq.); and

24 (D) take such other actions as the Sec-  
25 retary determines to be appropriate to support

1 the determination of the Secretary under para-  
2 graph (1).

3 (3) CONDITIONS FOR SECRETARIAL DETER-  
4 MINATION TO PROCEED.—The Secretary may not  
5 make or publish the determination under this sub-  
6 section, unless the conditions specified in section  
7 3.3.4 of the Hydroelectric Settlement have been sat-  
8 isfied.

9 (4) PUBLICATION OF NOTICE.—The Secretary  
10 shall publish notification of the determination of the  
11 Secretary under this subsection in the Federal Reg-  
12 ister.

13 (5) JUDICIAL REVIEW OF SECRETARIAL DETER-  
14 MINATION.—

15 (A) IN GENERAL.—For purposes of judi-  
16 cial review, the determination of the Secretary  
17 shall constitute a final agency action with re-  
18 spect to whether or not to proceed with facili-  
19 ties removal.

20 (B) PETITION FOR REVIEW.—

21 (i) FILING.—

22 (I) IN GENERAL.—Judicial re-  
23 view of the determination of the Sec-  
24 retary and related actions to comply  
25 with environmental laws (including

1 the National Environmental Policy  
2 Act of 1969 (42 U.S.C. 4321 et seq.),  
3 the Endangered Species Act of 1973  
4 (16 U.S.C. 1531 et seq.), and the Na-  
5 tional Historic Preservation Act (16  
6 U.S.C. 470 et seq.)) may be obtained  
7 by an aggrieved person only as pro-  
8 vided in this paragraph.

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

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

22 (ii) DEADLINE.—

23 (I) IN GENERAL.—Except as pro-  
24 vided in subclause (II), any petition  
25 for review under this paragraph shall

1 be filed not later than 60 days after  
2 the date of publication of the deter-  
3 mination of the Secretary in the Fed-  
4 eral Register.

5 (II) SUBSEQUENT GROUNDS.—If  
6 a petition is based solely on grounds  
7 arising after the date that is 60 days  
8 after the date of publication of the de-  
9 termination of the Secretary in the  
10 Federal Register, the petition for re-  
11 view under this subsection shall be  
12 filed not later than 60 days after the  
13 grounds arise.

14 (C) IMPLEMENTATION.—Any action of the  
15 Secretary with respect to which review could  
16 have been obtained under this paragraph shall  
17 not be subject to judicial review in any action  
18 relating to the implementation of the deter-  
19 mination of the Secretary or in proceedings for  
20 enforcement of the Hydroelectric Settlement.

21 (D) APPLICABLE STANDARD AND SCOPE.—  
22 Judicial review of the determination of the Sec-  
23 retary shall be in accordance with the standard  
24 and scope of review under subchapter II of  
25 chapter 5, and chapter 7, of title 5, United

1 States Code (commonly known as the “Admin-  
2 istrative Procedure Act”).

3 (E) NONTOLLING.—The filing of a petition  
4 for reconsideration by the Secretary of an ac-  
5 tion subject to review under this subsection  
6 shall not—

7 (i) affect the finality of the action for  
8 purposes of judicial review;

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

12 (iii) postpone the effectiveness of the  
13 action.

14 (6) REQUIREMENTS FOR DAM REMOVAL ENTI-  
15 TY.—A dam removal entity designated by the Sec-  
16 retary under paragraph (1)(B) shall—

17 (A) have the capabilities for facilities re-  
18 moval described in section 7.1.1 of the Hydro-  
19 electric Settlement; and

20 (B) be the Department of the Interior, ex-  
21 cept that the Secretary, consistent with section  
22 3.3.4.E of the Hydroelectric Settlement, may  
23 designate a non-Federal dam removal entity  
24 if—

1 (i) the Secretary, in the sole judgment  
 2 and discretion of the Secretary, finds that  
 3 the dam removal entity-designate—

4 (I) is qualified; and

5 (II) has the capabilities described  
 6 in subparagraph (A);

7 (ii) the States of California and Or-  
 8 egon have concurred in the finding under  
 9 clause (i); and

10 (iii) the dam removal entity-designate  
 11 has committed, if so designated, to per-  
 12 form facilities removal within the State  
 13 Cost Cap as described in section 4.1.3 of  
 14 the Hydroelectric Settlement.

15 (7) RESPONSIBILITIES OF DAM REMOVAL ENTI-  
 16 TY.—The dam removal entity designated by the Sec-  
 17 retary under paragraph (1)(B) shall have the re-  
 18 sponsibilities described in section 7.1.2 of the Hy-  
 19 droelectric Settlement.

20 (b) FACILITIES REMOVAL.—

21 (1) APPLICABILITY.—This subsection shall  
 22 apply if—

23 (A) the determination of the Secretary  
 24 under subsection (a) provides for proceeding  
 25 with facilities removal;



1 (B) the State of California and the State  
 2 of Oregon concur in the determination of the  
 3 Secretary, in accordance with section 3.3.5 of  
 4 the Hydroelectric Settlement;

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

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

11 (2) NON-FEDERAL FUNDS.—

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

21 (B) REFUND.—The Secretary may admin-  
 22 ister and refund any amounts described in sub-  
 23 paragraph (A) received from the State of Cali-  
 24 fornia in accordance with the requirements es-  
 25 tablished by the State.

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

5           (4) PROCEEDING WITH FACILITIES REMOVAL.—

6           (A) IN GENERAL.—The dam removal enti-  
 7           ty shall, consistent with the Hydroelectric Set-  
 8           tlement—

9                   (i) develop a definite plan for facilities  
 10                  removal as described in section 7 of the  
 11                  Hydroelectric Settlement, including a  
 12                  schedule for facilities removal;

13                  (ii) obtain all permits, authorizations,  
 14                  entitlements, certifications, and other ap-  
 15                  provals necessary to implement facilities  
 16                  removal, including a permit under section  
 17                  404 of the Federal Water Pollution Con-  
 18                  trol Act (33 U.S.C. 1344), notwithstanding  
 19                  subsection (r) of that section; and

20                  (iii) implement facilities removal.

21           (B) STATE AND LOCAL LAWS.—

22                   (i) IN GENERAL.—Except as provided  
 23                  in clause (ii), facilities removal shall be  
 24                  subject to applicable requirements of State  
 25                  and local laws relating to permits and

1 other authorizations, to the extent the re-  
2 quirements are not in conflict with Federal  
3 law, including the determination of the  
4 Secretary under subsection (a) and the  
5 definite plan (including the schedule) for  
6 facilities removal authorized under this  
7 Act.

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

10 (I) the authorities of the States  
11 regarding concurrence with the deter-  
12 mination of the Secretary under sub-  
13 section (a) in accordance with State  
14 law; or

15 (II) the authority of a State pub-  
16 lic utility commission regarding fund-  
17 ing of facilities removal.

18 (iii) JURISDICTION.—The United  
19 States district courts shall have original ju-  
20 risdiction over all claims regarding the con-  
21 sistency of State and local laws regarding  
22 permits and other authorizations, and of  
23 State and local actions pursuant to those  
24 laws, with the definite plan (including the

1 schedule) for facilities removal authorized  
2 under this Act.

3 (C) ACCEPTANCE OF TITLE TO FACILI-  
4 TIES.—

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

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

24 (D) CONTINUED POWER GENERATION.—

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

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

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

17 (ii) AGREEMENT WITH DAM REMOVAL  
 18 ENTITY.—As a condition of transfer of  
 19 title pursuant to subparagraph (C), the  
 20 dam removal entity shall enter into an  
 21 agreement with PacifiCorp that provides  
 22 for continued generation of power in ac-  
 23 cordance with clause (i).

24 (5) LICENSES AND JURISDICTION.—

25 (A) ANNUAL LICENSES.—

1 (i) IN GENERAL.—The Commission  
2 shall issue annual licenses authorizing  
3 PacifiCorp to continue to operate the fa-  
4 cilities until PacifiCorp transfers title to all  
5 of the facilities.

6 (ii) TERMINATION.—The annual li-  
7 censes shall terminate with respect to a fa-  
8 cility on transfer of title for the facility  
9 from PacifiCorp to the dam removal entity.

10 (iii) STAGED REMOVAL.—

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

16 (II) NONTRANSFER OF TITLE.—  
17 Annual license conditions shall remain  
18 in effect with respect to any facility  
19 for which PacifiCorp has not trans-  
20 ferred title to the dam removal entity  
21 to the extent compliance with the an-  
22 nual license conditions are not pre-  
23 vented by the removal of any other fa-  
24 cility.

1 (B) JURISDICTION.—The jurisdiction of  
 2 the Commission under part I of the Federal  
 3 Power Act (16 U.S.C. 792 et seq.) shall termi-  
 4 nate with respect to a facility on the transfer of  
 5 title for the facility from PacifiCorp to the dam  
 6 removal entity.

7 (C) RELICENSING.—

8 (i) IN GENERAL.—The Commission  
 9 shall—

10 (I) stay the proceeding of the  
 11 Commission regarding the pending li-  
 12 cense application of PacifiCorp for  
 13 Project No. 2082 for the period dur-  
 14 ing which the Hydroelectric Settle-  
 15 ment remains in effect; and

16 (II) resume the proceeding and  
 17 proceed to take final action on the  
 18 new license application only if the Hy-  
 19 droelectric Settlement terminates pur-  
 20 suant to section 8.11 of the Hydro-  
 21 electric Settlement.

22 (D) TERMINATION; LIMITATIONS.—If the  
 23 Hydroelectric Settlement is terminated pursu-  
 24 ant to section 8.11 of the Hydroelectric Settle-  
 25 ment, the Commission, in proceedings on the

1 application for relicensing, shall not be bound  
2 by the record or findings of the Secretary relat-  
3 ing to the determination of the Secretary or by  
4 the determination of the Secretary.

5 (c) LIABILITY PROTECTION.—

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

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



1 caused by the release of any material or substance  
 2 (including a hazardous substance).

3 (3) PREEMPTION.—Notwithstanding section  
 4 10(c) of the Federal Power Act (16 U.S.C. 803(c)),  
 5 protection from liability pursuant to this section  
 6 shall preempt the laws of any State to the extent the  
 7 laws are inconsistent with this Act, except that this  
 8 Act shall not limit any otherwise-available immunity,  
 9 privilege, or defense under any other provision of  
 10 law.

11 (4) EFFECTIVE DATE.—Liability protection  
 12 under this subsection shall take effect as the protec-  
 13 tion relates to any particular facilities on transfer of  
 14 title to the facility from PacifiCorp to the dam re-  
 15 moval entity designated by the Secretary under sub-  
 16 section (a)(1)(B).

17 (d) FACILITIES NOT REMOVED.—

18 (1) KENO FACILITY.—

19 (A) TRANSFER.—On notice that the dam  
 20 removal entity is ready to commence removal of  
 21 the J.C. Boyle Dam, the Secretary shall accept  
 22 the transfer of title to the Keno Facility to the  
 23 United States in accordance with section 7.5 of  
 24 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

1 et seq.), regardless of whether PacifiCorp retains  
 2 ownership of Fall Creek or transfers ownership to a  
 3 new licensee.

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

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

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

14 **SEC. 9. ADMINISTRATION AND FUNDING.**

15 (a) AGREEMENTS.—

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

1           (2) TRIBAL PROGRAMS.—Consistent with para-  
2       graph (1) and section 32 of the Restoration Agree-  
3       ment, the Secretaries shall give priority to qualified  
4       Party tribes in awarding grants, contracts, or other  
5       agreements for purposes of implementing the fish-  
6       eries programs described in part III of the Restora-  
7       tion Agreement.

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

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

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

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

20           (c) MANAGEMENT.—

21           (1) IN GENERAL.—The accounts established by  
22      subsection (b) shall be managed in accordance with  
23      this Act and section 14.3 of the Restoration Agree-  
24      ment.

1           (2) TRANSFERS.—Notwithstanding section  
2       1535 of title 31, United States Code, the Secretaries  
3       are authorized to enter into interagency agreements  
4       for the transfer of Federal funds between Federal  
5       programs for the purpose of implementing this Act  
6       and the Settlements.

7       (d) ACCEPTANCE AND EXPENDITURE OF NON-FED-  
8       ERAL FUNDS.—

9           (1) IN GENERAL.—Notwithstanding title 31,  
10      United States Code, the Secretaries may accept and  
11      expend, without further appropriation, non-Federal  
12      funds, in-kind services, or property for purposes of  
13      implementing the Settlement.

14          (2) USE.—The funds and property described in  
15      paragraph (1) may be expended or used, as applica-  
16      ble, only for the purpose for which the funds or  
17      property were provided.

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

21      (f) TERMINATION OF AGREEMENTS.—If any Agree-  
22      ment terminates—

23          (1) any appropriated Federal funds provided to  
24      a party that are unexpended at the time of the ter-

1       mination of the Agreement shall be returned to the  
2       general fund of the Treasury; and

3           (2) any appropriated Federal funds provided to  
4       a party shall be treated as an offset against any  
5       claim for damages by the party arising under the  
6       Agreement.

7       (g) BUDGET.—

8           (1) IN GENERAL.—The budget of the President  
9       shall include such requests as the President con-  
10      siders to be necessary for the level of funding for  
11      each of the Federal agencies to carry out the respon-  
12      sibilities of the agencies under the Settlements.

13          (2) CROSSCUT BUDGET.—Not later than the  
14      date of submission of the budget of the President to  
15      Congress for each fiscal year, the Director of the Of-  
16      fice of Management and Budget shall submit to the  
17      appropriate authorizing and appropriating commit-  
18      tees of the Senate and the House of Representatives  
19      a financial report containing—

20           (A) an interagency budget crosscut report  
21      that displays the budget proposed for each of  
22      the Federal agencies to carry out the Settle-  
23      ments for the upcoming fiscal year, separately  
24      showing funding requested under preexisting

1 authorities and new authorities provided by this  
2 Act;

3 (B) a detailed accounting of all funds re-  
4 ceived and obligated by all Federal agencies re-  
5 sponsible for implementing the Settlements; and

6 (C) a budget for proposed actions to be  
7 carried out in the upcoming fiscal year by the  
8 applicable Federal agencies in the upcoming fis-  
9 cal year.

10 (h) REPORT TO CONGRESS.—Not later than the date  
11 of submission of the budget of the President to Congress  
12 for each fiscal year, the Secretaries shall submit to the  
13 appropriate authorizing committees of the Senate and the  
14 House of Representatives a report that describes—

15 (1) the status of implementation of all of the  
16 Settlements;

17 (2) expenditures during the preceding fiscal  
18 year for implementation of all of the Settlements;

19 (3) the current schedule and funding levels that  
20 are needed to complete implementation of each of  
21 the Settlements;

22 (4) achievements in advancing the purposes of  
23 complying with the Endangered Species Act of 1973  
24 (16 U.S.C. 1531 et seq.) under the Settlements;

1           (5) additional achievements in restoring fish-  
2       eries under the Settlements;

3           (6) the status of water deliveries for the pre-  
4       ceding water year and projections for the upcoming  
5       water year for—

6                 (A) the Klamath Project and irrigators in  
7       the Off-Project Area pursuant to the Agree-  
8       ments; and

9                 (B) the National Wildlife Refuges in areas  
10      covered by the Agreements;

11           (7) the status of achieving the goals of sup-  
12      porting sustainable agriculture production (including  
13      the goal of limiting net power costs for water man-  
14      agement) and general economic development in the  
15      Klamath Basin;

16           (8) the status of achieving the goal of sup-  
17      porting the economic development of the Party  
18      tribes; and

19           (9) the assessment of the Secretaries of the  
20      progress being made toward completing implementa-  
21      tion of all of the Settlements.



1 **SEC. 10. MODIFICATION OF TAX EXEMPTION REQUIRE-**  
2 **MENTS FOR MUTUAL DITCH OR IRRIGATION**  
3 **COMPANIES.**

4 (a) IN GENERAL.—Paragraph (12) of section 501(c)  
5 of the Internal Revenue Code of 1986 is amended by add-  
6 ing at the end the following new subparagraph:

7 “(I) TREATMENT OF MUTUAL DITCH IRRI-  
8 GATION COMPANIES.—

9 “(i) IN GENERAL.—In the case of a  
10 mutual ditch or irrigation company or of a  
11 like organization to a mutual ditch or irri-  
12 gation company, subparagraph (A) shall be  
13 applied without taking into account any in-  
14 come received or accrued—

15 “(I) from the sale, lease, or ex-  
16 change of fee or other interests in real  
17 property, including interests in water,

18 “(II) from the sale or exchange  
19 of stock in a mutual ditch or irriga-  
20 tion company (or in a like organiza-  
21 tion to a mutual ditch or irrigation  
22 company) or contract rights for the  
23 delivery or use of water, or

24 “(III) from the investment of  
25 proceeds from sales, leases, or ex-  
26 changes under subclauses (I) and (II),

except that any income received under subclause (I), (II), or (III) which is distributed or expended for expenses (other than for operations, maintenance, and capital improvements) of the mutual ditch or irrigation company or of the like organization to a mutual ditch or irrigation company (as the case may be) shall be treated as nonmember income in the year in which it is distributed or expended. For purposes of the preceding sentence, expenses (other than for operations, maintenance, and capital improvements) include expenses for the construction of conveyances designed to deliver water outside of the system of the mutual ditch or irrigation company or of the like organization.

“(ii) TREATMENT OF ORGANIZATIONAL GOVERNANCE.—In the case of a mutual ditch or irrigation company or of a like organization to a mutual ditch or irrigation company, where State law provides that such a company or organization may be organized in a manner that permits voting on a basis which is pro rata to share

1 ownership on corporate governance mat-  
2 ters, subparagraph (A) shall be applied  
3 without taking into account whether its  
4 member shareholders have one vote on cor-  
5 porate governance matters per share held  
6 in the corporation. Nothing in this clause  
7 shall be construed to create any inference  
8 about the requirements of this subsection  
9 for companies or organizations not in-  
10 cluded in this clause.”.

11 (b) EFFECTIVE DATE.—The amendment made by  
12 subsection (a) shall apply to taxable years beginning after  
13 the date of the enactment of this Act.

○