To amend the Federal Power Act to modernize and improve the licensing of non-Federal hydropower projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Daines (for himself and Ms. Cantwell) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Federal Power Act to modernize and improve the licensing of non-Federal hydropower projects, 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 “Community and Hy-
5 dropower Improvement Act”.
6 SEC. 2. DEFINITIONS.
7 Section 3 of the Federal Power Act (16 U.S.C. 796)
8 is amended—
9 (1) in paragraph (2)—
(A) by striking “tribal lands embraced within Indian reservations,”; and

(B) by striking “also” and inserting “land and interests in land held in legal title by the United States in trust for the benefit of an Indian Tribe; and”;

(2) in paragraph (5), by inserting “Indian Tribe,” after “State,”; and

(3) by adding at the end the following:

“(30) INDIAN TRIBE.—The term ‘Indian Tribe’ means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published annually pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

“(31) PROJECT EFFECTS.—The term ‘project effects’ has the meaning given the term in paragraph (1) of section 2403(e) of the Energy Policy Act of 1992 (16 U.S.C. 797d(c)).”.

SEC. 3. GENERAL POWERS OF THE FEDERAL ENERGY REGULATORY COMMISSION.

(a) TECHNICAL CORRECTION TO THE ENERGY POLICY ACT OF 2005 AND FEDERAL POWER ACT.—
(1) **Energy Policy Act of 2005.**—

(A) In General.—Section 241(a) of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 674) is amended by striking “after ‘adequate protection and utilization of such reservation.’ at the end of the first proviso” and inserting “after ‘adequate protection and utilization of such reservation’ at the end of the first proviso a period and”.

(B) Execution.—Subparagraph (A) and the amendments made by that subparagraph shall take effect as if included in the Energy Policy Act of 2005 (42 U.S.C. 15801 et seq.), and section 241(a) of that Act (Public Law 1058; 119 Stat. 674) and the amendments made by that section shall be executed as if the amendment made by subparagraph (A) had been included in that Act.

(2) **Federal Power Act.**—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by striking the period after “Federal Energy Regulatory Commission”.

(b) Issuance of Licenses.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended—
(1) by striking the colon each place it appears and inserting a period;

(2) in the fourth proviso, by striking “And pro-
vided further, That upon” and inserting the fol-
lowing:

“(5) Notice; Considerations.—On”;

(3) in the third proviso, by striking “Provided
further, That in case” and inserting the follow-
ing:

“(4) Public Purposes.—In case”;

(4) in the second proviso, by striking “Provided
further, That no license” and inserting the follow-
ing:

“(3) Navigable Waters.—No license”;

(5) in the first proviso, by striking “Provided,
That licenses” and inserting the following:

“(2) Reservation.—

“(A) In general.—Licenses”;

(6) in the first sentence, by striking “(e) To
issue licenses” and inserting the following:

“(e) Issuance of Licenses.—

“(1) In general.—To issue licenses”;

(7) in paragraph (1) (as so designated), by
striking “, or to any State” and inserting “, or to
any State, Indian Tribe,”; 

(8) in paragraph (2)(A) (as so designated)—
(A) by striking the fourth sentence and inserting the following:

“(iii) PROCEDURES.—Not later than 180 days after the date of enactment of the Community and Hydropower Improvement Act, the Secretary of the Interior, Secretary of the Army, the Secretary of Commerce, and the Secretary of Agriculture shall jointly update, by rule, after consultation with the Commission and providing notice and an opportunity for public comment, the procedures for an expedited trial-type hearing under this section and section 18, including the opportunity to undertake discovery and cross-examine witnesses, providing—

“(I) a forum for conditions submitted under section 33(a) to obtain a hearing;

“(II) a requirement that the party raising a disputed issue, or the proponent of an alternative, bears the burden of proof by a preponderance of the evidence;
“(III) and opportunities for all parties to a trial-type hearing to participate in settlement negotiations before and after the hearing.”;

(B) in the third sentence—

(i) by striking “by the relevant resource” and inserting “by the relevant”; and

(ii) by striking “All disputed” and inserting the following:

“(ii) REQUIREMENT.—All disputed”;

(C) in the second sentence—

(i) by inserting “, including alternative conditions submitted under section 33(a), as applicable” after “on any disputed issues of material fact with respect to such conditions”; and

(ii) by striking “The license applicant” and inserting the following:

“(B) HEARING.—

“(i) IN GENERAL.—The license applicant”; and

(D) in the first sentence, by striking “shall deem necessary for the adequate protection and utilization of such reservation” and inserting
the following: “or the applicable Indian Tribe,
as provided in section 37, shall deem—
“(i) necessary for the adequate pro-
tection and utilization of such reservation;
and
“(ii) reasonably related to project ef-
facts on—
“(I) the reservation; and
“(II) the utilization of the res-
ervation”; and
(9) in paragraph (5) (as designated by para-
graph (2)), by inserting “addressing the effects of
hydrologic alterations that may occur over the li-
cense term,” after “the protection of recreational op-
portunities,.”.
(e) PRELIMINARY PERMITS; NOTICE OF APPLICA-
TION.—Section 4(f) of the Federal Power Act (16 U.S.C.
797(f)) is amended, in the proviso, by inserting “, Indian
Tribe,” after “in writing to any State”.
SEC. 4. APPROACH TO ENVIRONMENTAL REVIEW.
(a) IN GENERAL.—Section 2403 of the Energy Policy
Act of 1992 (16 U.S.C. 797d) is amended—
(1) in the section heading, by striking “THIRD
PARTY CONTRACTING BY FERC” and inserting
“APPROACH TO ENVIRONMENTAL REVIEW”;
(2) in subsection (a)—

(A) in the subsection heading, by striking “ENVIRONMENTAL IMPACT STATEMENTS” and inserting “THIRD-PARTY CONTRACTING BY THE FEDERAL ENERGY REGULATORY COMMISSION”; and

(B) in the first sentence, by striking “Where the Federal” and inserting the following:

“(1) ENVIRONMENTAL IMPACT STATEMENTS.— If the Federal”;

(3) in subsection (c), by striking “This section” and inserting “This subsection”;

(4) by redesignating subsections (b) and (c) as paragraphs (2) and (3), respectively, and indenting appropriately; and

(5) by adding at the end the following:

“(b) COOPERATION WITH OTHER AGENCIES.—

“(1) IN GENERAL.—The Federal Energy Regulatory Commission shall request that any Federal, State, or local agency or Indian Tribe with a responsibility under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or comparable State or Tribal law requirements with respect to the licensing of a project cooperate in the preparation of
the environmental assessment or environmental imp-
act statement that will be a record basis for the de-
cisions of the applicable agency or Indian Tribe with
respect to the applicable application.

“(2) EFFECT.—Cooperation under paragraph

(1) shall not impair the right of a cooperating agen-
cy or Indian Tribe to participate as a party in a pro-
ceeding, subject to appropriate protections against
ex parte communications.

“(c) ENVIRONMENTAL EFFECTS.—

“(1) DEFINITIONS.—In this subsection:

“(A) NONRECURRING PAST EFFECT.—The
term ‘nonrecurring past effect’, with respect to
a project, means an environmental effect that—
“(i) may have been caused by—

“(I) the original construction or
development of the project; or

“(II) prior operations of the
project; but

“(ii) has no ongoing effect on environ-
mental resources.

“(B) ONGOING EFFECT.—The term ‘ongo-
ing effect’, with respect to a project, means a
material environmental effect that would not
occur or that would be different, but for the
continued existence, operation, or maintenance
of the project.

“(C) PROJECT.—The term ‘project’ has
the meaning given the term in section 3 of the

“(D) PROJECT EFFECTS.—The term
‘project effects’ means the ongoing effects and
reasonably foreseeable effects of a project.

“(E) REASONABLY FORESEEABLE EF-
FECT.—The term ‘reasonably foreseeable ef-
fect’, with respect to a project, means a mate-
rial future environmental effect that—

“(i)(I) in the case of new construc-
tion, would not occur or would be different,
but for the construction, existence, oper-
ation, or maintenance of the project; or

“(II) in the case of no new construc-
tion, would not occur or would be different,
but for the existence, operation, or mainte-
nance of the project; and

“(ii) the Federal Energy Regulatory
Commission, another agency, or an Indian
Tribe determines, based on substantial evi-
dence—
“(I) is not speculative or improbable; and

“(II) is supported by monitoring, modeling, or other scientific analysis that is generally accepted in the scientific community.

“(2) REQUIRED CONSIDERATIONS.—In carrying out any authorities and responsibilities under part I of the Federal Power Act (16 U.S.C. 792 et seq.) with respect to resources affected by the project, the Federal Energy Regulatory Commission, other agencies, and Indian Tribes—

“(A) shall consider ongoing and reasonably foreseeable effects of any existing dam and other appurtenant project works included as part of an application under part I of the Federal Power Act (16 U.S.C. 792 et seq.);

“(B) shall not consider nonrecurring past effects of the dam and other appurtenant works of the project;

“(C)(i) shall consider whether the project has an adverse effect on any fish species; and

“(ii) if a determination is made in the affirmative under clause (i), shall consider passage and nonpassage strategies for reasonably
mitigating the adverse effect, as appropriate, based on—

“(I) the extent and quality of habitat upstream and downstream of the project, including the feasibility of creating new habitat or improving existing habitat through habitat improvement projects;

“(II) off-site mitigation as provided in section 39 of the Federal Power Act;

“(III) risks to the health of the fish and the river system associated with both passage and nonpassage strategies;

“(IV) costs of construction, operation, and maintenance associated with both passage and nonpassage strategies; and

“(V) such other biological, operational, and economic factors determined to be relevant by the Federal Energy Regulatory Commission, other agencies, and Indian Tribes;

“(D) shall evaluate reasonably foreseeable project effects on hydrologic patterns, other aspects of environmental quality and developmental uses during the term of the license, based on fieldwork investigations, literature re-
views, resource monitoring, technical models, or other appropriate methodologies, consistent with generally accepted scientific practices;

“(E) shall—

“(i) for purposes of deploying a model under this subsection, encourage the preferential use of open-sourced technical models, subject to the limitation that nothing in this clause prohibits the use of a proprietary model or proprietary data; and

“(ii) for purposes of using or otherwise relying on a model or data under this subsection—

“(I) ensure the validity of the model or data through validation analysis entered into the record; and

“(II) provide for the model, including data and other modeling inputs and outputs, to be reasonably available for evaluation, operation, reporting, and review by licensing participants, subject to appropriate protections relating to—

“(aa) duplication or public disclosure of intellectual property
associated with the model, such
as software code or algorithms;
and

“(bb) the public disclosure
of proprietary or other data that
would reveal trade secrets, other
information that is competitively
sensitive, or critical electric infra-
structure information (as defined
in section 215A(a) of the Federal
Power Act (16 U.S.C. 824o–
1(a)));

“(F) shall consider reasonably foreseeable
effects of hydrologic alterations over the license
term in the region in which the project is lo-
cated, including any change in project effects
due to the hydrologic alterations and the poten-
tial of the project to contribute to the protec-
tion and enhancement of the beneficial public
uses identified in paragraph (5) of section 4(e)
and section 10(a)(1) of the Federal Power Act
(16 U.S.C. 797(e), 803(a)(1));

“(G) shall ensure that any Federal require-
ments applicable in the project area under any
applicable Federal treaty with an Indian Tribe,
as determined by a court of competent jurisdiction, are met;

“(H) shall consider innovative solutions and emerging technologies as a means of meeting responsibilities and authorities under part I of the Federal Power Act (16 U.S.C. 792 et seq.) in a cost-effective manner; and

“(I) shall consider, based on an analysis prepared by the Federal Energy Regulatory Commission, impacts of the determination or decision of the Federal Energy Regulatory Commission, other agency, or Indian Tribe, as applicable, on—

“(i) grid reliability;

“(ii) any increase in the price of energy, power, and essential grid services to consumers of power; and

“(iii) the ability to integrate intermittent generation resources.

“(3) TECHNICAL CONFERENCES.—Not later than 180 days after the date of enactment of the Community and Hydropower Improvement Act and periodically thereafter, as determined to be appropriate by the Federal Energy Regulatory Commission, the Federal Energy Regulatory Commission, in
consultation with the Secretary, shall convene a technical conference to consider new technologies and methodologies that may be available and generally accepted in the scientific community or by agencies that manage water resources for power production, water supply, or flood control in the applicable region to quantify the considerations required under paragraph (2)(F) within an acceptable calculated range in licensing proceedings under part I of the Federal Power Act (16 U.S.C. 792 et seq.).

“(d) Citations to Record.—In carrying out authorities and responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and sections 4(e), 10, 18, 33, and 37 of the Federal Power Act (16 U.S.C. 797(e), 803, 811, 823d), the Federal Energy Regulatory Commission and other agencies and Indian Tribes shall—

“(1) cite to the specific parts of documents and other evidence that are the basis for the findings on issues of material fact for which the record contains inconsistent or conflicting information; and

“(2) state the basis for relying on the cited evidence for the purpose of making the findings on issues of material fact.”.
(b) Clerical Amendment.—The table of contents for the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 2781) is amended by striking the item relating to section 2403 and inserting the following:

“Sec. 2403. Approach to environmental review.”.

SEC. 5. LICENSE DURATION, CONDITIONS, REVOCATION, ALTERATION, OR SURRENDER.

(a) Voluntary License Surrender Procedures.—Section 6 of the Federal Power Act (16 U.S.C. 799) is amended—

(1) by striking the section designation and all that follows through “Licenses under” in the first sentence and inserting the following:

“SEC. 6. LICENSE DURATION, CONDITIONS, REVOCATION, ALTERATION, OR SURRENDER.

“(a) In General.—Licenses under”; and

(2) by adding at the end the following:

“(b) Procedures for Surrender of License.—

“(1) In General.—Not later than 1 year after the date of enactment of this subsection, the Commission, after providing for public notice and comment, shall promulgate regulations establishing procedures for license surrender proceedings initiated by a licensee.

“(2) Inclusions.—The regulations promulgated under paragraph (1) shall include—
“(A) a requirement for a licensee seeking
a license surrender to prepare an initial public
report that describes and analyzes—

“(i) the surrender proposal;

“(ii) any alternatives considered for the disposition of project works;

“(iii) any impacts of the proposed license surrender on—

“(I) grid reliability;

“(II) any increase in the price of energy, power, and essential grid services to consumers of power; and

“(III) the ability to integrate intermittent generating resources; and

“(iv) any benefits of the proposed license surrender to—

“(I) surrounding communities;

and

“(II) the natural environment;

“(B) opportunities for the public—

“(i) to comment on—

“(I) the initial public report; and

“(II) the surrender application;

“(ii) to propose other alternatives for the disposition of project works for consid-
eration by the Commission and licensee;
and
“(iii) to otherwise participate in the surrender proceeding;
“(C) requirements for the licensee to consult with applicable Federal and State resource agencies, Indian Tribes, and interested members of the public before filing the surrender application with the Commission;
“(D) procedures to develop a schedule for each surrender proceeding; and
“(E) procedures to expedite the surrender proceeding for a license that does not—
“(i) present complex resource issues;
“(ii) involve significant controversy or public opposition; or
“(iii) require other major regulatory approvals.”.

(b) Effect on Federal Dams.—

(1) In general.—Nothing in this section (including an amendment made by this section) affects the continued operation of any federally owned dam, including the Federal dams on the Lower Snake River operated by the Corps of Engineers.
(2) No precedent.—No action carried out under section 6 of the Federal Power Act (16 U.S.C. 799) establishes a precedent for an action relating to a dam referred to in paragraph (1).

SEC. 6. CONDITIONS OF LICENSE; REPORT REQUIREMENT.

(a) Modification of plans; factors considered to secure adaptability of project; recommendations for proposed terms and conditions.—Section 10(a)(2) of the Federal Power Act (16 U.S.C. 803(a)(2)) is amended by adding at the end the following:

“(D) Current and reasonably foreseeable future economic conditions material to the value of the project, over the term of the license, with respect to—

“(i) providing revenues from sales of power, generation capacity, and ancillary services; and

“(ii) other uses of the project.

“(E) Methods to collect and, as appropriate, publicly report hydrologic data relating to the operations of the project during a time interval appropriate for effective management of any affected waterways.”.
(b) **Annual Charges Payable by Licensees; Maximum Rates; Application; Review and Report to Congress.**—Section 10(e) of the Federal Power Act (16 U.S.C. 803(e)) is amended—

(1) in paragraph (1), in the first sentence, by inserting “, in accordance with paragraph (5)” after “for purposes of administering their responsibilities under this part”; and

(2) by adding at the end the following:

“(5) In fixing reasonable annual charges under paragraph (1) for purposes of administering the responsibilities of the United States under this part, the Commission—

“(A) notwithstanding section 9701 of title 31, United States Code, section 3401 of the Omnibus Budget Reconciliation Act of 1986 (42 U.S.C. 7178), or any other provision of Federal law relating to annual charges fixed under paragraph (1), shall ensure that all administrative costs of the United States, other than the administrative costs of the Commission, do not exceed the direct costs incurred by any department of the Federal Government or any agency, bureau, office, or other subdivision of the applicable department, in the participa-
tion of the applicable department in license proceedings under this part;

“(B) shall not include costs of any department of the Federal Government or any agency, bureau, office, or other subdivision of the applicable department that are reimbursed directly to the applicable department or subdivision of the applicable department by the licensee or license applicant;

“(C) shall include costs of a third-party contractor retained by any department of the Federal Government or any agency, bureau, office, or other subdivision of the applicable department that are incurred in supporting the applicable department in administering the responsibilities of the applicable department under this part, if the costs—

“(i) are not otherwise reimbursed directly to the department or subdivision of the department, as provided in subparagraph (B); and

“(ii) meet the requirements of subparagraph (D);

“(D) shall provide a reasonable opportunity for public review and comment on the de-
terminations of the Commission under subparagraphs (A) through (C) before issuing any bills for annual charges for purposes of the administration of this part under paragraph (1); and

“(E) shall—

“(i) respond to all comments received under subparagraph (D) before issuing any bills for annual charges for the administrative costs of the United States under this part under paragraph (1); and

“(ii) make any adjustments to the billing determinations in response to the comments received under subparagraph (D), as appropriate.”.

(c) Fish and Wildlife Protection, Mitigation, and Enhancement; Consideration of Recommendations; Findings.—Section 10(j) of the Federal Power Act (16 U.S.C. 803(j)) is amended—

(1) in paragraph (1), by adding at the end the following: “For any project that may affect fish and wildlife resources protected under a Federal treaty with an Indian Tribe, as determined by a court of competent jurisdiction, the conditions under this subsection shall be based on recommendations received from the applicable Indian Tribe.”; and
(2) in paragraph (2)—

(A) in the first sentence, by inserting “and Indian Tribes” after “and statutory responsibilities of such agencies”; and

(B) in the second sentence, in the matter preceding subparagraph (A), by inserting “or Indian Tribe” after “a recommendation of any such agency”.

(d) Supporting Statement and Use of Existing Studies.—Section 10 of the Federal Power Act (16 U.S.C. 803) is amended by adding at the end the following:

“(k) Supporting Statement for Certain License Conditions.—

“(1) In general.—In any case in which the applicable Secretary exercises authority to submit a license condition to the Commission for inclusion in the license under section 4(e)(2), 18, 33, or 37 or through authority reserved in the license under 1 or more of those sections, the applicable Secretary shall include with the submitted condition or prescription a written statement—

“(A) demonstrating that the applicable Secretary considered alternatives to the submitted condition;
“(B) providing a scientific and technical rationale for—

“(i) the condition submitted; and

“(ii) any alternatives considered but not adopted; and

“(C) identifying specific facts relied on in the record.

“(2) Studies, data, and other factual information.—Along with the written statement included under paragraph (1), the applicable Secretary shall submit any studies, data, and other factual information relied on by the applicable Secretary that is relevant to the decision of the applicable Secretary.

“(l) Use of Existing Studies.—

“(1) In general.—To the extent reasonably practicable, the Commission and other Federal and State agencies with responsibilities under this part shall—

“(A) use relevant existing studies, monitoring information, and data; and

“(B) avoid duplicating current, existing studies that are applicable to the relevant project.
“(2) Written Statement.—In requiring any new study or collection of information, the Commission and other Federal and State agencies and Indian Tribes with responsibilities under this part shall prepare a written statement that—

“(A) explains why the new study or other information is necessary to support the decisionmaking relative to the responsibilities of the applicable agency under this part;

“(B) identifies how existing information reasonably available to the applicable agency, including any monitoring information collected by the licensee during the existing license term, is inadequate to support the decisionmaking of the applicable agency; and

“(C) explains the manner in which the information produced by the required new study or other information supports the cost of producing the information.

“(3) Requirement.—In modifying or denying a request to require a new study or collection of information that is submitted to the Commission by another agency with responsibilities under this part, the Commission shall include in a written statement of the Commission an explanation of the manner in
which the Commission considers the modification or
denial to be consistent with—

“(A) the responsibilities of the requestor to
compile a record under applicable law; and

“(B) the obligation of the Commission and
other agencies to undertake to develop a joint
study plan pursuant to section 38(c)(2).”.

(c) REPORT.—Section 10 of the Federal Power Act
(16 U.S.C. 803) (as amended by subsection (d)) is amend-
ed by adding at the end the following:

“(m) REPORT.—Not later than 2 years after the date
of enactment of this subsection, and every 5 years there-
after, the Commission shall submit to the Committee on
Energy and Natural Resources of the Senate and the
Committee on Energy and Commerce of the House of
Representatives a report, prepared in consultation with
each affected licensee or exemptee under this part, that—

“(1) identifies any project or individual unit of
development that—

“(A) is licensed, or exempted from the li-
cense requirements, under this part; and

“(B) has been continually out-of-service for
not fewer than 5 years preceding the report;

“(2) explains the reason why each project or de-
velopment has been out-of-service;
“(3) identifies any plans of the licensee and the Commission for the rehabilitation or other disposition of the project or development; and

“(4) describes the anticipated timelines and requirements of the Commission for the rehabilitation or other final disposition of the project or development.”.

SEC. 7. DISPOSITION OF CHARGES ARISING FROM LICENSES.

Section 17 of the Federal Power Act (16 U.S.C. 810) is amended—

(1) by striking the section designation and all that follows through “(a) All proceeds” and inserting the following:

“SEC. 17. DISPOSITION OF CHARGES ARISING FROM LICENSES.

“(a) RECEIPTS FROM CHARGES.—All proceeds”;

(2) in subsection (a)—

(A) in the second sentence—

(i) by striking “be paid into the Treasury of the United States and credited to ‘Miscellaneous receipts’” and inserting “be deposited in the Licensing Administration Reimbursement Fund established by subsection (c)”;

(28)
(ii) by striking “and 50 per centum of the charges arising from all other licenses is hereunder is hereby reserved” and inserting “and, of the charges from all other licenses, 50 percent is reserved”; and

(iii) by striking “navigable waters of the United States” and inserting “navigable waters of the United States, and 37.5 percent shall be deposited in the Licensing Administration Reimbursement Fund established by subsection (c)”; and

(B) in the third sentence, by striking “into the Treasury of the United States and credited to miscellaneous receipts” and inserting “to the applicable department, or any agency, bureau, office, or other subdivision of the applicable department, in the amounts established by the Commission under section 10(e)(5) for the department, or agency, bureau, office, or other subdivision of the applicable department”;  

(3) in subsection (b), by striking the subsection designation and all that follows through “In case of” and inserting the following:

“(b) DELINQUENCY.—In case of”; and

(4) by adding at the end the following:
“(c) LICENSING ADMINISTRATION REIMBURSEMENT FUND.—

“(1) IN GENERAL.—There is established within the Treasury of the United States a fund, to be known as the ‘Licensing Administration Reimbursement Fund’ (referred to in this subsection as the ‘Fund’), to be administered by the Commission.

“(2) PURPOSE.—The purpose of the Fund is to reimburse Indian Tribes, State fish and wildlife agencies, and other State natural and cultural resource agencies for any administrative costs of carrying out the responsibilities of Indian Tribes or the agencies under this part.

“(3) CONTENTS.—The Fund shall consist of any amounts deposited in the Fund under subsection (a).

“(4) REQUIREMENT.—Amounts in the Fund shall be available to Indian Tribes, State fish and wildlife agencies, and other State natural and cultural resource agencies that document the participation of the Indian Tribe or agency in license proceedings for purposes of carrying out the responsibilities of the Indian Tribe or agency under this part.

“(5) LIMITATION.—Amounts in the Fund shall not be available for any costs that are otherwise re-
imbursable to an Indian Tribe, a State fish and
wildlife agency, or a State natural and cultural re-
source agency.

“(6) APPLICATION; DISTRIBUTION.—The Com-
mission shall establish standards governing the ap-
lication for, and distribution of, amounts from the
Fund.

“(7) RULEMAKING.—Not later than 90 days
after the date of enactment of this subsection, the
Commission shall promulgate regulations, after pro-
viding public notice and an opportunity for com-
ment, that establish the standards and process for
the distribution and use of amounts from the
Fund.”.

SEC. 8. OPERATION OF NAVIGATION FACILITIES; RULES
AND REGULATIONS; PENALTIES.

Section 18 of the Federal Power Act (16 U.S.C. 811)
is amended—

(1) in the first sentence, by inserting “to ad-
dress project effects and other relevant factors” be-
fore the period at the end;

(2) in the second sentence, by inserting “, in-
cluding alternative prescriptions submitted under
section 33(b), as applicable,” after “on any disputed
issues of material fact with respect to such fishways’’;

(3) in the third sentence, by striking “relevant resource” and inserting “resource”; and

(4) by striking the fourth sentence and inserting the following: “Not later than 180 days after the date of enactment of the Community and Hydropower Improvement Act, the Secretary of the Interior, the Secretary of the Army, the Secretary of Commerce, and the Secretary of Agriculture shall update jointly, by rule, after consultation with the Commission and providing notice and opportunity for public comment, the procedures for an expedited trial-type hearing under this section and section 4(e)(2), including the opportunity to undertake discovery and cross-examine witnesses, providing a forum for conditions submitted under section 33(b) to obtain a hearing, a requirement that the party raising a disputed issue, or the proponent of an alternative, bears the burden of proof by a preponderance of the evidence, and opportunities for all parties to a trial-type hearing to participate in settlement negotiations before and after the hearing.’’.
SEC. 9. CONDUIT HYDROELECTRIC FACILITIES.

Section 30(c) of the Federal Power Act (16 U.S.C. 823a(c)) is amended—

(1) in the matter preceding paragraph (1), by inserting “, affected Indian Tribes,” after “consult with the United States Fish and Wildlife Service”;

(2) in paragraph (1)—

(A) by striking “Fish and Wildlife Service National Marine Fisheries Service and the State agency” and inserting “United States Fish and Wildlife Service, National Marine Fisheries Service, and the State agency”; and

(B) by striking “Act, and” and inserting “Act; and”; and

(3) in paragraph (2), by striking “insure” and inserting “ensure”.

SEC. 10. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

(a) ALTERNATIVE CONDITIONS.—Section 33(a) of the Federal Power Act (16 U.S.C. 823d(a)) is amended—

(1) in paragraph (1)—

(A) by inserting “or an Indian Tribe, as provided in section 37,” after “(referred to in this subsection as the ‘Secretary’)”; and

(B) by striking “the first proviso of section 4(e)” and inserting “section 4(e)(2)”;
(A) in the matter preceding subparagraph (A), by striking “the first proviso of section 4(e)” and inserting “section 4(e)(2)”; (B) by striking “the Secretary” each place it appears and inserting “the Secretary or Indian Tribe”; and (C) by striking subparagraphs (A) and (B) and inserting the following:

“(A) would result in improved protection or utilization of the reservation at no additional cost to the project, including the value of foregone power or energy as compared to the condition initially deemed to be necessary by the Secretary or applicable Indian Tribe; or

“(B) would—

“(i) be no less protective of the reservation than the condition initially deemed to be necessary by the Secretary or applicable Indian Tribe; and

“(ii) as compared to the condition initially deemed to be necessary by the Secretary or applicable Indian Tribe—

“(I) cost significantly less to implement; or
“(II) result in improved operation of the project works for electricity production.”;

(3) in paragraph (3), by striking “the Secretary” each place it appears and inserting “the Secretary or Indian Tribe”;

(4) by redesignating paragraph (5) as paragraph (6);

(5) by striking paragraph (4) and inserting the following:

“(4) PUBLIC RECORD.—The Secretary or applicable Indian Tribe shall submit into the public record of the Commission proceeding with any condition under section 4(e)(2) or alternative condition accepted by the Secretary or applicable Indian Tribe under this subsection a detailed analysis establishing and explaining how the condition adopted by the Secretary or applicable Indian Tribe meets the criteria under paragraph (2), as compared to—

“(A) the condition initially determined to be necessary by the Secretary or applicable Indian Tribe; and

“(B) each alternative condition proposed by the license applicant or any other party to the license proceeding, as provided in paragraph
(1), that is not adopted by the Secretary or applicable Indian Tribe.

“(5) Written statement.—

“(A) In general.—Any submission by the Secretary under paragraph (4) shall include a written statement demonstrating that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not adopted on—

“(i) energy supply, distribution, cost, and use;

“(ii) flood control;

“(iii) navigation;

“(iv) water supply;

“(v) hydrologic alterations that may occur over the license term;

“(vi) air quality; and

“(vii) the preservation of other aspects of environmental quality.

“(B) Basis.—The written statement included under subparagraph (A) shall be based on information available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.
“(C) STUDIES; DATA.—Along with the written statement included under subparagraph (A), the Secretary shall submit any studies, data, and other factual information available to the Secretary and relevant to the determination of the Secretary under paragraph (2).”; and

(6) in paragraph (6) (as so redesignated)—

(A) in the first sentence, by striking “the Secretary’s final condition” and inserting “the final condition of the Secretary or applicable Indian Tribe”;

(B) in the second sentence, by striking “the Secretary” and inserting “the Secretary or applicable Indian Tribe”;  

(C) in the third sentence, by striking “Secretary” each place it appears and inserting “Secretary or applicable Tribe”; and

(D) in the fourth sentence—

(i) by striking “The Secretary” and inserting “The Secretary or applicable Indian Tribe”; and

(ii) by striking “Secretary’s final written determination” and inserting “final written determination of the Secretary or applicable Indian Tribe”.
(b) ALTERNATIVE PRESCRIPTIONS.—Section 33(b) of the Federal Power Act (16 U.S.C. 823d(b)) is amended—

(1) in paragraph (1), by striking “Secretary of Commerce” and inserting “Secretary of Commerce, as applicable (referred to in this subsection as the ‘Secretary concerned’),”;

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A)—

(i) by striking “of the Interior or the Secretary of Commerce, as appropriate,” and inserting “concerned”;

(ii) by striking “of the appropriate department” and inserting “concerned”; and

(iii) by striking “to the Secretary” and inserting “to the Secretary concerned”; and

(B) by striking subparagraphs (A) and (B) and inserting the following:

“(A) would result in improved protection for fish at no additional cost to the project, including the value of foregone power or energy, as compared to the fishway initially prescribed by the Secretary concerned; or
“(B) would—

“(i) be no less protective than the fishway initially prescribed by the Secretary concerned; and

“(ii) as compared to the fishway initially prescribed by the Secretary concerned—

“(I) cost significantly less to implement; or

“(II) result in improved operation of the project works for electricity production.”;

(3) in paragraph (3), by striking “the Secretary” each place it appears and inserting “the Secretary concerned”; 

(4) by redesignating paragraph (5) as paragraph (6);

(5) by striking paragraph (4) and inserting the following:

“(4) PUBLIC RECORD.—The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription accepted by the Secretary concerned under this subsection a detailed analysis establishing and explaining how the pre-
scription adopted by the Secretary concerned meets
the criteria under paragraph (2), as compared to—

“(A) the prescription initially prescribed by
the Secretary concerned; and

“(B) each alternative proposed by the li-
cense applicant or any other party to the license
proceeding, as provided in paragraph (1), that
is not adopted by the Secretary concerned.

“(5) WRITTEN STATEMENT.—

“(A) IN GENERAL.—Any submission by
the Secretary concerned under paragraph (4)
shall include a written statement demonstrating
that the Secretary concerned gave equal consid-
eration to the effects of the prescription adopt-
ed and alternatives not adopted on—

“(i) energy supply, distribution, cost,
and use;

“(ii) flood control;

“(iii) navigation;

“(iv) water supply;

“(v) hydrologic alterations that may
occur over the license term;

“(vi) air quality; and

“(vii) the preservation of other as-
pects of environmental quality.
“(B) Basis.—The written statement included under subparagraph (A) shall be based on information available to the Secretary concerned, including information voluntarily provided in a timely manner by the applicant and others.

“(C) Studies; data.—Along with the written statement included under subparagraph (A), the Secretary concerned shall submit any studies, data, and other factual information available to the Secretary concerned and relevant to the determination of the Secretary concerned under paragraph (2).”; and

(6) in paragraph (6) (as so redesignated)—

(A) in the first sentence, by striking “the Secretary’s final prescription” and inserting “the final prescription of the Secretary concerned”;

(B) in the second sentence, by striking “the Secretary” and inserting “the Secretary concerned”;

(C) in the third sentence, by striking “Secretary” each place it appears and inserting “Secretary concerned”; and

(D) in the fourth sentence—
(i) by striking “The Secretary” and inserting “The Secretary concerned”; and
(ii) by striking “Secretary’s final written determination” and inserting “final written determination of the Secretary concerned”.

SEC. 11. PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NONPOWERED DAMS.

Section 34 of the Federal Power Act (16 U.S.C. 823e) is amended—

(1) by striking subsection (c);

(2) by redesignating subsections (a), (b), (d), (e), and (f) as subsections (b), (c), (g), (a), and (h), respectively, and moving the subsections so as to appear in alphabetical order;

(3) in subsection (a) (as so redesignated)—

(A) in paragraph (1)—

(i) in subparagraph (D), by striking “and” at the end;

(ii) in subparagraph (E), by striking the period at the end and inserting “; and”;

(iii) by adding at the end the following:
“(F) the Commission determines, after considering the notification of intent submitted by the applicant under subsection (e)(1), any supporting information, and comments received under subsection (e)(2)(A), and any consultation under subsection (e)(2)(B), that an expeditious licensing decision under this section is reasonably practicable, taking into consideration, as appropriate—

“(i) whether any applicable environmental or dam safety considerations demonstrate that the qualifying nonpowered dam associated with the qualifying facility is likely to be removed during the term of a license;

“(ii) whether existing information establishes that the qualifying nonpowered dam associated with the qualifying facility will no longer serve an existing public purpose during the term of a license;

“(iii) whether any adverse resource effect associated with the qualifying nonpowered dam, including lack of fish passage, is—

“(I) presently unmitigated; and
“(II) likely to remain unmitigated under future operation;

“(iv) whether the licensing of the facility by the Commission has the potential to mitigate or enhance environmental conditions associated with the qualifying non-powered dam associated with the qualifying facility, including any preliminary protection, mitigation, and enhancement measures identified by the applicant;

“(v) whether the resource issues likely to be involved in the licensing process are unusual or complex; and

“(vi) whether information submitted with, or referenced in, the notification of intent is adequate to support the development of the license application.”;

(B) by striking paragraph (2) and inserting the following:

“(2) QUALIFYING FACILITY.—

“(A) IN GENERAL.—The term ‘qualifying facility’ means a facility that—

“(i) includes only—

“(I) the power house, power tunnel, penstocks, and tailrace;
“(II) any other water conveyance infrastructure connected directly to the powerhouse;

“(III) each primary line transmitting power from the facility to the point of junction with the distribution system or the interconnected primary transmission system; and

“(IV) any other new, miscellaneous structures used and useful in connection with the facility; and

“(ii) is determined under this section to meet the qualifying criteria.

“(B) EXCLUSIONS.—Notwithstanding subparagraph (A)(i)(IV) and section 3(11), the term ‘qualifying facility’ does not include, with respect to the complete unit of improvement or development of a facility described in subparagraph (A)—

“(i) a dam or appurtenant work or structure (including a navigation structure);

“(ii) a dike;

“(iii) any other water retention or diversion infrastructure;
“(iv) an impoundment;
“(v) a shoreline;
“(vi) an access road; or
“(vii) any recreational or other infra-
structure associated with an existing non-
powered dam or impoundment.”; and
(C) in paragraph (3)—
(i) in the matter preceding subpara-
graph (A), by inserting “Federal or non-
Federal” after “means any”; and
(ii) by striking subparagraph (C) and
inserting the following:
“(C) that—
“(i) for a non-Federal dam—
“(I) as of October 23, 2018, is
not generating electricity using any
hydropower-generating facility that
is—
“(aa) licensed under this
part; or
“(bb) exempted from the li-
cense requirements contained in
this part; and
“(II) is regulated by an estab-
lished dam safety program of the
State in which the non-Federal dam is located; or

“(ii) for a Federal dam—

“(I) is available for non-Federal power development; and

“(II)(aa) is not equipped with power generating equipment; or

“(bb) has available incremental generation potential for non-Federal power development.”;

(4) in subsection (b) (as so redesignated)—

(A) in the subsection heading, by inserting “Certain” after “Process for”;

(B) in paragraph (1)—

(i) by striking “As provided in this section, the Commission may issue and amend” and inserting “The Commission may issue”; and

(ii) by inserting “in accordance with this section” before the period at the end;

(C) by striking paragraph (2) and inserting the following:

“(2) UPDATING REGULATIONS.—Not later than 180 days after the date of enactment of the Commu-
nity and Hydropower Improvement Act, after con-
ulting with the interagency task force under para-
agraph (3) and providing notice and an opportunity
for public comment, the Commission shall update
regulations of the Commission for issuing licenses
for qualifying facilities under this section.”;

(D) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking “(A) In estab-
lishing the expedited process” and in-
serting the following:

“(A) IN GENERAL.—In updating regu-
lations”; and

(II) by striking “and Indian
tribes” and inserting “, Indian Tribes,
and the public”; and

(ii) by striking subparagraph (B) and
inserting the following:

“(B) WORKSHOPS AND MEETINGS.—Be-
fore issuing any proposed rule for public com-
ment pursuant to paragraph (2), the Commis-
sion shall convene workshops and other meet-
ings with the interagency task force under this
paragraph to develop procedures that allow the
Commission and appropriate Federal and State
agencies and Indian Tribes to exercise authority in accordance with subsection (d).”; and

(E) by striking paragraph (4) and inserting the following:

“(4) DEADLINE.—The Commission shall issue a final decision regarding an application for a license for a qualifying facility submitted under subsection (e)(3) not later than 2 years after the date on which the Commission determines under subsection (e)(2) that the proposed hydroelectric facility that is the subject of the application is a qualifying facility.”;

(5) in subsection (e) (as so redesignated)—

(A) by striking paragraph (2);

(B) by redesignating paragraph (1) as paragraph (2);

(C) by inserting before paragraph (2) (as so redesignated) the following:

“(1) APPLICABILITY OF SAFETY REGULATIONS.—

“(A) IN GENERAL.—The rules and regulations of the Commission relating to the protection of life, health, and property shall apply to a qualifying facility licensed under this section, only with respect to the potential effects of the construction, operation, and maintenance of the
qualifying facility on the safety of the applicable qualifying nonpowered dam.

“(B) STATE REGULATIONS.—For any qualifying facility licensed at a non-Federal qualifying nonpowered dam, the applicable dam safety rules and regulations of the State in which the qualifying nonpowered dam is located shall apply to—

“(i) the qualifying nonpowered dam; and

“(ii) any infrastructure associated with the qualifying nonpowered dam that is not a part of the qualifying facility that is the subject of the license.”; and

(D) by inserting after paragraph (2) (as so redesignated) the following:

“(3) REQUIREMENTS.—Before issuing any license for a qualifying facility at a non-Federal qualifying nonpowered dam, the Commission shall—

“(A) ensure that the qualifying nonpowered dam, and each other structure associated with the qualifying facility, is or will be consistent with the applicable dam safety standards of the Commission; and
“(B) consult with the applicable dam regulator in the State in which the qualifying facility is located to ensure appropriate continued oversight of the qualifying nonpowered dam associated with the qualifying facility, and associated structures, over the term of the license.”;

(6) by inserting after subsection (c) (as so redesignated) the following:

“(d) Storage, Release, and Flow Operations.—

“(1) Limitations.—

“(A) Obligations.—Notwithstanding any other legal requirement pertaining to a qualifying facility licensed under this section, the Commission, Federal and State agencies, and Indian Tribes shall not impose any obligation in the licensing of the qualifying facility that would interfere with, or materially change or affect in any way, the storage, release, or flow operations of the qualifying nonpowered dam associated with the qualifying facility, other than the routing of release or flow operations through the qualifying facility.

“(B) Interference.—Notwithstanding any other legal requirement pertaining to a
qualifying facility licensed under this section, the licensing of a qualifying facility under this section by the Commission shall not interfere with, or materially change or affect in any way, any other Federal, State, or Tribal authority pertaining to the storage, release, or flow operations applicable to the qualifying nonpowered dam associated with the qualifying facility, other than the routing of release or flow operations through the qualifying facility.

“(2) CONDITION IN LICENSE.—The Commission shall include in any license issued pursuant to this section a condition prohibiting the licensee from materially changing the storage, release, or flow operations of a qualifying nonpowered dam associated with the qualifying facility for the sole purpose of improving the power value of the qualifying facility.

“(e) EXPEDITED PROCESS.—

“(1) NOTIFICATION OF INTENT AND SUPPORTING INFORMATION.—The applicant for a qualifying facility shall commence the licensing process under this section by submitting to the Commission a notification of intent to file an application for a license, together with supporting information, which
shall inform the determination of the Commission under paragraph (2).

“(2) COMMISSION DETERMINATION.—

“(A) IN GENERAL.—Not later than 90 days after the date on which an applicant submits to the Commission a notification of intent under paragraph (1), the Commission, after providing notice and an opportunity for public comment, shall—

“(i) determine whether the proposed hydroelectric facility is a qualifying facility under this section; and

“(ii) include in a determination under clause (i) information, including analyses supported by information in the public record, relating to the factual basis for the determination.

“(B) CONSULTATION.—In making a determination under subparagraph (A) with respect to a proposed facility, the Commission shall consult with Federal and State agencies and Indian Tribes with authority over the facility regarding any qualifying criteria that may disqualify the facility from the expedited process under this section.
“(C) Resolution.—If the Commission determines under subparagraph (B) that any qualifying criteria potentially disqualify a proposed facility from the expedited process under this section, the Commission shall—

“(i) seek to resolve any issues in advance of issuing a determination regarding whether the proposed facility is a qualifying facility under this paragraph; and

“(ii) include in a determination under clause (i) information relevant to efforts to resolve the issues.

“(3) Qualifying Facility Applications.—

“(A) In General.—After submitting a notification of intent under paragraph (1), an applicant for a qualifying facility shall submit to the Commission an application for a license under this section.

“(B) Inclusions.—An application under subparagraph (A) shall include a description of each protection, mitigation, and enhancement measure proposed to be carried out in order for the applicable qualifying facility to receive a license from the Commission, in accordance with subsection (f).
“(C) DEADLINE FOR SUBMISSION.—An application under this paragraph shall be submitted to the Commission not later than the later of—

“(i) the date that is 30 days after the close of a single season of studies conducted in support of the application; and

“(ii) the date that is 1 year after the date on which a determination of the Commission is provided under paragraph (2).

“(f) REQUIREMENTS.—In determining whether to approve an application for a license for a qualifying facility under subsection (e)(3), in accordance with the deadline described in subsection (b)(4), the Commission, in consultation with applicable Federal and State resource agencies and Indian Tribes with regulatory responsibility for the qualifying facility, shall—

“(1)(A) use relevant existing studies, monitoring information, and data that are applicable to the relevant qualifying facility, in accordance with section 10(l);

“(B) avoid duplicating current, existing studies; and

“(C) design any new studies and information requirements to be consistent with the ability of the
Commission to meet the licensing deadline under subsection (b)(4);

“(2) consider whether obligations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) may be met through—

“(A) preparing an environmental assessment; or

“(B) supplementing a previously prepared environmental assessment or environmental impact statement;

“(3) develop a licensing process that reduces administrative burdens on resource agencies, Indian Tribes, the applicant, and the public by avoiding unnecessary paperwork, meetings, and other process obligations, subject to the condition that nothing in this paragraph eliminates any applicable consultation requirement under Federal or State law (including regulations);

“(4) exercise authorities commensurate with the limited unit of development and improvement for a qualifying facility described in subsection (a)(2)(A)(i), recognizing—

“(A) the existence of infrastructure at the time of the license application; and
“(B) that ongoing operations of existing infrastructure, including water releases, will be materially unchanged as a result of the development and operation of the qualifying facility, in accordance with subsection (d); and

“(5) consider a set of standard license terms and conditions that generally would apply to all qualifying facilities licensed under this section, based on common technical considerations and environmental effects, subject to the condition that the development of standard license terms and conditions shall not limit the imposition of facility-specific conditions for any particular qualifying facility.”; and

(7) in subsection (h) (as so redesignated)—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(3) any applicable State or Tribal law relating to a qualifying nonpowered dam, dike, conduit, impoundment, or shoreline, or any land or infrastructure associated with such qualifying nonpowered dam, that is not a component of a license issued pursuant to this section, including such a law relat-
ing to dam safety, property ownership and control, public access and safety, or the appropriation, use, or distribution of water at the qualifying nonpowered dam.”.

SEC. 12. CLOSED-LOOP AND OFF-STREAM PUMPED STORAGE PROJECTS.

Section 35 of the Federal Power Act (16 U.S.C. 823f) is amended to read as follows:

“SEC. 35. CLOSED-LOOP AND OFF-STREAM PUMPED STORAGE PROJECTS.

“(a) DEFINITIONS.—In this section:

“(1) CLOSED-LOOP OR OFF-STREAM PUMPED STORAGE PROJECT.—The term ‘closed-loop or off-stream pumped storage project’ means a project—

“(A) that—

“(i) is configured to use 2 or more natural or artificial reservoirs or other water bodies at different elevations; and

“(ii) can—

“(I) generate power as water moves down through a turbine; and

“(II) recharge by pumping water to the upper reservoir;

“(B) that is designed for construction and operation in a manner that ensures that the
upper and lower reservoirs or other water bodies do not impound any stream channel of a natural surface waterway, unless—

“(i) 1 or more project reservoirs are located on, or connected to, a stream channel of a natural waterway that has flowing water only during, and for a short duration after, precipitation events during a typical year; or

“(ii) not more than 1 project reservoir is located on, or directly connected to, a natural surface watercourse, subject to the conditions that the reservoir—

“(I) is in existence on the date of enactment of the Community and Hydropower Improvement Act;

“(II) receives the vast majority of water from—

“(aa) surfacewater of a different natural watershed via an existing pipeline, aqueduct, or other conveyance infrastructure; or

“(bb) groundwater; and
“(III) obtains not more than 10 percent of the volume of the average annual inflow of surfacewater from the natural watershed in which the reservoir is located; and

“(C) any project reservoir (except for a reservoir described in subparagraph (B)(ii)) of which, if the reservoir is connected to a natural surface waterway, is connected for the sole purpose of the initial fill and periodic recharge of reservoirs needed for project operation.

“(2) QUALIFYING CRITERIA.—The term ‘qualifying criteria’, with respect to a closed-loop or off-stream pumped storage project, means that the closed-loop or off-stream pumped storage project—

“(A) is unlikely to involve any fish or wildlife species listed as a threatened or endangered species, or any habitat designated as a critical habitat of such a species, under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), unless the applicable notification of intent identifies proposed measures to protect or mitigate damages to the applicable species or habitat;
“(B) is unlikely to involve resource issues that are unusual or complex in the licensing process and associated environmental review;

“(C) is supported by sufficient information and proposed environmental study plans submitted with the notification of intent to support expedited environmental review and consideration of the application;

“(D) proposes construction, development, and operation the environmental effects of which are likely capable of protection, mitigation, and enhancement through the licensing provisions contained in this part; and

“(E) is not located within any land or interest in land the legal title to which is held by the United States in trust for the benefit of an Indian Tribe, unless the affected Indian Tribe—

“(i) is a project proponent; or

“(ii) consents, in writing, to the location.

“(b) EXPEDITED LICENSING PROCESS FOR CLOSED-LOOP AND OFF-STREAM PUMPED STORAGE PROJECTS.—

“(1) IN GENERAL.—The Commission may issue licenses, as appropriate, for any closed-loop or off-
stream pumped storage project that meets the qualifying criteria, as determined by the Commission, in accordance with this section.

“(2) Updating regulations.—Not later than 180 days after the date of enactment of the Community and Hydropower Improvement Act, after consultation with the interagency task force under paragraph (3) and providing notice and an opportunity for public comment, the Commission shall update regulations of the Commission for issuing licenses for closed-loop or off-stream pumped storage projects that meet the qualifying criteria.

“(3) Interagency task force.—

“(A) In general.—In updating regulations under this section, the Commission shall convene an interagency task force, with appropriate Federal and State agencies, Indian Tribes, and the public represented, to coordinate the regulatory processes associated with the authorizations required to construct and operate closed-loop or off-stream pumped storage projects that meet the qualifying criteria.

“(B) Workshops and meetings.—Before issuing a proposed rule for public comment under paragraph (2), the Commission shall con-
vene workshops and other meetings with the interagency task force under this paragraph to develop procedures that allow the Commission and appropriate Federal and State agencies and Indian Tribes to exercise authority in accordance with—

“(i) this section; and

“(ii) the applicable requirements of this part.

“(4) DEADLINE.—The Commission shall issue a final decision regarding an application for a license for a proposed closed-loop or off-stream pumped storage project submitted under subsection (d)(3) not later than 3 years after the date on which the Commission determines under subsection (d)(2) that the closed-loop or off-stream pumped storage project meets the qualifying criteria.

“(c) DAM SAFETY.—Before issuing any license for a closed-loop or off-stream pumped storage project that meets the qualifying criteria, the Commission shall assess the safety of relevant existing dams and other project works.

“(d) EXPEDITED PROCESS.—

“(1) NOTIFICATION OF INTENT AND SUPPORTING INFORMATION.—The applicant for a
closed-loop or off-stream pumped storage project
shall commence the licensing process under this sec-
tion by submitting to the Commission a notification
of intent to file an application for a license, together
with supporting information, which shall inform the
determination of the Commission under paragraph
(2).

“(2) COMMISSION DETERMINATION.—

“(A) IN GENERAL.—Not later than 90
days after the date on which an applicant sub-
mits to the Commission a notification of intent
under paragraph (1), the Commission, after
providing notice and an opportunity for public
comment, shall—

“(i) determine whether the closed-loop
or off-stream pumped storage project de-
scribed in the notification meets the quali-
ifying criteria; and

“(ii) include in a determination under
clause (i) information, including analyses
supported by information in the public
record, relating to the factual basis for the
determination.

“(B) CONSULTATION.—In making a deter-
mination under subparagraph (A) with respect
to a closed-loop or off-stream pumped storage project, the Commission shall consult with Federal and State agencies and Indian Tribes with authority over the closed-loop or off-stream pumped storage project regarding any qualifying criteria that may disqualify the closed-loop or off-stream pumped storage project from the expedited process under this section.

“(C) RESOLUTION.—If the Commission determines under subparagraph (B) that any qualifying criteria potentially disqualify a closed-loop or off-stream pumped storage project from the expedited process under this section, the Commission shall—

“(i) seek to resolve any issues in advance of issuing a determination regarding whether the closed-loop or off-stream pumped storage project meets the qualifying criteria under this paragraph; and

“(ii) include in a determination under clause (i) information relevant to efforts to resolve such issues.

“(3) CLOSED-LOOP AND OFF-STREAM PUMPED STORAGE PROJECT APPLICATIONS.—
“(A) In General.—Not later than 1 year after the date on which the Commission determines under paragraph (2) that a closed-loop or off-stream pumped storage project meets the qualifying criteria, an applicant for the closed-loop or off-stream pumped storage project shall submit to the Commission an application for a license under this section.

“(B) Inclusions.—An application under subparagraph (A) shall include a description of each protection, mitigation, and enhancement measure proposed to be carried out in order for the applicable closed-loop or off-stream pumped storage project to receive a license from the Commission, in accordance with subsection (e).

“(e) Requirements.—In determining whether to approve an application submitted for a closed-loop or off-stream pumped storage project under subsection (d)(3), in accordance with the deadline described in subsection (b)(4), the Commission, in consultation with applicable Federal and State resource agencies and Indian Tribes with regulatory responsibility for the closed-loop or off-stream pumped storage project, shall—

“(1)(A) use relevant existing studies, monitoring information, and data that are applicable to
the relevant project, in accordance with section 10(l);

“(B) avoid duplicating current, existing studies; and

“(C) design any new studies and information requirements to be consistent with the ability of the Commission to meet the licensing deadline under subsection (b)(4);

“(2) consider whether obligations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) may be met through—

“(A) preparing an environmental assessment; or

“(B) supplementing a previously prepared environmental assessment or environmental impact statement;

“(3) develop a licensing process that reduces administrative burdens on resource agencies, Indian Tribes, the applicant, and the public by avoiding unnecessary paperwork, meetings, and other process obligations, subject to the condition that nothing in this paragraph eliminates any applicable consultation requirement under Federal or State law (including regulations); and
“(4) consider a set of standard license terms and conditions that generally would apply to all closed-loop or off-stream pumped storage projects licensed under this section, based on common technical considerations and environmental effects, subject to the condition that the development of standard license terms and conditions shall not limit the imposition of project-specific conditions for any particular closed-loop or off-stream pumped storage project.

“(f) TRANSFERS.—Notwithstanding section 5, regardless of whether the holder of a preliminary permit for a closed-loop or off-stream pumped storage project claims a municipal preference under section 7(a) in obtaining a permit, on request by a municipality, the Commission may, to facilitate development of a closed-loop or off-stream pumped storage project—

“(1) add 1 or more entities as joint permittees following the issuance of a preliminary permit; and

“(2) transfer a license in part to 1 or more nonmunicipal entities as co-licensees with a municipality, if the municipality retains majority ownership of the closed-loop or off-stream pumped storage project for which the license was issued.
“(g) DEVELOPING ABANDONED MINES FOR PUMPED STORAGE.—

“(1) WORKSHOP.—Not later than 180 days after the date of enactment of this Act, the Commission shall hold a workshop to explore potential opportunities for development of closed-loop pumped storage projects at abandoned mine sites.

“(2) GUIDANCE.—Not later than 1 year after the date of enactment of this Act, the Commission shall issue guidance to assist applicants for licenses or preliminary permits for closed-loop pumped storage projects at abandoned mine sites.

“(h) SAVINGS CLAUSE.—Nothing in this section affects any authority of the Commission to license a closed-loop or off-stream pumped storage project under any other provision of this part.”.

SEC. 13. CONDITIONS TO PROTECT TRIBAL RESOURCES.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

“SEC. 37. CONDITIONS TO PROTECT TRIBAL RESOURCES.

“(a) NECESSARY CONDITIONS OF INDIAN TRIBES.—

“(1) IN GENERAL.—Except as provided in subsection (c), an Indian Tribe shall have exclusive authority to deem a condition to a license under this part to be necessary under section 4(e)(2) if the li-
ence is issued for a project located within any land or an interest in land the legal title to which is held by the United States in trust for the benefit of the Indian Tribe, regardless of whether the Indian Tribe is a licensee or applicant for the project, subject to paragraph (2).

“(2) CONDITION; WRITTEN STATEMENT.—On deeming a condition to be necessary pursuant to paragraph (1), an Indian Tribe shall submit to the Commission—

“(A) the condition;

“(B) a written statement—

“(i) demonstrating that the Indian Tribe considered alternatives to the submitted condition;

“(ii) providing a scientific and technical rationale for—

“(I) the condition submitted; and

“(II) alternatives considered but not adopted; and

“(iii) identifying specific facts relied on in the record; and

“(C) any studies, data, and other factual information relied on by the Indian Tribe that is relevant to the decision of the Indian Tribe.
“(b) OTHER RESERVATIONS.—For any license issued within any reservation other than a reservation described in subsection (a), the Secretary of the agency responsible for the supervision of the reservation, in deeming conditions of the license to be necessary under section 4(e)(2), shall consult with the Secretary of the Interior and any potentially affected Indian Tribes regarding the responsibilities of the United States in the project area under any applicable treaty with an Indian Tribe, as determined by a court of competent jurisdiction.

“(c) EXCLUSION.—This section shall not apply to any project that, as of the date of enactment of the Community and Hydropower Improvement Act—

“(1) is licensed under this part; and

“(2) is not located on any land or interest in land, the legal title to which is held by the United States in trust for the benefit of an Indian Tribe.”.

SEC. 14. COORDINATION OF COMMISSION AND OTHER AGENCIES ISSUING FEDERAL AUTHORIZATIONS.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) (as amended by section 13) is amended by adding at the end the following:

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“SEC. 38. COORDINATION OF COMMISSION AND OTHER AGENCIES ISSUING FEDERAL AUTHORIZATIONS.

“(a) DEFINITIONS.—In this section:

“(1) CONDITIONING AGENCY.—The term ‘conditioning agency’ means a Federal agency (other than the Commission), a State agency, or an Indian Tribe that has the authority to issue a Federal authorization.

“(2) FEDERAL AUTHORIZATION.—The term ‘Federal authorization’ means any authorization required under Federal law with respect to an application for a license, including any—

“(A) license;

“(B) condition of a license submitted by the applicable Secretary or an Indian Tribe under section 4(e)(2);

“(C) prescription submitted by the applicable Secretary under section 18;

“(D) permit;

“(E) special use authorization;

“(F) certification;

“(G) opinion;

“(H) consultation;

“(I) determination; or

“(J) other approval.
“(b) Coordination of Schedule.—

“(1) Initial Conference.—Not later than 90 days after the date on which an applicant submits to the Commission a notification of intent to apply for a license under this part, the Commission, after consultation with each conditioning agency, shall convene a technical conference, with a transcript to be taken by the Commission and submitted to the public record, to coordinate the respective efforts and schedules of the Commission and the conditioning agencies relating to studies and other information, consultations, environmental reviews, and decisionmaking.

“(2) Joint Schedule and Record.—

“(A) Establishment.—To the extent reasonably practicable, the Commission and the applicable conditioning agencies shall establish, with respect to each project that is the subject of a notification of intent to apply for a license under this part—

“(i) a joint schedule that will permit the timely completion of decisions required to be made with respect to, and timely issuance of, Federal authorizations by the
Commission and the conditioning agencies;

and

“(ii) a record supporting the basis for
the respective decisions of the Commission
and the conditioning agencies.

“(B) CONSIDERATION OF WAIVERS AND
MODIFICATIONS.—The Commission and the
conditioning agencies shall consider waivers or
modifications of the requirements of respective
rules, within statutory limits, as appropriate—

“(i) to establish a joint schedule for
the proceeding; and

“(ii) to ensure timely decisionmaking.

“(3) SUBSEQUENT CONFERENCES.—

“(A) IN GENERAL.—After the date on
which the initial conference is convened under
paragraph (1), the Commission shall convene
subsequent technical conferences, as appro-
priate and after consultation with each condi-
tioning agency, to address changed cir-
cumstances that may—

“(i) allow for greater coordination of
efforts and schedules; or

“(ii) threaten the ability of the Com-
mission or any conditioning agency to
maintain any joint schedule established
under paragraph (2).

“(B) TRANSCRIPT.—The Commission shall
take a transcript of any technical conference
convened under this paragraph, to be submitted
to the public record.

“(4) FAILURE TO AGREE.—If the Commission
and a conditioning agency are unable to establish or
maintain a joint schedule under paragraph (2), the
Commission and conditioning agency shall submit to
the public record maintained by the Commission, not
later than 30 days after the conclusion of the tech-

nical conference under paragraph (1) or (3), as ap-
licable, a statement that—

“(A) identifies each inconsistency or con-

flict;

“(B) explains the position taken by each
agency causing the inconsistency or conflict;
and

“(C) provides an analysis, supported by in-
formation in the public record, of the factual
basis for the inconsistent or conflicting position
taken by each agency.

“(c) COORDINATION OF INFORMATION AND STUD-

IES.—
“(1) CONFERENCE.—As early as practicable after the date on which an applicant submits to the Commission a notification of intent to apply for a license under this part, the Commission, after consultation with each conditioning agency, shall convene a technical conference to address existing information and potential new studies relevant to the development of the record that would support agency decisionmaking.

“(2) JOINT STUDY PLAN.—To the extent reasonably practicable, the Commission and the applicable conditioning agencies shall establish, with respect to each project that is the subject of a notification of intent to apply for a license under this part, a joint study plan.

“(3) FAILURE TO AGREE.—If 1 or more agencies are unable to establish or maintain a joint study plan, the applicable agencies shall submit to the public record maintained by the Commission, not later than 30 days after the conclusion of the technical conference under paragraph (1), a statement that—

“(A) identifies each inconsistency or conflict;
“(B) explains the position taken by each agency causing the inconsistency or conflict; and

“(C) provides an analysis, supported by information in the public record, of the factual basis for the inconsistent or conflicting position taken by each agency.

“(d) TRIAL-TYPE HEARING.—For any trial-type hearing conducted under section 4(e)(2) or 18, the Commission—

“(1) may participate as a party for purposes of advocating the factual analyses of Commission staff relating to any disputed issue of material fact; and

“(2) shall give due weight to the findings of fact resulting from the trial-type hearing in preparing any environmental analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(e) CONSULTATION ON INCONSISTENT OR CONFLICTING LICENSE TERMS.—

“(1) IN GENERAL.—If a term or condition of a Federal authorization submitted or recommended for inclusion in a license under this part conflicts or is otherwise inconsistent with another such term or condition in a Federal authorization, the Commis-
tion shall initiate and facilitate consultation with the conditioning agencies submitting conflicting or inconsistent terms or conditions, to attempt to resolve the inconsistency or conflict.

“(2) REQUIREMENTS.—The consultation period under paragraph (1) shall—

“(A) be not longer than 90 days; and

“(B) include at least 1 technical conference or similar meeting.

“(3) ACTION ON AGREEMENT.—If the agencies submitting terms or conditions of a Federal authorization resolve an inconsistency or conflict under this subsection, the agencies shall establish a reasonable schedule and deadline, not later than 90 days after the conclusion of the consultation, to amend and re-issue the relevant Federal authorizations to reflect that resolution, as appropriate.

“(4) FAILURE TO AGREE.—If the agencies submitting terms or conditions of a Federal authorization are unable to resolve an inconsistency or conflict under this subsection, the agencies shall submit to the public record maintained by the Commission, not later than 30 days after the conclusion of the consultation, a statement that—
“(A) identifies the inconsistency or conflict; and

“(B) explains the reason for the inconsistency or conflict, supported by information in the public record.

“(f) PUBLIC NOTICE AND PARTICIPATION.—

“(1) NOTICE.—The Commission shall issue public notice of each technical conference between the Commission and a conditioning agency under this section.

“(2) PARTICIPATION.—Each technical conference under this section shall be held open to participation by—

“(A) the applicable license applicant; and

“(B) other licensing participants.

“(g) RULEMAKING.—Not later than 1 year after the date of enactment of the Community and Hydro Power Improvement Act, after providing notice and an opportunity for public comment, the Commission shall promulgate regulations to implement the requirements of this section.”.

SEC. 15. OFF-SITE CONSIDERATIONS IN HYDROPOWER LICENSING.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) (as amended by section 14) is amended by adding at the end the following:
“SEC. 39. OFF-SITE CONSIDERATIONS IN HYDROPOWER LICENSING.

(a) DEFINITIONS.—In this section:

(1) Conditioning agency; Federal authorization.—The terms ‘conditioning agency’ and ‘Federal authorization’ have the meanings given the terms in section 38(a).

(2) Nonjurisdictional dam.—The term ‘nonjurisdictional dam’ means any non-Federal dam, dike, embankment, or other barrier that—

(A) is constructed to hold back or divert water; and

(B) is not—

(i) licensed under this part; or

(ii) exempted from the license requirements contained in this part.

(3) Off-site measure.—The term ‘off-site measure’ means any activity intended to mitigate the project effects by replacing or providing substitute resources or habitat at a location different from the project area.

(b) Off-site Measures.—

(1) In general.—In discharging responsibilities under any Federal authorization for the protection of, mitigation of damage to, and enhancement
of resources affected by a project, the Commission
and conditioning agencies—

“(A) shall consider and include in the pub-
lic record off-site measures recommended by
any licensing participant, including Federal re-
source agencies, State resource agencies Indian
Tribes, and the public; but

“(B) shall not require any off-site measure
that is not proposed by the applicant.

“(2) COORDINATION.—An off-site measure
under this subsection may include coordination with
another project in the applicable basin.

“(3) EFFECT ON REGULATORY RESPONSIBIL-
ITIES.—The adoption by the Commission or any
conditioning agency of an off-site measure proposed
by an applicant shall satisfy the applicable require-
ments of a Federal authorization that otherwise
would be necessary or appropriate to mitigate a
project effect associated with the project site, subject
to the condition that the Commission and condi-
tioning agencies shall give preference to onsite meas-
ures to achieve that mitigation.

“(4) PROJECT EXTENT.—Notwithstanding sec-
tion 3(11), the land, infrastructure, improvements,
and waters associated with any off-site mitigation
measure shall not be required to be included as part of a project, subject to the condition that any off-site measure adopted under this section shall be included, implemented, and enforced as a license condition issued by the Commission under this part.

“(e) Nonjurisdictional Dam Removal.—

“(1) In General.—The requirements of this subsection apply to any off-site measure that—

“(A) includes removal of a nonjurisdictional dam;

“(B) is proposed by an applicant; and

“(C) is approved by the Commission or a conditioning agency under a Federal authorization.

“(2) Liability Protection.—

“(A) In General.—Notwithstanding any other provision of Federal, State, Tribal, local, or common law, a licensee shall not be liable for any harm, loss, or other damage to an individual or entity, property, a natural resource, or the environment, or any damages resulting from dam removal, arising from, relating to, or triggered by an action associated with the removal of a nonjurisdictional dam under this section, including any damage caused by the release of
any material or substance (including a hazardous substance), if the licensee and the owner of the nonjurisdictional dam or third party have entered into a legally enforceable agreement ensuring that the owner (or an assignee) or third party retains that liability.

“(B) FUNDING.—Notwithstanding any other provision of Federal, State, local, or common law, no individual or entity contributing funds for removal of a nonjurisdictional dam under this section shall be held liable, solely by virtue of that funding, for any harm, loss, or other damage to an individual or entity, property, or the environment, or damages, arising from the removal of a facility or facility operations arising from, relating to, or triggered by an action associated with removal of the non-jurisdictional dam, including any damage caused by the release of any material or substance (including a hazardous substance).

“(3) PREEMPTION.—

“(A) IN GENERAL.—Notwithstanding section 10(c), except as provided in subparagraph (B), protection from liability under this subsection shall preempt the law of any State or
Indian Tribe to the extent that the State or Tribal law is inconsistent with this section.

“(B) EXCEPTION.—Nothing in this subsection limits any otherwise-available immunity, privilege, or defense under any other provision of law.

“(d) RULEMAKING.—Not later than 1 year after the date of enactment of the Community and Hydropower Improvement Act, the Commission, after providing notice and an opportunity for public comment, shall promulgate regulations to implement the requirements of this section.”.

SEC. 16. MICRO HYDROPOWER FACILITIES.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) (as amended by section 15) is amended by adding at the end the following:

“SEC. 40. MICRO HYDROPOWER FACILITIES.

“(a) IN GENERAL.—To improve the regulatory process and reduce delays and costs for new development of hydropower facilities with an installed capacity of 1,000 kilowatts or less (referred to in this section as ‘micro hydropower facilities’), the Commission shall investigate—

“(1) opportunities to expand the use of micro hydropower facilities in the United States for purposes of—
“(A) capturing the electric generating potential of existing hydraulic processes without requiring the construction of any new dam or similar infrastructure;

“(B) reducing United States dependence on fossil fuel resources for power and energy; and

“(C) serving rural, underserved, or isolated communities; and

“(2) regulatory processes for, and administration of, micro hydropower facilities, including with respect to—

“(A) the protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat) and other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e)(5);

“(B) achieving cost-effective and administratively efficient regulation of micro hydropower facilities that are commensurate with the size, expanse, and environmental effects of micro hydropower facilities; and

“(C) protecting public safety and the structural integrity of project works.
“(b) INFORMATION GATHERING.—In carrying out subsection (a), the Commission shall—

“(1) consult with the Secretary of Energy, Federal and State resource agencies, Indian Tribes, and the public; and

“(2) at a minimum—

“(A) solicit—

“(i) relevant technical, scientific, and regulatory information; and

“(ii) public comment;

“(B) convene regional technical conferences to address the investigation subjects described in subsection (a); and

“(C) provide an opportunity for public comment after the technical conferences under subparagraph (B).

“(c) REPORT.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Community and Hydropower Improvement Act, the Commission shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that—
“(A) analyzes each of the investigation subjects described in subsection (a), including—

“(i) a quantitative assessment of—

“(I) the quantity of energy that could likely be produced by a program to expand the use of micro hydro-power facilities in the United States; and

“(II) the environmental and economic feasibility of an expanded use of micro hydropower facilities; and

“(ii) specific recommendations regarding the means by which Congress may address or remedy each identified issue;

“(B) describes the processes adopted, and any comments received, under subsection (b), including the response of the Commission to comments received from the Secretary of Energy, Federal and State resource agencies, Indian Tribes, and the public; and

“(C) includes—

“(i) a description of each recommendation submitted relating to the draft report under paragraph (2); and
“(ii) an explanation of the reasons of
the Commission for not adopting any sub-
mitted recommendation, if applicable, as
supported by information gathered under
subsection (b).

“(2) DRAFT REPORT.—Before submitting the
report under paragraph (1), the Commission shall
provide a draft report to the Secretary of Energy,
Federal and State resource agencies, Indian Tribes,
and the public for review and comment for a period
of not less than 60 days.”.

SEC. 17. REPORTING REQUIREMENT.

(a) In General.—Not later than 2 years after the
date of enactment of this Act and every 5 years thereafter,
the Federal Energy Regulatory Commission shall submit
to the Committee on Energy and Natural Resources of
the Senate and the Committee on Energy and Commerce
of the House of Representatives a report that describes
progress with respect to the implementation of this Act
and the amendments made by this Act.

(b) Requirement.—A report submitted under sub-
section (a) shall—

(1) identify any facilities for which expedited li-
censing was sought under section 34 of the Federal
Power Act (16 U.S.C. 823e) during the period covered by the report, including—

(A) the licensing status for each facility, including all incomplete Federal authorizations needed for a licensing decision;

(B) whether the facility qualified for expedited licensing under that section; and

(C) if the facility did not qualify for expedited licensing under that section, the reasons for such determination;

(2) identify all closed-loop and off-stream pumped storage projects for which expedited licensing was sought under section 35 of the Federal Power Act (as added by section 12) during the period covered by the report, including—

(A) the licensing status for each project, including all incomplete Federal authorizations needed for a licensing decision;

(B) whether the project qualified for expedited licensing under that section; and

(C) if the project did not qualify for expedited licensing under that section, the reasons for such determination;

(3) identify each instance in which an Indian Tribe exercised the right of an Indian Tribe under
section 37 of the Federal Power Act (as added by section 13) by deeming a condition to a license under part I of the Federal Power Act (16 U.S.C. 792 et seq.) to be necessary under paragraph (2)(A) of section 4(e) of that Act (16 U.S.C. 797(e)), including—

(A) the nature of the condition and the Tribal resources protected by the condition; and

(B) whether any party to the proceeding sought a trial-type hearing related to the condition under paragraph (2)(B) of that section, an alternative condition under section 33(a) of that Act (16 U.S.C. 823d(a)), or otherwise challenged the condition;

(4) identify and describe the outcomes of the efforts of Federal agencies to establish or maintain joint schedules under section 38(b) of the Federal Power Act (as added by section 14), with a discussion of specific examples that demonstrate trends, conflicts, and successes associated with the joint schedules;

(5) identify and describe the outcomes of the efforts of Federal agencies to establish or maintain joint study plans under section 38(c) of the Federal Power Act (as added by section 14), with a discus-
sion of specific examples that demonstrate trends, conflicts, and successes associated with the joint study plans; and

(6) identify and describe the outcomes of the efforts of Federal agencies to resolve inconsistent or conflicting license terms under section 38(e) of the Federal Power Act (as added by section 14), with a discussion of specific examples that demonstrate trends, conflicts, and successes associated with the opportunity to seek resolution of inconsistent or conflicting license terms.