

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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

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**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)—

1 (A) by striking “tribal lands embraced  
2 within Indian reservations,”; and

3 (B) by striking “also” and inserting “land  
4 and interests in land held in legal title by the  
5 United States in trust for the benefit of an In-  
6 dian Tribe; and”;

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

9 (3) by adding at the end the following:

10 “(30) INDIAN TRIBE.—The term ‘Indian Tribe’  
11 means the recognized governing body of any Indian  
12 or Alaska Native tribe, band, nation, pueblo, village,  
13 community, component band, or component reserva-  
14 tion, individually identified (including parentheti-  
15 cally) in the list published annually pursuant to sec-  
16 tion 104 of the Federally Recognized Indian Tribe  
17 List Act of 1994 (25 U.S.C. 5131).

18 “(31) PROJECT EFFECTS.—The term ‘project  
19 effects’ has the meaning given the term in para-  
20 graph (1) of section 2403(c) of the Energy Policy  
21 Act of 1992 (16 U.S.C. 797d(c)).”.

22 **SEC. 3. GENERAL POWERS OF THE FEDERAL ENERGY REG-**  
23 **ULATORY COMMISSION.**

24 (a) **TECHNICAL CORRECTION TO THE ENERGY POL-**  
25 **ICY ACT OF 2005 AND FEDERAL POWER ACT.—**

1 (1) ENERGY POLICY ACT OF 2005.—

2 (A) IN GENERAL.—Section 241(a) of the  
3 Energy Policy Act of 2005 (Public Law 109–  
4 58; 119 Stat. 674) is amended by striking  
5 “after ‘adequate protection and utilization of  
6 such reservation.’ at the end of the first pro-  
7 viso” and inserting “after ‘adequate protection  
8 and utilization of such reservation’ at the end  
9 of the first proviso a period and”.

10 (B) EXECUTION.—Subparagraph (A) and  
11 the amendments made by that subparagraph  
12 shall take effect as if included in the Energy  
13 Policy Act of 2005 (42 U.S.C. 15801 et seq.),  
14 and section 241(a) of that Act (Public Law  
15 1058; 119 Stat. 674) and the amendments  
16 made by that section shall be executed as if the  
17 amendment made by subparagraph (A) had  
18 been included in that Act.

19 (2) FEDERAL POWER ACT.—Section 4(e) of the  
20 Federal Power Act (16 U.S.C. 797(e)) is amended  
21 by striking the period after “Federal Energy Regu-  
22 latory Commission”.

23 (b) ISSUANCE OF LICENSES.—Section 4(e) of the  
24 Federal Power Act (16 U.S.C. 797(e)) is amended—

1           (1) by striking the colon each place it appears  
2           and inserting a period;

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

6           “(5) NOTICE; CONSIDERATIONS.—On”;

7           (3) in the third proviso, by striking “*Provided*  
8           *further, That in case*” and inserting the following:

9           “(4) PUBLIC PURPOSES.—In case”;

10          (4) in the second proviso, by striking “*Provided*  
11          *further, That no license*” and inserting the following:

12          “(3) NAVIGABLE WATERS.—No license”;

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

15          “(2) RESERVATION.—

16                 “(A) IN GENERAL.—Licenses”;

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

19          “(e) ISSUANCE OF LICENSES.—

20                 “(1) IN GENERAL.—To issue licenses”;

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

24          (8) in paragraph (2)(A) (as so designated)—

1 (A) by striking the fourth sentence and in-  
2 serting the following:

3 “(iii) PROCEDURES.—Not later than  
4 180 days after the date of enactment of  
5 the Community and Hydropwer Improve-  
6 ment Act, the Secretary of the Interior,  
7 Secretary of the Army, the Secretary of  
8 Commerce, and the Secretary of Agri-  
9 culture shall jointly update, by rule, after  
10 consultation with the Commission and pro-  
11 viding notice and an opportunity for public  
12 comment, the procedures for an expedited  
13 trial-type hearing under this section and  
14 section 18, including the opportunity to  
15 undertake discovery and cross-examine wit-  
16 nesses, providing—

17 “(I) a forum for conditions sub-  
18 mitted under section 33(a) to obtain a  
19 hearing;

20 “(II) a requirement that the  
21 party raising a disputed issue, or the  
22 proponent of an alternative, bears the  
23 burden of proof by a preponderance of  
24 the evidence;

1                   “(III) and opportunities for all  
2                   parties to a trial-type hearing to par-  
3                   ticipate in settlement negotiations be-  
4                   fore and after the hearing.”;

5                   (B) in the third sentence—

6                   (i) by striking “by the relevant re-  
7                   source” and inserting “by the relevant”;  
8                   and

9                   (ii) by striking “All disputed” and in-  
10                  serting the following:

11                  “(ii) REQUIREMENT.—All disputed”;

12                  (C) in the second sentence—

13                  (i) by inserting “, including alter-  
14                  native conditions submitted under section  
15                  33(a), as applicable” after “on any dis-  
16                  puted issues of material fact with respect  
17                  to such conditions”; and

18                  (ii) by striking “The license appli-  
19                  cant” and inserting the following:

20                  “(B) HEARING.—

21                  “(i) IN GENERAL.—The license appli-  
22                  cant”; and

23                  (D) in the first sentence, by striking “shall  
24                  deem necessary for the adequate protection and  
25                  utilization of such reservation” and inserting

1 the following: “or the applicable Indian Tribe,  
2 as provided in section 37, shall deem—

3 “(i) necessary for the adequate pro-  
4 tection and utilization of such reservation;  
5 and

6 “(ii) reasonably related to project ef-  
7 fects on—

8 “(I) the reservation; and

9 “(II) the utilization of the res-  
10 ervation”; and

11 (9) in paragraph (5) (as designated by para-  
12 graph (2)), by inserting “addressing the effects of  
13 hydrologic alterations that may occur over the li-  
14 cense term,” after “the protection of recreational op-  
15 portunities,”.

16 (c) PRELIMINARY PERMITS; NOTICE OF APPLICA-  
17 TION.—Section 4(f) of the Federal Power Act (16 U.S.C.  
18 797(f)) is amended, in the proviso, by inserting “, Indian  
19 Tribe,” after “in writing to any State”.

20 **SEC. 4. APPROACH TO ENVIRONMENTAL REVIEW.**

21 (a) IN GENERAL.—Section 2403 of the Energy Policy  
22 Act of 1992 (16 U.S.C. 797d) is amended—

23 (1) in the section heading, by striking “**THIRD**  
24 **PARTY CONTRACTING BY FERC**” and inserting  
25 “**APPROACH TO ENVIRONMENTAL REVIEW**”;

1 (2) in subsection (a)—

2 (A) in the subsection heading, by striking  
3 “ENVIRONMENTAL IMPACT STATEMENTS” and  
4 inserting “THIRD-PARTY CONTRACTING BY THE  
5 FEDERAL ENERGY REGULATORY COMMIS-  
6 SION”; and

7 (B) in the first sentence, by striking  
8 “Where the Federal” and inserting the fol-  
9 lowing:

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

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

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

17 (5) by adding at the end the following:

18 “(b) COOPERATION WITH OTHER AGENCIES.—

19 “(1) IN GENERAL.—The Federal Energy Regu-  
20 latory Commission shall request that any Federal,  
21 State, or local agency or Indian Tribe with a respon-  
22 sibility under the National Environmental Policy Act  
23 of 1969 (42 U.S.C. 4321 et seq.) or comparable  
24 State or Tribal law requirements with respect to the  
25 licensing of a project cooperate in the preparation of



1 the environmental assessment or environmental im-  
2 pact statement that will be a record basis for the de-  
3 cisions of the applicable agency or Indian Tribe with  
4 respect to the applicable application.

5 “(2) EFFECT.—Cooperation under paragraph  
6 (1) shall not impair the right of a cooperating agen-  
7 cy or Indian Tribe to participate as a party in a pro-  
8 ceeding, subject to appropriate protections against  
9 ex parte communications.

10 “(c) ENVIRONMENTAL EFFECTS.—

11 “(1) DEFINITIONS.—In this subsection:

12 “(A) NONRECURRING PAST EFFECT.—The  
13 term ‘nonrecurring past effect’, with respect to  
14 a project, means an environmental effect that—

15 “(i) may have been caused by—

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

18 “(II) prior operations of the  
19 project; but

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

22 “(B) ONGOING EFFECT.—The term ‘ongo-  
23 ing effect’, with respect to a project, means a  
24 material environmental effect that would not  
25 occur or that would be different, but for the

1 continued existence, operation, or maintenance  
2 of the project.

3 “(C) PROJECT.—The term ‘project’ has  
4 the meaning given the term in section 3 of the  
5 Federal Power Act (16 U.S.C. 796).

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

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

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

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

21 “(ii) the Federal Energy Regulatory  
22 Commission, another agency, or an Indian  
23 Tribe determines, based on substantial evi-  
24 dence—

1                   “(I) is not speculative or improb-  
2                   able; and

3                   “(II) is supported by monitoring,  
4                   modeling, or other scientific analysis  
5                   that is generally accepted in the sci-  
6                   entific community.

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

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

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

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

23                  “(ii) if a determination is made in the af-  
24                  firmative under clause (i), shall consider pas-  
25                  sage and nonpassage strategies for reasonably

1 mitigating the adverse effect, as appropriate,  
2 based on—

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

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

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

13 “(IV) costs of construction, operation,  
14 and maintenance associated with both pas-  
15 sage and nonpassage strategies; and

16 “(V) such other biological, oper-  
17 ational, and economic factors determined  
18 to be relevant by the Federal Energy Reg-  
19 ulatory Commission, other agencies, and  
20 Indian Tribes;

21 “(D) shall evaluate reasonably foreseeable  
22 project effects on hydrologic patterns, other as-  
23 pects of environmental quality and develop-  
24 mental uses during the term of the license,  
25 based on fieldwork investigations, literature re-

1 views, resource monitoring, technical models, or  
2 other appropriate methodologies, consistent  
3 with generally accepted scientific practices;

4 “(E) shall—

5 “(i) for purposes of deploying a model  
6 under this subsection, encourage the pref-  
7 erential use of open-sourced technical mod-  
8 els, subject to the limitation that nothing  
9 in this clause prohibits the use of a propri-  
10 etary model or proprietary data; and

11 “(ii) for purposes of using or other-  
12 wise relying on a model or data under this  
13 subsection—

14 “(I) ensure the validity of the  
15 model or data through validation anal-  
16 ysis entered into the record; and

17 “(II) provide for the model, in-  
18 cluding data and other modeling in-  
19 puts and outputs, to be reasonably  
20 available for evaluation, operation, re-  
21 porting, and review by licensing par-  
22 ticipants, subject to appropriate pro-  
23 tections relating to—

24 “(aa) duplication or public  
25 disclosure of intellectual property

1 associated with the model, such  
2 as software code or algorithms;  
3 and

4 “(bb) the public disclosure  
5 of proprietary or other data that  
6 would reveal trade secrets, other  
7 information that is competitively  
8 sensitive, or critical electric infra-  
9 structure information (as defined  
10 in section 215A(a) of the Federal  
11 Power Act (16 U.S.C. 824o-  
12 1(a)));

13 “(F) shall consider reasonably foreseeable  
14 effects of hydrologic alterations over the license  
15 term in the region in which the project is lo-  
16 cated, including any change in project effects  
17 due to the hydrologic alterations and the poten-  
18 tial of the project to contribute to the protec-  
19 tion and enhancement of the beneficial public  
20 uses identified in paragraph (5) of section 4(e)  
21 and section 10(a)(1) of the Federal Power Act  
22 (16 U.S.C. 797(e), 803(a)(1));

23 “(G) shall ensure that any Federal require-  
24 ments applicable in the project area under any  
25 applicable Federal treaty with an Indian Tribe,

1 as determined by a court of competent jurisdic-  
2 tion, are met;

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

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

14 “(i) grid reliability;

15 “(ii) any increase in the price of en-  
16 ergy, power, and essential grid services to  
17 consumers of power; and

18 “(iii) the ability to integrate intermit-  
19 tent generation resources.

20 “(3) TECHNICAL CONFERENCES.—Not later  
21 than 180 days after the date of enactment of the  
22 Community and Hydropwer Improvement Act and  
23 periodically thereafter, as determined to be appro-  
24 priate by the Federal Energy Regulatory Commis-  
25 sion, the Federal Energy Regulatory Commission, in

1 consultation with the Secretary, shall convene a  
2 technical conference to consider new technologies  
3 and methodologies that may be available and gen-  
4 erally accepted in the scientific community or by  
5 agencies that manage water resources for power pro-  
6 duction, water supply, or flood control in the appli-  
7 cable region to quantify the considerations required  
8 under paragraph (2)(F) within an acceptable cal-  
9 culated range in licensing proceedings under part I  
10 of the Federal Power Act (16 U.S.C. 792 et seq.).

11 “(d) CITATIONS TO RECORD.—In carrying out au-  
12 thorities and responsibilities under the National Environ-  
13 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and  
14 sections 4(e), 10, 18, 33, and 37 of the Federal Power  
15 Act (16 U.S.C. 797(e), 803, 811, 823d), the Federal En-  
16 ergy Regulatory Commission and other agencies and In-  
17 dian Tribes shall—

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

22 “(2) state the basis for relying on the cited evi-  
23 dence for the purpose of making the findings on  
24 issues of material fact.”.



1 (b) CLERICAL AMENDMENT.—The table of contents  
 2 for the Energy Policy Act of 1992 (Public Law 102–486;  
 3 106 Stat. 2781) is amended by striking the item relating  
 4 to section 2403 and inserting the following:

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

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

7 (a) VOLUNTARY LICENSE SURRENDER PROCE-  
 8 DURES.—Section 6 of the Federal Power Act (16 U.S.C.  
 9 799) is amended—

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

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

15 “(a) IN GENERAL.—Licenses under”; and

16 (2) by adding at the end the following:

17 “(b) PROCEDURES FOR SURRENDER OF LICENSE.—

18 “(1) IN GENERAL.—Not later than 1 year after  
 19 the date of enactment of this subsection, the Com-  
 20 mission, after providing for public notice and com-  
 21 ment, shall promulgate regulations establishing pro-  
 22 cedures for license surrender proceedings initiated  
 23 by a licensee.

24 “(2) INCLUSIONS.—The regulations promul-  
 25 gated under paragraph (1) shall include—

1           “(A) a requirement for a licensee seeking  
2 a license surrender to prepare an initial public  
3 report that describes and analyzes—

4                   “(i) the surrender proposal;

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

7                   “(iii) any impacts of the proposed li-  
8 cense surrender on—

9                           “(I) grid reliability;

10                           “(II) any increase in the price of  
11 energy, power, and essential grid serv-  
12 ices to consumers of power; and

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

15                   “(iv) any benefits of the proposed li-  
16 cense surrender to—

17                           “(I) surrounding communities;

18                           and

19                           “(II) the natural environment;

20           “(B) opportunities for the public—

21                   “(i) to comment on—

22                           “(I) the initial public report; and

23                           “(II) the surrender application;

24                   “(ii) to propose other alternatives for  
25 the disposition of project works for consid-

1                   eration by the Commission and licensee;

2                   and

3                   “(iii) to otherwise participate in the

4                   surrender proceeding;

5                   “(C) requirements for the licensee to con-

6                   sult with applicable Federal and State resource

7                   agencies, Indian Tribes, and interested mem-

8                   bers of the public before filing the surrender

9                   application with the Commission;

10                  “(D) procedures to develop a schedule for

11                  each surrender proceeding; and

12                  “(E) procedures to expedite the surrender

13                  proceeding for a license that does not—

14                         “(i) present complex resource issues;

15                         “(ii) involve significant controversy or

16                         public opposition; or

17                         “(iii) require other major regulatory

18                         approvals.”.

19                  (b) EFFECT ON FEDERAL DAMS.—

20                         (1) IN GENERAL.—Nothing in this section (in-

21                         cluding an amendment made by this section) affects

22                         the continued operation of any federally owned dam,

23                         including the Federal dams on the Lower Snake

24                         River operated by the Corps of Engineers.

1           (2) NO PRECEDENT.—No action carried out  
2           under section 6 of the Federal Power Act (16 U.S.C.  
3           799) establishes a precedent for an action relating to  
4           a dam referred to in paragraph (1).

5 **SEC. 6. CONDITIONS OF LICENSE; REPORT REQUIREMENT.**

6           (a) MODIFICATION OF PLANS; FACTORS CONSID-  
7           ERED TO SECURE ADAPTABILITY OF PROJECT; REC-  
8           COMMENDATIONS FOR PROPOSED TERMS AND CONDI-  
9           TIONS.—Section 10(a)(2) of the Federal Power Act (16  
10           U.S.C. 803(a)(2)) is amended by adding at the end the  
11           following:

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

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

19                           “(ii) other uses of the project.

20                   “(E) Methods to collect and, as appro-  
21                   priate, publicly report hydrologic data relating  
22                   to the operations of the project during a time  
23                   interval appropriate for effective management  
24                   of any affected waterways.”.

1 (b) ANNUAL CHARGES PAYABLE BY LICENSEES;  
2 MAXIMUM RATES; APPLICATION; REVIEW AND REPORT  
3 TO CONGRESS.—Section 10(e) of the Federal Power Act  
4 (16 U.S.C. 803(e)) is amended—

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

9 (2) by adding at the end the following:

10 “(5) In fixing reasonable annual charges under  
11 paragraph (1) for purposes of administering the re-  
12 sponsibilities of the United States under this part,  
13 the Commission—

14 “(A) notwithstanding section 9701 of title  
15 31, United States Code, section 3401 of the  
16 Omnibus Budget Reconciliation Act of 1986  
17 (42 U.S.C. 7178), or any other provision of  
18 Federal law relating to annual charges fixed  
19 under paragraph (1), shall ensure that all ad-  
20 ministrative costs of the United States, other  
21 than the administrative costs of the Commis-  
22 sion, do not exceed the direct costs incurred by  
23 any department of the Federal Government or  
24 any agency, bureau, office, or other subdivision  
25 of the applicable department, in the participa-

1           tion of the applicable department in license pro-  
2           ceedings under this part;

3           “(B) shall not include costs of any depart-  
4           ment of the Federal Government or any agency,  
5           bureau, office, or other subdivision of the appli-  
6           cable department that are reimbursed directly  
7           to the applicable department or subdivision of  
8           the applicable department by the licensee or li-  
9           cense applicant;

10          “(C) shall include costs of a third-party  
11          contractor retained by any department of the  
12          Federal Government or any agency, bureau, of-  
13          fice, or other subdivision of the applicable de-  
14          partment that are incurred in supporting the  
15          applicable department in administering the re-  
16          sponsibilities of the applicable department  
17          under this part, if the costs—

18                 “(i) are not otherwise reimbursed di-  
19                 rectly to the department or subdivision of  
20                 the department, as provided in subpara-  
21                 graph (B); and

22                 “(ii) meet the requirements of sub-  
23                 paragraph (D);

24          “(D) shall provide a reasonable oppor-  
25          tunity for public review and comment on the de-

1 terminations of the Commission under subpara-  
2 graphs (A) through (C) before issuing any bills  
3 for annual charges for purposes of the adminis-  
4 tration of this part under paragraph (1); and

5 “(E) shall—

6 “(i) respond to all comments received  
7 under subparagraph (D) before issuing any  
8 bills for annual charges for the administra-  
9 tive costs of the United States under this  
10 part under paragraph (1); and

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

15 (c) FISH AND WILDLIFE PROTECTION, MITIGATION,  
16 AND ENHANCEMENT; CONSIDERATION OF RECOMMENDA-  
17 TIONS; FINDINGS.—Section 10(j) of the Federal Power  
18 Act (16 U.S.C. 803(j)) is amended—

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

1 (2) in paragraph (2)—

2 (A) in the first sentence, by inserting “and  
3 Indian Tribes” after “and statutory responsibil-  
4 ities of such agencies”; and

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

9 (d) SUPPORTING STATEMENT AND USE OF EXISTING  
10 STUDIES.—Section 10 of the Federal Power Act (16  
11 U.S.C. 803) is amended by adding at the end the fol-  
12 lowing:

13 “(k) SUPPORTING STATEMENT FOR CERTAIN LI-  
14 CENSE CONDITIONS.—

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

23 “(A) demonstrating that the applicable  
24 Secretary considered alternatives to the sub-  
25 mitted condition;



1                   “(B) providing a scientific and technical  
2                   rationale for—

3                   “(i) the condition submitted; and

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

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

8                   “(2) STUDIES, DATA, AND OTHER FACTUAL IN-  
9                   FORMATION.—Along with the written statement in-  
10                  cluded under paragraph (1), the applicable Secretary  
11                  shall submit any studies, data, and other factual in-  
12                  formation relied on by the applicable Secretary that  
13                  is relevant to the decision of the applicable Sec-  
14                  retary.

15                  “(1) USE OF EXISTING STUDIES.—

16                  “(1) IN GENERAL.—To the extent reasonably  
17                  practicable, the Commission and other Federal and  
18                  State agencies with responsibilities under this part  
19                  shall—

20                  “(A) use relevant existing studies, moni-  
21                  toring information, and data; and

22                  “(B) avoid duplicating current, existing  
23                  studies that are applicable to the relevant  
24                  project.

1           “(2) WRITTEN STATEMENT.—In requiring any  
2 new study or collection of information, the Commis-  
3 sion and other Federal and State agencies and In-  
4 dian Tribes with responsibilities under this part  
5 shall prepare a written statement that—

6           “(A) explains why the new study or other  
7 information is necessary to support the deci-  
8 sionmaking relative to the responsibilities of the  
9 applicable agency under this part;

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

16           “(C) explains the manner in which the in-  
17 formation produced by the required new study  
18 or other information supports the cost of pro-  
19 ducing the information.

20           “(3) REQUIREMENT.—In modifying or denying  
21 a request to require a new study or collection of in-  
22 formation that is submitted to the Commission by  
23 another agency with responsibilities under this part,  
24 the Commission shall include in a written statement  
25 of the Commission an explanation of the manner in

1       which the Commission considers the modification or  
2       denial to be consistent with—

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

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

8       (e) REPORT.—Section 10 of the Federal Power Act  
9       (16 U.S.C. 803) (as amended by subsection (d)) is amend-  
10      ed by adding at the end the following:

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

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

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

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

24               “(2) explains the reason why each project or de-  
25               velopment has been out-of-service;

1           “(3) identifies any plans of the licensee and the  
2 Commission for the rehabilitation or other disposi-  
3 tion of the project or development; and

4           “(4) describes the anticipated timelines and re-  
5 quirements of the Commission for the rehabilitation  
6 or other final disposition of the project or develop-  
7 ment.”.

8 **SEC. 7. DISPOSITION OF CHARGES ARISING FROM LI-**  
9 **CENSES.**

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

12           (1) by striking the section designation and all  
13 that follows through “(a) All proceeds” and insert-  
14 ing the following:

15 **“SEC. 17. DISPOSITION OF CHARGES ARISING FROM LI-**  
16 **CENSES.**

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

18           (2) in subsection (a)—

19               (A) in the second sentence—

20                   (i) by striking “be paid into the  
21 Treasury of the United States and credited  
22 to ‘Miscellaneous receipts’” and inserting  
23 “be deposited in the Licensing Administra-  
24 tion Reimbursement Fund established by  
25 subsection (c)”;

1 (ii) by striking “and 50 per centum of  
2 the charges arising from all other licenses  
3 is hereunder is hereby reserved” and in-  
4 serting “and, of the charges from all other  
5 licenses, 50 percent is reserved”; and

6 (iii) by striking “navigable waters of  
7 the United States” and inserting “navi-  
8 gable waters of the United States, and  
9 37.5 percent shall be deposited in the Li-  
10 censing Administration Reimbursement  
11 Fund established by subsection (c)”; and

12 (B) in the third sentence, by striking “into  
13 the Treasury of the United States and credited  
14 to miscellaneous receipts” and inserting “to the  
15 applicable department, or any agency, bureau,  
16 office, or other subdivision of the applicable de-  
17 partment, in the amounts established by the  
18 Commission under section 10(e)(5) for the de-  
19 partment, or agency, bureau, office, or other  
20 subdivision of the applicable department”;

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

24 “(b) DELINQUENCY.—In case of”; and

25 (4) by adding at the end the following:

1           “(c) LICENSING ADMINISTRATION REIMBURSEMENT  
2 FUND.—

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

8           “(2) PURPOSE.—The purpose of the Fund is to  
9 reimburse Indian Tribes, State fish and wildlife  
10 agencies, and other State natural and cultural re-  
11 source agencies for any administrative costs of car-  
12 rying out the responsibilities of Indian Tribes or the  
13 agencies under this part.

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

17           “(4) REQUIREMENT.—Amounts in the Fund  
18 shall be available to Indian Tribes, State fish and  
19 wildlife agencies, and other State natural and cul-  
20 tural resource agencies that document the participa-  
21 tion of the Indian Tribe or agency in license pro-  
22 ceedings for purposes of carrying out the responsibil-  
23 ities of the Indian Tribe or agency under this part.

24           “(5) LIMITATION.—Amounts in the Fund shall  
25 not be available for any costs that are otherwise re-

1       imbursable to an Indian Tribe, a State fish and  
2       wildlife agency, or a State natural and cultural re-  
3       source agency.

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

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

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

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

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

22               (2) in the second sentence, by inserting “, in-  
23       cluding alternative prescriptions submitted under  
24       section 33(b), as applicable,” after “on any disputed

1 issues of material fact with respect to such  
2 fishways”;

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

5 (4) by striking the fourth sentence and insert-  
6 ing the following: “Not later than 180 days after the  
7 date of enactment of the Community and Hydropwer  
8 Improvement Act, the Secretary of the Interior, the  
9 Secretary of the Army, the Secretary of Commerce,  
10 and the Secretary of Agriculture shall update jointly,  
11 by rule, after consultation with the Commission and  
12 providing notice and opportunity for public com-  
13 ment, the procedures for an expedited trial-type  
14 hearing under this section and section 4(e)(2), in-  
15 cluding the opportunity to undertake discovery and  
16 cross-examine witnesses, providing a forum for con-  
17 ditions submitted under section 33(b) to obtain a  
18 hearing, a requirement that the party raising a dis-  
19 puted issue, or the proponent of an alternative,  
20 bears the burden of proof by a preponderance of the  
21 evidence, and opportunities for all parties to a trial-  
22 type hearing to participate in settlement negotiations  
23 before and after the hearing.”.



1 **SEC. 9. CONDUIT HYDROELECTRIC FACILITIES.**

2 Section 30(c) of the Federal Power Act (16 U.S.C.  
3 823a(c)) is amended—

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

7 (2) in paragraph (1)—

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

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

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

17 **SEC. 10. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

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

20 (1) in paragraph (1)—

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

24 (B) by striking “the first proviso of section  
25 4(e)” and inserting “section 4(e)(2)”;

26 (2) in paragraph (2)—

1 (A) in the matter preceding subparagraph  
2 (A), by striking “the first proviso of section  
3 4(e)” and inserting “section 4(e)(2)”;

4 (B) by striking “the Secretary” each place  
5 it appears and inserting “the Secretary or In-  
6 dian Tribe”; and

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

9 “(A) would result in improved protection  
10 or utilization of the reservation at no additional  
11 cost to the project, including the value of fore-  
12 gone power or energy as compared to the condi-  
13 tion initially deemed to be necessary by the Sec-  
14 retary or applicable Indian Tribe; or

15 “(B) would—

16 “(i) be no less protective of the res-  
17 ervation than the condition initially deemed  
18 to be necessary by the Secretary or appli-  
19 cable Indian Tribe; and

20 “(ii) as compared to the condition ini-  
21 tially deemed to be necessary by the Sec-  
22 retary or applicable Indian Tribe—

23 “(I) cost significantly less to im-  
24 plement; or

1                   “(II) result in improved oper-  
2                   ation of the project works for elec-  
3                   tricity production.”;

4                   (3) in paragraph (3), by striking “the Sec-  
5                   retary” each place it appears and inserting “the Sec-  
6                   retary or Indian Tribe”;

7                   (4) by redesignating paragraph (5) as para-  
8                   graph (6);

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

11                 “(4) PUBLIC RECORD.—The Secretary or appli-  
12                 cable Indian Tribe shall submit into the public  
13                 record of the Commission proceeding with any condi-  
14                 tion under section 4(e)(2) or alternative condition  
15                 accepted by the Secretary or applicable Indian Tribe  
16                 under this subsection a detailed analysis establishing  
17                 and explaining how the condition adopted by the  
18                 Secretary or applicable Indian Tribe meets the cri-  
19                 teria under paragraph (2), as compared to—

20                 “(A) the condition initially determined to  
21                 be necessary by the Secretary or applicable In-  
22                 dian Tribe; and

23                 “(B) each alternative condition proposed  
24                 by the license applicant or any other party to  
25                 the license proceeding, as provided in paragraph

1 (1), that is not adopted by the Secretary or ap-  
2 plicable Indian Tribe.

3 “(5) WRITTEN STATEMENT.—

4 “(A) IN GENERAL.—Any submission by  
5 the Secretary under paragraph (4) shall include  
6 a written statement demonstrating that the  
7 Secretary gave equal consideration to the ef-  
8 fects of the condition adopted and alternatives  
9 not adopted on—

10 “(i) energy supply, distribution, cost,

11 and use;

12 “(ii) flood control;

13 “(iii) navigation;

14 “(iv) water supply;

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

17 “(vi) air quality; and

18 “(vii) the preservation of other as-  
19 pects of environmental quality.

20 “(B) BASIS.—The written statement in-  
21 cluded under subparagraph (A) shall be based  
22 on information available to the Secretary, in-  
23 cluding information voluntarily provided in a  
24 timely manner by the applicant and others.

1           “(C) STUDIES; DATA.—Along with the  
2 written statement included under subparagraph  
3 (A), the Secretary shall submit any studies,  
4 data, and other factual information available to  
5 the Secretary and relevant to the determination  
6 of the Secretary under paragraph (2).”; and  
7 (6) in paragraph (6) (as so redesignated)—

8           (A) in the first sentence, by striking “the  
9 Secretary’s final condition” and inserting “the  
10 final condition of the Secretary or applicable In-  
11 dian Tribe”;

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

15           (C) in the third sentence, by striking “Sec-  
16 retary” each place it appears and inserting  
17 “Secretary or applicable Tribe”; and

18           (D) in the fourth sentence—

19           (i) by striking “The Secretary” and  
20 inserting “The Secretary or applicable In-  
21 dian Tribe”; and

22           (ii) by striking “Secretary’s final writ-  
23 ten determination” and inserting “final  
24 written determination of the Secretary or  
25 applicable Indian Tribe”.

1 (b) ALTERNATIVE PRESCRIPTIONS.—Section 33(b)  
2 of the Federal Power Act (16 U.S.C. 823d(b)) is amend-  
3 ed—

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

8 (2) in paragraph (2)—

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

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

14 (ii) by striking “of the appropriate de-  
15 partment” and inserting “concerned”; and

16 (iii) by striking “to the Secretary”  
17 and inserting “to the Secretary con-  
18 cerned”; and

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

21 “(A) would result in improved protection  
22 for fish at no additional cost to the project, in-  
23 cluding the value of foregone power or energy,  
24 as compared to the fishway initially prescribed  
25 by the Secretary concerned; or

1 “(B) would—

2 “(i) be no less protective than the  
3 fishway initially prescribed by the Sec-  
4 retary concerned; and

5 “(ii) as compared to the fishway ini-  
6 tially prescribed by the Secretary con-  
7 cerned—

8 “(I) cost significantly less to im-  
9 plement; or

10 “(II) result in improved oper-  
11 ation of the project works for elec-  
12 tricity production.”;

13 (3) in paragraph (3), by striking “the Sec-  
14 retary” each place it appears and inserting “the Sec-  
15 retary concerned”;

16 (4) by redesignating paragraph (5) as para-  
17 graph (6);

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

20 “(4) PUBLIC RECORD.—The Secretary con-  
21 cerned shall submit into the public record of the  
22 Commission proceeding with any prescription under  
23 section 18 or alternative prescription accepted by the  
24 Secretary concerned under this subsection a detailed  
25 analysis establishing and explaining how the pre-

1        description adopted by the Secretary concerned meets  
2        the criteria under paragraph (2), as compared to—

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

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

9        “(5) WRITTEN STATEMENT.—

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

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

18                       “(ii) flood control;

19                       “(iii) navigation;

20                       “(iv) water supply;

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

23                       “(vi) air quality; and

24                       “(vii) the preservation of other as-  
25                       pects of environmental quality.



1           “(B) BASIS.—The written statement in-  
2           cluded under subparagraph (A) shall be based  
3           on information available to the Secretary con-  
4           cerned, including information voluntarily pro-  
5           vided in a timely manner by the applicant and  
6           others.

7           “(C) STUDIES; DATA.—Along with the  
8           written statement included under subparagraph  
9           (A), the Secretary concerned shall submit any  
10          studies, data, and other factual information  
11          available to the Secretary concerned and rel-  
12          evant to the determination of the Secretary con-  
13          cerned under paragraph (2).”; and

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

15                 (A) in the first sentence, by striking “the  
16                 Secretary’s final prescription” and inserting  
17                 “the final prescription of the Secretary con-  
18                 cerned”;

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

22                 (C) in the third sentence, by striking “Sec-  
23                 retary” each place it appears and inserting  
24                 “Secretary concerned”; and

25                 (D) in the fourth sentence—

- 1 (i) by striking “The Secretary” and  
2 inserting “The Secretary concerned”; and  
3 (ii) by striking “Secretary’s final writ-  
4 ten determination” and inserting “final  
5 written determination of the Secretary con-  
6 cerned”.

7 **SEC. 11. PROMOTING HYDROPOWER DEVELOPMENT AT EX-**  
8 **ISTING NONPOWERED DAMS.**

9 Section 34 of the Federal Power Act (16 U.S.C.  
10 823e) is amended—

- 11 (1) by striking subsection (c);  
12 (2) by redesignating subsections (a), (b), (d),  
13 (e), and (f) as subsections (b), (c), (g), (a), and (h),  
14 respectively, and moving the subsections so as to ap-  
15 pear in alphabetical order;  
16 (3) in subsection (a) (as so redesignated)—  
17 (A) in paragraph (1)—  
18 (i) in subparagraph (D), by striking  
19 “and” at the end;  
20 (ii) in subparagraph (E), by striking  
21 the period at the end and inserting “;  
22 and”; and  
23 (iii) by adding at the end the fol-  
24 lowing:

1           “(F) the Commission determines, after  
2           considering the notification of intent submitted  
3           by the applicant under subsection (e)(1), any  
4           supporting information, and comments received  
5           under subsection (e)(2)(A), and any consulta-  
6           tion under subsection (e)(2)(B), that an expedi-  
7           tious licensing decision under this section is  
8           reasonably practicable, taking into consider-  
9           ation, as appropriate—

10           “(i) whether any applicable environ-  
11           mental or dam safety considerations dem-  
12           onstrate that the qualifying nonpowered  
13           dam associated with the qualifying facility  
14           is likely to be removed during the term of  
15           a license;

16           “(ii) whether existing information es-  
17           tablishes that the qualifying nonpowered  
18           dam associated with the qualifying facility  
19           will no longer serve an existing public pur-  
20           pose during the term of a license;

21           “(iii) whether any adverse resource ef-  
22           fect associated with the qualifying nonpow-  
23           ered dam, including lack of fish passage,  
24           is—

25           “(I) presently unmitigated; and

1                   “(II) likely to remain unmiti-  
2                   gated under future operation;

3                   “(iv) whether the licensing of the fa-  
4                   cility by the Commission has the potential  
5                   to mitigate or enhance environmental con-  
6                   ditions associated with the qualifying non-  
7                   powered dam associated with the quali-  
8                   fying facility, including any preliminary  
9                   protection, mitigation, and enhancement  
10                  measures identified by the applicant;

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

14                  “(vi) whether information submitted  
15                  with, or referenced in, the notification of  
16                  intent is adequate to support the develop-  
17                  ment of the license application.”;

18                  (B) by striking paragraph (2) and insert-  
19                  ing the following:

20                  “(2) QUALIFYING FACILITY.—

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

23                  “(i) includes only—

24                  “(I) the power house, power tun-  
25                  nel, penstocks, and tailrace;

1                   “(II) any other water conveyance  
2                   infrastructure connected directly to  
3                   the powerhouse;

4                   “(III) each primary line trans-  
5                   mitting power from the facility to the  
6                   point of junction with the distribution  
7                   system or the interconnected primary  
8                   transmission system; and

9                   “(IV) any other new, miscella-  
10                  neous structures used and useful in  
11                  connection with the facility; and

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

14                  “(B) EXCLUSIONS.—Notwithstanding sub-  
15                  paragraph (A)(i)(IV) and section 3(11), the  
16                  term ‘qualifying facility’ does not include, with  
17                  respect to the complete unit of improvement or  
18                  development of a facility described in subpara-  
19                  graph (A)—

20                         “(i) a dam or appurtenant work or  
21                         structure (including a navigation struc-  
22                         ture);

23                         “(ii) a dike;

24                         “(iii) any other water retention or di-  
25                         version infrastructure;

1 “(iv) an impoundment;

2 “(v) a shoreline;

3 “(vi) an access road; or

4 “(vii) any recreational or other infra-  
5 structure associated with an existing non-  
6 powered dam or impoundment.”; and

7 (C) in paragraph (3)—

8 (i) in the matter preceding subpara-  
9 graph (A), by inserting “Federal or non-  
10 Federal” after “means any”; and

11 (ii) by striking subparagraph (C) and  
12 inserting the following:

13 “(C) that—

14 “(i) for a non-Federal dam—

15 “(I) as of October 23, 2018, is  
16 not generating electricity using any  
17 hydropower-generating facility that  
18 is—

19 “(aa) licensed under this  
20 part; or

21 “(bb) exempted from the li-  
22 cense requirements contained in  
23 this part; and

24 “(II) is regulated by an estab-  
25 lished dam safety program of the

1 State in which the non-Federal dam is  
2 located; or

3 “(ii) for a Federal dam—

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

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

8 “(bb) has available incre-  
9 mental generation potential for  
10 non-Federal power develop-  
11 ment.”;

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

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

15 (B) in paragraph (1)—

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

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

22 (C) by striking paragraph (2) and insert-  
23 ing the following:

24 “(2) UPDATING REGULATIONS.—Not later than  
25 180 days after the date of enactment of the Commu-

1 nity and Hydropower Improvement Act, after con-  
2 sulting with the interagency task force under para-  
3 graph (3) and providing notice and an opportunity  
4 for public comment, the Commission shall update  
5 regulations of the Commission for issuing licenses  
6 for qualifying facilities under this section.”;

7 (D) in paragraph (3)—

8 (i) in subparagraph (A)—

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

12 “(A) IN GENERAL.—In updating regula-  
13 tions”; and

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

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

19 “(B) WORKSHOPS AND MEETINGS.—Be-  
20 fore issuing any proposed rule for public com-  
21 ment pursuant to paragraph (2), the Commis-  
22 sion shall convene workshops and other meet-  
23 ings with the interagency task force under this  
24 paragraph to develop procedures that allow the  
25 Commission and appropriate Federal and State



1 agencies and Indian Tribes to exercise authority  
2 in accordance with subsection (d).”; and

3 (E) by striking paragraph (4) and insert-  
4 ing the following:

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

12 (5) in subsection (c) (as so redesignated)—

13 (A) by striking paragraph (2);

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

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

18 “(1) APPLICABILITY OF SAFETY REGULA-  
19 TIONS.—

20 “(A) IN GENERAL.—The rules and regula-  
21 tions of the Commission relating to the protec-  
22 tion of life, health, and property shall apply to  
23 a qualifying facility licensed under this section,  
24 only with respect to the potential effects of the  
25 construction, operation, and maintenance of the

1           qualifying facility on the safety of the applicable  
2           qualifying nonpowered dam.

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

9                   “(i) the qualifying nonpowered dam;  
10                   and

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

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

17           “(3) REQUIREMENTS.—Before issuing any li-  
18           cense for a qualifying facility at a non-Federal quali-  
19           fying nonpowered dam, the Commission shall—

20                   “(A) ensure that the qualifying nonpow-  
21                   ered dam, and each other structure associated  
22                   with the qualifying facility, is or will be con-  
23                   sistent with the applicable dam safety standards  
24                   of the Commission; and

1           “(B) consult with the applicable dam regu-  
2           lator in the State in which the qualifying facil-  
3           ity is located to ensure appropriate continued  
4           oversight of the qualifying nonpowered dam as-  
5           sociated with the qualifying facility , and associ-  
6           ated structures, over the term of the license.”;

7           (6) by inserting after subsection (c) (as so re-  
8           designated) the following:

9           “(d) STORAGE, RELEASE, AND FLOW OPER-  
10          ATIONS.—

11           “(1) LIMITATIONS.—

12           “(A) OBLIGATIONS.—Notwithstanding any  
13           other legal requirement pertaining to a quali-  
14           fying facility licensed under this section, the  
15           Commission, Federal and State agencies, and  
16           Indian Tribes shall not impose any obligation in  
17           the licensing of the qualifying facility that  
18           would interfere with, or materially change or af-  
19           fect in any way, the storage, release, or flow op-  
20           erations of the qualifying nonpowered dam as-  
21           sociated with the qualifying facility, other than  
22           the routing of release or flow operations  
23           through the qualifying facility.

24           “(B) INTERFERENCE.—Notwithstanding  
25           any other legal requirement pertaining to a

1           qualifying facility licensed under this section,  
2           the licensing of a qualifying facility under this  
3           section by the Commission shall not interfere  
4           with, or materially change or affect in any way,  
5           any other Federal, State, or Tribal authority  
6           pertaining to the storage, release, or flow oper-  
7           ations applicable to the qualifying nonpowered  
8           dam associated with the qualifying facility,  
9           other than the routing of release or flow oper-  
10          ations through the qualifying facility.

11           “(2) CONDITION IN LICENSE.—The Commission  
12          shall include in any license issued pursuant to this  
13          section a condition prohibiting the licensee from ma-  
14          terially changing the storage, release, or flow oper-  
15          ations of a qualifying nonpowered dam associated  
16          with the qualifying facility for the sole purpose of  
17          improving the power value of the qualifying facility.

18          “(e) EXPEDITED PROCESS.—

19           “(1) NOTIFICATION OF INTENT AND SUP-  
20          PORTING INFORMATION.—The applicant for a quali-  
21          fying facility shall commence the licensing process  
22          under this section by submitting to the Commission  
23          a notification of intent to file an application for a li-  
24          cense, together with supporting information, which

1 shall inform the determination of the Commission  
2 under paragraph (2).

3 “(2) COMMISSION DETERMINATION.—

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

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

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

18 “(B) CONSULTATION.—In making a deter-  
19 mination under subparagraph (A) with respect  
20 to a proposed facility, the Commission shall  
21 consult with Federal and State agencies and In-  
22 dian Tribes with authority over the facility re-  
23 garding any qualifying criteria that may dis-  
24 qualify the facility from the expedited process  
25 under this section.

1           “(C) RESOLUTION.—If the Commission de-  
2           termines under subparagraph (B) that any  
3           qualifying criteria potentially disqualify a pro-  
4           posed facility from the expedited process under  
5           this section, the Commission shall—

6                   “(i) seek to resolve any issues in ad-  
7                   vance of issuing a determination regarding  
8                   whether the proposed facility is a quali-  
9                   fying facility under this paragraph; and

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

13           “(3) QUALIFYING FACILITY APPLICATIONS.—

14                   “(A) IN GENERAL.—After submitting a no-  
15                   tification of intent under paragraph (1), an ap-  
16                   plicant for a qualifying facility shall submit to  
17                   the Commission an application for a license  
18                   under this section.

19                   “(B) INCLUSIONS.—An application under  
20                   subparagraph (A) shall include a description of  
21                   each protection, mitigation, and enhancement  
22                   measure proposed to be carried out in order for  
23                   the applicable qualifying facility to receive a li-  
24                   cense from the Commission, in accordance with  
25                   subsection (f).

1                   “(C) DEADLINE FOR SUBMISSION.—An ap-  
2                   plication under this paragraph shall be sub-  
3                   mitted to the Commission not later than the  
4                   later of—

5                   “(i) the date that is 30 days after the  
6                   close of a single season of studies con-  
7                   ducted in support of the application; and

8                   “(ii) the date that is 1 year after the  
9                   date on which a determination of the Com-  
10                  mission is provided under paragraph (2).

11               “(f) REQUIREMENTS.—In determining whether to ap-  
12               prove an application for a license for a qualifying facility  
13               under subsection (e)(3), in accordance with the deadline  
14               described in subsection (b)(4), the Commission, in con-  
15               sultation with applicable Federal and State resource agen-  
16               cies and Indian Tribes with regulatory responsibility for  
17               the qualifying facility , shall—

18               “(1)(A) use relevant existing studies, moni-  
19               toring information, and data that are applicable to  
20               the relevant qualifying facility, in accordance with  
21               section 10(1);

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

24               “(C) design any new studies and information  
25               requirements to be consistent with the ability of the

1 Commission to meet the licensing deadline under  
2 subsection (b)(4);

3 “(2) consider whether obligations under the Na-  
4 tional Environmental Policy Act of 1969 (42 U.S.C.  
5 4321 et seq.) may be met through—

6 “(A) preparing an environmental assess-  
7 ment; or

8 “(B) supplementing a previously prepared  
9 environmental assessment or environmental im-  
10 pact statement;

11 “(3) develop a licensing process that reduces  
12 administrative burdens on resource agencies, Indian  
13 Tribes, the applicant, and the public by avoiding un-  
14 necessary paperwork, meetings, and other process  
15 obligations, subject to the condition that nothing in  
16 this paragraph eliminates any applicable consulta-  
17 tion requirement under Federal or State law (includ-  
18 ing regulations);

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

23 “(A) the existence of infrastructure at the  
24 time of the license application; and



1           “(B) that ongoing operations of existing  
2           infrastructure, including water releases, will be  
3           materially unchanged as a result of the develop-  
4           ment and operation of the qualifying facility, in  
5           accordance with subsection (d); and

6           “(5) consider a set of standard license terms  
7           and conditions that generally would apply to all  
8           qualifying facilities licensed under this section, based  
9           on common technical considerations and environ-  
10          mental effects, subject to the condition that the de-  
11          velopment of standard license terms and conditions  
12          shall not limit the imposition of facility-specific con-  
13          ditions for any particular qualifying facility.”; and

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

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

17                 (B) in paragraph (2), by striking the pe-  
18                 riod at the end and inserting “; or”; and

19                 (C) by adding at the end the following:

20                 “(3) any applicable State or Tribal law relating  
21                 to a qualifying nonpowered dam, dike, conduit, im-  
22                 poundment, or shoreline, or any land or infrastruc-  
23                 ture associated with such qualifying nonpowered  
24                 dam, that is not a component of a license issued  
25                 pursuant to this section, including such a law relat-

1 ing to dam safety, property ownership and control,  
2 public access and safety, or the appropriation, use,  
3 or distribution of water at the qualifying nonpowered  
4 dam.”.

5 **SEC. 12. CLOSED-LOOP AND OFF-STREAM PUMPED STOR-**  
6 **AGE PROJECTS.**

7 Section 35 of the Federal Power Act (16 U.S.C.  
8 823f) is amended to read as follows:

9 **“SEC. 35. CLOSED-LOOP AND OFF-STREAM PUMPED STOR-**  
10 **AGE PROJECTS.**

11 “(a) DEFINITIONS.—In this section:

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

15 “(A) that—

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

19 “(ii) can—

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

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

24 “(B) that is designed for construction and  
25 operation in a manner that ensures that the

1 upper and lower reservoirs or other water bod-  
2 ies do not impound any stream channel of a  
3 natural surface waterway, unless—

4 “(i) 1 or more project reservoirs are  
5 located on, or connected to, a stream chan-  
6 nel of a natural waterway that has flowing  
7 water only during, and for a short duration  
8 after, precipitation events during a typical  
9 year; or

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

14 “(I) is in existence on the date of  
15 enactment of the Community and  
16 Hydropwer Improvement Act;

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

19 “(aa) surfacewater of a dif-  
20 ferent natural watershed via an  
21 existing pipeline, aqueduct, or  
22 other conveyance infrastructure;  
23 or

24 “(bb) groundwater; and

1                   “(III) obtains not more than 10  
2                   percent of the volume of the average  
3                   annual inflow of surfacewater from  
4                   the natural watershed in which the  
5                   reservoir is located; and

6                   “(C) any project reservoir (except for a  
7                   reservoir described in subparagraph (B)(ii)) of  
8                   which, if the reservoir is connected to a natural  
9                   surface waterway, is connected for the sole pur-  
10                  pose of the initial fill and periodic recharge of  
11                  reservoirs needed for project operation.

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

16                  “(A) is unlikely to involve any fish or wild-  
17                  life species listed as a threatened or endangered  
18                  species, or any habitat designated as a critical  
19                  habitat of such a species, under the Endan-  
20                  gered Species Act of 1973 (16 U.S.C. 1531 et  
21                  seq.), unless the applicable notification of intent  
22                  identifies proposed measures to protect or miti-  
23                  gate damages to the applicable species or habi-  
24                  tat;

1           “(B) is unlikely to involve resource issues  
2           that are unusual or complex in the licensing  
3           process and associated environmental review;

4           “(C) is supported by sufficient information  
5           and proposed environmental study plans sub-  
6           mitted with the notification of intent to support  
7           expedited environmental review and consider-  
8           ation of the application;

9           “(D) proposes construction, development,  
10          and operation the environmental effects of  
11          which are likely capable of protection, mitiga-  
12          tion, and enhancement through the licensing  
13          provisions contained in this part; and

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

19                   “(i) is a project proponent; or

20                   “(ii) consents, in writing, to the loca-  
21                   tion.

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

24                   “(1) IN GENERAL.—The Commission may issue  
25          licenses, as appropriate, for any closed-loop or off-

1 stream pumped storage project that meets the quali-  
2 fying criteria, as determined by the Commission, in  
3 accordance with this section.

4 “(2) UPDATING REGULATIONS.—Not later than  
5 180 days after the date of enactment of the Commu-  
6 nity and Hydropwer Improvement Act, after con-  
7 sultation with the interagency task force under para-  
8 graph (3) and providing notice and an opportunity  
9 for public comment, the Commission shall update  
10 regulations of the Commission for issuing licenses  
11 for closed-loop or off-stream pumped storage  
12 projects that meet the qualifying criteria.

13 “(3) INTERAGENCY TASK FORCE.—

14 “(A) IN GENERAL.—In updating regula-  
15 tions under this section, the Commission shall  
16 convene an interagency task force, with appro-  
17 priate Federal and State agencies, Indian  
18 Tribes, and the public represented, to coordi-  
19 nate the regulatory processes associated with  
20 the authorizations required to construct and op-  
21 erate closed-loop or off-stream pumped storage  
22 projects that meet the qualifying criteria.

23 “(B) WORKSHOPS AND MEETINGS.—Be-  
24 fore issuing a proposed rule for public comment  
25 under paragraph (2), the Commission shall con-

1           vene workshops and other meetings with the  
2           interagency task force under this paragraph to  
3           develop procedures that allow the Commission  
4           and appropriate Federal and State agencies and  
5           Indian Tribes to exercise authority in accord-  
6           ance with—

7                           “(i) this section; and

8                           “(ii) the applicable requirements of  
9                           this part.

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

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

23           “(d) EXPEDITED PROCESS.—

24                           “(1) NOTIFICATION OF INTENT AND SUP-  
25           PORTING INFORMATION.—The applicant for a

1 closed-loop or off-stream pumped storage project  
2 shall commence the licensing process under this sec-  
3 tion by submitting to the Commission a notification  
4 of intent to file an application for a license, together  
5 with supporting information, which shall inform the  
6 determination of the Commission under paragraph  
7 (2).

8 “(2) COMMISSION DETERMINATION.—

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

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

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

24 “(B) CONSULTATION.—In making a deter-  
25 mination under subparagraph (A) with respect



1 to a closed-loop or off-stream pumped storage  
2 project, the Commission shall consult with Fed-  
3 eral and State agencies and Indian Tribes with  
4 authority over the closed-loop or off-stream  
5 pumped storage project regarding any quali-  
6 fying criteria that may disqualify the closed-  
7 loop or off-stream pumped storage project from  
8 the expedited process under this section.

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

15 “(i) seek to resolve any issues in ad-  
16 vance of issuing a determination regarding  
17 whether the closed-loop or off-stream  
18 pumped storage project meets the quali-  
19 fying criteria under this paragraph; and

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

23 “(3) CLOSED-LOOP AND OFF-STREAM PUMPED  
24 STORAGE PROJECT APPLICATIONS.—

1           “(A) IN GENERAL.—Not later than 1 year  
2           after the date on which the Commission deter-  
3           mines under paragraph (2) that a closed-loop or  
4           off-stream pumped storage project meets the  
5           qualifying criteria, an applicant for the closed-  
6           loop or off-stream pumped storage project shall  
7           submit to the Commission an application for a  
8           license under this section.

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

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

24                 “(1)(A) use relevant existing studies, moni-  
25                 toring information, and data that are applicable to

1 the relevant project, in accordance with section  
2 10(l);

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

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

9 “(2) consider whether obligations under the Na-  
10 tional Environmental Policy Act of 1969 (42 U.S.C.  
11 4321 et seq.) may be met through—

12 “(A) preparing an environmental assess-  
13 ment; or

14 “(B) supplementing a previously prepared  
15 environmental assessment or environmental im-  
16 pact statement;

17 “(3) develop a licensing process that reduces  
18 administrative burdens on resource agencies, Indian  
19 Tribes, the applicant, and the public by avoiding un-  
20 necessary paperwork, meetings, and other process  
21 obligations, subject to the condition that nothing in  
22 this paragraph eliminates any applicable consulta-  
23 tion requirement under Federal or State law (includ-  
24 ing regulations); and

1           “(4) consider a set of standard license terms  
2           and conditions that generally would apply to all  
3           closed-loop or off-stream pumped storage projects li-  
4           censed under this section, based on common tech-  
5           nical considerations and environmental effects, sub-  
6           ject to the condition that the development of stand-  
7           ard license terms and conditions shall not limit the  
8           imposition of project-specific conditions for any par-  
9           ticular closed-loop or off-stream pumped storage  
10          project.

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

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

20                 “(2) transfer a license in part to 1 or more  
21                 nonmunicipal entities as co-licensees with a munici-  
22                 pality, if the municipality retains majority ownership  
23                 of the closed-loop or off-stream pumped storage  
24                 project for which the license was issued.

1 “(g) DEVELOPING ABANDONED MINES FOR PUMPED  
2 STORAGE.—

3 “(1) WORKSHOP.—Not later than 180 days  
4 after the date of enactment of this Act, the Commis-  
5 sion shall hold a workshop to explore potential op-  
6 portunities for development of closed-loop pumped  
7 storage projects at abandoned mine sites.

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

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

17 **SEC. 13. CONDITIONS TO PROTECT TRIBAL RESOURCES.**

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

20 **“SEC. 37. CONDITIONS TO PROTECT TRIBAL RESOURCES.**

21 “(a) NECESSARY CONDITIONS OF INDIAN TRIBES.—

22 “(1) IN GENERAL.—Except as provided in sub-  
23 section (c), an Indian Tribe shall have exclusive au-  
24 thority to deem a condition to a license under this  
25 part to be necessary under section 4(e)(2) if the li-

1       cense is issued for a project located within any land  
2       or an interest in land the legal title to which is held  
3       by the United States in trust for the benefit of the  
4       Indian Tribe, regardless of whether the Indian Tribe  
5       is a licensee or applicant for the project, subject to  
6       paragraph (2).

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

11                   “(A) the condition;

12                   “(B) a written statement—

13                           “(i) demonstrating that the Indian  
14                           Tribe considered alternatives to the sub-  
15                           mitted condition;

16                           “(ii) providing a scientific and tech-  
17                           nical rationale for—

18                                   “(I) the condition submitted; and

19                                   “(II) alternatives considered but  
20                                   not adopted; and

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

23                           “(C) any studies, data, and other factual  
24                           information relied on by the Indian Tribe that  
25                           is relevant to the decision of the Indian Tribe.

1           “(b) OTHER RESERVATIONS.—For any license issued  
2 within any reservation other than a reservation described  
3 in subsection (a), the Secretary of the agency responsible  
4 for the supervision of the reservation, in deeming condi-  
5 tions of the license to be necessary under section 4(e)(2),  
6 shall consult with the Secretary of the Interior and any  
7 potentially affected Indian Tribes regarding the respon-  
8 sibilities of the United States in the project area under  
9 any applicable treaty with an Indian Tribe, as determined  
10 by a court of competent jurisdiction.

11           “(c) EXCLUSION.—This section shall not apply to any  
12 project that, as of the date of enactment of the Commu-  
13 nity and Hydropower Improvement Act—

14                   “(1) is licensed under this part; and

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

18 **SEC. 14. COORDINATION OF COMMISSION AND OTHER**  
19 **AGENCIES ISSUING FEDERAL AUTHORIZA-**  
20 **TIONS.**

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

1 **“SEC. 38. COORDINATION OF COMMISSION AND OTHER**  
2 **AGENCIES ISSUING FEDERAL AUTHORIZA-**  
3 **TIONS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) CONDITIONING AGENCY.—The term ‘con-

6 ditioning agency’ means a Federal agency (other

7 than the Commission), a State agency, or an Indian

8 Tribe that has the authority to issue a Federal au-

9 thorization.

10 “(2) FEDERAL AUTHORIZATION.—The term

11 ‘Federal authorization’ means any authorization re-

12 quired under Federal law with respect to an applica-

13 tion for a license, including any—

14 “(A) license;

15 “(B) condition of a license submitted by

16 the applicable Secretary or an Indian Tribe

17 under section 4(e)(2);

18 “(C) prescription submitted by the applica-

19 ble Secretary under section 18;

20 “(D) permit;

21 “(E) special use authorization;

22 “(F) certification;

23 “(G) opinion;

24 “(H) consultation;

25 “(I) determination; or

26 “(J) other approval.



1 “(b) COORDINATION OF SCHEDULE.—

2 “(1) INITIAL CONFERENCE.—Not later than 90  
3 days after the date on which an applicant submits  
4 to the Commission a notification of intent to apply  
5 for a license under this part , the Commission, after  
6 consultation with each conditioning agency, shall  
7 convene a technical conference, with a transcript to  
8 be taken by the Commission and submitted to the  
9 public record, to coordinate the respective efforts  
10 and schedules of the Commission and the condi-  
11 tioning agencies relating to studies and other infor-  
12 mation, consultations, environmental reviews, and  
13 decisionmaking.

14 “(2) JOINT SCHEDULE AND RECORD.—

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

21 “(i) a joint schedule that will permit  
22 the timely completion of decisions required  
23 to be made with respect to, and timely  
24 issuance of, Federal authorizations by the

1 Commission and the conditioning agencies;  
2 and

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

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

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

13 “(ii) to ensure timely decisionmaking.

14 “(3) SUBSEQUENT CONFERENCES.—

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

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

24 “(ii) threaten the ability of the Com-  
25 mission or any conditioning agency to

1 maintain any joint schedule established  
2 under paragraph (2).

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

7 “(4) FAILURE TO AGREE.—If the Commission  
8 and a conditioning agency are unable to establish or  
9 maintain a joint schedule under paragraph (2), the  
10 Commission and conditioning agency shall submit to  
11 the public record maintained by the Commission, not  
12 later than 30 days after the conclusion of the tech-  
13 nical conference under paragraph (1) or (3), as ap-  
14 plicable, a statement that—

15 “(A) identifies each inconsistency or con-  
16 flict;

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

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

24 “(c) COORDINATION OF INFORMATION AND STUD-  
25 IES.—

1           “(1) CONFERENCE.—As early as practicable  
2 after the date on which an applicant submits to the  
3 Commission a notification of intent to apply for a li-  
4 cense under this part, the Commission, after con-  
5 sultation with each conditioning agency, shall con-  
6 vene a technical conference to address existing infor-  
7 mation and potential new studies relevant to the de-  
8 velopment of the record that would support agency  
9 decisionmaking.

10           “(2) JOINT STUDY PLAN.—To the extent rea-  
11 sonably practicable, the Commission and the applica-  
12 ble conditioning agencies shall establish, with respect  
13 to each project that is the subject of a notification  
14 of intent to apply for a license under this part, a  
15 joint study plan.

16           “(3) FAILURE TO AGREE.—If 1 or more agen-  
17 cies are unable to establish or maintain a joint study  
18 plan, the applicable agencies shall submit to the pub-  
19 lic record maintained by the Commission, not later  
20 than 30 days after the conclusion of the technical  
21 conference under paragraph (1), a statement that—

22                   “(A) identifies each inconsistency or con-  
23 flict;

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

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

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

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

14           “(2) shall give due weight to the findings of  
15           fact resulting from the trial-type hearing in pre-  
16           paring any environmental analysis under the Na-  
17           tional Environmental Policy Act of 1969 (42 U.S.C.  
18           4321 et seq.).

19           “(e) CONSULTATION ON INCONSISTENT OR CON-  
20          FLICTING LICENSE TERMS.—

21           “(1) IN GENERAL.—If a term or condition of a  
22           Federal authorization submitted or recommended for  
23           inclusion in a license under this part conflicts or is  
24           otherwise inconsistent with another such term or  
25           condition in a Federal authorization, the Commis-

1 sion shall initiate and facilitate consultation with the  
2 conditioning agencies submitting conflicting or in-  
3 consistent terms or conditions, to attempt to resolve  
4 the inconsistency or conflict.

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

7 “(A) be not longer than 90 days; and

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

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

18 “(4) FAILURE TO AGREE.—If the agencies sub-  
19 mitting terms or conditions of a Federal authoriza-  
20 tion are unable to resolve an inconsistency or con-  
21 flict under this subsection, the agencies shall submit  
22 to the public record maintained by the Commission,  
23 not later than 30 days after the conclusion of the  
24 consultation, a statement that—

1               “(A) identifies the inconsistency or con-  
 2               flict; and

3               “(B) explains the reason for the inconsist-  
 4               ency or conflict, supported by information in  
 5               the public record.

6               “(f) PUBLIC NOTICE AND PARTICIPATION.—

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

11              “(2) PARTICIPATION.—Each technical con-  
 12              ference under this section shall be held open to par-  
 13              ticipation by—

14                      “(A) the applicable license applicant; and

15                      “(B) other licensing participants.

16              “(g) RULEMAKING.—Not later than 1 year after the  
 17              date of enactment of the Community and Hydropwer Im-  
 18              provement Act, after providing notice and an opportunity  
 19              for public comment, the Commission shall promulgate reg-  
 20              ulations to implement the requirements of this section.”.

21     **SEC. 15. OFF-SITE CONSIDERATIONS IN HYDROPOWER LI-**  
 22                      **CENSING.**

23              Part I of the Federal Power Act (16 U.S.C. 792 et  
 24              seq.) (as amended by section 14) is amended by adding  
 25              at the end the following:

1 **“SEC. 39. OFF-SITE CONSIDERATIONS IN HYDROPOWER LI-**  
2 **CENSING.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) CONDITIONING AGENCY; FEDERAL AU-  
5 THORIZATION.—The terms ‘conditioning agency’ and  
6 ‘Federal authorization’ have the meanings given the  
7 terms in section 38(a).

8 “(2) NONJURISDICTIONAL DAM.—The term  
9 ‘nonjurisdictional dam’ means any non-Federal dam,  
10 dike, embankment, or other barrier that—

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

13 “(B) is not—

14 “(i) licensed under this part; or

15 “(ii) exempted from the license re-  
16 quirements contained in this part.

17 “(3) OFF-SITE MEASURE.—The term ‘off-site  
18 measure’ means any activity intended to mitigate the  
19 project effects by replacing or providing substitute  
20 resources or habitat at a location different from the  
21 project area.

22 “(b) OFF-SITE MEASURES.—

23 “(1) IN GENERAL.—In discharging responsibil-  
24 ities under any Federal authorization for the protec-  
25 tion of, mitigation of damage to, and enhancement



1 of resources affected by a project, the Commission  
2 and conditioning agencies—

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

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

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

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

23 “(4) PROJECT EXTENT.—Notwithstanding sec-  
24 tion 3(11), the land, infrastructure, improvements,  
25 and waters associated with any off-site mitigation

1 measure shall not be required to be included as part  
2 of a project, subject to the condition that any off-  
3 site measure adopted under this section shall be in-  
4 cluded, implemented, and enforced as a license con-  
5 dition issued by the Commission under this part.

6 “(c) NONJURISDICTIONAL DAM REMOVAL.—

7 “(1) IN GENERAL.—The requirements of this  
8 subsection apply to any off-site measure that—

9 “(A) includes removal of a nonjurisdic-  
10 tional dam;

11 “(B) is proposed by an applicant; and

12 “(C) is approved by the Commission or a  
13 conditioning agency under a Federal authoriza-  
14 tion.

15 “(2) LIABILITY PROTECTION.—

16 “(A) IN GENERAL.—Notwithstanding any  
17 other provision of Federal, State, Tribal, local,  
18 or common law, a licensee shall not be liable for  
19 any harm, loss, or other damage to an indi-  
20 vidual or entity, property, a natural resource, or  
21 the environment, or any damages resulting from  
22 dam removal, arising from, relating to, or trig-  
23 gered by an action associated with the removal  
24 of a nonjurisdictional dam under this section,  
25 including any damage caused by the release of

1 any material or substance (including a haz-  
2 arduous substance), if the licensee and the owner  
3 of the nonjurisdictional dam or third party have  
4 entered into a legally enforceable agreement en-  
5 suring that the owner (or an assignee) or third  
6 party retains that liability.

7 “(B) FUNDING.—Notwithstanding any  
8 other provision of Federal, State, local, or com-  
9 mon law, no individual or entity contributing  
10 funds for removal of a nonjurisdictional dam  
11 under this section shall be held liable, solely by  
12 virtue of that funding, for any harm, loss, or  
13 other damage to an individual or entity, prop-  
14 erty, or the environment, or damages, arising  
15 from the removal of a facility or facility oper-  
16 ations arising from, relating to, or triggered by  
17 an action associated with removal of the non-  
18 jurisdictional dam, including any damage  
19 caused by the release of any material or sub-  
20 stance (including a hazardous substance).

21 “(3) PREEMPTION.—

22 “(A) IN GENERAL.—Notwithstanding sec-  
23 tion 10(c), except as provided in subparagraph  
24 (B), protection from liability under this sub-  
25 section shall preempt the law of any State or

1 Indian Tribe to the extent that the State or  
2 Tribal law is inconsistent with this section.

3 “(B) EXCEPTION.—Nothing in this sub-  
4 section limits any otherwise-available immunity,  
5 privilege, or defense under any other provision  
6 of law.

7 “(d) RULEMAKING.—Not later than 1 year after the  
8 date of enactment of the Community and Hydropwer Im-  
9 provement Act, the Commission, after providing notice  
10 and an opportunity for public comment, shall promulgate  
11 regulations to implement the requirements of this sec-  
12 tion.”.

13 **SEC. 16. MICRO HYDROPOWER FACILITIES.**

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

17 **“SEC. 40. MICRO HYDROPOWER FACILITIES.**

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

23 “(1) opportunities to expand the use of micro  
24 hydropower facilities in the United States for pur-  
25 poses of—

1           “(A) capturing the electric generating po-  
2           tential of existing hydraulic processes without  
3           requiring the construction of any new dam or  
4           similar infrastructure;

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

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

10          “(2) regulatory processes for, and administra-  
11          tion of, micro hydropower facilities, including with  
12          respect to—

13                 “(A) the protection, mitigation, and en-  
14                 hancement of fish and wildlife (including re-  
15                 lated spawning grounds and habitat) and other  
16                 beneficial public uses, including irrigation, flood  
17                 control, water supply, and recreational and  
18                 other purposes referred to in section 4(e)(5);

19                 “(B) achieving cost-effective and adminis-  
20                 tratively efficient regulation of micro hydro-  
21                 power facilities that are commensurate with the  
22                 size, expanse, and environmental effects of  
23                 micro hydropower facilities; and

24                 “(C) protecting public safety and the  
25                 structural integrity of project works.

1       “(b) INFORMATION GATHERING.—In carrying out  
2 subsection (a), the Commission shall—

3               “(1) consult with the Secretary of Energy, Fed-  
4 eral and State resource agencies, Indian Tribes, and  
5 the public; and

6               “(2) at a minimum—

7                       “(A) solicit—

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

10                              “(ii) public comment;

11               “(B) convene regional technical con-  
12 ferences to address the investigation subjects  
13 described in subsection (a); and

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

17       “(c) REPORT.—

18               “(1) IN GENERAL.—Not later than 1 year after  
19 the date of enactment of the Community and  
20 Hydropwer Improvement Act, the Commission shall  
21 submit to the Committee on Energy and Natural  
22 Resources of the Senate and the Committee on En-  
23 ergy and Commerce of the House of Representatives  
24 a report that—

1           “(A) analyzes each of the investigation  
2 subjects described in subsection (a), including—

3           “(i) a quantitative assessment of—

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

9                   “(II) the environmental and eco-  
10 nomic feasibility of an expanded use  
11 of micro hydropower facilities; and

12           “(ii) specific recommendations regard-  
13 ing the means by which Congress may ad-  
14 dress or remedy each identified issue;

15           “(B) describes the processes adopted, and  
16 any comments received, under subsection (b),  
17 including the response of the Commission to  
18 comments received from the Secretary of En-  
19 ergy, Federal and State resource agencies, In-  
20 dian Tribes, and the public; and

21           “(C) includes—

22                   “(i) a description of each rec-  
23 ommendation submitted relating to the  
24 draft report under paragraph (2); and

1                   “(ii) an explanation of the reasons of  
2                   the Commission for not adopting any sub-  
3                   mitted recommendation, if applicable, as  
4                   supported by information gathered under  
5                   subsection (b).

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

12 **SEC. 17. REPORTING REQUIREMENT.**

13                  (a) IN GENERAL.—Not later than 2 years after the  
14                  date of enactment of this Act and every 5 years thereafter,  
15                  the Federal Energy Regulatory Commission shall submit  
16                  to the Committee on Energy and Natural Resources of  
17                  the Senate and the Committee on Energy and Commerce  
18                  of the House of Representatives a report that describes  
19                  progress with respect to the implementation of this Act  
20                  and the amendments made by this Act.

21                  (b) REQUIREMENT.—A report submitted under sub-  
22                  section (a) shall—

23                         (1) identify any facilities for which expedited li-  
24                         censing was sought under section 34 of the Federal



1 Power Act (16 U.S.C. 823e) during the period cov-  
2 ered by the report, including—

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

6 (B) whether the facility qualified for expe-  
7 dited licensing under that section; and

8 (C) if the facility did not qualify for expe-  
9 dited licensing under that section, the reasons  
10 for such determination;

11 (2) identify all closed-loop and off-stream  
12 pumped storage projects for which expedited licens-  
13 ing was sought under section 35 of the Federal  
14 Power Act (as added by section 12) during the pe-  
15 riod covered by the report, including—

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

19 (B) whether the project qualified for expe-  
20 dited licensing under that section; and

21 (C) if the project did not qualify for expe-  
22 dited licensing under that section, the reasons  
23 for such determination;

24 (3) identify each instance in which an Indian  
25 Tribe exercised the right of an Indian Tribe under

1 section 37 of the Federal Power Act (as added by  
2 section 13) by deeming a condition to a license  
3 under part I of the Federal Power Act (16 U.S.C.  
4 792 et seq.) to be necessary under paragraph (2)(A)  
5 of section 4(e) of that Act (16 U.S.C. 797(e)), in-  
6 cluding—

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

9 (B) whether any party to the proceeding  
10 sought a trial-type hearing related to the condi-  
11 tion under paragraph (2)(B) of that section, an  
12 alternative condition under section 33(a) of that  
13 Act (16 U.S.C. 823d(a)), or otherwise chal-  
14 lenged the condition;

15 (4) identify and describe the outcomes of the ef-  
16 forts of Federal agencies to establish or maintain  
17 joint schedules under section 38(b) of the Federal  
18 Power Act (as added by section 14), with a discus-  
19 sion of specific examples that demonstrate trends,  
20 conflicts, and successes associated with the joint  
21 schedules;

22 (5) identify and describe the outcomes of the ef-  
23 forts of Federal agencies to establish or maintain  
24 joint study plans under section 38(c) of the Federal  
25 Power Act (as added by section 14), with a discus-

1        sion of specific examples that demonstrate trends,  
2        conflicts, and successes associated with the joint  
3        study plans; and

4            (6) identify and describe the outcomes of the ef-  
5        forts of Federal agencies to resolve inconsistent or  
6        conflicting license terms under section 38(e) of the  
7        Federal Power Act (as added by section 14), with a  
8        discussion of specific examples that demonstrate  
9        trends, conflicts, and successes associated with the  
10       opportunity to seek resolution of inconsistent or con-  
11       flicting license terms.