

Confidential and Privileged Settlement Communication

PROPOSED
KLAMATH RIVER BASIN RESTORATION AGREEMENT
FOR THE
SUSTAINABILITY OF PUBLIC AND TRUST RESOURCES AND AFFECTED
COMMUNITIES

May 6, 2009 Working Draft

Please Note: During the April 9, 2009 Klamath Settlement Group meeting, the Klamath Settlement Group reviewed and approved the red line changes shown in the April 2, 2009 working draft and those red line changes have been cleared.

The redline in this May 6, 2009 working draft shows the changes approved at the April 9, 2009 meeting. The Klamath Settlement Group should review these changes to make sure they are correct. Please send comments to Ed Sheets at ed@edsheets.com by Friday, May 15, 2009.

The Table of Contents has not been updated because this step is time-consuming. The only change was to add subsections for the California reintroduction actions in Section 11.

Signal: means instruction to LDX

Signal means: request to specified member of KSG Drafting Committee

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1. Introduction.

1.1. Parties.

The following Parties enter into this “Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities,” on ____, 2009. Other entities may subsequently become Parties by following the procedures established in Section 7.2.1.A.

United States

U.S. Department of Agriculture, Forest Service
U.S. Department of Commerce’s National Marine Fisheries Service
U.S. Department of the Interior, including Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service

State of California

California Department of Fish and Game

State of Oregon

Oregon Department of Environmental Quality
Oregon Department of Fish and Wildlife
Oregon Water Resources Department

Tribes

Karuk Tribe
Klamath Tribes
Yurok Tribe

Counties

Humboldt County, California
Klamath County, Oregon
Siskiyou County, California

Parties Related to Klamath Reclamation Project

Tulelake Irrigation District
Klamath Irrigation District

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Klamath Drainage District
Klamath Basin Improvement District
Ady District Improvement Company
Enterprise Irrigation District
Malin Irrigation District
Midland District Improvement Company
Pine Grove Irrigation District
Pioneer District Improvement Company
Poe Valley Improvement District
Shasta View Irrigation District
Sunnyside Irrigation District
Don Johnston & Son
Modoc Lumber Company
Bradley S. Luscombe
Randy Walthall and Inter-County Title Company
Reames Golf and Country Club
Winema Hunting Lodge, Inc.
Van Brimmer Ditch Company
Collins Products, LLC
Plevna District Improvement Company
Klamath Water Users Association
Klamath Water and Power Agency

Upper Klamath Irrigators

Off-Project Water Users Association
[Upper Klamath Water Users Association](#)

Other Organizations

American Rivers
California Trout
Friends of the River
National Center for Conservation Science and Policy
Northern California/Nevada Council Federation of Fly Fishers
Pacific Coast Federation of Fishermen's Associations
Salmon River Restoration Council
Trout Unlimited.

Deleted: Klamath Forest Alliance

Deleted: Northcoast Environmental Center

1.2. General Recitals.

1.2.1. Klamath Hydroelectric Project.

The Klamath Hydroelectric Project (FERC No. 2082), located on the Klamath River and its tributaries, blocks the upstream passage of anadromous and other fish at River Mile 195 and has other adverse impacts as a result of flow regulation. Through the Klamath Hydroelectric Project Settlement Agreement (Appendix D) (Hydropower Agreement), the Parties and PacifiCorp have agreed to propose for Regulatory Approvals measures for interim operations and eventual removal of dams and appurtenant facilities as an alternative to a new license.

1.2.2. Klamath Reclamation Project and Other Irrigation Deliveries.

The Parties enter into this Agreement to resolve longstanding disputes between them regarding the amounts, timing, and other conditions of diversion and delivery of water for irrigation, National Wildlife Refuges, and related uses within the Klamath Reclamation Project and by non-federal entities in the Upper Klamath Basin; regarding flows and lake levels that support Fish Species and wildlife. The resolution achieved here is intended to protect the sustainability of the agricultural uses and communities along with public and trust resources.

1.2.3. Sustainable Tribal Communities.

Tribes in the Klamath River Basin have lived in the Basin for millennia and are expected to continue to do so using sustainable resource-based economies. There are tribal fishing rights in various locations that have associated water rights for the fish to propagate and produce sufficient numbers for harvest. The Tribes, irrigators, and the United States have differed in administrative and judicial settings over the amounts of water needed for fish. This Agreement seeks to resolve these substantial differences and also to provide the Tribes with both sustainable natural resources and sustainable communities.

1.3. Goals of the Agreement.

The Agreement is intended to result in effective and durable solutions which: (i) in concert with Dam Removal, restore and sustain natural production and provide for Full Participation in Harvest Opportunities of Fish Species throughout the Klamath Basin; (ii) establish reliable water and power supplies which sustain agricultural uses and communities and National Wildlife Refuges; (iii) contribute to the public welfare and the sustainability of all Klamath Basin communities through these and other measures provided herein to resolve the disputes described in Section 1.2.

1.4. Structure of Agreement.

The Agreement consists of nine parts.

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Part I (Sections 1 - 7) states general provisions. These include the purpose of the Agreement, the Parties' obligations to support and implement, funding, dispute resolution, governance, and other general provisions.

Part II (Section 8) states the Parties' obligations to support the Hydropower Agreement (Appendix D). This provides for the removal of the Hydropower Project under conditions that protect and advance the public interest.

Part III (Sections 9 - 13) states the Fisheries Habitat Restoration, Reintroduction, and Monitoring Program. This will contribute to the sustainability and robust harvestable surplus of anadromous and other fisheries throughout the Klamath Basin.

Part IV (Sections 14 - 19) states the Water Resources Program. This consists of schedules, plans, and other provisions to substantially change the management of delivered water supply for irrigation and related uses in the Klamath Reclamation Project, Upper Klamath Basin, and National Wildlife Refuges. Additionally, it addresses other matters related to the Klamath Reclamation Project and the National Wildlife Refuges.

Part V (Sections 20 – 24) states the regulatory assurances under the federal Endangered Species Act and other laws, related to the performance of the Fisheries and Water Resources Programs.

Part VI (Sections 25 - 28) states the Power Resources Program. This will provide power cost security for the Klamath Reclamation Project and Upper Klamath water users and will result in efficiency improvements and renewable power.

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Part VII (Sections 29 – 32) states the Counties' Impacts Mitigation and Benefits Program. This will assure that the removal of the Hydropower Project and the performance of other obligations under this Agreement will occur in a manner that benefits the interests of Klamath County, Oregon; Humboldt and Siskiyou Counties, California and their residents.

Part VIII (Sections 33 - 36) states the Tribal Program. This will assure that the removal of the Hydropower Project and the performance of other obligations under this Agreement will occur in a manner that benefits the interests of the Karuk Tribe, Yurok Tribe, and Klamath Tribes and their members.

Part IX (Sections 37 – 39) provides for execution of the Agreement.

The Appendices are certain documents which implement the Agreement.

1.5. Effectiveness.

1.5.1. Initial Effectiveness.

A. Effective Date.

This Agreement shall take effect on ____, 2008 (Effective Date), when executed by the Parties (other than the Federal Agency Parties) as listed in Section 1.1. As provided in Sections 8.4.1 and 39, this Agreement shall be executed concurrently with the Hydropower Agreement.

B. Performance.

When this Agreement has been so executed, the Parties shall perform obligations which are performable under their existing authorities. Until Authorizing Legislation is enacted, the Parties shall not perform, or be expected to perform, any obligations which require new authorities arising from the Authorizing Legislation.

1.5.2. Further Effectiveness.

The Agreement will remain effective for its Term if, by December 31, 2010, the Secretary of the U.S. Department of the Interior publishes a finding that the following events have occurred:

- A.** Authorizing Legislation Consistent with Appendix A has been enacted respectively by Congress and the States of California and Oregon; and
- B.** *Event in Hydropower Agreement, to be specified upon completion of Appendix D.*

The Secretary shall Timely publish the notice upon the occurrence of the above conditions. The Parties may agree, pursuant to Section 7.2, to extend the period during which the Agreement will continue prior to such finding.

1.6. Term of the Agreement.

Except as otherwise expressly provided, the term of the Agreement as to Contractual Obligations shall be 50 years from the Effective Date.

1.7. Definitions and Acronyms.

Applicable Law shall mean: general law which (i) exists outside of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (ii)

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applies to obligations of a type established under this Agreement or otherwise to activities of Parties contemplated by this Agreement.

Assurance or **Assurances** shall mean: a Contractual or Regulatory Obligation, or both, depending on the context within the Agreement.

Authorizing Legislation shall mean: the proposed legislation for enactment by Congress and the Oregon and California Legislatures, as necessary or appropriate to implement this Agreement, as proposed in Appendices A-1 – A-3.

BIA shall mean: U.S. Department of the Interior’s Bureau of Indian Affairs.

BLM shall mean: U.S. Department of the Interior’s Bureau of Land Management.

CDFG shall mean: California Department of Fish and Game.

CESA shall mean: the California Endangered Species Act set forth in California Fish and Game Code sections 2050 *et seq.*

Charter shall mean: charters pursuant to the Federal Advisory Committee Act for the Klamath Basin Advisory Council, the Technical Advisory Team, the Upper Basin Team, and any other appropriate sub-group, under which non-Public Agency Parties will provide recommendations to the federal Public Agency Parties regarding the implementation of federal obligations under this Agreement. The Charters may be secured through the Authorizing Legislation or other appropriate mechanism mutually agreeable to the Parties.

Collaborative Management shall mean: the participation by mutual agreement of the Tribes, federal agencies, and/or state agencies as partners in the management of Klamath Basin anadromous fisheries and related tribal trust resources to the extent allowed by Applicable Law and this Agreement.

Consensus shall mean: the absence of opposition by any Party to a proposal, following any Dispute Resolution Procedures as stated in Section 6.5.

Consistent with the Agreement, or Consistency, shall mean: the absence of any material modification of this Agreement in the performance of any Contractual Obligation, any Regulatory Approval, or Authorizing Legislation. For the purpose of this term and “Inconsistent,” “material” means integral to the bargained-for benefits for the Parties collectively and for each given Party; and “material modification” includes any material omission of an applicable provision or material addition of a provision.

Contractual Obligation shall mean: those obligations under this Agreement that are not subject to Regulatory Approval.

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Dam Removal shall mean: the removal of Iron Gate, Copco 1, Copco 2, and J.C. Boyle Dams and appurtenant facilities of the Hydropower Project, and preparatory activities, as specified in the Hydropower Agreement attached as Appendix D.

Dam Removal Lead shall mean: the entity which is responsible for the performance of Dam Removal, as specified in Section ____ of the Hydropower Agreement.

Dispute Resolution Procedures shall mean: the procedures established by Section 6.5.

DIVERSION shall have the meaning assigned by Appendix E-1, Term 1.b.

Drought shall mean: a drought of lesser scale than Extreme Drought as addressed in the Drought Plan under Section 18.2.

Due Diligence shall mean: a Party's taking all reasonable steps to implement its obligations under this Agreement.

Effective Date shall mean: the date when the Parties execute this Agreement, as described in Section 1.5.1.

Emergency shall mean: an event as defined in Section 18.3.1.

Environmental Water shall mean: the quantity and quality of water produced pursuant to Section 19 or other provisions of this Agreement to benefit Fish Species and other aquatic resources.

ESA shall mean: the federal Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

Extreme Drought shall have the meaning established in the Drought Plan and as required by Section 18.2.2.A.i.

FACA shall mean: the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

Federal Agency Party shall mean: each of the Federal entities that are listed as Parties in Section 1.1.

FERC shall mean: Federal Energy Regulatory Commission.

Fish Managers shall mean: a federal, state, or tribal agency which has responsibility under Applicable Law to manage one or more Fish Species or their habitat in the Klamath Basin.

Fish Species, Fish, Fisheries, or Species (when referencing Fish), shall mean: species (including races) of fish.

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Force Majeure shall mean: for the purpose of performing Contractual Obligations under this Agreement, an event beyond the reasonable control of a Lead or Responsible Party that prevents the Timely performance of an obligation despite the exercise of Due Diligence. Such events may include natural disasters as well as all unavoidable legal impediment or prohibitions.

Forest Service shall mean: Forest Service, USDA.

Full Participation in Harvest Opportunities shall mean: full participation in Tribal, ceremonial, subsistence, and commercial; ocean-commercial and recreational; and in-river recreational harvest opportunities for anadromous Fish Species.

Fully Protected Species shall mean: a species listed as fully protected under applicable provisions of the California Fish and Game Code.

FWS shall mean: U.S. Department of the Interior's Fish and Wildlife Service.

Governance Team shall mean: each of those entities described in this Agreement, including Appendix C, for the purpose of implementing the programs and other obligations of this Agreement.

Hydropower Agreement shall mean: the Klamath Hydroelectric Project Settlement Agreement between PacifiCorp and the Parties (Appendix D).

Hydropower Order shall mean: a final order by FERC approving Appendix D, following exhaustion of any appeal.

Hydropower Project shall mean: PacifiCorp's Klamath Hydroelectric Project (FERC no. 2082).

Inconsistent with this Agreement shall mean: any material modification of this Agreement in the performance of any Contractual Obligation, any Regulatory Approval, or the Authorizing Legislation. .

Instream Use of Water shall mean: the use of water in lakes, rivers, and their tributaries.

Klamath Basin Advisory Council or **KBAC** shall mean: the advisory entity established pursuant to the Federal Advisory Committee Act, as described in Appendix C-1.

Klamath Basin Coordinating Council or **KBCC** shall mean: the coordinating entity established by this Agreement, as described in Appendix C.1.

KDD shall mean: Klamath Drainage District.

KID shall mean: Klamath Irrigation District.

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Klamath Off-Project Water Users Association, or KOPWU, shall mean: a non-profit organization representing the interests of its members, off-project power users (Off-Project power users are Pacific Power, agricultural customers in the state of Oregon within the Klamath and Lost River Drainages outside the Klamath Reclamation Project.

Klamath Project Water Users or KPWU shall mean: the following of the contractors associated with the Klamath Reclamation Project: Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Modoc Lumber Company, Bradley S. Luscombe, Randy Walthall and Inter-County Title Company, Reames Golf and Country Club, Winema Hunting Lodge, Inc., Van Brimmer Ditch Company, Collins Products, LLC, and Plevna District Improvement Company.

Klamath Project Water Entities shall mean those Klamath Project Water Users who will file a validation or confirmation action pursuant to Section 15.3.1.B: Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, and Sunnyside Irrigation District.

Klamath Reclamation Project shall mean: the federal reclamation project authorized, constructed, managed, and operated under the federal Reclamation Act of June 17, 1902, 32 Stat. 388, as amended and supplemented, including dams, canals, and other works and interests for water diversion, storage, delivery, drainage and flood control, and similar functions. When used in reference to a geographic area or area of use or reuse of water, the term shall mean: all land in the Upper Klamath River Basin which is any one or more of the following: (i) within the boundary or service area of any public district or other water distribution entity which has contracted with the United States, pursuant to the Federal Reclamation laws for water service or for the repayment of the costs of construction, operation and maintenance of irrigation, drainage or other reclamation works benefiting such district or other entity, and/or operation and maintenance of such works,, and all land of individuals or companies or other entities who are parties to contracts with the United States of such nature; (ii) within the Service Area of the Klamath Reclamation Project as identified on the map incorporated by reference under Article II.B. and D of the Klamath River Basin Compact; or (iii) within the boundaries of TLNWR or LKNWR.

Klamath River Basin or Klamath Basin shall mean: the lands tributary to the Klamath River in Oregon and California. The term includes the Lost River and Tule Lake Basins.

Klamath Tribes shall mean: the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians, parties to the Treaty of Council Grove of 1864.

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Klamath Water and Power Agency (KWAPA) shall mean: the intergovernmental entity of that name established under an intergovernmental agreement [on June 12, 2008](#) pursuant to Oregon Revised Statutes Chapter 190 and Chapter 5 (commencing with section 6500) of Division 7 of Title 1 of the California Government Code.

Lead Party shall mean: the Party identified as having primary responsibility (as among the Parties) for implementation of an obligation under the Agreement. The term does not mean “Lead Agency” under California Environmental Quality Act, the National Environmental Policy Act, or other Applicable Law.

Lead Responsibility shall mean: the responsibility of the Lead Party.

Lower Klamath Basin shall mean: the lands tributary to the Klamath River below the current site of Iron Gate Dam in Siskiyou County, California.

LKNWR shall mean: Lower Klamath National Wildlife Refuge,

Managed Environmental Water shall mean: the quantity and quality of Environmental Water that is legally stored or maintained, or could legally be stored or maintained, in Upper Klamath Lake or any subsequently-developed stored water under the authority of Reclamation or other federal agency. This is a subset of Environmental Water, which includes water not stored or otherwise maintained in Upper Klamath Lake.

NMFS shall mean: U.S. Department of Commerce’s National Marine Fisheries Service.

Notice shall mean: written notice pursuant to the requirements and procedures of Section 7.1.

NPS shall mean: U.S. Department of the Interior’s National Park Service.

ODEQ shall mean: Oregon Department of Environmental Quality.

ODFW shall mean: Oregon Department of Fish and Wildlife.

Off-Project Customer shall mean: any Oregon retail customer of PacifiCorp which is or would have been eligible for service from PacifiCorp pursuant to the terms of the Agreement dated 1956 between the California Oregon Power Company, predecessor in interest of PacifiCorp, and Klamath Basin Water Users Protective Association, as the predecessor in interest of the Klamath Off-Project Water Users Association, for uses described in that Agreement.

Off-Project Irrigator shall mean: any water user who is a Claimant in the Klamath Basin Adjudication in the sub-basins identified in Section 16.2.2.C, or a holder of a State water right permit or certificate for irrigation use in the sub-basins identified in Section 16.2.2.C.

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On-Project Customer shall mean: any user of electrical power, to the extent that such user operates the type or class of pumps described in Exhibit B including Rate Schedule B of Contract No. 14-06-200-5075, dated January 31, 1956, between the United States, Department of the Interior, and California Oregon Power Company, regardless of the date of installation of any such pump or any associated meter.

On-Project Plan Area, or OPPIA, shall mean: the areas that rely in whole or part on water diverted from the Settlement Points of Diversion identified in Appendix E-1, exclusive of all of LKNWR other than Area K lands.

OWRD shall mean: Oregon Water Resources Department.

Participants mean non-Parties who participate in one or more of the programs in this Agreement.

Parties shall mean: the signatories of this Agreement as listed in Section 1.1 and, with respect to Federal Agency Parties, as provided in Section 37.3. Additional entities may become Parties after the Effective Date as provided in Section 7.2.1.A.

Public Agency Party shall mean each Tribe and each other Party which is a public agency established under Applicable Law.

Reclamation shall mean: the U.S. Department of the Interior's Bureau of Reclamation.

Refuge, National Wildlife Refuge, or Wildlife Refuge shall mean: LKNWR or TLNWR, as applicable in context.

Regulatory Agency Party shall mean each Public Agency Party which has regulatory authority to permit or otherwise regulate implementation of obligations under the Agreement or activities of Parties contemplated by this Agreement.

Regulatory Approval shall mean: each permit or other approval under a regulatory statute necessary to implement any of the obligations, or activities of Parties as contemplated, under this Agreement.

Regulatory Obligation shall mean: each of those obligations proposed, or activities of Parties contemplated, by this Agreement which are subject to Regulatory Approval and, upon such approval, are enforceable under regulatory authority.

Responsible Party shall mean: a Party identified as having significant but not primary responsibility for the implementation of an obligation under this Agreement. The term is not intended to mean "Responsible Agency" under California Environmental Quality Act or other Applicable Law.

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Secretarial Finding shall mean: a finding by the Secretary of the U.S. Department of the Interior pursuant to Section 1.5.2.

Settlement Points of Diversion shall have the meaning assigned by Appendix E-1, Term 1.a.

SWRCB shall mean: State of California Water Resources Control Board.

Technical Advisory Team or **TAT** shall mean: the team established by Appendix C-2 of this Agreement.

TID shall mean: Tulelake Irrigation District.

Timely or **Timeliness** shall mean: performance of an obligation or act by the deadline established in the applicable provision, and otherwise in a manner reasonably calculated to achieve the bargained-for benefits of the Agreement.

TLNWR shall mean: Tule Lake National Wildlife Refuge.

Tribes shall mean: the Yurok Tribe, Karuk Tribe, and Klamath Tribes.

Upper Basin Team shall mean: that team constituted pursuant to Section 16.2.2.A.

Upper Klamath River Basin or **Upper Klamath Basin** shall mean: the lands tributary to the Klamath River above the current location of Iron Gate Dam in Siskiyou County, California and including Lost River and Tule Lake Basins.

Upper Klamath Water Users Association shall mean: [to be supplied]

USGS shall mean: the U.S. Geological Survey.

USDA shall mean: the U.S. Department of Agriculture.

Water Managers shall mean: entities, including federal, state, tribal, agencies, irrigation and drainage districts, and other entities that have responsibility under Applicable Law for management of water resources, including storage and diversion, in the Klamath Basin.

Water Use Retirement Program shall mean: the retirement of irrigation surface water uses in the sub-basins above Upper Klamath Lake identified in Section 16.2.2.C through the purchase of irrigation surface water rights and the transfer of those water rights to instream use, cancellation of those water rights, or protection of those water rights by such other mechanisms as specified by the Off-Project Water Settlement, or such other means of permanently retiring irrigation surface water uses as approved by the Klamath Tribes.

2. Legal Responsibilities, Reservation of Rights, and Precedents.

2.1. Compliance with Legal Responsibilities.

Except as otherwise expressly provided, by entering into this Agreement, each Party represents that it believes that this Agreement is Consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources of the Klamath River Basin. In the implementation of this Agreement, Public Agency Parties shall comply with existing legal authorities, including National Environmental Policy Act, Endangered Species Act, Clean Water Act, and other Applicable Law, and shall act Consistent with the terms of the Authorizing Legislation.

2.2. Reservation of Rights.

Nothing in this Agreement is intended to, or shall be construed to, affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. The Parties expressly reserve all rights not granted, recognized or relinquished in this Agreement. Except as expressly provided herein, nothing in this Agreement is intended to diminish the rights of those Parties which are sovereign Indian Tribes. Further, no Party shall be deemed to have approved, admitted, accepted, or otherwise consented to any issue, position or other principle underlying any of the subject matters covered by this Agreement, except as expressly provided herein. Nothing in this Agreement is intended or shall be construed to be an irrevocable commitment of the funds or resources of a Public Agency Party (pursuant to Section 4.1.4below), a pre-decisional determination by a Public Agency Party, or a waiver of sovereign immunity.

2.3. No Precedent.

As described in Section 1.2, this Agreement is entered into for the purpose of resolving disputes that have arisen or may arise between the Parties related to: (i) the relicensing and related proceedings for the Hydropower Project, (ii) water uses in the Klamath Reclamation Project and Upper Klamath Basin, (iii) water needs for the fish and wildlife of the Klamath Basin, and (iv) other matters addressed in this Agreement. Therefore, the Agreement shall not be offered for or against a Party as argument, admission, admission of wrongdoing, liability, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding whatsoever, *except* that the Agreement may be used in any future proceeding to interpret or enforce the terms of this Agreement. This Agreement may also be used by any Party in litigation by or against non-Parties to implement or defend this Agreement. This section shall survive any termination of this Agreement.

3. Obligations under the Agreement.

3.1. Obligation to Support.

3.1.1. Authorizing Legislation.

The Parties acknowledge that implementation of certain obligations under this Agreement will require additional authorizations by the United States Congress, the California Legislature, and the Oregon Legislature. Obligations that require such additional authorization shall become effective upon enactment of that legislation. Subject to Section 2.2, the Parties shall support the proposal and enactment of Authorizing Legislation contained in Appendix A; *provided* that nothing in this Agreement shall be deemed to limit the authority or discretion of the federal or state Executive Branch Consistent with Applicable Law.

3.1.2. Regulatory Approvals.

Subject to Section 2.2, the Parties shall support the application for and granting of Regulatory Approvals not Inconsistent with the Agreement.

3.1.3. Defense of Agreement.

Subject to Section 2.2, each Party shall support and defend this Agreement in each applicable venue or forum, including any administrative or judicial action in which it participates, and which concerns the validity of any Regulatory Approval or Authorizing Legislation.

A. Litigation

Subject to Section 3.2.4.B.v, the form of support or defense in such administrative or judicial action shall be left to the discretion of each Party. This section does not apply to a dispute or action challenging the adequacy of a Party's performance of an obligation under this Agreement.

B. Comments.

Each Party may comment on the Consistency of any plan, other document, or data arising in the implementation of this Agreement and not otherwise set forth in the appendices. The Parties acknowledge that their comments may conflict due to differing good-faith interpretations of the applicable obligations under this Agreement.

C. Scientific Research.

Nothing in this Agreement shall prevent scientific research or the publication of the same by any Party.

3.2. Obligation to Implement.

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3.2.1. General.

Each Party shall implement each of its obligations under this Agreement in good faith and with Due Diligence. Any obligation identified as an obligation of all of the Parties does not obligate any individual Party to take any action itself or itself make any specific commitment other than to participate in the applicable procedures.

3.2.2. Cooperation Among the Parties.

The Parties shall cooperate in the implementation of this Agreement. A Party shall not act in a manner that results in an action or requirement that is Inconsistent with the Agreement unless necessary to comply with statutory, regulatory or other legal responsibility; in which event, the Party shall provide Timely Notice to other Parties to permit Dispute Resolution Procedures pursuant to Section 6.5.

3.2.3. Lead or Responsible Party.

Parties shall be Lead or Responsible Parties with non-common responsibilities for the performance of obligations under this Agreement, either by designation in this Agreement or, following the Effective Date, by acceptance of a designation recommended by the Klamath Basin Coordinating Council.

3.2.4. Timeliness.

A. General.

The Parties shall implement their obligations in a Timely way.

B. Implementation of Obligations Consistent with Sequence in Appendix B.1.

The Parties adopt Appendix B-1 to describe the sequence of performance of specific obligations necessary to achieve the bargained for benefits of this Agreement. The Parties shall make maximum reasonable efforts to implement this Agreement in a manner Consistent with this sequence.

i. Dispute Resolution.

The Parties shall make maximum reasonable efforts to use Dispute Resolution Procedures under Section 6 at the earliest possible time that a claim of untimely performance or any other form of non-performance of the Appendix B-1 sequence arises.

ii. **Funding.**

Subject to Sections 2.2 and 4.1.4, the Parties shall make maximum reasonable efforts to Timely secure public or private funding in the amounts estimated in Appendix B-2 on a schedule Consistent with Appendix B-1.

iii. **Litigation.**

A Party may bring an action to enforce a Regulatory or Contractual Obligation, as provided in Section 7.4. Recognizing the cost and other consequences of such litigation, a Party has discretion whether and how to use litigation to assist in the implementation of the obligations under this Agreement.

iv. **Cooperative Efforts.**

The obligation to assist in the implementation of the Appendix B-1 sequence is joint and several to all Parties, as well as individual to each Party. In seeking funding, or using dispute resolution or litigation, as described above, each Party will be mindful of the efforts of other Parties and will seek to cooperate to achieve efficiencies and avoid duplication or other unnecessary costs or efforts. Thus, a given Party's obligation to use maximum reasonable efforts in general requires that a given Party seek to perform each applicable obligation in good faith and with diligence, zeal, and loyalty to this Agreement. In addressing non-performance of an obligation under this Agreement, the duty of maximum reasonable efforts may be satisfied either if: (1) the given Party takes the initiative, as among other Parties, to invoke and apply the applicable procedure(s) to resolve the dispute, or (2) another Party takes such initiative, and the given party supports or participates in the resulting procedure(s) as appropriate, to add value to such resolution.

v. **Obligation to Cure.**

The filing of an action by one Party against another Party over matters addressed in this Agreement is deemed to constitute a failure of the mutual obligations set forth in this Agreement. Such failure triggers, on the part of all Parties, an obligation to preserve the benefits of the Agreement for all Parties, including any Party who is, or could be, adversely affected by such

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litigation. Parties directly affected by the action, as well as other Parties with interests in, or obligations in this Agreement related to, the subject of the action, shall: (1) meet and confer promptly and in good faith to confirm that the Dispute Resolution Procedures in Section 6 have identified the nature of the dispute, the provisions of this Agreement which failed to achieve the bargained-for benefits as to affected Parties, and the potential remedies for the defect; or (2) if not already completed, take appropriate steps to secure Timely performance of obligations under this Agreement; or (3) seek amendment of the Agreement pursuant to Section 7.2; or (4) otherwise develop and implement a functional cure to preserve the bargained-for benefits under the Agreement for all Parties, including the Parties adversely affected by the litigation; and (5) seek a supervised settlement conference in the adjudicatory forum and advise the court or presiding officer of their Contractual Obligations under this Agreement, including this provision of the Agreement. Further, if an action is commenced against a Party by a non-Party, that relates to matters addressed in this Agreement, the Parties shall to the maximum extent practicable and applicable, comply with the obligations of (2) through (5) above.

C. Extension of Time.

Except as otherwise provided in this Agreement, if any Party requires more time than permitted by this Agreement to perform an obligation, that Party shall provide Notice to other Parties thirty days before the applicable deadline. The Notice shall explain: (i) the obligation that the Party is attempting to perform, (ii) the reason that performance is or may be delayed, (iii) the steps the Party has taken or proposes to take to Timely complete performance, and (iv) the Party's request for additional time to complete performance. If any other Party disputes the request for additional time, that other Party shall initiate the Dispute Resolution Procedures stated in Section 6. This provision does not apply to any applicable deadline imposed by Applicable Law. The Parties shall follow the procedures for amendment to the Agreement, if no Party objects to the extension.

3.2.5. Force Majeure.

A. Suspension of Obligation.

During a Force Majeure event, and except as otherwise provided in this Agreement, the Lead or Responsible Party shall be relieved of any specific obligation directly precluded by the event, as well as those

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other obligations whose performance is materially impaired, but only for the duration of such event.

B. Remedies.

If a Force Majeure event occurs, and except as otherwise provided in this Agreement:

- i. The Lead or Responsible Party shall provide Notice within three days of the onset of the event. Such Notice shall describe the occurrence, nature and expected duration of such event. That initial Notice shall be followed by further Notice within seven days of the onset of the event, describing the steps the Party has taken or proposes to be taken to prevent or minimize the interference with the performance of any affected obligation under this Agreement;
- ii. The Lead or Responsible Party shall thereafter provide periodic Notice to the other Parties of the efforts to address and resolve a Force Majeure event; and
- iii. If any other Party disputes the Lead or Responsible Party's claim of a Force Majeure event, or the adequacy of the efforts to address and resolve such event, such Party shall initiate the Dispute Resolution Procedures stated in Section 6.

4. Funding.

4.1. Budget.

4.1.1. Support.

Subject to Section 2.2, each of the Parties shall support authorizations and appropriations of public funds, as well as securing of non-public funds, to implement the Agreement. Further, subject to that same limitation, each of the Parties shall support allocation and reprogramming of existing funds to implement this Agreement prior to the enactment of Authorizing Legislation or the Secretarial Finding described in Section 1.5.2. However, each funding entity shall retain its discretion and authority to make final decisions regarding allocation and reprogramming of existing funds, Consistent with Applicable Law.

4.1.2. Appendix B-2.

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As of the Effective Date, Appendix B-2 estimates the amounts and sources of funding necessary for the implementation of each of the programs of this Agreement, as well as the performance of specific obligations, over the ten years following the Effective Date. Unless otherwise provided, these amounts are stated in 2007 dollars, subject to adjustment using federal Office of Management and Budget guidelines. Periodically, the Parties shall adopt a successor form of Appendix B-2 to estimate required funding for the continued implementation of each of these programs.

4.1.3. Maximum Benefits.

The Parties shall in good faith and with Due Diligence seek to expend funds in a cost-effective manner to optimize the public benefits resulting from performance of obligations arising under this Agreement.

4.1.4. Availability of Public Funds.

Funding by any Public Agency Party under this Agreement is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 *et seq.*, and/or other Applicable Law. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any funds from the United States Treasury, or of any fund controlled by California, Oregon, a County or other local agency, or a Tribe, except as otherwise permitted by Applicable Law.

4.1.5. Other Funds.

An estimate in Appendix B-2 does not limit Parties other than Federal and State Public Agency Parties from seeking additional or other funds to perform an obligation under this Agreement or for a related purpose; *provided* that any such effort shall not be Inconsistent with the obligation of the Parties to support authorizations and appropriations for programs and obligations under this Agreement as estimated in Appendix B-2.

4.2. Klamath River Basin Restoration Agreement Fund.

Within six months of the Effective Date, and Consistent with Applicable Law, the Parties other than Public Agency Parties shall establish the Klamath River Basin Restoration Agreement Fund. This will be a dedicated account to hold funds which are both: (i) received from non-federal sources to perform obligations under this Agreement and (ii) not otherwise under the lawful control by the United States, or by California, Oregon, a County or other local agency, or a Tribe, pursuant to Authorizing Legislation or other Applicable Law.

4.2.1. Establishment of Accounts by Program or Sub-Program.

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The Restoration Agreement Fund shall include an account for implementation of each program or sub-program of this Agreement, as appropriate.

4.2.2. Management of Fund.

The Parties other than Public Agency Parties shall agree to a manager for the Restoration Agreement Fund and to procedures for management. Such procedures shall include requirements for:

A. Receipt of Funds.

Receipt of funds from any lawful source, including but not limited to charitable foundations for performance of obligations under this Agreement;

B. Disbursement.

Application by Parties or non-Parties for disbursement of funds to perform obligations as specified by this Agreement, and reviews of such application by the Parties, and resolution of any disputes about the sufficiency or otherwise the approvability of the application; and

C. Accounting and Reporting.

Accounting and reporting by the Parties, funding sources, and the public, to assure that expenditures comply generally with Section 4.1.1 and specifically with any other conditions established by the sources of funding managed by the Restoration Agreement Fund.

4.3. Accountability for Use of Funding.

Funding through Federal and state agencies will be provided through contract, agreement, or other arrangements, as appropriate under Applicable Law and applicable policy.

5. Governance.

5.1. Purpose.

Governance of this Agreement shall provide and facilitate coordination, cooperation, and accountability by Parties such that all obligations of the Agreement are performed effectively, Timely, and at the appropriate scales. Such governance does not supplant existing authorities or supersede Applicable Law. It shall provide for public involvement to help guide implementation of the Agreement.

5.2. Structure.

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The Parties shall support and participate in the governance structure stated in Appendix C.

5.3. Funding of Governance.

Subject to Section 2.2, the Parties shall support authorizations and appropriations of funding, in the amount of \$3.3 million as estimated in Appendix B-2, to fund the governance structure for the first ten years after the Effective Date.

5.4. Reporting and Accountability.

The Parties agree that the Klamath Basin Coordinating Council, subject to compliance with Applicable Law and within six months of the Effective Date, shall adopt and thereafter implement procedures to report on the status of performance of each obligation under this Agreement. Such report shall include a statement and analysis of the causes for any non-performance as well as efforts to cure such non-performance. The reporting shall include an annual report and shall be real-time (e.g., through a KBCC website) as appropriate to contribute to Timely dispute resolution under Section 6 as well as adaptive management under Section 5.5. In addition, the Council shall prepare a periodic report, not less frequently than every ten years, to evaluate overall progress in implementation of the obligations of this Agreement and the results of such implementation relative to the goals stated in Section 1.3 as well as the more specific purposes or objectives of the several programs.

5.5. Adaptive Management.

In the performance of the obligations under this Agreement, the Parties generally agree to use an adaptive management process provided in the applicable provision. This process will include objectives, metrics for the achievement of those objectives, monitoring and evaluating the monitoring results, and using the results of that evaluation to inform and improve future management decisions.

5.6. Enrollment Procedure for Participants in Agreement Programs.

The Parties intend that the Restoration Program pursuant to Section 10 the Water Rights Retirement Program pursuant to Section 16.2.2, the Fisheries Habitat Improvement Program pursuant to Section 16.3, and Regulatory Assurances pursuant to Sections 20 – 24, will partly be implemented by Participants who enroll in any of those programs. Consistent with Applicable Law, the Lead Party for each of those programs, or the Klamath Basin Coordinating Council as appropriate, shall establish enrollment procedures as a mandatory element of each program and shall maintain a roster of enrolled Participants. Enrollment procedures may include: procedures for Participants to enroll or for the Lead Party to list the Participants in such a program.

6. Dispute Resolution.

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All disputes among the Parties regarding the implementation of this Agreement, including disputes regarding any Party's performance of Contractual or Regulatory Obligations, shall be the subject to the Dispute Resolution Procedures stated in Section 6.5, except as otherwise provided in this Agreement. The Parties agree that each dispute shall be brought and resolved in a Timely manner.

6.1. Cooperation.

Disputing Parties shall devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. Disputing Parties shall cooperate in good faith to promptly schedule, attend and participate in the dispute resolution.

6.2. Costs.

Unless otherwise agreed among the Disputing Parties, each Disputing Party shall bear its own costs for its participation in these Dispute Resolution Procedures.

6.3. Implementation.

Each Disputing Party shall promptly implement any resolution of the dispute.

6.4. Non-Exclusive Remedy.

These Dispute Resolution Procedures do not preclude any Party from Timely filing and pursuing an action to enforce a Contractual Obligation under this Agreement, or to appeal a Regulatory Approval Inconsistent with the Agreement, or enforce a Regulatory Approval or Applicable Law; *provided* that such Party Timely attempts in good faith to resolve the dispute through the Dispute Resolution Procedures stated in Section 6.5. The Parties agree that litigation will be initiated as a last resort and only after careful consideration of the matters in dispute and the potential collateral consequences to this Agreement.

6.5. Dispute Resolution Procedures.

6.5.1. Dispute Initiation Notice.

A Party claiming a dispute shall give Notice of the dispute. Such Notice shall describe: (i) the matter(s) in dispute, (ii) the identity of any other Party alleged to have not performed a Contractual or Regulatory Obligation, and (iii) the specific relief sought. Collectively, the Party initiating the procedure, the Party complained against, and any other Party which provides Notice of its intent to participate in these procedures, are "Disputing Parties."

6.5.2. Informal Meetings.

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Disputing Parties shall hold at least two informal meetings to resolve the dispute, commencing within 30 days after the Dispute Initiation Notice.

6.5.3. Referral to Klamath Basin Coordination Council.

In the absence of resolution and following the informal meetings described in Section 6.5.2, the Disputing Parties shall refer a dispute to the KBCC. Upon such referral, all members of the KBCC shall be deemed "Disputing Parties." The KBCC shall attempt to resolve the dispute according to its internal procedures, within 60 days of such referral.

6.5.4. Mediation.

If the dispute is not resolved in the informal meetings or by the KBCC, the Disputing Parties shall decide whether to use a neutral mediator. The decision whether to pursue mediation shall be made within 30 days after the failure to resolve the dispute by referral to the KBCC. The Disputing Parties shall agree on an appropriate allocation of any costs of the mediator employed under this section. Mediation shall not occur if the Disputing Parties cannot agree on the allocation of costs. The Disputing Parties shall select a mediator within 30 days of the decision to pursue mediation, including the agreement of allocation of costs. The mediation process shall be concluded not later than 60 days after the mediator is selected. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

6.5.5. Dispute Resolution Notice.

The Disputing Parties shall provide Notice of the results of the Dispute Resolution Procedures. The Notice shall: (i) restate the disputed matter, as initially described in the Dispute Initiation Notice; (ii) describe the alternatives which the Disputing Parties considered for resolution; and (iii) state whether resolution was achieved, in whole or part, and state the specific relief agreed to as part of the resolution.

7. Other General Provisions.

7.1. Notice.

Except as otherwise provided, any Notice required by this Agreement shall be written and distributed to all Parties. Such Notice shall be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. The Parties agree that, to the maximum extent practicable, electronic mail or facsimile is the preferred method of providing Notice. When this Agreement requires Notice in fewer than seven days, Notice shall be provided by telephone, facsimile, or electronic mail and shall be effective when received. The Klamath Basin Coordinating Council shall maintain a current roster of the authorized representatives of the Parties. Each Party shall provide Notice of any

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change in the authorized representative designated in Appendix F as of the Effective Date.

7.2. Amendment of Agreement.

7.2.1. General.

The Parties may amend this Agreement only by Consensus and in written form and only in the circumstances specified in (A) – (E) below.

A. New Party.

An entity who did not execute this Agreement on the Effective Date subsequently submits a written application to become a Party and, in that application, demonstrates to the satisfaction of all Parties by Consensus that: (i) it supports both this and the Hydropower Agreements and (ii) its participation will contribute to the effective implementation of the agreements. Any such subsequent Party shall execute both agreements concurrently. This provision applies to a proposed assignee or successor of a Party.

B. Untimely or Inadequate Performance of Obligation.

A Party's performance of an obligation is delayed or impaired by Force Majeure, or other good cause established pursuant to Section 3.2.4.C, and the other Parties agree to a modification of the schedule or other element of the obligation.

C. Untimely or Inadequate Funding.

Notwithstanding Due Diligence in seeking the funding as described in Appendix B-2, the Parties do not secure adequate funding on a Timely basis to perform a particular obligation; and the Parties, having met and conferred pursuant to Section 6.5, agree to an alternative schedule and other appropriate remedies to permit the performance of that particular obligation. Certain provisions of this Agreement provide that a particular obligation will be performed only after performance of other obligations; and any amendment will preserve that sequence.

D. Severability.

After any provision is severed as provided in Section 7.3, the Parties who have not withdrawn pursuant to Section 7.5 determine that an alternative to such severed provision will preserve the bargained-for benefits of the Agreement.

E. Other Changed Circumstances

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The Parties believe that other changed circumstances, subsequent to the Effective Date, justify an amendment to preserve the bargained-for benefits.

7.3. Severability.

This Agreement is made on the understanding that each provision is a necessary part of the entire Agreement. However, if any provision of this Agreement is held to be invalid, illegal, or unenforceable by a Regulatory Agency or a court of competent jurisdiction: (i) the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way; and (ii) the Parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal, or unenforceable) that is valid, legal, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Agreement. Further, if timely performance of this Agreement is prevented by inadequate funding or other cause not controlled by the Parties, or a cure expressly provided by this Agreement does not timely occur, the Parties shall reconvene and, pursuant to Sections 6 and 7.2, agree whether an alternative provision secures to the Parties the bargained-for benefits of the Agreement.

7.4. Enforcement.

7.4.1. Contractual Obligations.

A Party may bring an action to enforce any Contractual Obligation under this Agreement.

A. Dispute Resolution.

A Party may seek to enforce a Contractual Obligation only after compliance with the Dispute Resolution Procedures in Section 6.

B. Remedy.

In such an action, a Disputing Party may only seek specific performance of the Contractual Obligation, or declaratory or other equitable relief, to the maximum extent permitted by Applicable Law. This Agreement does not establish a right to seek relief, or jurisdiction for such relief, against a Party if such relief or jurisdiction does not otherwise exist under Applicable Law.

C. Venue.

The venue for an action to enforce a Contractual Obligation shall be as provided under Applicable Law for obligations of the type of the

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disputed Contractual Obligation. As provided in Section 2.2, this Agreement does not waive any Party's sovereign immunity.

7.4.2. Regulatory Obligations.

A Party may bring an action to enforce any Regulatory Obligation, once approved as proposed under this Agreement.

A. Dispute Resolution.

A Party may seek to enforce a Regulatory Obligation against another Party, only after compliance with the Dispute Resolution Procedures in Section 6.

B. Remedy.

In such action, a Disputing Party may seek whatever remedies are ordinarily available for enforcement of obligations of the type of the disputed Regulatory Obligation. This Agreement does not establish any special remedy for such enforcement.

C. Venue.

The venue to enforce a Regulatory Obligation shall be as provided under Applicable Law.

7.4.3. Enforceability of Planning Obligations.

This Agreement commits the Parties to the development of plans and policies for possible future actions which the Public Agency Parties have not yet approved, adopted or funded as of the Effective Date. This Agreement does not commit any Public Agency Party to any action which may result in physical environmental change. Each Public Agency Party shall comply with Applicable Law before committing to such action. Among other things, an environmental analysis will be prepared, where required by Applicable Law, as early as feasible in the planning process to enable environmental considerations to properly influence project or program design. No Party may enforce this Agreement against a Public Agency Party to interpret an obligation for a plan or policy as a pre-decisional commitment to any action which may result in physical environmental change.

7.4.4. No Third Party Beneficiaries.

This Agreement does not create any right in the public, or any member thereof, as a non-Party beneficiary. It does not authorize any non-Party (including enrolled Participant) to maintain an action at law or equity pursuant to this Agreement. The

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rights and obligations of the Parties with respect to non-Parties shall remain under Applicable Law.

7.5. Withdrawal.

A Party may withdraw from the Agreement only if (i) a provision is severed pursuant to Section 7.3 and (ii) the Parties do not adopt an alternative provision that preserves the bargained-for benefits for the withdrawing party, after exhaustion of the procedures in Sections 3.2.4.B.iv and 3.2.4.B.v, Section 6, and Sections 7.2 – 7.3.

7.6. Termination.

This Agreement shall terminate before the date provided in Section 1.6 if:

7.6.1. By December 31, 2010, or any extension agreed-to by the Parties, the Secretary has not published a finding that the events specified in Section 1.5.2 have occurred; or

7.6.2. At any time, the Parties agree by Consensus to terminate the Agreement.

The provisions of Sections 2.3 and 15.3.9.C.ii shall survive termination of this Agreement either under this section or Section 1.6.

7.7. Successors and Assigns.

This Agreement shall be binding on and inure to the benefit of the Parties and their approved successors and assigns, unless otherwise specified in this Agreement.

7.8. Joint Venture.

Except as expressly provided, this Agreement does not and shall not be deemed to make any Party the agent for, partner of, or joint venture with, any other Party.

7.9. Governing Law.

7.9.1. Contractual Obligation.

A Party's performance of a Contractual Obligation arising under this Agreement shall be governed by (i) applicable provisions of this Agreement and (ii) Applicable Law for obligations of that type.

7.9.2. Regulatory Obligation.

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A Party's performance of a Regulatory Obligation, once approved as proposed by this Agreement, shall be governed by Applicable Law for obligations of that type.

7.9.3. Reference to Statutes or Regulation

Any reference in this Agreement to any Applicable Law shall be deemed to be a reference to a statute or regulation, or successor, in existence as of the date of the action in question.

7.10. Elected Officials not to Benefit.

This Agreement shall not provide any benefit for any elected official, other than the benefits provided to all Parties.

7.11. Entire Understanding.

This Agreement constitutes the entire understanding among the Parties. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the subject matter of this Agreement. It supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter hereof. Other than the Appendices to this Agreement, which are attached hereto and incorporated throughout this Agreement by reference, no other document, representation, agreement, understanding or promise, constitutes any part of this Agreement.

**PART II.
KLAMATH HYDROELECTRIC PROJECT**

8. General.

8.1. Support for Hydropower Agreement.

The Parties shall support the Hydropower Agreement (Appendix D). This obligation includes but is not limited to best efforts to support: all regulatory and other required approvals for the Hydropower Agreement; preparation of scope of works and preliminary and final Dam Removal Plans by the Dam Removal Lead; coordination between the Dam Removal Lead and Parties; cooperation in study and permit Due Diligence pursuant to the Hydropower Agreement; and, performance of Dam Removal. Parties shall also support efforts to coordinate and cooperate during implementation of the two agreements for the benefit of both agreements. The Parties acknowledge that the Hydropower Agreement is based on facts and circumstances unique to the Klamath Basin, and they do not intend to establish a precedent for other basins or hydropower generation generally.

Deleted: In consideration for the benefits flowing to the Parties from the Agreement as a whole, t

8.2. Keno Dam.

8.2.1. Provisions in Hydropower Agreement.

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Parties shall support conditions in the Hydropower Agreement to ensure that the interim operation and disposition of Keno Dam do not create new cost responsibilities for Klamath Reclamation Project contractors. Parties also shall support conditions in the Hydropower Agreement to maintain existing management of water levels behind the dam before transfer to Reclamation. Reclamation shall operate Keno Dam to maintain water levels for diversion and canal maintenance consistent with existing contracts of PacifiCorp and historic practice and in compliance with Applicable Law. Notwithstanding Section 1.6, this obligation shall remain in effect until modified with the agreement of Klamath Reclamation Project contractors; and the Parties shall support a comparable resolution for current contractors of PacifiCorp in the Hydropower Agreement; *provided*, the obligation to comply with Applicable Law shall not expire. The Parties shall support terms in the Hydropower Agreement requiring that PacifiCorp provide funds to Reclamation to address water quality impacts associated with Keno Dam after transfer to Reclamation.

8.2.2. Provisions in Authorizing Legislation.

The Parties support the following term in the federal Authorizing Legislation: “The Secretary is authorized to take title to Keno Dam and any necessary associated real property from PacifiCorp in the course of implementing the Klamath Hydroelectric Project Settlement Agreement subject to the conditions defined in Sections ___ of the Hydroelectric Project Settlement Agreement; *provided, however*, the Bureau of Reclamation shall maintain water levels for diversion and to maintain canals above Keno Dam consistent with historic practices and in compliance with applicable law. Klamath Reclamation Project contractors shall not bear any cost associated with Keno Dam or any related lands or facilities whether cost of operation, maintenance, rehabilitation, betterment, liabilities of any kind, or otherwise.”

8.3. Link River Dam.

8.3.1. Provisions in Hydropower Agreement.

Parties shall support conditions in the Hydropower Agreement to ensure that interim operation, decommissioning, and disposition of Eastside and Westside powerhouses do not create new cost responsibilities for Reclamation contractors. Reclamation shall operate Link River Dam in a manner that ensures the availability of water for diversion for the Klamath Reclamation Project and is Consistent with Section 19.3 in regard to Managed Environmental Water for fisheries benefits. During the term of this Agreement, this Section 8.3 may be modified only by amendment pursuant to Section 7.2. Notwithstanding Section 1.6 and subject to Applicable Law, the obligation to operate the Link River Dam to ensure the availability of water for diversion for the Klamath Reclamation

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Project shall remain in effect until modified with the agreement of Klamath Reclamation Project contractors.

8.3.2. Provisions in Authorizing Legislation.

The Parties support the following term in the federal Authorizing Legislation: “The Secretary is authorized to take operational responsibility for Link River Dam and any necessary associated real property from PacifiCorp in the course of implementing the Klamath Hydroelectric Project Settlement Agreement subject to the conditions defined in Sections ____ of the Klamath Hydroelectric Project Settlement Agreement; *provided*, however, that Reclamation shall operate Link River Dam in a manner that ensures the availability of water for diversion for the Klamath Reclamation Project and in compliance with Applicable Law. Klamath Reclamation Project contractors shall not bear any cost associated with Link River Dam or any related lands or facilities or dikes or levees around Upper Klamath Lake, whether cost of operation, maintenance, rehabilitation, betterment, liabilities of any kind, or otherwise.”

8.4. Relationship between Restoration Agreement and Hydropower Agreement.

8.4.1. Concurrent Execution.

As provided in Sections 1.5 and 39, the Parties shall concurrently execute this Agreement and the Hydropower Agreement.

8.4.2. Coordinated Implementation.

The Parties shall implement this Agreement and the Hydropower Agreement in a coordinated and Timely manner, to the maximum extent reasonably practicable, recognizing that such performance is necessary to assure the bargained-for benefits. This Agreement contains certain provisions which on their face provide for performance in advance of the physical performance of Dam Removal.

**PART III.
FISHERIES PROGRAM**

9. Overview of Klamath Basin Fisheries Habitat Restoration, Reintroduction, and Monitoring Program.

The Parties adopt and shall implement the Klamath Basin Fisheries Habitat Restoration, Reintroduction, and Monitoring Program (Fisheries Program).

9.1. Recitals.

9.1.1. Blockage of Passage.

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The Parties acknowledge that the Hydropower Project has excluded coho salmon, Chinook salmon, steelhead, and Pacific Lamprey from the Klamath Basin upstream of Iron Gate Dam. The Parties also acknowledge that coho salmon, Lost River and shortnose suckers and bull trout are presently listed under the Federal Endangered Species Act.

9.1.2. Other Harmful Conditions.

The river reaches controlled by the Hydropower Project, and reaches upstream (including Upper Klamath Lake and tributaries, the Klamath Reclamation Project area, and the Lost River and tributaries) currently present certain conditions harmful to fish. These conditions include degraded riparian habitat and stream channels, passage barriers, diversions resulting in entrainment, adverse water quality conditions, adverse hydraulic conditions, fluctuating water levels, and other impacts, known and unknown. These conditions may result in mortality or injury to fish, and reduce the viability of fish populations. These conditions will probably continue in the future unless reduced by cooperative and concerted efforts to resolve them.

9.1.3. Benefits of Reintroduction.

Notwithstanding the conditions described in Section 9.1.1 – 9.1.2, the Parties have concluded that the availability of additional habitat and introduction or reintroduction of Fish Species upstream of Iron Gate Dam will result in significant net conservation benefits.

9.1.4. Benefits of Restoration.

The Parties have also concluded that certain restoration actions above, within, and below the Hydropower Project will substantially remove, reduce or mitigate the conditions described in Section 9.1.1 – 9.1.2.

9.2. Program Elements.

9.2.1. Purpose.

The purpose of the Fisheries Program is to restore and sustain natural production of Fish Species throughout the Klamath River Basin. Specifically, this program: (i) provides for reintroduction of anadromous Species above Iron Gate Dam, including tributaries to Upper Klamath Lake; (ii) otherwise establishes conditions that, combined with effective implementation of the Water Resources Program in Part IV, will contribute to the natural sustainability of fisheries and Full Participation in Harvest Opportunities, as well as the overall ecosystem health of the Klamath River Basin; and (iii) assesses status and trends, the factors that influence those trends, of Fish and their habitats as identified in Section 9.1.1, and

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the effectiveness of actions under this Agreement to achieve this purpose; and (iv) provides for adaptive management as described in Section 5.4.

9.2.2. Approaches.

Throughout the geographic scope of the Fisheries Program described in Section 9.2.3, the Program shall use collaboration, incentives, and adaptive management as preferred approaches. The Program shall also emphasize restoration and maintenance of properly functioning lake and riverine processes and conditions, and remediation of the conditions described in Section 9.1.2, while also striving to maintain or enhance economic stability of adjacent landowners. Further, the Program shall prioritize habitat restoration and monitoring actions to ensure the greatest return on expenditures.

9.2.3. Geographic Scope.

The focus of reintroduction shall be the Upper Klamath Basin. The focus of restoration and monitoring shall be the Klamath River Basin, excluding the Trinity River watershed above its confluence with the Klamath River. The Agreement is not intended and shall not be implemented to establish or introduce populations of salmon, steelhead, or Pacific Lamprey in the Lost River or its tributaries or the Tule Lake Basin.

9.2.4. Plans.

The program shall be implemented through a Fisheries Restoration Plan, a Fisheries Reintroduction Plan, and a Fisheries Monitoring Plan (collectively, "Fisheries Plans"), along with measures in the Water Resources Program described in Part IV.

A. Plan Coordination.

The Fisheries Plans shall include common as well as specific elements. It shall allow for Collaborative Management among Fish Managers and shall provide for coordinated performance, including adaptive management.

B. Mitigation of Adverse Impacts.

To the extent feasible and appropriate, the Fisheries Plans shall mitigate adverse effects from reintroduction upon other Fish Species. Such effects may include but are not limited to the potential for disease, predation, and competition. In addition, the Plans shall include measures, to the extent practicable and lawful, to mitigate threats to species listed under the ESA or other adverse impacts to

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natural resources, so as to protect the species and avoid disruption of ongoing programs under this Agreement.

9.2.5. Use of Best Available Science.

The Fisheries Program shall be based on the best available scientific data and information. Fish Managers shall consider all relevant past and current scientific information.

9.2.6. Fisheries Program Goals

The establishment of restoration goals in the Fisheries Program will be a valuable tool to evaluate the progress of implementation of elements of the Agreement intended to contribute to the natural sustainability of fisheries and Full Participation in Harvest Opportunities as specified in Sections 9.2.1 and 1.3. The Fish Managers shall incorporate best available science into the fishery restoration goals for each Phase of the Program. These Fisheries Program goals will consider and integrate the four parameters for viable fish populations including: abundance, population growth rate, genetic diversity, and population spatial structure, and be consistent with the Fisheries Program purposes described in Section 9.2.1.

9.3. Funding

The Parties shall support authorization and appropriation of funds in the amount of \$493.2 million, as estimated in Appendix B-2, to implement the Fisheries Program for the first ten years after the Effective Date.

10. Fisheries Restoration Plan.

10.1. Phase I of the Fisheries Restoration Plan.

10.1.1. Preparation.

Within one year of the Effective Date, the Fish Managers shall co-author and distribute Phase I of the Klamath River Fisheries Restoration Plan.

- A. The FWS and NMFS shall be co-Lead Parties for administrative tasks in the plan development process.
- B. The Fish Managers shall work with other Parties and seek their input during plan development, and shall also consider public input under Applicable Law.
- C. The Phase I Plan shall describe how the public comments and recommendations were incorporated. If the Fish Managers

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cannot agree as co-authors on the content of the Phase I Plan, FWS and NMFS shall author and distribute a Phase I Plan. The Fish Managers shall be responsible for revision of the Phase I Plan as appropriate pursuant to the same process used for the initial plan.

10.1.2. Plan Elements.

Based on best available science, Phase I of the Fisheries Restoration Plan shall establish restoration priorities and criteria for restoration project selection for the ten years following the Effective Date. Specific elements will include, but may not be limited to, restoration and permanent protection of riparian vegetation, restoration of stream channel functions, remediation of Fish passage problems, and prevention of entrainment into diversions. Another specific element will be coarse sediment management in the Klamath River between Keno Dam and the Shasta River confluence, where coarse sediment supply will be managed, in coordination with any plan for dam removal, to replenish and sustain existing in-river sediment storage capacity, which may subsequently be increased after evaluating the attendant biological benefits. The Phase I Plan will identify high priority projects that either: (i) have direct benefits to existing Fish resources; or (ii) will significantly contribute to preparing habitats for use by anadromous Fish once passage is restored. The Phase I Plan shall indicate how it will integrate the approaches described in Section 9.2.2.

10.2. Phase II of the Fisheries Restoration Plan.

10.2.1. Preparation and Adoption.

Within seven years of finalization of the Phase I Plan, the Fish Managers shall co-author and distribute Phase II of the Klamath River Fisheries Restoration Plan.

- A. The Fish Managers shall collaborate with other Parties, including the Klamath Basin Coordinating Council, and seek their input during plan development, and shall also consider public input under Applicable Law.
- B. The Phase II Plan shall describe how these comments and recommendations were incorporated.
- C. The FWS and NMFS shall be co-Lead Parties for administrative tasks in the plan development process. If the Fish Managers cannot agree as co-authors on the content of the Phase II Plan, FWS and NMFS shall author and distribute a Phase II Plan.

10.2.2. Plan Elements.

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Using the results of the effectiveness monitoring of Phase I actions, the Phase II Plan will establish elements, restoration priorities, and an adaptive management process, for the remaining term of the Agreement. The Phase II Plan will describe how it will integrate the approaches described in Section 9.2.2.

10.2.3. Plan Revision.

The Fish Managers shall be responsible for revision of the Phase II Plan as appropriate and pursuant to the same process used for the initial plan.

11. Fisheries Reintroduction and Management Plan.

Reintroduction of anadromous Fish into the Upper Klamath Basin by the Fish Managers will involve two planning and implementation phases. Phase I will address the near-term investigations, facilities, actions, monitoring, and decisions necessary to initiate and accomplish the reintroduction of anadromous Fish Species. Phase II will address the management of re-established Fish populations in presently un-occupied habitats and as part of the fisheries of the Klamath River Basin.

11.1. Oregon Wildlife Policy.

Because anadromous Fish Species are not currently part of fisheries management in the Klamath River Basin in Oregon, ODFW will present decision documents to the Oregon Fish and Wildlife Commission, in order to direct ODFW's participation in the implementation of this section.

11.1.1. General Policy.

Oregon's Wildlife Policy (ORS 496.012) recognizes that the Oregon Fish and Wildlife Commission represents "the public interest of the State of Oregon" and further will implement the goal "To develop and manage the lands and waters of the state in a manner that will enhance the production and public enjoyment of wildlife." By statutory definition, wildlife includes fish. Nothing in this Agreement modifies or abrogates the Oregon Fish and Wildlife Commission's statutory responsibilities.

11.1.2. Recommended Klamath Policy.

By May 2008, ODFW shall submit a policy decision document to the Oregon Fish and Wildlife Commission for review and approval.

A. Objective of Self-Sustaining Populations of Anadromous Fish.

This decision document shall bring forward a public decision to manage the Upper Klamath Basin to include anadromous Fish Species

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previously extirpated from those habitats. The decision document shall propose an objective to re-establish in Oregon, self-sustaining, naturally-produced populations of Chinook, steelhead, coho, and lamprey that were historically present in the Upper Klamath Basin into historic habitats currently vacant of anadromy.

B. Level of Specificity.

The level of planning for the Oregon Fish and Wildlife Commission decision will of necessity be limited to a description of the Fish Species for reintroduction, the geographical extent of those Species, identification of critical uncertainties to be addressed during reintroduction, broad strategies for reintroduction (i.e. active movement versus. volitional re-colonization), and a conceptual plan for future management once anadromous Fish Species are thriving in the Upper Klamath Basin (Phase II Reintroduction).

C. Adaptive Management.

The Oregon Fish and Wildlife Commission document will identify an adaptive management approach to implementing the reintroduction to provide flexibility for making necessary adjustments, given the uncertainties inherent in restoring fish populations so long absent from the Upper Basin.

11.2. Oregon Fisheries Reintroduction and Management Plans.

11.2.1. Preparation and Adoption.

- A.** During the year immediately following Oregon Fish and Wildlife Commission's approval of reintroduction into Oregon, ODFW and the Klamath Tribes shall prepare, collaboratively with other Fish Managers, the Phase I Reintroduction Plan for reintroduction of anadromous Fish Species into Oregon reaches of the Klamath River Basin. This plan will include measures to implement early components of reintroduction. It will include participation from interested Parties and other entities capable of adding appropriate technical expertise to the process.
- B.** The Phase I Reintroduction Plan will identify facilities and actions necessary to start the reintroduction, as well as monitoring, evaluation, and other investigations as appropriate to narrow uncertainties. The Phase I Plan will be adaptable in order to incorporate knowledge gained from monitoring and evaluation during the reintroduction. Additionally, the Fish Managers from the reaches of the Klamath River below Upper

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Klamath Lake will develop specific actions to be incorporated into the Fisheries Monitoring Plan to assess the volitional re-colonization of those reaches of river and tributaries by Fish currently blocked by Iron Gate Dam.

- C. ODFW and the Klamath Tribes shall implement the reintroduction actions in Oregon. Reintroduction actions in California shall be implemented by the Fish Managers in California.
- D. Once the implementation of Phase I Reintroduction yields results to guide the management of anadromous Fish in Oregon as described in Section 11.3.2, Phase II Reintroduction will be initiated.
- E. ODFW, in close coordination with the Klamath Tribes, shall prepare for the Oregon Fish and Wildlife Commission a decision document to guide the management of established anadromous fish populations in the Oregon reaches of the Klamath River Basin. The Oregon Fish and Wildlife Commission's document will provide policy guidance to ODFW for participation in development of a plan to manage reintroduced fish populations in the Klamath Basin.
- F. Following Oregon Fish and Wildlife Commission's approval of management of anadromous Fish in Oregon, ODFW and other Fish Managers shall prepare collaboratively the Phase II Reintroduction Plan to describe the management of new populations of anadromous Fish in the basin as integral components of Fisheries management of the entire Klamath River Basin. The Phase II Reintroduction Plan will be incorporated into a plan for the management of Klamath Fisheries that will fulfill the requirements of the Pacific Fisheries Management Council. This latter plan will be prepared by the Fish Managers and will be submitted to the respective policy decision bodies of the Fish Managers for their adoption. This planning effort will include participation from interested Parties or other entities capable of adding appropriate technical expertise to the process.

11.2.2. Elements.

The Phase I Reintroduction and Phase II Reintroduction Plans will present specific management options for managing Chinook salmon, coho salmon, steelhead trout and Pacific lamprey in the Klamath River Basin, where anadromous Fish were historically present. The implementation plan will identify

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near-term and long-term actions necessary to address key uncertainties and develop specific strategies for achieving the goals of reintroduction.

A. Schedule.

ODFW shall conduct activities in accordance with the Phase I Reintroduction Plan beginning as early as 2009. Key investigations that do not require Fish passage through the Hydropower Project (e.g. stock selection, outmigrant behavior, and reintroduction methods) will begin immediately following completion of the Phase I Reintroduction Plan.

B. Lost River.

The Reintroduction Plan will not propose to introduce anadromous Fish into the Lost River and Tule Lake subbasin.

11.3. Oregon Implementation.

The Fish Managers shall annually provide a report to the Klamath Basin Coordinating Council on the progress of implementing the Reintroduction Plan. During implementation of the plans, the Fish Managers shall include participation by interested Parties and other entities capable of adding technical expertise to the process.

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11.3.1. Implementation of Phase I Reintroduction.

A. Above Upper Klamath Lake.

In Phase I Reintroduction, ODFW and the Klamath Tribes, in collaboration with the other Fish Managers, shall introduce Chinook salmon into Upper Klamath Lake and tributaries. This phase will require active intervention and movement of fish into habitats above Upper Klamath Lake. A variety of release and rearing strategies will be utilized to optimize opportunities for success. An adaptive management approach will be utilized to determine appropriate race(s) and life history of Chinook to release (spring and/or fall Chinook) with best opportunities for successful rearing, emigration to the ocean and return.

B. Below Upper Klamath Lake.

During Phase I Reintroduction, the Fish Managers shall monitor and evaluate natural re-colonization of native Chinook and coho salmon, steelhead trout and Pacific lamprey into the Klamath River and tributaries below Upper Klamath Lake. No active intervention or movement of Fish will be immediately proposed to re-establish

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salmon, steelhead or lamprey in these stream areas during the initial portion of Phase I Reintroduction. However, if monitoring reveals that re-colonization is not occurring or is too slow, the Fish Managers may pursue active reintroduction of salmon and lamprey into habitats below Klamath Lake.

C. Sport and Commercial Fisheries.

To the extent possible, adult salmon returning to Upper Klamath Lake and tributaries from Phase I Reintroduction efforts shall be protected to minimize their harvest in sport, commercial and tribal fisheries until the Phase II Reintroduction Plan is adopted.

D. Research.

Research investigations shall be undertaken during Phase I Reintroduction to determine appropriate stocks which meet strict disease criteria and migration ability, potential competition and interaction of re-introduced Fish with existing native stocks, and natural production potential for anadromous Fish in the upper basin. In addition, research will inform adaptive management of active reintroduction efforts in and above Upper Klamath Lake.

11.3.2. Implementation of Phase II Reintroduction.

On a continuing basis, the Fish Managers shall ascertain the status of reintroduced or recolonized populations of anadromous Fish in the Klamath River and tributaries. The Fish Managers shall include participation by interested Parties and other entities capable of adding technical expertise to the process. Once self-sustaining populations of Chinook salmon and steelhead are established in the Upper Klamath Basin, at levels of population productivity consistently above replacement, Phase II will be initiated. In Phase II Reintroduction, Fish Managers will implement management actions to achieve objectives identified in the plans specified in Section 11.2.1. The re-established populations in the Upper Klamath Basin will contribute to the Fisheries of the basin as a whole. Management actions will insure that tribal, commercial, and sport harvests are managed in a way that provides for escapement of salmon and steelhead into the Upper Klamath Basin at levels that sustain healthy populations.

11.4. California Fish and Game Policy

Chapter 8 of the California Fish and Game Code (section 6900) provides policy guidance for management of salmon, steelhead trout, and anadromous fisheries within the state of California. Fish and Game Code 6900 states: "Protection of, and an increase in, the naturally spawning salmon and steelhead trout resources of the state would provide a valuable public resource to the residents, a large statewide benefit, and would, in

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addition, provide employment opportunities not otherwise available to the citizens of the state, particularly in rural areas of present underemployment.” In addition, “Reliance upon hatchery production of salmon and steelhead trout in California is at or near the maximum percentage that it should occupy in the mix of natural and artificial hatchery production in the state. Hatchery production may be an appropriate means of protecting and increasing salmon and steelhead in specific situations; however, when both are feasible alternatives, preference shall be given to natural production.” This agreement and development of subsequent “Fisheries Plans” as described in this agreement is intended to be consistent with current policies under California Fish and Game Code.

11.4.1. Fisheries Reintroduction Strategy for California.

Natural and hatchery populations of Chinook salmon, coho salmon and steelhead trout, along with natural populations of Pacific lamprey, currently exist in the Klamath River Basin immediately downstream of Iron Gate Dam. Following the removal of Iron Gate, Copco 1 and Copco 2 Dams, anadromous fish will have access to historic habitats within California upstream of Iron Gate Dam. The Department of Fish and Game anticipates that seeding of these newly available habitats within California will occur naturally for the majority of native species once fish passage is restored. The geographic scope of current monitoring efforts for anadromous fish shall be expanded accordingly and will be consistent with the protocols established in the Fisheries Monitoring Plan described in Section 12. Information gathered through such monitoring shall guide adaptive management of reintroduction actions.

11.4.2. California Fisheries Reintroduction Plan

Natural reintroduction of anadromous fish within the California portion of the Klamath Basin will commence immediately once fish passage is restored. The California Department of Fish and Game shall adopt a passive (wait and see) approach to reintroduction which shall include development of reintroduction goals, monitoring protocols, habitat assessments and other investigations as appropriate. The Plan shall also include development of guidelines for use of a conservation fish hatchery to more quickly establish naturally producing populations in the wild if deemed appropriate and necessary.

Within one year of the Effective Date, The California Department of Fish and Game shall develop a California Fisheries Reintroduction Plan. The Plan shall be developed in collaboration with the Tribes and other Fish Managers and will be developed in coordination with the Oregon Fisheries Reintroduction Plan as described in section 11.2 and 11.3. It will include participation from interested Parties and other entities capable of adding appropriate technical expertise to the process.

The Plan shall include an adaptive management approach during reintroduction to allow for inclusion of new information as it becomes available and provide

flexibility in the methods used to achieve established goals. For example, if monitoring reveals that re-colonization is not occurring or is too slow, the Fish Managers may pursue active reintroduction of native anadromous fish. Such reintroduction actions could include a variety of release and rearing strategies to optimize opportunities for success. The adaptive management approach would be utilized to determine appropriate race(s) and life history of Chinook to release (spring and/or fall Chinook) with best opportunities for successful rearing, emigration to the ocean and return. Research would inform any adaptive management of active reintroduction efforts. One such research priority would be to determine appropriate stocks for active reintroduction which meet strict disease criteria and migration ability. Research would also need to address, potential competition and interaction of re-introduced fish with existing native stocks, and natural production potential for anadromous fish.

Conservation Hatchery: In the context of this agreement, a conservation hatchery is an artificial fish production facility with the primary objective of enabling naturally produced fishes to fully support re-establishing populations. Fishes produced in such a facility must fit within the ecological context of the Klamath River such that (1) artificially produced fishes demonstrate the range of life history characteristics representative of naturally produced fishes; (2) the genetic structure of the artificially produced fishes matches that of the naturally produced fishes; (3) the number of fishes produced in the hatchery does not overwhelm the naturally produced fishes as returning adults; and artificially produced fishes do not introduce new diseases or greater susceptibility to existing diseases to the naturally producing population(s). A successful conservation hatchery program will continually decrease the dependence on artificial production as naturally produced fishes become more abundant, successful, and dispersed among the range of available habitats. A successful conservation hatchery eventually stops operating because natural production is capable of fully supporting the re-established populations.

12. Fisheries Monitoring Plan.

12.1. Preparation and Adoption.

Within one year of the Effective Date, the Fish Managers shall co-author the Fisheries Monitoring Plan. The Fisheries Monitoring Plan will be coordinated with the Fisheries Restoration and Reintroduction Plans described in Sections 10 and 11, respectively. The Fish Managers shall collaborate with, and seek comments and recommendations from, each of the Parties, and seek public input, in the development of the Fisheries Monitoring Plan. The Fish Managers shall describe how comments and recommendations are incorporated into the Fisheries Monitoring Plan. The FWS and NMFS shall be co-Lead Parties for administration of the Plan development process. If the Fish Managers cannot agree as co-authors, FWS and NMFS shall author the Fisheries Monitoring Plan. The Fish Managers shall be responsible for revision of the Fisheries Monitoring Plan, pursuant to the same process used for the initial plan.

12.2. Fisheries Monitoring Plan.

12.2.1. Status and Trends.

The Fisheries Monitoring Plan will include, but not be limited to: (i) methods for stock identification, (ii) collecting information to assess the status and trends in abundance of fish populations and their habitats, including riparian areas, and (iii) providing information for restoration actions and for management of fisheries dependent on Klamath Basin fish populations. The Fish Species to be included in the plan are Chinook and coho salmon, steelhead trout, resident rainbow trout, lamprey, suckers, bull trout, sturgeon and eulachon.

12.2.2. Data Related to Environmental Water.

The Fisheries Monitoring Plan will include, but not be limited to, the collection of data to: (i) monitor Klamath River instream flows and Upper Klamath Lake elevations to evaluate the water outcomes from implementation of the Water Resources Program; and (ii) assist the TAT in developing its Annual Water Management Plan and in providing in-season management recommendations as described in Appendix C-2. The type of water data will include water quantity data (e.g., instream flows and Upper Klamath Lake elevations at appropriate locations) and water quality data (e.g., temperature).

12.2.3. Effectiveness Monitoring.

The Fisheries Monitoring Plan will include effectiveness monitoring in order to assess the performance of restoration actions at both site-specific and broader scales. The results of the effectiveness monitoring will assist identification of restoration priorities and other adaptive management actions for subsequent planning phases as described in Section 10.2.2.

12.2.4. Limiting Factors.

The Fisheries Monitoring Plan will also include assessments to evaluate factors limiting recovery and restoration of Fish populations in order to identify measures to eliminate, reduce or mitigate such threats. The results of the limiting factors assessments will assist in the identification of restoration priorities and adaptive management actions for subsequent planning phases as described in Section 10.2.2.

12.2.5. Data System.

The Fisheries Monitoring Plan will describe a cohesive and integrated approach to the collection and storing of monitoring data and restoration information. The Plan will identify existing monitoring efforts and monitoring gaps to expand data

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collection efforts where necessary to promote a comprehensive, integrated, and efficient Fisheries Program.

12.2.6. Specification of Responsibilities.

The Fisheries Monitoring Plan will describe specific roles and responsibilities of the Fish Managers, and where appropriate, other Parties, in implementing the monitoring program.

12.2.7. Periodic Review Regarding Fisheries Outcomes.

In furtherance of Section 1.3, the United States and the Tribes shall periodically meet and confer to review whether the intended fisheries outcomes of this Agreement are being realized for tribal trust as well as public benefits and to determine appropriate remedial actions (if any).

A. Review.

By June 30, 2020 and June 30, 2030, and at other dates thereafter as agreed pursuant to Section 5.4, the TAT shall evaluate: (i) fishery habitat objectives Consistent with Sections 1.3, 9.2.1, 12.2.1 and 12.2.4 and (ii) habitat outcomes of the actions taken by the Parties, including volumes of water available for Instream Use. The TAT shall evaluate appropriate documents considered by the Parties in reaching this Agreement, including but not limited to Simondet *et al.*, *Settlement Group Tech Team Assignment X Flow Report* (January 6, 2007), *Dunsmoor Assumptions in Hydrological Modeling (KPSIM)*(May 2007), and Appendix E-5, as well as best available science undertaken thereafter through this Monitoring Plan or otherwise. If the TAT's evaluation is that the intended objectives or outcomes have not been met, the TAT shall provide a recommendation to the United States, the Tribes, and other Fisheries Managers regarding additional measures that should be taken. The TAT's recommendation shall be subject to peer review by an independent body to evaluate the methods, data, and calculations used for such recommendation.

B. Responsive Actions.

If warranted after the peer review of the TAT's recommendation, the United States, affected Tribes and other Fish Managers, and other Parties shall develop and implement a functional response which preserves the bargained-for benefits of all Parties, in the form of supplemental terms of this Agreement Consistent with Section 3.2.4.B, and subject to the Dispute Resolution Procedures in Section 6. In developing such response, the Parties shall consider the priorities established in the relevant programs to provide fisheries benefits.

C. Further Extension of the Agreement.

In 2055, the Parties shall agree to consider an extension of the term of the Agreement as stated in Section 1.6, if warranted by the circumstances at that time.

13. Funding and Implementation.

13.1. Funding Program Planning in 2009.

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Within 60 days after the Effective Date, the Fish Managers shall meet to determine budgets necessary for initial stages of development of their respective plans. Subject to Section 4.1, these Public Agency Parties, including Tribes, shall provide funds for these initial planning efforts. Each funding agency shall retain its authority and final approval to make funding decisions under Applicable Law.

13.2. Annual Funding Review.

On an annual basis, or other appropriate interval to be determined by the Parties depending on appropriations, all Parties with funds or other resources (e.g., in-kind) available for use in the implementation of the Fisheries Program shall meet and confer to identify all available funds appropriate for such uses in Fiscal Year 2010 and thereafter. They shall also identify funding constraints. The FWS and NMFS shall be co-Lead Parties for managing the funding review process. The initial meeting for this purpose shall occur within 180 days of the Effective Date.

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13.3. Program Funding Allocation Prior to Council Charter.

13.3.1. Funding Proposals from Planning Groups.

Within 30 days after the review of available funding described in Section 13.2, in coordination with other Parties and other entities with available resources, and Consistent with Applicable Law, the Fish Managers shall incorporate the results of that funding review and develop an Annual Program of Work and associated budget for funding the implementation of the priorities set forth in the plans for

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the Fisheries Program. The Annual Program of Work will reconcile and balance the priorities among the Plans. If there is an unresolved dispute about priorities after exhaustion of Dispute Resolution Procedures under Section 6.5, each Party with available resources shall make its own decision. The FWS and NMFS shall be co-Lead Parties for administrative tasks of the development process for this Annual Program of Work.

13.3.2. Implementation by Funding Entities.

Consistent with Applicable Law and subject to Section 4.1 as appropriate, funding entities, in coordination with other entities with available resources (e.g., in-kind services), will implement actions Consistent with the Annual Program of Work developed under Section 13.3.1. Each funding entity shall retain its authority and final approval to make funding decisions. To the greatest extent feasible and appropriate under available authorities and programs, agreements with entities implementing elements of these plans will establish permanent protections and measures for adaptive management to reach desired conditions.

13.4. Annual Reporting.

Within 30 days before the annual funding review described in Section 13.2, the funding entities shall provide a report to the Klamath Basin Coordinating Council on all activities funded and/or carried out in the previous year Consistent with implementation of the Annual Program of Work and describe any substantial deviations from the previous year's Annual Program of Work.

13.5. Funding Process Subsequent to Council Charter.

The FWS and NMFS shall jointly deliver to the Klamath Basin Coordinating Council the Annual Program of Work and associated budget described in Section 13.3.1. The KBCC shall determine its process for review and developing recommendations. It shall incorporate the information provided under Section 13.3, and make recommendations to the funding entities regarding budget priorities Consistent with the Fisheries Plans. The FWS and NMFS shall be co-Lead Parties for managing the process described above for the prioritized funding allocation. The funding entities shall perform expenditures as described in Section 13.3.2. Each funding entity shall retain its authority and final approval to make funding decisions under Applicable Law.

**PART IV.
WATER RESOURCES PROGRAM**

14. Overview of Water Resources Program.

The Parties hereby establish a Water Resources Program.

14.1. Elements.

This program shall consist of the following discrete and Consistent elements: (1) Klamath On-Project Water Users Program, including provisions related to National Wildlife Refuges; (2) Upper Klamath Basin Water Program; (3) Environmental Water, which will be managed, and protected as described in Section 19; (4) Drought, Climate Change, and other Emergency Response Plan; and (5) the other obligations specified in this Part IV relating to additional water conservation and storage.

14.2. Consistency with Applicable Law.

The Water Resources Program shall be Consistent with Applicable Laws and the limits of applicable water rights. None of the terms of Sections 14 – 19 affect either OWRD’s authority to determine and administer water rights generally or specifically in the Klamath Basin Adjudication, or the SWRCB’s authority.

14.3. Funding

The Parties shall support authorization and appropriation of funds in the amount of \$296.3 million, as estimated in Appendix B-2, to implement the Water Resources Program in the first ten years after the Effective Date.

15. On-Project Water Users Program.

15.1. Water Diversions for Klamath Reclamation Project and Klamath Basin National Wildlife Refuges.

15.1.1. Klamath Reclamation Project.

This Agreement provides for limitations on specific diversions for the Klamath Reclamation Project, as described in this Section 15.1.1 and as provided in Appendix E-1. The limitations are intended, particularly in drier years, to increase water availability for Fisheries purposes, while Section 15.1.2 provides terms for the allocation and delivery of water to National Wildlife Refuges. Section 15.2 establishes the program by which KWAPA will address the limitations on diversions. The DIVERSION amount as specified in Appendix E-1 for the irrigation season will increase by 10,000 acre feet in some years effective March 1 after the earlier of: (i) four dams of the Hydropower Project (J.C. Boyle, Copco I, Copco II, and Iron Gate) have been breached and do not impound water; (ii) 10,000 acre feet of new storage has been developed under Section 17.3; or (iii) the Klamath Basin Coordinating Council, on or after February 1, 2020 and after receipt of recommendations from the TAT, determines the increase is appropriate. The Council shall provide appropriate notice to OWRD of when the increase is to occur based on the fulfillment of one of these conditions.

A. **Collaboration on Irrigation Diversions and Environmental Water Management.**

i. **Purpose and Scope.**

The Parties acknowledge that historically, the Klamath Reclamation Project in some wet water years has diverted less than the applicable maximum DIVERSION described in Section 15.1.1 and provided in Appendix E-1, and that diversion of less than the maximum DIVERSION may occur in some years in the future. The Parties concur that Fish Managers will benefit from ongoing information throughout the irrigation season as to irrigation operations. The Parties intend by these provisions that water not diverted shall be managed for the benefit of the fisheries in the Upper Klamath Lake and Klamath River, and that Fish Managers through collaboration with irrigation managers shall have ongoing information on the operation of irrigation systems.

ii. **Obligations.**

To insure that water not needed by the Klamath Reclamation Project is managed for the benefit of the fisheries, and otherwise that fisheries management reflects a high degree of knowledge regarding ongoing and anticipated timing of water diversions, the Parties agree to the following:

- (1). Within 12 months of the Effective Date, KWAPA (in coordination with TID, KID, KDD, Reclamation, FWS (TLNWR and LKNWR), and other interested Parties) shall complete an analysis of the relevant historical data including, but not limited to, Klamath Reclamation Project water diversions, climatic data, and agronomic data, to determine the circumstances which cause diversion of less than the applicable maximum DIVERSION as provided in Appendix E-1. The results of this analysis shall be provided to the TAT.
- (2). Using the analysis, KWAPA (in coordination with TID, KID, KDD, Reclamation, FWS (TLNWR and LKNWR) and other interested Parties) and the TAT, shall develop and continuously refine predictive techniques for use by the TAT to anticipate, as early in the irrigation season as possible and periodically thereafter, those

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circumstances in which the Klamath Reclamation Project will likely divert less than the applicable maximum DIVERSION. The TAT will use all such information as part of its recommendations for management of the water resources for the benefit of the fisheries. And:

- (3). KWAPA shall participate fully in the activities of the TAT. Prior to the beginning of the irrigation season, KWAPA shall provide information to the Team on anticipated timing and amounts of diversion by the Klamath Reclamation Project. This prediction shall be refined by KWAPA and the TAT periodically throughout the irrigation season, and shall include statements of the degree of probability that specified amounts of water may not be diverted to meet irrigation requirements.

B. Development of DIVERSION Limitations.

The applicable limits in Appendix E-1 on defined DIVERSION of water from Upper Klamath Lake and the Klamath River from the Settlement Points of Diversion were developed by: establishing an applicable DIVERSION related to irrigation and any other uses to be addressed in the OPPA under the On-Project Plan identified in Section 15.2, including a range for the March to October period from 330,000 to 385,000 acre-feet, which would at some time increase to 340,000 to 385,000 acre feet; then adding a quantity equal to the applicable Refuge Allocation described in Section 15.1.2. The Parties agree that the terms for distribution or management of water within the Klamath Reclamation Project to occur under this Agreement are provided in terms of this Agreement that follow. Details regarding the use of water following diversion are specified in other provisions, including Section 15.1.2, Section 15.2, and Appendix E-1.

15.1.2. Water Diversions for Tule Lake and Lower Klamath National Wildlife Refuges.

A. Recitals.

i. National Wildlife Refuges Generally.

The lands within the LKNWR and TLNWR are owned by the United States and managed by FWS. These Refuges receive water through facilities of the Klamath Reclamation Project, administered by Reclamation. Klamath Reclamation Project

and other facilities are used to deliver water to LKNWR's and TLNWR's wetlands (including seasonal wetlands, permanent vegetation, and open water areas), sumps, cooperative farming lands, and lease lands, and to walking wetlands within the Klamath Reclamation Project. For purposes of this Agreement, walking wetlands includes a Refuge-approved program that incorporates managed wetlands into agricultural crop rotations on the Refuge as well as on private lands in the Klamath Reclamation Project. Such wetlands support the diversity of waterbird species endemic to the Upper Klamath Basin. Walking wetlands returned to agricultural production enhance agricultural crop yields and reduce chemical inputs by enhancing soil fertility and reducing soil pests and diseases to crops.

ii. **TID Operations and the Refuges.**

Pursuant to contract with the United States (Contract No. 14-06-200-5954 between TID and the United States), TID operates various Klamath Reclamation Project facilities owned by the United States, including D Plant. Operation of D Plant results in deliveries of water to the P Canal system and to LKNWR wetlands and cooperative farming lands. TID also operates Klamath Reclamation Project control infrastructure to maintain water surface elevations in Sumps 1A and 1B in TLNWR pursuant to Section 6 of the Kuchel Act (Public Law 88-567), section 7(b) of contract 14-06-200-5964, and other applicable laws, rules, regulations, and requirements, and to provide water for TLNWR lease lands, cooperative farming lands, and Walking Wetlands.

iii. **KDD Operations and LKNWR.**

KDD owns and operates certain facilities, including Ady Canal and North Canal. KDD provides delivery of water to LKNWR's wetlands, cooperative farming lands, and lease lands (known as Area K) pursuant to contract with the United States contract number Ilr-402, as amended and supplemented. As used in this Section 15.1.2, and solely for the convenience of reference, Klamath Reclamation Project facilities include facilities owned by and operated by KDD.

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iv. **Delivery of Water to Wildlife Refuges.**

This Agreement provides for a specific allocation of water for the Refuges, described in Section 15.1.2 E (Refuge Allocation),

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and certain related commitments. Otherwise, nothing in this Agreement modifies any current obligations of KDD with respect to delivery of water to LKNWR or TID with respect to TLNWR, but, rather, removes any ambiguity or resolves any differences of position as to certain delivery of water for Refuge purposes to LKNWR wetlands, TLNWR sumps, and Walking Wetlands under a Refuge-approved program. TID will continue to operate Klamath Reclamation Project water control infrastructure to maintain water surface elevations in Sumps 1A and 1B in accordance with Section 6 of the Kuchel Act, Article 7(b) of Contract No. 14-06-200-5964, applicable rules and regulations, and other applicable requirements (e.g., the Endangered Species Act), and terms herein.

B. Purpose and Scope.

The purpose of this Section 15.1.2 is to describe the delivery of water to the LKNWR and TLNWR and to ensure reliable water deliveries for the exercise of the Refuges' water rights. Water deliveries for the exercise of the Wildlife Refuges' water rights and the Refuge Allocation described in this Section 15.1.2.E shall be made available from the Klamath Reclamation Project's DIVERSION, as provided in Appendix E-1 and Attachment A thereto, or from other sources used in the Klamath Reclamation Project in the OPPA and delivered through Klamath Reclamation Project facilities.

i. **TLNWR.**

With respect to TLNWR, the terms in this Section 15.1.2 ensure continued delivery of water to the approximately 13,000 acres of wetlands and open water on TLNWR, TLNWR's cooperative farming lands, agricultural lease lands, and Walking Wetlands, subject to existing laws and applicable contracts. TLNWR will receive water from the Klamath Reclamation Project's DIVERSION, identified in Appendix E-1 to this Agreement, or from other sources used in the Klamath Reclamation Project in the OPPA and delivered through Klamath Reclamation Project facilities, and not from the Refuge Allocation, except as provided in Section 15.1.2.E.iii(2) for refilling of the sumps after intentional draining by the Refuges, and Section 15.1.2.E.iii(1) related to Refuge-approved Walking Wetlands.

ii. **LKNWR.**

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With respect to LKNWR, the terms in this Section 15.1.2 provide a specific allocation of water for LKNWR wetlands and cooperative farming lands and other uses identified in Section 15.1.2.E.iii. The Refuge Allocation, ranges from 48,000 to 60,000 acre feet of water in the summer period and 35,000 acre feet in the winter period. In addition, the LKNWR lease lands will receive water from the Klamath Reclamation Project's DIVERSION, as provided in Appendix E-1, or from other sources used in the Klamath Reclamation Project in the OPPA and delivered through Klamath Reclamation Project facilities, and not from the Refuge Allocation.

C. Effective Date and Support for Agreement Terms.

The effective date for this Section 15.1.2 shall be the date that Appendix E-1 becomes effective. Each of KPWU consents to this Section 15.1.2 and hereby releases the United States, TID, and KDD from all claims, damages, or losses resulting from the performance under this section and under any new or amended contracts consistent with this Section 15.1.2.

D. Klamath Reclamation Project Diversions.

Water for the LKNWR and TLNWR will be provided as part of the DIVERSION identified in Appendix E-1 as necessary to meet the commitments herein, but may be provided from other sources used in the Klamath Reclamation Project and delivered through Klamath Reclamation Project facilities. The water delivery commitments herein do not preclude the use of water for another purpose prior to the delivery to Wildlife Refuge lands and/or the Refuge Allocation described in Section 15.1.2.E (e.g., delivery of return flows) so long as the delivery obligations and specific quantities are maintained.

i. Water for TLNWR and LKNWR Lease Lands.

Water for LKNWR's lease lands and for TLNWR's lease lands, cooperative farming lands, and maintenance of the sumps, except for draining and refill of the sumps by the Refuges as provided in Section 15.1.2.E.iii(2), shall be provided from the DIVERSION, identified in Appendix E-1, or from other sources used in the Klamath Reclamation Project in the OPPA and delivered through Klamath Reclamation Project facilities, without any effect on the Refuge Allocation identified in Section 15.1.2.E.i. Also, delivery of water to LKNWR's (Area K) lease lands and to TLNWR shall be under the On-Project Plan described in Section 15.2.4, *provided that*

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the portion of the On-Project Water Plan applicable to such Wildlife Refuge lands will be developed with and approved by the Refuge Manager, and the On-Project Plan as it relates to Refuge lands shall treat such Refuge lands equitably.

ii. **Refuge Water Allocations.**

Water for the LKNWR wetlands, cooperative farming lands, and the uses in Section 15.1.2.E.iii (constituting the Refuge Allocation) shall be as provided below in Section 15.1.2.E.

iii. **Measurement Points.**

DIVERSION under Appendix E-1 shall be measured at the points of diversion or control, as described in Appendix E-1. The points of measurement for the Refuge Allocation shall be the points of delivery as described at Section 15.1.2.E.iv.

iv. **Conveyance Losses.**

Conveyance losses associated with delivery of water for the Refuge Allocation will not be charged to the Refuge Allocation, except as provided in Section 15.1.2.E.iii(3) and 15.1.2.E.iii(4).

E. Refuge Allocation.

The Refuge Allocation shall be comprised of water for the following: LKNWR wetlands; LKNWR cooperative farming lands; refilling of TLNWR sumps after intentional draining by the Refuges (as identified in Section 15.1.2.E.iii(2)); Refuge-approved walking wetlands (as identified in Section 15.1.2.E.iii(1)); conveyance losses, if any, resulting from bypassing water at Anderson-Rose Dam solely for LKNWR wetlands, (as identified in Section 15.1.2.E.iii(3)); and conveyance losses for any delivery to LKNWR via North Canal (as identified in Section 15.1.2.E.iii(4)). The Refuge Allocation shall be provided through water diverted under the DIVERSION, identified in Appendix E-1, or from other sources used in the Klamath Reclamation Project in the OPPA and delivered through Klamath Reclamation Project facilities, and shall be based on two periods: November through February (winter period Refuge Allocation) and March through October (summer period Refuge Allocation).

i. **Summer Period.**

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Except as provided in Section 15.1.2.F.i (Shortages), the summer period Refuge Allocation (March 1 - October 31) shall be based on the Forecast used for DIVERSIONS, described in Appendix E-1 (i.e., the March 1 Natural Resource Conservation Service 50 percent exceedance forecast for net inflow to Upper Klamath Lake for April - September) and shall consist of the following:

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- (1). When the Forecast is 287,000 or less, 48,000 acre-feet;
- (2). When the Forecast is more than 287,000 acre-feet but less than 569,000 acre-feet, the quantity in thousands of acre feet resulting from the following equation: $48 + (7.64 \times [(Forecast - 287) \div 282])$; and
- (3). When the forecast is 569,000 acre-feet or more, 60,000 acre-feet.

ii. **Winter Period.**

Subject to Section 15.1.2.F.ii, the winter period Refuge Allocation (November 1 – February 28 (or February 29 in leap years) shall be 35,000 acre feet, except, when additional water is available under Applicable Law and this Agreement, the November - February allocation may be increased up to 60,000 acre feet, subject to any agreement for delivery of water, as needed. Any such additional amount (i.e. winter allocation above 35,000 acre-feet) shall be charged against the summer period Refuge Allocation, except if such additional water is made available upon recommendation of the KBCC to provide for augmentation of the Refuge Summer Allocation pursuant to Section 17.3, but not including the 10,000 acre feet identified in Section 15.1.1.

iii. **Other Refuge Uses.**

The Refuge Allocation described above in Paragraphs (i) and (ii) applies to LKNWR wetlands and cooperative farming lands and the following uses, and delivery to the LKNWR Delivery Points described in Section 15.1.2.E.iv(1) will be adjusted downward based on the following:

- (1). One acre-foot per acre for each acre of walking wetlands where any such practice is part of a

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Klamath Basin Refuge-approved program or agreement in to the following areas: TLNWR's lease lands and cooperative farming lands; LKNWR's Area K lease lands; and lands within the Klamath Reclamation Project outside of TLNWR and LKNWR, subject to any necessary approvals to such use of the Refuges' water rights;

- (2). If Sump 1A or Sump 1B has been drained or lowered intentionally at the request or direction of the manager of the Klamath Basin Refuges Complex (Refuge Manager), by the quantity used to refill either such sump;
- (3). If it is reasonably necessary to bypass water at Anderson-Rose Dam solely to meet delivery requirements for the LKNWR wetlands, or cooperative farming lands, by conveyance losses as agreed upon by the Refuge Manager and KPWU. The Refuge Manager and KPWU will agree on the amount of such conveyance losses within 18 months of the Effective Date.
- (4). If the Refuge Manager and KDD agree to any delivery to LKNWR by diversion through North Canal, by conveyance losses as agreed upon by the Refuge and KPWU.
- (5). If additional Klamath Reclamation Project surface water that is conveyed through Project facilities becomes available for LKNWR through a controlled means other than the LKNWR Delivery Points identified below in Section 15.1.2.E.iv(1), and is delivered to the LKNWR, by that amount.

iv. **Points of Measurement for Refuge Allocation.**

The points of measurement for the Refuge Allocation shall be as follows:

- (1). For water comprising and charged to the Refuge Allocation for LKNWR wetlands, open water, and cooperative farming lands, the delivery points and measurement points shall include: Ady/South Canal at State Line; D Plant (minus use by private P-Canal water users); North Canal at State Line; and any

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location identified in Section 15.1.2.E.iii(5) (collectively, “LKNWR Delivery Points”).

- (2). For refill of Sumps 1A Sump 1B, if drained or lowered intentionally at the request or direction of the Refuge Manager, as provided in Section 15.1.2.E.iii(2), the measurement points shall be the points of delivery.
- (3). For Refuge-approved walking wetlands the measurement shall be as provided above in Section 15.1.2.E.iii(1).
- (4). For conveyance losses if any for deliveries with respect to Section 15.1.2.E.iii(3) (bypass at Anderson Rose Dam as agreed upon in Section 15.1.2.E.iii(3); and with respect to Section 15.1.2.E.iii(4) (extension of North Canal, as agreed upon in Section 15.1.2.E.iii(4)).

F. Shortages.

i. Summer Period Shortages.

In any year that the applicable DIVERSION quantity for the summer period (March 1 - October 31) identified in Appendix E-1 is not available for diversion at the Settlement Points of Diversion by the Klamath Reclamation Project, the difference between the applicable DIVERSION quantity and the amount available for diversion at the Settlement Points of Diversion by the Klamath Reclamation Project (the deficit) shall be addressed as follows:

- (1). For up to the first 10,000 acre-feet of deficit in the summer period DIVERSION during Phase 1, identified in Appendix E-1, and for up to 20,000 acre-feet of deficit during Phase 2, identified in Appendix E-1, there shall be no effect on delivery of the summer period Refuge Allocation (at the LKNWR Delivery Points described in Section 15.1.2.E.iv if forbearance agreements have been entered for the summer (March – October) period covering non-Refuge lands in the Klamath Reclamation Project sufficiently to reduce water demand by an amount equivalent to such deficit. Such forbearance agreements would be in addition

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to those existing and being exercised in the year under the On-Project Plan and may occur under Section 18.2.2.B.iii(1) or otherwise. Drought relief funds under Section 18.2.2.B.vi shall be made available for this purpose; additionally, any other funds available to the Refuge may be used by it for this purpose. KWAPA will assist the Refuge in addressing any such agreements.

- (2). After the application of step (1), above, or to the extent that step (1) is not implemented, delivery for the summer period Refuge Allocation will be temporarily reduced at the LKNWR Delivery Points as necessary to cover the remaining deficit to the summer period Klamath Reclamation Project DIVERSION until delivery under the summer period Refuge Allocation to all uses described above at Section 15.1.2.D.ii, 15.1.2.E and 15.1.2.E.iii has been reduced to 24,000 acre-feet.
- (3). After application of step (2), if said summer period DIVERSION continues to have a deficit, the Refuge Allocation and delivery to the OPPA will proportionately share any additional deficits to the summer period DIVERSION. For example, if the remaining deficit is five percent of the applicable summer period DIVERSION, delivery to the Refuge Allocation calculated above in step (2) will be reduced by five percent and delivery to the OPPA from the Settlement Points of Diversion will also be reduced by five per cent.

ii. **Winter Period Shortage.**

In any year that the applicable DIVERSION quantity for the winter period (November - February), identified in Appendix E-1, is not available for diversion by the Klamath Reclamation Project, shortage will be shared based on a plan to share shortages agreed upon by the Refuge Manager and KPWU. The plan will be completed within one year of the Effective Date.

G. **Delivery Facilities.**

i. **TID Water Deliveries.**

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The delivering entity, TID, its assigns, or Reclamation, shall provide or continue to provide water deliveries to the Wildlife Refuges as follows:

- (1). Delivery of water, through D Pumping Plant, to LKNWR wetlands and cooperative farming lands, including delivery of at least 9,000 acre-feet of water through D Pumping Plant to LKNWR wetlands or cooperative farming lands during the period September - October, subject to any agreed variation by TID, or its assigns, and the Refuge Manager, and such amount in April- August as determined by the Refuge Manager in consultation with TID and Reclamation and subject to reasonable operational terms;
- (2). Operation of Klamath Reclamation Project water control infrastructure to maintain water surface elevations in TLNWR's Sumps 1A and 1B per Section 6 of the Kuchel Act, section 7(b) of the TID contract, other applicable laws, rules, regulations, and any other applicable requirements (e.g., Endangered Species Act);
- (3). Delivery of water to TLNWR lease lands pursuant to applicable contract(s), subject to Sections 15.1.2.G.i(4) and 15.1.2.D.i; and
- (4). Any additional specific obligations for delivery as agreed upon by TID, or its assigns, and the Refuge Manager.

ii. **KDD Water Deliveries.**

The delivering entity, KDD or its assigns, shall continue to provide delivery of water to LKNWR as follows:

- (1). Delivery of water diverted at Ady Channel and Ady Canal headgates through the South Canal to the LKNWR wetlands and cooperative farming lands, as provided in contract number Ilr-402, as amended and supplemented between KDD and the United States, as amended and supplemented, with the point of measurement of deliveries being State Line; and

- (2). Delivery of water to LKNWR's Area K lease, in accordance with the terms of contract number Ilr-402, as amended and supplemented and the agreement of May 29, 1980 between KDD and the United States, as amended and supplemented, subject to Section 15.1.2.D.i.

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iii. **North Canal Water Deliveries.**

If agreed upon by KDD and the United States, KDD will provide for delivery of water diverted at North Canal, with the point of delivery and measurement being at State Line.

iv. **On-Project Plan and Refuge Lease Lands.**

Water deliveries to LKNWR's Area K lease lands and TLNWR's lease lands may be limited pursuant to the On-Project Plan described at Section 15.2.

v. **Plan for General Parameters of Delivery of Refuge Allocation.**

Not later than one year after the Effective Date, the Refuge Manager, Reclamation, TID, and KDD will agree to the general parameters of delivery of the Refuge Allocation.

vi. **Schedule for Deliveries of Refuge Allocation.**

The Refuge Manager shall prepare, as needed, a schedule(s) of deliveries to LKNWR other than Area K, subject to concurrence by Reclamation, TID, and KDD or their assigns in light of operational needs or limitations. Such schedule will be flexible and may be adjusted by agreement of said entities according to climate or other conditions and Refuge needs, so long as consistent with the applicable Refuge Allocation and reasonably achievable through the operation of relevant works.

vii. **North Canal as Point of Diversion.**

Subject to Section 15.1.2.G.iii, KPWU shall not oppose any action by the Refuge to establish North Canal as a point of diversion for any water rights associated with the LKNWR lands outside of the Refuge's Area K lease lands.

H. **Other.**

i. **Pass-Through of Excess Water.**

Water that becomes physically available at the LKNWR Delivery Points due to the operation of Klamath Reclamation Project works but that is in excess of the applicable Refuge Allocation shall be conveyed to the Klamath River, provided, that any such water in excess of an applicable delivery schedule that becomes available through the operation of project works and is in fact used on the LKNWR lands outside of Area K lease lands shall be charged against the Refuge Allocation.

ii. **Determination of Passed-Through Excess Water.**

Such water that is available at P Canal through operation of D Pumping Plant that is passed through the LKNWR to the Klamath River will not be charged against the Refuge Allocation. The FWS and KPWU shall, within one year of the Effective Date, develop an agreed-upon system to determine whether water was passed through the LKNWR lands outside of Area K lease lands.

iii. **LKNWR Acquisition of Lands.**

If additional Klamath Reclamation Project lands are acquired by and included in LKNWR, the water rights or delivery rights, if any, associated with those lands at the time prior to acquisition will remain with those lands after acquisition and where there are associated Project delivery rights, they will be incorporated and added into the Refuge Allocation.

I. Contracts.

TID, Reclamation, and FWS agree that the only costs to be charged to the Wildlife Refuges by TID associated with the operation and maintenance of D Pumping Plant for the Wildlife Refuges shall be those identified in Section 15.4.2, and no further charges or reimbursement to TID shall occur for delivery to the Refuges, whatever the amount and scheduling of said delivery shall be. This limitation shall not, however, preclude an agreement to additional terms related to any wheeling of groundwater.

J. Interim Agreement.

Although the terms of this Section 15.1.2 are not effective until Appendix E-1 is effective, as provided in Section 15.1.2.C, KPWU

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and the FWS recognize that both agriculture in the Klamath Reclamation Project and the lands within the Wildlife Refuges need water to continue their operations. KPWU and FWS recognize that it is in their best interests and agree to continue to work together cooperatively to manage water for the benefit of agriculture and the Wildlife Refuges, under legal authorities and obligations existing prior to enactment of Authorizing Legislation or the effectiveness of Section 15.1.2.

K. Term and Effect of Section 15.1.2.

Notwithstanding Section 1.6, this Section 15.1.2 shall remain in effect until modified by agreement of the FWS and KPWU.

15.1.3. Modification of Klamath Reclamation Project Purposes.

The Parties support the following term in the federal Authorizing Legislation. “The purposes of the Klamath Reclamation Project include irrigation, reclamation, domestic, flood control, municipal, industrial, power, National Wildlife Refuge, and fish and wildlife purposes. Nothing in this Act shall be deemed either to create or result in a water right or affect existing water rights. The fish and wildlife and National Wildlife Refuge purposes of the Klamath Reclamation Project shall not adversely affect the irrigation purpose of the Project, *provided that*, the provisions regarding water allocations and delivery to the National Wildlife Refuges agreed upon in Section 15.1.2 of the Klamath River Basin Restoration Agreement are hereby deemed not to constitute an adverse effect upon the Klamath Reclamation Project’s irrigation purpose.”

15.2. On-Project Plan.

15.2.1. Purpose and Scope.

The purpose of the On-Project Plan for the Klamath Reclamation Project is to align water supply and demand for the areas that rely in whole or part on water diverted from the Settlement Points of Diversion identified in Appendix E-1, exclusive of all of LKNWR other than Area K lands (On-Project Plan Area or OPPA) Consistent with the diversion limitations identified in Section 15.1 and provided in Appendix E-1, the availability of supplies not affected by such limitations, and the terms of Section 15.1.2, on an annual and ongoing basis. The On-Project Plan shall be developed and implemented Consistent with these provisions and Section 15.2.4 concerning groundwater.

- A. The On-Project Plan will include a specific objective that groundwater pumping as provided in the plan will not have an Adverse Impact as defined in Section 15.2.4.A.i.

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- B.** The Parties understand that the On-Project Plan to be developed by KWAPA will assume no significant change from historic availability of surface water supplies other than the limitations created by Section 15.1 and Appendix E-1, and no significant change from historic timing or scheduling of diversions, recognizing the variability in all of these parameters and applying appropriate judgment.
- C.** If experience in the implementation of the On-Project Plan demonstrates that the plan measures, including funding, are inadequate to meet the purpose of the plan described above, the Parties shall support measures adequate to meet the purpose.

15.2.2. Preparation.

KWAPA shall be the Lead Party to prepare the On-Project Plan. It shall have sole responsibility for developing, adopting, and implementing the plan, except as it pertains to National Wildlife Refuge lands identified in Section 15.1.2.D.i, and subject to the terms of Section 15.2.4.B.

A. Funding.

The Parties shall support authorization and appropriation of funds in the amounts estimated by Appendix B-2 for the development, implementation, and administration of the On-Project Plan. In addition, Reclamation shall consider whether funds made available for the Interim Flow and Lake Level Program that are not expended in a year should be made available for the On-Project Plan pursuant to Section 19.4.4 to accomplish the purpose of this Section 15.2.

B. Schedule.

i. Adoption.

Not later than 18 months after distribution to KWAPA of the plan development funds estimated in Appendix B-2, KWAPA shall complete the development of the On-Project Plan Consistent with Section 15.1.2.D.i. Upon such completion, it shall submit the plan to Reclamation for approval. Reclamation shall evaluate and approve the plan within 60 days of receipt if: (1) the plan reasonably meets the stated purpose of Section 15.2 and (2) the plan is Consistent with the remaining provisions of this Agreement. Not later than 45 days after approval of the plan by Reclamation, KWAPA shall adopt the plan and provide Notice to the other Parties.

ii. **Implementation.**

The Parties shall support the authorization and appropriation of funds, as estimated in Appendix B-2, to KWAPA to implement and administer the approved and adopted On-Project Plan. KWAPA shall complete all actions identified in the On-Project Plan necessary for the implementation of the plan, including making the necessary agreements, constructing facilities, or concluding other measures to accomplish the purpose of the plan by the date selected by KWAPA pursuant to Section 15.3.8.A or as modified under Section 15.3.8.B if applicable.

iii. **Periodic Amendment.**

Consistent with an evolving understanding of appropriate management of the Klamath Reclamation Project and sound irrigation practice and annual experience in implementation, KWAPA shall evaluate the On-Project Plan not less than every three years for refinement, or more often if required under the provisions of Section 15.2.4 below. Any amendment is subject to Reclamation's approval.

15.2.3. Elements.

In development of the On-Project Plan, KWAPA shall consider and evaluate the following measures for short-term, intermittent, long-term, and permanent application to meet the purpose of the plan: conservation easements, forbearance agreements, conjunctive use programs, efficiency measures, land acquisitions, water acquisitions, groundwater development, groundwater substitution, other voluntary transactions, water storage, and any other applicable measures.

15.2.4. Measures Related to Groundwater.

For the purpose of the On-Project Plan and the Contractual Obligations of Section 15.2.4.A through 15.2.4.D, the definitions of "Adverse Impact" and responses to "Adverse Impact," and other provisions related to groundwater are as follows.

A. Objective of No Adverse Impact.

i. **Definition.**

For the purpose of this provision, **Adverse Impact** shall mean: a 6% reduction in the flow of any of the following springs. The definition applies to springs individually or collectively:

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- (1). Individual springs (Barkley Spring #1, Barkley Spring #2, Sucker Springs, Ouxy Spring) along the east shore of Upper Klamath Lake from Hagelstein Park to Modoc Point, both as to the named springs individually, and to other, unnamed springs in this geographic area collectively;
- (2). The following springs associated with the northwest portion of Upper Klamath Lake : Harriman, Malone, Crystal, Fourmile, and Camporee Springs;
- (3). Springs in the Wood River valley spring network, including springs feeding Wood River, Fort Creek, Crooked Creek, and Sevenmile Creek;
- (4). Spring Creek, tributary to the Williamson River, and springs feeding the Williamson River from Spring Creek to Kirk Reef (the above limitation is applicable to an individual spring or the network collectively);
- (5). The springs in the Klamath River in the J.C. Boyle bypass reach;
- (6). The springs which enter Copco I Reservoir;
- (7). The springs under Copco I Reservoir;
- (8). The springs which enter Shovel Creek;
- (9). The springs which enter Spencer Creek; or
- (10). The springs under J.C. Boyle Reservoir.

Determination of Adverse Impact will be based on the most probable value for a specific location provided by USGS modeling and monitoring, regardless of associated confidence intervals or expressions of uncertainty or imprecision.

ii. **Baseline for Determination of Adverse Impact.**

For purposes of the Contractual Obligations of Section 15.2.4.A through 15.2.4.D, the baseline magnitude, frequency and duration of groundwater use in the OPPA, as well as groundwater use outside the OPPA, for determination of Adverse Impacts shall be the year 2000.

Use of models and monitoring to evaluate effects of groundwater use under the On-Project Plan will involve explicitly accounting for the effects of climate and hydrologic variability, as well as use and change of use of groundwater outside the OPPA, such that the characterization of effects of groundwater use under the On-Project Plan is limited to only such use as specifically occurs under the On-Project Plan.

B. Technical Investigation.

i. **Purpose and Scope.**

The Parties agree that further technical investigations and monitoring of hydrologic and geologic processes shall be conducted to evaluate whether groundwater pumping within the Klamath Reclamation Project under the On-Project Plan will have or has an Adverse Impact as defined and if so to provide a basis for remedial measures including Plan modification as described in Section 15.2.4.B.v and vi. The investigative and evaluative measures shall include modeling or other predictive tools, monitoring, test wells or other appropriate procedures. The Parties support the scope of work for technical investigations and monitoring attached as Appendix E-2 and shall pursue funding to accomplish the work.

ii. **Lead Agency.**

The USGS, in cooperation with OWRD, shall be the Lead Agency to conduct the technical investigations and monitoring. The Parties shall fully cooperate with any technical investigations developed by the Lead Agency. All data and analysis generated by the lead agency shall be made available to all Parties in the same form and at the same time. The Lead Agency shall conduct the technical investigations described in Appendix E-2 as expeditiously as possible to inform the development and implementation of the On-Project Plan.

iii. **Funding for Investigation.**

The Parties shall support authorization and appropriation of funds, in the amounts estimated in Appendix B-2, for USGS and OWRD to complete the studies and provide the monitoring described in Appendix E-2 and further investigations necessary to fulfill the purpose stated in Sections 15.2.4.B.i and 16.2.1.G.

iv. **Cooperation among Parties and Use of Results.**

Although KWAPA has sole authority for development, adoption, and implementation of the On-Project Plan, except as provided in Section 15.1.2.D.ii, KWAPA shall in the development of the Plan collaborate with OWRD and other interested Parties to develop approaches to groundwater use Consistent with the objective of No Adverse Impact and the technical investigations.

- (1). At a minimum, KWAPA will meet with OWRD and other interested Parties once during development of the Plan and once at least 30 days prior to completion of the Plan.
- (2). In development of the initial On-Project Plan, KWAPA shall incorporate the work by USGS regarding groundwater use in existence at that time; adequately consider and utilize all other information provided by USGS or any Party regarding whether, how and when groundwater pumping under the On-Project Plan may cause an Adverse Impact; and make best efforts (including Dispute Resolution Procedures pursuant to Section 6.5) to reach Consensus with Parties on reasonable and appropriate treatment of groundwater pumping in the On-Project Plan to avoid Adverse Impact, as defined in this Section 15.2.4.A.i.

v. **Implementation and Periodic Amendment of Plan.**

- (1). If investigations or monitoring by the Lead Agency identify an Adverse Impact caused by groundwater use under the On-Project Plan, or that groundwater use under the On-Project Plan is predicted to cause an Adverse Impact, KWAPA shall remedy the Adverse Impact or avoid the predicted Adverse Impact as quickly as practicable. KWAPA will use best efforts to effect the remedy before the next irrigation season and other Parties shall render appropriate assistance in effecting such remedy, provided that, if Lead Agency's work shows that groundwater pumping under the On-Project Plan is causing an Adverse Impact and immediate and serious harm to the fisheries, interested Parties will meet and confer immediately (notwithstanding any provision for additional time under Section 6.5) to

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provide a remedy during the current irrigation season. The remedy may include modification of the On-Project Plan as necessary; provided that any amendment shall be approved by Reclamation. However, actions to avoid or remedy an Adverse Impact under Sections 15.2.4.B.iv - v are not limited to modification of the On-Project Plan or actions within the OPPA. While KWAPA may take action outside of the OPPA to offset impacts of pumping under the On-Project Plan, nothing in this Agreement creates any regulatory authority over groundwater that does not currently exist; *provided* that the Contractual Obligations in Section 15.2.4 are enforceable.

- (2). KWAPA, USGS, OWRD, and the TAT shall annually meet and confer before December 15 of each year regarding the long-term monitoring information, and specifically to evaluate annually whether the On-Project Plan is meeting the no Adverse Impact objective, whether the Plan may be leading to an Adverse Impact in future years or whether the Plan is causing or will cause an Adverse Impact in the upcoming irrigation season.

vi. **Costs Associated with Remedy for Adverse Impact or Other Modification of Plan.**

To the extent funding realized pursuant to Section 15.2.2.A is inadequate, subject to Sections 2.2 and 4.1.4, and Consistent with Applicable Law, the Parties shall seek other funding to mitigate costs of remedying or avoiding Adverse Impacts provided that, seeking or securing such funding shall not be a prerequisite to the obligation for KWAPA to remedy or avoid an Adverse Impact.

vii. **Further Consideration of Results of Investigation and Monitoring.**

If so determined by the Klamath Basin Coordinating Council, the frequency or degree of monitoring or consultation among Parties may be modified or terminated.

C. **Existing Wells.**

The scope of work for the Lead Agency's investigation, attached as Appendix E-2, shall include monitoring of existing wells to determine

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whether Adverse Impacts from groundwater pumping in the OPPA are occurring. The scope of work shall also analyze mitigation scenarios for any effects of such existing wells. The Parties shall meet and confer in good faith to mitigate any Adverse Impacts during the USGS' analysis prior to adoption of the On-Project Plan.

D. New Wells.

The On-Project Plan and funds to implement the Plan shall not be used to develop new wells unless KWAPA or other proponent of the well first shows no Adverse Impact as defined in Section 15.2.4.A.i to the satisfaction of the Klamath Basin Coordinating Council. The On-Project Plan, plan funds, and Participants in plan implementation shall not employ surface water forbearance agreements that allow new production irrigation wells on property subject to a forbearance agreement or similar encumbrance

E. Use of Further Investigations Related to Fisheries.

The Parties anticipate that future scientific investigations may further inform understanding of the relationship of flows in the springs identified in Section 15.2.4.A.i and fisheries of the Klamath River and Upper Klamath Lake.

- i. If such further investigations demonstrate that an increase in the percentage value stated in Section 15.2.4.A.i would not be detrimental to the fisheries of Upper Klamath Lake or the Klamath River, with the recommendation of the TAT and approval by Klamath Basin Coordinating Council, the Parties will amend this Agreement, and KWAPA shall modify the On-Project Plan to increase such value accordingly.
- ii. If such investigations demonstrate that, notwithstanding the absence of an Adverse Impact as that term is defined in Section 15.2.4.A.i, groundwater use under the On-Project Plan results in material adverse effects on water quantity or quality of Upper Klamath Lake or the Klamath River, or to springs whether specifically listed or not listed in Section 15.2.4.A.i, in a manner of consequence to fisheries of Upper Klamath Lake or the Klamath River:
 - (1). Upon the recommendation of the TAT and with the approval of Klamath Basin Coordinating Council, KWAPA will reduce groundwater use under the On-Project Plan to avoid or reduce such material

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adverse consequence if additional water from new storage under Section 17.3.2 is made available for use in the OPPA (beyond such amount as may become available as described in Sections 15.1 and 17.3) in an amount equal to the amount of reduction of the groundwater use; and/or

- (2). The Parties, with assistance of the USGS and OWRD, shall collaborate in identifying other measures that could reduce the adverse effects of other influences on the flow of the relevant springs. Identified measures will be implemented upon the recommendation of the TAT, approval of the Klamath Basin Coordinating Council, and with the agreement of affected Parties.

- iii. Evaluations of the effects of groundwater use under the On-Project Plan under this Section 15.2.4.E only will be based on the same stipulated baseline and consideration of other factors as identified in Section 15.2.4.A.ii. Nothing in Section 15.2.4.E.ii(1) shall limit the quantity of water which may potentially be available to the OPPA under Section ~~17.3.2~~.

Deleted: 1.1.1

15.3. Water Rights Assurances Related to Water Diversions to the Klamath Reclamation Project, the Klamath Basin Adjudication, The Klamath Tribes, the Three California Indian Tribes, and the United States as Trustee.

15.3.1. Assurances by the Klamath Reclamation Project Regarding Project Water.

A. Diversion Limitation.

Within twenty days after all of the conditions stated in (i) – (iv) have occurred, the KPWU and the Bureau of Reclamation and Fish and Wildlife Service shall file the document attached hereto as Appendix E-1 with the OWRD or the Circuit Court, as applicable, as part of the ongoing Klamath Basin Adjudication. The filing shall recommend that the Adjudicator or Circuit Court adopt it as part of the Findings of Fact and Order of Determination or Decree, as applicable. If a Decree has been entered in the Klamath Basin Adjudication prior to the time for the filing, the KPWU and the Bureau of Reclamation and Fish and Wildlife Service shall use such processes that are available under Applicable Law to cause the diversion limitations of Appendix E-1 to be enforceable by OWRD. The conditions are:

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- i. The Regulatory Approvals related to the Klamath Reclamation Project described in Sections 21.1.2 and 21.2 are issued, provided that Section 21.2 is a condition only if such application under a General Conservation Plan or a Habitat Conservation Plan is submitted to the relevant Regulatory Agency Parties by December 1, 2015; and
- ii. The Klamath Project Water Entities have obtained final judgments from the state courts having jurisdiction confirming or validating this Agreement, as described in sub-section B, below; and
- iii. The applicable deadline in Section 15.3.8.A for implementation of the On-Project Water Plan has passed.
- iv. Timely publication of the notice by the Secretary of the Interior as described in Section 15.3.4 has occurred.

B. Validation.

The Klamath Project Water Entities shall, within 120 days of the Effective Date of this Agreement, file actions in accordance with Applicable Law seeking validation or confirmation of this Agreement, and shall diligently prosecute such actions to final judgment. If requested by KPWU, other Parties shall support the requested judgments as amicus curiae or other appropriate method.

C. Dedication.

Within four years after completion of the events described in Section 15.3.1.A., the Department of the Interior and KPWU shall provide notice to the Parties of whether and to what extent they will petition OWRD to transfer to instream use their water rights to the Klamath River and Upper Klamath Lake from the Settlement Points of Diversion identified in Appendix E-1 in amounts that are in excess of the applicable maximum quantities that can be diverted under Appendix E-1. Any such quantity or quantities transferred shall not exceed amounts allowed under state law.

D. Enforceability of Diversion Limitations.

If Appendix E-1 has been filed with the OWRD or the Circuit Court as applicable pursuant to Section 15.3.1.A and the OWRD is unable to regulate diversion from the Settlement Points of Diversion based on the diversion limitations in Appendix E-1, because no Findings of Fact and Order of Determination has been issued pursuant to Oregon

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Revised Statutes section 539.130 or because a stay issued pursuant to Oregon Revised Statutes section 539.180 precludes such regulation, or because, prior to the entry of a decree by the Circuit Court, OWRD is required by Applicable Law to regulate based on a Findings of Fact and Order of Determination that does not incorporate the diversion limitations in Appendix E-1, any party may during such period or periods bring an action as necessary to enforce the diversion limitations in Appendix E-1 in any court having jurisdiction.

15.3.2. Assurances Regarding Tribal Water Rights.

A. Certain Klamath Tribal Water Rights Unaffected.

KPWU agree that the water rights in California of the United States Bureau of Indian Affairs, acting in its trustee capacity for the Klamath Tribes, and the Klamath Tribes, whatever they may be, have not been quantified, resolved or determined in any way by this Agreement or any related documents and hereafter will take no Inconsistent position in any administrative context or proceeding, or any judicial proceeding, or otherwise. KPWU also agree to not protest, contest, object, or block any assertion of water rights by these governments that is not Inconsistent with Sections 15.3.3 and 15.3.8 in any future administrative context or proceeding, or judicial proceedings, or otherwise.

B. Resolution of Adjudication Contests Related to Klamath Tribal Water Rights.

KPWU, the Klamath Tribes and the United States Bureau of Indian Affairs shall file the documents in the form attached hereto as Appendix E-6 with the Office of Administrative Hearings (OAH), Klamath Basin Adjudication, within sixty (60) days of the Effective Date regarding Adjudication claims 612, 671, 672 and 673 consolidated within case 282 and claims 616 and 622 consolidated within case 286 that:

- i. Provisionally resolve and end the contests filed by KPWU,
- ii. Recognize the tribal water rights at the claimed amounts and with the priority date of time immemorial, and
- iii. Provide for KPWU's exceptions to be fully litigated before the Circuit Court if the Secretarial Notice is not Timely published pursuant to Section 15.3.4, and

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- iv. Implement the commitments of the Klamath Tribes and United States as trustee with respect to Sections 15.3.3, 15.3.4, and 15.3.9 as those commitments relate to water rights that are the subject of Adjudication claims 612, 671, 672, 673 consolidated within case 282 and claims 616 and 622 consolidated within case 286.

C. Tribal Rights Unresolved-Unquantified.

KPWU agree that the water rights of the United States Bureau of Indian Affairs, acting in its trustee capacity, and the Yurok Tribe, and Karuk Tribe, whatever they may be, have not been quantified, resolved or determined in any way by this Agreement or any related documents. KPWU also agree to not protest, contest, object, or block any assertion of water rights by these governments in future judicial or administrative proceedings that are not inconsistent with Sections 15.3.6, **Error! Reference source not found.**, 0, and 15.3.8.

15.3.3. Assurances of Non-Interference with Klamath Reclamation Project Diversions by the United States Bureau of Indian Affairs and Klamath Tribes.

The United States Bureau of Indian Affairs acting in its trustee capacity, and The Klamath Tribes, hereby provide interim assurance that the two parties will not assert: (i) tribal water or fishing rights theories or tribal trust theories in a manner, or (ii) Klamath tribal water or trust rights in the State of California, whatever they may be, in a manner, that will interfere with the diversion, use or reuse of water for the Klamath Reclamation Project that is not precluded by the limitation on diversions of water as provided in Appendix E-1 in any administrative context or proceeding, or any judicial proceeding, or otherwise, provided, however, that this assurance shall not include, and shall not be construed to extend to, rights under statutes of general applicability, including the Endangered Species Act, Consistent with and subject to Sections 20.3.1.B and 20.4.1. This interim assurance will remain in place concomitant with KWAPA's good faith and diligent efforts (including consideration of whether substantial funding of the Plan has been provided) to develop and implement the On-Project Plan on the schedule found in Section 15.3.4.A and will:

- i. Become permanent upon publication of the notice by the Secretary of the Interior as described in Section 15.3.4; or

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- ii. Terminate on December 31, 2012 if the Secretary of the Interior has not Timely published the notice described in Section 15.3.4.

15.3.4. Notice and Publication by the Secretary of the Interior.

The Secretary of the Interior shall publish a notice in the Federal Register within forty-five (45) days of all of the following events occurring:

- A. The On-Project Plan is being implemented on November 1, 2012, consistent with a milestone or milestones agreed to by the Tribes, United States, and KWAPA by October 30, 2009, which is based on the schedule in the On-Project Plan and the realized appropriations actually disbursed to KWAPAA for implementation, *provided that* if the Tribes, United States, and KWAPA cannot agree upon a milestone or milestones by October 30, 2009 then within 70 days the Klamath Basin Coordinating Council pursuant to Section II.D. of Appendix C shall set the milestone or milestones applicable on November 1, 2012; and,
- B. The water supply measures found in Sections 17.2.1 and 17.2.2 have been completed; and
- C. The Environmental Impact Statement regarding the proposed project to reconnect the Wood River Ranch to Upper Klamath Lake as described in this Agreement in Section 17.2.3 is completed and any necessary funding to implement the preferred alternative of the EIS is authorized by Congress or that funding is otherwise committed by state, local, tribal or private sources; and
- D. Funding has been authorized for the water rights retirement program established in Section 16.2; and
- E. *Event in Hydropower Agreement, to be specified upon completion of Appendix D;*
- F. The Drought Plan to be developed in Section 18.2 has been adopted by the lead entity; and
- G. The Oregon Fish and Wildlife Commission has adopted a policy to reintroduce anadromous fish into the upper Klamath Basin, as described in Section 11.1; and

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- H. Funding has been authorized and appropriated in the amounts specified in Appendix B-2 for the first four years pertaining to the Klamath Tribes.

If the publication by the Secretary of the Interior occurs before December 31, 2012 (Timely Publication), the assurances in Section 15.3.3 shall become permanent. In the event that the Secretary does not publish the notice required in this section before December 31, 2012, the assurances in Section 15.3.3 shall no longer be effective or binding. In that circumstance, until January 31, 2013, KPWU may assert the water rights contests or exceptions previously filed in the Klamath Basin Adjudication by giving notice that KPWU will assert such contests or exceptions, or, if the deadline for filing exceptions in the Circuit Court has not passed before January 31, 2013, KPWU may file their exceptions on or before the due date. In addition, if the Secretary does not publish the notice by December 31, 2012, KPWU's Assurances in the final sentence of Section 15.3.2.A and the final sentence of Section 15.3.2.C shall no longer be effective or binding.

15.3.5. Klamath Tribes' Waiver of Claims Against the United States.

The Klamath Tribes agree to provide, and to support in the federal Authorizing Legislation contemplated by this Agreement (Appendix A-1), a complete waiver and release of claims against the United States, its agencies, and officers of all claims for damages, losses or injuries to rights to water, claims of interference with, diversion or taking of such water rights, due to water rights related or water management actions or inaction in the Klamath River Basin above the Oregon-California Border, that first occurred at any time up to and including the Effective Date. This waiver and release shall include, *inter alia*, all claims arising at any time up to and including the Effective Date from the following above the California-Oregon border: interference by others with tribal water rights; loss or damage due to water management actions or water rights related actions, including inaction, to fish, wildlife, land, or other resources; operation of the Klamath Reclamation Project; failure to provide tribal trust water in Upper Klamath Lake or the Klamath River; and failure to properly litigate, negotiate or settle the Klamath Tribes' water rights (including this Agreement). The form of such agreement shall be as attached hereto as Appendix E-7. Such waiver shall be executed by the Tribes within 60 days of the passage of the federal Authorizing Legislation contemplated by this Agreement (see Appendix A-1) but shall not be in force or effect until the following events have taken place, at which time the Secretary shall publish a notice in the Federal Register and the waivers shall be effective from that day forward. Those events are:

- A. The Authorizing Legislation in Appendix A, including authorization for the United States and the Tribes to irrevocably make the assurances stated in Sections 15.3.3 and 15.3.5, has been enacted into law; and

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- B. The Secretary has Timely published the notice provided for in Section 15.3.4; and
- C. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with the planning and implementation of Phase I and Phase II of the Fisheries Restoration Plan, Phase I of the Fisheries Reintroduction Plan, the Fisheries Monitoring Plan, the Water Rights Retirement Program, the Interim Flow and Lake-level Program, and the Regulatory Assurances Programs, as specified in Sections 10, 11.3.1, 12, 16.2, 19.4, and 21.2; and
- D. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with Sections 34 and 35; and
- E. *Event in Hydropower Agreement, to be specified upon completion of Appendix D; and*
- F. The petition described in Section 36 has been granted or rendered unnecessary to achieve the purpose of Section 36, or the equivalent benefits contemplated in Section 36.2 are in place and effective.

15.3.6. Assurances By and Between the Yurok Tribe and the United States.

A. Assurance by the Yurok Tribe and the United States.

The United States acting in its trustee capacity and the Yurok Tribe hereby provide interim assurance that the two will not assert (1) tribal water or fishing rights theories or tribal trust theories in a manner, and (2) the two parties will not assert Yurok tribal or trust water rights, whatever they may be, in a manner, that will interfere with the diversion, use or reuse of water for the Klamath Reclamation Project that is not precluded by the limitation on diversions of water from Upper Klamath Lake and the Klamath River as provided in Appendix E-1 in any administrative context or proceeding, or any judicial proceeding, or otherwise; *provided*, however, that this assurance shall not include, and shall not be construed to extend to, rights under statutes of general applicability, including the Endangered Species Act, Consistent with and subject to Sections 20.3.1.B and 20.4.1. This interim assurance will remain in place concomitant with KWAPA's good faith and diligent efforts (including consideration of whether substantial funding of the Plan has been provided) to develop and

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complete the On-Project Plan on the schedule found in Section 15.3.4.A and will:

- i. Become permanent upon publication of the notice by the Secretary of the Interior as described in Section 15.3.4; or
- ii. Terminate on December 31, 2012 if the Secretary of the Interior has not Timely published the notice described in Section 15.3.4.

B. Yurok Tribe Waiver of Claims Against the United States.

The Yurok Tribe agrees to provide, and support in the federal Authorizing Legislation contemplated by this Agreement (Appendix A-1), a complete waiver and release of claims against the United States, its agencies, and officers of all claims for damages, losses or injuries to rights to water, claims of interference with, diversion or taking of such water rights, due to water rights related or water management actions or inaction in the Klamath River Basin above the Oregon-California Border, that first occurred at any time up to and including the Effective Date. This waiver and release shall include, *inter alia*, any claims arising at any time up to and including the Effective Date from the following above the California-Oregon border: interference by others with tribal water rights; loss or damage due to water management actions or water rights related actions, including inaction, to fish, wildlife, land, or other resources; operation of the Klamath Reclamation Project; failure to provide tribal trust water in Upper Klamath Lake or the Klamath River; and failure to properly litigate, negotiate or settle the Yurok Tribe's water rights (including this Agreement). The form of such Agreement shall be attached hereto as Appendix E-7. Such waiver shall be executed by the Tribes within 60 days of the passage of the federal Authorizing Legislation contemplated by this Agreement but shall not be in force or effect until the following events have taken place, at which time the Secretary shall publish a notice in the Federal Register and the waivers shall be effective from that day forward. Those events are:

- i. The Authorizing Legislation in Appendix A-1, including authorization for the United States and the Tribes to irrevocably make the commitments stated in this Section, has been enacted into law; and
- ii. The Secretary has Timely published the notice provided for in Section 15.3.4; and

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- iii. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with the planning and implementation of Phase I and Phase II of the Fisheries Restoration Plan, Phase I of the Fisheries Reintroduction Plan, the Fisheries Monitoring Plan, the Water Rights Retirement Program, the Interim Flow and Lake-level Program, and the Regulatory Assurances Programs, as specified in Sections 10, 11.3.1, 12, 16.2, 19.4, and 21.2; and
- iv. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with Sections 34 and 35; and
- v. *Event in Hydropower Agreement, to be specified upon completion of Appendix D.*

15.3.7. Assurances By and Between the Karuk Tribe and the United States.

A. Assurance by the Karuk Tribe and the United States.

The United States acting in its trustee capacity and the Karuk Tribe hereby provide interim assurance that the two will not assert (1) tribal water or fishing rights theories or tribal trust theories in a manner, and (2) the two parties will not assert Karuk tribal or trust water rights, whatever they may be, in a manner, that will interfere with the diversion, use or reuse of water for the Klamath Reclamation Project that is not precluded by the limitation on diversions of water from Upper Klamath Lake and the Klamath River as provided in Appendix E-1 in any administrative context or proceeding, or any judicial proceeding, or otherwise; provided, however, that this assurance shall not include, and shall not be construed to extend to, rights under statutes of general applicability, including the Endangered Species Act, Consistent with and subject to Sections 20.3.1.B and 20.4.1. This interim assurance will remain in place concomitant with KWAPA's good faith and diligent efforts (including consideration of whether substantial funding of the Plan has been provided) to develop and complete the On-Project Plan on the schedule found in Section 15.3.4.A and will:

- i. Become permanent upon publication of the notice by the Secretary of the Interior as described in Section 15.3.4; or

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- ii. Terminate on December 31, 2012 if the Secretary of the Interior has not Timely published the notice described in Section 15.3.4.

B. Karuk Tribe Waiver of Claims Against the United States.

The Karuk Tribe agrees to provide, and support in the federal Authorizing Legislation contemplated by this Agreement (Appendix A-1), a complete waiver and release of claims against the United States, its agencies, and officers of all claims for damages, losses or injuries to rights to water, claims of interference with, diversion or taking of such water rights, due to water rights related or water management actions or inaction in the Klamath River Basin above the Oregon-California Border, that first occurred at any time up to and including the Effective Date. This waiver and release shall include, inter alia, any claims arising at any time up to and including the Effective Date from the following above the California-Oregon border: interference by others with tribal water rights; loss or damage due to water management actions or water rights related actions, including inaction, to fish, wildlife, land, or other resources; operation of the Klamath Reclamation Project; failure to provide tribal trust water in Upper Klamath Lake or the Klamath River; and failure to properly litigate, negotiate or settle the Karuk Tribe's water rights (including this Agreement). The form of such agreement shall be as attached hereto as Appendix E-7. Such waiver shall be executed by the Tribes within 60 days of the passage of the federal Authorizing Legislation contemplated by this Agreement but shall not be in force or effect until the following events have taken place, at which time the Secretary shall publish a notice in the Federal Register and the waivers shall be effective from that day forward. Those events are:

- i. The Authorizing Legislation in Appendix A-1, including authorization for the United States and the Tribes to irrevocably make the commitments stated in this Section, has been enacted into law; and
- ii. The Secretary has Timely published the notice provided for in Section 15.3.4; and
- iii. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with the planning and implementation of Phase I and Phase II of the Fisheries Restoration Plan, Phase I of the Fisheries Reintroduction Plan, the Fisheries Monitoring Plan, the Water Rights Retirement Program, the Interim Flow and Lake-level Program, and the Regulatory Assurances Programs, as

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specified in Sections 10, 11.3.1, 12, 16.2, 19.4, and 21.2;
and

iv. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with Sections 34 and 35; and

v. *Event in Hydropower Agreement, to be specified upon completion of Appendix D.*

15.3.8. Interim Assurances by All of the Tribes and Schedule for Enforceability of Diversion Limitations.

A. KWAPA shall select a date by December 1, 2012, for the full and complete implementation of the On-Project Plan within five years thereafter, but in any event no later than December 1, 2017. Thereafter, such date may only be modified under the circumstances identified in Section 15.3.9.B.

B. Commencing on the Effective Date, and after the Publication of the Secretarial Notice described in Section 15.3.4 if such notice is Timely published, the following applies: from the Effective Date until the date selected by KWAPA in Section 15.3.8.A., the Tribes and United States' interim assurances to KPWU are not limited by the applicable DIVERSION amount found in Appendix E-1, as referenced in Sections 15.3.3, 15.3.6.A, and 15.3.7.A, and the assurances therein shall extend to all diversion, use and reuse of water for the Klamath Reclamation Project, provided, however, such assurances shall not include, and shall not be construed to extend to, rights under statutes of general applicability, including the Endangered Species Act, Consistent with and subject to Sections 20.3.1.B and 20.4.1. Thereafter, the Tribes and United States may assert or exercise tribal water rights or fishing rights or trust theories in a manner seeking to result in a limitation of diversion identical to that found in Appendix E-1 and as if it were filed and in effect; exercise of water rights includes the right to make a call under any water right that has been determined in an adjudicatory proceeding. This capacity to exercise or assert water rights or fishing or trust rights or obligations is notwithstanding the possible non-fulfillment of the provisions of Section 15.3.1, but recognizes the need for substantial funding of the On-Project Plan during the period after December 1, 2012. In circumstances subject to Sections 7.2.1.B and 7.2.1.C, KWAPA, the United States Bureau of Indian Affairs, and the Tribes will in good faith negotiate an alternative deadline and

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support expeditious funding for completion of full implementation of the On-Project Plan. If KWAPA believes that circumstances exist that justify modification of the date selected under section 15.3.9.A and the Tribes, the United States Bureau of Indian Affairs, and KWAPA do not, within 120 days prior to the date that was selected under section 15.3.9.A, agree to a modification, the KBCC pursuant to Section II.D in Appendix C will determine whether a modification is justified and the new deadline, if any, within 70 days. Any extension by the KBCC of the deadline selected under Section 15.3.9.A shall be limited to no more than 24 months; provided, that this limitation does not preclude subsequent extensions by the Tribes, KWAPA, and United States Bureau of Indian Affairs, or by the KBCC pursuant to section II.D of Appendix C.

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- C. If the Secretarial Notice in Section 15.3.4 is not Timely published, the following applies:
- i. the Karuk Tribe, and Yurok Tribe and BIA as their trustee will meet and confer in good faith with KWAPA and KPWU to seek a mutually satisfactory resolution of the provision(s) of Section 15.3.4 that were not Timely fulfilled prior to taking actions in judicial or administrative forums that are Inconsistent with Sections 15.3.6.A., and 15.3.7.A; (ii) with respect to the Klamath Tribes and the United States Bureau of Indian Affairs as its trustee and water rights that are the subject of the claims 612, 671, and 673 consolidated within case 282 and claims 616 and 622 consolidated within case 286 of the Klamath Basin Adjudication and KPWU: such Parties rights shall be as stated in Section 15.3.4 and Appendix E-6, and no water right recognized under such claims in an Order of Determination issued pursuant to ORS section 539.130(1) shall, directly or indirectly, be asserted in a manner that interferes with the diversion use, and reuse of water for the Klamath Reclamation Project until such time as a judgment/decreed is entered pursuant to ORS section 539.150(4). Additionally, the Klamath Tribes and the BIA shall meet and confer with KWAPA, KPWU, and the other Tribes as provided in Section 15.3.8.C.i.
 - ii. Section 15.3.9.C.ii applies to the Klamath Tribes, the United States Bureau of Indian Affairs and the KPWU with respect to the water rights in cases 282 and 286 of the

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Klamath Basin Adjudication, irrespective of whether the Secretarial notice in Section 1.5.2 is published.

15.3.9. Inapplicability of Section 1.6.

Appendix E-1 when filed under Section 15.3.1 and effective, and the assurances triggered by the Secretarial finding described in Section 15.3.4, are permanent and not subject to Section 1.6.

15.4. Other Terms Related to Wildlife Refuges, Klamath Reclamation Project Operations and Agriculture.

15.4.1. Purpose.

The purpose of this Section 15.4 is to describe other terms regarding Klamath Reclamation Project operations related to the Wildlife Refuges and the relationship of the Wildlife Refuges and agriculture, and related matters.

15.4.2. D Pumping Plant.

A. D Pumping Plant Costs.

Notwithstanding Article 33(d) of Contract No. 14-06-200-5954 between the United States and TID, the allocation of costs for operation and maintenance of D Plant will be as follows: Reclamation shall reimburse TID for 37.5 percent of the costs of operation and maintenance of D Pumping Plant; such reimbursement shall be allocated among flood control, Refuge, fish and wildlife, or other purposes as determined by the Secretary of the Interior, and shall be considered a nonreimbursable federal expenditure. The FWS shall reimburse TID for 31.25 percent of the costs of operation and maintenance of D Pumping Plant for the benefit of such to the Wildlife Refuges, not including the Refuge lease lands. The remaining 31.25 percent of the cost of operation and maintenance of D Pumping Plant shall be allocated to agricultural irrigation and is to be paid by agricultural irrigation users as determined by Reclamation with input from the KPWU. Within one year of Effective Date, the allocation of percentages of costs of operation and maintenance of D Pumping Plant will be reviewed and adjusted if supported by data regarding use of D Plant and if mutually agreed by Reclamation, the Refuge Manager, and the KPWU.

B. Nonpayment of D Plant Pumping Costs.

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Notwithstanding Section 7.4.1.B, TID may seek money damages for nonpayment under this Section 15.4.2 in accordance with Applicable Law.

C. Term and Effect of Section 15.4.

Notwithstanding Section 1.6, this Section 15.4.2 shall remain in effect until modified by agreement of TID and the United States.

15.4.3. Wildlife and Agriculture on Wildlife Refuge Lease Lands and Other Klamath Reclamation Project Agricultural Lands.

A. Refuge Lease Lands.

With respect to the Wildlife Refuge lands leased for agriculture under section 4 of the Kuchel Act, Public Law 88-567 (Refuge lease lands), the Parties (i) recognize the unique history and circumstances of the Wildlife Refuges' lease lands and their dual wildlife and agricultural values; (ii) recognize that in the conduct of the leasing of the Refuge lease lands, the Secretary of the Department of the Interior, through collaborative efforts with growers and water delivery agencies, has made or may make use of practices, such as walking wetlands, lease incentives, and other programs, that enhance waterfowl management while optimizing agricultural use and maximizing lease revenues; and (iii) seek to further the beneficial partnerships that have developed between the growers and the Wildlife Refuges. The Parties support continued lease land farming on TLNWR and LKNWR managed as described above in (ii).

B. Non-Federal Lands.

The Parties support partnership agreements on private lands within the Klamath Reclamation Project, and funding for such agreements, for walking wetlands and other activities that promote wildlife and do not harm the local agricultural economy or interests of local public agencies.

15.4.4. Disposition of Refuge Lease Land Revenues.

A. Past Net Revenues from Leasing of Refuge Lands.

- i. Certain costs related to Reclamation Project facilities have accrued and are currently identified as an outstanding balance for the Reclamation Project. The net lease revenues that are in the Reclamation Fund have not been applied to these costs due to uncertainty in the proper

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application of existing law. The contracts between the United States and the Klamath Reclamation Project water users do not address these costs. It is also uncertain whether the outstanding costs are equal to, less than, or greater than the current lease revenues in the Reclamation Fund, or whether past net lease revenues may be applied to the outstanding Klamath Reclamation Project costs. Accordingly, pursuant to the Act of August 1, 1956, 70 Stat. 799, and the Act of June 17, 1944, 58 Stat. 279, and other acts as applicable, after 10% of the net revenues from leasing of TLNWR lands within the boundaries of TID are provided to TID, as provided in article 4 of Contract No. 14-06-200-5954, and payment is made to counties from net revenues from the leasing of Refuge lands in TLNWR and LKNWR (Area K) in lieu of taxes, as provided in section 3 of Public Law 88-567, the Parties agree that remaining net revenues from the leasing of Refuge lands in TLNWR and LKNWR at the time of enactment of the Authorizing Legislation proposed in Appendix A-1 and deposited in the Reclamation Fund shall apply as a credit to existing capital costs of Klamath Reclamation Project facilities.

- ii. In order to resolve any and all disputes or outstanding issues regarding any debt or encumbrance of the Klamath Reclamation Project or Project contractors and the disposition and application of past net revenues from leasing of lands within the TLNWR or LKNWR, the United States and KPWU agree that the funds held in the Reclamation Fund from the Refuges' lease land revenues at the time of enactment of the Authorizing Legislation will be deemed to be equal to, and applied to liquidate, any and all debt or encumbrance of the Klamath Reclamation Project or Project contractors as of the date of enactment of that act. KPWU and the United States further agree that the disposition of net lease revenues thereafter shall be in accordance with the Authorizing Legislation, as described in Section 15.4.4.B.
- iii. The provision in Section 15.4.4.A.ii that any past Klamath Reclamation Project debt or encumbrance is deemed satisfied and the provision in Section 15.4.4.B that future net lease revenues will be applied to future Klamath Reclamation Project capital costs, does not affect the title of Klamath Reclamation Project facilities that are currently owned by the United States. Express Congressional approval is required to transfer title to any Klamath

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Reclamation Project facilities now owned by the United States, and nothing in this Agreement or the Authorizing Legislation shall affect any such title transfer.

B. Future Net Revenues from Leasing of Refuge Lands.

The Parties shall support the provisions of the Authorizing Legislation (Appendix A-1) providing that the disposition of future net revenues from leasing of Refuge lands will be as follows:

- i. 10% of net revenues to TID from leasing of TLNWR lands within the boundaries of TID, as provided in article 4 of Contract No. 14-06-200-5954 and section 2(a) of the Act of August 1, 1956;
 - ii. Payment to counties in lieu of taxes as provided in section 3 of Public Law 88-567;
 - iii. 20% directly, without further authorization, of net revenues from leasing of TLNWR and LKNWR lands, to the FWS, Klamath Basin Refuges, for wildlife management purposes on the TLNWR and LKNWR;
 - iv. 10% of net revenues to KDD from leasing of LKNWR lands within the boundaries of KDD, subject to KDD assuming Reclamation's Operation and Maintenance duties for LKNWR (Area K) lease lands; and
 - v. The remainder of the Wildlife Refuges' net lease land revenues will be covered to the Reclamation fund and shall be applied to future Klamath Reclamation Project capital costs.
- C. Subject to passage of the Authorizing Legislation Consistent with Section 15.4.4.B, KDD will accept transfer of all Operation and Maintenance responsibility for the Reclamation water delivery and drainage facilities that are within the boundaries of both LKNWR and KDD (i.e. Area K), exclusive of the Klamath Straits Drain. After passage of such legislation, the United States and KDD will amend the April 28, 1943, Amendatory Contract between the United States and KDD (Contract No. 14-06-200-5964) to provide for transfer to KDD of all Operation and Maintenance responsibility for the Reclamation water delivery and drainage facilities that are within the boundaries of both LKNWR and KDD, exclusive of

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the Klamath Straits Drain, consistent with the terms in that legislation with regard to the disposition of lease revenues.

- D. Upon enactment of the Authorizing Legislation Consistent with Appendix A-1, TID waives any and all past claims for damages for breach of contract against the United States arising under Article 4 of Contract No. 14-06-200-5954 between TID and the United States.

15.4.5. Authorizing Legislation.

A. Act of February 21, 1911.

The Parties support the following term in the federal Authorizing Legislation: “Notwithstanding the Act of February 21, 1911, 36 Stat. 925, Klamath Reclamation Project facilities may be used by operators of the facilities to convey non-Project water for any authorized purpose of the Klamath Reclamation Project; provided, that all such use shall be subject to other necessary permits, if any, and all water delivered into and taken out of Klamath Reclamation Project facilities will be measured.”

B. Title II of Public Law 97-293.

The Parties support the following term in the federal Authorizing Legislation: “Title II of Public Law 97-293 shall not apply to the Klamath Basin Restoration Agreement or any contract or contract amendment or agreement identified or authorized in the Klamath Basin Restoration Agreement.”

C. No Effect on Kuchel Act.

The Parties support the following term in the federal Authorizing legislation: “Nothing in this Act shall affect or alter Public Law 88-567, 78 Stat. 850 (Sept. 2, 1964)”

16. Upper Klamath Basin Water Program.

16.1. Purposes.

The purposes of the Upper Klamath Basin Water Program in the Wood, Williamson, Sycan, and Sprague river sub-basins are to: (i) develop an Off-Project Water Settlement (OPWAS) that, upon approval, resolves water rights disputes between the Off-Project Irrigators, Klamath Tribes, and BIA; and (ii) through the OPWAS, or otherwise, provide for increased stream flow and inflow into Upper Klamath Lake through voluntary retirement of water rights or water uses, or other means as agreed to by the Klamath

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Tribes, to improve Fisheries habitat and also provide for stability of irrigation water deliveries.

16.2. Resolving Upper Basin Water Use Issues.

The Parties believe that the Off-Project Water Settlement and the Water Use Retirement Program offer the best opportunity for resolving long-standing water disputes and related issues in the Upper Klamath Basin, and intend that the principles of the Water Use Retirement Program in Section 16.3.2 be implemented through the Off-Project Water Settlement. In the absence of such settlement, Section 16.3.2 provides a mechanism for implementation of the Water Use Retirement Program.

16.2.1. Off-Project Water Settlement.

The Parties intend that the OPWAS will include terms that (i) resolve claims and contests in Klamath Basin Adjudication Cases 277, 279, 280, 281, 282, 284, 285, and 286, (ii) provide reciprocal assurances for maintenance of instream flows and reliable irrigation water deliveries in the event that not all such contests are resolved, and (iii) provide for a Water Use Retirement Program.

A. Support for OPWAS.

The Parties intend that the Klamath Tribes, a large proportion of the Claimants within the geographic area delineated in Section 16.2.2.C, and a large proportion of the Contestants in the cases listed above will sign the OPWAS. A large proportion means enough participants to reasonably assure that the purposes in Section 16.2.2.B can be accomplished. For the purposes of this Section 16.2, participants in OPWAS who are not Parties to the Klamath Restoration Agreement shall either enroll as a Party under Section 7.2.1.A, or enroll as a Participant under Section 5.6.

B. Reciprocal Assurances.

In order to provide certainty to OPWAS parties related to risks associated with unresolved Contests in KBA Cases 277, 279-282, 284-286, the OPWAS shall include reciprocal agreements in which the OPWAS parties each provide assurances that water available for instream and consumptive use shall be maintained, notwithstanding the outcome of any Contests not resolved by the OPWAS.

C. Water Use Retirement Program within the OPWAS.

The OPWAS parties will develop a Water Use Retirement Program to be implemented as part of the OPWAS in a manner that includes the principles of Section 16.2.2 as modified by agreement in the OPWAS.

D. Schedule for Negotiation.

- i. Upon the Effective Date, the Klamath Tribes, BIA, and other interested Parties will undertake settlement negotiations with Off-Project Irrigators to develop a proposed Off-Project Water Settlement.
- ii. The negotiations in Section 16.2.1.D.i will be completed within 18 months of the Effective Date.

E. Participation by Parties.

- i. The Parties shall support authorization and appropriation of funds, in the amount of \$500,000 as estimated in Appendix B-2, for the period of 18 months to support development of the OPWAS. They shall provide other appropriate support for OPWAS development.
- ii. The Parties will be provided with the proposed final OPWAS negotiated pursuant to Section 16.2.1.D for review in advance of finalization, to address consistency with the program elements described in Sections 16.3.1 and 16.3.2. Disputes will be resolved pursuant to Dispute Resolution Procedures in Section 6. The Water Use Retirement Program shall be implemented in a manner consistent with any finalized OPWAS.

F. Procedures in the Klamath Basin Adjudication.

i. **Stay.**

OWRD will consider providing a stay of the Klamath Basin Adjudication for an appropriate period after the Effective Date in order to allow sufficient time to develop and file the OPWAS.

ii. **Filing the OPWAS.**

The Klamath Tribes, the BIA, and any Contestants in KBA Cases 277, 279, 280, 281, 282, 284, 285 and 286 that are signatory to OPWAS, shall, as applicable, file relevant parts of the OPWAS as a stipulated settlement of the claims and contests in those cases.

iii. **Failure or Incomplete Filing.**

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If the OPWAS is not filed as a stipulated settlement, or if not all Contestants to KBA Cases 277, 279, 280, 281, 282, 284, 285 and 286 join in the OPWAS as a stipulated settlement, litigation of remaining Claims and Contests in those Cases will resume on a schedule established by OWRD or the Oregon Office of Administrative Hearings.

G. Groundwater Model Scope.

The groundwater model for the investigation specified in Section 15.2.4.B shall include the Wood and Sprague river sub-basins. The Parties agree, in such investigation, to support enhanced resolution of the model to facilitate OWRD's evaluation of the extent to which new groundwater permit applications might affect surface water pursuant to Section 16.2.2.G.

16.2.2. Water Use Retirement Program.

The intent of this Section 16.2.2 is that a Water Use Retirement Program be implemented as part of the OPWAS in a manner that includes the principles of this Section 16.2.2 as modified by agreement in the OPWAS, subject to agreement by the Parties to this Agreement. If the OPWAS is not timely finalized, a Water Use Retirement Program will be implemented as follows. The program goals are to be accomplished within ten years.

A. Upper Basin Team.

i. Function.

An Upper Basin Team (UBT) shall oversee the planning and implementation of the Water Use Retirement Program. Within 18 months of the Effective Date, the UBT shall prepare a plan to accomplish the principles of this Section 16.2.2. The UBT will submit a completed plan for approval by the Federal Lead Party and provide annual reports on the progress of water rights retirements to the Lead Party.

ii. Membership.

The UBT shall be comprised of representatives from the Klamath Tribes and landowners in the Sprague (excluding the drainage from the Sycan Marsh upstream), the Williamson (from the confluence with the Sprague River upstream to Kirk), and/or the Wood river sub-basins. Two tribal representatives shall be appointed by the Klamath Tribal Council. Two

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landowner representatives shall be appointed by the KBCC which may, at its sole discretion, identify potential candidates through a public request-for-qualifications process, use the results of an open election among Off-Project Irrigators, or use some other method as appropriate. An additional fifth member will be appointed by mutual agreement of the other four members. A representative of the federal Lead Party will be a non-voting member.

iii. **Federal Lead Party.**

The FWS will be the federal Lead Party for this program.

iv. **Governance.**

The UBT will receive a Charter and will adopt governance procedures consistent with the Charter to empower local leadership in the implementation of this program.

B. Program Goal.

- i. The program goal shall be to increase the inflow to Upper Klamath Lake by 30,000 acre-feet on an average annual basis, through voluntary sale of surface water rights for irrigation, retirement of surface water use for irrigation, or other means as agreed to by the Klamath Tribes. If, after the goal of increasing inflow to Upper Klamath Lake by 30,000 acre-feet is achieved, there is still a need for additional water for instream uses, the Parties shall meet and confer in regard to extending the voluntary water use retirement program, creating a water leasing program, or other options that may be available and shall use the dispute resolution procedures in Section 6 if needed. Such retirement will occur in locations and in a manner that maintains the socio-economic character of the Off-Project agricultural community, and that does not adversely impact the water rights of any remaining Contestants who are not signatories to the OPWAS.
- ii. The year 2001 is the baseline for measuring progress towards the water use retirement goal. Acreage retired from surface water irrigation after 2001 will be counted toward the flows and water goals of the program. Acreage added to surface water irrigation after 2001 will be counted against the flow and water goals of the program. Retirement of lands associated with the projects listed in

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Section 17.2.1 – 17.2.3 will not count towards the water use retirement amount. Site-specific estimates of the instream flow increase resulting from each retirement will provide the basis for evaluating progress toward and attainment of flow and water goals. Average consumptive use per acre of the crop grown on the land, not diversion amounts per acre, will provide the basis for determining instream contributions. Retired water rights will be compensated for through market mechanisms based upon mutually agreed values informed by qualified third party appraisal.

C. Program Area.

The Program Area shall consist of the following sub-basins: Wood River, Sprague River, Sycan River (excluding the drainage from the Sycan Marsh upstream), and the Williamson River (from the confluence with the Sprague River upstream to Kirk).

D. Voluntary Program.

The program will include specific procedures for voluntary retirement of water rights or uses and a suite of tools to accomplish flow targets in the Program Area. All purchases will be based on fair market value. Eminent domain will not be used to acquire water rights under this program.

E. Considerations for Transactions.

The program shall establish procedures and standards for location and type of lands qualifying for retirement, taking into account distance up-basin from Upper Klamath Lake, expected actual instream flow increase, fisheries habitat value, ramification to adjacent landowners, priority dates and other relevant parameters as may be defined by the UBT. Water rights or uses will be retired in a manner that attempts to minimize adverse impacts to third parties, such as conveyance losses, flood irrigation impacts, maintenance costs, inefficiencies in remaining system, and impacts on shared systems.

F. Protection of Purchased Rights.

The program shall protect water rights purchased under this program from further consumptive uses by either: (i) transfer of the purchased water right to instream use with the priority date of the purchased right; (ii) cancellation of the water right; or (iii) such other mechanism as may be specified by the OPWAS or otherwise.

G. OWRD Policy.

The Parties, in entering into this Water Use Retirement Program, understand that based on the policies of the Oregon Water Resources Commission and OWRD, no new direct flow surface water rights are being issued, and that new groundwater withdrawals are also limited by current policy. If applicable policies change, the Parties shall meet and confer under the Dispute Resolution Procedures in Section 6.5.

16.3. Fisheries Habitat Improvement Program.

16.3.1. Purpose.

The purpose of this program is to improve fisheries habitat above Upper Klamath Lake in the geographic area delineated in Section 16.2.2.C, to provide federal regulatory assurances to landowners in the affected areas, and to do so in a manner that seeks to maintain landowner economic stability.

16.3.2. Program Elements.

This program will consist of implementing the Fisheries Restoration Program of Section 10 and the General or Habitat Conservation Plans of Section 21.2. The Parties agree that, in the drainage above Upper Klamath Lake, collaborative approaches to habitat improvement and maintenance may include innovative mechanisms like restoration easements and grassbanks that simultaneously facilitate habitat improvement and landowner economic stability. The program will prioritize restoration approaches that promote vegetative response in riparian/wetland areas and enhance basic ecological function to support fisheries.

17. Additional Water Conservation and Storage.

The Parties agree to these additional obligations to enhance water conservation and provide for further water storage.

17.1. General.

This Agreement does not limit any authority under Applicable Law to implement additional water conservation measures that are Consistent with the terms of this Agreement.

17.2. Measures to Increase Water Supply in Upper Klamath Lake.

17.2.1. Williamson River Delta.

In accordance with the preferred alternative described in the Environmental Impact Statement and with funding provided by Reclamation, Natural Resource

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Conservation Service and the FWS, The Nature Conservancy (TNC) ~~completed the breaching of the levies in November 2008 to allow additional storage of,~~ approximately 28,800 acre-feet (gross) of water when Upper Klamath Lake elevations are between 4143.3 and 4136.0 feet by December 30, 2009. The first portion of this project occurred in October 2007 returning to Upper Klamath Lake about two-thirds of the total project area. The remainder of the acreage will be returned to Upper Klamath Lake by 2009.

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17.2.2. Barnes Ranch/Agency Lake.

Consistent with the Memorandum of Understanding of May 11, 2006, between Reclamation, FWS and TNC, Reclamation and the FWS will work cooperatively to reconnect the Barnes Ranch and Agency Lake Ranch to Agency Lake to provide approximately 63,770 acre-feet (gross) of additional storage when Upper Klamath Lake elevations are between 4143.3 and 4136.0 feet. ~~The reconnection is scheduled to be completed around December 30, 2013.~~

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17.2.3. Wood River Ranch Restoration Project.

In accordance with all legal requirements and upon receipt of funding, BLM will work to reconnect the Wood River Wetland to Agency Lake to provide approximately 16,000 additional acre-feet of gross storage when Upper Klamath Lake elevations are between 4143.3 and 4136.0 feet.

17.2.4. Off-Project Land and Water Right Retirements above Upper Klamath Lake.

As provided in Section 16.2.2, the UBT and FWS will pursue voluntary transactions to retire sufficient water rights on irrigated lands above Upper Klamath Lake to generate an additional 30,000 acre-feet of inflow to the lake on an average annual basis.

17.2.5. Alternatives.

If any of the obligations in Sections 17.2.1 through 17.2.4 cannot be met or become technically infeasible or legally impossible, the Parties shall pursue amendment of this Agreement pursuant to Section 7.2.1.E to achieve comparable storage and/or inflows to Upper Klamath Lake.

17.2.6. Additional Conservation.

The Parties shall support continued investigations of methods to achieve conservation of Klamath Basin water.

17.3. Future Storage Opportunities.

17.3.1. Technical Investigation.

Pursuant to the Klamath Basin Water Supply Enhancement Act of 2000 (P.L. 106-498), and given sufficient appropriations identified in Appendix B-2, Reclamation shall complete a Feasibility Report for off-stream storage by September 30, 2012. The Parties shall thereafter support ongoing investigations and acquisition of additional storage.

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17.3.2. Use of Additional Storage.

A. Reservations.

Consistent with Reclamation planning directives, policies and standards, and the National Environmental Policy Act (NEPA), Reclamation shall not determine the specific design, beneficiaries, etc. of such projects before completion of a NEPA decision document. Reclamation shall identify the range of alternatives identified in the Feasibility Study to enhance water management flexibility in providing for irrigation, fish and wildlife purposes, as well as the furtherance of Reclamation's tribal trust responsibilities.

B. Support.

Subject to Reclamation's and OWRD's reservations of responsibilities and obligations, the Parties shall support use of water from these facilities in accordance with this paragraph.

- i. Such water will be a resource to be employed as needed to achieve the objectives of this Agreement as related to fisheries.
- ii. When first available, such water will be used to realize the increase in diversions to the Klamath Reclamation Project as described in Section 15.1.1 and provided in Appendix E-1, if that increase has not otherwise occurred.
- iii. Water will be used to implement the provisions of 18.2.2.B.ii.
- iv. Water may otherwise be used in accordance with recommendations of the TAT and decisions of the Klamath Basin Coordinating Council.
- v. In addition, the TAT may recommend the use of any such water for Klamath Reclamation Project irrigation and/or fish and wildlife Refuges if circumstances so warrant. In

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that circumstance, an increase in water diversion as a result of such storage could not occur merely because additional storage has become available and there would be transparent public processes prior to any increase.

18. Drought, Climate Change, and Emergency.

18.1. Purpose and Scope.

The Parties intend that the obligations and the bargained-for benefits of this Agreement are fulfilled and realized in all circumstances, including Extreme Drought, Emergency circumstances, or long-term climatic conditions which cannot now be predicted reliably. In the instances of Extreme Drought, Emergency, or climatic changes, the Parties intend that water and resource management actions be taken such that no Klamath Basin interest shall bear an unreasonable portion of burdens imposed or the risk of loss or injury. Nothing here is intended to limit the applicability or effect of the Endangered Species Act or other Applicable Law.

18.2. Drought.

18.2.1. Lead Entity to Develop and Implement Drought Plan.

1. Not later than the conclusion of its first meeting after the Effective Date, the Klamath Basin Coordinating Council shall identify a lead entity for the development and implementation of the Drought Plan acting with the advice and assistance of the TAT. The development of the plan shall include participation of the United States, California, Oregon, KWAPA, each Tribe, representative of the Upper Klamath water users signatory organization(s), commercial fishers, and other interested Parties who choose to participate.

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18.2.2. Content of the Plan.

- A. The Drought Plan will include:
 - i. Definitions of **Extreme Drought** and **Drought**;
 - (1). The Parties intend that an Extreme Drought shall be declared only in exceptional conditions. Water years 1992 and 1994 are the Extreme Drought years in the period 1961 to 2000.
 - (2). The Parties intend that Drought shall mean: a drought condition lesser in scale than an Extreme Drought as determined by the Drought Plan.
 - (3). The definitions of Drought and Extreme Drought in Section 18.2.2.A.i have no effect on the definitions

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of drought under Applicable Law. Declarations of Drought or Extreme Drought by the lead entity under these provisions and any actions resulting from that declaration do not affect the rights or obligations under Applicable Law or require the exercise of Public Agency Party discretion under Applicable Law;

- ii. A process to ensure increasingly intensive water management for agricultural, National Wildlife Refuges, and in-Lake and in-River fishery purposes in dry years in anticipation of, and in preparation for the potential of a Drought or Extreme Drought so as to avoid or minimize adverse impacts to Klamath Basin communities and natural resources in response to increasingly dry conditions;
 - iii. A specification of the manner in which available water will be quantified, and responses to Drought and Extreme Drought will be implemented;
 - iv. Processes to provide periodic advance notice to affected Klamath Basin communities of the potential for occurrence of a Drought or Extreme Drought, and, when issuing a declaration of Extreme Drought, to do so as early as practicable and to the extent possible in advance of the irrigation growing season;
 - v. A description of responses to Drought and Extreme Drought; and
 - vi. Such other provisions as the TAT may recommend and the lead entity incorporates into its Plan.
- B.** The Plan will require that the lead entity, with the recommendations of the TAT, determine which among the following measures, alone or in combination, shall be employed in response to increasingly dry and then Extreme Drought conditions. The Plan will require that the responses be employed in order of priority set forth below in response to increasingly dry conditions. The lead entity shall use diligent efforts to exploit each measure before moving to the next measure, in light of the urgency of the situation, and is not required to demonstrate exhaustion of all possible applications of any particular measure before moving to the next. To the maximum extent feasible, the plan will protect Klamath Basin communities, and provide sufficient quantities of water to meet

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the biologically essential River flows and lake elevations in periods of Drought or Extreme Drought. The response measures to be included in the plan will be:

- i. Voluntary water conservation measures;
- ii. The use of stored water available under Section 17.3;
- iii. Both of the following:
 - (1). The lease of water on a willing seller basis which would otherwise be diverted for irrigation purposes. For any leasing within the Klamath Reclamation Project, the applicable DIVERSION at the applicable Settlement Point of Diversion in Appendix E-1 will be reduced by the foregone consumptive use of water.
 - (2). Use of groundwater, either for irrigation purposes to replace that which would otherwise have been diverted or, where lawful and upon the recommendation of the TAT, as a supplement to river flows and lake levels. Upon the advice and with the approval of the TAT, the “no adverse impact” criteria of the on-project plan related to groundwater (Section 15.2.4.A) may be waived in response to Extreme Drought.
- iv. Other measures, as available, to reduce water diversion by exercise of water right priorities within the Klamath Basin in Oregon and California, Consistent with this Agreement and Applicable Law. These measures include the fact that Parties with water rights senior to 1906 will make water rights calls to bring necessary additional water to Upper Klamath Lake as early as practicable in years of Drought or Extreme Drought;
- v. If there is an Extreme Drought, and the measures identified above are insufficient, the reduction in diversions to a level below the applicable DIVERSION in Appendix E-1, as modified by Section 18.2.2.B.iii(1), following notice as set forth in Section 18.2.2.A.iv. Measures may be taken in the circumstances under this sub-section, notwithstanding the DIVERSION limitation for Klamath Reclamation Project as found in Appendix E-1; and

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- vi. Provisions authorizing the use of available Drought relief funds in the discretion of the funding entities to compensate Parties or Participants who suffer injury as a consequence of performance of Extreme Drought measures under this Agreement. To the extent that funds are not available to compensate such parties, the Parties shall cooperate in seeking federal and state funds to mitigate impacts of the Drought or Extreme Drought and the response measures.

18.2.3. Schedule.

The lead entity shall adopt a Drought Plan as soon as practicable and no later than the beginning of the second water year after the Effective Date. Prior to adoption, the plan shall be submitted to funding entities for appropriate approval. Upon approval, the lead entity shall adopt the plan. The plan shall be amended as appropriate and pursuant to this process.

18.2.4. Extreme Drought Declaration.

The lead entity to be established by the Klamath Basin Coordinating Council, acting on the recommendation of the TAT and in accordance with the Drought Plan, shall declare that a Drought or Extreme Drought condition exists as defined by the Plan. Within fifteen days of the declaration, the lead entity, with the assistance of the TAT, shall determine the scope of the Drought, including the amount and sources of water reasonably likely to be available within the Klamath Basin, and identify potential responses consistent with the obligation to insure that available water is managed Consistent with Section 18.1.

18.2.5. Implementation and Enforcement.

As soon as practicable as dictated by the circumstances, and no later than 30 days following the declaration of Drought, the Klamath Basin Coordinating Council shall take all steps necessary to facilitate compliance with the identified measures, including actions in state or federal venues as necessary.

18.3. Emergency.

18.3.1. Definition of Emergency.

For the purpose of this section, **Emergency** shall mean: a major failure of Klamath Reclamation Project facilities or dikes on Upper Klamath Lake or Lake Euwana that affects the storage and delivery of water necessary to meet the commitments of this Agreement.

18.3.2. Lead Agencies.

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Reclamation, in coordination with KWAPA, shall be the Lead Parties for the development and implementation of the Emergency Response Plan as described in Section 18.3.3.

18.3.3. Content of the Plan.

The Emergency Response Plan shall include (i) a process to anticipate and prepare for the potential of an Emergency, (ii) the funding sources, (iii) the priority of funding responses to an Emergency, (iv) identification of the measures that may be taken in response to an Emergency, (v) the process to be used to implement such measures, and (vi) any other provisions the Lead Parties deem necessary to properly respond to an Emergency. The Plan shall be reviewed and amended as necessary every three calendar years after the Plan is adopted pursuant to Section 18.3.4.

18.3.4. Schedule.

The Lead Parties shall complete all actions necessary to produce the Emergency Response Plan within one year from the Effective Date. The Parties shall review the Emergency Response Plan and provide comments to the Lead Parties within 90 days after production of the Plan. Within 90 days after comments are received by the Lead Parties, Reclamation shall adopt the Plan. Each of these deadlines may be extended upon a determination by the Lead Parties that additional time is reasonably necessary for completion of the Plan, or that good cause otherwise exists to extend the deadline.

18.3.5. Response Procedures.

In the event of an Emergency, the Parties shall take the following actions.

A. Notice.

Except as provided in Section 18.3.5.B below, within three days of discovery of the event, Reclamation shall publish on its website and otherwise provide Notice to appropriate Parties a description of the Emergency and its likely effects on the storage and delivery of water necessary to meet the commitments of this Agreement. Affected Parties and others will be provided a period of three additional days in which to consult with Reclamation and KWAPA or relevant KPWU entities as to appropriate responses to the Emergency.

B. Emergency Requiring Immediate Response.

In the event that a response to an Emergency requires immediate action, notice, as provided in Section 18.3.5.A above, will be given within 24 hours after the initial response is complete or earlier if

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feasible under the circumstances of the Emergency. Emergencies requiring an immediate response for which the notice provision in Section 18.3.5.A above is not required include any Emergency for which a delay in the response to that Emergency will result in (i) injury to persons or property, including loss of life, (ii) a significant loss of water from its intended use, or (iii) a significant increase in the cost of any subsequent repair or replacement.

C. Response.

After completion of the notice provisions in Section 18.3.5.A above, except as provided in Section 18.3.5.B above, Reclamation, KWAPA, and any appropriate KPWU entity shall determine appropriate measures to respond to the Emergency as provided in Section 18.3.6 below.

D. Dispute Resolution.

Disputes regarding the propriety of the response selected by Reclamation, KWAPA, or a KPWU entity shall be resolved expeditiously in accordance with the Dispute Resolution Procedures in Section 6. The Parties shall use Notice to meet all deadlines within this section. Each communication by the Parties shall include any associated data or reports relied upon. Any dispute resolution process shall not unreasonably interfere with the response necessary to respond to any Emergency.

18.3.6. Permissible Responses.

Reclamation, KWAPA, and appropriate KPWU entities may respond to any Emergency in the manner they deem necessary to reduce to the extent possible any damages to property, injuries to persons, including loss of life, or the loss of water from its intended use. In the shortest time possible, Consistent with sound engineering and economic principles, the Lead Agencies shall restore to its intended use any diversion or release of water that was interrupted as a result of the Emergency.

18.4. Climate Change.

The Parties will determine as early as practicable, whether and, if so, how long term climate change will affect the fisheries and communities of the Klamath Basin. The Parties will re-convene to negotiate in good faith any supplemental terms to this Agreement which may be made necessary by changes in the climate in order to achieve the Parties' goal of maintaining sustainable fisheries and communities.

18.4.1. Purpose.

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The Parties intend by this section to insure that: long-term climate change in the Klamath Basin is assessed early and continuously; the Parties collaboratively respond to climatic change in a manner that is intended to protect basin interests from the adverse affects of climatic change for as long as practicable; and the resources of the basin are managed in the future on the basis of the best available science.

18.4.2. Technical Assessment.

On the Effective Date, OWRD and CDFG, in coordination with other Water Managers and Fish Managers, will become the initial co-Lead Parties responsible for overseeing an ongoing assessment of the risks and potential impacts of climate change on the management of the Klamath Basin resources. The Parties will support the California Resources Agency assuming the role of the California co-lead. The co-Lead Parties shall seek input from interested Parties and other entities capable of adding appropriate technical expertise to this process.

18.4.3. Schedule.

Within two years of the Effective Date, Lead Parties shall initiate the assessment process. The assessment will be ongoing and will be intended to provide Klamath Basin stakeholders and resources managers with qualitative and quantitative information on climate change impacts.

18.4.4. Use of Results.

The results of the OWRD and CDFG's assessments will be provided on a regular basis to the Klamath Basin Coordinating Council such that climate change science will be incorporated into management of Basin resources. Their assessments will be incorporated into Regulatory Agency Parties' regulatory review and approval process as described in Sections 20 – 24 as applicable.

18.4.5. Response.

The Parties agree to reconvene and to negotiate in good faith to develop supplemental terms of this Agreement Consistent with the goals of sustainable communities in light of climatic change when either or both of the following criteria are satisfied:

- A. Substantial effects of climate change are determined by the Klamath Basin Coordinating Council to be manifest or reasonably likely to occur; or
- B. Adaptive management of water resources Consistent with the obligations of this Agreement is deemed by the Klamath Basin

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Coordinating Council to be insufficient to address the impacts of climatic change.

19. Environmental Water.

19.1. Purpose and Scope.

As stated in Section 9.2.1, the Parties intend that this Agreement restore and sustain natural production of Fish Species throughout the Klamath River Basin. The Parties intend to achieve this benefit by reintroducing Fish Species, establishing conditions that will contribute to the natural sustainability of fisheries and Full Participation in Harvest Opportunities, improving water quality, increasing the quantity of water to benefit fisheries and other aquatic resources, and providing adaptive and, where practicable, real-time management of water quantity to benefit fisheries and other aquatic resources. This section addresses the management, protection, and monitoring of Environmental Water.

19.2. Measures to Produce Environmental Water.

In this Agreement, the Parties have made the following obligations (among others) related to Environmental Water.

- 19.2.1.** Pursuant to Section 8, the Parties shall support the Hydropower Agreement which includes, among other provisions, the decommissioning of four mainstem Klamath River dams.
- 19.2.2.** Section 15 will result in, and provide limitations on diversions from the Klamath River and Upper Klamath Lake associated with the Klamath Reclamation Project.
- 19.2.3.** Pursuant to Section 16, water rights on land above Upper Klamath Lake will be retired.
- 19.2.4.** Pursuant to Section 17, the Parties shall investigate and seek to secure additional water storage in the Basin.
- 19.2.5.** Pursuant to Sections 10 and 11, the Parties shall implement the Fisheries Restoration and Reintroduction Plans.
- 19.2.6.** The Parties shall support realization of these obligations in the following manner.
 - A.** Consistent with Sections 1 - 4 and other provisions of this Agreement, the Parties shall support this Agreement, including the Authorizing Legislation, and they shall seek funding for the Agreement.

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- B. Consistent with Sections 20, 21, 22, 23 and 24, Regulatory Agency Parties shall meet their obligations under the Agreement. The Parties confirm that nothing in this Agreement is intended to alter the existing federal and state statutory obligations for the protection of fish, wildlife and water.
- C. Federal Agency Parties commit, for themselves and in their capacity as trustee for the Tribes, that unless otherwise required by Applicable Law they will not take actions Inconsistent with this Agreement, and where appropriate, shall act to promote compliance with the Agreement.
- D. CDFG and ODEQ, ODFW, and OWRD commit that, unless otherwise required by law, in all matters pertaining to the Klamath Basin they will not take actions Inconsistent with this Agreement and, where appropriate, shall act to promote compliance with this Agreement.
- E. The Tribes commit to exercise their authority as sovereign nations to achieve compliance with the terms of this Agreement. To the maximum extent permitted by their respective Tribal law and to the maximum extent of each Tribe's jurisdiction, the Tribes shall exercise their authority to impose conditions as part of Tribal Agency action which will require the completion of specific identifiable tasks within specified time periods necessary to insure compliance with the obligations set forth in Sections 19.2.1 – 19.2.6.

19.3. Managed Environmental Water.

19.3.1. Water Rights and other Legal Requirements.

Management of Managed Environmental Water will be Consistent with: (i) Applicable Law, including obligations of Reclamation and other Parties under the ESA; (ii) any related secondary rights to use the stored water, as well as consistent with senior water rights, and (iii) this Agreement.

19.3.2. Governance.

The Secretary of Interior shall make management decisions regarding Managed Environmental Water, so as to maximize benefits for the Klamath Basin's fish and wildlife and to achieve the water management goals of this Agreement. Once subject to a Council Charter, the TAT shall provide recommendations to the Secretary on how best to distribute and use this Managed Environmental Water for this purpose. In carrying out this function, the TAT shall ensure broad technical and public participation, use the best available and most current

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technical and scientific information, and encourage Consensus in recommendations on water operations that affect either Upper Klamath Lake or lower Klamath Basin ecosystems. Appendix C-2 describes the scope of TAT responsibilities and operating procedures.

19.3.3. Real-Time Management.

Except as limited by other provisions of this Agreement, the processes used to determine whether to store or not store Managed Environmental Water, for the purpose of conservation and recovery of Fish Species, shall be open, transparent, real-time, Consistent with the principles of Collaborative Management, and also Consistent with the limits of existing water rights and other Applicable Law.

19.3.4. Link River Dam.

Reclamation shall continue to operate Link River Dam as described in Section 8.3.

19.4. Interim Flow and Lake Level Program Pending Implementation of Irrigation Plans.

19.4.1. Purpose.

This addresses the interim period as defined in Section 19.4.2 To further the goals of the Fisheries Program in Part III, the Parties intend during this interim period to implement a water leasing and purchase program to reduce surface water diversions from the Klamath River and from its tributaries above Upper Klamath Lake and to apply the water obtained toward improving the status of anadromous and resident Fish Species. During the interim period, the Parties intend that this program will be administered to increase, to the extent technically feasible, the amount of water in the Klamath River and Upper Klamath Lake toward the amounts which will result from the permanent instream water supply enhancement actions in Sections 15, 16 and 17.

19.4.2. Definition.

For the purpose of this Section 19.4, the “interim period” is the time period between the Effective Date and the date on which the On-Project Irrigation Plan is fully implemented pursuant to Section 15.2, an additional 30,000 acre-feet of water inflow is being provided in Upper Klamath Lake on an average annual basis as determined by OWRD pursuant to Section 16.2.2, and the additional measures required by Section 17.2 have been achieved.

19.4.3. Interim Operations.

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The Secretary of the Interior shall, pursuant to Applicable Law, implement a water leasing and purchase program to achieve the purposes of this Section 19. Although the interim program may rely on short-term agreements, any agreements contemplated in the Klamath Reclamation Project or Off-Project that have a term greater than the Interim Period in Section 19.4.2 shall, to the extent feasible, be Consistent with the applicable On-Project Plan in Section 15.2 or the Upper Klamath Basin Program in Section 16. The Secretary's implementation of this program will be informed by recommendations of the TAT. Leases and purchases of water under this interim program shall be from willing sellers, at prices that are economically feasible.

19.4.4. Expenditures.

The Parties shall support authorizations and appropriations for the Program, in the amounts estimated in Appendix B-2. The Secretary of the Department of the Interior shall determine whether any funds that are not needed for the implementation of the interim program should be used to implement the On-Project Plan in Section 15.2 or for other purposes identified in Parts III or IV of the Agreement.

A. Technical Advisory Team.

- i. The Secretary shall provide the Parties and other stakeholders with regularly updated information concerning the water leasing and purchase program status and operations.
- ii. Using the process outlined in Appendix C-2, the TAT shall recommend to the Secretary no later than March 15 of each year the amount of water and times at which water would be most useful to meet the purposes of Section 19.4. In making its recommendations, the TAT shall use the best available science and information in its recommendation on the distribution of additional water for the benefit of resident and anadromous fish in Upper Klamath Lake and the Klamath River. In preparing these recommendations, the TAT shall consider the guidance principles, among others, described below. The Parties acknowledge that these guidance principles are not intended to be used as mandatory standards but are only guidelines for use by the TAT in making its recommendations. Upon convening, the TAT shall review, amend, and supplement these guidance principles. The guidance principles are:

- (1) Replicating the natural hydrologic regime under which the Fish Species evolved likely represents the

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best flow regime to conserve and recover Klamath River anadromous fish stocks and listed suckers in Upper Klamath Lake;

(2) Flow and lake level management should strive to achieve existing habitat-based flow and lake elevation recommendations that would likely increase survival of salmonids and suckers, and potentially improve other important ecological, chemical, physical and biological processes.

(3) Flow and lake level management should strive to meet the lake level and flow outputs from the WRIMS R32/Refuge run at the current location of Iron Gate Dam, as presented in Appendix E-5, recognizing such runs may or may not reflect overall water availability at any given time.

B. Reduction and Termination of Expenditures.

To the extent Consistent with the purpose of this Section, the Secretary shall proportionally reduce expenditures for the water leasing and purchase program incrementally, as surface water diversions are reduced pursuant to Sections 15 and 16, and as water supplies are enhanced pursuant to Section 17. When the obligations to enhance Environmental Water under Sections 15, 16, and 17.2 have been fully achieved, expenditures for this Program will terminate accordingly.

19.5. Protection of Environmental Water.

19.5.1. General.

A. Not Available for Consumptive Use.

Subject to Section 15.3.1.C, the United States, ODEQ, ODFW, and OWRD, State of California, the Counties of Klamath, Siskiyou, Humboldt, and the Tribes agree that any Environmental Water shall be legally protected to the maximum extent permitted by law for instream fish and wildlife beneficial uses, consistent with preventing injury to existing water rights. All Parties agree that, as appropriate and in accordance with Applicable Law and this Agreement, they shall request regulatory agencies to protect Environmental Water to the maximum extent permitted by Applicable Law. These legal protections shall include, but not be limited to, the state-specific measures listed below.

B. PacifiCorp.

Increased instream flows or additions to Upper Klamath Lake or to the Klamath River resulting from implementation of any of the obligations of Sections 15 or 16 shall not be available to nullify, offset or limit PacifiCorp's obligations for mitigation of Klamath Hydroelectric Project impacts during the interim period prior to Dam Removal. Specific provisions to that effect shall be contained in the separate Hydropower Agreement.

19.5.2. Oregon Protections.

A. Existing Instream Water Right Applications.

The Parties, except the OWRD, which must make independent decisions that cannot be predisposed by this Agreement, shall not oppose the existing Instream Water Right applications filed by the ODFW, and/or the Oregon State Parks and Recreation Department for all Klamath Basin streams and water bodies, and any protests previously filed by Parties to these claims shall be withdrawn. The OWRD shall move these applications forward for certification of the instream water right requests as soon as feasible pursuant to Applicable Law. A summary of the outstanding Instream Water Right applications and protests for the Klamath Basin is set forth in Appendix E-3 and incorporated herein. It is acknowledged that not all protests to these existing Instream Water Rights are within the control of or filed by Parties themselves, and that no Party shall have any obligation to secure any such commitments from its individual members who may have filed such protests individually. Also, settlement of some of these protests shall require the consent of PacifiCorp, and those protests within the control of PacifiCorp will be resolved as elements of a separate Hydropower Agreement.

B. New Instream Water Right Applications.

Any appropriate Party may apply for a permit to store Managed Environmental Water through the measures described in Sections 17.2.1 - 17.2.3. If a permit to store water is issued, the ODFW may apply for an instream water right to be supplied from the stored water if the ODFW determines that such application would be Consistent with Applicable Law.

C. Existing Instream Water Right Claims of Various Federal Agencies.

The Parties shall not file exceptions in Klamath County Circuit Court opposing issuance or proposing to diminish the federal instream water right claims listed in Appendix E-4, which were filed by the BLM, Forest Service, or National Park Service.

D. Conversion of Existing PacifiCorp Water Rights to Instream Water Rights.

The Parties, excluding the OWRD and Water Resources Commission which reserve their authorities, shall not oppose the conversion, at the earliest opportunity after dam decommissioning, of PacifiCorp's existing hydroelectric or other mainstem Klamath or Link River water rights within the Klamath Hydroelectric Project to instream water rights, as provided in the Hydropower Agreement and subject to any conditions necessary to avoid injury to existing upstream users. Such protections shall include the preclusion of any water rights calls for water downstream of existing points of diversion. Provisions for implementing this conversion will be set forth in a separate Hydropower Agreement.

E. Identification of Needs and Priorities for Stream Flow Restoration for the Klamath Basin in Oregon.

Within five years of the Effective Date, the ODFW, in cooperation with the OWRD Field Services Division, shall update its *Streamflow Restoration Needs and Priorities Identification* work list done originally under the Oregon Plan for Salmon and Watersheds in 2000 that prioritizes individual water availability sub-basins for streamflow restoration activities in the Klamath Basin based on fishery concerns, along with opportunities to restore instream water for individual water availability basins. This prioritization list shall be used to target future opportunities to restore instream water within the Klamath Basin Consistent with and to implement this Agreement.

19.5.3. California Protections.

A. Dedication of Instream Flows.

Appropriate Parties shall support a petition by PacifiCorp to the SWRCB, as provided in the Hydropower Agreement and pursuant to Water Code section 1707, to dedicate Environmental Water to instream use in California waters for the purpose of preserving or

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enhancing wetlands habitat, fish and wildlife resources, Consistent with the terms of this Agreement.

19.5.4. Additional Measures to Protect and Improve Water Quality.

A. Water Quality Generally.

No waiver of federal Clean Water Act requirements or of comparable state water quality standards or implementation mechanisms is intended by any provision of this Agreement.

B. State TMDLs.

The Parties commit, subject to Applicable Law, to support the development and implementation of appropriate TMDLs and other water quality improvement programs adopted by the states within the Klamath Basin.

C. Out-of-Basin Water Transfers.

The Parties (except state agencies with direct decisional authority over such transfers) shall make all reasonable efforts to oppose any additional out-of-basin water transfers from the Klamath River Basin.

**PART V.
REGULATORY ASSURANCES**

20. Overview of Regulatory Assurances for Fisheries and Water Resources Programs.

20.1. Consequences of Reintroduction.

20.1.1. Recitals.

A. Consequences on Land and Water Users.

Reintroduction of salmon and other aquatic Species above Iron Gate Dam, as provided in Section 11, will be a unique circumstance that could have potential regulatory or other legal consequences for users of water and land upstream of the current site of Iron Gate Dam under various statutory and common laws. Specifically, the Parties recognize that such reintroduction could result in new or modified Regulatory Obligations that could affect the ability to divert or use or dispose of water or the ability to utilize land productively.

B. Interests of Land and Water Users.

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The Parties make the commitments in Section 20.1.2 with full awareness of the recitals in Section 9.1.2. Further, the Parties affirm that interests in the Upper Klamath Basin with potential exposure to Regulatory Obligations have in good faith over a period of time preceding this Agreement played a substantial role in bringing about the circumstances that make reintroduction possible; the other Parties through such period have confirmed the need to provide such assurances; and, if there were to be adverse consequences for regulated parties due to reintroduction, it would reflect poorly on the Agreement as well as on the general goal that regulated parties promote and facilitate environmental restoration.

C. Resulting Commitments.

The Parties make the following commitments related to reintroduction. Nothing in the commitments contained in Sections 20 – 24 is intended to relieve pre-existing regulatory obligations.

20.1.2. Avoidance or Minimization of Adverse Impact.

The Parties commit to take every reasonable and legally-permissible step to avoid or minimize any adverse impact, in the form of new regulation or other legal or funding obligation that might occur to users of water or land upstream of Iron Gate Dam from introduction or reintroduction of aquatic Species to currently unoccupied habitats or areas. The Parties shall implement the measures and binding commitments set out below in Sections 20 – 24 to meet this commitment.

In addition to the objective of avoiding new or modified Regulatory Obligations for landowners, Parties agree, without creating new obligations beyond Applicable Law, that the processes set forth in Sections 20 – 24 below are also intended to be Consistent with the purposes of Section 9.2.1. Further, the Parties agree that the best way to achieve these results is through collaborative approaches to restoration, which will be facilitated by the processes in Sections 20 – 24.

20.1.3. Screening Klamath Reclamation Project Diversions and Related Actions.

A. Screening.

One objective related to reintroduction is to prevent to the greatest extent feasible entry of reintroduced salmon and other aquatic Species into Klamath Reclamation Project diversions. Based on this objective, and in consultation with NMFS, FWS, ODFW, KWAPA and the affected Project districts and Project water users, Reclamation shall

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evaluate appropriate methods and locations to screen Klamath Reclamation Project diversions, including: (i) Lost River diversion channel or associated diversion points; (ii) North Canal, (iii) ADY Canal, and (iv) other diversions from Reclamation or Reclamation contractor-owned facilities diverting water from the Klamath River/Lake Euwana. Subject to Section 4.1, the Parties shall support funding for construction, replacement, additions and extraordinary maintenance of screens at these diversions on a nonreimbursable basis to the Klamath Reclamation Project contractors. Upon receipt of such funding, and subject to Applicable Law, Reclamation shall construct screens at these diversions in accordance with the results of these evaluations. Each appropriate irrigation district or other entity contractor as determined by Reclamation will be responsible for routine maintenance and cleaning of screens at these diversions, to be specified under agreements with Reclamation.

B. Related Actions.

Reclamation shall also evaluate whether measures may be necessary to prevent adverse effects to reintroduced salmon and other Fish that may enter into Klamath Straits Drain. As appropriate based on the results of this evaluation, the Parties shall support, and subject to Section 4.1, Reclamation shall seek funding for construction, replacement, additions and extraordinary maintenance of facilities to prevent any such adverse effects from entry into Straits Drain on a nonreimbursable basis to the Klamath Reclamation Project contractors. Upon receipt of such funding, and subject to Applicable Law, Reclamation shall construct such facilities. Reclamation and affected contractors will agree on responsibility for routine maintenance and cleaning of such facilities.

C. Coordination with Fisheries Program.

Evaluation and implementation of any actions pursuant to Sections 20.1.3.A and B will be conducted in full coordination with the Fisheries Program.

20.1.4. Unforeseen Circumstances.

A. Unforeseen Circumstances Affecting Commitments.

The Parties make these commitments and those in Sections 20 – 24 below related to reintroduction based in good faith on the reasonably anticipated consequences of reintroduction. If unforeseen consequences result from reintroduction during the course of this Agreement, the Parties agree to meet and confer in light of these

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commitments to determine any necessary future actions, including, but not limited to, consideration of whether narrowly tailored regulations or legislation is necessary to ensure the realization of commitments in the first sentence of Section 20.1.2. The Parties further acknowledge the potential for changes in regulatory programs and potential uncertainties as to the precise mechanisms by which the basic commitments stated herein will be achieved. If unforeseen changes in regulatory programs occur or uncertainties result as to the precise mechanisms by which the basic commitments stated herein will be achieved during the course of this Agreement the Parties agree to meet and confer in light of these commitments to determine any necessary future actions, including, but not limited to, consideration of whether narrowly tailored regulations or legislation is necessary to ensure the realization of these commitments.

B. Meet and Confer Procedure.

The Parties intend for a flexible process by which any Party may request that any other Party(ies) meet to attempt in good faith to determine mutually agreeable actions based on such unforeseen circumstances and commitments described herein, and report the results of such process to the other Parties, prior to resorting to Dispute Resolution Procedures under Section 6.5 or other remedies as provided in this Agreement. If no Party requests to meet and confer or if Parties meet and confer, but cannot in good faith determine mutually agreeable actions through this process, then the Parties may resort to Dispute Resolution Procedures or other remedies as provided in this Agreement.

20.2. Consequences of Restoration.

Restoration of habitat of salmon and other Fish Species as provided in Section 10 could have potential regulatory or other legal consequences for users of land and water, as well as any different entities performing the restoration measures, under various statutory and common laws. For waters and lands above the current location of Iron Gate Dam, the Parties intend that any consequences of restoration measures by Parties or Participants pursuant to this Agreement shall be addressed in the assurances for reintroduction described in Section 20.1.

20.3. Consequences of Water Deliveries.

The limitations related to Klamath Reclamation Project diversions identified in Section 15.1 and provided in Appendix E-1, and any other applicable provisions of this Agreement, are intended in part to ensure durable and effective compliance with the Endangered Species Act or other Applicable Law related to the quantity of water for diversion, use and reuse in the Klamath Reclamation Project. Therefore, the Parties

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agree that they shall not seek further limitations on the quantity of water diverted, used or reused in the Klamath Reclamation Project beyond these limitations, subject to (i) for Regulatory Agency Parties, Sections 20.3.1.A, 21.4, 21.5, 21.6., 23.1.1, 23.3, and 24, or if otherwise required of them by other Applicable Law; and (ii) for Parties other than Regulatory Agency Parties, Sections 20.3.1.B.

20.3.1. Changed Circumstances.

This section generally addresses the consequences for these assurances in the event of changed circumstances following the Effective Date. For the purpose of this section, “**maximum reasonable efforts**” is defined, and includes the obligations, as set forth in Section 3.2.4.B.iv, subject to Section 2.2.

A. Obligation of Federal and State Public Agency Parties.

The Federal and State Public Agency Parties agree that, beginning on the Effective Date and subject to Section 2.2 and 4.1.4, they will make maximum reasonable efforts to implement their respective obligations of the Agreement in a manner consistent with the schedule and other conditions for KPWU’s performance of their obligations under and related to Section 15.3.1.A.

i. Widest Reasonable Scope of Evaluations for Purpose of Regulatory Approvals of Diversion Limitations.

The Regulatory Agency Parties agree that, in the course of the proceedings to provide evaluations and Regulatory Approvals for diversion of water for the Klamath Reclamation Project subject to the diversion limitations in Appendix E-1, they will take maximum reasonable efforts to consider and analyze all reasonably foreseeable changed circumstances related to the sufficiency of such diversion limitations in compliance with Applicable Law.

ii. Reopener of Regulatory Approvals of Diversion Limitations.

The Regulatory Agency Parties further intend that, to the maximum extent consistent with Applicable Law, before taking or seeking any action that would result in further limitations to such diversions in any Regulatory Approval or potential reconsideration or reopener of any Regulatory Approval for diversion of water for the Klamath Reclamation Project subject to such diversion limitations, they will consider whether (i) measures to increase water supply in Upper Klamath Lake as provided in Section 17.2 are implemented as provided therein,

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- (ii) the appropriate Parties have implemented or are implementing all other relevant obligations and measures under this Agreement for the protection of the affected resources, and
- (iii) there are any reasonably available alternatives, outside of the Klamath Reclamation Project, to achieve the Fisheries benefits of the diversion limitations.

iii. **Applicable Law for Regulatory Approvals of Diversion Limitations.**

The preceding subsections provide general guidance to Regulatory Agency Parties responsible for Regulatory Approvals of the diversion limitations provided in Appendix E-1, other than approvals of Appendix E-1 itself by the Adjudicator in the Klamath Water Adjudication or the Circuit Court as applicable. Sections 21 – 24, including specifically Section 21.4, state further requirements specific to the Endangered Species Act and other Applicable Law for the diversion limitations.

B. Obligations of Other Parties.

Each Party other than Federal and State Public Agency Parties agrees as follows.

i. **Recital.**

The Parties have negotiated this Agreement to achieve peace on the river and end conflict that has persisted related to the Klamath Reclamation Project.

ii. **Support for Regulatory Approvals of Diversion Limitations.**

- (1). Each such Party shall support the issuance of Regulatory Approvals for diversion of water for the Klamath Reclamation Project subject to the diversion limitations identified in Appendix E-1, including the treatment of unforeseen or other changed circumstances stated in Section 20.3.1.A.
- (2). This Agreement is intended to establish a package of obligations and Timely implementation thereof, resulting in actions that address instream resources that are or may be protected under Applicable Law

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and that are intended to achieve the Fisheries purposes set forth in Section 9.2.1.

- (3). The Parties' objective is that any action that would potentially reduce the quantity of water for diversion, use and reuse in the Klamath Reclamation Project, beyond the limitations provided in Appendix E-1, will be a last and temporary resort to prevent jeopardy under the Endangered Species Act or other prohibited impact under other Applicable Law.

iii. **Assurances Before Diversion Limitations Are In Effect.**

Before Appendix E-1 is in effect as provided in Section 15.3.1.A or 2017, whichever is earlier, a Party other than Federal and State Public Agency Parties shall not seek to enforce Applicable Law to impose limitations on the water quantity for diversion, use, and reuse in the Klamath Reclamation Project, unless:

- (1). The Party has certified that the diversion of water is greater than would result from the limitations under Appendix E-1, or is not Consistent with the goals and other provisions of this Agreement; and
- (2). The Party has certified that Applicable Lead Parties are timely implementing the actions in the Upper Basin Water Rights Retirement Program under Section 16.2.2, the Interim Flow and Lake Level Program under Section 19.4, the Phase I Restoration Plan under Section 10.1, and other related actions contemplated under this Agreement; or in the event of non-performance, such Party has made maximum reasonable efforts to correct such non-performance as provided in Section 3.2.4.B; and
- (3). The Party has accounted for any evaluation the TAT has completed pursuant to Section 12.2.1 through 12.2.3 on the effects of any actions under this Agreement that have been implemented; and
- (4). The Party has considered reasonably available alternatives within its ability to enforce Applicable Law, outside of the Klamath Reclamation Project, where such enforcement would benefit the Fisheries

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or other aquatic resource of interest, and has concluded that such alternatives are not reasonably likely to provide timely or effective relief; and,

- (5). The Party believes that the quantity of water diverted for use and reuse in the Klamath Reclamation Project may result in jeopardy of listed Species under the Endangered Species Act or other prohibited impact to the natural resources of the Klamath Basin under Applicable law; and,
- (6). Such Party provides Notice to all other Parties of its belief under paragraph (5) and of its compliance with paragraphs (1) through (4) above, and completes the Dispute Resolution Procedures of Section 6 including the continuing obligation (notwithstanding the prior efforts described in this subsection) to consider reasonable alternatives to such enforcement. The Dispute Resolution Procedures, in addition to other requirements of this Agreement, shall include the Party's certification that it has complied with paragraphs (1) through (4) above; and,
- (7). In the event the Party files an action, the Party complies with all obligations as set forth in Section 3.2.4.

iv. **Assurances Once Diversions Limitations Are In Effect.**

After Appendix E-1 is in effect as provided in Section 15.3.1.A or after 2017, whichever is earlier, a Party other than Federal and State Public Agency Parties shall not seek to enforce Applicable Law to impose further limitations on the water quantity for diversion, use, and reuse in the Klamath Reclamation Project, beyond the limitations that result from the application of Appendix E-1, unless:

Deleted: Section 15.1 and

- (1). The Party has certified that the applicable parties are timely implementing the actions in the Upper Basin Water Rights Retirement Program under Section 16.2.2, wetlands reconnection under Section 17.2, additional storage under Section 17.3, Interim Flow and Lake Level Program under Section 19.4, the Restoration Plan under Section 10.1 - 10.2, and related actions contemplated under this Agreement;

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or, in the event of non-performance, such Party has made maximum reasonable efforts to correct any nonperformance as provided in Section 3.2.4.B; and,

- (2). Applicable after the issuance of the Findings of Fact and Order of Determination in the Oregon Water Adjudication, the Party has requested that the Klamath Tribes and United States, individually and severally, make water right calls under water rights that they hold for instream use not affecting diversion, use, or reuse of water by the Klamath Reclamation Project; and,
- (3). The Party has taken into account any evaluation the TAT has completed pursuant to Sections 12.2.1 through 12.2.3 on the effects of any actions contemplated by this Agreement that have been implemented; and,
- (4). The Party has considered reasonably available actions within its ability to enforce Applicable Law, outside of the Klamath Reclamation Project, where such enforcement would benefit the Fisheries or other aquatic resource of interest, and has concluded that such alternatives are not reasonably likely to provide timely or effective relief; and,
- (5). Notwithstanding the representations on Effective Date in Section 20.3.1.B.ii, and after consideration of the effects of any such actions that have been implemented, the Party then believes that the water quantity of diversion, use and reuse in the Klamath Reclamation Project may result in jeopardy of listed Species under the Endangered Species Act or other prohibited impact to the natural resources of the Klamath Basin under other Applicable Law; and,
- (6). Such Party provides to all Parties of its belief under paragraph (5) and of its compliance with paragraphs (1) through (4) above, and completes the Dispute Resolution Procedures of Section 6, including the continuing obligation (notwithstanding the prior efforts described above) to consider reasonable alternatives to such enforcement. The Dispute Resolution Process, in addition to other

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requirements of this Agreement, shall include a Party's certification that it has complied with paragraphs (1) through (4) above; and,

- (7). In the event the Party files an action, the Party complies with all obligations to cure as set forth in Section 3.2.4.

v. **Concurrent Process in Emergencies.**

This provision shall not be interpreted as prohibiting any statutory notice, nor shall it prohibit any filing needed to protect against a statute of limitations. If necessary to meet filing deadlines or respond to an emergency situation, these filings may be done concurrently with the notice and Dispute Resolution described above.

vi. **Limitations.**

Nothing in this subsection B shall be construed to establish a right to seek limitation on diversion and use and reuse of water that does not exist under Applicable Law.

20.4. Reservations.

20.4.1. Reservation of Rights by the Tribes.

The Tribes hereby reserve their rights to enforce any Regulatory Approval, including biological opinions under the Endangered Species Act, contemplated by and Consistent with this Agreement under Applicable Law. The obligations of Section 20.3.B.iii (1) through (4), and iv (1) through (4), do not apply to such enforcement; *provided* that Section 7.4.2 is applicable.

Further, nothing in this Agreement shall preclude any Tribe from pursuing or obtaining authority under 33 U.S.C. sections 1377(e) nor limit its obligations under any such authority.

20.4.2. Water Rights.

None of the terms of Sections 20 – 24 apply to the OWRD's authority to determine and administer water rights or relate to determinations to be made in the Klamath Basin Adjudication, or SWRCB's authority to determine and administer water rights.

20.4.3. No Implied Existence of Regulatory Authority.

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Nothing in Sections 20 – 24 is intended to imply the existence of regulatory authority or obligations, or rights to enforce Applicable Law or Regulatory Approvals, that do not currently exist.

20.5. Funding.

The Parties shall support authorizations and appropriations of funds, in the amount of \$47.5 million, as estimated in Appendix B-2, to implement the Regulatory Assurances Program for the first ten years after the Effective Date.

21. Federal Endangered Species Act.

21.1. Section 7 Consultation.

21.1.1. Measures to Increase Water Supply in Upper Klamath Lake.

Federal agencies responsible for the following measures to increase water supply in Upper Klamath Lake as provided in Section 17.2 shall consult with FWS and/or NMFS as applicable under ESA section 7 and implementing regulations (50 C.F.R. Part 402):

- A. Williamson River Delta Project as provided in Section 17.2.1;
- B. Barnes Ranch/Agency Lake Project as provided in Section 17.2.2;
- C. Wood River Ranch Restoration Project as provided in Section 17.2.3; and
- D. Upper Basin Water Right Retirement Program as provided in Sections 17.2.4 and 16.

21.1.2. Water Deliveries to Klamath Reclamation Project.

At an appropriate time determined with consultation with KWAPA prior to KWAPA's completion of all actions identified in the On-Project Plan necessary for the implementation of the Plan as provided in Section 15.2.2.B.ii, Reclamation shall submit to NMFS and FWS a request for reinitiation of formal consultation and any other information necessary under ESA section 7 and implementing regulations (50 C.F.R. Part 402) for Reclamation's proposed action of operation of the Klamath Reclamation Project Consistent with the limitations on diversion of water from Upper Klamath Lake and the Klamath River as provided in Appendix E-1 and any other applicable provisions of this Agreement, unless the effects of such action have already been adequately considered in a biological opinion. Reclamation's requests to NMFS and FWS for reinitiation of formal consultation are intended to seek a decision on whether to issue a biological

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opinion and incidental take statement for such Klamath Reclamation Project operations for the period until a decision on whether to issue an incidental take statement for Reclamation and an incidental take permit for KWAPA as provided in Sections 21.2 and 21.3; provided that consultations under Section 21.1.2 may, if appropriate, occur concurrently with consideration of an Incidental Take Permit under Section 21.2.

21.1.3. NMFS and FWS Biological Opinions.

After receipt of the request for reinitiation of formal consultation and necessary information as described in the preceding subsection, NMFS and FWS shall each prepare and issue a biological opinion on the proposed action as provided under ESA section 7 and implementing regulations. In preparing such biological opinions, NMFS and FWS shall give appropriate consideration to the measures listed in Section 21.1.1 as they relate to Reclamation's proposed action and Consistent with ESA section 7 and implementing regulations at the time.

21.2. Section 10 Incidental Take Permit.

21.2.1. Section 10(a)(1)(B) Permit for Listed and Unlisted Species.

Party applicants shall include KWAPA and any other non-Federal Parties who may incidentally take ESA listed Species and/or who seek regulatory assurances under this Agreement and the ESA for incidental take of currently unlisted Species based on effects of actions that result from implementation of this Agreement. Party applicants shall either (i) use a General Conservation Plan(s) as provided below, or (ii) fund and develop a Habitat Conservation Plan(s) as provided below, and provide any other information and documents necessary to apply to NMFS and FWS for an incidental take permit(s) under ESA section 10(a)(1)(B) and implementing regulations for such listed and unlisted Species. KWAPA's proposed action for purposes of this application shall include operation of the Klamath Reclamation Project Consistent with the limitations on diversion of water from Upper Klamath Lake and the Klamath River as provided in Section 15.1 and Appendix E-1 and any other applicable provisions of this Agreement. Such applications for incidental take permits using either a General Conservation Plan(s) or Habitat Conservation Plan(s) will be limited to addressing the non-Federal applicants' actions that occur in that portion of the Klamath River and its tributaries above the current site of Iron Gate Dam. Because effects of such actions may cause incidental take both above and below the current site of Iron Gate Dam, these applications shall address any effects of such actions on such listed and unlisted Species both above and below the current site of Iron Gate Dam. The Parties understand that an application by KWAPA and/or other Klamath Reclamation Project interests for a Section 10 Habitat Conservation Plan shall embrace a period substantially beyond the term of the Agreement under Section 1.6.

21.2.2. General Conservation Plan for Use in Application for Section 10(a)(1)(B) Permit.

A. Development of a General Conservation Plan.

- i. NMFS and FWS shall lead the development of a General Conservation Plan(s) under ESA section 10(a)(1)(B), consistent with NMFS and FWS' implementing regulations and policy, including the "Five Point Policy" (65 Fed. Reg. 35242) (June 1, 2000).
- ii. The General Conservation Plan(s) will include: (1) a conservation strategy with biological goals and objectives; (2) use of adaptive management as a tool to address uncertainty in the conservation of covered Species; (3) a monitoring program and reports to provide necessary information to assess compliance, project impacts, progress toward biological goals and objectives, and information for adaptive management; and (4) opportunity for applicant and public participation.
- iii. For purposes of eligibility of Off-Project Customers for the Power Resources Program, as provided in Section 25.3.1.B, the Parties shall support provision that the geographic scope of the General Conservation Plan(s) will be at least co-extensive with the scope of Agreement dated 1956, between the California Oregon Power Company, predecessor in interest of PacifiCorp, and Klamath Basin Water Users Protective Association, as the predecessor in interest of the Klamath Off-Project Water Users Association. To the extent that it sufficiently covers actions on individual properties, this General Conservation Plan(s) will be available for the use of any applicant to include with any other information and documents necessary to apply for an incidental take permit(s) under ESA section 10(a)(1)(B) and implementing regulations.
- iv. In development of the General Conservation Plan(s), NMFS and FWS shall collaborate with interested Tribes, and NMFS and FWS shall coordinate with other interested Parties, applicants, and other stakeholders.

B. Standards for the General Conservation Plan.

In addition to standards in ESA section 10 and NMFS and FWS' implementing regulations and policy, including use of best scientific

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and commercial data available, NMFS and FWS' development and implementation of the General Conservation Plan(s), and decision(s) on whether to issue incidental take permits, shall be done in coordination with the Fisheries Restoration and Reintroduction Plans specified in Sections 10 and 11.

C. Covered Activities and Potential Measures for the General Conservation Plan.

Activities covered under the General Conservation Plan(s) may include, but not be limited to, diversion and application of water, agricultural operations, grazing, road construction and maintenance, vegetation management, timber management, and actions associated with restoration, management, and maintenance of the riparian corridor. Measures for minimization and mitigation of incidental take under the General Conservation Plan(s) will be based on NMFS and FWS' evaluation, in cooperation with applicants, of site-specific conditions, and may include, but not be limited to, screening of diversions, management of livestock access, protection and enhancement of riparian vegetation, fish passage improvement, culvert replacement, and reduction of erosion and sedimentation from streambanks and roads.

21.2.3. Alternative to Develop Habitat Conservation Plans for Use in Application for Section 10(a)(1)(B) Permit.

As an alternative to the General Conservation Plan(s) described above, Party applicants may fund and develop Habitat Conservation Plan(s) for use with other information and documents necessary to apply for an incidental take permit(s) under ESA section 10(a)(1)(B) and implementing regulations for such listed and unlisted Species. In that case, NMFS and FWS shall assist in the development of any such Habitat Conservation Plan(s) and related documents by providing outreach and guidance about statutory, regulatory, and policy standards and by facilitating development of associated application packages that meets applicable standards. In addition, NMFS and FWS shall, without creating new obligations beyond Applicable Law, encourage applicants to develop any such Habitat Conservation Plan(s) Consistent with the Fisheries Plans specified in Sections 10, 11, and 12, as applicable.

21.2.4. Alternative to Apply for Section 10(a)(1)(A) Permit.

As an alternative to the previous subsections regarding application for an ESA section 10(a)(1)(B) Permit for listed and unlisted Species, if NMFS or FWS, in coordination with CDFG and ODFW, determine that a permit(s) under ESA section 10(a)(1)(A) and related processes is available under the circumstances and could provide such parties with comparable regulatory assurances under the ESA,

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Party applicants may apply for a permit(s) under ESA section 10(a)(1)(A) and related processes. Under this alternative, all obligations listed in this Section 21.2, as applicable, shall apply to development of an application for and the decision on a permit(s) under ESA section 10(a)(1)(A) and related processes.

21.2.5. Participation of Other Parties and the Public.

Party applicants shall support reasonable opportunities for participation of other Parties to this Agreement in development of the General Conservation Plan(s) and any Habitat Conservation Plan(s). In addition to public notice and comment required by ESA section 10(c) and NMFS and FWS implementing regulations (50 C.F.R. §§ 222.303 and 17.22, respectively) for a decision(s) on whether to issue any incidental take permit(s), NMFS and FWS shall provide reasonable opportunities for public participation in development of the General Conservation Plan(s) and encourage applicants to include participation by interested Tribes and provide reasonable opportunities for public participation in development of any Habitat Conservation Plan(s) consistent with NMFS and FWS' policy, including the "Five Point Policy" (65 Fed. Reg. 35242, June 1, 2000). Before reaching a decision on whether to issue an incidental take permit as described in Section 21.2, NMFS and FWS shall seek and consider input from interested Tribes on each application.

21.2.6. Changed Circumstances.

The General Conservation Plan and any Habitat Conservation Plan(s) shall include conservation and mitigation measures Consistent with this Agreement to respond to reasonably foreseeable changed circumstances to the maximum extent practicable and consistent with the ESA and NMFS and FWS' implementing regulations.

21.2.7. Funding.

The Parties shall support authorizations and appropriations of funding, in the amount estimated in Appendix B-2, for development of the General Conservation Plan; actions necessary for review of incidental take permit applications; actions necessary for issuance of incidental take permits; and measures for satisfaction of the incidental take permit issuance criteria that are not funded under other provisions of this Agreement, including measures as described in Section 21.2 for minimization and mitigation of incidental take, and including monitoring programs required for incidental take permits. NMFS and FWS shall coordinate with other Parties to determine any other sources of funding available for the actions described above in this subsection.

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21.2.8. Duty to Support.

All Parties shall support efforts to seek such incidental take permit(s) and related processes with the goal of a decision(s) on whether to issue such permit(s) as soon as practicable but not later than one year before reintroduction of anadromous fish above Iron Gate Dam.

21.2.9. Dispute Resolution.

Parties participating in the development of the General Conservation Plan or any Habitat Conservation Plan(s) shall attempt to resolve any disputes pursuant to the Dispute Resolution Procedures in Section 6.5. NMFS and FWS shall report to the Parties annually or otherwise as necessary pursuant to Section 6.5 regarding any unresolved disputes or delays in development of the General Conservation Plan or any Habitat Conservation Plan(s) or delays in subsequent procedures necessary to reach a decision(s) on issuance of the incidental take permit(s) that may result in failure to meet the goal of a decision(s) on whether to issue such permits not later than one year before reintroduction of anadromous fish above Iron Gate Dam.

21.3. Integration of Section 7 and Section 10 Processes.

Consistent with NMFS and FWS' implementing regulations and guidance, NMFS and FWS shall include analysis of Reclamation's operation of the Klamath Reclamation Project and other Federal agency actions as described in Section 21.1.1 as an element of the intra-Service ESA section 7 consultation on the decision(s) on whether to issue any such incidental take permit(s) as described in Section 21.2 and Reclamation and other Federal action agencies shall provide information as necessary to accommodate this analysis. This consultation is intended to result in decisions on whether to issue an incidental take permit(s) for KWAPA and any other non-Federal permit applicants.

21.4. Reconsideration of Limitations on Diversions.

In the event that:

21.4.1. NMFS or FWS determine in accordance with 50 C.F.R. §§ 402.14(i), 222.307(c), or 17.22(b)(2), as applicable, that Reclamation's or KWAPA's actions related to operation of the Klamath Reclamation Project, as described in Sections 21.1 and 21.2, are insufficient to minimize incidental take of Species considered under Sections 21.1 and 21.2;

21.4.2. NMFS or FWS determine that Reclamation's operation of the Klamath Reclamation Project or NMFS and/or FWS' issuance of any incidental take permit to KWAPA, as described in Sections 21.1 and 21.2, are likely to jeopardize the continued existence of listed Species or result in destruction or adverse modification of critical habitat; or

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- 21.4.3.** Reclamation, NMFS, and/or FWS determine that reinitiation of formal consultation in accordance with 50 C.F.R. § 402.16 may be necessary on Reclamation's operation of the Klamath Reclamation Project or NMFS and/or FWS' issuance of any incidental take permit to KWAPA, as described in the Sections 21.1 and 21.2:

before seeking any further limitations on diversion, use and reuse of water related to the Klamath Reclamation Project beyond the limitations provided in Appendix E-1 and any other applicable provisions of this Agreement, NMFS and FWS will consider, to the maximum extent consistent with the ESA and any other Applicable Law, whether (i) measures to increase water supply in Upper Klamath Lake as provided in Section 17.2 are implemented as provided therein, (ii) the Parties have implemented all other relevant obligations under this Agreement for the protection of the affected resources, and (iii) there are any reasonably available alternative or additional habitat restoration actions or alternative sources of water.

21.5. Reservation.

By entering into this Agreement, NMFS and FWS are not prejudging the outcome of any process under the ESA and NMFS and FWS implementing regulations, and NMFS and FWS expressly reserve the right to make determinations and take actions as necessary to meet the requirements of the ESA and implementing regulations.

21.6. Integration of Essential Fish Habitat Consultations.

Information prepared by a Federal agency for consultation under the ESA as provided in 50 C.F.R. § 402.14 may also serve as the Essential Fish Habitat (EFH) assessment under the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations, provided it is clearly labeled as such and includes all of the required components of an EFH assessment under 50 C.F.R. § 600.920(e). In that case, NMFS shall integrate the results of the ESA and EFH consultations in a single transmittal from NMFS to the Federal agency. The Federal agency shall respond as provided in 50 C.F.R. § 600.920(k) to any EFH conservation recommendations provided by NMFS. The response must include a description of proposed measures for avoiding, mitigating, or offsetting the impact of the proposed activity on EFH and an explanation of reasons if the Federal agency does not follow any of NMFS' EFH conservation recommendations. In addition, NMFS shall integrate EFH issues in its development of the General Conservation Plan described in Section 21.2. By entering into this Agreement, NMFS is not prejudging the outcome of any EFH consultation, and NMFS expressly reserves the right to make determinations and take actions as necessary to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations.

22. Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act.

22.1. Applicants.

Parties or Participants expecting that their actions implementing the Agreement may “take” bald eagles may continue to include bald eagles as “unlisted covered Species” in HCPs developed for multiple Species as described in Section 21.2.

22.2. Actions by FWS.

The FWS shall continue to defer prosecution under the Eagle Act and MBTA for incidental take of bald eagles if such take is in compliance with the terms and conditions of an incidental take permit issued under the authority of ESA section 10(a)(1)(B). The Service shall work closely with Parties or Participants who are uncertain of project impacts to bald eagles to determine if the proposed project adheres to the Service’s National Bald Eagle Management Guidelines, which contain recommendations for avoiding bald eagle disturbances, and thus to determine if take authorization will be required. For actions that may result in “take” of bald eagles, for which development of an HCP is inappropriate (actions with a federal nexus or actions for which the bald eagle is the only affected Species), compliance with the Service’s authorization process for take under the Eagle Act shall be required.

22.3. Reservation of Authority.

By entering into this Agreement, FWS is not prejudging the outcome of any process under the Eagle Act, MBTA, and its implementing regulations. FWS expressly reserves the right to make determinations and take actions as necessary to meet the requirements of the Eagle Act, MBTA, and its implementing regulations.

23. California Laws.

23.1. California Endangered Species Act.

23.1.1. Application.

Parties and Participants seeking coverage under the California Endangered Species Act (CESA), (Fish and Game Code sections 2050 *et seq.*), for incidental take of CESA listed Species within the Geographic Scope may:

- A. Apply to the CDFG for an incidental take permit pursuant to Fish and Game Code section 2081;
- B. Request a consistency determination pursuant to Fish and Game Code section 2080.1, with an incidental take statement pursuant to ESA section 7(a) or an incidental take permit pursuant to ESA section 10; or

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- C. Apply for incidental take authorization pursuant to a Natural Community Conservation Plan as provided in Fish and Game Code sections 2800 *et seq.*

23.1.2. Coordination.

A Party or Participant who intends to request a consistency determination pursuant to Fish and Game Code section 2080.1 shall notify the CDFG when a request for initiation or reinitiation of formal consultation is made or an application for a HCP is filed. In such event, NMFS, FWS and CDFG shall coordinate and communicate during the development of the HCP so as to better assure that any HCP will also meet the criteria listed under CESA.

23.1.3. Geographic Scope.

The geographic scope of the California Regulatory Assurances is limited to the Klamath River above the current location of Iron Gate Dam.

23.2. California Fully Protected Species.

23.2.1. Recital.

The Lost River Sucker, Golden Eagle and southern Bald Eagle are listed as fully protected under Fish and Game Code section 5515(b)(4) and Fish and Game Code section 3511(b)(7) and 3511(b)(10). Under such law, the Lost River Sucker, Golden Eagle and southern Bald Eagle may not be taken or possessed at any time. The Parties acknowledge that implementation of this Agreement may create the possibility for the take of Lost River Suckers, Golden Eagles, or southern Bald Eagles.

23.2.2. New Legislation.

Upon the Effective Date, CDFG will provide draft legislation, not yet reviewed or approved by the Executive Branch, substantially in the form of Appendix A-2, regarding a limited authorization to take Lost River Suckers, Golden Eagles or southern Bald Eagles, contingent upon the fulfillment of certain conditions.

23.3. Reservation of Authority.

No California agency, by virtue of execution of this Agreement, is pre-determining the outcome of any process under state law, and all rights are expressly reserved for any state agency to make determinations and take actions as necessary to meet the requirements of state law. Nothing in this section implies the existence of regulatory authority that does not currently exist.

24. Oregon Laws.

24.1. Water Quality.

24.1.1. New Designated Use.

Before proposing any new designated use due to Reintroduction or earlier if determined appropriate for a water body, ODEQ shall give good faith consideration to any request that it exercise its discretion to perform a Use Attainability Analysis (UAA) consistent with 40 C.F.R. Part 131 Subpart B, ODEQ's *Use Attainability Analysis and Site Specific Criteria Internal Management Directive* (April 3, 2007) and any then-applicable regulation or guidance. ODEQ shall provide public notice and opportunity to comment on any proposed new designated use in accordance with then-applicable Oregon Administrative Rules.

24.1.2. Agriculture.

Agricultural operations complying with agricultural water quality area management plans and rules administered by the Oregon Department of Agriculture, and with rule amendments, if any, adopted to implement the Fisheries Program, shall not be subject to further water quality requirements under Oregon Revised Statutes chapter 468B or 568, if any, arising solely from reintroduction and the designation or presence of new fish beneficial uses.

24.1.3. Forestry.

Private forestry operations complying with water protection rules administered by the Oregon Department of Forestry, and with rule amendments, if any, adopted to implement the Fisheries Program, shall not be subject to further water quality requirements under Oregon Revised Statutes chapter 468B or 527, if any, arising solely from reintroduction and the designation or presence of new fish beneficial uses.

24.1.4. Alternative Measures.

The Parties shall support all reasonably available alternative or additional water quality measures before considering any action for the purpose of water quality compliance that would reduce water supplies beyond the limitations provided in this Agreement.

24.1.5. Existing Obligations.

Nothing in this section is intended to affect existing or pending regulatory obligations not arising from reintroduction, including but not limited to

implementation of load and waste load allocations identified in the pending Klamath River TMDL.

24.2. Fish Passage and Screening.

Parties performing necessary obligations under this Agreement, or Participants who commit in an enforceable form to cooperate in the implementation of measures or obligations of the Fisheries Program or Section 16.3, shall not be required to fund any further fish passage or screening requirements under Oregon Revised Statutes chapter 498 or 509 arising solely from reintroduction. Nothing in this section is intended to affect existing or pending regulatory obligations not arising from reintroduction.

24.3. Reservations.

No state agency of the State of Oregon, by virtue of execution of this Agreement, is predetermining the outcome of any process under state law, and all rights are expressly reserved for any state agency to make determinations and take actions as necessary to meet the requirements of state law. Nothing in this Section 24 shall imply the existence of regulatory authority that does not currently exist.

**PART VI.
POWER RESOURCES PROGRAM**

25. Overview of Power Resources Program.

25.1. Purpose.

The purpose of this program is to provide power cost security to assist in maintaining sustainable agricultural communities in the Upper Klamath Basin, including water efficiency and conservation practices in the Klamath Reclamation Project and power for water management by and for National Wildlife Refuges. This section includes a number of actions that are designed to maintain a power cost target level of approximately three cents (2007) per kilowatt-hour, delivered, for eligible customers as provided in Section 25.3. The Parties do not intend that this program constitute or result in rate discrimination within the meaning of Applicable Law.

25.2. Program Elements.

The Power Resources Program consists of three elements: (i) Interim Power Sustainability; (ii) Federal "Project Use" Power in the Klamath Reclamation Project; and (iii) Long-Term Renewable Power. The combined benefits of these three program elements are intended to ensure power cost security for all eligible customers as provided in Section 25.3. The following provisions have been developed to maintain the power cost target in Section 25.1. The Parties are committed to full accomplishment of these

provisions, while recognizing that the actual realization of the specific power cost target depends on several factors and variables and is not guaranteed by the Agreement.

25.3. Eligibility.

25.3.1. Interim Power Sustainability and Long-Term Renewable Power Programs.

A. On-Project Customers.

On-Project Customers, as defined above, shall be eligible to receive the benefits of the Interim Power Sustainability, and Long-Term Renewable Power Programs.

B. Off-Project Customers.

- i. Until the Water Rights Retirement Program pursuant to Section 16.2, the Restoration Program pursuant to Section 10, and the Regulatory Assurances pursuant to Sections 21.2 are all available, each Off-Project Customer, as defined above, shall be eligible to receive the benefits of the Interim Power Sustainability and Long-Term Renewable Power Programs, *provided* such customer has enrolled in the Interim Power Sustainability and Long-Term Renewable Power Program, as appropriate, and has agreed to support this Agreement and the Hydropower Agreement. For this purpose, the Klamath Basin Coordinating Council shall adopt procedures for enrollment, including specification of the obligations of an enrollee to support these agreements, within three months of the Effective Date.
- ii. After the Water Rights Retirement Program pursuant to Section 16.2, the Restoration Program pursuant to Section 10, and the Regulatory Assurances pursuant to Sections 21.2 are all available, any Off-Project Customer shall be eligible to receive the benefits of the Interim Power Sustainability and Long-Term Renewable Power Programs, *provided* such customer has enrolled in Water Rights Retirement Program, the Restoration Program, or the applicable assurance under Section 21.2, or if not eligible for any of these programs or assurances, has enrolled in the Interim Power Sustainability and Long-Term Renewable Power Program, as appropriate, subject to criteria and procedures to be defined by the Klamath Basin Coordinating Council.

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25.3.2. Federal Power Program.

Eligibility shall be as defined in Section 27.

25.4. Funding.

The Parties shall support authorizations and appropriations of funds, in the amount of \$41.7 million, as estimated in Appendix B-2, to implement the Power Resources Program for the first ten years after the Effective Date.

25.5. Program Management.

25.5.1. Management Board.

KWAPA and representative of the Upper Klamath water users signatory organization(s), shall create an entity known for the purposes of this Agreement as the Management Board on or before February 1, 2008, to administer the Power Resources Program. The Board will develop its operating protocols, including decision-making protocol, by July 1, 2008.

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25.5.2. Authorities.

The Management Board shall have the authority to spend available moneys under the Power Resources Program according to the Guidelines described below, and may hire consultants, staff, and advisors and may authorize feasibility and related studies and analyses. The existence of the Management Board and the Energy Efficiency and Renewable Resources Program will not preclude KWAPA or KOPWU, UKWUA, or other Parties from pursuing separate efforts related to power using funds other than the funds under this Agreement. The Management Board will seek consensus on decisions, if consensus is not possible it will act by majority vote.

25.5.3. Guidelines for Power Resources Program.

On or before December 1, 2008, the Management Board shall develop and approve Guidelines. The Guidelines shall include the following:

- A. The criteria and standards for all expenditures under the Power Resources Program;
- B. Appropriate means to ensure that the revenues generated by any investments are used for proper purposes;
- C. Financial accounting standards to track expenditures that are standard in the electric industry;

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- D. Binding provisions to be used to resolve any disputes in the implementation of the Power Resources Program.

25.5.4. Administration.

A. Distributing Funds to Eligible Customers.

The Parties shall support any feasible administrative means for distributing funds to achieve the power cost targets for individual eligible customers. Specifically, the Parties shall support mechanisms and any necessary Regulatory Approvals which would enable PacifiCorp to apply credits to the bills of eligible customers consistent with the directions provided by the Management Board.

B. Independent Entity.

If the Management Board is not able to enter into an acceptable arrangement with PacifiCorp, it will contract with an independent entity to hold and disperse the funds in the Power Resources Program to meet the power cost target.

25.5.5. Reporting.

The Management Board shall create an annual financial report on the progress and the financial condition of the Power Resources Program. The reports shall be submitted to the Secretary and Reclamation and shall be made available to any other interested Party.

25.6. Regulatory Approvals.

The Parties shall use their best efforts to support whatever Regulatory Approvals may be required to implement, administer, and otherwise maximize the efficiency of the Power Resources Program.

25.7. Net Metering.

The Parties anticipate that net metering arrangements, including aggregation of loads for net metering, may be required as part of the Power Resources Program (including but not limited to solar photovoltaic systems). Consistent with the general provisions of Section 3.2, the Parties agree to cooperate in the development of net metering arrangements with PacifiCorp and to support any Regulatory Approvals that may be required for such arrangements.

26. Interim Power Sustainability Program.

26.1. Purpose.

The purpose of the Interim Power Sustainability Program is to maintain the power cost target for the eligible customers as provided in Section 25.3.1, while the remaining program elements are implemented.

26.2. Duration.

The Interim Power Sustainability Program shall be effective as of January 1, 2008 and terminate on December 31, 2010, or at an earlier date if the other Power Resource Program elements have achieved the power cost target level.

26.3. Implementation.

The Management Board shall implement the Interim Power Sustainability Program Consistent with Section 25.5.4.

27. Federal Power Program for Specified Loads in Klamath Reclamation Project.

27.1. Program Purpose.

27.1.1. General.

The purpose of this program is to obtain Federal Project Use Power/Reserve Power to serve all meters and power loads in the Klamath Reclamation Project that are authorized by Applicable Law.

27.1.2. Authorizing Legislation.

The Parties agree that the meters and loads eligible for this program element shall be identified and defined in the federal Authorizing Legislation and support the following term in the federal Authorizing Legislation: "The Secretary of the Interior is hereby authorized and directed to make necessary arrangements for the acquisition, transmission and delivery of Project Use (or Reserve) Power to the federal pumping plant facilities located associated with the Klamath Reclamation Project in Oregon and California. For the purposes of this act, "federal pumping plant facilities" shall include facilities that are used to provide, deliver, drain or transfer water, within or from land constituting the area of the Klamath Reclamation Project as defined in the Klamath Basin Agreement; provided, however, that, such "federal pumping plant facilities" shall not include privately owned irrigation facilities used solely for the purpose of applying water to the land or crops for irrigation purposes unless operated by a contractor of the Bureau of Reclamation whose contract provides that the contractor have a pumping facility constructed by the contractor in order to utilize water conveyed through

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Klamath Reclamation Project facilities. Power for these federal pumping plant facilities shall be provided as a first preference from the Federal Columbia River Power System hydroelectric facilities at a delivered cost not to exceed the cost of project use or reserve power use loads at the Grand Coulee Project. The Administrator shall deliver such power to the Malin or Captain Jack Substations in Oregon and shall, if requested, provide power delivery lines and facilities or contracts to complete the power delivery to the federal irrigation pumping plant facilities of the Klamath Reclamation Project.”

27.2. Program Scope.

27.2.1. Eligible Meters and Power Loads.

The Parties agree that meters and power loads eligible for this program element shall be identified and defined in the Authorizing Legislation attached hereto as Appendix A-1.

27.2.2. Excluded Meters.

Any meters and loads not authorized in the Authorizing Legislation attached hereto shall not be eligible for Project Use Power/Reserve Power pursuant to this Agreement.

27.3. Program Elements.

27.3.1. Cooperation.

The Parties shall support conditions in the Hydropower Agreement that PacifiCorp agree to a transition of authorized irrigation loads and meters within the Klamath Reclamation Project from power service from PacifiCorp to direct service from federal Project Use Power/Reserve Power.

27.3.2. Transmission.

Consistent with Applicable Law, the Secretary of the Department of the Interior shall establish any necessary arrangements for the transmission of Federal Project Use Power/Reserve Power directly to the California Oregon Border (“COB”) (including either the Malin or Captain Jack substations located in Klamath County, Oregon).

28. Investment in Energy Efficiency and Renewable Resource Generation.

28.1. Program Purpose.

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The purpose of this program is to: (i) increase power efficiency of the On-Project Customers and Off-Project Customers; and (ii) generate renewable energy. These actions will be designed to maintain the power cost target for Eligible Parties.

28.2. Financial and Engineering Plan.

The Management Board shall commission a consultant to develop a Financial and Engineering Plan to determine the optimal implementation of the Power Resources Program. The plan will be submitted to the Secretary for approval by December 31, 2008. In evaluating the plan, the Secretary shall consider: (i) whether the plan reasonably meets the stated purposes of Sections 25.1 and 28.1; and (ii) whether the plan is Consistent with remaining provisions of this Agreement. The Management Board shall adopt the Plan within 45 days of approval. Upon adoption, the Management Board shall implement the plan. Any amendment shall be approved by the Secretary.

**PART VII.
COUNTIES' MITIGATION AND BENEFITS PROGRAM**

29. Overview of Counties' Impacts Mitigation and Benefits Program.

29.1. Recitals.

- 29.1.1.** Dam Removal (including all preparatory and other activities related to the removal of the physical works of the dams) will be an unprecedented effort that may have impacts to Klamath County, Oregon, and Humboldt and Siskiyou Counties, California, and their residents.
- 29.1.2.** Physical impacts caused by Dam Removal may include: movement or discharge of sediment currently stored behind the hydropower dams, and changes in the volume and timing of flow resulting from the cessation of flow regulation by the Hydropower Project.
- 29.1.3.** Economic impacts of Dam Removal may include: reduction in property tax payments upon retirement of the Hydropower Project from utility service, other changes in property taxes and values, and changes in business activities and opportunities as a result of the cessation of hydropower flow regulation.

29.2. General Obligations.

- 29.2.1.** As provided in Sections 1.5, 8.4, and 39, the Parties are concurrently executing the Hydropower Agreement, which contains provisions acceptable to the Parties regarding public notice, insurance, performance bonding, downstream monitoring, roadway use and

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maintenance, downstream rehabilitation and maintenance, property rights protection, the City of Yreka's water system and regulatory agency conduct.

- 29.2.2.** The Parties intend and agree that the Basin Agreement and the Hydropower Agreement, together and separately, do not, except as expressly set forth herein and therein, establish, waive, or limit any right of any person to seek remedies for damages or other losses which are (i) cognizable under Applicable Law and (ii) are caused by the operation of the Hydropower Project or by Dam Removal.

29.3. Purposes.

The purposes of the program are to avoid or mitigate certain impacts the Counties and their residents may incur as a result of Dam Removal and to allow the Counties to address impacts, promote economic development and provide additional opportunities within each county for the benefit of their residents.

29.4. Funding.

The Parties shall support authorizations and appropriations of funding, in the amount determined after adjustment to the estimates in Appendix B-2, to implement the Counties Program for the first ten years after the Effective Date.

30. Klamath County.

The Parties hereby establish a Klamath County Program to achieve the purposes and objectives set forth herein.

30.1. Recitals.

Klamath County acknowledges and supports the objectives sought by the Klamath Water Users Association and the Off-Project Irrigators for agriculture within Klamath County, including (i) certainty of water delivery to the agricultural community; (ii) a favorable power cost for the irrigators; and (iii) regulatory assurances as provided in Sections 20 – 24.

30.2. Adoption and Governance.

- 30.2.1.** Klamath County shall develop and adopt a Klamath County Program and a written plan to govern the Program by ~~June 30, 2012.~~

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- 30.2.2.** A ~~Program Team~~ shall administer the program and plan. The team shall be comprised of representatives from Klamath County, the Klamath Tribes and ~~Lake County.~~ It shall adopt all necessary protocols and procedures to discharge these responsibilities.

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30.3. Approach.

The Klamath County Program shall use the following approach.

30.3.1. Economic Development.

By July 1, 2012, the Parties shall seek to secure \$500,000, in addition to the amount estimated in Appendix B-2 for this program, to undertake a study and projects for economic development associated with the restoration of the Klamath River and reintroduction of anadromous fisheries into Klamath County and the headwaters of the Klamath River in Lake County, Oregon. As part of this approach, Klamath County will seek funds from the Oregon Economic Development Department to support the studies and/or project directed toward economic development.

- A. The Klamath County Program Team shall select independent consultants and develop a study plan.
- B. The study described in Section 30.3.1.A shall use appropriate methods to determine economic development opportunities associated with fisheries enhancement, tourism and recreational development, agricultural development, alternative energy development, and the Klamath Tribes' economic development.

30.3.2. Property Taxes.

The Parties shall support authorizations and appropriations, in the amount shown in Appendix B-2, to compensate Klamath County for the loss of property tax revenues associated with: (i) reduced agricultural land values in the Klamath Reclamation Project due to a reduction of water deliveries; and, (ii) reduced agricultural land values in the areas above Upper Klamath Lake due to the surrender of significant water rights. The funds shall be dispersed to the Klamath County Treasurer by July 1, 2012.

30.3.3. Other.

Klamath County agrees not to file a claim in federal or state court, or before any administrative agency, against the State of Oregon, the State of California, any state agency, department, division or subdivision thereof, or the United States, arising from any decrease in property tax revenue or alleged business or economic losses, including property values, due to Dam Removal.

31. Siskiyou County.

The Parties establish a Siskiyou County Impact Mitigation and Benefits Program.

31.1. Approach.

31.1.1. Funding.

- A. Upon identification of an appropriate funding source, the Department of Fish and Game (the “DFG”) shall sponsor and the Parties shall support proposed legislation substantially similar to that contained in Attachment A-2.
- B. The amount of such proposed legislation sponsored by the DFG shall be its best estimate of the amount necessary to mitigate the net adverse tax impacts to Siskiyou County as a result of performing decommissioning pursuant to the Hydropower Agreement, but in no event shall such amount exceed Siskiyou County’s estimate contained in Attachment B-2 (\$20 million). Siskiyou County agrees to cooperate in the development of such best estimate and provide any of its records or information requested by DFG.
- C. If the legislation specified in 31.1.1 A has not been approved by the time of the submission of a license surrender order pursuant to the Hydropower Agreement, Siskiyou County may, at its sole discretion, immediately withdraw from this agreement or request the Parties reconvene pursuant to Section 7.3, which shall be Siskiyou sole and exclusive remedy for any breach or failure of the provisions of this Section 31.

31.1.2. Treatment of CEQA Overriding Consideration.

If a CEQA or NEPA lead agency determines that Dam Removal will cause a significant physical impact to Siskiyou County roads, infrastructure or other property and those impacts are not mitigated, then representatives of Siskiyou County and CDFG will meet and work within the public process to develop joint-recommendations to address those impacts.

31.1.3. Fishing Closure.

If Dam Removal results in the suspension or closure of fishing opportunities (including commercial and tribal) or in-river sports, representatives of Siskiyou County and CDFG will also meet to develop recommendations to address those impacts.

31.2. Certain Claims.

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- 31.2.1. Siskiyou County agrees not to file a claim in federal or state court, or before the California Board of Control or any other administrative agency, against the State of California, the State of Oregon, any state agency, department, division or subdivision thereof, or the United States, arising from any decrease in property tax revenue or alleged business or economic losses, including property values, due to Dam Removal.
- 31.2.2. Siskiyou County shall obtain a release from any entity or individual, consistent with 31.2 A, that receives any portion of the funds for economic development or other purposes.

32. Humboldt County.

32.1. Recital.

Humboldt County acknowledges and supports the objectives and provisions contained in this Agreement that addresses restoration of the Klamath watershed and fisheries.

32.2. Approach.

In recognition of the potential benefits resulting from restoration of the Klamath River, Humboldt County does not request any compensatory or economic claims in advance of the decommissioning and deconstruction activity.

- 32.2.1. If a CEQA or NEPA lead agency determines that Dam Removal will cause a significant physical impact to Humboldt County roads or infrastructure and those impacts are not mitigated, then representatives of Humboldt County and CDFG will meet to develop recommendations to address those direct impacts.
- 32.2.2. If Dam Removal results in the suspension or closure of fishing opportunities (including commercial and tribal) or in-river sports, representatives of Humboldt County and CDFG will meet to develop recommendations to address those impacts.

32.3. Certain Claims.

Humboldt County agrees not to file a claim in federal or state court, or before the California Board of Control or any other administrative agency, against the State of California, the State of Oregon, any state agency, department, division or subdivision thereof, or the United States, arising from any decrease in property tax revenue or alleged business or economic losses, including property values, due to Dam Removal.

PART VIII.

TRIBAL PROGRAM

33. Overview of Tribal Program.

33.1. Recitals.

- 33.1.1. As the original stewards of the natural resources of the Klamath River Basin, the Karuk Tribe, Klamath Tribes, and Yurok Tribe – hold special positions in the Basin. The Parties are mindful of the Tribes’ interests in, and relation to the Basin ecosystem and its fisheries.
- 33.1.2. The Parties acknowledge that the Tribes’ economic, cultural and spiritual dependence upon the natural resources of the Klamath Basin have caused the Tribes to be particularly vulnerable as those resources have become scarce. Over the past century, traditional tribal subsistence and related economies have suffered.
- 33.1.3. The Tribes have a sound and long standing history of competent resource management that provides the Tribes with special understandings of natural resource science and restoration.
- 33.1.4. Accordingly, Tribes, Public Agency Parties and other Parties acknowledge the Tribes’ essential role in the Collaborative Management necessary to implement the provisions of this Agreement.

33.2. Purposes.

The Parties support the goals of each Tribe to achieve the revitalization of tribal subsistence and related economies during the period immediately following this Agreement. The Parties support the Tribes as they strive to meet a reasonable standard of living, a standard recognized in the reservation of tribal fishing and other related rights, until the fisheries are restored such that Full Participation in Harvest Opportunities are achieved. Funding provided in these sections is, among other purposes, intended to be used to assist the Tribes in developing the capacity to participate as grantees and in the Collaborative Management of the Fisheries Program described in Sections 9 through 13 above.

33.3. Funding.

The Parties shall support authorizations and appropriations in addition to existing funds, in the amount of \$80 million as estimated in Appendix B-2, to implement the Tribal Program for the first ten years following the Effective Date.

34. Tribal Participation in Fisheries and Other Programs.

34.1. Purpose.

The Parties support proper tribal participation in the Fisheries and other programs under this Agreement. Specifically, funding provided for this purpose shall be used in each Tribe's discretion for the purposes of: (i) building each Tribe's internal capacity to participate in the Collaborative Management and restoration of the fisheries, (ii) administration of each Tribe's fisheries-related programs, and (iii) conservation management programs of habitat above Upper Klamath Lake and Klamath River.

34.2. Term of Funding.

The Parties shall support authorization and appropriation of funds, as estimated in Appendix B-2 for the first ten years after the Effective Date and thereafter for the term of the Agreement and the life of the subject agreement or as identified in an applicable provision.

34.3. Other Funding.

In the Collaborative Management of the Environmental Water and resources of the Klamath Basin, and as Consistent with Applicable Law, the Tribes shall be priority recipients of federal grants and funds for Fisheries Program described in Part III. The Tribes will remain eligible for funding associated with fisheries restoration and reintroduction programs outside the scope of this Agreement.

35. Long-term Economic Revitalization Projects.

35.1. Other Funds.

The Parties acknowledge that this Agreement addresses primarily tribal fishing and water matters, and accordingly agree that they will also support efforts by the Tribes to secure economic revitalization programs and funds such that the Tribes may achieve long-term economic self-sufficiency. Funding provided for Long-Term Economic Revitalization Projects will be used at each Tribe's discretion for development and planning of long-term economic revitalization projects.

35.2. Mazama Project.

The Parties shall support authorization and appropriation of funding, in the amount estimated in Appendix B-2, for the Mazama Forest Project in Klamath County, Oregon. The Parties agree that nothing in the development of the Mazama Forest Project, including but not limited to the Klamath Tribes' purchase of property, or the United States' designation of property as having federal trust status, will alter existing law regarding the applicability of State Water Law. The Parties agree that, notwithstanding the first sentence in Section 6, any disputes about the applicability of State Water Law shall be resolved in a court of competent jurisdiction.

36. Klamath Tribes' Interim Fishing Site.

36.1. Petition.

Within three months of the Effective Date, the CDFG, Klamath Tribes, and relevant agencies of the United States will jointly petition the California Fish and Game Commission to establish an interim fishing site in the reach of the Klamath River between Iron Gate Dam and the I-5 Bridge. The petition will provide that Chinook Salmon fishing in this reach of the river will be open to the Klamath Tribes each salmon season immediately after the hatchery at Iron Gate Dam achieves egg take goals. The provisions regulating this interim fishing site, including the definition of the interim period for this purpose, will be set forth in this joint petition. The interim fishing regulations will become effective as soon as practicable.

36.2. Alternative Procedure.

If the petition is not granted, the United States, the Klamath Tribes, and other interested Parties agree to meet and confer to develop equivalent benefits for the Klamath Tribes.

36.3. No Adverse Impact.

Any outcome under this Section 36 will not have any adverse impact upon existing harvest allocation issues among other Tribes and non-Indian interests.

**PART IX.
EXECUTION OF AGREEMENT**

37. Authority.

37.1. General.

Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents. As of the Effective Date, this binding effect applies to all obligations which legally may be performed under existing authorities. This binding effect applies to other obligations arising from new authorities arising pursuant to the Authorizing Legislation as provided in Section 3.1.1.

37.2. Public Agency Parties.

In signing this Agreement, a Public Agency Party expresses its support for the Agreement and the policies that apply to its exercise of its authorities. By such signing and as provided in Section 7.4.3, no Public Agency Party commits to any action which may result in physical environmental change.

37.3. Federal Agency Parties.

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The Federal Agency Parties shall sign a separate letter stating their support for this Agreement as of the Effective Date.

38. Counterparts.

This Agreement may be executed in counterparts. Each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same document.

39. Concurrent Execution.

This Agreement shall be executed concurrently with the Hydropower Agreement.

Dated: _____, 2008

LDX: please format all signature blocks below, per the following examples.

ES: please get name and title for each signatory.

State of California

[name]
[title]
California Department of Fish and Game

State of Oregon

[name]
[title]
Oregon Department of Environmental Quality

[name]
[title]
Oregon Department of Fish and Wildlife

Working Draft May 6, 2009

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[name]

[title]

Oregon Water Resources Department

Tribes

Karuk Tribe
Klamath Tribes
Yurok Tribe

Counties

Humboldt County, California
Klamath County, Oregon
Siskiyou County, California

Parties Related to Klamath Reclamation Project

Tulelake Irrigation District
Klamath Irrigation District
Klamath Drainage District
Klamath Basin Improvement District
Ady District Improvement Company
Enterprise Irrigation District
Malin Irrigation District
Midland District Improvement Company
Pine Grove Irrigation District
Pioneer District Improvement Company
Poe Valley Improvement District
Shasta View Irrigation District
Sunnyside Irrigation District
Don Johnston & Son
Modoc Lumber Company
Bradley S. Luscombe
Randy Walthall and Inter-County Title Company
Reames Golf and Country Club
Winema Hunting Lodge, Inc.
Van Brimmer Ditch Company
Collins Products, LLC
Plevna District Improvement Company
Klamath Water Users Association
Klamath Water and Power Agency

Upper Klamath Irrigators

Klamath Off-Project Water Users Association

[Upper Klamath Water Users Association](#)

Other Organizations

American Rivers
California Trout
Friends of the River
Klamath Forest Alliance
National Center for Conservation Science and Policy
Northcoast Environmental Center
Northern California/Nevada Council Federation of Fly Fishers
Pacific Coast Federation of Fishermen's Associations
Salmon River Restoration Council
Trout Unlimited.

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Appendix A
Authorizing Legislation for Klamath River Basin
Settlement Agreement

Appendix A-1
Proposed Federal Legislation

KLAMATH BASIN RESTORATION AND SUSTAINABILITY ACT OF 2008

The Parties are preparing recommendations for draft federal legislation that incorporate the terms of the Restoration and Hydropower Agreements that require federal legislation. Excerpts from the draft are included in the Agreement above at Sections 8.2, 8.3, 15.1.3, 15.4.5 – 15.4.7, and 27.2.1 to facilitate public review. The remainder of the legislation is still under development and will be made available upon completion of the Restoration Agreement, to which the legislation must conform. The full draft of the legislation will, as appropriate, include revisions to the excerpted provisions that are now provided.

Appendix A-2
Proposed California Legislation

Section 2081.9 is added to the Fish and Game Code to read:

2081.9. (a) Notwithstanding Sections 5515 and 3511 and contingent upon the conditions set forth in (b) and (c), the department may authorize, under Chapter 1.5 (commencing with Section 2050) or Chapter 10 (commencing with Section 2800), the take of species in the Klamath River basin and those portions of the Tule Lake basin and Lost River basin that occur in California.

(b) The Klamath Basin Settlement Agreement has been executed and become effective.

(c) All of the following conditions are met:

(1) The requirements of subdivision (b) and (c) of Section 2081 are satisfied as to the species for which take is authorized.

(2) The take authorization provides for the development and implementation of an adaptive management process for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take. The adjusted measures are subject to Section 2052.1.

(3) The requirements of paragraph (1) may be satisfied if the take is authorized under Chapter 10 (commencing with Section 2800).

Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in ~~Section 2081.7~~, **Sections 2081.7 and 2081.9**, fully protected fish or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected fish, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include any actions taken as part

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of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected fish or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

- (1) Colorado River squawfish (*Ptychocheilus lucius*).
- (2) Thicktail chub (*Gila crassicauda*).
- (3) Mohave chub (*Gila mohavensis*).
- (4) Lost River sucker (*Catostomus luxatus*).
- (5) Modoc sucker (*Catostomus microps*).
- (6) Shortnose sucker (*Chasmistes brevirostris*).
- (7) Humpback sucker (*Xyrauchen texanus*).
- (8) Owens River pupfish (*Cyprinoden radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

Section 3511 of the Fish and Game Code is amended to read:

3511.(a)(1) Except as provided in ~~Section 2081.7~~, **Sections 2081.7 and 2081.9**, fully protected birds or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected bird, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, and may authorize the live capture and relocation of those species pursuant to a permit for the protection of livestock. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, “scientific research” does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected birds or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected birds:

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- (1) American peregrine falcon (*Falco peregrinus anatum*).
- (2) Brown pelican.
- (3) California black rail (*Laterallus jamaicensis coturniculus*).
- (4) California clapper rail (*Rallus longirostris obsoletus*).
- (5) California condor (*Gymnogyps californianus*).
- (6) California least tern (*Sterna albifrons browni*).
- (7) Golden eagle.
- (8) Greater sandhill crane (*Grus Canadensis tabida*).
- (9) Light-footed clapper rail (*Rallus longirostris levipes*).
- (10) Southern bald eagle (*Haliaeetus leucocephalus*).
- (11) Trumpeter swan (*Cygnus buccinator*).
- (12) White-tailed kite (*Elanus leucurus*).
- (13) Yuma clapper rail (*Rallus longirostris yumanensis*).

Draft Legislation to be introduced in California by DFG.

Section 1: The sum of \$__ is appropriated to the Department of Fish and Game for the implementation of Part VII of the Klamath Restoration Agreement as executed on *****.

Section 2: Upon determination by the Director that the following have occurred, the Department shall transfer the principal sum to Siskiyou County.

- a) The Secretary of the Interior has made the findings specified in the Klamath Restoration Agreement by December 31, 2010.
- b) Siskiyou County has not withdrawn from the Klamath Restoration Agreement.
- c) All permits and other necessary approvals have been obtained for the removal of Iron Gate, COPCO I and COPCO II and dam removal will timely commence; or the dams have been transferred to a non-taxable entity for the purpose of dam removal and that entity is not contributing revenue to the county similar to the taxes received by the County when the dams were privately held.

Section 3: Upon receipt, the County shall use these funds in the manner permitted by Applicable Law for the use of property tax receipts and as deemed appropriate by the County to help transition from the impacts of Dam Removal and otherwise ameliorate any impacts to the County and its residents.

Section 4: Siskiyou County shall not to file a claim in federal or state court, or before the California Board of Control or any other administrative agency, against the State of California, the State of Oregon, any state agency, department, division or subdivision thereof, or the United States, arising from any decrease in property tax revenue or alleged business or economic losses, including property values, due to Dam Removal.

Section 5: No individual or entity that receives any funds released pursuant to Section 2 shall be eligible to file a claim in federal or state court, or before the California Board of Control or any other administrative agency, against the State of California, the State of Oregon, any state agency, department, division or subdivision thereof, or the United States, arising from any

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decrease in property tax revenue or alleged business or economic losses, including property values, due to Dam Removal.

Section 6: The Department shall allocate the interest earned from the funds allocated pursuant to Section 1 for restoration projects within the Klamath Basin.

Section 7: The funds allocated pursuant to Section 1 shall be available until June 30, 2015.

Appendix A-3
Proposed Oregon Legislation

DRAFT

75th OREGON LEGISLATIVE ASSEMBLY – 2009 Regular Session

House Bill _____
Ordered by the House _____

Sponsored by Representative _____;

SUMMARY

Relating to the Klamath Basin Restoration Agreement of 2007; to define terms; to provide for the provision of funds to execute Oregon's commitments to the Klamath Basin Settlement Agreement of 2007; and further economic development in the Klamath Basin area.

Directs Department of Administrative Services to provide funds for specified purposes related to the Klamath Basin Settlement Agreement of 2007. Establishes a Klamath Basin Restoration Agreement Fund. Authorizes issuance of lottery bonds and directs that net proceeds of the bonds are to be deposited in the fund.

A BILL FOR AN ACT

Relating to the Klamath Basin Restoration Agreement; and appropriating money.

Whereas it is the purpose of this 2009 Act to give the Department of Administrative services authority to provide funds to public bodies and private entities for the purpose of fulfilling Oregon's monetary obligations as part of the Klamath Restoration Agreement.

Whereas to attain the purpose of this 2009 Act, the Klamath Basin Restoration Agreement Fund created by this Act must be administered in a prudent and fiscally sound manner; and

Whereas it is also the intent of this 2009 Act that, upon the effective date of this 2009 Act, lottery bonds will be issued for the purposes of securing funds for the Klamath Basin Restoration Agreement Fund that will be used to further economic development in the Klamath Basin area.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Klamath Basin Restoration Agreement Fund. Moneys in the fund may be invested as provided in ORS 293.701 to 293.820. Interest earned by the Klamath Basin Restoration Agreement Fund shall be credited to the fund.

(2) The Legislative Assembly finds that issuing lottery bonds to provide moneys for energy development and other uses in the Klamath Basin area will further economic development in that area.

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(3) The use of lottery bond proceeds is authorized based on the following findings:

That water right retirements and reduced water delivery in the Klamath Basin through the Klamath Restoration Agreement will negatively affect land values and the agricultural land base in the Klamath Basin area and that the use of lottery bond proceeds as provided in this 2009 Act will further economic development by mitigating the negative impact of such water right retirements and reduced water delivery in the Klamath Basin on the economy of the region.

(4) At the request of the Department of Administrative Services, the State Treasurer may issue lottery bonds up to a principal amount of \$----- plus an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs.

(3) The Klamath Basin Restoration Agreement Fund shall consist of:

(a) Net proceeds from the sale of the lottery bonds issued under this 2009 Act;

(b) Interest earnings of the fund; and

(c) Any other moneys that may be transferred to the fund by the Legislative Assembly or paid into the Fund under the Klamath Basin Restoration Agreement.

(4) Moneys in the Klamath Basin Restoration Agreement Fund are continuously appropriated to the Department of Administrative Services for the following purposes:

(a) Providing grants for projects related to renewable energy development, energy efficiency, and conservation for the Klamath Irrigation Project Water Users in Klamath County,

(b) Providing funds to Klamath County to compensate for loss of tax revenue as a result of the Klamath Basin Restoration Agreement.

(C) Paying the direct and indirect costs of the Department of Administrative Services in administering the fund and in administering and maintaining, if applicable, the interest payments on the bonds as exempt from federal income tax.

Deleted: DRAFT OREGON WATER LAW AMENDMENTS¶

¶ **Section 537.348 of Oregon Water Law is amended as indicated.¶**

¶ **537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates.** (1) Any person

may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.¶

(2) Any person who has an existing water right, which includes for the purposes of this subsection a water right evidenced by an order of determination filed with the Circuit Court as provided in ORS 539.130, may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use.¶

(3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream right during the same water or calendar year provided:¶

(a) The uses are not concurrent; and¶

(b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right. [1987 c.859 §9; 2001 c.205 §1]¶

¶ **Note:** The amendments to 537.348 by section 2, chapter 205, Oregon Laws 2001, become operative January 2, 2014. See section 3, chapter 205, Oregon Laws 2001; HB 2097 (2007). The text that is operative on and after January 2, 2014, is set forth for the user's convenience.¶

¶ ORS 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall ... [1]

Appendix B
Schedule and Budget for Implementation of Agreement

Appendix B-1
Schedule for Implementation of Agreement

Appendix B-1 describes the schedule of activities in the Klamath Basin Restoration Agreement.¹ It lists specific actions in the Agreement, annual activities. *Note: The appendix will be updated to conform the Klamath Basin Project Settlement Agreement and the Hydropower Agreement.*

ES: modify to incorporate KBAC.

Specific Actions

2008

General

- Execution of the Agreements

Legislation

- Assist legislative offices and committees in the introduction and passage of legislation.

Governance

- Form Klamath Basin Coordinating Council and develop protocols (Section 5, 6, 7, and Appendix C).
- Form TAT, UBT, and other subgroups (Appendix C and C-1)
- File for approval of Council Charter.
- Adopt procedures to report on the status of performance of each obligation under the Agreement (Section 5.4).
- Establish enrollment procedures for programs (Section 5.6).

Fisheries Program

- Determine funding needs (Section 13.1 and 13.3).
- Initiate development of Fisheries Restoration Phase I Plan (Section 10.1).
- Submit Fisheries Reintroduction Plan Policy for review (Section 11.1.2) by May 2008.
- Prepare Fisheries Monitoring Plan (Section 12.1).

Water Resources

- Collaboration to benefit agriculture and Wildlife Refuges (Section 15.1.2.J)
- Initiate development of On-Project Plan (Section 15.2.2).
- Initiate groundwater investigations (Section 15.2.4.B)
- File validation actions (Section 15.3.1.B).
- File adjudication documents (Sections 15.3.2.B and 15.3.3).
- Initiate OPWAS negotiations (Section 16.2.1.E)
- Initiate development of Water Use Retirement Program (Section 16.2.2)
- Identify the entities to develop the Extreme Drought Plan (18.2.3).
- Prepare Emergency Response Plan (Section 18.3).

Power Resources

- Form Management Board on or before February 1, 2008 (Section 25.3.1).
- Adopt guidelines by December 1, 2008 (Section 25.3.3).
- Develop system to distribute funds to eligible customers (Section 25.3.4).

¹ All dates assume that the Effective Date (when the Agreements are signed) is February, 2008.

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- Implement Interim Power Program (Section 26).
- Initiate financial and engineering plan (Section 28.2.2).

Counties Program

- Develop and adopt Klamath County Program (Section 30.2).

Tribal Program

- Initiate fisheries capacity building and conservation management programs (Section 34.1)

2009

Fisheries

- Complete Fisheries Restoration Phase I Plan by February 2009 (Section 10.1).
- Prepare and adopt Phase I Fisheries Reintroduction Plan (Section 11.2.1).
- Conduct reintroduction activities (Section 11.2.1 and 11.2.2).
- Complete Fisheries Monitoring Plan by February 2009 (Section 12.1).

Water Resources

- Analysis of historical data by February 2009 (Section 15.1.1.A.ii(1)).
- Develop and refine predictive techniques (Section 15.1.1.A.ii(2)).
- Complete analysis and agreements on Refuge deliveries (Section 15.1.2.).
- Complete and adopt On-Project Plan (Section 15.2.2.B.i).
- Agree on schedule for On-Project plan implementation through 2012 (Section 15.3.4.A).
- KWAPA identifies date for full implementation of On-Project Plan (Section 15.3.9).
- Review D Pumping Plant (Section 15.4.2.D).
- Complete OPWAS (Section 16.2.1.E)
- Complete Water Use Retirement Program (Section 16.2.2).
- Complete Williamson River Delta project (Section 17.2.1)
- Adopt the Drought Plan (18.2.3).
- Adopt Emergency Response Plan (Section 18.3.4).
- Initiate climate change assessment (Section 18.4).

Power Resources

- Implement Interim Power Program (Section 26), Federal Power provisions (Section 27) and Efficiency and Renewable Resource Program (Section 28).
- Implement Energy Efficiency and Renewable Resource Program (Section 28).

2010

General

- Deadline for federal and state legislation (Section 1.5.2.A): December 30, 2010.²
- Deadline for FERC Hydropower Order (Section 1.5.2.A): December 30, 2010.³
- Secretarial Finding pursuant to federal legislation.

Water Resources

- Complete Barnes Ranch/Agency Lake project (Section 17.2.2).
- Initiate climate change assessment (Section 18.4.3).

Power Resources

- Implement Energy Efficiency and Renewable Resource Program (Section 28).

² Parties may extend time period, pursuant to Section 7.2 (see Section 1.5.2.B).

³ Parties may extend time period, pursuant to Section 7.2 (see Section 1.5.2.B).

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2011

- Execute Klamath Tribe's waiver within 60 days of passage of federal legislation (Section 15.3.5.A).
- Complete Wood River project EIS (Section 17.2.3 and Appendix B-2)
- Complete Feasibility Report for off-stream storage (Section 17.3.1.A).

2012

- On-Project Plan being implemented on November 1, 2012 (15.3.4.A).
- Secretarial Finding if conditions are met (15.3.4).

2013

- The Secretary of the Interior shall publish a notice in the Federal Register within forty-five days of December 1, 2012 (Section 15.3.4)

2015

- Distribute Phase II of the Klamath River Fisheries Restoration Plan (Section 10.2)

2018

- Prepare a periodic report, not less frequently than every ten years, to evaluate the overall progress in implementation on the Agreement and the results of such implementation (Section 5.4).

2020

- TAT review of fisheries outcomes (Section 12.2.7) by June 30, 2020 and June 30, 2030.

2055

- Parties consider an extension of the term of the Agreement (Section 12.2.7.C)

Annual Implementation Activities

Governance

- Prepare an annual workplan and schedule for decisions, recommendations, oversight and coordination. The workplan will include a public information and involvement program.
- Work with federal and state governments on appropriation of funds.
- Implement procedures to report on the status of performance of each obligation under this Agreement (Section 5.4)

Fisheries

- Annual report on the progress of implementing the Reintroduction Plan (Section 11.3)
- Funding process subsequent to Council Charter (Section 13.5)
- FWS and NMFS deliver to the Klamath Basin Coordinating Council the Annual Program of Work and associated budget described in Section 13.3.1 for review and recommendations.
- Annual Report (Section 13.4) within 30 days before the annual funding review.

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Water Resources

- Implement On-Project Plan
- Implement Off-Project Plan
- TAT recommendations by March 15th (Section 19.4)
- Implement Interim Lake Level and River Flows Program (Section 19.4)

Power Resources

- Implement Federal Power provisions (Section 27) and Efficiency and Renewable Resource Program (Section 28)

Tribal Program

- Fisheries capacity building and conservation management programs (Section 34.1)

Regulatory Assurances

The schedules for these activities are dependent on other actions.

- The screening program in Section 20.1.3 is dependent on budget (assume for FY 2015).
- ESA consultations in Section 21.1.1. would occur before implementation of actions in Section 17.2.
- ESA review in Sections 21.1.2. and 21.1.3. would occur prior to KWAPA's completion of all actions identified in the On-Project Plan necessary for the implementation of the Plan as provided in Section 15.2.2.B.ii.
- ESA review in Section 21.2.1. would occur one year before implementing the Reintroduction Plan in Section 11.

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Appendix B-2
Budget for Implementation of Agreement

COST ESTIMATES FOR SETTLEMENT MEASURES AND COMMITMENTS
(\$2007 Thousands)

Program	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Governance	\$ -	\$ 298	\$ 315	\$ 329	\$ 345	\$ 362	\$ 380	\$ 405	\$ 426	\$ 447	\$ 3,307
Fisheries											
Restoration	\$ 6,300	\$ 17,730	\$ 33,360	\$ 29,605	\$ 31,605	\$ 41,296	\$ 40,066	\$ 42,896	\$ 51,886	\$ 27,751	\$ 322,495
Reintroduction	\$ 385	\$ 4,444	\$ 12,974	\$ 3,568	\$ 4,068	\$ 4,068	\$ 8,676	\$ 4,993	\$ 4,993	\$ 4,993	\$ 53,159
Monitoring	\$ 3,850	\$ 9,943	\$ 11,666	\$ 12,586	\$ 12,866	\$ 13,266	\$ 13,266	\$ 13,566	\$ 13,266	\$ 13,266	\$ 117,541
Water Resources	\$ 14,911	\$ 36,585	\$ 36,253	\$ 32,578	\$ 30,078	\$ 29,178	\$ 29,178	\$ 29,175	\$ 29,175	\$ 29,175	\$ 296,284
Regulatory Assurances	\$ -	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500	\$ 12,500	\$ 17,500	\$ 2,500	\$ 47,500
Power	\$ 1,730	\$ 3,241	\$ 15,737	\$ 10,510	\$ 7,500	\$ 3,000	\$ -	\$ -	\$ -	\$ -	\$ 41,718
Counties	\$ -	\$ -	\$ -	\$ -	\$ 3,200	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ 23,200
Tribes	\$ 4,900	\$ 13,000	\$ 13,000	\$ 13,100	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 80,000
TOTAL	\$ 32,076	\$ 87,740	\$ 125,804	\$ 104,775	\$ 98,162	\$ 99,670	\$ 120,065	\$ 109,535	\$ 123,245	\$ 84,131	\$ 985,202

Working Draft, May 6, 2009

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**COST ESTIMATES FOR SETTLEMENT MEASURES AND COMMITMENTS
(\$2007 Thousands)**

#	Section	Program	Project	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	SUM
1		Governance	KBCC	-	298	315	329	345	362	380	405	426	447	3,307
2		Restoration	Planning & Impl. -- Ph. I and Ph. II Restoration Plans Williamson R. aquatic habitat restoration	700	200	-	-	-	-	1,000	600	-	-	2,500
3		Restoration	Sprague R. aquatic habitat restoration	-	500	500	1,000	1,000	1,000	1,000	1,000	1,000	1,000	8,000
4		Restoration	Wood R. Valley aquatic habitat restoration	-	1,000	4,000	5,445	5,445	9,536	9,536	9,536	9,536	9,536	63,570
5		Restoration	Williamson Sprague Wood Screening Diversion (n=100)	-	700	1,000	1,000	1,000	2,000	2,000	2,000	2,000	2,000	13,700
6		Restoration	Williamson & Sprague USFS uplands	500	1,000	1,500	-	-	-	-	-	-	-	3,000
7		Restoration	Upper Klamath Lake wetlands restoration	-	500	1,610	1,610	1,610	1,610	1,610	1,610	1,610	1,610	13,380
8		Restoration	Screening of UKL pumps (underway)	-	700	1,000	1,000	1,000	1,000	2,000	2,000	2,000	2,000	12,700
9		Restoration	UKL watershed USFS uplands	100	200	200	-	-	-	-	-	-	-	500
10		Restoration	Keno Res. water quality studies & remediation actions	-	220	1,000	1,000	1,000	-	-	-	-	-	3,220
11		Restoration	Keno Res. wetlands restoration	-	1,000	3,000	3,000	3,000	5,000	5,000	10,000	20,000	-	50,000
12		Restoration	Keno to Iron Gate upland private & BLM	-	500	500	1,000	1,000	2,000	-	-	-	-	5,000
13		Restoration	Keno to Iron Gate upland USFS (Goosenest)	-	50	50	100	100	100	100	100	140	-	740
14		Restoration	Keno to Iron Gate mainstem restoration	-	100	250	300	50	150	100	150	50	250	1,400
15		Restoration	Keno to Iron Gate tributaries - diversions & riparian	-	100	100	100	350	200	200	200	200	200	1,650
16		Restoration	Shasta River aquatic habitat restoration	-	-	-	-	500	500	500	-	-	-	1,500
17		Restoration	Shasta R. USFS uplands	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	625	18,625
18		Restoration	Shasta R. water (leasing, easements, acquisition)	-	100	250	300	100	150	200	200	200	180	1,680
19		Restoration	Scott River aquatic habitat restoration	-	1,000	4,000	-	-	-	-	-	-	-	5,000
20		Restoration	Scott R. USFS uplands	3,000	2,000	2,000	2,000	2,000	2,000	2,000	1,000	750	-	16,750
21		Restoration	Scott R. private uplands	-	260	300	300	300	300	300	300	300	300	2,660
22		Restoration	Scott R. private uplands	-	100	100	100	100	150	100	100	-	-	750

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23	Restoration	Scott R water (leasing, easements, acquisition)	-	1,000	4,000	-	-	-	-	-	-	-	5,000
24	Restoration	Mid Klamath R. & tribs (Iron Gate to Weitchpec) aquatic hab restoration.	-	500	1,000	1,500	2,000	2,000	1,000	1,000	1,000	950	10,950
25	Restoration	Mid Klamath tribs USFS upland	-	1,000	1,000	1,500	1,000	1,000	1,500	1,000	1,000	1,000	10,000
26	Restoration	Mid Klamath tribs private upland	-	500	500	650	1,000	1,000	1,000	1,000	1,000	1,000	7,650
27	Restoration	Lower Klamath R. & tribs (Weitchpec to mouth) aquatic hab restoration	-	500	500	1,000	1,190	2,000	2,000	2,500	2,500	3,000	15,190
28	Restoration	Lower Klamath private uplands	-	1,000	2,000	3,000	4,000	6,000	6,000	6,000	6,000	3,500	37,500
29	Restoration	Salmon River aquatic hab restoration	-	500	500	1,000	1,000	1,000	320	-	-	-	4,320
30	Restoration	Salmon R. USFS upland	-	500	500	700	860	600	600	600	600	600	5,560
31	Reintroduction	Reintroduction Plan	100	100	100	100	100	100	100	100	100	100	1,000
32	Reintroduction	Collection Facility	-	988	4,238	238	238	238	238	238	238	238	6,889
33	Reintroduction	Production Facility	-	750	4,285	285	285	285	285	285	285	285	7,030
34	Reintroduction	Acclimation Facility	-	850	2,285	285	285	285	285	285	285	285	5,130
35	Reintroduction	Transport	-	-	-	95	95	95	95	95	95	95	665
36	Reintroduction	Monitoring and Evaluation	190	1,233	1,733	2,233	2,733	2,733	2,733	2,850	2,850	2,850	22,138
37	Reintroduction	Monitoring and Evaluation New Hatchery (IGD or Fall Creek)	95	190	190	190	190	190	190	190	190	190	1,805
38	Reintroduction		-	333	143	143	143	143	4,750	950	950	950	8,503
39	Monitoring	Adult Salmonids	-	607	1,107	1,607	2,107	2,107	2,107	2,107	2,107	2,107	15,963
40	Monitoring	Juvenile Salmonids	-	471	1,471	1,971	1,971	2,471	2,471	2,471	2,471	2,471	18,240
41	Monitoring	Genetics Otololith	-	80	100	120	200	200	200	200	200	200	1,500
42	Monitoring	Hatchery Tagging	-	597	662	662	162	162	162	162	162	162	2,890
43	Monitoring	Disease	-	808	808	808	808	808	808	808	808	808	7,268
44	Monitoring	Green Sturgeon	-	394	233	233	233	233	233	233	233	233	2,256
45	Monitoring	Lamprey	-	238	238	238	238	238	238	238	238	238	2,138
46	Monitoring	Geomorphology	-	300	300	300	300	300	300	300	300	300	2,700
47	Monitoring	Habitat Monitoring	-	300	300	300	300	300	300	300	300	300	2,700
48	Monitoring	Water Quality	-	1,149	1,149	1,149	1,149	1,149	1,149	1,149	1,149	1,149	10,337

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49		Monitoring	UKL bloom dynamics	-	-	200	200	200	200	200	200	200	1,600
50		Monitoring	UKL water quality/phytoplankton/zooplankton	750	750	750	750	750	750	750	750	750	7,500
51		Monitoring	UKL internal load/bloom dynamics	-	-	200	200	200	200	200	200	200	1,600
52		Monitoring	UKL external nutrient loading	100	100	100	100	100	100	100	100	100	1,000
53		Monitoring	UKL analysis of long-term data sets	-	-	100	-	-	-	-	100	-	200
54		Monitoring	UKL listed suckers	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	12,500
55		Monitoring	Tributaries water quality/nutrients/sediment	750	750	750	750	750	750	750	750	750	7,500
56		Monitoring	Tributaries geomorphology/riparian vegetation	100	300	300	300	300	300	300	300	300	2,800
57		Monitoring	Tributaries physical habitat	50	50	50	50	50	150	150	150	150	1,000
58		Monitoring	Tributaries listed suckers	-	750	750	750	750	750	750	750	750	6,750
59		Monitoring	Keno Reservoir water quality/algae/nutrients	750	750	750	750	750	750	750	750	750	7,500
60		Monitoring	Keno Reservoir to Tributaries: Meteorology (weather stations)	100	100	100	100	100	100	100	100	100	1,000
61		Monitoring	Remote Sensing acquisition and analysis	-	200			200			200		600
62	8.2/8.3	Water Resources	Link and Keno Dam O&M	-	500	500	500	500	500	500	500	500	4,500
63	15.1.1A(ii)(1)	Water Resources	Data Analysis and evaluation for provision to TAT	-	100	8	8	8	8	8	5	5	153
64	15.1.1A(ii)(2)	Water Resources	Development of predictive techniques	-	-	200	20	20	20	20	20	20	340
65	15.1.2	Water Resources	Klamath Basin Wildlife Refuges: O&M North and P Canals	-	-	100	-	-	-	-	-	-	100
66	15.1.2	Water Resources	Klamath Basin Wildlife Refuges: Walking Wetland Construction	-	250	250	250	250	250	250	250	250	2,250
67	15.1.2	Water Resources	Klamath Basin Wildlife Refuges: Big Pond Dike Construction	-	-	500	-	-	-	-	-	-	500
68	15.2.2A	Water Resources	On Project water plan	2,500	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	92,500
69	15.2.4B(iii)	Water Resources	Groundwater Technical Investigation	111	285	245	-	-	-	-	-	-	641
70	15.2.4B(vi)	Water Resources	Costs Associated with Remedy for Adverse Impact	-	-	-	-	-	-	-	-	-	-
71	15.4.2	Water Resources	D Pumping Plant	-	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	9,000
72	16.2.4A	Water Resources	Water Rights Retirement Plan	250	250	500	500	500	-	-	-	-	2,000

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73	16.2.4B	Water Resources	Off Project Plan and Program: Retirement of 30K ac ft above UKL	-	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	45,000
74	17.2.2	Water Resources	UKL Wetlands Restoration: Agency/Barnes	-	1,000	1,000	500	-	-	-	-	-	-	2,500
75	17.2.3	Water Resources	UKL Wetlands Restoration: Wood River	-	2,000	1,000	2,000	-	-	-	-	-	-	5,000
76	17.3.1B	Water Resources	Rogue Basin Study	-	-	-	-	-	-	-	-	-	-	-
77	18.2.1	Water Resources	Drought Plan Development	250	-	-	-	-	-	-	-	-	-	250
78	18.2.4	Water Resources	Drought Plan Restoration Agreement Fund	-	3,000	3,000	-	-	-	-	-	-	-	6,000
79	18.3.3	Water Resources	Emergency Response Plan	100	-	-	-	-	-	-	-	-	-	100
80	18.3.5	Water Resources	Emergency Response Fund	-	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	9,000
81	18.4.2	Water Resources	Technical Assessment of Climate Change	-	500	-	-	-	-	-	-	-	-	500
82	19.3.2	Water Resources	Real Time Water Management	200	200	200	200	200	200	200	200	200	200	2,000
83	19.3.2	Water Resources	Real Time Water Management: Water Flow Monitoring and Gauges	500	500	500	500	500	500	500	500	500	500	5,000
84	19.3.2	Water Resources	Real Time Water Management: UKL Inflow Prediction Modeling and Added Snowpack Gauges	250	250	500	500	500	500	500	500	500	500	4,500
85	19.3.2	Water Resources	Adaptive Management: Science and Analysis	500	500	500	500	500	150	150	150	150	150	3,250
86	19.3.2	Water Resources	Real Time Management: Calibration and improvements to WRIMS modeling and predictions	250	250	250	100	100	50	50	50	50	50	1,200
87	19.4.4	Water Resources	Interim Flow and Lake Level Program	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000
88	20.1.3	Regulatory Assurances	Keno Reservoir KIP Screening	-	-	-	-	-	-	-	10,000	15,000	-	25,000
89	21.2.7	Regulatory Assurances	Federal GCP/HCP	-	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	13,500
90	23	Regulatory Assurances	California Laws	-	500	500	500	500	500	500	500	500	500	4,500
91	24	Regulatory Assurances	Oregon Laws	-	500	500	500	500	500	500	500	500	500	4,500
92	26.3.1	Power	Interim Power Sustainability	1,730	2,241	3,719	-	-	-	-	-	-	-	7,690
93	27.3.2	Power	Federal Power for Specified Loads in KIP	-	-	-	-	-	-	-	-	-	-	-
94	28.2.1	Power	Energy Efficiency and Renewable Resources	-	-	12,018	10,510	7,500	3,000	-	-	-	-	33,028

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95	28.2.2	Power	Financial and Engineering Plan	-	1,000	-	-	-	-	-	-	-	-	1,000
96	30.3.1	Counties	Klamath County Study	-	-	-	-	-	-	-	-	-	-	-
97	30.3.2	Counties	Klamath County	-	-	-	-	3,200	-	-	-	-	-	3,200
98	31.1.1	Counties	Siskiyou County	-	-	-	-	-	-	20,000	-	-	-	20,000
99		Counties	Humboldt County	-	-	-	-	-	-	-	-	-	-	-
100	34.1.1	Tribes	Fisheries Management HVT	500	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	9,500
101	34.1.1	Tribes	Fisheries Management Karuk	500	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	9,500
102	34.1.1	Tribes	Fisheries Management Klamath	500	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	9,500
103	34.1.1	Tribes	Fisheries Management Yurok	500	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	9,500
104	34.1.2	Tribes	Conservation Management HVT	500	500	500	500	500	500	500	500	500	500	5,000
105	34.1.2	Tribes	Conservation Management Karuk	500	500	500	500	500	500	500	500	500	500	5,000
106	34.1.2	Tribes	Conservation Management Klamath	500	500	500	500	500	500	500	500	500	500	5,000
107	34.1.2	Tribes	Conservation Management Yurok	500	500	500	500	500	500	500	500	500	500	5,000
108	34.4	Tribes	Economic Development Study HVT	-	250	-	-	-	-	-	-	-	-	250
109	34.4	Tribes	Economic Development Study Karuk	-	250	-	-	-	-	-	-	-	-	250
110	34.4	Tribes	Economic Development Study Klamath	-	250	-	-	-	-	-	-	-	-	250
111	34.4	Tribes	Economic Development Study Yurok	-	250	-	-	-	-	-	-	-	-	250
112	34.6	Tribes	Klamath Tribes: Mazama Economic Development Project	900	6,000	7,000	7,100	-	-	-	-	-	-	21,000
113	35	Tribes	Fishing Sites											-
														985,202

Appendix C
Coordination and Oversight, Klamath Basin Restoration Agreement

Deleted: Governance of

Deleted: River Settlement

Appendix C-1
Klamath Basin Coordinating and Advisory Council and Subgroups

I
Purpose and Scope of Coordination and Oversight of Klamath Basin Restoration Agreement

Coordination and oversight of the Klamath Basin Restoration Agreement is intended to provide and facilitate coordination, cooperation, collaboration, decision-making, and accountability by Parties to the Agreement to assure elements of the Agreement are carried out effectively and at the appropriate scales to forward sustainable restoration and renewal of the Klamath River Basin. The coordination and oversight framework will be the mechanism by which state and federal agencies, local governments, tribes, conservation groups and community members work together to collaboratively develop and implement long-term solutions for the Klamath River Basin. Coordination and oversight of the Agreement embodies a multi-party and agency effort, and is reliant on Agreement Parties and partners, and their respective authorities and abilities, to facilitate implementation. Coordination and oversight does not provide for new decision-making authorities or change existing local, state and/or federal law. This coordination and oversight structure is not intended to direct other restoration entities and efforts existing within the Klamath River Basin that are outside the Agreement, but instead it will strive to coordinate and integrate with existing entities and ongoing efforts to help support and further the Agreement and Klamath River Basin goals.

Coordination and oversight groups/subgroups are defined based on whether or not they provide advice or recommendations to Federal Agency Parties. The Klamath Basin Advisory Council (KBAC) and the Technical Advisory Team (TAT) are a group and subgroup, respectively, that will provide recommendations to Federal Agency Parties, consistent with their Charters established pursuant to the Federal Advisory Committee Act (FACA). These recommendations are relevant to implementation of the Agreement (KBAC) and to management of Environmental Water (TAT). An Upper Basin Team (UBT) will also provide recommendations on water retirements to a Federal Agency Party, through the structure of the KBAC. A Klamath Basin Coordinating Council (KBCC) will provide coordination and oversight of various elements of the Agreement not requiring recommendations for Federal Agency Parties. Because the KBCC will not require a Charter pursuant to FACA, details of this group will be addressed in its protocols and operating procedures.

The coordination and oversight framework will provide opportunities for public involvement to help guide implementation of the Agreement, as well as the respective public processes of local government, and state and federal agencies as they implement their statutory authorities.

Changes to the coordination and oversight structure will likely occur over time as the Agreement is implemented. Changes to the structure may be in the form of an amendment to the Agreement and/or the Charters.

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Initially, fiscal support for coordination and oversight will rely on existing resources at the federal and state level. Fiscal and human resources support will be obtained and provided through the separate authorities of each Party, but prioritized and coordinated where possible and applicable.

II.
Klamath Basin Coordinating Council

A. Purpose and Function.

The KBCC is the coordinating body for all Parties of the Agreement that does not provide advice or recommendations to Federal Agency Parties, and therefore shall not be subject to FACA requirements. Its purpose is to promote continued collaboration, cooperation, coordination, and consultation among Parties and others as elements of the Agreement are implemented. The KBCC will provide for general oversight and administration, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the Agreement. The KBCC will make decisions and establish protocols to implement elements of the Agreement. The KBCC will serve as a primary forum for public involvement in implementation of the Agreement.

B. Organization/Membership.

All Parties are members of the KBCC. All Parties may participate in KBCC meetings; however, only designated representatives of the Parties shall be voting members (Appendix Table C-1). Designated representatives shall seek the individual views of their member Parties to ensure effective representation in voting matters. Designated representatives of the Parties for the KBCC (and the KBAC) shall include representation from the Federal Agency Parties; the State of Oregon; the State of California; the Counties of Klamath (OR), Siskiyou and Humboldt (CA); the Tribal governments of the Klamath Tribes of Oregon, and the Yurok Tribe, [Hoopa Valley Tribe], and the Karuk Tribe of California; Parties Related to the Klamath Reclamation Project (KRP) as identified in Section 1.1 of the Agreement; the Klamath Off-Project water users; the commercial fishing industry; and conservation and restoration organizations (Appendix Table C-1). Parties shall form their own rules for selection of representatives. If Parties are not able to select representatives, the KBCC shall develop a procedure. The KBCC shall determine appropriate representation for any additional entities that may become Parties after the Effective Date as provided in Section 7.2.1.A. Membership makeup and Party representation are the same for both the KBCC and the KBAC.

Appendix Table C-1. Party Representation for the KBCC and KBAC

<u>Parties</u>	<u>Representation</u>	<u>Members</u>
<u>Dept of Interior</u>	<u>1</u>	<u>FWS, BLM, BOR, BIA</u>
<u>Dept of Agriculture</u>	<u>1</u>	<u>USFS</u>
<u>Dept of Commerce</u>	<u>1</u>	<u>NOAA/NMFS</u>
<u>State of Oregon</u>	<u>1</u>	<u>ODEQ, ODFW, OWRD</u>
<u>State of California</u>	<u>1</u>	<u>CDFG</u>
<u>Klamath Tribes</u>	<u>1</u>	
<u>Yurok Tribe</u>	<u>1</u>	
<u>Karuk Tribe</u>	<u>1</u>	

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<u>[Hoopa Valley Tribe]</u>	<u>1</u>	
<u>Klamath County</u>	<u>1</u>	
<u>Siskiyou County</u>	<u>1</u>	
<u>Humboldt County</u>	<u>1</u>	
<u>Parties related to KRP*</u>	<u>2</u>	
<u>Klamath Off-Project Water Users</u>	<u>1</u>	
<u>Conservation /Restoration Groups</u>	<u>2</u>	
<u>Commercial Fishing Industry</u>	<u>1</u>	
Total	18	

* Klamath Reclamation Project

C. Roles and Responsibilities.

The KBCC shall serve as an oversight forum to foster efficient and effective implementation of the Agreement, including tracking and reporting action progress, solving problems, establishing protocols and procedures, providing approvals, making decisions, resolving general issues within and among programs, promoting collaboration and coordination among groups and Klamath Basin partners, providing input to assist with prioritization of program projects, concertedly and cooperatively seeking grants and other funding for priority projects, reporting program expenditures, and developing an annual workplan. The KBCC (of which all members shall be deemed to be Disputing Parties) shall provide the forum for dispute resolution as described in Section 6 of the Agreement when issues cannot be resolved at lower scales within programs, subgroups, or among Disputing Parties.

The KBCC shall have the flexibility to establish additional subgroups as necessary and appropriate to address specific issues and needs on a periodic, ad hoc, temporary, or long-term basis, and to implement provisions of the Agreement, including the separate but related Hydropower Agreement. KBCC subgroups shall not be subject to FACA requirements, as their advice and recommendations will not be for Federal Agency Parties. These subgroups shall provide advice or recommendations to the KBCC. Subgroups may establish their own operating protocols.

The KBCC shall ensure public engagement is afforded through facilitated participation in KBCC and subgroup meetings, and shall consider public input when making decisions.

The KBCC shall provide for a basin-wide perspective for holistic solutions and approaches, without superseding the authorities of respective entities, for determining program administration at appropriate scales. The KBCC will function to link and coordinate Agreement programs and actions with other actions and programs required through the federal ESA (Biological Opinions and Recovery Plans) and with other watershed working groups within the entire Klamath River Basin in Oregon and California (e.g., Trinity River Working Group, Upper Klamath Basin Working Group, subbasin watershed organizations and resource conservation districts).

With respect to any matter on which these coordination and oversight provisions or other protocols established by the KBCC provide for participation by all Parties, any Party may delegate to another Party the authority to act on its behalf. Any such delegation shall be in writing and will remain in effect according to its terms or until revoked.

D. Operations.

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The KBCC shall vote through designated Party representation as described in subsection B. The KBCC shall provide for participation of all Parties and the public during meetings pursuant to Applicable Law and reasonable operating procedures. In addition, the KBCC shall hold periodic or episodic meetings of all Parties as necessary to provide participation in and discussion of coordination and oversight functions that do not require a vote (such as reviewing progress in implementation of the Agreement) or functions vested in all Parties (such as Amendment of the Agreement under Section 7.2 or Dispute Resolution under Section 6), as provided in its internal protocols. The KBCC shall operate under Applicable Law and provide full disclosure to Parties of information, actions, and decisions, adequate notice of meetings, and record keeping.

The KBCC and subgroups shall establish the necessary operating procedures, including meeting frequency, meeting location, coordination with other Klamath Basin and subbasin working groups, and internal reporting mechanisms and requirements. KBCC operations may use the support of a facilitator, if funding is obtained.

Except in the case of KBCC decisions under section 15.3.4.A and 15.3.9.B. of the Agreement, decision-making by the KBCC voting members shall be by super-majority (at least a ¾ vote of the representatives that are present). Parties that do not support a KBCC recommendation to a non-federal Party may prepare a minority report. All reports shall become part of the record. A quorum for decision-making by a super-majority shall be defined within the KBCC's protocols, or if not so defined, shall be a majority of the voting members.

With respect to any decision to be made by the KBCC under the terms of section 15.3.4.A or 15.3.9.B of the Agreement, the decision process and rule shall be as follows:

The KBCC representative from KWAPA, the Klamath Tribes (after meeting and conferring with the other signatory Tribes), the state of California, and the state of Oregon shall convene within fourteen days of the passing of the due dates in section 15.3.4.A (October 30, 2009) and section 15.3.9.B (120 days before the date selected by KWAPA under section 15.3.9.A) and review the dispute among KWAPA, the Tribes, and the United States Bureau of Indian Affairs. This group of four shall be known as the decision panel. The decision panel has twenty-one additional days to resolve the dispute, by no less than a majority vote of 3-1 (with the Klamath Tribes representing the majority view of the three signatory tribes), and provide its decision in writing to the KBCC.

If the decision panel is unable to resolve the dispute within thirty-five days of the due date in section 15.3.4.A or 15.3.9.B as applicable, it has seven days to select a fifth member from among the Parties to the KBCC and to form the final decision panel. The decision panel shall select the fifth member by one of the following means, in order of preference: first by consensus; second, if there is no consensus choice, by a majority vote; and third, if there is no majority choice, by a consensus of the two states, California and Oregon. The final decision panel shall immediately provide notice to the KBCC of its formation.

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The final decision panel shall have no more than thirty-five days to resolve the dispute, by a simple majority vote. Notice of the written decision by the final decision panel shall be immediately provided to the KBCC.

The decision of the decision panel or final panel, as applicable, shall constitute the decision of the KBCC and is not reviewable in any way.

No discovery is allowed before the decision panel or final decision panel. Each panel shall set appropriate deadlines for the submission of letter briefs and documentary evidence and for an oral explanation of the position of the United States Bureau of Indian Affairs, Klamath Tribes, and KWAPA.

E. Funding.

As provided in Section 5.3, the Parties shall support authorizations and appropriations in the amount estimated in Appendix B-2 to fund the coordination and oversight structure for the first ten years after the Effective Date. Funds shall support a facilitator.

III.

Klamath Basin Advisory Council and Interim Advisory Council

A. Purpose and Function.

The Klamath Basin Advisory Council (KBAC) is the body comprised of all Parties to the Agreement that will provide advice and recommendations for Federal Agency Parties after execution of a Charter pursuant to FACA. Prior to execution of a Charter, advice and recommendations for Federal Agency Parties shall be provided by an Interim Advisory Council. Recommendations of the KBAC and the Interim Advisory Council shall not be binding on Federal Agency Parties.

B. Organization/Membership

All Parties will be provided an opportunity to participate in meetings of the Chartered KBAC consistent with Applicable Law. The KBAC Charter is to be modeled on the structure and representation outlined herein and shall establish the organization and membership of the KBAC. Voting members of the KBAC shall be the designated Party representatives as specified for the KBCC (Appendix Table C-1). The Interim Advisory Council shall consist of state, federal, and local government and tribal Parties as provided under the Unfunded Mandates Reform Act of 1995. Voting members within the Interim Advisory Council shall be designated Party representatives from state, federal, local government, and tribal Parties.

C. Roles and Responsibilities

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The KBAC and Interim Advisory Council primarily serve to develop and provide advice and recommendations for Federal Agency Parties as necessary for implementing the Agreement.

The KBAC shall establish additional subgroups as necessary and appropriate to address specific issues and needs on a periodic, ad hoc, temporary, or long-term basis. Unless separately Chartered, subgroups of the KBAC that develop advice or recommendations for the Federal Agency Parties shall provide such advice or recommendations only to the KBAC (e.g., Upper Basin Team). Subgroups that provide advice or recommendations directly to Federal Agency Parties shall be Chartered pursuant to FACA and these Charters shall be linked to the KBAC Charter as appropriate (e.g., Technical Advisory Team).

D. Operations

Upon the Effective Date of the Agreement, the Parties shall initiate the Interim Advisory Council for the purpose of developing and providing advice and recommendations for the Federal Agency Parties. Parties who are not members of the Interim Advisory Council shall be given maximum practicable opportunity under Applicable Law to provide input on an individual basis to the Interim Advisory Council in preparation of federal recommendations. Interim Advisory Council operations shall be as transparent as possible and practicable under Applicable Law and provide full disclosure of information, actions, and decisions to the Parties.

The appropriate Federal Agency Party will immediately undertake the formal steps to obtain Charters for the KBAC and necessary subgroups, such as the Technical Advisory Team. The KBAC Charter will specify the relationship between the KBCC and chartered and non-chartered subgroups.

Voting within the KBAC and Interim Advisory Council shall be through designated Party representatives as described for the KBCC (Appendix Table C-1). When recommendations are developed for specific Federal Agency Parties, representatives for those specific Parties shall be non-voting members. Otherwise representatives for Federal Agency Parties shall be voting members. In addition to requirements under FACA for public involvement, the designated KBAC representatives shall seek the input of their member Parties to ensure effective representation in voting matters. The Interim Advisory Council shall seek input from the public, and from non-member Parties on an individual basis, in development of such advice or recommendations as practicable and consistent with Applicable Law. The Interim Advisory Council shall be disbanded once the KBAC is Chartered.

Decision-making by the KBAC and Interim Advisory Council voting members shall be by consensus of a quorum. If consensus is not achieved, majority and minority reports shall be developed and provided to the Federal Agency Parties (and/or to State Agency Parties). A quorum for decision-making shall be defined within the KBAC Charter and Interim Advisory Council protocols, or if not so defined, shall be a majority of the voting representatives. Only advice and recommendations for Federal Agency Parties will be decided within the KBAC; all other decisions and deliberations will be performed within the KBCC.

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At all times, the KBAC and Chartered subgroups shall operate in accordance with Applicable Law and their respective Charters. To the extent not defined in the Charter, the KBAC and subgroups shall establish the necessary operating procedures, including meeting frequency, meeting location, coordination with other Klamath Basin and subbasin working groups, and internal reporting mechanisms and requirements. Meetings of the KBAC shall be set at common dates and places as the KBCC to the maximum extent practicable, except that meetings set at common dates and places will have separate times and agendas. A Designated Federal Official shall preside over KBAC meetings.

Appendix C-2
Technical Advisory Team, Managed Environmental Water, and Upper Basin Team

I.
Introduction

The Agreement provides that implementation of certain of its sections will be informed through the activities of a Technical Advisory Team (TAT) and an Upper Basin Team (UBT). The TAT, a Chartered subgroup of the KBAC, shall provide recommendations for the identified Federal Agency Lead Parties, or other Parties, and to the KBAC or KBCC, as provided in the Agreement and pursuant to this Appendix C-2. In carrying out its purpose, the TAT will be compliant with its Charter established pursuant to the FACA. The UBT shall provide recommendations to the KBAC and thus will not be independently chartered.

For its specific purposes, the TAT shall seek broad technical participation, the best and most current technical information, and consensus in recommendations. This Appendix establishes and identifies the TAT and its purpose, membership, and operation and the specific procedures to be followed by the TAT concerning Managed Environmental Water.

This Appendix also establishes and identifies the UBT and its general purpose, membership, and roles concerning the Water Use Retirement Program.

II.
Technical Advisory Team and Interim Technical Team

A. Purpose and Function.

The Technical Advisory Team's purpose is to utilize the technical expertise of the Parties and others with interest and expertise in water management and fisheries to inform the implementation of the Agreement as it relates to Managed Environmental Water and other aquatic resource issues. As defined in the Agreement, the TAT is assigned a number of tasks, including the provision of recommendations to the KBCC, KBAC, and to Lead Agency Parties, which includes recommendations to the Secretary of the Interior regarding Managed Environmental Water (see Sections 12.2.2, 12.2.7, 15.1.1, 15.2.4.E.i, 15.2.4.E.ii (1) and (2), 17.3.2.B.iv, 17.3.2.B.v, 18.2.4, 19.3.2, 19.4.3, and 19.4.4.A in the Agreement). TAT recommendations will not supersede Applicable Law or the terms of the Agreement or the Hydropower Agreement.

B. Organization and Membership.

The TAT shall consist of the Parties with interest, expertise or authority in water management, water quality, or fish management and with the ability to contribute to restoring and maintaining the health of the waters of the Klamath Basin and the Fish Species. Prior to execution of the TAT Charter, the members of the TAT shall only perform those TAT functions outlined in the Agreement that do not involve recommendations for the Federal Agency Parties.

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During the period prior to execution of the TAT Charter, development and submittal of recommendations or advice for Federal Agency Parties will be by an Interim Technical Team consisting of state, federal and local government and tribal Parties with expertise as described above, in compliance with the Unfunded Mandates Reform Act of 1995. The TAT Charter shall establish the organization and membership of the TAT, as modeled on the structure outlined herein.

C. Roles and Responsibilities.

The roles and responsibilities of the TAT are set out in the Agreement (see listed Sections above), and as described in specific detail below with respect to Managed Environmental Water. Generally, the TAT shall review and evaluate data gathered under and outside the Agreement, make recommendations for management of resources, provide technical expertise, and evaluate implementation of the Agreement as it relates to management of Environmental Water that affects Upper Klamath Lake and the lower Klamath River mainstem ecosystems in the period before, during and after dam removal. The TAT will make technical recommendations to the KBCC and/or KBAC, the Federal Agency Lead Party (Secretary) or other Parties as provided in the Agreement, and shall provide opportunities for public input. The TAT will coordinate with Fish Managers responsible for developing and implementing the restoration, reintroduction and monitoring plans for Fish Species and their habitats.

D. Operations.

Upon the Effective Date of the Agreement, the Parties will initiate an Interim Technical Team, consisting of federal, state and local government and tribal Parties, for the purpose of providing recommendations for Federal Agency Lead Parties. Otherwise, all Parties to the TAT will fulfill other technical advisory functions under the Agreement that do not involve recommendations for Federal Agency Parties.

The appropriate Federal Agency Party shall immediately undertake the formal steps to obtain an independent FACA Charter for the TAT. The TAT Charter will specify the relationship between the TAT and the KBCC and/or KBAC, and specify the Designated Federal Official to oversee TAT meetings.

During the period prior to execution of the TAT Charter, the Interim Technical Team will perform any of the roles, responsibilities, operations and other functions established in the Agreement that involve recommendations for the Federal Agency Parties. The Interim Technical Team will seek input from the public, and from non-member Parties on an individual basis, in development of such advice or recommendations. Following execution of the TAT Charter pursuant to FACA, the TAT shall assume all functions outlined under the Agreement, and the Interim Technical Team shall be disbanded.

Voting members of the TAT and the Interim Technical Team shall be designated representatives of member Parties, (except that representatives for Federal Agency Parties, to which recommendations are directed, shall not be voting members for purposes of developing

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recommendations for Federal Agency Parties)(Appendix Table C-2). The designated TAT representatives shall seek the input of their member Parties to ensure effective representation in voting matters. Parties shall form their own rules for selection of representatives. If Parties are not able to select representatives, a procedure for selection shall be defined within the KBAC or TAT Charter (whichever is more appropriate).

Appendix Table C-2. Party Representation for TAT

Parties	Representation	Members
<u>Dept of Interior</u>	<u>3</u>	<u>FWS, BOR, BIA</u>
<u>Dept of Commerce</u>	<u>1</u>	<u>NOAA/NMFS</u>
<u>State of Oregon</u>	<u>3</u>	<u>ODEQ, ODFW, OWRD</u>
<u>State of California</u>	<u>1</u>	<u>CDFG</u>
<u>Klamath Tribes</u>	<u>1</u>	
<u>Yurok Tribes</u>	<u>1</u>	
<u>Karuk Tribes</u>	<u>1</u>	
<u>[Hoopa Valley Tribe]</u>	<u>1</u>	
<u>Humboldt County</u>	<u>1</u>	
<u>Parties related to KRP*</u>	<u>1</u>	
<u>Klamath Off-Project</u>	<u>1</u>	
<u>Conservation/Restoration Groups</u>	<u>1</u>	
<u>Commercial Fishing</u>	<u>1</u>	
Total	17	

* Klamath Reclamation Project

At all times, the TAT shall operate in accordance with Applicable Law, including providing public notice of meetings and access to meetings, meeting minutes, and other TAT documents. Prior to issuance of the FACA Charter, Parties who are not members of the Interim Technical Team shall be given the maximum practicable opportunity under Applicable Law for input to the Interim Technical Team in preparation of recommendations for Federal Agency Parties. In carrying out its purposes, the TAT will seek public participation and the best and most current technical information. Meetings shall typically be on a twice-monthly basis during the water delivery and use period. The TAT shall report to the KBCC and/or KBAC on a scheduled basis.

The TAT shall use its discretion to establish subcommittees for various purposes. Subcommittees shall report directly to the TAT.

E. Decisions and Dispute Resolution.

The TAT shall strive for consensus in developing advice and recommendations for Federal Agency Parties. If consensus is not achieved, a minority report, or alternative recommendation, may be provided to the Federal Agency Party for its consideration by those who do not support the majority decision. Only policy disagreements (i.e., those that relate to terms within the Agreement) should be referred to the KBCC for further discussion and resolution. The KBCC will respond to the dispute in accordance with the dispute resolution procedures set forth in Section 6 of the Agreement. It is not intended that the KBCC resolve or mediate technical

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issues related to TAT recommendations. Disputes involving a recommendation for a Federal Lead Agency Party may be referred to the KBAC for further discussion and resolution.

F. Public Participation.

The public may provide input on an issue at scheduled TAT meetings or outside the TAT process as provided under the Charter for the TAT and its public processes. However, general public participation may be limited when phone conferencing is necessitated during in-season operations.

G. Emergency Meetings.

Any voting member of the TAT may call a meeting when an emergency situation requires action of the TAT, as provided in the Agreement. Such a meeting must comply with the public notice provisions that may be required under the Charter. Otherwise, emergencies may be addressed by federal, state, local government and tribal Party TAT representatives only (Appendix Table C-2), without public notice, if critical action is time sensitive.

III. Managed Environmental Water

Once chartered, the TAT shall provide recommendations to the Secretary of the Interior concerning Managed Environmental Water in accordance with Sections 19.3 of the Agreement and Applicable Law.

The TAT is a year-round technical body. Winter activities (November through February) will consist of development of recommendations for use of Managed Environmental Water in an Annual Water Management Plan, and recommending actions on management of winter lake and river operations, especially pertaining to storage and release rates at Link River Dam in light of changing forecasts. In-season (March through October), the TAT will ensure that timely recommendations are forwarded to the Secretary of the Interior (Secretary) to accomplish the purposes of Sections 19, consistent with recommendations in the Annual Water Management Plan as adjusted on the basis of continuous information and analysis. A significant task will be balancing releases from Link River Dam with irrigation diversions and return flows to achieve desired fishery conservation objectives. Post-season activities will consist of a review of the previous year's analyses and performances, and updating TAT operating procedures as needed. The TAT will report to the KBCC on a scheduled basis and upload information on the Internet regularly.

Operating Procedures for Managed Environmental Water

A. Annual Water Management Plan and Environmental Water Management Recommendations.

No later than March 15 each year, the TAT shall recommend to the Secretary the preferred timing of Managed Environmental Water to optimize benefits for fish and wildlife resources. This will be done through recommendations in an Annual Water Management Plan based on the run-off forecast and other factors specific to that year and the guidance principles as provided in the Agreement. This plan will set recommendations for “default operations” for the year, subject to alteration due to hydrologic or other changes in circumstance. All interested Parties may participate in plan development and the public will be given an opportunity to review and comment on the draft plan. The plan will be subject to continuous adjustment based upon comments from Basin stakeholders and real-time hydrological and biological data on conditions within the Basin.

In-season, the TAT will provide to the Secretary technical recommendations on Managed Environmental Water for the succeeding two weeks based on available information and pending recommendations. These recommendations should state flow or lake level objectives (e.g., keep flows at a location X in a W-Z range, or keep Upper Klamath Lake at level A through time period B), the biological or other basis for the recommendation, the biological risks and benefits associated with implementing the proposed recommendation, and information on how well the recommendation comports with regulatory requirements. Expected Project operations will be evaluated and taken into account consistent with Section 15.1.1.A of the Agreement.

The recommendations should state the identity of those TAT voting members who have reviewed and support the recommendation. The TAT will strive for consensus in developing recommendations. In the absence of consensus, majority and minority reports (or alternative recommendations) may be produced, with minority reports prepared by those who do not support the majority recommendation. Parties shall have the option of pursuing the disputes as described in the Decision and Dispute Resolution Section (II E).

When a recommendation has been properly submitted, the Secretary should be prepared to timely describe for the record the operational options and implications of meeting the recommendation. If the decision by the Secretary is to adopt and implement the recommendation, the recommendation and decision will be documented for the minutes. If the Secretary does not agree to implement the recommendation, the Secretary will describe for the minutes both the intended operation and the basis for that decision. If the Secretary believes the best available biological information supports a position that differs from that of the recommendation, the explanation should acknowledge this difference and should include whatever information is necessary to support the alternative view.

B. In-season Management Data.

Consistent with the Agreement and in particular with Appendix E-1, the TAT will use the Natural Resource Conservation Service (NRCS) 50% exceedance forecast for inflow to Upper

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Klamath Lake as the basis for its recommendations, but may develop or use other short-term forecasts to better inform its recommendations. The types of forecasts employed and the specific protocols for those forecasts are expected to be developed by the TAT and to evolve in response to adaptive management operations.

During critical times of year for Fish Species, TAT members will produce and distribute biological information on those Species. TAT members will provide relevant information on other wildlife resources. Information will be posted on a website.

C. Meetings

Between the last week of February, and up to at least September 30 of each year, the TAT will meet twice monthly, or more often if necessary, to facilitate in-season operations related to Managed Environmental Water. The principal purpose of the meetings will be to review the status of the preceding week's recommendations and operations, project operating data, biological data, and to make new recommendations on management of Environmental Water for Klamath River flows and lake levels for the following week(s). Consistent with Section 19, equal consideration will be given to Upper Klamath Lake and Klamath River flow issues, as they are part of the same ecosystem.

A Designated Federal Official shall facilitate the meetings and be the responsible party for operational logistics.

IV.
Upper Basin Team

A. Purpose and Function

The Upper Basin Team's (UBT) purpose shall be to oversee the planning and implementation of the Water Use Retirement Program, as described in 16.2.2, including preparation of a plan to accomplish Section 16.2.2 principles. Recommendations by the UBT for the Federal Lead Party shall be provided directly to the KBAC, and therefore the UBT will not require a Charter pursuant to FACA. As such, the UBT shall be a subcommittee of the KBAC.

B. Organization and Membership

The four members of the UBT shall be comprised of two representatives from the Klamath Tribes and two landowner representatives from the Sprague, Williamson, and/or Wood river sub-basins. An additional fifth member shall be appointed by mutual agreement of the four members. A representative of the federal Lead Party shall be a non-voting member.

C. Roles and Responsibilities

The role of the UBT shall be to plan and implement the Water Use Retirement Program, including provision of a plan and annual reports of progress to the federal Lead Party.

D. Operations

The UBT shall adopt procedures and protocols to empower local leadership in the implementation of this program. These protocols shall specify the relationship between the UBT and the KBAC (in providing recommendations for a Federal Lead Agency Party) and the KBCC (in all other matters).

Appendix D
Klamath River Project Settlement Agreement
between PacifiCorp and Klamath Restoration Group

The Klamath River Project Settlement Agreement between PacifiCorp and the Klamath Restoration Group is being negotiated concurrently with this Agreement. The Project Agreement will be inserted in this appendix when it is completed.

Appendix E
Implementing Documents Related to Klamath Reclamation Project and other Water
Resource Matters

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Appendix E-1
Klamath Reclamation Project Delivery Limitations

(Filing to Establish Limitation on Specified Diversion Associated
with the Klamath Reclamation Project)

Preface: The form of Appendix E-1 as follows reflects the current state of the Klamath River Adjudication being conducted in the State of Oregon. It is likely that the deadline established under the Klamath Basin Restoration Agreement for filing Appendix E-1 will occur after the issuance of the Findings of Fact and Order of Determination in the Adjudication. As appropriate, the caption and other terms not affecting the substantive consequence of the following will be revised based on the forum and context in which the filing occurs.

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BEFORE THE ADJUDICATOR
WATER RESOURCES DEPARTMENT
FOR THE
STATE OF OREGON

In the Matter of the Determination of the Relative Rights of the Waters of the
Klamath River, a Tributary of the Pacific Ocean

Edward & Marilyn Livingston, Sylvia G. Bruce,
~~WaterWatch of Oregon, Inc.~~, Horsefly Irrigation District,
Langell Valley Irrigation District, Rogue River Valley
Irrigation District, Medford Irrigation District, Roger
Nicholson, Richard Nicholson, AgriWater, LLC; Maxine
Kizer, Ambrose McAuliffe, Susan McAuliffe, Kenneth L.
Tuttle and Karen L. Tuttle dba Double K Ranch, ~~Dave
Wood, Kenneth Zamzow~~, Nicholson Investments, LLC;
Wm. S. Nicholson, John B. Owens, Kenneth Owens, Wm.
L. Brewer, Mary Jane Danforth, ~~Jane M. Barnes, Franklin
Lockwood Barnes, Jr.~~, Jacob D. Wood, Elmore E.
Nicholson, Mary Ann Nicholson, Gerald H. Hawkins,
Hawkins Cattle Co., Owens & Hawkins, Harlowe Ranch,
Terry M. Bengard, Tom Bengard, Dwight T. Mebane,
Helen Mebane, ~~Sevenmile Creek Ranch, LLC~~; James
Wayne, Jr.; Clifford Rabe, Tom Griffith, William
Gallagher, Thomas William Mallams, River Springs
Ranch, Pierre A. Kern Trust, William V. Hill, Lillian M.
Hill, Carolyn Obenchain, Lon Brooks, ~~William C.
Knudsen~~, Wayne Jacobs, Margaret Jacobs, Robert Bartell,
Rodney Z. James, Hilda Francis for Francis Loving Trust,
David M. Cowan, James R. Goold for Tillie Goold Trust,
Duane F. Martin, Peter M. Bourdet, Vincent Briggs, J.T.

Lead Case No. 003

Consolidated Cases: 003, 118,
119, 120, 129, 137, 148, ~~149~~, and
~~150~~

Claims: 142, 143, 144, 186, 194,
205, 211, 285, 286, ~~287⁴, 288⁵,~~
289, 290, 291, 292, 293, 294,
295, 296, 297, 298, 299, 312,
317, 321, 322, 323, and 324

Contests: 0005, 0006, 0007,
0008, 0033, 0039, 0040, 0047,
0281, 0516, 0986, 1221, 1455,
1804, 2044, 2048, 2049, 2050,
2051, 2052, ~~2256~~, 2491,
~~2492, 2761, 2778, 2788, 2789,~~
~~2851⁶, 2854, 2856⁷, 2858, 2859,~~
~~2860, 2861, 2862, 2863, 2864,~~
~~2865, 2871, 2876, 2880, 2881,~~
~~2882, 2883⁸, 3136⁹, 3137¹⁰,~~

⁴ Claim 287 was voluntarily withdrawn by Oregon Department of Fish and Wildlife on September 26, 2003. *See* Notice of Withdrawal of Claim.

⁵ Claim 288 was voluntarily withdrawn by David P. Henzel on July 1, 2003. *See* Notice Of Withdrawal Of Claim.

⁶ WaterWatch of Oregon, Inc. voluntarily withdrew from Contest 2851 on February 19, 2003. *See* WaterWatch's Voluntary Withdrawal of Contest 2851.

⁷ By an Order dated May 20, 2003, WaterWatch of Oregon, Inc. was dismissed as a party contestant from all proceedings in the Klamath Basin Adjudication. *See* Order Dismissing WaterWatch Of Oregon, Inc.'s Contest Nos. 2820 et al.

⁸ Klamath Project Water Users' Renewed Motion to Strike Contest Nos. 2858, 2859-2865, 2871, 2876, and 2880-2883, and Dismiss WaterWatch as a Party was Granted on 4/03/03. *See* Order on Renewed Motion to Strike Contests and Dismiss WaterWatch as a Party and Motion to Reconsider.

⁹ Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3136 on May 28, 2002. *See* Voluntary Withdrawal of Contest by Langell Valley Irrigation District and Horsefly Irrigation District.

¹⁰ Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3137 on August 21, 2002. *See* Voluntary Withdrawal Of Contest By Langell Valley Irrigation District And Horsefly Irrigation District.

¹¹ Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3138 on March 21, 2003. *See* Voluntary Withdrawal Of Contest By Langell Valley Irrigation District And Horsefly Irrigation District.

¹² Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contest 3176 on December 5, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹³ Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice, from Contests 3184 and 3197 on February 25, 2003. *See* Voluntary Withdrawal Of Contests 3197 And 3215 [*sic*] By Horsefly And Langell Valley Irrigation Districts. Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3184 and 3197 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁴ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3191 on May 1, 2003. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁵ Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3208 on February 25, 2003. *See* Voluntary Withdrawal Of Contest 3208 By Horsefly And Langell Valley Irrigation Districts. Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3208 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁶ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contest 3209. *See* Voluntary Withdrawal of Contest 3209 by Medford Irrigation District and Rogue River Valley Irrigation District (Nov. 17, 2005).

¹⁷ Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3214 on February 25, 2003. *See* Voluntary Withdrawal Of Contest 3214 By Horsefly And Langell Valley Irrigation Districts. Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3214 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁸ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contests 3212, 3213, 3215-3222, 3227, 3232, and 3237-3240 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁹ William Bryant voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on October 31, 2003. Dave Wood voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on October 26, 2004. Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Walter Seput to James Wayne, Jr. (5/2/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on September 2, 2005. Kenneth Zamzow voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on September 2, 2005. William C. Knudtsen voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on September 13, 2005. Sevenmile Creek Ranch, LLC voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on March 1, 2007. Franklin Lockwood Barnes, Jr., and Jane M. Barnes voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on April 6, 2007.

²⁰ Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland

Confidential and Privileged Settlement Communication

Ranch Co., Tom Bentley, Thomas Stephens, John Briggs, ~~Wm. Bryant~~, Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District; Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co., Malin Irrigation District, Midland District Improvement District, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Thomas J. Shaw/Modoc Lumber Co., Bradley S. Luscombe, Randy Walthal and Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Company, Travis Huntly/Collins Products, LLC, The Klamath Tribes, Leland Woods Trust, Gary Griffith, Marjorie Divine, Victor Divine, David Griffith, Nora Griffith, John V. Lilly, Edna B. Lilly, Earl Martin Kerns, Shirley F. Kerns, Phyllis Vincent, Don Buffington, Ralph Sterns, Rich Flink/Reams Golf and Country Club, Inc.; Leonard Baio; Gary Strong, Contestants,

v.

Marta C. Carpenter; Flowers Bros. Inc.; Robert Flowers; Klamath Sprig and Honker Club, Inc.; Martin Scull; Karen Tucker; Sandral Tucker,

Claimants,

and

United States of America, Bureau of Reclamation; Geary Bros. Caledonia Ranch, a Co-Tenancy; Jeld-Wen, Inc.

District Improvement Co.; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe, Randy Walthal; Inter-County Title Company; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Company; Plevna District Improvement Company; and Collins Products, LLC voluntarily withdrew from Contests 3408, 3417, 3424, 3428 and 3629 on April 7, 2004. *See* Notice of Withdrawal of Contest Nos. 3408, 3417, 3424, 3428 and 3629.

²¹ Don Vincent voluntarily withdrew from Contests 2048, 2050, 2051, 3400, 3407, 3408, 3417, 3424-3429, 3624-3630, 3635, and 3640 on November 28, 2000. *See* Notice Of Withdrawal Of Claimants. Berlva Pritchard voluntarily withdrew from Contests 3400, 3407, 3408, 3412, 3417, 3424-3429, 3624-3630, 3635, and 3640 on June 24, 2002. *See* Notice Of Withdrawal Of Claimant. Klamath Hills District Improvement Company voluntarily withdrew, without prejudice, from Contests 2048, 2050, 2051, 3400, 3407, 3408, 3417, 3424-3429, and 3624-3630 on January 16, 2004. *See* Voluntary Withdrawal Of Contest By Klamath Hills District Improvement Company.

²² The Klamath Tribes withdrew from Contests 4167, 4168, and 4169 on August 14, 2006, after Consolidation of Cases 118, 119 and 120 was reversed by the Interim Order issued in this Case 003. *See* Klamath Tribes' Withdrawal of Contests dated August 14, 2006.

²³ The Klamath Tribes voluntarily withdrew, without prejudice, Contest 4179. *See* Klamath Tribes' Withdrawal of Contest dated September 28, 2006.

²⁴ The Klamath Tribes withdrew from Contests 4218, 4219, 4220, 4221, 4222, 4223, 4224, 4225, and 4230 on December 3, 2002. *See* Contest Dismissal Agreement And Stipulation Between Klamath Project Water Users, The Klamath Tribes, And The United States; [Proposed] Order of the Hearing Officer in Case 003.

Confidential and Privileged Settlement Communication

(Running Y Ranch);
Claimants/Contestants.

~~Horsefly Irrigation District; Langell Valley Irrigation District; Medford Irrigation District; Rogue River Valley Irrigation District; Roger Nicholson; Richard Nicholson; Agri Water, LLC; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood; Kenneth Zamzow; Anita Nicholson; William S. Nicholson; John B. Owens; William L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins; Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane; Helen Mebane; Sevenmile Creek Ranch, LLC; James G. Wayne Jr.; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; Lillian M. Hill; Carolyn Obenchain; Lon Brooks; Newman Enterprise; William C. Knudsen; Wayne Jacobs; Margaret Jacobs; Robert Bartell; Rodney Z. James; Hilda Francis for Francis Loving Trust; David M. Cowan; James R. Goold for Tillie Goold Trust; Duane F. Martin; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District~~

Case No. 274

Claim Nos. 313, 314, 315 and 316

Contest Nos. ~~2872, 2873, 2874, 2875~~²⁵, ~~3228, 3229, 3230, 3231~~²⁶, 3302, 3303, 3304, 3305²⁷, 3636, 3637, 3638, 3639²⁸, 3996, 3997, 4226, 4227, 4228 and 4229²⁹

²⁵ WaterWatch of Oregon, Inc.'s Contests 2872, 2873, 2874 and 2875 were dismissed. See Order Dismissing WaterWatch of Oregon, Inc.'s Contests, May 20, 2003.

²⁶ Medford and Rogue River Valley Irrigation Districts voluntarily withdrew from Contests 3228, 3229, 3230 and 3231 on March 3, 2003. Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contests 3228, 3229, 3230 and 3231 on April 22, 2005.

²⁷ Dave Wood voluntarily withdrew from Contests 3302-3305 on October 26, 2004. Change of Title Interest for Contests 3302-3305 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3302-3305 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3302-3305 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3302-3305 from Walter Seput to Wayne James, Jr. (5/2/05). Change of Title Interest for Contests 3302-3305 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3302-3305 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3302-3305 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3302-3305 on September 2, 2005. William Knudsen voluntarily withdrew from Contests 3302-3305 on September 13, 2005. A Change of Ownership was filed on June 15, 2006, reflecting that William V. Hill is deceased and ownership of his rights transferred to Lillian M. Hill. Sevenmile Creek Ranch, LLC voluntarily withdrew from Contests 3302-3305 on March 1, 2007. Jane M. Barnes and Franklin Lockwood Barnes, Jr. voluntarily withdrew from Contests 3302-3305 on April 6, 2007.

²⁸ Don Vincent voluntarily withdrew from Contests 3636, 3637, 3638 and 3639 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contests 3636, 3637, 3638 and 3639 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contests 3636, 3637, 3638 and 3639 on January 16, 2004.

²⁹ The Klamath Tribes voluntarily withdrew from Contests 4226, 4227, 4228 and 4229 on February 13, 2003.

Confidential and Privileged Settlement Communication

Improvement Company; Enterprise Irrigation District; ~~Klamath Hills District Improvement Company~~; Malin Irrigation District; Midland District Improvement Company; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Modoc Lumber Co.; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Gold and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC,

Contestants,

vs.

United States Department of Interior, Fish and Wildlife Service,

Claimant/Contestant.

John M. Mosby; Marilyn Mosby; Boyd P. Braren; Boyd P. Braren Trust; Roger Nicholson; Richard Nicholson; Agri Water, LLC; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; ~~Dave Wood; Kenneth Zamzow;~~ Nicholson Investments, LLC; Nicholson; William S. Nicholson; John B. Owens; William L. Brewer; Mary Jane Danforth; ~~Jane M. Barnes; Franklin Lockwood Barnes, Jr.;~~

Case No. 275

Claim Nos. 318, 319 and 320

Contest Nos. ~~2877, 2878, 2879~~³⁰, ~~3233, 3234, 3235, 3236~~³¹, 3307, 3308, 3309³², 3641, 3642, 3643³³, 3999, 4000, ~~4231, 4232, and 4233~~³⁴

³⁰ WaterWatch of Oregon, Inc.'s Contests 2877, 2878, and 2879 were dismissed. *See* Order Dismissing Waterwatch of Oregon, Inc.'s Contests, May 20, 2003.

³¹ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contests 3233, 3234, 3235, and 3236 on March 3, 2003. Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contests 3233, 3234, 3235, and 3236 on April 22, 2005.

³² Dave Wood voluntarily withdrew from Contests 3307-3309 on October 26, 2004. Change of Title Interest for Contests 3307-3309 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3307-3309 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3307-3309 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3307-3309 from Walter Seput to Wayne James, Jr. (5/2/05). Change of Title Interest for Contests 3307-3309 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3307-3309 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3307-3309 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3307-3309 on September 2, 2005. William Knudtsen voluntarily withdrew from Contests 3307-3309 on September 13, 2005. Sevenmile Creek Ranch, LLC voluntarily withdrew from Contests 3307-3309 on March 1, 2007. Jane M. Barnes and Franklin Lockwood Barnes, Jr. voluntarily withdrew from Contests 33307-3309 on April 6, 2007.

³³ Don Vincent voluntarily withdrew from Contests 3641, 3642, and 3643 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contests 3641, 3642, and 3643 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contests 3641, 3642, and 3643 on January 16, 2004.

³⁴ The Klamath Tribes voluntarily withdrew Contests 4231, 4232, and 4233 on February 13, 2003.

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Jacob D. Wood; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins; Hawkins Cattle Co.; Owens & Hawkins; Harlow Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane; Helen Mebane; ~~Sevenmile Creek Ranch, LLC~~; James G. Wayne, Jr.; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams, River Springs Ranch, Pierra A. Kern Trust, William V. Hill, Lillian M. Hill, Carolyn Obenchain; Lon Brooks; Newman Enterprise; ~~William C. Knudsen~~; Wayne Jacobs; Margaret Jacobs; Robert Bartell; Rodney Z. James; Hilda Francis for Francis Loving Trust; David M. Cowan; James R. Goold for Tillie Goold Trust; Duane F. Martin; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement Company; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC,

Contestants,

vs.

United States Department of Interior, Fish and Wildlife Service,

Claimant/Contestant.

**STIPULATION IN
IMPLEMENTATION OF THE
KLAMATH BASIN
RESTORATION AGREEMENT
AND ORDER THEREON**

Claimants and Contestants, the United States on behalf of the Bureau of Reclamation (Reclamation) and Fish and Wildlife Service, and Klamath Irrigation District (KID), Tulelake Irrigation District (TID), Klamath Drainage District (KDD), Klamath Basin Improvement District (KBID), Ady District Improvement Company (ADIC), Enterprise Irrigation District (EID), Malin Irrigation District (MID), Midland District Improvement Company (MDIC), Pine Grove Irrigation District (PGID), Pioneer District Improvement Company (PDIC), Poe Valley Improvement District (PVID), Shasta View Irrigation District (SVID), Sunnyside Irrigation

Confidential and Privileged Settlement Communication

District (SID), Don Johnston & Son (Johnston), Modoc Lumber Co. (Modoc), Bradley S. Luscombe (Luscombe), Randy Walthall and Inter-County Title Co. (Walthall and Inter-County Title), Reames Golf and Country Club (Reames), Winema Hunting Lodge, Inc. (Winema), and Van Brimmer Ditch Co. (VBDC) (collectively, the Claimants or Parties) hereby agree and stipulate as follows.

RECITALS

1. The United States on behalf of the Bureau of Reclamation and Fish and Wildlife Service has filed Claims 293-299, 312, 317, 313, 314, 315, 316, 318, 319, and 320.
2. KID, TID, KDD, KBID, ADIC, EID, MID, MDIC, PGID, PDIC, PVID, SVID, SID, Johnston, Modoc, Luscombe, Walthall and Inter-County Title, Reames, Winema, and VBDC are claimants under Claims 321-324, including the sub-claims 321-1 through 321-18, 322-1 through 322-3, 323-1 through 323-3, and 324. In addition, KDD holds Permit No. 43334.
3. The parties described in paragraphs 1 and 2 of the Recitals are known collectively as "Claimants."
4. The claims described in Paragraphs 1 and 2 of the Recitals include among their points of diversion the following locations: A Canal, Station 48, Number 1 Drain Gate, Miller Hill Pumping Plant, KID Pumping Plants 1-10, North Canal (having point of rediversion and control at North Canal Control Structure), Ady Intake Channel (having point of rediversion and control at Ady Intake Control Structure for the Ady Canal System and Ady ##6 and 7 for the ADIC system), Ady District ##1-5, Johnston Intake Channel (having point of rediversion and control at Johnston Pumping Plant), Modoc Culvert, Pioneer Intake Channel (having point of rediversion and control at Pioneer Pumping Facility), and Reames Pumping Plant. Other points

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of diversion associated with any claims identified in Paragraphs 1 and 2 of the Recitals are not affected by this Stipulation or the Order thereon.

5. The Claimants have entered into the Klamath Basin Restoration Agreement (KBRA). Pursuant to the KBRA, the Claimants identified in Paragraphs 1 and 2 of the Recitals have agreed to limit diversions from the points of diversion listed in Paragraph 4 of the Recitals as determined by the terms herein, to the amounts stated in Attachment A to this Stipulation and Order. The limitations as expressed were developed in a settlement context and for the purposes of settlement. This Stipulation, including Attachments A, B, and C attached hereto and incorporated by reference, substantively constitutes Appendix E-1 of the KBRA.

6. Section 15.1.2 of the KBRA, attached hereto as Attachment B, identifies and defines the "Refuge Allocation" and provides terms and conditions related to the Refuge Allocation and related to water deliveries for Tule Lake and Lower Klamath National Wildlife Refuges. The Refuge Allocation is provided in Section 15.1.2.E-H of Attachment B.

7. Deliveries of water diverted from the Settlement Points of Diversion to the area identified as the "On-Project Plan Area," as defined in Section 1.7 of the KBRA will continue, subject to Attachment A and the On-Project Plan identified in Section 15.2 of the KBRA.

TERMS OF THE AGREEMENT

1. **Definitions.** The following terms have the following meanings for the purposes of this Stipulation and any Order thereon and for purposes of the KBRA:

a. "Settlement Points of Diversion" means: A Canal, Station 48, Number 1 Drain Gate, Miller Hill Pumping Plant, KID Pumping Plants 1-10, North Canal (having point of rediversion and control at North Canal Control Structure), Ady Intake Channel (having point of

Confidential and Privileged Settlement Communication

rediversion and control at Ady Intake Control Structure for the Ady Canal System and Ady ##6 and 7 for the ADIC system), Ady District ##1-5, Johnston Intake Channel (having point of rediversion and control at Johnston Pumping Plant), Modoc Culvert, Pioneer Intake Channel (having point of rediversion and control at Pioneer Pumping Facility), and Reames Pumping Plant.

b. “DIVERSION” for the purposes of this Stipulation means the sum of:

- (1) diversion at A Canal;
- (2) diversion for North Canal, measured at North Canal Control Structure;
- (3) diversion for Ady Canal system, measured at Ady Intake Control Structure;
- (4) combined diversion from KID Pumping Plants 1-10;
- (5) combined diversion for ADIC system, at ADIC ##1-7;
- (6) diversion for Johnston system, at Johnston Pumping Plant;
- (7) diversion for Pioneer system, at Pioneer Pumping Facility;
- (8) diversion at Modoc Culvert;
- (9) diversion at Reames Pumping Plant; and
- (10) Klamath Diversion via Lost River Diversion Channel.

Locations of Settlement Points of Diversion and points of control are as specified in Attachment C attached hereto.

c. “Klamath Diversion via Lost River Diversion Channel” means the result of the following: Station 48 Diversions plus Miller Hill Pumping Plant diversions, minus Miller Hill spill returns, minus releases from Wilson Dam to the Lost River Diversion Channel.

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d. “Refuge Allocation” means the quantity of water identified in Attachment A and Section 15.1.2.E-H of Attachment B for water uses for the Lower Klamath National Wildlife Refuge other than Area K lands and for other uses described in Section 15.1.2.E of Attachment B. The Refuge Allocation shall be provided through water diverted under the DIVERSION identified in Attachment A or from sources used by or available to the Klamath Reclamation Project and delivered through Klamath Reclamation Project facilities as provided in Sections 15.1.2.E-H of Attachment B.

e. “Refuge Points of Delivery” shall be the points of measurement as provided in Section 15.1.2.E.iv. of Attachment B and means: Ady/South Canal at State Line, D Plant (minus use by private P-Canal water users), North Canal at State Line, and any location identified in Section 15.2.E.(iii)(5) of Attachment B; Sumps 1A and 1B when refilled after draining or lowering at the direction of the refuge manager; refuge-approved “walking wetlands,” as further described in Section 15.1.2.A(i) of Attachment B; and conveyance losses as described in Section 15.1.2.E(iv)(4).

f. “Station 48 Diversions” means combined diversions at Station 48 and Number 1 Drain Gate.

2. Limitation on DIVERSION. The DIVERSION as defined herein at the Settlement Points of Diversion under all claimed, permitted and certificated water rights identified in Paragraphs 1 and 2 of the Recitals shall not exceed the values in Attachment A.

In addition, diversion of water for the purpose of the Refuge Allocation is restricted to those points of diversion as claimed in Klamath Basin Adjudication Claims 293, 312, 317, 313, 314, 315, 316, 318, 319, and 320, 321, and 323.

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The Claimants shall monitor the DIVERSION as defined herein at the Settlement Points of Diversion, during any period when diversions are occurring at the Settlement Points of Diversion, and report such quantities to the Oregon Water Resources Department (OWRD) in accordance with any valid Order of Determination or Decree upon which such diversions are based. Consistent with applicable law, the OWRD shall regulate the points of diversion or control based on DIVERSION as defined herein for the purpose of enforcing this Stipulation and any Order thereon, and otherwise on the basis of water rights of record.

3. For purposes of this Stipulation and any Order thereon, the diversion at each of the following facilities shall be presumed to equal the following amounts during the period March – October unless it is demonstrated to the OWRD that a lesser amount is diverted during such period:

<u>Facility</u>	<u>Presumed diversion Mar – Oct (AF)</u>
KID Pumping Plants 1-10 Combined	2600
Ady ##1-7 Combined	2031
Johnston Pumping Plant	678
Pioneer Pumping Facility	1495
Modoc Culvert	217
Reames Pumping Plant	417

4. If new monitoring devices are installed at any of the Settlement Points of Diversion that currently have monitoring devices, a correlation will be developed between the historical measurement and the newer measurement device. The Claimants agree that the methodology used to develop this correlation will follow USGS protocol for surface water data collection. The quantities in Attachment A will thereafter be adjusted, up or down, such that use of the new device does not change the actual volume of water that can be diverted.

5. This Stipulation, and any Order thereon, shall not be construed as an admission or determination on any issue of fact or law, including, without limitation, the legal characterization

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of water as to source; *provided*, that for purposes of the KBRA, water diverted at Station 48 Diversions or Miller Hill Pumping Plant not within the definition of Klamath Diversion via Lost River Diversion Channel shall not be considered water of Upper Klamath Lake or the Klamath River, and diversion of any such water is not limited by the terms of this Stipulation or any Order thereon. Nor shall the Stipulation or any Order thereon limit diversion or use from any location or source not identified herein.

6. This Stipulation, and any Order thereon, shall not be construed as evidence of intent to abandon a water right.

7. The applicable DIVERSION in Attachment A reflects the Refuge Allocation as provided in the KBRA and Attachment B. DIVERSION quantities in Attachment A will provide the applicable Refuge Allocation, measured at the Refuge Points of Delivery, as provided in Section 15.1.2 of Attachment B, subject to and consistent with the provisions in Sections 15.1.2.E-H, including but not limited to the first paragraph of section 15.1.2.E, and Sections 15.1.2.D, 15.1.2.E(ii), and 15.1.2.F, of Attachment B. Consistent with Section 15.1.2, nothing in this Stipulation or any Order thereon precludes the use of any water diverted within the total applicable DIVERSION quantity in Attachment A for any authorized Klamath Reclamation Project purpose, so long as the total quantity of water equal to the applicable Refuge Allocation is delivered to the Refuge Points of Delivery, consistent with Sections 15.1.2.G(v) and (vi) and H(i) and (ii) of Attachment B. Enforcement by OWRD of the water rights related to the DIVERSION including the water rights related to the Refuge Allocation shall be consistent with applicable law

8. By entering and filing of this Stipulation, the Claimants identified in the recitals are not foregoing any rights to seek changes in any water rights related to the Settlement Points

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of Diversion, including modification or relocation of the points of diversion or change in place of use, so long as the limitations on DIVERSION provided in Attachment A is not exceeded; any Order on this Stipulation will be construed to be consistent with this condition. Further, nothing in this Stipulation or any Order thereon prohibits an increase in the diversions at the Settlement Points of Diversion beyond the DIVERSION limits if such increase is solely the result of a transfer of a non-Settlement Point of Diversion water right.

[Add boilerplate.]

[CASE 3 SIGNATURE BLOCKS]

RONALD R. TENPAS
Assistant Attorney General

DATE: _____

By _____
STEPHEN R. PALMER
Special Attorney, U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, California 95825
Telephone: (916) 978-5683
Telefax: (916) 978-5694

DATE: _____

By _____
BARBARA SCOTT-BRIER
Special Attorney, U.S. Department of Justice
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U.S. Department of the Interior
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Telephone: (503) 231-2139
Telefax: (503) 231-2166

DATE: _____

By _____

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ATTORNEYS FOR THE UNITED STATES OF AMERICA

SOMACH, SIMMONS & DUNN
A Professional Corporation

DATE: _____

By _____

Paul S. Simmons, OSB 97138
Daniel Kelly (*Pro Hac Vice*; Cal. Bar No. 215051)
Attorneys for Tulelake Irrigation District

DATE: _____

By _____

William M. Ganong, OSB 78213
Attorney for Klamath Irrigation District,
Malin Irrigation District, Reames Golf and
Country Club, and Modoc Lumber Company

Confidential and Privileged Settlement Communication

DATE: _____

By _____

Justin E. Throne, OSB 02003
Attorney for Ady District Improvement Company, Klamath Drainage District, Klamath Basin Improvement District, Midland District Improvement Company, Poe Valley Improvement District, Sunnyside Irrigation District, Enterprise Irrigation District, and Pine Grove Irrigation District

DATE: _____

By _____

B.J. Matzen, OSB 70091
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AMERICA, ON BEHALF OF THE FISH AND
WILDLIFE SERVICE**

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District, and Pine Grove Irrigation District

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DATE: _____

By _____
James R. Uerlings, OSB 76030
Attorneys for Shasta View Irrigation District

IT IS SO ORDERED.

DATED: _____

ATTACHMENT A

As used herein, "Forecast" means the March 1 Natural Resources Conservation Service 50 percent exceedance forecast for net inflow to Upper Klamath Lake during the period April 1 – September 30.

PHASE 1

The following limitations on DIVERSION, as defined in the Stipulation of the Claimants, shall be applicable immediately upon issuance of Order on Stipulation in Implementation of the Klamath River Basin Restoration Agreement and until the commencement of Phase 2. The Refuge Allocation as identified in section 15.1.2.E-H of Attachment B, which is within each applicable DIVERSION amount, is reflected below, and is to be subject to and consistent with section 15.1.2.E-H of Attachment B.

A. During the Period March – October:

1. If the Forecast is 287,000 acre-feet or less: 378,000 acre-feet, including Refuge Allocation of 48,000 acre feet.

2. If the Forecast is more than 287,000 acre-feet but less than 569,000 acre-feet, the quantity in thousands of acre-feet resulting from application of the following equation: $378 + \{42.64 \times [(Forecast - 287) \div 282]\}$, including Refuge Allocation that results from application of the following equation: $48 + (7.64 \times [(Forecast - 287) \div 282])$.

3. If the Forecast is 569,000 acre-feet or more: 445,000 acre-feet, including Refuge Allocation of 60,000 acre feet.

B. During the Period November – February: 80,000 acre-feet, including Refuge Allocation of 35,000 acre feet, *provided*, that if the OWRD receives notice from the Klamath

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Basin Coordinating Council that additional diversion is acceptable, the amount may increase as specified in such notice as long as within the water rights.

PHASE 2

The following limitations on DIVERSION, as defined in the Stipulation of the Claimants, shall become applicable when the OWRD receives appropriate notice from the Klamath Basin Coordinating Council. The Refuge Allocation as identified in section 15.1.2.E-H of Attachment B, which is within each applicable DIVERSION amount, is reflected below, and is to be subject to and consistent with Section 15.1.2.E-H of Attachment B.

A. During the Period March – October:

1. If the Forecast is 287,000 acre-feet or less, 388,000 acre-feet, including Refuge Allocation of 48,000 acre feet.

2. If the Forecast is more than 287,000 acre-feet but less than 569,000 acre-feet, the quantity in thousands of acre-feet resulting from application of the following equation: $388 + \{42.64 \times [(Forecast - 287) \div 282]\}$, including Refuge Allocation that results from application of the following equation: $48 + (7.64 \times [(Forecast - 287) \div 282])$.

3. If the Forecast is 569,000 acre-feet or more, 445,000 acre-feet, including Refuge Allocation of 60,000 acre feet.

B. During the Period November – February: 80,000 acre-feet, including Refuge Allocation of 35,000 acre feet, *provided*, that if the OWRD receives notice from the Klamath Basin Coordinating Council that additional diversion is acceptable, the amount may increase as specified in such notice as long as within the water rights.

ATTACHMENT B

LDX: Delete following text of Attachment B and substitute final version of Section 15.1.2, as above, retaining numbering.

15.1.2 Water Diversions for Tule Lake and Lower Klamath National Wildlife Refuges.

A. Recitals.

i. National Wildlife Refuges Generally

The lands within the LKNWR and TLNWR are owned by the United States and managed by FWS. These Refuges receive water through facilities of the Klamath Reclamation Project, administered by Reclamation. Klamath Reclamation Project and other facilities are used to deliver water to LKNWR's and TLNWR's wetlands (including seasonal wetlands, permanent vegetation, and open water areas), sumps, cooperative farming lands, and lease lands, and to walking wetlands within the Klamath Reclamation Project. For purposes of this Agreement, walking wetlands includes a Refuge-approved program that incorporates managed wetlands into agricultural crop rotations on the Refuge as well as on private lands in the Klamath Reclamation Project. Such wetlands support the diversity of waterbird species endemic to the Upper Klamath Basin. Walking wetlands returned to agricultural production enhance agricultural crop yields and reduce chemical inputs by enhancing soil fertility and reducing soil pests and diseases to crops.

ii. **TID Operations and the Refuges**

Pursuant to contract with the United States (Contract No. 14-06-200-5954 between TID and the United States), TID operates various Klamath Reclamation Project facilities owned by the United States, including D Plant. Operation of D Plant results in deliveries of water to the P Canal system and to LKNWR wetlands and cooperative farming lands. TID also operates Klamath Reclamation Project control infrastructure to maintain water surface elevations in Sumps 1A and 1B in TLNWR pursuant to Section 6 of the Kuchel Act (Public Law 88-567), section 7(b) of contract 14-06-200-5964, and other applicable laws, rules, regulations, and requirements, and to provide water for TLNWR lease lands, cooperative farming lands, and Walking Wetlands.

iii. **KDD Operations and LKNWR**

KDD owns and operates certain facilities within KDD's boundaries, including Ady Canal and North Canal. KDD provides delivery of water to LKNWR's wetlands, cooperative farming lands, and lease lands (known as Area K) pursuant to contract with the United States (Contract No. 14-06-200-5964 between KDD and the United States). As used in this Section 15.1.2, and solely for the convenience of reference, Klamath Reclamation Project facilities include facilities owned by and operated by KDD.

iv. **Delivery of Water to Wildlife Refuges**

This Agreement provides for a specific allocation of water for the Refuges, described in Section 15.1.2 15.1.2.E (Refuge Allocation), and certain related commitments. Otherwise, nothing in this Agreement modifies any current obligations of KDD with respect to delivery of water to LKNWR or TID with respect to TLNWR, but, rather, removes any ambiguity or resolves any differences of position as to certain delivery of water for Refuge purposes to LKNWR wetlands, TLNWR sumps, and Walking Wetlands under a Refuge-approved program. TID will continue to operate Klamath Reclamation Project water control infrastructure to maintain water surface elevations in Sumps 1A and 1B in accordance with Section 6 of the Kuchel Act, Article 7(b) of Contract No. 14-06-200-5964, applicable rules and regulations, and other applicable requirements (e.g., the Endangered Species Act), and terms herein.

B. Purpose and Scope.

The purpose of this Section 15.1.2 is to describe the delivery of water to the LKNWR and TLNWR and to ensure reliable water deliveries for the exercise of the Refuges' water rights. Water deliveries for the exercise of the Wildlife Refuges' water rights and the Refuge Allocation described in this Section 15.1.2.E shall be made available from the Klamath Reclamation Project's DIVERSION, as provided in Appendix E-1 and Attachment A thereto, or from other sources used by the Klamath Reclamation Project in the "On Project Plan Area" ("OPPA"), as defined in Section 15.2 and delivered through Klamath Reclamation Project facilities.

i. **TLNWR**

With respect to TLNWR, the terms in this Section 15.1.2 ensure continued delivery of water to the approximately 13,000 acres of wetlands and open water on TLNWR, TLNWR's cooperative farming lands, agricultural lease lands, and Walking Wetlands, subject to existing laws and applicable contracts. TLNWR will receive water from the Klamath Reclamation Project's DIVERSION, identified in Appendix E-1 to this Agreement, or from other sources used by the Klamath Reclamation Project in the OPPA and delivered through Project facilities, and not from the Refuge Allocation, except as provided in Section 15.1.2.E.iii(2) for refilling of the sumps after intentional draining by the Refuges, and Section 15.1.2.E.iii(1) related to Refuge-approved Walking Wetlands.

ii. **LKNWR**

With respect to LKNWR, the terms in this Section 15.1.2 provide a specific allocation of water for LKNWR wetlands and cooperative farming lands and other uses identified in Section 15.1.2.E.iii. The Refuge Allocation, ranges from 48,000 to 60,000 acre feet of water in the summer period and 35,000 acre feet in the winter period. In addition, the LKNWR lease lands will receive water from the Klamath Reclamation Project's DIVERSION, as provided in Appendix E-1, or from other sources used by the Klamath Reclamation Project in the OPPA and delivered through Klamath Reclamation Project facilities, and not from the Refuge Allocation.

C. Effective Date and Support for Agreement Terms.

The effective date for this Section 15.1.2 shall be the date that Appendix E-1 becomes effective. Each of KPWU consents to this Section 15.1.2 and hereby releases the United States, TID, and KDD from all claims, damages, or losses resulting from the performance under this section and under any new or amended contracts consistent with this Section 15.1.2.

D. Klamath Reclamation Project Diversions.

Water for the LKNWR and TLNWR will be provided as part of the DIVERSION identified in Appendix E-1 as necessary to meet the commitments herein, but may be provided from other sources available to the Klamath Reclamation Project and delivered through Klamath Reclamation Project facilities. The water delivery commitments herein do not preclude the use of water for another purpose prior to the delivery to Wildlife Refuge lands and/or the Refuge Allocation described in Section 15.1.2.E (e.g., delivery of return flows) so long as the delivery obligations and specific quantities are maintained.

i. Water for TLNWR and LKNWR Lease Lands

Water for LKNWR's lease lands and for TLNWR's lease lands, cooperative farming lands, and maintenance of the sumps, except for draining and refill of the sumps by the Refuges as provided in Section 15.1.2.E.iii(2), shall be provided from the DIVERSION, identified in Appendix E-1, or from other sources used in the Klamath Reclamation Project in the OPPA and delivered through Project facilities, without any effect on the Refuge Allocation identified in Section 15.1.2.E.i. Also, delivery of water to LKNWR's (Area K) lease lands and to TLNWR shall be under the On-Project Plan described in Section 15.2.4, *provided* that the portion of the On-Project Water Plan applicable to such Wildlife Refuge lands will be developed with and approved by the Refuge Manager, and the On-Project Plan as it relates to Refuge lands shall treat such Refuge lands equitably.

ii. Refuge Water Allocations

Water for the LKNWR wetlands, cooperative farming lands, and the uses in Section 15.1.2.E.iii (constituting the Refuge Allocation) shall be as provided below in Section 15.1.2.E.

iii. **Measurement Points**

DIVERSION under Appendix E-1 shall be measured at the points of diversion or control, as described in Appendix E-1. The points of measurement for the Refuge Allocation shall be the points of delivery as described at Section 15.1.2.E.iv.

iv. **Conveyance Losses**

Conveyance losses associated with delivery of water for the Refuge Allocation will not be charged to the Refuge Allocation, except as provided in Section 15.1.2.E.iii(3) and 15.1.2.E.iii(4).

E. Refuge Allocation.

The Refuge Allocation shall be comprised of water for the following: LKNWR wetlands; LKNWR cooperative farming lands; refilling of TLNWR sumps after intentional draining by the Refuges (as identified in Section 15.1.2.E.iii(2)); Refuge-approved walking wetlands (as identified in Section 15.1.2.E.iii(1)); conveyance losses, if any, resulting from bypassing water at Anderson-Rose Dam solely for LKNWR wetlands, (as identified in Section 15.1.2.E.iii(3)); and conveyance losses for any delivery to LKNWR via North Canal (as identified in Section 15.1.2.E.iii(4)). The Refuge Allocation shall: be provided through water diverted under the DIVERSION, identified in Appendix E-1, or from other sources used by the Klamath Reclamation Project in the OPPA and delivered through Project facilities, and shall be based on two periods: November through February (winter period Refuge Allocation) and March through October (summer period Refuge Allocation).

i. **Summer Period**

Except as provided in Section 15.1.2.F.i (Shortages), the summer period Refuge Allocation (March 1 - October 31) shall be based on the Forecast used for DIVERSIONS, described in Appendix E-1 (i.e., the March 1 National Resource Conservation Service 50 percent exceedance forecast for net inflow to Upper Klamath Lake for April - September) and shall consist of the following:

- (1). When the Forecast is 287,000 or less, 48,000 acre-feet;

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- (2). When the Forecast is more than 287,000 acre-feet but less than 569,000 acre-feet, the quantity in thousands of acre feet resulting from the following equation: $48 + (7.64 \times [(Forecast - 287) \div 282])$; and
- (3). When the forecast is 569,000 acre-feet or more, 60,000 acre-feet.

ii. **Winter Period**

Subject to Section 15.1.2.F.ii, the winter period Refuge Allocation (November 1 – February 28 (or February 29 in leap years) shall be 35,000 acre feet, except, when additional water is available under Applicable Law and this Agreement, the November - February allocation may be increased up to 60,000 acre feet, subject to any agreement for delivery of water, as needed. Any such additional amount (i.e. winter allocation above 35,000 acre-feet) shall be charged against the summer period Refuge Allocation, except if such additional water is made available upon recommendation of the KBCC to provide for augmentation of the Refuge Summer Allocation pursuant to Section 17.3, but not including the 10,000 acre feet identified in Section 15.1.1.

iii. **Other Refuge Uses**

The Refuge Allocation described above in Paragraphs (i) and (ii) applies to LKNWR wetlands and cooperative farming lands and the following uses, and delivery to the LKNWR Delivery Points described in Section 15.1.2.E.iv(1) will be adjusted downward based on the following:

- (1). One acre-foot per acre for each acre of walking wetlands where any such practice is part of a Klamath Basin Refuge-approved program or agreement in to the following areas: TLNWR's lease lands and cooperative farming lands; LKNWR's Area K lease lands; and lands within the Klamath Reclamation Project outside of TLNWR and LKNWR, subject to any necessary approvals to such use of the Refuges' water rights;
- (2). If Sump 1A or Sump 1B has been drained or lowered intentionally at the request or direction of the manager of the Klamath Basin Refuges

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Complex (Refuge Manager), by the quantity used to refill either such sump;

- (3). If it is reasonably necessary to bypass water at Anderson-Rose Dam solely to meet delivery requirements for the LKNWR wetlands, or cooperative farming lands, by conveyance losses as agreed upon by the Refuge Manager and KPWU. The Refuge Manager and KPWU will agree on the amount of such conveyance losses within 18 months of the Effective Date.
- (4). If the Refuge Manager and KDD agree to any delivery to LKNWR by diversion through North Canal, by conveyance losses as agreed upon by the Refuge and KPWU.
- (5). If additional Klamath Reclamation Project surface water that is conveyed through Project facilities becomes available for LKNWR through a controlled means other than the LKNWR Delivery Points identified below in Section 15.1.2.E.iv(1), and is delivered to the LKNWR, by that amount.

iv. **Points of Measurement for Refuge Allocation**

The points of measurement for the Refuge Allocation shall be as follows:

- (1). For water comprising and charged to the Refuge Allocation for LKNWR wetlands, open water, and cooperative farming lands, the delivery points and measurement points shall include: Ady/South Canal at State Line; D Plant (minus use by private P-Canal water users); North Canal at State Line; and any location identified in Section 15.1.2.E.iii(5) (collectively, "LKNWR Delivery Points").
- (2). For refill of Sumps 1A Sump 1B, if drained or lowered intentionally at the request or direction of the Refuge Manager, as provided in Section 15.1.2.E.iii(2), the measurement points shall be the points of delivery.

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- (3). For Refuge-approved walking wetlands the measurement shall be as provided above in Section 15.1.2.E.iii(1).
- (4). For conveyance losses if any for deliveries with respect to Section 15.1.2.E.iii(3) (bypass at Anderson Rose Dam as agreed upon in Section 15.1.2.E.iii(3); and with respect to Section 15.1.2.E.iii(4) (extension of North Canal, as agreed upon in Section 15.1.2.E.iii(4)).

F. Shortages.

i. Summer Period Shortages

In any year that the applicable DIVERSION quantity for the summer period (March 1 - October 31) identified in Appendix E-1 is not available for diversion at the Settlement Points of Diversion by the Klamath Reclamation Project, the difference between the applicable DIVERSION quantity and the amount available for diversion at the Settlement Points of Diversion by the Klamath Reclamation Project (the deficit) shall be addressed as follows:

- (1). For up to the first 10,000 acre-feet of deficit in the summer period DIVERSION during Phase 1, identified in Appendix E-1, and for up to 20,000 acre-feet of deficit during Phase 2, identified in Appendix E-1, there shall be no effect on delivery of the summer period Refuge Allocation (at the LKNWR Delivery Points described in Section 15.1.2.E.iv if forbearance agreements have been entered for the summer (March – October) period covering non-Refuge lands in the Klamath Reclamation Project sufficiently to reduce water demand by an amount equivalent to such deficit. Such forbearance agreements would be in addition to those existing and being exercised in the year under the On-Project Plan and may occur under Section 18.2.2.B.iii(1) or otherwise. Drought relief funds under Section 18.2.2.B.vi shall be made available for this purpose; additionally, any other funds available to the Refuge may be used by it for this purpose. KWAPA will assist the Refuge in addressing any such agreements.

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- (2). After the application of step (1), above, or to the extent that step (1) is not implemented, delivery for the summer period Refuge Allocation will be temporarily reduced at the LKNWR Delivery Points as necessary to cover the remaining deficit to the summer period Klamath Reclamation Project DIVERSION until delivery under the summer period Refuge Allocation to all uses described above at Section 15.1.2.D.ii, 15.1.2.E and 15.1.2.E.iii has been reduced to 24,000 acre-feet.
- (3). After application of step (2), if said summer period DIVERSION continues to have a deficit, the Refuge Allocation and delivery to the OPPA will proportionately share any additional deficits to the summer period DIVERSION. For example, if the remaining deficit is five percent of the applicable summer period DIVERSION, delivery to the Refuge Allocation calculated above in step (2) will be reduced by five percent and delivery to the OPPA from the Settlement Points of Diversion will also be reduced by five per cent.

ii. **Winter Period Shortage**

In any year that the applicable DIVERSION quantity for the winter period (November - February), identified in Appendix E-1, is not available for diversion by the Klamath Reclamation Project, shortage will be shared based on a plan to share shortages agreed upon by the Refuge Manager and KPWU. The plan will be completed within one year of the Effective Date.

G. Delivery Facilities.

i. **TID Water Deliveries**

The delivering entity, TID, its assigns, or Reclamation, shall provide or continue to provide water deliveries to the Wildlife Refuges as follows:

- (1). Delivery of water, through D Pumping Plant, to LKNWR wetlands and cooperative farming lands, including delivery of at least 9,000 acre-feet of water through D Pumping Plant to LKNWR wetlands or cooperative farming lands during the

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months of September and October, subject to any agreed variation by TID, or its assigns, and the Refuge Manager, and such amount in April- August as determined by the Refuge Manager in consultation with TID and Reclamation and subject to reasonable operational terms;

- (2). Operation of Klamath Reclamation Project water control infrastructure to maintain water surface elevations in TLNWR's Sumps 1A and 1B per Section 6 of the Kuchel Act, section 7(b) of the TID contract, other applicable laws, rules, regulations, and any other applicable requirements (e.g., Endangered Species Act);
- (3). Delivery of water to TLNWR lease lands pursuant to applicable contract(s), subject to Sections 15.1.2.G.i(4) and 15.1.2.D.i; and
- (4). Any additional specific obligations for delivery as agreed upon by TID, or its assigns, and the Refuge Manager.

ii. **KDD Water Deliveries**

The delivering entity, KDD or its assigns, shall continue to provide delivery of water to LKNWR as follows:

- (1). Delivery of water diverted at Ady Channel and Ady Canal headgates through the South Canal to the LKNWR wetlands and cooperative farming lands, as provided in the contract with the FWS, with the point of measurement of deliveries being State Line; and
- (2). Delivery of water to LKNWR's Area K lease lands, in accordance with the terms of applicable contract(s), subject to Section 15.1.2.D.i.

iii. **North Canal Water Deliveries**

If agreed upon by KDD and the United States, KDD will provide for delivery of water diverted at North Canal, with the point of delivery and measurement being at State Line.

iv. **On-Project Plan and Refuge Lease Lands**

Water deliveries to LKNWR's Area K lease lands and TLNWR's lease lands may be limited pursuant to the On-Project Plan described at Section 15.2.

v. **Plan for General Parameters of Delivery of Refuge Allocation**

Not later than one year after the Effective Date, the Refuge Manager, Reclamation, TID, and KDD will agree to the general parameters of delivery of the Refuge Allocation.

vi. **Schedule for Deliveries of Refuge Allocation**

The Refuge Manager shall prepare, as needed, a schedule(s) of deliveries to LKNWR other than Area K, subject to concurrence by Reclamation, TID, and KDD or their assigns in light of operational needs or limitations. Such schedule will be flexible and may be adjusted by agreement of said entities according to climate or other conditions and Refuge needs, so long as consistent with the applicable Refuge Allocation and reasonably achievable through the operation of relevant works.

vii. **North Canal as Point of Diversion**

KPWU shall not oppose any action by the Refuge to establish North Canal as a point of diversion for any water rights associated with the LKNWR lands outside of the Refuge's Area K lease lands.

H. Other.

i. **Pass-Through of Excess Water**

Water that becomes physically available at the LKNWR Delivery Points due to the operation of Klamath Reclamation Project works but that is in excess of the applicable Refuge Allocation shall be conveyed to the Klamath River, provided, that any such water in excess of an applicable delivery schedule that becomes available through the operation of project works and is in fact used on the LKNWR lands outside of Area K lease lands shall be charged against the Refuge Allocation.

ii. **Determination of Passed-Through Excess Water**

Such water that is available at P Canal through operation of D Pumping Plant that is passed through the LKNWR to the Klamath River will not be charged against the Refuge Allocation. The FWS and KPWU shall, within one year of the Effective Date, develop an agreed-upon system to determine whether water was passed through the LKNWR lands outside of Area K lease lands.

iii. **LKNWR Acquisition of Lands**

If additional Klamath Reclamation Project lands are acquired by and included in LKNWR, the water rights or delivery rights, if any, associated with those lands at the time prior to acquisition will remain with those lands after acquisition and where there are associated Project delivery rights, they will be incorporated and added into the Refuge Allocation.

I. **Contracts.**

TID, Reclamation, and FWS agree that the only costs to be charged to the Wildlife Refuges by TID associated with the operation and maintenance of D Pumping Plant for the Wildlife Refuges shall be those identified in Section 15.4.2, and no further charges or reimbursement to TID shall occur for delivery to the Refuges, whatever the amount and scheduling of said delivery shall be. This limitation shall not, however, preclude an agreement to additional terms related to any wheeling of groundwater.

J. **Interim Agreement.**

Although the terms of this Section 15.1.2 are not effective until Appendix E-1 is effective, as provided in Section 15.1.2.C, KPWU and the FWS recognize that both agriculture in the Klamath Reclamation Project and the lands within the Wildlife Refuges need water to continue their operations. KPWU and FWS recognize that it is in their best interests and agree to continue to work together cooperatively to manage water for the benefit of agriculture and the Wildlife Refuges, under legal authorities and obligations existing prior to enactment of Authorizing Legislation or the effectiveness of Section 15.1.2.

K. Term and Effect of Section 15.1.2.

Notwithstanding Section 1.6, this Section 15.1.2 shall remain in effect until modified by agreement of the FWS and KPWU.

Appendix E-2
Groundwater Investigation Scope of Work

Predicting and Monitoring the Effects of Ground-Water Use
in the Upper Klamath Basin

Utilization of US Geological Survey monitoring, science, and models as part of the Klamath
River Basin Restoration Agreement

I.
Introduction

Ground water pumping is an element of the Klamath River Basin Restoration Agreement. It is important, therefore, that all parties to the agreement have a clear understanding of the short and long term hydrologic effects of ground-water use, and that there be a consensus as to the methods that will be used to predict and monitor those effects. This document briefly describes the hydrologic effects of ground-water use, methods for determining those effects, and ways in which the methodologies being developed by the USGS can be best utilized as part of the Restoration Agreement.

II.
Effects of Ground-Water Use

Ground water removed from aquifers comes from a combination of reduced subsurface storage and changes in flows at aquifer boundaries. Aquifer boundaries are those places where water enters or leaves aquifer systems such as streams and springs, wetlands, and adjoining basins. The proportions of water coming from storage and boundaries change with time as pumping progresses, with water coming primarily from storage at the onset of pumping, and then coming more from changes in flows at boundaries as pumping continues and the hydrologic system approaches a new equilibrium. The change in subsurface storage is manifest as a decline in the water level elevations in aquifers (drawdown). The water-level elevations stabilize when the decline has spread sufficiently to alter the flows at the aquifer boundaries. Changes in flows at aquifer boundaries may include, among other things, changes in ground-water flow to or from streams, to or from adjoining basins, and changes in discharge to springs, wetlands, and subirrigation. If the boundary flows are insufficient to supply the pumping, then the water table will continue to decline.

The ground-water flow system in the upper Klamath Basin, including the water table elevation and the major hydrologic boundaries, is described by Gannett and others (2007). Considerable data exist that can be used to characterize the response of the flow system (including boundary flows) to external stresses including climate variations (drought cycles) and pumping. These data provide insight into how the ground-water system is likely to respond to increased pumping.

When considering ground-water use as part of an overall water-management strategy in the upper Klamath Basin, it should be understood that consumptive use of ground-water will have

some effect on ground-water discharge to streams, and, as a consequence, streamflow. It is not a question of *if* streams will be affected by ground-water use, but of *where*, *when*, and *how much*. The proportion of ground-water pumped that ultimately comes from streamflow and the timing of the impacts vary depending on the location of pumping and proximity to aquifer boundaries. The timing of the impacts to streams (and other boundaries) may be quite different than the timing of the actual ground-water pumping. Developing a water management strategy in the upper Klamath Basin, therefore, requires a method to predict, evaluate, and monitor the rate, distribution, and timing of the short and long term response of streams to ground-water use.

III.

Methods to Quantify the Effects of Ground-Water Use

Directly measuring the way in which streams are affected by ground-water use is often problematic. When pumping occurs very close to springs or small streams, the effects on flow may be directly measurable. When pumping occurs at larger distances from springs or streams, in contrast, the effects are often impossible to discriminate in streamflow records for a number of reasons. The principal reason is that the effects become diffused with distance, and so become spread out over time and across large geographic areas. As a result, the impacts to a single spring or stream reach are often very small compared to the streamflow or spring discharge. The relatively small impacts, although potentially cumulatively significant, are difficult to detect given the uncertainty in streamflow measurement techniques, the masking effects of other signals in the hydrologic record (such as normal climate-driven variations in runoff, diversions, and so forth), and the fact that effects of pumping stresses have been gradually accumulating over decades.

In situations where effects on streams and springs of ground-water use cannot be directly measured, the only tools available for quantitatively understanding these effects are mathematical models, which most commonly take the form of numerical ground-water flow models (or simply *computer models*). Such models are constructed to represent all important elements of a flow system. Properly constructed and calibrated ground-water flow models can simulate the distribution of hydraulic head (water-table elevation) and flows within a ground-water system including the flows to and from major boundaries such as springs and streams. Such models also can predict the response of the ground-water system to proposed pumping. Computer modeling is the state of the art method for evaluating the types of ground-water related questions likely to be important to the Klamath River Basin Restoration Agreement. Such models are widely used to address similar water management issues throughout the Nation.

IV.

Existing Upper Klamath Basin Ground-Water Modeling Project

The USGS, in cooperation with the Oregon Water Resources Department and the Bureau of Reclamation, is presently working to complete a computer model that will simulate the ground-water flow system in the upper Klamath Basin. The model covers the entire basin above Iron Gate Dam with a grid spacing of 2500 feet, meaning that ground-water head (water-level elevation) and flow are calculated on about one-half mile spacing. All major streams and many of the major tributaries are represented in the model. Major hydrologic processes such as

recharge from precipitation, and discharge to streams, lakes, drains, wetlands, and wells, are also included in the model. The model is being calibrated to simulate hydrologic conditions (ground-water levels and discharge variations) measured between 1970 and 2004. The water level and ground-water discharge data being used for calibration are described in Gannett and others (2007). Once calibrated, the model will be able to simulate the rate, geographic distribution, and timing of changes in streamflow, and other boundary flows, resulting from ground-water pumping at any location in the basin above Iron Gate Dam. It can also simulate changes resulting from climate variation or other external stresses.

The accuracy of the model will ultimately be determined by the resolution of the model grid, the accuracy with which the complexities of the flow system are represented, and the uncertainty in the data used for calibration. Model uncertainty, including uncertainty in model predictions, can be quantified. Therefore, confidence intervals can be placed on model predictions of the effects of new ground-water use.

Under the current scope of work, the calibrated model will be coupled to an optimization (or management) model and the combined models will be used to explore a limited number of yet-to-be-determined management scenarios. The present project is scheduled to be completed and a report published in 2008. The model will be available for use once the report is approved and published.

V.

Utilization of US Geological Survey Monitoring, Science, and Models

This section describes ways in which the USGS can help in execution of the Klamath River Basin Restoration Agreement. Three major elements are described: application of the model that will result from the existing USGS study, enhancements to the model being developed under the existing USGS study, and improved hydrologic monitoring.

The model presently under development will be well suited to answer many, if not most, of the ground-water related questions that will be important to the Klamath River Basin Restoration Agreement. It will have the ability to predict the geographic distribution, amount, and timing of the effects from ground-water pumping at any location. The spatial resolution of ground-water discharge to streams in the model will likely be at a river-reach scale similar to that shown in Figure 7 of Gannett and others (2007) (this figure is included at the end of this document). Even though the locations of major springs are well known, ground-water discharge is evaluated at a reach scale of 1 to 10 miles.

Model accuracy and resolution required for execution of the Klamath Basin Restoration Agreement may ultimately exceed what is planned under the scope of the present USGS study. Should this be the case, there are ways in which model uncertainty can be reduced and model resolution and accuracy improved with certain model enhancement.

Model analysis and enhancement, as well as ground-water management in general, will be aided by improved monitoring. It would be advisable, therefore, to develop a network of observation wells and stream gaging stations specifically to detect changes in spring discharge and

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streamflow due to ground-water use. Such a monitoring network would build upon the existing monitoring networks being operated by the USGS, OWRD, and the California Department of Water Resources.

A. Application of ground-water model being developed under the existing USGS Project

The following paragraphs describe the ways in which the ground-water model being developed under the scope of the present USGS project could be used for the purposes of the Klamath River Basin Restoration Agreement.

In order for there to be confidence in the model, parties to the Restoration Agreement (or committees formed as part of the agreement) should have a thorough understanding of the model, how it works, and the way in which the results should be used. A basic task, therefore, would be to educate the appropriate groups with regard to basic modeling concepts and how hydrologic processes in the upper Klamath Basin are represented in the model. This would likely be accomplished in a workshop or series of workshops. USGS scientists could be made available to attend meetings of the appropriate committees formed as part of the Restoration Agreement, such as the Coordinating Council or Technical Advisory Team, to answer model-related questions and help with discussions.

A second major element would be to work with the parties to the Restoration Agreement, Coordinating Council, or Technical Advisory Team to identify specific questions, scenarios, or management options they want to evaluate, run the appropriate simulations, and report the results. A probable modeling task would be to determine the ways in which streams and other boundaries are likely to be affected by a variety of rates, locations, frequency, and duration of ground-water pumping. It would also be possible to evaluate probable effects of climate variability or change on flows.

Because calibration of the model is still in progress, it is not yet possible to know the degree of uncertainty likely to be associated with model predictions, and whether or not refinements will be needed to reduce uncertainty to a level that meets the needs of the Restoration Agreement. Possible ways to further develop or refine the model, if needed, are described in the next section.

B. Refinements to Existing Model: Reducing model uncertainty

Once the present model is calibrated, additional data can be identified and collected to reduce model uncertainty. Some improvement might be realized by providing more information for model calibration without modifying the model structure. Such information could include additional measurements of head (the water-table elevation), ground-water discharge to springs and streams, or ground-water ages. Additional improvements might require structural changes to the model to better meet specific requirements of the Restoration Agreement. Refinement could include increasing the complexity of the geologic framework to better represent locations of spring discharge, refining the grid spacing or layering to more precisely represent certain hydrologic features (e.g. critical spring complexes), or explicitly simulating additional

hydrologic processes. Detailed subregional models, for example at a subbasin scale, could be nested within the regional model. The ability to add complexity or new processes to the model, however, may be limited by a lack of data. Some model enhancements, therefore, may require substantial collection of additional data.

C. Improved Hydrologic Monitoring: A basis for model validation, model improvement, and detecting impacts

As discussed previously, a monitoring program could be developed to increase the likelihood of detecting any significant changes in ground-water discharge to streams. If data are collected for a sufficient period of time (a decade at least), it may be possible to discriminate any variations in discharge due to ground-water use from variations due to other causes. Targeted monitoring could provide confirmation that the effects of pumping are too small to discriminate, or monitoring could detect large, unexpected changes not predicted by the model. Regardless of how well a model is calibrated, it is critical to maintain an ongoing monitoring program to validate the performance of the model, particularly when that model is used to guide an ongoing resource management program.

Improved hydrologic monitoring would also be beneficial to modeling efforts. With time, data from an enhanced hydrologic monitoring network could help validate model predictions, or identify areas where model predictions are not as accurate as expected. Data from a monitoring network could be used to help refine calibration and further reduce model uncertainty.

A monitoring program would include a number of components. The backbone of such a program would be the existing stream gaging network. Existing sites could be evaluated to ensure maximum accuracy is being obtained. Certain historic gage sites (for example the Klamath River near Copco and Fall Creek near Copco) could be reestablished if required to better quantify ground-water discharge. Additional gages could be installed in selected bypass canals or diversions to better quantify ground-water discharge with the existing gage network. In addition there may be sites on major spring-fed streams or important spring complexes where additional gaging stations could be of use.

A second major component of such a monitoring program would be monitoring ground-water levels. Changes in the water-table elevation are easily measured, and monitoring the magnitude and location of pumping-related variations in the water table could provide insight into possible impacts to streams. There is presently an extensive network of wells being monitored in the upper Klamath Basin by the USGS, the Oregon Water Resources Department, and the California Department of Water Resources. This network was designed to monitor the response of the ground-water system to pumping and climate variability, but not specifically to track potential changes in ground-water discharge to streams. The network could be revised (i.e. have wells added) to provide better tracking of potential impacts to streams. It may be possible to use existing wells, but new wells drilled specifically for monitoring may be required at some locations.

Developing a monitoring program would occur in phases. The first phase would be to evaluating all existing and historic stream gaging station and ground-water level monitoring sites and data,

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and identify the additional sites where streamflow, spring discharge, or ground-water level data are required. The second phase would be actually establishing the sites (securing landowner permission, obtaining and installing equipment, etc.). The third phase would be the actual collection of data over time, analysis of data, and reporting of findings.

VI.
Estimated Costs

The following costs are estimates. When the Klamath River Basin Restoration Agreement becomes effective and funding secured, a detailed work plan with more refined cost estimates will be developed.

A. Use Of Ground-Water Model As Presently Being Developed

The costs associated with this work element are primarily due to the staff time required to interact with the Restoration Agreement committees and travel costs. Staff time would be required to prepare for and attend meeting and workshops, to make model runs, and document expected results from various management scenarios. It is assumed that this activity would begin Fiscal Year 2008 and continue through 2010. Estimated costs are: FY2008, \$70,000; FY 2009, \$50,000; FY 2010, \$40,000. The costs are larger the first year due to the need to develop workshops on the model and its use for the Restoration Agreement.

B. Refinements To The Ground-Water Model As Presently Being Developed

A two year effort is described, probably starting in 2009. The first year would primarily entail efforts to reduce prediction uncertainty of the existing model by incorporating data from 2005 to 2008, and collecting additional data. No substantial structural modifications to the model are envisioned. The second year would entail structural changes to the model possibly including model grid refinement, addition of new parameters, or inclusion of additional hydrologic processes. The estimated costs are \$150,000 for the first year and \$125,000 for the second year.

C. Improved Hydrologic Monitoring

Budgets were estimated for three years, but the third year costs could be repeated as long as monitoring is to continue (adjusted for inflation). The first year (FY 2008) consists largely of reviewing existing streamflow and water-level data collection and historic data, identification of potential new sites and field reconnaissance. The second year (FY 2009) consists of implementing the new monitoring program, establishing the new sites, and probably installing some new gaging stations. The third and subsequent years consist primarily of collection, analysis, and reporting of data. Estimated costs are \$46,000 for the first year, \$165,000 for the second year, and \$125,000 for the third year. The operation costs assume four additional stream gaging stations will be operated in the basin. These cost estimates do not include drilling of additional monitoring wells.

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Budget Summary			
	FY 08	FY 09	FY 10
Use existing model to address settlement needs	\$ 70,000	\$ 50,000	\$ 40,000
Refine existing model/reduce prediction uncertainty		\$ 150,000	\$ 125,000
Improve hydrologic monitoring	\$ 46,000	\$ 165,000	\$ 125,000
Total for all elements	\$ 116,000	\$ 365,000	\$ 290,000

VII.
References Cited

Gannett, M.W., Lite, K.E. Jr., La Marche, J.L., Fisher, B.J., and Polette, D.J., 2007, Ground-water hydrology of the upper Klamath Basin, Oregon and California: U.S. Geological Survey Scientific Investigations Report 2007-5050, 84 p.

Prepared by: Marshall Gannett, US Geological Survey Oregon Water Science Center, 2130 SW Fifth Avenue, Portland, Oregon 97201, 503-251-3233, mgannett@usgs.gov.

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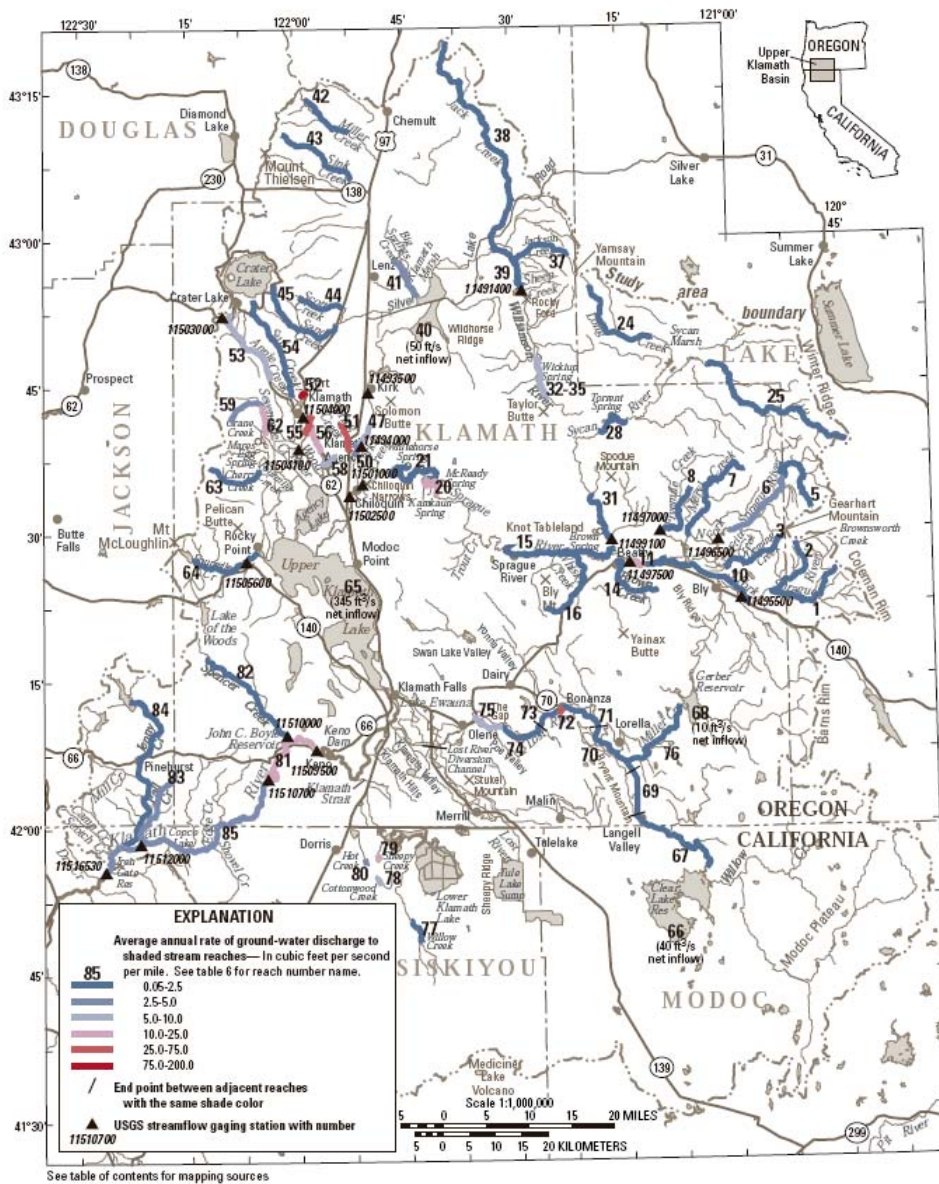


Figure 7. Principal areas of ground-water discharge to streams and major springs in the upper Klamath Basin, Oregon and California, and selected stream-gaging stations. Shading along main stem reaches represents ground-water discharge (in cubic feet per second per mile) averaged along the entire shaded reach. The actual location of ground-water discharge may be localized. Shading along headwater streams represents the ground-water discharge averaged over the shaded reach and includes ground-water discharge to tributaries. See table 6 for detailed descriptions of measurement locations.

Appendix E-3
Instream Water Right Applications and Protests

OR Instream Water Right Applications

Application	Stream	Protestant
70798	CHERRY CR > FOURMILE CR	M.J. GAIL DANFORTH ET AL.
70798	CHERRY CR > FOURMILE CR	FORT KLAMATH CRITICAL HABITAT LANDOWNERS
70799	S FK SPRAGUE R > SPRAGUE R	RIVER SPRINGS RANCH ET AL.
70799	S FK SPRAGUE R > SPRAGUE R	WATERWATCH AND OREGON TROUT
70800	S FK SPRAGUE R > SPRAGUE R	RIVER SPRINGS RANCH ET AL.
70800	S FK SPRAGUE R > SPRAGUE R	WATERWATCH AND OREGON TROUT
70801	S FK SPRAGUE R > SPRAGUE R	RIVER SPRINGS RANCH ET AL.
70801	S FK SPRAGUE R > SPRAGUE R	WATERWATCH AND OREGON TROUT
70802	S FK SPRAGUE R > SPRAGUE R	RIVER SPRINGS RANCH
70802	S FK SPRAGUE R > SPRAGUE R	WATERWATCH AND OREGON TROUT
70804	SPRAGUE R > WILLIAMSON R	RIVER SPRINGS RANCH ET AL.
70804	SPRAGUE R > WILLIAMSON R	WATERWATCH AND OREGON TROUT
70807	CROOKED CR > WOOD R	DICK FAIRCLO f/OWENS & HAWKINS
70807	CROOKED CR > WOOD R	FORT KLAMATH CRITICAL HABITAT LANDOWNERS
70807	CROOKED CR > WOOD R	WATERWATCH AND OREGON TROUT
70808	DEMING CR > S FK SPRAGUE R	RIVER SPRINGS RANCH ET AL.
70808	DEMING CR > S FK SPRAGUE R	WATERWATCH AND OREGON TROUT
70809	FISHHOLE CR > S FK SPRAGUE R	FISHHOLE CREEK SENIOR WATER RIGHTS HOLDERS
70809	FISHHOLE CR > S FK SPRAGUE R	WATERWATCH AND OREGON TROUT
70815	N FK SPRAGUE R > SPRAGUE R	RIVER SPRINGS RANCH ET AL.
70815	N FK SPRAGUE R > SPRAGUE R	WATERWATCH AND OREGON TROUT
70816	N FK SPRAGUE R > SPRAGUE R	RIVER SPRINGS RANCH ET AL.
70816	N FK SPRAGUE R > SPRAGUE R	WATERWATCH AND OREGON TROUT
70824	WILLIAMSON R > UPPER KLAMATH LK	RICHARD WHITMAN f/GERDA HYDE, Yamsi Ranch
70829	WOOD R > AGENCY LK	DICK FAIRCLO f/MEADOWS DRAIN DIST
70829	WOOD R > AGENCY LK	DICK FAIRCLO f/OWENS & HAWKINS
70829	WOOD R > AGENCY LK	FORT KLAMATH CRITICAL HABITAT LANDOWNERS
70829	WOOD R > AGENCY LK	WATERWATCH AND OREGON TROUT
70830	SEVENMILE CR > AGENCY LK	RBT FAIRCLO f/MEADOWS DRAIN DIST
70830	SEVENMILE CR > AGENCY LK	WATERWATCH AND OREGON TROUT
70830	SEVENMILE CR > AGENCY LK	FORT KLAMATH CRITICAL HABITAT LANDOWNERS

Flows below Upper Klamath Lake

Application	Stream	Protestant
70094	KLAMATH R > PACIFIC OCEAN	KLAMATH DRAINAGE DISTRICT
70094	KLAMATH R > PACIFIC OCEAN	KLAMATH WATER USERS ASSOC. ET AL
70094	KLAMATH R > PACIFIC OCEAN	WATERWATCH AND OREGON TROUT
70812	KLAMATH R > PACIFIC OCEAN	PETER SERRURIER f/PACIFICORP
70812	KLAMATH R > PACIFIC OCEAN	KLAMATH DRAINAGE DISTRICT
70812	KLAMATH R > PACIFIC OCEAN	KLAMATH WATER USERS ASSOC. ET AL

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70812	KLAMATH R > PACIFIC OCEAN	FORT KLAMATH CRITICAL HABITAT LANDOWNERS
70813	LINK R > KLAMATH R	WM GANONG f/KLAM IRR DIST
70813	LINK R > KLAMATH R	RUNNING Y RANCH
70813	LINK R > KLAMATH R	PETER SERRURIER f/PACIFICORP
70813	LINK R > KLAMATH R	DON MOONEY f/KLAM W USERS ASSN.
70813	LINK R > KLAMATH R	DON MOONEY f/TULELAKE IRR DIST
70813	LINK R > KLAMATH R	FORT KLAMATH CRITICAL HABITAT LANDOWNERS

With Gail Danforth's protest on application 70798 were: Grant and Lois Brown, Dave and Gina Danforth, Theodore and Debra Paddock, Chris and Becky Brown, Dan and Elouise Brown, and Vern and Barb Keffer.

With Fort Klamath Critical Habitat Landowners protests on applications 70798, 70807, 70812, 70813, 70829 and 70830 were: Tulana Farms, Leonard Garrison, McAuliffe Ranches, J.P. McAuliffe, Joe McAuliffe Co., Ambrose and Susan McAuliffe, Jeffery Mathis, Mathis Ranches, Double K Ranch, Kenneth L Tuttle, Lee & Edna Hunsaker, Dorothy Nickolson, Harris & Wood Ranches, Maxine Kizer, M.J. Gail Danforth, Wm. L. Brewer, Clay Charley, Charley Livestock Co., Gail & Denny Rickards, Elaine G. Kerns, Roger Nicholson, Nicholson, Anita Nicholson Jack Owens Ranches, John B. Owens,

With River Springs Ranch protests for applications 70799, 70800, 70801, 70802, 70804, 70808, (S FK Sprague R) were: Pierre A. Kern Trust, Pierre A. Kern, Newman Enterprises, Diamond Newman, Dale Newman, Stanley Newman, Douglas Newman, James S. Hall, Steven C. Ranch, Nelson Somers, Robert Valladao, Rodney L. Hadley, LeeAnna D. Hadley, James S. Hall, William and Lillian Hill, William V. Hill, Sr. and the Lillian M. Hill Trust, Larry Olson.

With River Springs Ranch protests for applications 70815 and 70816 (N FK Sprague R) were: Pierre A. Kern Trust, Pierre A. Kern, Obenchain Cattle Co., Ruth Obenchain, Carolyn Obenchain, Margaret Jacobs, Larry Olson, William and Lillian Hill, William V Hill, Sr., and Lillian M. Hill Trust.

With Fishhole Creek Senior Water Rights Holders protests for applications 70809 were: Diamond Newman, James Hall, Rodney & Kathy Todd, William and Ethel Rust, Steve & Karen Simmons,

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Appendix E-4
Federal Instream Water Right Claims Not to be Opposed

Note: This table is a listing of federal instream water rights claims in the Klamath Basin Adjudication that will not be opposed at the Circuit Court phase of the Adjudication by the Parties to the KBRA. Further information regarding the specific attributes of each water right may be found at the Oregon Water Resources Department [Recommend that we explain the intended use of this Appendix E-4].

LDX: (1) Reorganize entries so that claims are in numerical order. (2) Remove two right-hand columns which no longer have entries. (3) Recenter so that table (consisting of three columns) is properly centered. (4) Fix widow-orphan: some pages end early.

CLAIM	PARTY	SOURCE/STREAM		
376	Bureau of Land Management	Klamath River		
501	Forest Service, USDA	Sycan River		
502	Forest Service	Sycan River		
571	Forest Service	Sycan River		
572	Forest Service	Sycan River		
574	Forest Service	Sycan River		
575	Forest Service	Sycan River		
577	Forest Service	Sycan River		
578	Forest Service	Sycan River		
724	Forest Service	Sycan River)		
725	Forest Service	Sycan River		
726	Forest Service	Sycan River		
727	Forest Service	Sycan River		
565	Forest Service	Sprague River		
566	Forest Service	Sprague River		

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CLAIM	PARTY	SOURCE/STREAM		
500	Forest Service	Sprague River – North Fork		
524	Forest Service	Sprague River – North Fork		
525	Forest Service	Sprague River – North Fork		
527	Forest Service	Sprague River – North Fork		
528	Forest Service	Sprague River – North Fork		
529	Forest Service	Sprague River – North Fork		

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CLAIM	PARTY	SOURCE/STREAM		
530	Forest Service	Sprague River – North Fork		
568	Forest Service	Sprague River – South Fork		
569	Forest Service	Sprague River – South Fork		
579	Forest Service	Williamson River		
580	Forest Service	Williamson River		
582	Forest Service	Williamson River		
583	Forest Service	Williamson River		
585	Forest Service	Williamson River		
586	Forest Service	Williamson River		
588	Forest Service	Williamson River		

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CLAIM	PARTY	SOURCE/STREAM		
589	Forest Service	Williamson River		
712	Forest Service	Williamson River		
713	Forest Service	Williamson River		
715	Forest Service	Williamson River		
716	Forest Service	Williamson River		
591	National Park Service	Annie Creek, etc.		
592	National Park Service	Bear Creek, etc.		
593	National Park Service	Crater Lake		
594	National Park Service	Desert Creek, etc.		
595	National Park Service	Pothole Creek		
596	National Park Service	Sand Creek		
597	National Park Service	Scott Creek		

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CLAIM	PARTY	SOURCE/STREAM		
598	National Park Service	Silent Creek		
599	National Park Service	Sun Creek, etc.		
600	National Park Service	Unnamed Creek (near Annie Creek)		
601	National Park Service	Unnamed Creek (in NE corner of Park)		
493	Forest Service	Gearhart Mountain Wilderness		
494	Forest Service	Gearhart Mountain Wilderness		
495	Forest Service	Mountain Lakes Wilderness		
496	Forest Service	Mount Thielsen Wilderness		
497	Forest Service	Sky Lakes Wilderness		

Appendix E-5
Simulated Klamath River Flows and Upper Klamath Lake Levels

LDX: text should be left-justified, but for tables.

Introduction

Appendix E-5 contains model outputs which some Settlement Parties evaluated in preparing the Agreement. Considering specific assumptions (model inputs), Appendix E-5 illustrates relative operations between Upper Klamath Lake and the Klamath River and potential outcomes of management of Managed Environmental Water under hypothetical circumstances of water availability. The Parties' sole intention in appending the data is to provide to the Technical Advisory Team (TAT), WRIMS model outputs addressing Upper Klamath Lake levels and Klamath River flows at the current location of Iron Gate Dam under those assumed conditions of water availability, to illustrate those relative operations. The model outputs are made available to the TAT as it develops real-time management recommendations for lake and river flows. The data presented in Appendix E-5 does not imply that any future condition will occur or define any legal or regulatory obligation or minimum lake or flow requirements.

WRIMS is a hydrologic model capable of simulating flows in the upper Klamath River as they would have happened under various management scenarios and allows comparison of alternatives. The period of analysis record for the WRIMS model analysis is 1961-2000. Inflows to Upper Klamath Lake are the primary driver of the system, and are "hard-wired" into the model. Thus, the model shows what would have happened in the 1961-2000 period if flows, lake levels, and agricultural diversions (among other factors) were different than they actually were historically.

Table 1 details the assumptions and inputs upon which the R32 Refuge simulation is based. Simulation results are presented in Table 2 and Figures 1-4 for flows in the Klamath River (at Iron Gate Dam), and in Table 3 and Figures 5-8 for water levels in Upper Klamath Lake.

It is important to note that the R32 Refuge run makes no attempt to simulate the outcome of the Drought Plan in Section 18.2, and therefore the river flows and lake levels presented here in the Extreme Drought (1992 and 1994) and Drought years (as defined in 18.2.2.A.i) are lower than they would otherwise be if the simulation had included the Drought Plan.

Finally, the R32 Refuge simulation does not attempt to predict future hydrologic conditions or changes that may occur beyond those specified in the assumptions explicitly included in the simulation. It is anticipated that the Technical Advisory Team will recommend revisions or refinements to the basic operations between Upper Klamath Lake and the Klamath River as it deems appropriate and in response to new information including any changes in habitat conditions, water availability that may result from new storage (beyond that assumed in the model runs), the Drought Plan, or factors that may occur in the future.

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Table 1. Summarized assumptions for and inputs to the WRIMS R32 Refuge model run (UKL = Upper Klamath Lake; taf = thousands of acre feet).

Input Parameter or Assumption	Description
Net inflow to UKL	Historic plus 30 taf during the Mar-Oct irrigation season.
Wetland areas reconnected to UKL	Williamson River Delta (Tulana and Goose Bay), Agency Lake and Barnes Ranches, Wood River Wetland.
Klamath Reclamation Project Diversion from UKL and Klamath River exclusive of Refuge Allocation	Mar-Oct: 330 taf when Mar 1 inflow forecast is ≤ 287 taf; 385 taf when forecast is > 569 taf; linear between forecasts of 287 and 569. Nov-Feb deliveries same as historic. Delivery set to higher priority than lake or river.
Refuge allocation	48 taf when Mar 1 inflow forecast is ≤ 287 taf; 60 taf when forecast is > 569 taf; linear between forecasts of 287 and 567. Nov-Feb deliveries same as historic. Diversions from UKL reduced by estimated D Plant pumping.
Flood Control curve	Most recent version provided by BOR as of October 2007, with minor modifications
Iron Gate flow targets	Alt X Yurok as revised by USFWS. Targets selected based on cumulative winter or summer inflows to UKL through the previous time step, using the Inflow Exceedence Index (IEI). Interpolate between targets based on the IEI.
UKL level targets	Alt Y targets selected based on cumulative winter or summer inflows to UKL through the previous time step, using the Inflow Exceedence Index (IEI). Interpolate between targets based on the IEI.

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Table 2. Simulated flows at Iron Gate Dam from WRIMS R32 Refuge during 1961-2000.

Year	Oct	Nov	Dec	Jan	Feb	Mar 1-15	Mar 16-31	Apr 1-15	Apr 16-30	May 1-15	May 16-31	Jun 1-15	Jun 16-30	Jul 1-15	Jul 16-31	Aug	Sep
1961	1144	1300	1300	1802	1626	2637	2989	2374	2120	1758	1893	1482	1552	980	962	953	1191
1962	1269	1193	1297	1877	1651	2482	2500	2203	3097	2222	2372	1703	1425	841	795	813	986
1963	1186	1300	3133	2259	2774	2282	2635	4170	3792	2640	2693	2126	1872	1118	1137	950	1163
1964	1210	1289	1300	1987	2016	2403	2387	1816	3015	2214	2093	1752	1823	1114	1083	930	1049
1965	1065	1163	7538	7894	7172	4139	4486	3437	3239	2642	2618	2052	1938	1203	1188	1060	1197
1966	1185	1300	1300	2215	2402	2635	2687	2274	2718	2242	2105	1599	1473	900	920	817	1067
1967	1035	1142	1300	2053	2387	2954	3426	3569	3240	3792	4094	2431	2400	1451	1336	900	951
1968	1062	1025	1056	1091	1376	2693	3066	2142	1698	1249	1377	1074	986	717	732	884	1069
1969	1077	1090	1090	1212	2407	3167	3491	6114	5785	2993	3023	2394	2258	1420	1306	863	953
1970	1102	1108	1166	5905	4607	3826	4100	2388	1763	2074	2143	1624	1511	929	905	777	993
1971	1042	1146	1815	4323	3639	5349	5710	6775	6440	4869	5280	2734	2750	1880	1857	1308	1354
1972	1288	1300	2035	2869	5203	10383	10636	4305	3958	2778	2795	2067	1759	1162	1158	1188	1199
1973	1159	1269	1456	2751	2440	2562	2616	2248	2226	1716	1756	1253	1090	717	719	694	940
1974	1123	1300	3233	6057	3548	5499	5860	7062	6702	3060	3197	2446	2101	1526	1624	1331	1298
1975	1290	1243	1300	2075	2864	5007	5405	4777	4454	3636	4005	2589	2448	1706	1738	1251	1307
1976	1300	1300	2226	2409	2589	3023	3058	2863	2254	2134	2132	1610	1507	937	959	1112	1269
1977	1300	1252	1249	1289	1000	1317	1315	1332	1250	1044	1226	1100	1104	815	794	699	941
1978	975	1108	1742	4059	3114	3778	4074	3985	3651	2709	2659	1943	1678	1027	1019	818	1119
1979	954	1074	1041	1064	1039	2256	2127	1999	1996	1752	1878	1444	1247	814	792	778	980
1980	1058	1168	1228	2517	3488	2820	3120	2351	2187	2012	2114	1631	1528	945	922	775	979
1981	996	950	1050	1040	1040	1649	1649	1713	1693	1304	1440	1187	1113	807	795	771	836
1982	919	1075	3486	2611	7807	5539	5894	6186	5827	2880	2914	2206	1981	1437	1529	1184	1197
1983	1196	1265	1793	2847	5756	7180	7500	5894	5639	3974	4328	2760	2760	1880	1880	1479	1442
1984	1300	1449	6130	3345	3748	6037	6412	5586	5220	3443	3792	2747	2648	1686	1613	1353	1467
1985	1300	3375	2879	2393	2563	2874	2894	4108	4524	2596	2383	1749	1588	915	849	824	1228
1986	1146	1247	1300	2178	7130	6595	6866	3253	2975	2588	2404	2054	1804	1161	1127	833	1151
1987	1137	1221	1300	2033	1122	2784	3082	2111	2040	1787	1723	1295	1219	878	990	909	1110
1988	1065	996	1062	1131	1537	2026	2350	1632	1632	1439	1549	1301	1377	988	937	835	952
1989	933	1015	1115	1078	1052	4476	6651	5193	4907	2807	2794	1820	1387	1255	1127	859	1086
1990	1145	1150	1111	1054	1015	1542	2811	1807	1552	1673	1755	1437	1430	961	963	955	1107
1991	1052	994	923	951	950	1240	1275	1393	1433	1178	1315	1106	1095	844	846	841	894
1992	816	828	861	850	809	1012	1003	1045	1006	793	819	672	616	484	496	414	478
1993	521	634	770	841	877	2432	5758	5504	5188	2920	3012	2478	2341	1362	1169	1089	1033
1994	1076	981	974	954	928	1228	1133	1165	1107	908	1040	882	838	599	542	453	537
1995	549	674	755	993	1013	3081	4742	3767	3444	2792	2868	2414	2237	1367	1299	823	902
1996	940	882	1026	2908	8966	4507	4846	3846	3566	3009	3223	2366	2136	1347	1287	930	1069
1997	1161	1247	3244	9043	4744	3371	3342	2695	2773	2434	2363	1972	1983	1187	1187	1031	1239
1998	1255	1300	1286	3028	3938	4752	5148	4821	4474	5458	5735	2647	2656	1835	1835	1258	1259
1999	1249	1166	2797	3081	3803	6139	6449	6142	5758	3184	3545	2645	2500	1631	1581	1345	1384
2000	1300	1300	1272	2606	3713	3248	3535	3579	3318	2575	2560	1868	1674	988	978	780	1165

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Table 3. Simulated Upper Klamath Lake levels from WRIMS R32 Refuge during 1961-2000.

Year	Oct	Nov	Dec	Jan	Feb	Mar 1- 15	Mar 16- 31	Apr 1- 15	Apr 16- 30	May 1- 15	May 16- 31	Jun 1- 15	Jun 16- 30	Jul 1- 15	Jul 16- 31	Aug	Sep
1961	4139.7	4140.5	4141.6	4141.6	4142.7	4142.9	4143.0	4142.9	4142.8	4142.7	4142.5	4142.1	4141.8	4141.2	4140.6	4140.0	4139.5
1962	4139.7	4140.3	4141.1	4141.1	4142.1	4142.4	4142.6	4143.0	4143.1	4142.9	4142.7	4142.0	4141.4	4140.8	4140.2	4139.6	4139.0
1963	4140.6	4141.5	4141.9	4141.7	4142.7	4142.9	4143.0	4143.0	4143.1	4143.1	4143.1	4142.4	4141.8	4141.3	4140.7	4139.9	4139.5
1964	4139.7	4140.5	4141.2	4141.7	4141.9	4142.1	4142.3	4142.9	4143.1	4142.7	4142.4	4142.2	4142.0	4141.4	4140.7	4139.9	4139.2
1965	4139.1	4140.0	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4142.9	4142.7	4142.3	4141.8	4141.3	4140.7	4140.2	4139.6
1966	4139.9	4140.9	4141.8	4142.0	4142.0	4142.3	4142.6	4142.9	4143.0	4142.6	4142.3	4141.8	4141.3	4140.9	4140.4	4139.6	4139.2
1967	4139.2	4140.0	4141.3	4142.0	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.8	4142.4	4141.6	4140.8	4139.8	4139.0
1968	4139.2	4139.6	4140.4	4141.2	4142.7	4142.9	4143.0	4142.6	4142.3	4142.1	4141.9	4141.5	4141.0	4140.5	4140.0	4139.7	4139.2
1969	4139.2	4140.0	4140.8	4142.2	4142.7	4142.9	4143.0	4143.0	4143.1	4143.1	4143.0	4142.6	4142.1	4141.4	4140.7	4139.6	4139.0
1970	4139.3	4139.8	4141.4	4142.3	4142.7	4142.9	4143.0	4142.9	4143.0	4142.8	4142.6	4142.1	4141.6	4141.0	4140.5	4139.5	4139.0
1971	4139.1	4140.7	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.9	4142.7	4142.0	4141.4	4140.2	4139.8
1972	4140.1	4141.2	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.0	4142.9	4142.4	4142.0	4141.5	4140.9	4140.1	4139.6
1973	4139.9	4140.7	4141.9	4142.3	4142.7	4142.9	4143.0	4142.9	4142.7	4142.4	4142.1	4141.5	4141.0	4140.5	4140.0	4139.2	4138.8
1974	4139.3	4141.2	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.7	4142.2	4141.7	4141.2	4140.3	4139.7
1975	4139.8	4140.3	4141.3	4141.9	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.8	4142.5	4141.9	4141.3	4140.4	4139.9
1976	4140.3	4141.3	4141.9	4142.3	4142.7	4142.9	4143.0	4142.9	4143.0	4142.7	4142.4	4141.9	4141.4	4141.0	4140.5	4140.6	4140.0
1977	4140.0	4140.4	4140.8	4141.1	4141.8	4142.1	4142.3	4142.1	4141.8	4141.9	4141.9	4141.6	4141.2	4140.6	4139.9	4139.1	4138.8
1978	4139.0	4139.9	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4142.9	4142.7	4142.1	4141.5	4141.0	4140.4	4139.5	4139.4
1979	4139.4	4139.7	4140.3	4141.4	4142.3	4142.6	4142.9	4142.9	4142.9	4142.8	4142.7	4142.0	4141.3	4140.8	4140.2	4139.4	4138.9
1980	4139.2	4140.0	4140.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.0	4142.9	4142.6	4142.2	4141.7	4141.1	4140.5	4139.5	4138.9
1981	4139.0	4139.5	4140.4	4141.2	4142.4	4142.6	4142.8	4142.8	4142.9	4142.7	4142.5	4141.9	4141.3	4140.8	4140.1	4139.1	4138.5
1982	4138.8	4140.3	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.0	4143.0	4142.5	4142.2	4141.7	4141.2	4140.0	4139.5
1983	4139.8	4140.6	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.9	4142.7	4142.1	4141.5	4140.7	4140.1
1984	4140.4	4141.7	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.9	4142.5	4141.9	4141.2	4140.3	4140.1
1985	4141.0	4141.7	4141.9	4142.0	4142.2	4142.5	4142.8	4143.0	4143.1	4142.7	4142.3	4141.8	4141.4	4140.8	4140.2	4139.6	4139.7
1986	4140.0	4140.8	4141.5	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4142.9	4142.7	4142.1	4141.6	4141.0	4140.4	4139.6	4139.6
1987	4140.0	4140.6	4141.2	4141.5	4142.7	4142.9	4143.0	4142.9	4142.8	4142.4	4142.0	4141.6	4141.2	4140.9	4140.7	4139.9	4139.3
1988	4139.2	4139.6	4140.9	4141.9	4142.7	4142.9	4143.0	4143.0	4143.0	4142.8	4142.6	4142.3	4141.9	4141.2	4140.5	4139.6	4138.9
1989	4138.8	4139.9	4140.5	4141.3	4142.1	4142.9	4143.0	4143.0	4143.1	4143.0	4142.9	4142.3	4141.8	4141.1	4140.3	4139.6	4139.4
1990	4139.6	4140.0	4140.5	4141.6	4142.4	4142.9	4143.0	4143.0	4143.1	4142.9	4142.6	4142.2	4141.8	4141.3	4140.7	4140.0	4139.4
1991	4139.3	4139.6	4140.0	4140.7	4141.4	4141.8	4142.2	4142.2	4142.2	4142.2	4142.2	4141.8	4141.3	4140.8	4140.3	4139.3	4138.5
1992	4138.5	4139.1	4139.7	4140.3	4140.7	4140.9	4141.0	4140.9	4140.9	4140.4	4140.0	4139.5	4139.0	4138.7	4138.4	4137.6	4137.3
1993	4137.7	4138.5	4139.4	4140.3	4141.0	4142.5	4143.0	4143.0	4143.1	4143.1	4143.0	4142.7	4142.4	4141.6	4140.9	4139.9	4139.2
1994	4139.3	4139.6	4140.1	4140.7	4141.3	4141.4	4141.6	4141.4	4141.3	4141.2	4141.0	4140.5	4140.0	4139.3	4138.7	4137.8	4137.5
1995	4137.8	4138.6	4139.3	4140.9	4142.3	4142.9	4143.0	4143.0	4143.1	4143.1	4143.2	4142.7	4142.2	4141.5	4140.8	4139.6	4138.8
1996	4138.8	4139.3	4141.3	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.6	4142.0	4141.4	4140.7	4139.8	4139.3
1997	4139.4	4140.3	4141.9	4142.3	4142.7	4142.8	4142.8	4142.9	4143.0	4142.8	4142.5	4142.3	4142.1	4141.5	4140.9	4140.2	4139.7
1998	4139.8	4140.5	4141.1	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4143.2	4143.2	4142.6	4141.8	4140.5	4139.8
1999	4140.0	4141.6	4141.9	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4143.2	4143.2	4142.8	4142.5	4141.8	4141.2	4140.6	4140.0
2000	4140.2	4140.8	4141.6	4142.3	4142.7	4142.9	4143.0	4143.0	4143.1	4142.9	4142.7	4142.1	4141.6	4141.0	4140.5	4139.5	4139.5

Figure 1. Results of the R32 Refuge simulation for Iron Gate flows during 1961-1970.

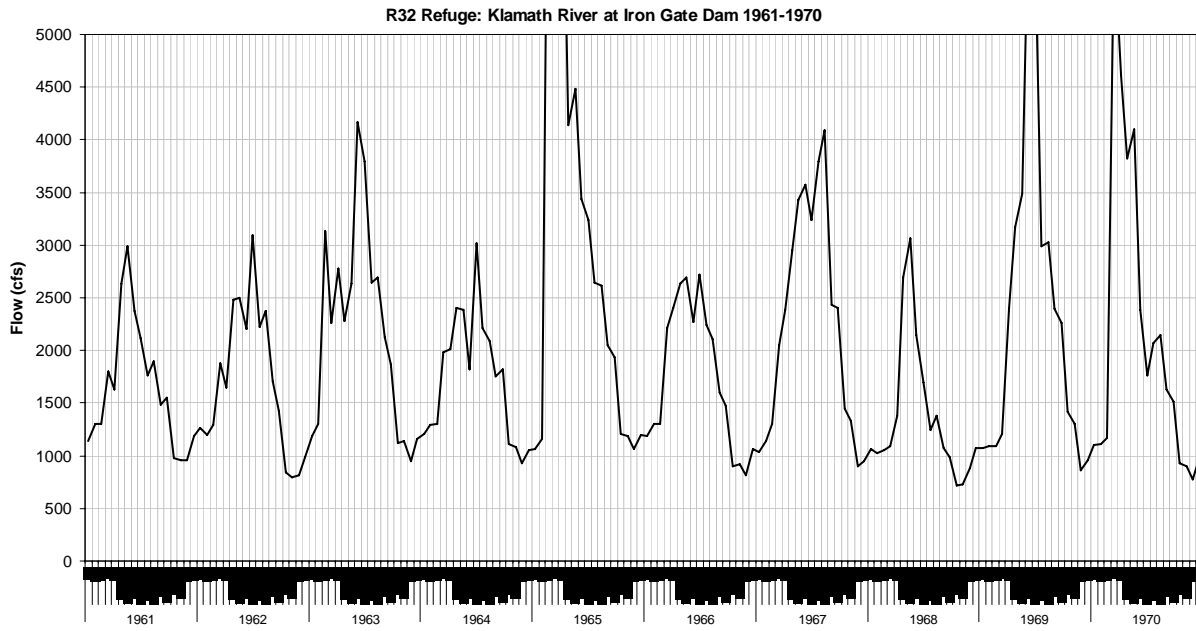


Figure 2. Results of the R32 Refuge simulation for Iron Gate flows during 1971-1980.

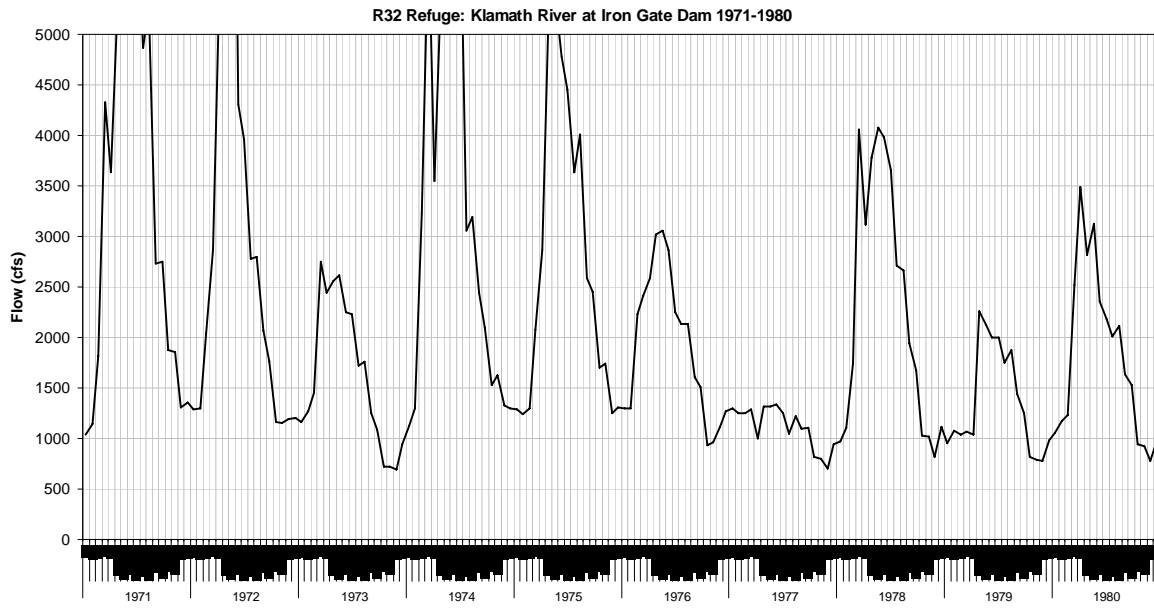


Figure 3. Results of the R32 Refuge simulation for Iron Gate flows during 1981-1990.

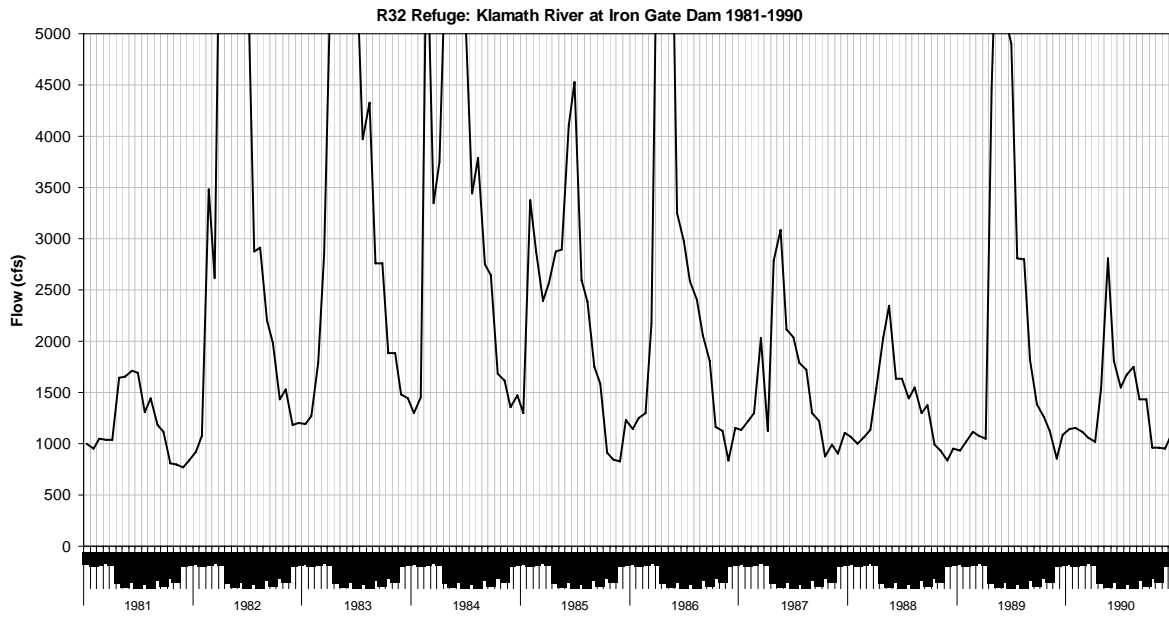


Figure 4. Results of the R32 Refuge simulation for Iron Gate flows during 1991-2000.

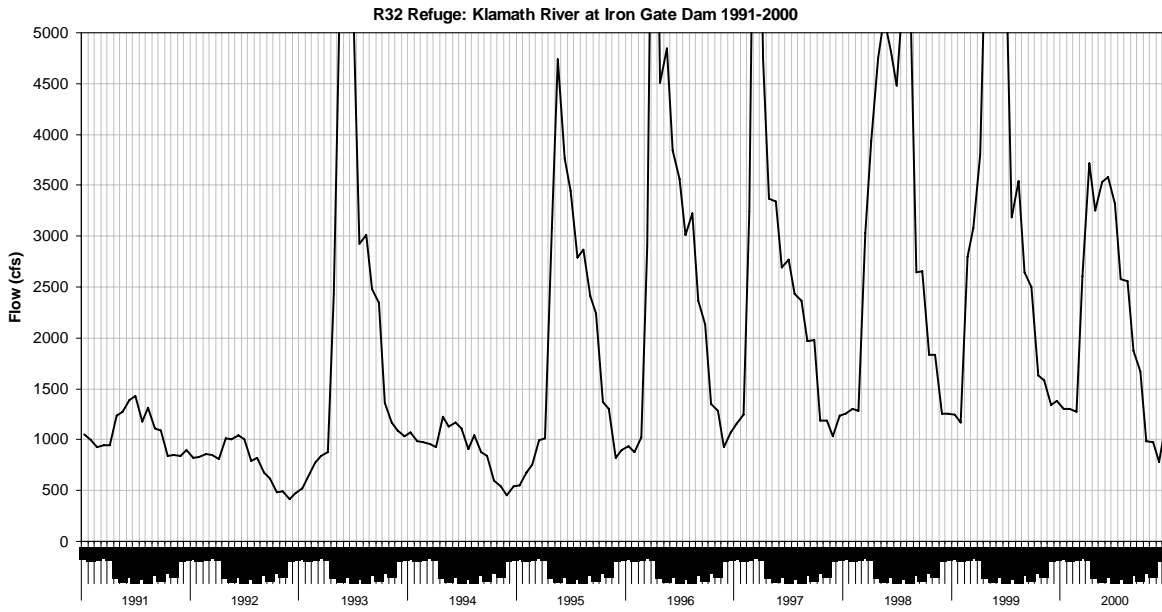


Figure 5. Results of the R32 Refuge simulation for Upper Klamath Lake levels during 1961-1970.

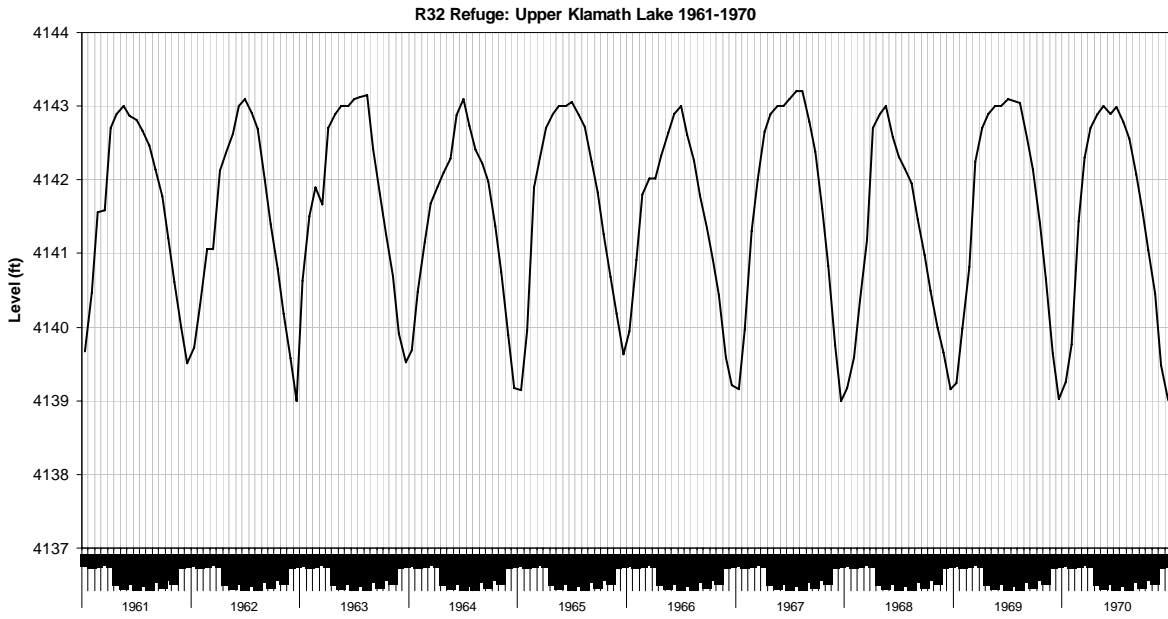


Figure 6. Results of the R32 Refuge simulation for Upper Klamath Lake levels during 1971-1980.

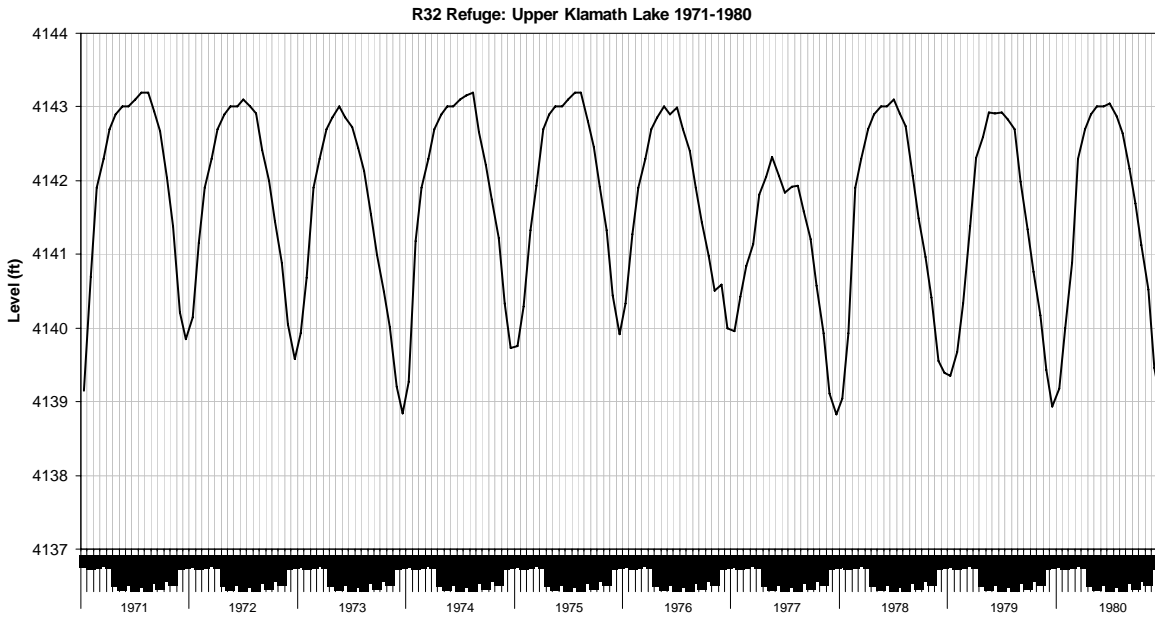


Figure 7. Results of the R32 Refuge simulation for Upper Klamath Lake levels during 1981-1990.

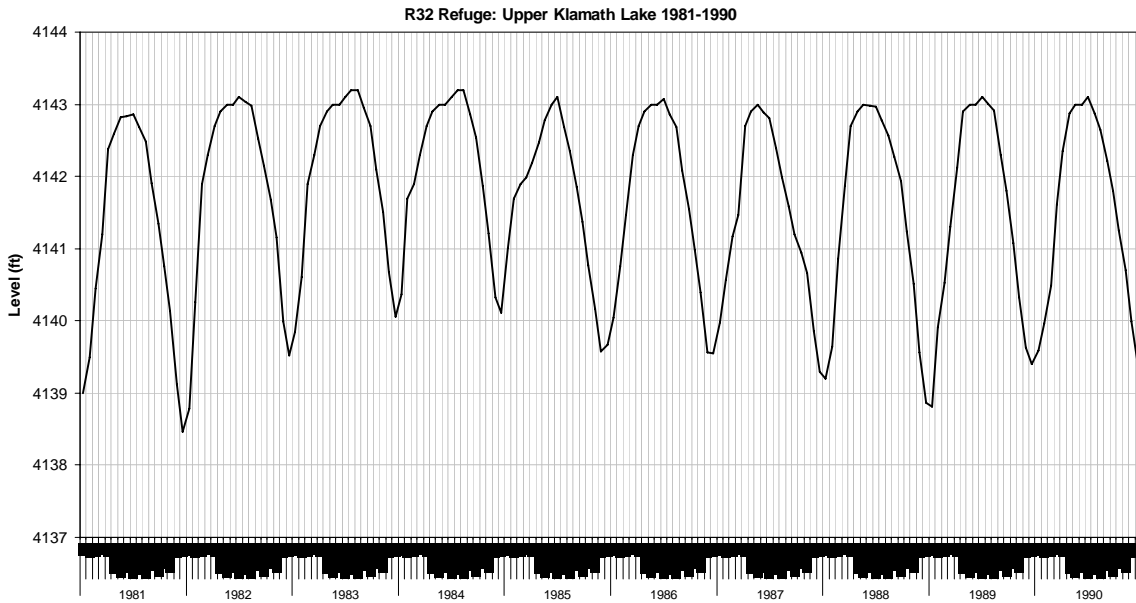
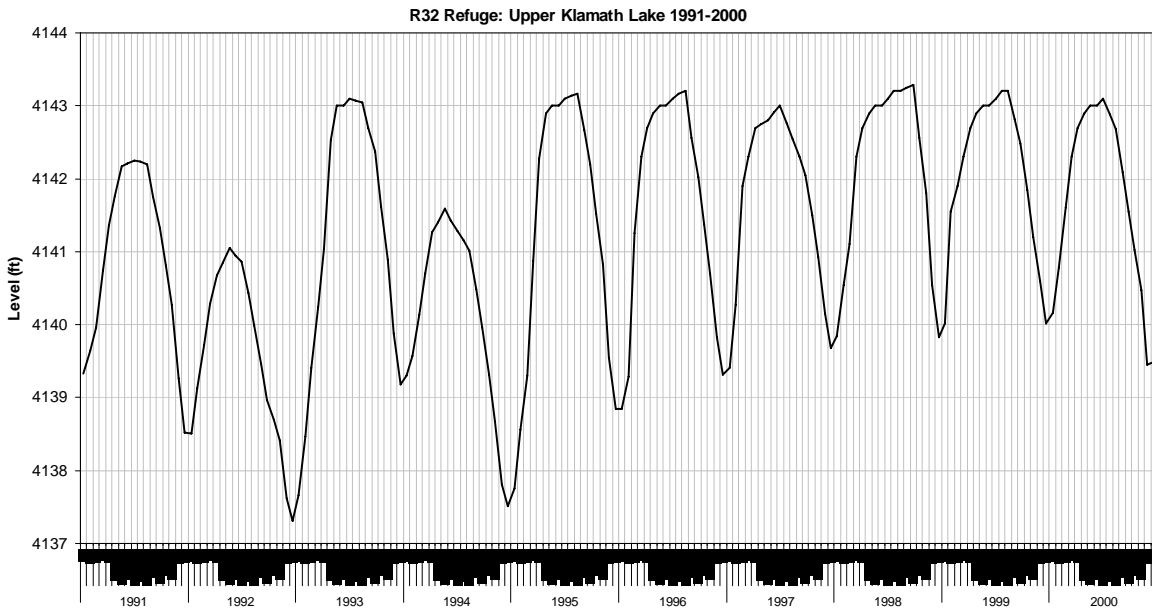


Figure 8. Results of the R32 Refuge simulation for Upper Klamath Lake levels during 1991-2000.



Appendix E-6
Klamath Basin Adjudication Case 282 and 286 Documents

[LDX: please reformat as follows. (1) the first line below should be at left margin. (2) The numbered paragraphs below should have the same format as the numbered paragraphs in Appendix E-7.]

Pursuant to the _____ resolution of the _____ [tribal governing body] dated _____, the Klamath Tribes on behalf of themselves and their members are authorized to execute a waiver and release of all claims of the type enumerated below concerning the area of the Klamath Basin above the Oregon-California border that arose at any time up to and including the Effective Date of the Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities (Restoration Agreement):

- (1) claims that the Tribes or its members may have against the United States, its agencies, or employees, arising out of, resulting from, or relating in any manner to claims for water rights in, or waters of the Klamath Basin that the United States asserted, or could have asserted, in any court proceeding, and any litigation related to those claims, including but not limited to the Klamath Basin Adjudication in the State of Oregon;
- (2) claims relating to damages, losses, or injuries to water, land, or other resources due to a limitation of water or water rights, including but not limited to -- action or inaction leading to insufficient water to support hunting, fishing, or gathering rights or other tribal resources; claims of interference with, or taking of water; or failure to protect, acquire, replace, or develop water or water rights within the Klamath Basin; operation of the Klamath Reclamation Project; failure to provide tribal trust water in Upper Klamath Lake or the Klamath River -- that the Tribes may have asserted or could have asserted in any court against the United States, its agencies, or employees,
- (3) claims arising out of, resulting from or relating in any manner to the negotiation, execution or the adoption of the Restoration Agreement, exhibits or appendices to the Restoration Agreement, or any specific terms and provisions thereof, that the Tribes may have against the United States, its agencies, or employees; *provided*, however, this sub-paragraph does not apply to claims related to enforcement or implementation of the Restoration Agreement.

Date

[printed name of Tribal Official]
[Title of Tribal Official]

Appendix E-7
Tribal Waivers to the United States

LDX: Make formatting changes. (1) The opening paragraph in each of the three waivers should be at left margin. (2) The numbering should be CG Times, not Arabic.

Pursuant to the _____ resolution of the _____ [tribal governing body] dated _____, the Karuk Tribe on behalf of themselves and their members are authorized to execute a waiver and release of all claims of the type enumerated below concerning the area of the Klamath Basin above the Oregon-California border that arose at any time up to and including the Effective Date of the Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities (Restoration Agreement):

- (1) claims that the Tribe or its members may have against the United States, its agencies, or employees, arising out of, resulting from, or relating in any manner to claims for water rights in, or waters of the Klamath Basin that the United States asserted, or could have asserted, in any court proceeding, and any litigation related to those claims, including but not limited to the Klamath Basin Adjudication in the State of Oregon;
- (2) claims relating to damages, losses, or injuries to water, land, or other resources due to a limitation of water or water rights, including but not limited to -- action or inaction leading to insufficient water to support hunting, fishing, or gathering rights or other tribal resources; claims of interference with, or taking of water; or failure to protect, acquire, replace, or develop water or water rights within the Klamath Basin; operation of the Klamath Reclamation Project; failure to provide tribal trust water in Upper Klamath Lake or the Klamath River -- that the Tribe may have asserted or could have asserted in any court against the United States, its agencies, or employees;
- (3) Claims arising out of, resulting from or relating in any manner to the negotiation, execution or the adoption of the Restoration Agreement, exhibits or appendices to the Restoration Agreement, or any specific terms and provisions thereof, that the Tribe may have against the United States, its agencies, or employees; *provided*, however, this sub-paragraph does not apply to claims related to enforcement or implementation of the Restoration Agreement.

Date

[printed name of Tribal Official]
[Title of Tribal Official]

Confidential and Privileged Settlement Communication

Pursuant to the _____ resolution of the _____ [tribal governing body] dated _____, the Yurok Tribe on behalf of themselves and their members are authorized to execute a waiver and release of all claims of the type enumerated below concerning the area of the Klamath Basin above the Oregon-California border that arose at any time up to and including the Effective Date of the Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities (Restoration Agreement):

- (1) claims that the Tribe or its members may have against the United States, its agencies, or employees, arising out of, resulting from, or relating in any manner to claims for water rights in, or waters of the Klamath Basin that the United States asserted, or could have asserted, in any court proceeding, and any litigation related to those claims, including but not limited to the Klamath Basin Adjudication in the State of Oregon;
- (2) claims relating to damages, losses, or injuries to water, land, or other resources due to a limitation of water or water rights, including but not limited to -- action or inaction leading to insufficient water to support hunting, fishing, or gathering rights or other tribal resources; claims of interference with, or taking of water; or failure to protect, acquire, replace, or develop water or water rights within the Klamath Basin; operation of the Klamath Reclamation Project; failure to provide tribal trust water in Upper Klamath Lake or the Klamath River -- that the Tribe may have asserted or could have asserted in any court against the United States, its agencies, or employees,
- (3) claims arising out of, resulting from or relating in any manner to the negotiation, execution or the adoption of the Restoration Agreement, exhibits or appendices to the Restoration Agreement, or any specific terms and provisions thereof, that the Tribe may have against the United States, its agencies, or employees; *provided*, however, this sub-paragraph does not apply to claims related to enforcement or implementation of the Restoration Agreement.

Date

[printed name of Tribal Official]
[Title of Tribal Official]

Appendix F
Authorized Representatives of the Parties

LDX: (1) please put into two column format. (2) Add [name] and other contact information placeholders to each entry. (3) Add vertical spaces between each entry. See treatment of US.

ES: need name and contact information.

United States

[name of contact]
U.S. Department of Agriculture
Forest Service
[address, telephone, fax, email]

U.S. Department of Commerce
National Marine Fisheries Service

U.S. Department of the Interior
Bureau of Indian Affairs

U.S. Department of the Interior
Bureau of Land Management

U.S. Department of the Interior
Bureau of Reclamation

U.S. Department of the Interior
Fish and Wildlife Service

State of California

California Department of Fish and Game

State of Oregon

Oregon Department of Environmental Quality
Oregon Department of Fish and Wildlife
Oregon Water Resources Department

Tribes

Karuk Tribe
Klamath Tribes
Yurok Tribe

Counties

Humboldt County, California
Klamath County, Oregon
Siskiyou County, California

Parties Related to Klamath Reclamation Project

Tulelake Irrigation District
Klamath Irrigation District
Klamath Drainage District
Klamath Basin Improvement District
Ady District Improvement Company
Enterprise Irrigation District
Malin Irrigation District
Midland District Improvement Company
Pine Grove Irrigation District
Pioneer District Improvement Company
Poe Valley Improvement District
Shasta View Irrigation District
Sunnyside Irrigation District
Don Johnston & Son
Modoc Lumber Company
Bradley S. Luscombe
Randy Walthall and Inter-County Title Company
Reames Golf and Country Club
Winema Hunting Lodge, Inc.
Van Brimmer Ditch Company
Collins Products, LLC
Plevna District Improvement Company
Klamath Water Users Association
Klamath Water and Power Agency

Upper Klamath Irrigators

Off-Project Water Users Association
[Upper Klamath Water Users Association](#)

Other Organizations

American Rivers
California Trout
Friends of the River
Klamath Forest Alliance
National Center for Conservation Science and Policy
Northcoast Environmental Center
Northern California/Nevada Council Federation of Fly Fishers

Confidential and Privileged Settlement Communication

Pacific Coast Federation of Fishermen's Associations
Salmon River Restoration Council
Trout Unlimited.

DRAFT OREGON WATER LAW AMENDMENTS

Section 537.348 of Oregon Water Law is amended as indicated.

537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Any person who has an existing water right, which includes for the purposes of this subsection a water right evidenced by an order of determination filed with the Circuit Court as provided in ORS 539.130, may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use.

(3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream right during the same water or calendar year provided:

(a) The uses are not concurrent; and

(b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right. [1987 c.859 §9; 2001 c.205 §1]

Note: The amendments to 537.348 by section 2, chapter 205, Oregon Laws 2001, become operative January 2, 2014. See section 3, chapter 205, Oregon Laws 2001; HB 2097 (2007). The text that is operative on and after January 2, 2014, is set forth for the user's convenience.

ORS 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Any person who has an existing water right, which includes for the purposes of this subsection a water right evidenced by an order of determination filed with the Circuit Court as provided in ORS 539.130, may lease all or a portion of the existing water right

for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use.