

**Klamath Project Drought Response Agency**  
**SPECIAL MEETING AGENDA**

February 28, 2020  
1:30 pm  
620 Main Street  
Klamath Falls, Oregon 97601  
Telephone Information  
(800) 308 9936  
Participant Code: 942683

Call to Order:

1. Roll Call of Directors
2. Vote to authorize execution of contract with the Bureau of Reclamation substantially in the form of the 2018 Agreement providing for compensation in exchange for making water available, a copy of which is attached hereto.
3. Necessity/Timing of Future Board Meetings
4. Other business to come before the Board
5. Public Comment: This is the time for any member of the public to address the Board of Directors on any matter not on the agenda that is within the subject matter jurisdiction of the Agency. Comments shall be limited to five minutes per person, or such other time limit as may be imposed by the Chairman of the Board, in order to enable the Board to complete the remainder of the agenda within a reasonable period of time.
6. Next Steps

**Adjourn to** next regular meeting of the Board of Directors of the Klamath Project Drought Response Agency.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Klamath Project, Oregon-California

CONTRACT BETWEEN THE UNITED STATES  
AND  
THE 2018 KLAMATH PROJECT DROUGHT RESPONSE AGENCY  
FOR ACQUISITION OF WATER FOR PROTECTING OR RESTORING FISH AND  
WILDLIFE RESOURCES DUE TO DROUGHT CONDITIONS

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THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to section 102 of Title I of the Reclamation States Emergency Drought Relief Act of 1991 (Pub. L. 102-250, 106 Stat. 54, 43 U.S.C. §2212) (Drought Relief Act), between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer executing this Contract, hereinafter referred to as the Contracting Officer, and the 2018 KLAMATH PROJECT DROUGHT RESPONSE AGENCY, hereinafter referred to as the Agency;

WITNESSETH, That:

EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating and managing certain features of the Klamath Project in the States of Oregon and California, for diversion, carriage, distribution and beneficial use, for irrigation and other beneficial uses, of waters of the Klamath River, the Lost River, and their tributaries; and

[2<sup>nd</sup>] WHEREAS, in accordance with section 104 of the Drought Relief Act, the Governors of the States of Oregon and California have requested, by letters dated May 25, 2018 and June 7, 2018, respectively, that the United States provide temporary drought assistance for the Klamath Project; and

[3<sup>rd</sup>] WHEREAS, in accordance with section 104 of the Drought Relief Act, the Commissioner of the Bureau of Reclamation has determined, consistent with her delegated authority from the Secretary of the Interior, that temporary drought assistance, in accordance with the Governors' requests and section 104 of the Drought Relief Act, is merited, and duly notified the Governors of California and Oregon of such a determination by letter dated July 10, 2018; and

[4<sup>th</sup>] WHEREAS, Federal lands within the designated boundaries of the Lower Klamath National Wildlife Refuge and Tulelake National Wildlife Refuge (collectively the Refuges) are dependent upon and receive water from the Klamath Project, either by direct delivery or use of return flows, for irrigation and other beneficial uses; and

[5<sup>th</sup>] WHEREAS, there is currently a deficiency in the amount of water available to the Refuges due to drought conditions, which is contributing to an increased incidence of avian botulism and is likely to result in further losses to or decline of fish and wildlife resources, and a potential for other adverse impacts to fish and wildlife resources due to water deficiency outside the boundaries of the Refuges; and

[6<sup>th</sup>] WHEREAS, section 101 of the Drought Relief Act authorizes the Secretary of the Interior to undertake management and conservation activities that will minimize or can be expected to have an effect in minimizing, losses and damages resulting from drought conditions, and in doing so may purchase water from willing sellers, including, but not limited to, water made available by Federal Reclamation project contractors through conservation or other means with respect to which the seller has reduced the consumption of water; and

[7<sup>th</sup>] WHEREAS, section 102 of the Drought Relief Act authorizes the Secretary of the Interior to make water available from Federal reclamation projects and non-project water available on a non-reimbursable basis for the purpose of protecting or restoring fish and wildlife resources, including mitigation losses, that occur as a result of drought conditions or

the operation of a Federal reclamation project during drought conditions; and

[8<sup>th</sup>] WHEREAS, the Agency intends to coordinate activities and act on behalf of Klamath Project contractors as the means to make water available to the United States pursuant to this Contract; and

[9<sup>th</sup>] WHEREAS, the United States has completed an Environmental Assessment and Finding of No Significant Impact, dated August 10, 2018, for the execution of this Contract;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties agree as follows:

#### DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:
  - (a) "Parties" shall mean the United States and the Agency; and
  - (b) "Secretary" or "Contracting Officer" shall mean the Secretary of the Interior, (unless otherwise stated) or his duly authorized representative.

#### TERM OF CONTRACT

2. This Contract shall become effective on the date hereinabove written and shall remain in effect through January 31, 2019.

#### WATER MADE AVAILABLE TO THE UNITED STATES

3. The Agency shall coordinate activities of Klamath Project contractors to make up to 26,355 acre-feet of water available to the United States under the terms of this Contract, with initial deliveries to begin on or before September 1, 2018, unless mutually agreed to in writing by the Contracting Officer and the Agency.

#### SCHEDULING AND ACCOUNTING OF WATER DELIVERIES

4. (a) Beginning within five (5) business days following execution of this

Contract, the Agency shall coordinate and arrange for one or more meetings, conference calls, or other formal or informal communications among the Contracting Officer, the U.S. Fish and Wildlife Service, and other parties as appropriate to discuss the anticipated uses of water and potential sources of water and wildlife benefits to be made available to the United States under this Contract. Following any such meeting, or at any other time during the term of this Contract, the Agency may submit to the Contracting Officer, in accordance with Article 20, a proposed schedule of water to be made available to the United States in accordance with this Contract, which schedule shall identify, at a minimum, the source, volume, rate, timing of, and means of quantifying the proposed water deliveries and/or other wildlife benefits. Within 48 hours of receipt of such a notice, the Contracting Officer shall notify the Agency whether the Agency's proposed schedule of water to be made available to the United States is acceptable. If accepted by the Contracting Officer, the Agency will make water available to the United States in accordance with the schedule accepted by the Contracting Officer; *Provided That*, prior to the Contracting Officer's acceptance of any proposed schedule, if notified by the Contracting Officer, the Agency shall demonstrate to the satisfaction of the Contracting Officer that the water the Agency proposes to make available to the United States is legally available to the United States for its use under this Contract.

(b) For purposes of the water to be made available to the United States under the terms of this Contract, the Parties generally agree that conveyance losses between the point of diversion and the Refuges, or other location, where that water is to be delivered, shall be the responsibility of the United States.

(c) The Agency does not warrant the quality of the water to be made available to the United States and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of the water delivered or made available.

(d) At any time during the term of this Contract, the Agency may request that

the Contracting Officer notify the Agency of the volume of water that has been delivered by the Agency and acquired by the United States, consistent with the terms of this Contract. The Contracting Officer shall provide the Agency with a notice of this volume of water within five (5) business days of receipt of such request.

#### INVOICING

5. (a) At any time during the term of this Contract, the Agency may submit an invoice to the Contracting Officer requesting payment for the water made available to the United States, consistent with the notice provided by the Contracting Officer to the Agency pursuant to Article 4(d).

(b) In accordance with the Prompt Payment Act (Pub. L. 97-452, 96 Stat. 2474), as amended, the United States shall pay the Agency within 30 days upon receipt of a proper invoice that includes the following information for verification and payment processing purposes:

- (i) Name and address of the Agency;
- (ii) Invoice date and number;
- (iii) The Taxpayer Identification Number of the Agency;
- (iv) The Contract Number 18-WC-20-5322
- (v) Name and phone number of a contact person
- (vi) Remittance address; and
- (vii) The measured volume of water delivered to the United States, and

not previously paid for, consistent with the notice issued by the Contracting Officer in accordance with Article 4(d) of this Contract.

#### METHOD OF PAYMENT BY THE UNITED STATES

6. (a) The Agency shall register at the U.S. Federal District Registration System for Award Management (SAM) website at [www.sam.gov](http://www.sam.gov) prior to submitting an invoice for

payment pursuant to Article 6 herein.

(b) All payments made by the United States under this Contract shall be made by electronic funds transfer (EFT) using the EFT information contained in the SAM database. The Agency is responsible during the term of this Contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after initial registration, the Agency is required to review and update on an annual basis from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate, and complete.

#### AMOUNT OF PAYMENT BY THE UNITED STATES

7. The United States shall pay the Agency for the amount of water acquired by the United States consistent with the terms of this Contract at the rate of \$360 per acre-foot.

#### NO ARGUMENT, PRECEDENT OR ADMISSION

8. Nothing in this Contract shall 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, except that this Contract may be used in any future proceeding to interpret or enforce the terms of this Contract, consistent with applicable law.

#### MEDIUM FOR TRANSMITTING PAYMENTS BY THE AGENCY

9. (a) All payments from the Agency to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, written transfers, or other types of payment specified by the United States.

(b) Upon execution of the contract, the Agency shall furnish the Contracting Officer with the Agency's taxpayer's identification number (TIN). The purpose for requiring the Agency TIN is for collecting and reporting any delinquent amounts arising out of the Agency's relationship with the United States.

#### CHARGES FOR DELINQUENT PAYMENTS DUE FROM THE AGENCY

10. (a) The Agency shall be subject to interest, administrative, and penalty charges on delinquent payments due by the Agency to the United States under the terms of this Contract. If a payment is not received by the due date, the Agency shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Agency shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Agency shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Agency shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

#### PROTECTION OF WATER AND AIR QUALITY

11. (a) Klamath Project Facilities used to make available water to the Klamath Project reclamation contractors shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the Agency and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of the water delivered to the Agency.

(b) The Agency shall comply with all applicable water and air pollution laws and regulations of the United States and state law; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Agency; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Klamath Project facilities or Agency facilities or water provided by the Agency within its water service area.

(c) This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

#### EQUAL EMPLOYMENT OPPORTUNITY

12. During the performance of this Contract, the Agency agrees as follows:

(a) The Agency will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, the Agency agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Agency makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Agency by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Agency recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the Agency shall be investigated by the Contracting Officer's Office of Civil Rights.

#### BOOKS, RECORDS, AND REPORTS

15. The Agency shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Agency's financial transactions; water supply data; Project operation, maintenance, and replacement logs; Project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

#### CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

16. The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Agency from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

#### ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

17. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

#### OFFICIALS NOT TO BENEFIT

18. No Member of or Delegate to the Congress, Resident Commissioner, or official of the Agency shall benefit from this Contract other than as a water user or landowner in the same

manner as other water users or landowners.

#### CHANGES IN AGENCY'S ORGANIZATION

19. While this Contract is in effect, no change may be made in the Agency's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Agency under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

#### NOTICES

20. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Agency, when mailed, postage prepaid, or delivered to Bureau of Reclamation, Klamath Basin Area Office, 6600 Washburn Way, Klamath Falls, Oregon 97603, and on behalf of the United States, when mailed, postage prepaid, or delivered to: 2018 Klamath Project Drought Response Agency, P.O. Box 1944, Klamath Falls, OR 97601. The designation of the address may be changed by notice given in the same manner as provided in this Article for other notices.

#### CONFIRMATION OF CONTRACT

21. Promptly after the execution of this contract, the Agency shall provide evidence to the Contracting Officer that, pursuant to the laws of the States of Oregon and California, as applicable, the Agency is a legally constituted entity and this Contract is lawful, valid, and binding on the Agency. This Contract shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction.

#### CONTRACT DRAFTING CONSIDERATIONS

22. This Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. The double-spaced articles of this Contract have been drafted, negotiated, and reviewed by the Parties, and no one party shall be considered to have drafted the stated articles.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Regional Director  
Mid-Pacific Region  
Bureau of Reclamation

(SEAL)

2018 KLAMATH PROJECT DROUGHT  
RESPONSE AGENCY

By: \_\_\_\_\_  
Chairman of the Board of Directors

Attest:

By: \_\_\_\_\_  
Secretary of the Board of Directors