

# **KLAMATH PROJECT DROUGHT RESPONSE AGENCY 2020 LIMITED IRRIGATION DROUGHT PROGRAM POLICY**

## **A. Program Summary**

The Klamath Project Drought Response Agency (“KPDRA”), was formed by an Intergovernmental Cooperation and Joint Exercise of Powers Agreement (“Agreement”) in 2018 to do all things necessary or incident to the maximization of water supply for the members of the KPDRA and all irrigation water users in the Klamath Reclamation Project, including but not limited to, the design and implementation of conservation and management programs through the coordination, incentives, and compensation indicated in the Recitals of the Agreement to the extent permitted by the laws and regulations governing such operations.

United States Natural Resource Conservation Service April 1, 2020, predictions for the 2020 Klamath Project irrigation season indicate that inflows to Upper Klamath Lake would be significantly below normal, resulting in an irrigation water supply that will not meet demand. Based on the inflow predictions, the United States Bureau of Reclamation announced that 140,000 acre feet of water would be available in 2020 for irrigation of land in the Klamath Reclamation Project. In early May 2020, the inflow predictions were reduced which will likely cause Reclamation to substantially reduce the allocation of water from Upper Klamath Lake available for irrigation. As a result, water deliveries for irrigation will likely be lesser in quantity and duration than previously anticipated. Some irrigation water users in the Klamath Project made the decision to irrigate land in reliance on the April allocation. They would not have irrigated the land had they known the allocation would be substantially less than originally provided. The purpose of this Limited Irrigation Drought Program is to provide assistance to landowners who did not irrigate between November 1, 2019 and February 29, 2020, did irrigate between March 1 and 5:00 pm on May 12, 2020, but are not able to irrigate their land with water from Upper Klamath Lake or the Klamath River after 5:00 pm May 12, 2020. The distribution of funds will occur through an Application process. Funds for this program will come from water delivered to the Tule Lake and Lower Klamath National Refuges and, potentially, other funds provided by Federal programs. The amount of Drought Response Funds available for this Program will not be known until the end of 2020. The purpose of this Policy is to provide financial assistance when and if it becomes available in a manner that the KPDRA Board of Directors, in its sole discretion, determines to be reasonable and fair. Any payment provided by this Program is not intended to compensate for the value of lost crop or the value of the use of the water which was lost by the participant.

## **B. Eligibility**

MBK Engineers, Inc. on behalf of KPDRA, will solicit Application forms for participation in this 2020 Limited Irrigation Drought Program of land normally irrigated with surface water that meets the following criteria:

1. The parcel must be five or more contiguous acres of irrigable land in size and must have clear boundaries separating it from adjoining and adjacent irrigated land;
2. The area subject to payment will be the area normally irrigated with surface water from Upper Klamath Lake or the Klamath River as measured on aerial photographs: see section D 3;

3. The parcel must be dependent upon irrigation with surface water from Upper Klamath Lake, was not irrigated between November 1, 2019 and February 29, 2020, was irrigated on or after March 1, 2020, but was not irrigated after 5:00 pm on May 12, 2020, and will not be irrigated for the remainder of the 2020 irrigation season;
4. The Applicant must be legally authorized to apply for and receive funds under this program and must so warrant to KPDRRA; and
5. The parcel must be listed as having a water right in the Klamath Project according to the Klamath River Adjudication Amended and Corrected Findings of Fact and Final Order of Determination or an exception filed thereto.
6. The applicant agrees to comply with additional terms and conditions imposed by the DRA in relation to the subject property, particularly in the event the DRA may require reasonable weed abatement or other “conservation” methods, as necessary to assure the eligibility of this program to receive additional funding.

The following lands are ineligible to participate:

- a. Land irrigated using only groundwater, in a year of normal Project water supply, does not qualify;
- b. Refuge lease lands do not qualify; and
- c. Land in walking wetlands or other similar programs where water was applied and no agricultural crop was produced and harvested, do not qualify.

To qualify for this program no water from any source other than natural precipitation shall be or have been applied to the land after 5:00 pm on May 12, 2020.

A flat rate payment equal to 67% of the rate paid per acre for land that was not irrigated after October 31, 2019 and before October 31, 2020. The amounts payable under all of the 2020 Drought Programs will be determined when the total amount of funds available for the Programs and the total number of applicants is known, likely in December 2020. Completed Applications may submitted by hand delivery to the office of Parks and Ratliff, PC., 620 Main Street, Klamath Falls, Oregon, by fax to the office of MBK, by certified mail addressed to MBK’s office and postmarked on or before June 10, 2020, by email to: [info@klamathwaterbank.com](mailto:info@klamathwaterbank.com).

#### **D. Claim Form Application/Qualification Process**

The following Notice and application process will be employed. Provided, however, that KPDRRA or its authorized representative may modify this process at any time at its sole discretion:

1. KPDRRA will notify irrigators through public notice and local media selected by KPDRRA that Applications forms for participation in the 2020 KPDRRA Limited Irrigation Drought Program are available.
2. The Applicant shall complete and submit the Application form for participation in the 2020 Limited Irrigation Drought Program, provided by the KPDRRA. All information requested on the Application form must be completed and all documentation required by the Application form must be provided with the Application form. Incomplete Applications may be rejected. Applications forms are available at the office of the Klamath Irrigation District, Tulelake Irrigation District, Klamath Water Users Association,

and MBK. Application forms will also be available to be downloaded from the KPDRA website: [klamathwaterbank.com](http://klamathwaterbank.com), or by calling 541-630-0752, or by emailing [info@klamathwaterbank.com](mailto:info@klamathwaterbank.com).

3. A “complete” Application form shall include the Application form and a map showing the land to be entered into the 2020 Limited Irrigation Drought Program. A Google map or aerial photo showing the proposed property to be entered in the program clearly outlined is preferred.

4. The qualified acreage will be determined using a Geographic Information Systems mapping the area irrigated. County tax map records, district assessment records and farm agency mapping acreages often include non-crop acreage (roadways, farm building, canals, and drains) and will not be used to determine the actual area of the parcel included in the Contract. The determination of qualified acreage by KPDRA shall be final and shall not be subject to challenge.

5. Application forms will be reviewed for completeness and reasonableness.

6. KPDRA will provide a map showing the location of each parcel to each irrigation district for the district’s review and comment.

7. The KPDRA Board of Directors retains the authority to reject any or all application forms.

8. By completing and submitting an Application form the Applicant is deemed to represent and warrant to the 2020 Klamath Project Drought Response Agency and MBK Engineers, Inc.:

a. That the Applicant has the legal right to claim and receive any proceeds from this program that may be paid by KPDRA to Applicant for the parcel described in the Application;

b. That the information included on this Application is complete and correct, and that the Applicant and the parcel described on this Application form comply with all of the criteria set forth in this Policy for participation in this program;

c. Applicant agrees that neither KPDRA nor MBK Engineers has an obligation to verify the information provided by the Applicant or to otherwise investigate, correct, supplement, or verify the information provided on or with this Application form. Applicant waives any claims, counterclaims, other assertions, or defenses Applicant may now have or may hereafter discover that KPDRA or MBK Engineers failed in any manner to independently investigate and determine that the Applicant or the well qualify for participation in this program; and

d. Applicant agrees and warrants that Applicant shall indemnify and hold harmless KPDRA, its officers, contractors, consultants, advisors, and agents from any loss or damage, including, but not limited to attorney fees and costs of suit, and from any claim or liability arising from Applicant’s submittal of the Application and Applicant’s participation or non-participation in this program.

## **E. Payment**

1. It is a goal of KPDRA to payout the funds received from the Bureau of Reclamation and other agencies without delay. However, KPDRA will not know how much money is available or how much each Program participant will receive until the end of 2020 at the earliest. KPDRA makes no representations of when payment will be made or how much money, if any, an Applicant may receive. Payment(s) will be mailed to qualified Applicants at the address shown on the Application form.

2. KPDRA is not responsible for the payment of taxes, assessments, irrigation district charges, and any other obligations related to participating in this program.

3. If KPDRA discovers that any of the information provided on the Application was not accurate, the land will be disqualified from the program and no payment will be made to the Applicant.

## **F. Other Provisions**

1. The funding for this program is being provided by money currently held by KPDRA and up to eight million dollars of additional funding that has been authorized and appropriated by the United States Congress, but the receipt of which is subject to conditions that may not be reasonably attainable or which KPDRA may determine, in its sole discretion, would be detrimental to the water users in the Klamath Project. The KPDRA may, or may not, receive funds from other sources. Klamath Water Users Association is working diligently with our Congressional representatives, the US Bureau of Reclamation, and other Federal, State, and local agencies to make the additional funding available to KPDRA. KPDRA has also instituted a Groundwater Program, a Focused Groundwater Program, and a full season Drought Response Program to augment the available water supply and reduce the demand for surface water. KPDRA, in its sole discretion, will allocate the available funding between the Programs. Funding for all Programs is subject to receiving funding and there may be insufficient funds available to pay in full all eligible participants in the Programs.

2) All decisions made by or on behalf of KPDRA will be made by its Board of Directors. MBK will provide such assistance to the Board of Directors as it may request, however, MBK is not authorized to make and will not make any decisions during this Program.

3) Any decision made by KPDRA or any action taken by or on behalf of the KPDRA may be appealed to the Board of Directors of KPDRA for reconsideration, which will hear such appeal after due notice at a public meeting. Any Klamath Project water user may initiate an appeal for reconsideration by written notice provided to Nathan Ratliff, Parks and Ratliff PC., 620 Main Street, Klamath Falls, Oregon 97601, legal counsel for KPDRA. Any Notice may be delivered or mailed to Counsel at said address. Any Notice must be delivered in a timely manner and should describe the decision or action being appealed and provide detailed information describing the impact of the decision on the person appealing the decision. Mr. Ratliff may request additional information and will provide a full copy of the appeal Notice and information to the members of the Board of Directors. Mr. Ratliff will provide timely Notice of the date, place, and time of the meeting at which the Board of Directors will consider the appeal for reconsideration. Although it is the intent of KPDRA that any such hearing be informal with a goal of timely resolving the appeal for reconsideration, the person making the appeal may be represented by legal counsel and may provide additional information and witnesses at the appeal hearing. The Board of Directors will consider the information provided, shall decide the appeal for reconsideration, and will notify the person making the appeal of its decision.

# KLAMATH PROJECT DROUGHT RESPONSE AGENCY 2020 LIMITED IRRIGATION DROUGHT PROGRAM APPLICATION

**THIS APPLICATION IS FOR LAND THAT WAS NOT IRRIGATED BETWEEN NOVEMBER 1, 2019 AND FEBRUARY 29, 2020, AND DID IRRIGATE BETWEEN MARCH 1, 2020, AND 5:00PM ON MAY 12, 2020, WITH SURFACE WATER.**

**Submit completed Application in person to the office of Parks and Ratliff, PC., 620 Main Street, Klamath Falls, Oregon (call 541-882-6331 before dropping off to ensure someone is there to receive the application); or email the application to [info@klamathwaterbank.com](mailto:info@klamathwaterbank.com); or mail the application to KPDRA, PO Box 1944, Klamath Falls, OR 97601; or fax the application to (916) 456-0253; no later than 5:00 p.m. on June 10, 2020.**

## APPLICANT CONTACT INFORMATION

Applicant: \_\_\_\_\_

*(If applicant is not the owner, must provide authorization to represent owner.)*

Mailing Address:

City:	State:	ZIP Code:
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Phone:	Cell:	Email:
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## LEGAL OWNER OF PROPERTY / CONTACT INFORMATION

Owner *(If other than applicant)*:

Mailing address:

City:	State:	ZIP Code:
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Phone:	Cell:	E-mail:
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## PROPERTY INFORMATION

Number of irrigable acres not irrigated: \_\_\_\_\_

Tax lot or parcel number or TID number if in CA: \_\_\_\_\_

Intended crop to be grown in 2020: \_\_\_\_\_

On what date did you first irrigate this parcel in 2020 with surface water? \_\_\_\_\_

What was the last date you irrigated this parcel in 2020 with surface water? \_\_\_\_\_

Name of district(s) that provides Irrigation water to the parcel: \_\_\_\_\_

## WARRANTIES AND REPRESENTATIONS

By completing and submitting this Application, Applicant represents and warrants to the Klamath Project Drought Response Agency (“KPDRA”):

1. That the Applicant has the legal right to claim and receive any proceeds from this program that may be paid by KPDRA to Applicant for the parcel;
2. That the information included on this Application and the documents submitted with this Application is complete and correct, and that the Applicant and the parcel comply with all of the criteria set forth in the Klamath Project Drought Response Agency 2020 Limited Irrigation Drought Program Policy for participation in this program;
4. That the parcel was not irrigated with water from Upper Klamath Lake or Upper Klamath Lake between November 1, 2019 and February 29, 2020 and was irrigated on or after March 1, 2020, but was not irrigated after 5:00pm on May 12, 2020;
5. Applicant agrees that neither KPDRA nor MBK Engineers has an obligation to verify the information provided by the Applicant or to otherwise investigate, correct, supplement, or verify the information provided on or with this Application form. Applicant waives any claims, counterclaims, other assertions, or defenses Applicant may now have or may hereafter discover that KPDRA or MBK Engineers failed in any manner to independently investigate and determine that the Applicant or the land qualify for participation in this Program;
6. Applicant agrees and warrants that Applicant shall indemnify and hold harmless KPDRA, its officers, contractors, consultants, advisors, and agents from any loss or damage, including, but not limited to attorney fees and costs of suit, and from any claim or liability arising from Applicant’s submittal of the Application and Applicant’s participation or non-participation in this program;
7. The applicant agrees to comply with additional terms and conditions imposed by the DRA in relation to the subject property, particularly in the event the DRA may require reasonable weed abatement or other “conservation” methods, as necessary to assure the eligibility of this program to receive additional funding; and,
8. Applicant is not subject to backup withholding and Applicant certifies that its social security number or tax identification number is: \_\_\_\_\_.

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Applicant’s signature

Date

### Application Checklist

**Make sure you have submitted:**

- Application due by June 10,2020.
- Map CLEARLY marked with an outline of the parcel for which you are applying. (Google Earth Map, County Tax Lot Map)
- Proof that the 2020 charges or assessments of the district that delivers irrigation water to the Parcel have been paid.

**Please submit a separate application for each non-contiguous parcel you desire to enter in this Program.**