

Klamath Project Drought Response Agency

SPECIAL MEETING AGENDA

Thursday, July 17, 2025, 3:00 pm

2312 S 6th St.

Klamath Falls, Oregon

Available Via Zoom:

<https://us06web.zoom.us/j/86175597972?pwd=rrCfSp1vKK6AhAKv41bdFnxzXFyprd.1>

Meeting ID: 861 7559 7972

Passcode: 643522

Phone In Number: 253 205 0468

1. Call to Order
2. Roll Call of Directors
3. 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.
4. Review/Authorize agreement for acquisition of water for protecting or restoring fish and wildlife resources.
 - a. Entertain Motion to Approve KPDRA Resolution #25-02 to authorize execution of agreement (\$18 Million)
5. Discussion regarding upcoming meeting times/dates
6. Next Steps

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

Should you need accommodations, please contact Nathan Ratliff, Counsel for the KPDRA, at 541 882-6331.

RESOLUTION #25-02
KLAMATH PROJECT DROUGHT RESPONSE AGENCY

WHEREAS this Agency was formed for the purposes of administering funds appropriated by the United States to be distributed to water users and/or districts negatively impacted by drought conditions;

WHEREAS funds have been appropriated through the Inflation Reduction Act to the Secretary of the Interior (acting through the Commissioner of Reclamation) for grants, contracts, or financial assistance agreements to or with public entities to provide for the conduct of certain activities, including ecosystem and habitat restoration projects to address issues directly caused by drought in a river basin or inland water body;

WHEREAS contract negotiations have taken place after the appropriation of funds with the Bureau of Reclamation to set forth the details of the relationship between the Agency and the Bureau of Reclamation as it relates to said funds and their administration;

WHEREAS the Klamath Project Drought Response Agency wishes to work with all deliberate speed to implement authorized programs and distribute funds to in accordance with its organization purpose;

WHEREAS, by way of Resolution #25-012, the Klamath Project Drought Response Agency Board authorized execution of a predecessor agreement to the Agreement described herein, but since that authorization, the form Contract has been modified to authorize additional funding; and

WHEREAS, as of July 7, 2025, it has been represented by the Bureau of Reclamation that the contractual agreement between the United States and the Klamath Project Drought Response Agency, in the form set forth in Exhibit A, attached hereto and incorporated fully herein, is substantially in final form, but it is still subject to internal review which should be promptly completed;

BE IT RESOLVED, the governing board of the Klamath Project Drought Response Agency approves the Agreement in the form attached hereto and hereby authorizes its chairman/president to execute the CONTRACT BETWEEN THE UNITED STATES AND THE KLAMATH PROJECT DROUGHT RESPONSE AGENCY FOR ACQUISITION OF WATER FOR PROTECTING OR RESTORING FISH AND WILDLIFE RESOURCES DUE TO DROUGHT CONDITIONS.

BE IT FURTHER RESOLVED, the governing board of the Klamath Project Drought Response Agency authorizes withholding execution of the predecessor agreement previously authorized by Resolution# 25-01, and hereby rescinds resolution #25-01.

DATED this _____ day of July, 2025.

S. Marc Staunton, Board President

Acting Secretary

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

CONTRACT BETWEEN THE UNITED STATES
AND
THE 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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1 UNITED STATES

2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Klamath Project, Oregon-California

5 CONTRACT BETWEEN THE UNITED STATES
6 AND
7 THE KLAMATH PROJECT DROUGHT RESPONSE AGENCY
8 FOR ACQUISITION OF WATER
9 FOR PROTECTING OR RESTORING FISH AND WILDLIFE RESOURCES
10 DUE TO DROUGHT CONDITIONS

11 THIS CONTRACT made this _____ day of _____, 20_____,
12 pursuant to Section 50233(b) of the Inflation Reduction Act of August 16, 2022 (IRA) (Pub. L.
13 117-169, 136 Stat. 2053), between the UNITED STATES OF AMERICA, acting by and through
14 the Bureau of Reclamation (Reclamation), represented by the officer executing this Contract,
15 hereinafter referred to as the Contracting Officer, and the KLAMATH PROJECT DROUGHT
16 RESPONSE AGENCY, hereinafter referred to as the Agency;

17 WITNESSETH, That:

18 EXPLANATORY RECITALS

19 [1st] WHEREAS, the United States has constructed and is operating and managing
20 certain features of the Klamath Project in the States of Oregon and California, for diversion,
21 carriage, distribution and beneficial use, for irrigation and other beneficial uses, of waters of the
22 Klamath River, the Lost River, and their tributaries; and

23 [2nd] WHEREAS, Federal lands within the designated boundaries of the Lower
24 Klamath National Wildlife Refuge and Tulelake National Wildlife Refuge (collectively the
25 Refuges) are dependent upon and receive water from the Klamath Project, either by direct
26 delivery or use of return flows, for irrigation and other beneficial uses; and

[3rd] WHEREAS, a deficiency in the amount of water available to the Refuges due to drought conditions may result in an increased incidence of avian botulism and 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

[5th] WHEREAS, section 50233(b) of the IRA appropriated certain funds to the Secretary of the Interior (acting through the Commissioner of Reclamation) for grants, contracts, or financial assistance agreements, in accordance with the reclamation laws, to or with public entities and Indian Tribes, that provide for the conduct of certain activities, including ecosystem and habitat restoration projects to address issues directly caused by drought in a river basin or inland water body; and

[6th] 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

[7th] WHEREAS, the United States is conducting the requisite [NEPA] analysis, to execute this Contract and, if necessary, the parties will promptly modify this Contract consistent with the NEPA document;

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) “Klamath Project” shall mean the project authorized by the Secretary of the Interior on May 15, 1905, in accordance with the Reclamation Act of 1902 (32 Stat. 388) and

the Act of February 9, 1905 (33 Stat. 714), and approved by the President of the United States on January 5, 1911, in accordance with the Act of June 25, 1910 (36 Stat. 835); and

(b) “Klamath Project contractors” shall mean the Klamath Project districts or water managers and does not include the contractors that are members of the districts or water managers.

(c) “Parties” shall mean the United States and the Agency; and

(d) “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 for five (5) years after the date of execution but not past September 30, 2031.

WATER MADE AVAILABLE TO THE UNITED STATES

3. The Agency shall coordinate activities of Klamath Project contractors to describe an operation or operations that would be performed by a district or other in-Project water management agency that would result in water being made available to the United States under the terms of this Contract. This contract implements a program that was developed pursuant to Attachment A of the January 17, 2025 MOU Drought and Ecosystems Programs at the Klamath Project Under the Inflation Reduction Act that relies on funds appropriated under Section 50233 of the Inflation Reduction Act Programs. This Contract neither requires any specific quantity of water be made available, nor any payment to the Agency if water is not made available, but any water made available as provided herein shall be subject to the terms and conditions of this Contract.

SCHEDULING AND ACCOUNTING OF WATER DELIVERIES

4. (a) At any time during the term of this Contract, the Agency may submit to the Contracting Officer, in accordance with Article 11, a proposed schedule of water to be made

75 available to the United States in accordance with this Contract, which schedule shall identify, at
76 a minimum, the source, volume, rate, timing of, and means of quantifying the proposed water
77 deliveries and associated wildlife benefits. Within 72 hours of receipt of such a notice, the
78 Contracting Officer shall notify the Agency whether the Agency's proposed schedule of water to
79 be made available to the United States is acceptable. If accepted by the Contracting Officer, the
80 Agency will make water available to the United States in accordance with the proposed
81 operations and schedule accepted by the Contracting Officer; *Provided That*, prior to the
82 Contracting Officer's acceptance of any proposed operation and schedule, if notified by the
83 Contracting Officer, the Agency shall demonstrate to the satisfaction of the Contracting Officer
84 that the water the Agency proposes to make available to the United States is legally available to
85 the United States for its use under this Contract, and otherwise applicable law.

86 (b) For purposes of the water to be made available to the United States under
87 the terms of this Contract, the Parties agree that conveyance losses between the point of
88 diversion and the point(s) of delivery at the Refuges, where that water is to be delivered, shall
89 be the responsibility of the United States.

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

93 (d) At any time during the term of this Contract, the Agency may request that
94 the Contracting Officer notify the Agency of the volume of water that has been delivered by the
95 Agency and utilized by the United States, consistent with the terms of this Contract. The
96 Contracting Officer shall provide the Agency with a notice of this volume of water within five
97 (5) business days of receipt of such request.

99 PAYMENTS BY THE UNITED STATES AND THE AGENCY

100 5. The United States shall pay the Agency for the amount of water made available by
101 the Agency and utilized by the United States consistent with the terms of this Contract at the rate
102 of \$450 per acre-foot (2025 inflation adjusted from 2020 contract payment of \$370 per acre-foot,
103 subject to an annual adjustment for subsequent inflation); provided, that the total amount paid the
104 Agency under this Contract shall not exceed \$18,000,000.00 (eighteen million dollars).

105 METHOD OF PAYMENT BY THE UNITED STATES

106 6. (a) The Agency shall register at the U.S. Federal District Registration
107 System for Award Management (SAM) website at www.sam.gov prior to submitting an
108 invoice for payment pursuant to Article 7 herein.

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

117 INVOICING

118 7. (a) At any time during the term of this Contract, the Agency may submit an
119 invoice to the Contracting Officer requesting payment for the water made available to the
120 United States, consistent with the notice provided by the Contracting Officer to the Agency
121 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 25-WC-20-6378;
- (v) Name and phone number of a contact person;
- (vi) Remittance address; and
- (vii) The measured volume of water made available to and utilized by 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.

(c) Upon receipt of the U.S. payment and also in accord with the Prompt Payment Act, the Agency shall then disburse these funds to the appropriate members and customers of the Project contractors or water managers who directly participated in the operation(s) to make water available for this Contract thereby giving rise to the United States payment.

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

146 this Contract, consistent with applicable law.

147 PARTIES NOT LIABLE

148 9. The Agency shall not assert that the United States, its officers, agents and
149 employees are legally liable for damages of any nature whatsoever arising out of any actions
150 or omissions by the Agency, its officers, agents and employees related to the performance of
151 this Contract where such liability is caused by an act, error or omission of the Agency, its
152 officers, agents or employees. The United States shall not assert that the Agency, its officers,
153 agents and employees are legally liable for damages of any nature whatsoever arising out of
154 any actions or omissions by the United States, its officers, agents and employees related to the
155 performance of this Contract where such liability is caused by an act, error or omission of the
156 United States, its officers, agents or employees.

157 DISPUTE RESOLUTION

158 10. In the event of a dispute regarding interpretation or implementation of this
159 Contract, or if the Parties are unable to agree upon a matter as to which their agreement is
160 provided for hereunder, the Director of Reclamation's California Great Basin Region and the
161 Manager of the Agency will endeavor to resolve the dispute by meeting within 30 days after
162 the request of a party. If said Parties deem the dispute to be un-resolvable, the Parties shall
163 use the services of a mutually acceptable mediator who has experience in water related
164 disputes. The Parties shall share the fees and expenses of the mediator equally.

165 NOTICES

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

173 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

179 OFFICIALS NOT TO BENEFIT

180 13. No Member of or Delegate to the Congress, Resident Commissioner, or official of
181 the Agency shall benefit from this Contract other than as a water user or landowner in the same
182 manner as other water users or landowners.

183 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

187 BOOKS, RECORDS, AND REPORTS

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

197 RULES, REGULATIONS, AND DETERMINATIONS

198 16. (a) The Contracting Officer shall have the right to make determinations
199 necessary to administer this Contract that are consistent with its expressed and implied
200 provisions, the laws of the United States and the States of California and Oregon, and the rules
201 and regulations promulgated by the Secretary of the Interior. Such determinations shall be made
202 in consultation with the Agency.

203 (b) The Agency shall comply with all applicable Federal, State, and local
204 laws, executive orders, rules and regulations applicable to its performance under this Contract.

205 PROTECTION OF WATER AND AIR QUALITY

206 17. (a) The Agency will comply with all applicable water and air pollution laws
207 and regulations of the United States and the States of California and Oregon; and will obtain all
208 required permits or licenses from the appropriate Federal, State, or local authorities necessary for

the delivery of water by the Agency; and will 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 Federal or Agency facilities or project water provided by the Agency within its Project Water Service Area.

(b) This article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

18. (a) The Agency shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(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.

MEDIUM FOR TRANSMITTING PAYMENTS BY THE AGENCY

19. (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.

249 CONTRACT DRAFTING CONSIDERATIONS

250 20. This Contract has been negotiated and reviewed by the parties hereto, each
251 of whom is sophisticated in the matters to which this Contract pertains. The double-spaced
252 Articles of this Contract have been drafted, negotiated, and reviewed by the parties, and no one
253 party shall be considered to have drafted the stated articles. Single-spaced Articles are standard
254 Articles pursuant to Bureau of Reclamation Policy.

255 SEVERABILITY

256 21. In the event that any one or more of the provisions contained herein is, for
257 any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality
258 or unenforceability will not affect any other provisions of this Contract, but this Contract is to
259 be construed as if such invalid, illegal or unenforceable provisions had never been contained
260 herein, unless the deletion of such provision or provisions would result in such a material
261 change so as to cause the fundamental benefits afforded the Parties by this Contract to become
262 unavailable or materially altered.

263 COUNTERPART CLAUSE

264 22. This Contract may be executed in counterparts with each having the same force
265 and effect as if executed in one complete document by all Parties.

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

268 UNITED STATES OF AMERICA

269 By: _____
270 Regional Director
271 Interior Region 10, California-Great Basin
272 Bureau of Reclamation

273 KLAMATH PROJECT DROUGHT
274 RESPONSE AGENCY

275 By: _____
276 Chairman of the Board of Directors
277 ATTEST

278 By: _____
279 Secretary of the Board of Directors

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

For

DROUGHT AND ECOSYSTEM PROGRAMS AT THE KLAMATH PROJECT UNDER THE INFLATION REDUCTION ACT

by and among

THE BUREAU OF RECLAMATION AND KLAMATH PROJECT DROUGHT RESPONSE AGENCY KLAMATH WATER USERS ASSOCIATION

1.0 Recitals

The Klamath Project (Project) was authorized in 1905 pursuant to the provisions of the Reclamation Act of 1902.

The United States Bureau of Reclamation (Reclamation) owns and operates various Project facilities.

Reclamation has entered into contracts with numerous agencies and persons that provide for the delivery of water made available in whole or in part by Project facilities.

Certain Project contractors operate and maintain Project works and all Water Users are reliant on Project works and related operation and maintenance activities for essential water delivery and drainage.

The Klamath River Basin has experienced successive years of severe drought in the face of multiple needs or demands for water.

In recent years, pursuant to the Klamath Basin Water Supply Enhancement Act of 2000, Public Law 106-498, as amended (Enhancement Act), and the Reclamation States Drought Relief Act of 1991, Public Law 102-250, as amended (Drought Relief Act), the Klamath Project Drought Response Agency (DRA), supported by and with the approval of Reclamation, has operated various programs on an annual basis that have assisted in aligning supply and demand for water in the Project and have produced benefits for fish and wildlife.

California and Oregon are Reclamation States, and the Klamath River Basin has experienced levels of long-term drought comparable to the Colorado River Basin.

The Parties assume that Reclamation and the DRA will, in parallel with and in addition to programs under this Memorandum of Understanding (MOU), continue to implement activities under the Enhancement Act and Drought Relief Act, including programs under the Enhancement Act to align supply and demand at level at least equivalent to those of the period 2021-2024.

The Parties acknowledge that Project contractors are engaged in or pursuing activities for irrigation efficiency and modernization, for rehabilitation of infrastructure, and for ecosystem improvements and other benefits which are expected to rely on authorities other than the IRA.

Accordingly, the Parties agree as follows:

2.0 Definitions

"Klamath Project Drought Response Agency" (DRA) means the intergovernmental association and joint powers agency established under the laws of the states of Oregon and California.

"Klamath Water Users Association" (KWUA) means the non-profit corporation that does business by that name.

"Reclamation" means the United States Bureau of Reclamation, a bureau of the United States Department of the Interior.

3.0 Parties

The Parties to this MOU are Reclamation, DRA, and KWUA.

4.0 Effective Date

This MOU will become effective when signed by Reclamation, DRA and KWUA.

5.0 Commitments

Attachment A to this MOU identifies specific activities to be undertaken by Project contractors, Project water users and/or the DRA. The Parties commit to prompt implementation of Attachment A based on the activities and schedules described or as subsequently agreed or supplemented by the Parties. The Parties anticipate that \$43 million appropriated under Section 50233 of the Public Law 117-169, known as the Inflation Reduction Act (IRA) will be obligated for implementation of such activities.

6.0 Roles and Responsibilities

It is anticipated that extensive coordination will be required throughout the entirety of this process. This coordination will require each Parties' dedication of technical experts, administrative support, directors, and other staff as required. Generally, and consistent with the provisions below, the following actions are expected of each Party to MOU:

6.1.1. All Parties

- Identify a Primary Contact (PC) with sufficient authority to enable efficient and effective decision-making.
- Undertake and complete tasks as identified in Attachment A.
- Perform timely review of materials.
- Report on status and progress.
- Identify issues as early in the process as possible.
- Openly share information.

6.1.2. Reclamation

- Reclamation will assign a Project Manager (PM) with responsibilities for managing the timely completion of tasks and review of materials as described in Attachment A as well as coordinating the identification and resolution of potential issues.
- Reclamation will identify the management personnel with authorities and responsibilities for addressing policy-level issues as appropriate and coordinating with the Parties to this MOU as needed to complete tasks described in this MOU to identify and resolve issues.
- Reclamation will make best efforts to simplify and streamline regulatory processes and approvals of activities under this MOU, as well other ongoing activities described in the recitals of this MOU.

7. Miscellaneous Provisions

7.1. Duration of this MOU, Amendment

This MOU may be modified by mutual consent of authorized representatives of the Parties. This MOU will remain in effect until modified or terminated. The MOU may be terminated by mutual consent, or upon sixty days' written notice by any of the Parties.

7.2. No Delegation

Nothing in this MOU will cause, or will be deemed to cause, any delegation of legal authority from any Party to this MOU to any other Party.

7.3. Applicable Laws

All activities undertaken pursuant to this MOU must be in compliance with applicable law and regulations.

7.4. Severability

In the event one or more provisions contained in this MOU is rendered illegal or impossible, or implementation is otherwise barred in any way by, executive or legislative branch action, or by policy decisions therein, the Parties will meet and confer to determine whether such portion will be deemed severed from this MOU and the remaining parts of this MOU will remain in full force and effect as though such illegal, impossible, or barred portion had never been a part of this MOU.

7.5. No Legally Enforceable Rights Created; No Waiver

This MOU sets out the expectations of each Party. All Parties acknowledge and agree that this MOU does not, and will not be construed to, create any rights or obligations for any Party enforceable in a court of law by any Party, by any Party contracting with Reclamation, by any stakeholder affected by the Project, or by any other third party, agency, person, or entity. Further, all Parties agree that nothing in this MOU constitutes, or will be construed to be, an admission of any issue of fact or law or waiver of any right of any Party, including any right that would exist in the absence of this MOU or its implementation.

No Party hereto will assert that any activity under this MOU will affect the validity of any existing water rights held by any other Party. This MOU does not constitute an amendment, modification or alteration of any existing contract. Further, nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting each Party's or any Project contractor's or water user's normal operations or decisions in carrying out its statutory or regulatory duties. This MOU does not limit or restrict the Parties from participating in similar activities or arrangements with other entities, except to the extent that such activities or arrangements would significantly and adversely interfere with the Parties' abilities to advance the actions contemplated under MOU.

7.6. Relationship of Parties

Execution of this MOU does not create a new legal entity with a separate existence from the individual Parties. This MOU does not create an "advisory committee" as that term is defined in the Federal Advisory Committee Act, as amended (Pub. L. 92-463). This MOU neither expands nor is in derogation of those powers and authorities vested in the Parties, or any of them, by applicable laws, statutes, regulations, or Executive Orders, nor does it modify or supersede any applicable interagency agreements existing as of the date of this MOU.

7.7. Anti-Deficiency Act

The Federal agency commitments described in this MOU are contingent on appropriations.


7.8. Authority

Each person executing this MOU on behalf of a Party represents that he or she has the authority to execute the MOU on behalf of the Party and that their signature will result in the entity becoming a Party.

7.9. Counterparts


This MOU may be executed in counterparts.

8. Signatures




Marc Staunton
President
Klamath Project Drought Response Agency

1-16-2024
Date



Tracey Liskey
President
Klamath Water User Association

1-16-24
Date



Alan Heck
Area Manager
U.S. Department of the Interior, Bureau of Reclamation

1-17-25
Date

ATTACHMENT A

INFLATION REDUCTION ACT PROGRAMS UNDER MOU BETWEEN U.S. BUREAU OF RECLAMATION, KLAMATH PROJECT DROUGHT RESPONSE AGENCY, AND KLAMATH WATER USERS ASSOCIATION

The Parties are committed to develop, and give consideration to formal approval of, the following programs that would rely on funds appropriated under Section 50233 of the Inflation Reduction Act (IRA). It is assumed that programs to align supply and demand under the Klamath Basin Water Supply Enhancement Act of 2000 would continue in parallel with the IRA-based programs. The total funding for each activity would include actual costs of administration by the non-federal entity or entity.

I. Demand Reduction And Modified Practices Emphasis (\$25 Million)

A. Multi-Year Demand Reduction

This program will be based on forbearance contracts between Klamath Project Drought Response Agency (DRA) and producers that are substantially longer in duration than recent DRA programs' contracts. DRA and Reclamation will further define metrics and methods to evaluate effectiveness of this program in the final agreement. No later than February 7, 2025 Reclamation and DRA will complete the development of a proposed grant agreement, and no later than February 28, 2025, Reclamation and DRA will take action to approve or disapprove the grant agreement, which will be for a DRA program that includes the following elements.

Pursuant to the following programs under the authority of Section 50233 of the IRA:

1. The DRA would enter into contracts with some producers for a term of three, four, or five years. (Here, "producers" will be a defined term in the contracts that covers persons / entities actually engaged in farming.)
2. The producer or landowner would receive payment immediately after verification of compliance for each year.
3. The non-irrigated land must: a) be in the authorized place of use of the Klamath Project and under contract with Reclamation; and b) have been irrigated or enrolled in a DRA program in one of the three crop years preceding the date of the contract between DRA and the producer. Rotations of the area of non-irrigation within the operational control of a producer are anticipated.
4. In addition to the base payments under "3.," the program would be "tiered" in that it would also include opportunities for "add-ons" that would provide ecosystem benefits, each of which would be incentivized by supplemental payment. Not less than twenty percent of the payments to producers under the Multi-Year Demand Reduction Program will be for these actions, which could include:

- a. Healthy living ecosystem practices (soil, air quality);
- b. Wildlife-friendly planting / management;
- c. Others

B. Modified Practices Emphasis

This program will be based on contracts between the DRA and producers, and will be covered in the same agreement as the multiyear demand reduction program. Contracts will provide for planting of substitute crops (including fall planted rather than spring planted), adjusting timing of cropping patterns or deficit irrigation practices. The DRA will target at least twenty percent of total payments to producers under part “I” to occur under this program, subject to reduction to not less than ten percent of the total payments to producers under part “I” if there is insufficient commodity market or producer demand for the target of twenty percent of total payments.

II. Permanent Demand Reduction (\$10 Million)

Reclamation, in close consultation with KWUA and interested districts that rely on water from Upper Klamath Lake (hereinafter “interested districts”), will develop a program that would permanently eliminate the demand on Upper Klamath Lake of certain specific lands through voluntary agreements on a willing seller basis with specific landowners. In developing the program, Reclamation will prioritize lands that are i) in regions where there is no appreciable commercial agricultural production and all parcels served by specific infrastructure (such as a lateral) could be taken off line and all owners would be willing to make that arrangement in exchange for compensation, and the district would receive a one-time payment to offset district-wide operations and maintenance costs that would no longer be recoverable from the retired lands; or ii) publicly-owned properties that could be converted from irrigated turf to non-irrigated surfaces. Reclamation will retain discretion to consider other lands for the program in accordance with its existing authorities.

Several other important business points will also have to be negotiated.

III. Ecosystem Improvement Emphasis (\$8 Million)

This program would focus on delivery of water or water management benefits for fish and wildlife resources; for example, delivery of water to refuges. The template for the envisioned agreement is a 2020 contract between Reclamation and the DRA entered under the Reclamation States Emergency Drought Relief Act. No later than February 7, 2025, Reclamation and KPDRA will complete the development of a proposed contract, and no later than March 7, 2025, Reclamation and DRA will take action to approve or disapprove a contract, containing the following elements.

Contract elements:

1. Five-year term. Fixed sum obligated, but no minimum or maximum payment in any specific year

2. The DRA submits written proposals to identified U.S. Fish and Wildlife Service (Service) management that describe an operation or operations that would be performed by a district or other in-Project water management agency that would result in water being made available for fish and wildlife resources. (This is typically, but not necessarily a real-time proposal based on conditions that occur during the year)
3. Upon approval by the Service, DRA would coordinate with the district or water managers in the performance of the identified task. Immediately after water being made available, the DRA would be compensated on a per-acre-foot basis for the quantity of water that has been made available.
4. The 2020 contract provided for payment of \$370 per acre-foot. This price would be inflation-adjusted to the first year of the contract and include an annual inflator.

IV. Miscellaneous

If agreed by Reclamation and the DRA, funds not used under the programs described in I. and II. above can be shifted to program III. Reclamation and the DRA will further define conditions and timeframes under which funds would shift in the final agreement.