

REVIEW DRAFT
Proposed “First Amendment” to the
Klamath Basin Restoration Agreement

December 22, 2011

NOTE TO KBRA Parties:

This document identifies potential revision to specific sections of the Klamath Basin Restoration Agreement (KBRA) and other terms of a proposed “First Amendment” to the KBRA that has been prepared by a KBRA Amendments Drafting Committee. It is being sent to the KBRA Parties for informal review.

Please review the draft and provide any comments or questions **by January 13, 2012** to your representative on the Drafting Committee or you can send them to Ed Sheets, the Klamath Agreements facilitator, at ed@edsheets.com and he will forward them to the Drafting Committee.

The Drafting Committee will discuss any questions, comments, or changes during the week of January 16th and prepare a final document for consideration by the Klamath Basin Coordinating Council during a conference call on January 20, 2012. At that KBCC conference call the KBCC will decide whether to initiate the formal process for amendment of the KBRA and approval of the First Amendment. If the KBCC recommends approval of the amendments, all Parties would then be asked to consider formal approval of the enclosed document. The “First Amendment” will not become effective unless approved by all existing KBRA Parties.

Please review this draft carefully. The First Amendment would be adopted as a package. Therefore, it is important to identify any concerns or changes in language in the proposed amendments and address them before the KBRA Parties begin the formal amendment process.

Please note that involved parties and the Drafting Committee are still working on a few issues and there could be modifications before formal consideration by the KBCC and Parties; they are identified in *[italics and brackets]*.

Background

On August 16, 2011, Ed Sheets transmitted to the Parties to the KBRA certain proposed amendments for review and consideration. Those proposed amendments, developed by the Klamath Tribes and federal representatives, addressed potential unintended consequences that could result under the KBRA as it exists. Primarily, those proposed amendments related to possible effects of changes to Appendix C-2 of the KBRA on the exchange of commitments between the Klamath Tribes and the United States. For

additional information, please review the memorandum dated August 16, 2011 from Ed Sheets to the parties to the KBRA and Hydroelectric Settlement Agreement.

Subsequently, an ad-hoc drafting committee formed to review the proposed amendments and make recommendations. The committee's general recommended approach was a subject of the KBCC meeting on September 9, 2011.

The ad hoc drafting committee refined the previously-identified proposed amendments and identified additional amendments that it considered appropriate under the circumstances. In general, these additional amendments would not, themselves, justify undertaking a process for amendment of the KBRA at this time. However, given the recognition that there is a need to address some issues now, including issues in the August 16, 2011 memorandum from Ed Sheets, the KBCC concluded that it makes sense to update and "clean up" the agreement. Several of the amendments relate to the reality that federal legislation was not introduced or enacted as early as the Parties had anticipated as of February 2010, and to other factors related to experience in implementation under the circumstances. As you will observe, the proposed amendments would also add a new party, the Klamath Basin Power Alliance.

**FIRST AMENDMENT TO
KLAMATH BASIN RESTORATION AGREEMENT
FOR THE SUSTAINABILITY OF PUBLIC AND TRUST RESOURCES
AND AFFECTED COMMUNITIES**

RECITALS

1. Effective February 18, 2010, Non-Federal Parties entered into the Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities (Agreement).
2. The Parties have identified and agreed to certain amendments to the Agreement and related terms that are consistent with the goals of the Agreement and intent of the Parties, embodied in this “First Amendment to Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities” (First Amendment).

TERMS

A. The Agreement is amended as follows; the words shown in ~~strike through marks~~ are stricken, words that are underlined are inserted where shown:

1. The third sentence of Section 1.1.2 is amended as follows:

Upon enactment of Authorizing Legislation that directs the Secretaries to sign this Agreement and the signing of this Agreement by the Secretaries the following agencies of the United States (“Federal Agency Parties”) shall become Parties to this Agreement:

Deleted: authorizes and

Deleted: the federal agencies to become parties to this Agreement

2. Section 1.1.3 is amended as follows:

Sixty days after the Effective Date, other entities may subsequently become Parties by following the procedures established in Section 7.2.2. Having followed such procedures, Klamath Basin Power Alliance is a Party.

3. Section 1.6 is amended as follows:

Except as otherwise expressly provided, the term of the Agreement as to Contractual Obligations shall be 50 years from the date the Federal Agency Parties become Parties to this Agreement pursuant to Section 1.1.2.

Deleted: Effective Date

4. In Section 1.7, the definition of “Klamath Project Water Users or KPWU” is amended as follows:

Klamath Project Water Users or KPWU shall mean: the following of the contractors associated with the Klamath Reclamation Project who are Parties: ... [The rest of the definition is not changed].

5. In Section 1.7, the definition of “Klamath Project Water Entities” is amended as follows:

Klamath Project Water Entities shall mean: those of the following entities who are Parties: ... [The rest of the definition is not changed].

Deleted: Klamath Project Water Users who will file a validation or confirmation action pursuant to Section 15.3.1B

6. In section 1.7, the definition of “On-Project Plan Area” is amended as follows:

On-Project Plan Area, or OPPA, 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. The Parties confirm that Langell Valley Irrigation District and Horsefly Irrigation District are not within the OPPA as so defined.

7. In section 1.7, the definition of “Secretaries” is amended as follows:

Secretaries shall mean: the Secretary of the Interior or designee, the Secretary of Commerce or designee, and the Secretary of Agriculture or designee.

Deleted: ies

8. The first sentence of Section 4.1.2.B is amended as follows:

Subject to Section 4.1.2.C., the KBCC shall amend estimated funding in Appendix C-2 or any successor as appropriate if any event occurs that materially affects the cost, feasibility, or benefits of performance of an obligation under this Agreement, including adaptive management pursuant to Section 5.4.1.

Deleted: The KBAC or KBCC, as applicable.

9. Amend Section 4.1.2 by adding a new Section 4.1.2.C as follows:

C. Limitation

Notwithstanding any provision of Section 4.1.2.B to the contrary, the KBCC shall not: i) amend Appendix C-2 in a manner that diminishes the funds for the programs described in Sections 15.3.5.C.iii and iv, Sections 15.3.6.B.iii.c and d, and Sections 15.3.7.B.iii.c and d without the consent of the authorized representative of the affected Tribe and the Secretary; ii) amend Appendix C-2 in

a manner that diminishes the funds identified under line items 66 or 90 without the consent of KWAPA and KWUA; iii) amend Appendix C-2 in a manner that diminishes the funds identified under line item 70 without the consent of UKWUA; iv) amend Appendix C-2 in a manner that diminishes the funds identified under line items 72-75 or 91 without the consent of KWAPA, KWUA, and UKWUA. For purposes of this Section 4.1.2.C, Appendix C-2 means the version of Appendix C-2 adopted by the KBCC on June 17, 2011, or any successor that is adopted by the KBCC consistent with Section 4.1.2.B and this Section 4.1.2.C.

10. Section 7.2.1.F is amended as follows:

In response to an event in Section 7.2.1.A through E above, the Parties shall: (i) develop an appropriate amendment through the KBCC, KBAC, or otherwise; or (ii) follow the Dispute Resolution Procedures in Section 6 if the KBCC or KBAC has not Timely commenced to develop such an amendment. Pursuant to (ii), any Party who objects that such an event impairs its bargained-for benefits under this Agreement shall make Best Efforts to provide Dispute Initiation Notice within 60 days of such event; provided that a Party's rights under this Agreement or otherwise are not modified or waived in any manner if it does not Timely provide such notice.

Deleted: T

Deleted: response to an event in Section 7.2.1.A through E above.

Deleted: A

11. Section 7.6.1.A is amended as follows:

A. By December 31, 2014, federal Authorizing Legislation has not been enacted; or

Deleted: 2012

12. The references to funding in the following sections are amended as follows:

Section 9.3 Fisheries Program Funding

The Non-Federal Parties shall support authorization and appropriation of funds as estimated in Appendix C-2, to implement the Fisheries Program.

Deleted: in the amount of \$493.2 million,

Deleted: for the first ten years after the Effective Date

Section 14.3. Water Resources Program Funding

The Non-Federal Parties shall support authorization and appropriation of funds as estimated in Appendix C-2, to implement the Water Resources Program.

Deleted: in the amount of \$338 million,

Deleted: in the first ten years after the Effective Date

Section 21.5. Regulatory Assurances Funding

The Non-Federal Parties shall support authorizations and appropriations of funds as estimated in Appendix C-2, to implement the Regulatory Assurances Program.

Deleted: , in the amount of \$47.5 million,

Deleted: for the first ten years after the Effective Date

Section 26.4. Counties Program Funding

The Non-Federal and non-State Parties shall support state authorizations and appropriations of funding, in the amounts estimated in Table 2: Non-Federal Funding to Implement the Non-Federally Funded Activities in the Klamath Agreements in Appendix C-2, to implement the Counties Program.

Deleted: determined after adjustment to the estimates

Deleted: for the first ten years after the Effective Date

Section 31.3. Tribal Program Funding

The Non-Federal Parties shall support authorizations and appropriations, in addition to existing funds, as estimated in Appendix C-2, to implement the Tribal Program.

Deleted: in the amount of \$65 million

Deleted: for the first ten years following the Effective Date

13. A new sentence is added to Section 15.1.2.E as follows:

Section 15.1.2.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.b); Refuge-approved walking wetlands (as identified in Section 15.1.2.E.iii.a); 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.c); and conveyance losses for any delivery to LKNWR via North Canal (as identified in Section 15.1.2.E.iii.d). 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). Notwithstanding any other terms of this Agreement, no call will be made for water from Clear Lake or Gerber Reservoir or the Lost River above Harpold Dam for delivery to meet the Refuge Allocation in this Agreement. This limitation with respect to the Refuge Allocation under this Agreement is subject to the first two sentences of Section 2.2.11 and any rights or privileges attendant to any water rights that may be determined.

14. Section 15.1.2.F. is amended as follows:

i. Summer Period Shortage

The amount of the Refuge Allocation is a function of the predicted availability of water from Upper Klamath Lake and the Klamath River. Thus, in any year that the applicable DIVERSION quantity from Upper Klamath Lake and the Klamath River for the summer period (March 1 through October 31) identified in Appendix E-1 is greater than the quantity of water from Upper Klamath Lake and the Klamath River, available for diversion at the Settlement Points of Diversion for the Klamath Reclamation Project, the

Deleted: In any year that the applicable DIVERSION quantity

Deleted: not

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: [The rest of 15.1.2.F. is not changed]

ii. Winter Period Shortage

In any year that the applicable DIVERSION quantity for the winter period (November through 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 ~~date the Federal Agency Parties become Parties to this Agreement pursuant to Section 1.1.2.~~

Deleted: Effective Date

15. Section 15.1.2.G.v is amended as follows:

Not later than one year ~~before the deadline for completion of development of the On-Project Plan under Section 15.2.2.B.i,~~ the Refuge Manager, Reclamation, TID, and KDD will agree to the general parameters of delivery of the Refuge Allocation.

Deleted: after the Effective Date

16. The second sentence of Section 15.1.2.H.ii is amended as follows:

The Refuge Manager and KPWU shall, within one year of the ~~date the Federal Agency Parties become Parties to this Agreement pursuant to Section 1.1.2,~~ develop an agreed-upon system to determine whether water was passed through the LKNWR lands outside of Area K lease lands.

Deleted: agencies

Deleted: Effective Date

17. The first sentence of Section 15.2.2.B.i is amended as follows:

Not later than ~~July 31, 2013,~~ KWAPA shall complete the development of the On-Project Plan consistent with Section 15.1.2.D.i.

Deleted: 18 months after distribution to KWAPA of the On-Project Plan development funds estimated in Appendix C-2 (first entry in item 66)

18. Section 15.3.1 is amended by adding, immediately after Section 15.3.1.E, new Sections 15.3.1.F and 15.3.1.G, as follows:

F. Limitation

~~Section 15.3.1.A.ii and Section 15.3.1.B only apply to a Klamath Project Water Entity with respect to this Agreement as it existed on the date the Klamath Project Water Entity became a Party.”~~

G. Modification

~~In the event any provision of Section 15.1.2 is modified or refined after the Effective Date, including due to completion of specific items reserved in~~

Section 15.1.2 to future resolution, such terms will be reflected appropriately in Attachment B of Appendix E-1 as ultimately filed.

19. The first sentence of Section 15.3.2.B.ii.a is amended as follows:

Not later than February 1, 2012, These Parties shall file amended stipulations and proposed orders in the KBA to implement the relevant commitments of this Agreement in Sections 15.3.3 and 15.3.8.B.

Deleted: ninety days after the Effective Date

20. Section 15.3.5 is amended as follows:

15.3.5 Relinquishment and Release of Claims Against the United States by the Klamath Tribes

C. Events that Must Occur Before the Klamath Tribes Relinquish and Release Claims

The Klamath Tribes' relinquishment and release of claims set forth in Section 15.3.5.A shall not be in force or effect until the date on which the Secretary publishes a statement of findings in the Federal Register that certain conditions precedent that benefit the Klamath Tribes have been fulfilled. The Klamath Tribes' relinquishment and release shall be effective from the date of publication of this notice. Reference in Section 15.3.5 to Appendix C-2 means the version of Appendix C-2 adopted by the Klamath Basin Coordinating Council on June 17, 2011, or such other version of Appendix C-2 approved by the KBCC, and the authorized representatives of the Secretary, and the Klamath Tribes consistent with Section 4.1.2.C. These conditions precedent are as follows:

i. Authorizing Legislation, which authorizes the relinquishments and releases above, and includes authorization for the United States and the Klamath Tribes to irrevocably make the Assurances stated in Section 15.3 and authorizes the United States to participate in the OPWAS process under Section 16.2.1, has been enacted into law;

ii. The Secretary has published the notice provided for in Section 15.3.4.A concluding that the beneficial events enumerated there for the Klamath Tribes have been accomplished;

iii. The total amount of funding identified for the elements of Appendix C-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 Use 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, 20.4, and 22.2 has been authorized and appropriated provided that, of these total funding amounts, the following

amounts have been appropriated and transferred to the Klamath Tribes to perform the relevant actions: (1) fifty percent of the funds identified to perform restoration actions in Appendix C-2 line items 3-5 (Williamson, Sprague, and Wood river aquatic habitat restoration) and monitoring actions in line items 51 (UKL analysis of long-term data sets), 52 (UKL listed suckers), 54 (tributaries geomorphology/riparian vegetation), 55 (tributaries physical habitat), 56 (tributaries listed suckers), and 59 (remote sensing acquisition and analysis), and (2) the funds identified to perform monitoring actions in line items 48 (UKL nutrients/algae/zooplankton), 50 (UKL external loading), and 53 (tributaries water quality/nutrients/temperature)*[The drafting committee is still working on the bracketed language; it possible that this language will be removed prior to the amendment process];*

iv. The total amount of funding identified for the elements of Appendix C-2 associated with Sections 32 and 33 has been authorized and appropriated, and funding has been Timely provided to the Klamath Tribes consistent with Section 33.2.1 to allow the Tribes to acquire the Mazama Forest;

v. Facilities Removal as defined by the Hydroelectric Settlement has occurred; and

vi. The petition described in Section 34 has been granted or rendered unnecessary to achieve the purpose of Section 34, or the equivalent benefits contemplated in Section 34.2 are in place and effective.

The Secretary's notice published under this section that the events in (i) through (vi) above have taken place is deemed a final agency action reviewable under 5 U.S.C. section 701.

D. Federal Authorizing Legislation and Subsections 15.3.5.C.iii & iv.

Notwithstanding the notice deadline in Section 3.2.4.B.vi, if the Klamath Tribes believe that the federal Authorizing Legislation is not materially consistent with Subsections 15.3.5.C.iii & iv and their related elements in Appendix C-2, then within 180 days after enactment of federal Authorizing Legislation, the Klamath Tribes shall initiate a renegotiation with the Secretary of the relinquishment and release of claims set forth in Section 15.3.5.A, or Section 15.3.5.E shall no longer apply. "Material consistency", as related to this subsection, means that the legislation does not substantially diverge from the bargained-for benefits of this Agreement, as proposed to be implemented through Sections 15.3.5.C.iii & iv and their related elements in Appendix C-2. The purpose of the renegotiation in this circumstance shall be to develop a mutually agreeable amendment to Section 15.3.5., to maintain the bargained-for benefits of that Section. The meaning of "materially consistent" in this subsection shall not control the application of the term "materially inconsistent" in Section 8.11.2.A. of the Hydroelectric Settlement. The Klamath Tribes or the Secretary may file a Dispute Initiation Notice under Section 6.5 if sufficient progress is not Timely made in the renegotiation. The amendment to Section

15.3.5 shall not have the effect of modifying or affecting the Contractual Obligations of the United States, Federal Agency Parties, or the Klamath Tribes to any other Party, or otherwise affect the interests of any other Party, without the written consent of such other Party. If such amendment meets these conditions and is mutually agreeable to the Klamath Tribes and the Secretary, it shall take effect as an amendment to this Agreement without action by other Parties pursuant to Section 7.2.1 (first sentence). [The tribes and U.S. are working on potential language addressing tolling of claims in this section]

15.3.5.E Tolling of Claims

[No changes except section number]

21. Sections 15.3.6.B.iii, iv, and v are amended as follows:

iii. Events that Must Occur Before the Yurok Tribe Relinquishes and Releases Claims

The Yurok Tribe's relinquishment and release of claims set forth in (i) above shall not be in force or effect until the date on which the Secretary publishes a statement of findings in the Federal Register that certain conditions precedent that benefit the Tribe have been fulfilled. The Tribe's relinquishment and release shall be effective from the date of publication of this notice. Reference in Section 15.3.6 to Appendix C-2 means the version of Appendix C-2 adopted by the Klamath Basin Coordinating Council on June 17, 2011, or such other version of Appendix C-2 approved by the KBCC, and the KBCC representatives of the Secretary, and the Yurok Tribe consistent with Section 4.1.2.B. These conditions precedent are as follows:

- a. Authorizing Legislation, which authorizes the relinquishments and releases above, and includes authorization for the United States and the Tribe to irrevocably make the Assurances stated in Section 15.3 has been enacted into law;
- b. The Secretary has published the notice provided for in Section 15.3.4.A concluding that the beneficial events enumerated there for the Tribe have been accomplished;
- c. The total amount of funding identified for the elements of Appendix C-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 Use 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, 20.4, and 22.2 has been authorized and appropriated; [The Secretary shall enter into contracts, compacts or other agreements with the Yurok Tribe for activities described in section 3 of the KBRA under Title I or Title II of the Indian Self Determination Act (add citation) at the Yurok Tribe's option] [The drafting committee is still working on the

bracketed language; it possible that this language will be removed prior to the amendment process].

- d. The total amount of funding identified for the elements of Appendix C-2 associated with those provisions of Sections 31 through 33 pertinent to the Yurok Tribe has been authorized and appropriated; and
- e. Facilities Removal as defined by the Klamath Hydroelectric Settlement Agreement has occurred.

The Secretary’s notice published under this section that the events in (a) through (e) above have taken place is deemed a final agency action reviewable under 5 U.S.C. section 701.

iv Authorizing Legislation and Sections 15.3.6.B.iii.c and d

The Yurok Tribe and the Secretary acknowledge that federal legislation is necessary to implement certain obligations in Section 15.3.6.B.iii. Notwithstanding the notice deadline in Section 3.2.4.B.vi, if the Yurok Tribe believe that such legislation is not materially consistent with Sections 15.3.6.B.iii.c and d and Appendix C-2, then within 180 days after enactment of Authorizing Legislation, the Yurok Tribe shall initiate a renegotiation with the Secretary of the relinquishment and release of claims set forth in Section 15.3.6.A, or Section 15.3.6.B.iv shall no longer apply. “Material consistency,” as related to this subsection, means that the legislation does not substantially diverge from the bargained-for benefits of this Agreement, as proposed to be implemented through Sections 15.3.6.B.iii.c and d and Appendix C-2. The purpose of the renegotiation in this circumstance shall be to develop a mutually agreeable amendment to Section 15.3.6, to maintain the bargained-for benefits of that Section. The meaning of “materially consistent” in this subsection shall not control the application of the term “materially inconsistent” in Section 8.11.2.A. of the Hydroelectric Settlement. The Yurok Tribe or the Secretary may file a Dispute Initiation Notice under Section 6.5 if sufficient progress is not Timely made in the renegotiation. The amendment to Section 15.3.6 shall not have the effect of modifying or affecting the Contractual Obligations of the United States, Federal Agency Parties, or the Yurok Tribe to any other Party, or otherwise affect the interests of any other Party, without the written consent of such other Party. If such amendment meets these conditions and is mutually agreeable to the Yurok Tribe and the Secretary, it shall take effect as an amendment to this Agreement without action by other Parties pursuant to Section 7.2.1 (first sentence). [The tribes and U.S. are working on potential language addressing tolling of claims in this section]

v. Tolling of Claims

[No change except section number]

- 22. Sections 15.3.7.B.iii, iv, and v are amended as follows:

iii. Events that Must Occur Before the Karuk Tribe Relinquishes and Releases Claims

The Karuk Tribe's relinquishment and release of claims set forth in (i) above shall not be in force or effect until the date on which the Secretary publishes a statement of findings in the Federal Register that certain conditions precedent that benefit the Tribe have been fulfilled. The Tribe's relinquishment and release shall be effective from the date of publication of this notice. Reference in Section 15.3.7 to Appendix C-2 means the version of Appendix C-2 adopted by the Klamath Basin Coordinating Council on June 17, 2011, or such other version of Appendix C-2 approved by the KBCC, and the KBCC representatives of the Secretary, and the Karuk Tribe consistent with Section 4.1.2.B.

These conditions precedent are as follows:

- a. Authorizing Legislation, which authorizes the relinquishments and releases above, and includes authorization for the United States and the Tribe to irrevocably make the Assurances stated in Section 15.3 has been enacted into law;
- b. The Secretary has published the notice provided for in Section 15.3.4.A concluding that the beneficial events enumerated there for the Tribe have been accomplished;
- c. The total amount of funding identified for the elements of Appendix C-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 Use 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, 20.4, and 22.2 has been authorized and appropriated;
- d. The total amount of funding identified for the elements of Appendix C-2 associated with those provisions of Sections 31 through 33 pertinent to the Karuk Tribe has been authorized and appropriated; and
- e. Facilities Removal as defined by the Klamath Hydroelectric Settlement Agreement has occurred.

The Secretary's notice published under this section that the events in (a) through (e) above have taken place is deemed a final agency action reviewable under 5 U.S.C. section 701.

iv. Authorizing Legislation and Sections 15.3.7.B.iii.c and d

The Karuk Tribe and the Secretary acknowledge that federal legislation is necessary to implement certain obligations in Section 15.3.7.B.iii. Notwithstanding the notice deadline in Section 3.2.4.B.vi, if the Karuk Tribe believe that such legislation is not materially consistent with Sections 15.3.7.B.iii.c and d and Appendix C-2, then within 180 days after enactment of Authorizing Legislation, the Karuk Tribe shall initiate a renegotiation with the Secretary of the relinquishment and release of claims set forth in

Section 15.3.7.A, or Section 15.3.7.B.iv shall no longer apply. “Material consistency,” as related to this subsection, means that the legislation does not substantially diverge from the bargained-for benefits of this Agreement, as proposed to be implemented through Sections 15.3.7.B.iii.c and d and Appendix C-2. The purpose of the renegotiation in this circumstance shall be to develop a mutually agreeable amendment to Section 15.3.7, to maintain the bargained-for benefits of that Section. The meaning of “materially consistent” in this subsection shall not control the application of the term “materially inconsistent” in Section 8.11.2.A. of the Hydroelectric Settlement. The Karuk Tribe or the Secretary may file a Dispute Initiation Notice under Section 6.5 if sufficient progress is not Timely made in the renegotiation. The amendment to Section 15.3.7 shall not have the effect of modifying or affecting the Contractual Obligations of the United States, Federal Agency Parties, or the Karuk Tribe to any other Party, or otherwise affect the interests of any other Party, without the written consent of such other Party. If such amendment meets these conditions and is mutually agreeable to the Karuk Tribe and the Secretary, it shall take effect as an amendment to this Agreement without action by other Parties pursuant to Section 7.2.1 (first sentence). [The tribes and U.S. are working on potential language addressing tolling of claims in this section]

v. Tolling of Claims

[No change except section number]

23. Section 17.3 is amended as follows:

Eligibility for the benefits of the Power for Water Management Program shall be as follows. Applicable eligibility criteria will be applied for the Power User at each meter. Consistent with Section 1.7, the date of installation of a meter is not relevant to eligibility, and eligibility may exist with respect to pumps or meters installed before or after the Effective Date. Power Users can be eligible whether or not they own land. Where under Section 17.3.2 the eligibility for a Power User depends on activity on land, the eligibility will relate to each meter that records power usage serving specific land.

24. Section 17.3.2 is amended as follows:

Subject to any limitations that may exist under Applicable Law for any user or class of users based on geography or other factors, Off-Project Power Users shall be eligible to receive the benefits of the Power for Water Management Program subject to the following. If the Off-Project Power User is not the owner of the land, the Off-Project Power User’s eligibility under Sections 17.3.2.C and 17.3.2.D will be based on whether the owner or the Off-Project Power User meets the criteria in Sections 17.3.2.C or 17.3.2.D as applicable.

25. Section 17.3.3 is amended as follows:

Subject to the availability of such information, KWAPA and UKWUA shall provide necessary notifications and other information to PacifiCorp, Bonneville Power Administration, Reclamation, and other parties as necessary with respect to those Power Users who are eligible for benefits of the Power for Water Management Program and its elements, consistent with the eligibility criteria in this section. KWAPA and UKWUA shall be entitled to rely upon the representations of the Power User or a landowner.

26. Section 19.2.3 is amended as follows:

The Lead Entity submitted the Drought Plan on July 11, 2011 pursuant to Section 19.2.3 D. The Parties agree to the following procedures and schedule to ensure that preparation, adoption, and approval of amendments to the Drought Plan will be Timely completed on the following schedule.

19.2.3.A: The Lead Entity shall develop a draft for amendments to the Drought Plan. It shall provide an opportunity for the Parties to comment on that draft Plan. The draft Plan amendments may include alternatives. The Lead Entity shall also consult with the funding entity during the review by the Parties.

Deleted: by September 30, 2010

19.2.3.B: The Lead Entity shall consider comments from Parties, the Fund Administration Entity, the Department of the Interior, other funding entities, and other entities as appropriate in the course of finalizing the Drought Plan. The members of the Lead Entity shall act by consensus to adopt a Plan. If consensus exists, the Lead Entity shall adopt a Drought Plan and provide Notice.

Deleted: by November 30, 2010

19.2.3.D: The Lead Entity shall submit the adopted Drought Plan to the Department of the Interior: (i) within 30 days of its Notice of adoption if it does not receive a Dispute Initiation Notice; or (ii) within 120 days following the completion of the Dispute Resolution Procedures if consensus among its members exists.

Deleted: Fund Administration Entity

Deleted: , and not later than January 7, 2011,

Deleted: by March 31, 2011

19.2.3.E: Following receipt of a Drought Plan submittal pursuant to paragraph D, the Department of the Interior shall: (1) ensure completion of any environmental compliance procedures under Applicable Law, (2) review the plan to determine that it includes the elements required by Section 19.2.2, and (3) make a decision on funding Plan implementation within one year of receipt of the Plan.

Deleted: Fund Administration Entity

Deleted: , by March 31, 2012

19.2.3.F: A Drought Panel shall be convened within 30 days of the deadlines in 19.2.3.D, if the Lead Entity adopts a Drought Plan but does not submit the adopted Plan to the Department of the Interior pursuant to the procedures described in paragraphs (C) and (D.ii) above. The Drought Panel shall be composed of: a representative of the Secretary of the California Natural Resources Agency, a representative of the Natural Resources Director to the governor of Oregon, and a representative of the Secretary. It shall consult with the Fund Administration Entity and the Department of the Interior in the course of preparing the Drought Plan. The Drought Panel shall seek consensus to adopt a Drought Plan. If consensus is not achieved, it will adopt the Plan by majority vote.

Deleted: (i) by December 31, 2010, if the Lead Entity has not adopted a Drought Plan by November 30, 2010 pursuant to the procedures in paragraph (B); or (ii) by April 30, 2011

Deleted: by November 30, 2010,

Deleted: Fund Administration Entity

Deleted: by March 31, 2011

19.2.3.G: If convened pursuant to paragraph (F), the Drought Panel shall adopt the Drought Plan, provide Notice to the Parties, and submit the Plan to the funding entity, within 90 days of the latest deadline in paragraph (F). This Drought Plan (or any predicate decision of the Drought Panel) shall not be subject to the Dispute Resolution Procedures of Section 6.5.

Deleted: by July 31, 2011

19.2.3.H: Following receipt of a Drought Plan submittal pursuant to paragraph (G), the Department of the Interior shall: (1) ensure completion of any environmental compliance procedures under Applicable Law, (2) review the plan to determine that it includes the elements required by Section 19.2.2, and (3) make a decision on funding Plan implementation within one year of receipt of the Plan.

Deleted: Fund Administration Entity

Deleted: , by July 31, 2012

19.2.3.I: If the Department of the Interior does not approve funding of a Drought Plan adopted by the Lead Entity pursuant to paragraph (D), the Lead Entity shall develop a revised Drought Plan within 90 days of a notification by the Department of the Interior that it does not approve funding. Any Dispute Resolution shall be completed within 60 days. If the Lead Entity does not submit the revised Drought Plan to the Department of the Interior within 180 days of a notification by the Department of the Interior that it does not approve funding, because consensus among its members does not exist to adopt the revised Drought Plan or submit it, the Drought Panel shall be convened. It shall prepare and adopt a revised Drought Plan and submit it to the Department of the Interior within 90 days.

Deleted: Fund Administration Entity

Deleted: by June 30, 2012

Deleted: by August 30, 2012

Deleted: Fund Administration Entity

Deleted: by September 30, 2012

Deleted: Fund Administration Entity

Deleted: by December 31, 2012

19.2.3.J: If the Department of the Interior does not approve funding on the Drought Plan submitted by the Drought Panel pursuant to paragraph G, the Drought Panel shall prepare and adopt a revised Drought Plan and submit it to the funding entity within 90 days of receiving a notification by the Department of the Interior that it does not approve funding.

Deleted: Fund Administration Entity

Deleted: by October 31, 2012

19.2.3.K: The Department of the Interior shall make a decision on the revised Drought Plan adopted under paragraphs (H) or (I), within 180 days of receiving the revised Drought Plan.

Deleted: Fund Administration Entity

Deleted: by April 30, 2013

19.2.3.L: Approval of the Drought Plan submittal by the Department of the Interior, including regulatory review, shall be the final action in this process established by this Section 19.2.3. The Drought Plan shall be effective upon such approval.

Deleted: Fund Administration Entity

27. Amend Section 19.3 as follows:

19.3 Emergency

Reclamation will continue to address emergencies that affect Klamath Reclamation Project facilities under existing authorities.

The Non-Federal Parties shall support funding to address emergencies if they occur.

Delete the rest of the existing Section 19.3.

28. Section 19.4.3 is amended as follows:

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. The Lead Parties may rely upon and use or adopt as their assessment the work conducted by federal agencies under applicable authorities.

29. Section 35.2 is amended as follows:

In signing this Agreement, a Public Agency Party expresses its support for the Agreement and exercises its authorities in a manner consistent with Sections 2.2.7 and 7.4.3.

- Deleted: the policies that apply to its
- Deleted: of
- Deleted: . By such signing and as provided in
- Deleted: no Public Agency Party has taken an action

B. Klamath Basin Power Alliance shall be the Management Entity under Section 17.4 of the Agreement. Klamath Basin Power Alliance shall be a Party to the Agreement and this First Amendment if: i) Klamath Basin Power Alliance signs this First Amendment; and ii) Klamath Basin Power Alliance (concurrent with its signing of this First Amendment), PacifiCorp, the United States Department of the Interior and the United States Department of Commerce’s National Marine Fisheries’ Service approve and sign an agreement that Klamath Basin Power Alliance is a party to the Hydroelectric Settlement. The Parties agree that the Hydroelectric Settlement shall be deemed to be amended to include Klamath Basin Power Alliance as a party upon the satisfaction of these conditions.

C. The amendments in part A of this First Amendment shall be effective notwithstanding whether they meet the criteria for amendment under Section 7.2 of the Agreement.

D. All terms used in this First Amendment shall have the same meaning that such terms have in the Agreement.

E. This First Amendment shall be effective when executed by or on behalf of all Non-Federal Parties to the Agreement.

F. This First Amendment 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 the counterparts had signed the same document.

REVIEW DRAFT—NOT APPROVED BY ANY KBRA PARTY—REVIEW DRAFT

G. This First Amendment constitutes the final, complete, entire, and exclusive agreement and understanding of the Parties with respect to the subject matter of this First Amendment. It supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter hereof. No other document, representation, agreement, understanding, or promise constitutes any part of this First Amendment.

H. Each signatory to this First Amendment certifies that he or she is authorized to execute this First Amendment and to legally bind the Party he or she represents.

Signatures [*reviewers: please contact Ed Sheets with any changes to the signature blocks*]

State of California

California Natural Resources Agency

_____ Date: _____

by: Edmund G. Brown, Governor

California Department of Fish and Game

_____ Date: _____

by: Charlton H. Bonham, Director

State of Oregon

Governor of Oregon

_____ Date: _____

by: John Kitzhaber, Governor

Oregon Department of Environmental Quality

_____ Date: _____

by: Dick Pedersen, Director

Oregon Department of Fish and Wildlife

_____ Date: _____
by: Roy Elicker, Director

Oregon Water Resources Department

_____ Date: _____
by: Phillip C. Ward, Director

Tribes

Karuk Tribe

_____ Date: _____
by: Arch Super, Chairman

Klamath Tribes

_____ Date: _____
by: Joseph Kirk, Chairman

Yurok Tribe

_____ Date: _____
by: Thomas O'Rourke, Chairperson

Counties

Humboldt County, California

_____ Date: _____

REVIEW DRAFT—NOT APPROVED BY ANY KBRA PARTY—REVIEW DRAFT

by: Mark Lovelace, Chairperson

Klamath County, Oregon

_____ Date: _____

by: Commissioner

Irrigators

Ady District Improvement Company

_____ Date: _____

by: Robert Flowers, President

Collins Products, LLC

_____ Date: _____

by: Eric Schooler, President and Chief Executive Officer

Enterprise Irrigation District

_____ Date: _____

by: Michael Beeson, President

Don Johnston & Son

_____ Date: _____

by: Donald Scott Johnston, Owner

Inter-County Properties Co., which acquired title as Inter-County Title Co.

_____ Date: _____

by: Darrel E. Pierce

Klamath Irrigation District

_____ Date: _____
by: David Cacka, President

Klamath Drainage District

_____ Date: _____
by: Luther Horsley, President

Klamath Basin Improvement District

_____ Date: _____
by: Warren Haught, Chairman

Klamath Basin Power Alliance

_____ Date: _____
by: President

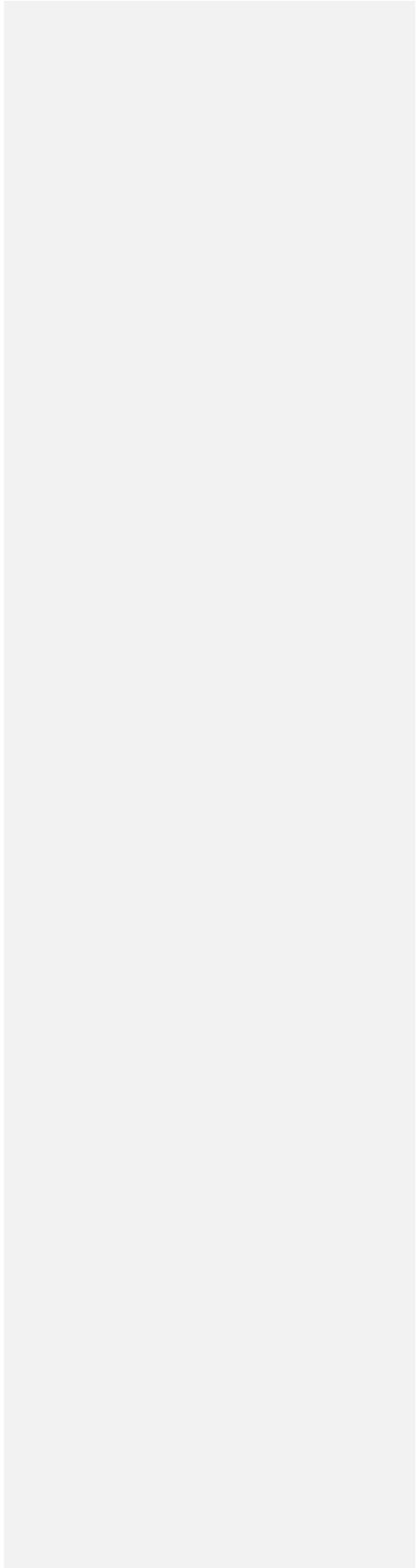
Klamath Water Users Association

_____ Date: _____
by: Luther Horsley, President

Klamath Water and Power Agency

_____ Date: _____
by: Edward T. Bair, Chairman of the Board

Bradley S. Luscombe



REVIEW DRAFT—NOT APPROVED BY ANY KBRA PARTY—REVIEW DRAFT

_____ Date: _____

by: Bradley S. Luscombe

Malin Irrigation District

_____ Date: _____

by: Harold Hartman, President

Midland District Improvement Company

_____ Date: _____

by: Frank Anderson, President

Pioneer District Improvement Company

_____ Date: _____

by: Lyle Logan, President

Plevna District Improvement Company

_____ Date: _____

by: Steve Metz, President

Reames Golf and Country Club

_____ Date: _____

by: L.H. Woodward, President

Shasta View Irrigation District

_____ Date: _____

by: Claude Hagerty, President

Sunnyside Irrigation District

_____ Date: _____
by: Charles Kerr, President

Tulelake Irrigation District

_____ Date: _____
by: John Crawford, President

Upper Klamath Water Users Association

_____ Date: _____
by: Karl Scronce, President

Van Brimmer Ditch Company

_____ Date: _____
by: Gary Orem, President

Randolph Walthall and Jane Walthall as trustees under declaration of trust dated November 28, 1995

_____ Date: _____
by: Jane Walthall

Westside Improvement District #4

_____ Date: _____
by: Steven L. Kandra, President

Winema Hunting Lodge, Inc.

REVIEW DRAFT—NOT APPROVED BY ANY KBRA PARTY—REVIEW DRAFT

_____ Date: _____

by: R. David Bolls, III

Other Organizations

American Rivers

_____ Date: _____

by: President

California Trout

_____ Date: _____

by: George Shillinger, Executive Director

Institute for Fisheries Resources

_____ Date: _____

by: Glen Spain, Northwest Regional Director

Northern California Council, Federation of Fly Fishers

_____ Date: _____

by: Mark Rockwell, Vice-President, Conservation

Pacific Coast Federation of Fishermen's Associations

_____ Date: _____

by: Glen Spain, Northwest Regional Director

Salmon River Restoration Council

_____ Date: _____

REVIEW DRAFT—NOT APPROVED BY ANY KBRA PARTY—REVIEW DRAFT

by: Petey Brucker, President

Trout Unlimited

_____ Date: _____

by: Chris Wood, Chief Executive Officer

