

**DRAFT AGENDA**  
**INTERIM TECHNICAL ADVISORY TEAM MEETING**

February 24, 2011, at the conclusion of the Klamath Basin Coordinating Council Meeting  
Running Y Conference Center, Klamath Falls, Oregon

1. Review roles and responsibilities of TAT.
2. Discuss organizational issues (e.g. notification of meetings, opportunity for comment by KBRA Parties and public, communications and reporting recommendations, etc.)
3. Discuss 2011 activities and schedule.
4. Discuss report to KBCC on April 7<sup>th</sup>.
5. Discuss next steps and schedule next conference call or meeting.
6. Other

## **INTERIM TECHNICAL ADVISORY TEAM 2011 ACTIVITIES AND SCHEDULE**

DRAFT February 9, 2011

**Winter activities (November through February)** will consist of:

1. Development of recommendations for use of Managed Environmental Water in an Annual Water Management Plan, and
2. Recommending actions on management of winter lake and river operations, especially pertaining to storage and release rates at Link River Dam in light of changing forecasts.

### **February 2011**

1. Organizational meeting of Interim TAT
  - a. Review schedule of activities.
  - b. Develop operating procedures.
  - c. Schedule future meetings/conference calls
  - d. Determine whether funding is available for Interim Flow and Lake Level Program and begin work on 2011 Annual Water Management Plan recommendations.
2. Other

### **March 2011**

1. Provide comments on Draft Drought Plan.
2. Provide 2011 Annual Water Management Plan recommendations on by March 15<sup>th</sup>.
3. Meet twice-monthly (or more often if necessary) during water delivery and use period.
4. Other

**In-season (March through October),** the TAT will:

1. Ensure that timely recommendations are forwarded to the Secretary of the Interior (Secretary) to accomplish the purposes of Sections 20, consistent with recommendations in the Annual Water Management Plan as adjusted on the basis of continuous information and analysis.
2. A significant task will be balancing releases from Link River Dam with irrigation diversions and return flows to achieve desired fishery conservation objectives.

3. Post-season activities will consist of a review of the previous year's analyses and performances, and updating TAT operating procedures as needed.
4. The TAT will report to the KBCC on a scheduled basis and upload information on the Internet regularly.

#### **Other Activities for 2011**

1. Review analysis from KWAPA (in coordination with TID, KID, KDD, Reclamation, FWS (TLNWR and LKNWR), and other interested Parties) of the relevant historical data including, but not limited to, Klamath Reclamation Project water diversions, climatic data, and agronomic data, to determine the circumstances which cause diversion of less than the applicable maximum DIVERSION as provided in Appendix E-1. Schedule dependent on completion of analysis (which is dependent of availability of funds). (Section 15.1.1.ii.a)
2. Using the analysis, KWAPA (in coordination with TID, KID, KDD, Reclamation, FWS (TLNWR and LKNWR) and other interested Parties) and the TAT, shall develop and continuously refine predictive techniques for use by the TAT to anticipate, as early in the irrigation season as possible and periodically thereafter, those circumstances in which the Klamath Reclamation Project will likely divert less than the applicable maximum DIVERSION. The TAT will use all such information as part of its recommendations for management of the water resources for the benefit of the fisheries; ). (Section 15.1.1.ii.b)and
3. KWAPA shall participate fully in the activities of the TAT. Prior to the beginning of the irrigation season, KWAPA shall provide information to the TAT on anticipated timing and amounts of diversion for the Klamath Reclamation Project. This prediction shall be refined by KWAPA and the TAT periodically throughout the irrigation season, and shall include statements of the degree of probability that specified amounts of water may not be diverted to meet irrigation requirements. ). (Section 15.1.1.ii.c)
4. KWAPA, USGS, OWRD, and the TAT shall annually meet and confer before December 15 of each year regarding the long-term monitoring information, and specifically to evaluate annually whether the On-Project Plan is meeting the no Adverse Impact objective, whether the Plan may be leading to an Adverse Impact in future years or whether the Plan is causing or will cause an Adverse Impact in the upcoming irrigation season. (Section 15.2.4.v.b)
5. Other

## **TAT Roles and Responsibilities in the KBRA**

February 9, 2011 DRAFT

### **Summary**

This document compiles the references to the Technical Advisory Team (TAT) in the Klamath Basin Restoration Agreement (KBRA).

### **Section 12.2.2 Data Related to Environmental Water**

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

### **Section 12.2.7 Periodic Review Regarding Fisheries Outcomes**

In furtherance of Section **Error! Reference source not found.**, the Federal Agency Parties and the Tribes shall periodically meet and confer to review whether the intended fisheries outcomes of this Agreement are being realized for tribal trust as well as public benefits and to determine appropriate remedial actions (if any).

#### **A. Review**

By June 30, 2020 and June 30, 2030, and at other dates thereafter as agreed pursuant to Section **Error! Reference source not found.**, the TAT shall evaluate: (i) fishery habitat objectives consistent with Sections **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.**; and (ii) habitat outcomes of the actions taken by the Parties, including volumes of water available for Instream Use. The TAT shall evaluate appropriate documents considered by the Parties in reaching this Agreement, including but not limited to Simondet *et al.*, *Settlement Group Tech Team Assignment X Flow Report* (January 6, 2007), Dunsmoor, *Assumptions in Hydrological Modeling (KPSIM)* (May 2007), *Compilation of Information to Inform USFWS Principals on the Potential Effects of the Proposed Klamath Basin Restoration Agreement (Draft 11) on Fish Habitat Conditions in the Klamath Basin, with Emphasis on Fall Chinook Salmon* (January 2010), and Appendix E-5, as well as best available science undertaken thereafter through this Monitoring Plan or otherwise. If the TAT's evaluation is that the intended objectives or outcomes have not been met, the TAT shall provide a recommendation to the United States, the Tribes, and other Fisheries Managers regarding additional measures that should be taken. The TAT's

recommendation shall be subject to peer review by an independent body to evaluate the methods, data, and calculations used for such recommendation.

**B. Responsive Actions**

If warranted after the peer review of the TAT's recommendation, the United States, affected Tribes and other Fish Managers, and other Parties shall develop and implement a functional response which preserves the bargained-for benefits of all Parties, in the form of supplemental terms of this Agreement consistent with Section **Error! Reference source not found.**, and subject to the Dispute Resolution Procedures in Section **Error! Reference source not found.** In developing such response, the Parties shall consider the priorities established in the relevant programs to provide fisheries benefits.

**C. Further Extension of the Agreement**

In 2055, the Parties shall agree to consider an extension of the term of the Agreement as stated in Section **Error! Reference source not found.**, if warranted by the circumstances at that time.

**15.1.1 Klamath Reclamation Project**

This Agreement provides for limitations on specific diversions for the Klamath Reclamation Project, as described in this Section 15.1.1 and as provided in Appendix E-1. The limitations are intended, particularly in drier years, to increase water availability for Fisheries purposes, while Section **Error! Reference source not found.** provides terms for the allocation and delivery of water to National Wildlife Refuges.

Section **Error! Reference source not found.** establishes the program by which KWAPA will address the limitations on diversions. The DIVERSION quantity as specified in Appendix E-1 for the irrigation season will increase by 10,000 acre-feet in some years effective March 1 after the earlier of: (i) the physical removal of all or part of each of the Hydroelectric Facilities has occurred and achieved a free-flowing condition and volitional fish passage; (ii) 10,000 acre-feet of new storage has been developed under Section **Error! Reference source not found.**; or (iii) the KBCC, on or after February 1, 2020 and after receipt of recommendations from the TAT, determines the increase is appropriate. The KBCC shall provide appropriate notice to OWRD of when the increase is to occur based on the fulfillment of one of these conditions. The Parties acknowledge that: the preceding terms of this section and Attachment A to Appendix E-1 as related to the increase of 10,000 acre-feet were negotiated prior to the completion of Section 15.3.4.A; and, based on Sections 15.3.4.A.v and 15.3.1.A, at least one condition specified above triggering the increase of 10,000 acre-feet would occur prior to the filing of Appendix E-1. Accordingly, absent amendment of the relevant terms, KBCC's notice to OWRD would occur not later than the time of the filing of Appendix E-1.

## **ii. Obligations**

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

- a. Within 12 months of the Effective Date, or as soon as practicable based on the availability of funds as identified in Appendix C-2, item 61, KWAPA (in coordination with TID, KID, KDD, Reclamation, FWS (TLNWR and LKNWR), and other interested Parties) shall complete an analysis of the relevant historical data including, but not limited to, Klamath Reclamation Project water diversions, climatic data, and agronomic data, to determine the circumstances which cause diversion of less than the applicable maximum DIVERSION as provided in Appendix E-1. The results of this analysis shall be provided to the TAT;
- b. Using the analysis, KWAPA (in coordination with TID, KID, KDD, Reclamation, FWS (TLNWR and LKNWR) and other interested Parties) and the TAT, shall develop and continuously refine predictive techniques for use by the TAT to anticipate, as early in the irrigation season as possible and periodically thereafter, those circumstances in which the Klamath Reclamation Project will likely divert less than the applicable maximum DIVERSION. The TAT will use all such information as part of its recommendations for management of the water resources for the benefit of the fisheries; and
- c. KWAPA shall participate fully in the activities of the TAT. Prior to the beginning of the irrigation season, KWAPA shall provide information to the TAT on anticipated timing and amounts of diversion for the Klamath Reclamation Project. This prediction shall be refined by KWAPA and the TAT periodically throughout the irrigation season, and shall include statements of the degree of probability that specified amounts of water may not be diverted to meet irrigation requirements.

### **15.2.4. Measures Related to Groundwater**

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

### **18.2.3. Wood River Wetland Restoration Project**

To achieve water management outcomes consistent with this Agreement, the Parties' ultimate goal is to reconnect Wood River Wetland to Agency Lake when physical and biotic conditions are sufficient to provide the wetland restoration benefits for which the property was acquired.

BLM currently manages the Wood River Wetland to restore wetlands adjacent to Agency Lake. In furtherance of this Agreement and the ultimate goal, BLM, in collaboration with the KBAC and TAT will complete a study, by March 31, 2012, that evaluates options for enhancing water management flexibility in providing benefits for water storage, fish, wildlife and wetlands habitat from the Effective Date until the date on which the On-Project Plan is fully implemented pursuant to Section 15.2.2.B.ii, or an additional 30,000 acre-feet of water inflow is being provided in UKL on an average annual basis as determined by OWRD pursuant to Section 16.2.2.F. This study will consider options, among others, whether diked and drained areas of Wood River Wetland that once comprised Agency Lake should be operated as pumped storage within existing dikes, or fully reconnected to Agency Lake by breaching dikes. Either option would result in a total water volume of approximately 16,000 acre-feet of gross storage between elevations 4143.3 and 4136.0 feet, but would provide differing arrays of water management opportunities and ecosystem benefits.

The BLM shall commence its environmental analysis of the options considered in the above study within 60 days of an Affirmative Determination by the Secretary, as described in Section 3.3 of the Hydroelectric Settlement. It shall undertake to complete such review within 2 years after commencement. BLM shall implement the selected alternative in a Timely manner. All actions described in this section are contingent upon adequate funding.

#### **18.3.2. Use of Additional Storage**

##### **A. Reservations**

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

##### **B. Support**

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

- i. Such water will be a resource to be employed as needed to achieve the objectives of this Agreement as related to fisheries.
- ii. When first available, such water will be used to realize the increase in diversions to the Klamath Reclamation Project as described in Section 15.1.1 and provided in Appendix E-1, if that increase has not otherwise occurred.
- iii. Water will be used to implement the provisions of Section 19.2.2.B.ii.

- iv. Water may otherwise be used in accordance with recommendations of the **TAT** and decisions of the Klamath Basin Coordinating Council.
- v. In addition, the **TAT** may recommend the use of any such water for Klamath Reclamation Project irrigation and/or Wildlife Refuges if circumstances so warrant. In that circumstance, an increase in water diversion as a result of such storage could not occur merely because additional storage has become available and there would be transparent public processes prior to any increase.

## **19. Drought Plan**

### **19.2.1 Lead Entity to Develop Drought Plan**

The Parties hereby designate, as lead entity responsible for the development of the Drought Plan (“Lead Entity”), a group composed of the following: Klamath Tribes, Karuk Tribe and Yurok Tribe, Upper Klamath Water Users Association, the Klamath Water and Power Agency, the Klamath Basin National Wildlife Refuges, Oregon Water Resources Department, California Department of Fish and Game, and an additional Party from among those listed as “Other Organizations” in Section 1.1.1, if designated by consensus of such Parties within 30 days of the Effective Date. In developing the Drought Plan, the Lead Entity shall consult with and seek the advice of the **TAT** or interim **TAT**, and shall consult with and invite participation of other Parties.

#### **19.2.2.A. The Drought Plan will include:**

...

xii. Such other provisions as the **TAT** may recommend and the Lead Entity incorporates into its Drought Plan.

#### **19.2.2.B**

B. The Drought Plan will require that Enforcement Entity(ies), with the recommendations of the **TAT**, determine which among the following measures, alone or in combination, shall be employed. The Drought Plan will require that the responses be employed in order of priority set forth below in response to Drought conditions of increasing severity. The Enforcement Entity(ies) shall use diligent efforts to exploit each measure before moving to the next measure, in light of the urgency of the situation, but are not required to demonstrate exhaustion of all possible applications of any particular measure before moving to the next. To the maximum extent feasible, the Drought Plan will protect Klamath Basin communities, and provide sufficient quantities of water to meet the biologically essential River flows and lake elevations in periods of Drought or Extreme Drought. The response measures to be included in the Drought Plan will be:

- vi. Voluntary water conservation measures;



vii. The use of stored water available under Section Error! Reference source not found.;

viii. Both of the following:

- a. The lease of water on a willing seller basis which would otherwise be diverted for irrigation purposes. For any leasing within the Klamath Reclamation Project, applicable DIVERSION at the Settlement Points of Diversion in Appendix E-1 will be reduced by the foregone consumptive use of water; and
- b. Use of groundwater, either for irrigation purposes to replace that which would otherwise have been diverted or, where lawful and upon the recommendation of the TAT, as a supplement to river flows and lake levels. Upon the advice and with the approval of the TAT, the “no adverse impact” criteria of the On-Project Plan related to groundwater (Section **Error! Reference source not found.**) may be waived in response to Extreme Drought

#### **19.2.4. Drought and Extreme Drought Declaration.**

The Plan shall require that the Declaration Entity, acting on the recommendation of the TAT and in accordance with the Drought Plan, shall declare that a Drought or Extreme Drought condition exists as defined by the Plan. Within fifteen days of the declaration, the Enforcement Entity(ies), with the assistance of the TAT and the Declaration Entity, shall determine the scope of the Drought, including the amount and sources of water reasonably likely to be available within the Klamath Basin, and identify potential responses consistent with the obligation to insure that available water is managed consistent with Section 19.1.

### **20.3 Managed Environmental Water**

#### **20.3.1 Water Rights and other Legal Requirements**

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

#### **20.3.2 Coordination and Oversight**

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

Consensus in recommendations on water operations that affect either Upper Klamath Lake or lower Klamath Basin ecosystems. Appendix D-2 describes the scope of **TAT** responsibilities and operating procedures.

### **20.3.3 Real-Time Management**

Except as limited by other provisions of this Agreement, the processes used to determine whether to store or not store Managed Environmental Water, for the purpose of conservation and recovery of Fish Species, shall be open, transparent, real-time, consistent with the principles of Collaborative Management, and also consistent with Section 15.4.5.A and the limits of existing water rights and other Applicable Law.

### **20.4.3 Interim Program**

The Secretary shall, pursuant to Applicable Law, implement a water leasing and purchase program to achieve the purposes of this Section 20.4 interim program. Although the interim program may rely on long-term agreements, any agreements contemplated in the Klamath Reclamation Project or Off-Project that have a term greater than the Interim Period in Section 20.4.2 shall be consistent with the applicable On-Project Plan in Section 15.2 or the Off-Project Water Program in Section **Error! Reference source not found..** KWAPA and the Secretary shall evaluate whether and how long-term agreements or other measures pursued under Section 15.2.2.B.ii could serve, or be adapted to serve, the purposes of the interim program. The Secretary's implementation of the interim program shall take into account the recommendations of the **TAT**. Leases and purchases of water under this interim program shall be from willing sellers, at prices that are economically feasible.

#### **A. The Role of Technical Advisory Team**

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

- a. Replicating the natural hydrologic regime under which the Fish Species evolved likely represents the best flow regime to conserve and recover Klamath River anadromous fish stocks and listed suckers in Upper Klamath Lake;
- b. Flow and lake level management should strive to achieve existing habitat-based flow and lake elevation recommendations that would likely increase survival of salmonids and suckers, and potentially improve other important ecological, chemical, physical and biological processes; and
- c. Flow and lake level management should strive to meet lake level and flow outputs from simulations presented in Appendix E-5, recognizing that such simulations do not necessarily reflect either overall water availability at any given time, or the actual water management strategy that will be employed in the future.

#### **20.4.5. Integration of Programs and Reduction and Termination of Expenditures**

##### **A. Integration of Planning and Implementation**

To achieve the purposes of the Interim Program in this section and the On-Project Plan described in Section 15.2, the Secretary shall coordinate with KWAPA, and each shall use Best Efforts to minimize areas of overlap of functions, avoid confusion or misunderstanding in the affected communities and limit overall costs. The Secretary may, after consultation with the TAT and KBAC, enter into agreements with KWAPA to carry out any action necessary to implement the purposes of the interim program in Section 20.4 under terms and conditions the Secretary deems necessary.

##### **B. Termination of Interim Program**

To the extent consistent with the purpose of this section, the Secretary shall proportionally reduce expenditures for the water leasing and purchase program incrementally, as measures to increase Environmental Water are realized. When the obligations to implement the On-Project Plan under Section 15.2.2.B.ii, increase annual average Upper Klamath Lake inflow pursuant to Section 16, and the events in Section 15.3.4.A.ii and iii have occurred, expenditures for this Program will terminate accordingly. If the funds identified in Appendix C-2 for this interim program have been fully expended prior to meeting the above obligations, the Parties will meet and confer to determine the source of future funding for this interim program.

**Appendix D-1**  
**Klamath Basin Coordinating and Advisory Councils and Subgroups**

**I.**

**Purpose and Scope of Coordination and Oversight of Klamath Basin Restoration Agreement**

Coordination and oversight of the Klamath Basin Restoration Agreement is intended to provide and facilitate coordination, cooperation, collaboration, decision-making, and accountability by Parties to the Agreement to assure elements of the Agreement are carried out effectively and at the appropriate scales to forward sustainable restoration and renewal of the Klamath River Basin. The coordination and oversight framework will be the mechanism by which state and federal agencies, local governments, tribes, conservation groups and community members work together to collaboratively develop and implement long-term solutions for the Klamath River Basin. Coordination and oversight of the Agreement embodies a multi-party and agency effort, and is reliant on Agreement Parties and partners, and their respective authorities and abilities, to facilitate implementation. Coordination and oversight does not provide for new decision-making authorities or change existing local, state and/or federal law. This coordination and oversight structure is not intended to direct other restoration entities and efforts existing within the Klamath River Basin that are outside the Agreement, but instead it will strive to coordinate and integrate with existing entities and ongoing efforts to help support and further the Agreement and Klamath River Basin goals.

Coordination and oversight groups/subgroups are defined based on whether or not they provide advice or recommendations to Federal Agency Parties. The Klamath Basin Advisory Council (KBAC) and the Technical Advisory Team (TAT) are a group and subgroup, respectively, that will provide recommendations to Federal Agency Parties, consistent with their Charters established pursuant to the Federal Advisory Committee Act (FACA). These recommendations are relevant to implementation of the Agreement (KBAC) and to management of Environmental Water (TAT). An Upper Basin Team (UBT) will also provide oversight on water use retirements and recommendations on water retirements to the Federal Lead Party, through the structure of the KBAC. A Klamath Basin Coordinating Council (KBCC) will provide coordination and oversight of various elements of the Agreement not requiring recommendations for Federal Agency Parties. Because the KBCC will not require a Charter pursuant to FACA, details of this group will be addressed in its protocols and operating procedures.

The coordination and oversight framework will provide opportunities for public involvement to help guide implementation of the Agreement, as well as the respective public processes of local government, and state and federal agencies as they implement their statutory authorities.

Changes to the coordination and oversight structure will likely occur over time as the Agreement is implemented. Changes to the structure may be in the form of an amendment to the Agreement and/or the Charters.

Initially, fiscal support for coordination and oversight will rely on existing resources at the federal and state level. Fiscal and human resources support will be obtained and provided through the separate authorities of each Party, but prioritized and coordinated where possible and applicable.

## II.

### **Klamath Basin Coordinating Council**

#### **A. Purpose and Function.**

The KBCC is the coordinating body for all Parties of the Agreement that does not provide advice or recommendations to Federal Agency Parties, and therefore shall not be subject to FACA requirements. Its purpose is to promote continued collaboration, cooperation, coordination, and consultation among Parties and others as elements of the Agreement are implemented. The KBCC will provide for general oversight and administration, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the Agreement. The KBCC will make decisions and establish protocols to implement elements of the Agreement. The KBCC will serve as a primary forum for public involvement in implementation of the Agreement.

#### **B. Organization/Membership.**

All Parties are members of the KBCC. All Parties may participate in KBCC meetings; however, only designated representatives of the Parties shall be voting members (Appendix Table D-1). Designated representatives shall seek the individual views of their member Parties to ensure effective representation in voting matters. Designated representatives of the Parties for the KBCC (and the KBAC) shall include representation from the Federal Agency Parties; the State of Oregon; the State of California; the Counties of Klamath (OR), Del Norte, Siskiyou and Humboldt (CA); the Tribal governments of the Klamath Tribes of Oregon, and the Yurok Tribe and the Karuk Tribe of California; Parties Related to the Klamath Reclamation Project (KRP) as identified in Section 1.1 of the Agreement; UKWUA; the commercial fishing industry; and conservation and restoration organizations (Appendix Table D-1). Parties shall form their own rules for selection of representatives. If Parties are not able to select representatives, the KBCC shall develop a procedure. The KBCC shall determine appropriate representation for any additional entities that may become Parties after the Effective Date as provided in Section 7.2.2. Membership makeup and Party representation are the same for both the KBCC and the KBAC.

**Appendix Table D-1. Party Representation for the KBCC and KBAC\***

<b>Parties</b>	<b>Representation</b>	<b>Members</b>
Dept of Interior	1	FWS, BLM, BOR, BIA
Dept of Agriculture	1	USFS
Dept of Commerce	1	NOAA/NMFS
State of Oregon	1	ODEQ, ODFW, OWRD

State of California	1	CDFG
Klamath Tribes	1	
Yurok Tribe	1	
Karuk Tribe	1	
Del Norte County	1	
Klamath County	1	
Siskiyou County	1	
Humboldt County	1	
Parties related to KRP**	2	
Off-Project Representative***	1	
Conservation /Restoration Groups	2	
Commercial Fishing Industry	1	
<b>Total</b>	<b>18</b>	

\* Final representation will be revised to include only Parties to the Agreement.

\*\* Klamath Reclamation Project: one representative from KWAPA and one from KWUA or such other Party related to the Klamath Reclamation Project as KWUA may designate. The Klamath Reclamation Project designation may be changed by a majority of the Parties who are Parties related to the Klamath Reclamation Project as identified in Section 1.1.1 of the Agreement.

\*\*\*Off-Project Signatory Parties will select one representative. If these Parties are not able to agree, the KBCC or KBAC, as applicable, will select a representative from nominees from each Off-Project signatory Party.

### **C. Roles and Responsibilities.**

The KBCC shall serve as an oversight forum to foster efficient and effective implementation of the Agreement, including tracking and reporting action progress, solving problems, establishing protocols and procedures, providing approvals, making decisions, resolving general issues within and among programs, promoting collaboration and coordination among groups and Klamath Basin partners, providing input to assist with prioritization of program projects, concertedly and cooperatively seeking grants and other funding for priority projects, reporting program expenditures, and developing an annual workplan. The KBCC (of which all members shall be deemed to be Disputing Parties) shall provide the forum for dispute resolution as described in Section 6 of the Agreement when issues cannot be resolved at lower scales within programs, subgroups, or among Disputing Parties.

The KBCC shall have the flexibility to establish additional subgroups as necessary and appropriate to address specific issues and needs on a periodic, ad hoc, temporary, or long-term basis, and to implement provisions of the Agreement, including the separate but related Hydroelectric Settlement. KBCC subgroups shall not be subject to FACA requirements, as their advice and recommendations will not be for Federal Agency Parties. These subgroups shall provide advice or recommendations to the KBCC. Subgroups may establish their own operating protocols.

The KBCC shall ensure public engagement is afforded through facilitated participation in KBCC and subgroup meetings, and shall consider public input when making decisions.

The KBCC shall provide for a basin-wide perspective for holistic solutions and approaches, without superseding the authorities of respective entities, for determining program administration at appropriate scales. The KBCC will function to link and

coordinate Agreement programs and actions with other actions and programs required through the federal ESA (Biological Opinions and Recovery Plans) and with other watershed working groups within the entire Klamath River Basin in Oregon and California (e.g., Trinity River Working Group, Upper Klamath Basin Working Group, subbasin watershed organizations and resource conservation districts).

With respect to any matter on which these coordination and oversight provisions or other protocols established by the KBCC provide for participation by all Parties, any Party may delegate to another Party the authority to act on its behalf. Any such delegation shall be in writing and will remain in effect according to its terms or until revoked.

**D. Operations.**

The KBCC shall vote through designated Party representation as described in (B). The KBCC shall provide for participation of all Parties and the public during meetings pursuant to Applicable Law and reasonable operating procedures. In addition, the KBCC shall hold periodic or episodic meetings of all Parties as necessary to provide participation in and discussion of coordination and oversight functions that do not require a vote (such as reviewing progress in implementation of the Agreement) or functions vested in all Parties (such as Amendment of the Agreement under Section 7.2 or Dispute Resolution under Section 6), as provided in its internal protocols. The KBCC shall operate under Applicable Law and provide full disclosure to Parties of information, actions, and decisions, adequate notice of meetings, and record keeping.

The KBCC and subgroups shall establish the necessary operating procedures, including meeting frequency, meeting location, coordination with other Klamath Basin and subbasin working groups, and internal reporting mechanisms and requirements. KBCC operations may use the support of a facilitator, if funding is obtained.

Except in the case of KBCC decisions under Section 14.3.1 and 15.3.8.B. of the Agreement, decision-making by the KBCC voting members shall be by super-majority (at least a  $\frac{3}{4}$  vote of the representatives that are present). Parties that do not support a KBCC recommendation to a Non-Federal Party may prepare a minority report. All reports shall become part of the record. A quorum for decision-making by a super-majority shall be defined within the KBCC's protocols, or if not so defined, shall be a majority of the voting members.

With respect to any decision to be made by the KBCC under the terms of Section 14.3.1 and 15.3.8.B of the Agreement, the decision process and rule shall be as follows:

The KBCC representative from KWAPA, the Klamath Tribes (after meeting and conferring with the other signatory Tribes), the state of California, and the state of Oregon shall convene within fourteen days of the passing of the due dates in Sections 14.3.1 (extension of the deadline of the On-Project Plan) and 15.3.8.B (120 days before the date selected by KWAPA under section 15.3.8.A) and review the dispute among KWAPA, the Tribes, and the United States Bureau of Indian Affairs. This group of four shall be known as the decision panel. The

decision panel has twenty-one additional days to resolve the dispute, by no less than a majority vote of 3-1 (with the Klamath Tribes representing the majority view of the three signatory tribes), and provide its decision in writing to the KBCC.

If the decision panel is unable to resolve the dispute within thirty-five days of the due date in Section 15.3.8.B, it has seven days to select a fifth member from among the Parties to the KBCC and to form the final decision panel. The decision panel shall select the fifth member by one of the following means, in order of preference: first by consensus; second, if there is no consensus choice, by a majority vote; and third, if there is no majority choice, by a consensus of the two states, California and Oregon. The final decision panel shall immediately provide notice to the KBCC of its formation.

The final decision panel shall have no more than thirty-five days to resolve the dispute, by a simple majority vote. Notice of the written decision by the final decision panel shall be immediately provided to the KBCC.

The decision of the decision panel or final panel, as applicable, shall constitute the decision of the KBCC and is not reviewable in any way.

No discovery is allowed before the decision panel or final decision panel. Each panel shall set appropriate deadlines for the submission of letter briefs and documentary evidence and for an oral explanation of the position of the United States Bureau of Indian Affairs, Klamath Tribes, and KWAPA.

**E. Funding.**

As provided in Section 5.3, the Non-Federal Parties shall support authorizations and appropriations in the amount estimated in Appendix C-2 to fund the coordination and oversight structure for the first ten years after the Effective Date. Funds shall support a facilitator.

**III.**

**Klamath Basin Advisory Council and Interim Advisory Council**

**A. Purpose and Function.**

The Klamath Basin Advisory Council (KBAC) is the body comprised of all Parties to the Agreement that will provide advice and recommendations for Federal Agency Parties after execution of a Charter pursuant to FACA. Prior to execution of a Charter, advice and recommendations for Federal Agency Parties shall be provided by an Interim Advisory Council. Recommendations of the KBAC and the Interim Advisory Council shall not be binding on Federal Agency Parties.



**B. Organization/Membership**

All Parties will be provided an opportunity to participate in meetings of the Chartered KBAC consistent with Applicable Law. The KBAC Charter is to be modeled on the structure and representation outlined herein and shall establish the organization and membership of the KBAC. Voting members of the KBAC shall be the designated Party representatives as specified for the KBCC (Appendix Table D-1). The Interim Advisory Council shall consist of state, federal, and local government and tribal Parties as provided under the Unfunded Mandates Reform Act of 1995. Voting members within the Interim Advisory Council shall be designated Party representatives from state, federal, local government, and tribal Parties. With respect to the Parties related to the Klamath Reclamation Project, the two voting members of the Interim Advisory Council shall be KWAPA and KID. This designation may be changed by the majority of Parties related to the Klamath Reclamation Project who are local governments.

**C. Roles and Responsibilities**

The KBAC and Interim Advisory Council primarily serve to develop and provide advice and recommendations for Federal Agency Parties as necessary for implementing the Agreement.

The KBAC shall establish additional subgroups as necessary and appropriate to address specific issues and needs on a periodic, ad hoc, temporary, or long-term basis. Unless separately Chartered, subgroups of the KBAC that develop advice or recommendations for the Federal Agency Parties shall provide such advice or recommendations only to the KBAC (e.g., Upper Basin Team). Subgroups that provide advice or recommendations directly to Federal Agency Parties shall be Chartered pursuant to FACA and these Charters shall be linked to the KBAC Charter as appropriate (e.g., Technical Advisory Team).

**D. Operations**

Upon the Effective Date of the Agreement, the Parties shall initiate the Interim Advisory Council for the purpose of developing and providing advice and recommendations for the Federal Agency Parties. Parties who are not members of the Interim Advisory Council shall be given maximum practicable opportunity under Applicable Law to provide input on an individual basis to the Interim Advisory Council in preparation of federal recommendations. Interim Advisory Council operations shall be as transparent as possible and practicable under Applicable Law and provide full disclosure of information, actions, and decisions to the Parties.

The appropriate Federal Agency Party will immediately undertake the formal steps to obtain Charters for the KBAC and necessary subgroups, such as the Technical Advisory Team. The KBAC Charter will specify the relationship between the KBCC and chartered and non-chartered subgroups.

Voting within the KBAC and Interim Advisory Council shall be through designated Party representatives as described for the KBCC (Appendix Table D-1). When recommendations are developed for specific Federal Agency Parties, representatives for those specific Parties shall be non-voting members. Otherwise representatives for Federal Agency Parties shall be voting members. In addition to requirements under FACA for public involvement, the designated KBAC representatives shall seek the input of their member Parties to ensure effective representation in voting matters. The Interim Advisory Council shall seek input from the public, and from non-member Parties on an individual basis, in development of such advice or recommendations as practicable and consistent with Applicable Law. The Interim Advisory Council shall be disbanded once the KBAC is Chartered.

Decision-making by the KBAC and Interim Advisory Council voting members shall be by consensus of a quorum. If consensus is not achieved, majority and minority reports shall be developed and provided to the Federal Agency Parties (and/or to State Agency Parties). A quorum for decision-making shall be defined within the KBAC Charter and Interim Advisory Council protocols, or if not so defined, shall be a majority of the voting representatives. Only advice and recommendations for Federal Agency Parties will be decided within the KBAC; all other decisions and deliberations will be performed within the KBCC.

At all times, the KBAC and Chartered subgroups shall operate in accordance with Applicable Law and their respective Charters. To the extent not defined in the Charter, the KBAC and subgroups shall establish the necessary operating procedures, including meeting frequency, meeting location, coordination with other Klamath Basin and subbasin working groups, and internal reporting mechanisms and requirements. Meetings of the KBAC shall be set at common dates and places as the KBCC to the maximum extent practicable, except that meetings set at common dates and places will have separate times and agendas. A Designated Federal Official shall preside over KBAC meetings.

**Appendix D-2**  
**Technical Advisory Team, Managed Environmental Water, and Upper Basin Team**

**I.**  
**Introduction**

The Agreement provides that implementation of certain of its sections will be informed through the activities of a Technical Advisory Team (TAT) and an Upper Basin Team (UBT). The TAT, a Chartered subgroup of the KBAC, shall provide recommendations for the identified Federal Agency Lead Parties, or other Parties, and to the KBAC or KBCC, as provided in the Agreement and pursuant to this Appendix D-2. In carrying out its purpose, the TAT will be compliant with its Charter established pursuant to the FACA. The UBT shall provide recommendations to the KBAC and thus will not be independently chartered.

For its specific purposes, the TAT shall seek broad technical participation, the best and most current technical information, and consensus in recommendations. This Appendix establishes and identifies the TAT and its purpose, membership, and operation and the specific procedures to be followed by the TAT concerning Managed Environmental Water.

This Appendix also establishes and identifies the UBT and its general purpose, membership, and roles concerning the Water Use Retirement Program.

**II.**  
**Technical Advisory Team and Interim Technical Team**

**A. Purpose and Function.**

The Technical Advisory Team's purpose is to utilize the technical expertise of the Parties and others with interest and expertise in water management and fisheries to inform the implementation of the Agreement as it relates to Managed Environmental Water and other aquatic resource issues. As defined in the Agreement, the TAT is assigned a number of tasks, including the provision of recommendations to the KBCC, KBAC, and to Lead Agency Parties, which includes recommendations to the Secretary of the Interior regarding Managed Environmental Water in the Agreement. TAT recommendations will not supersede Applicable Law or the terms of the Agreement or the Hydroelectric Settlement.

**B. Organization and Membership.**

The TAT shall consist of the Parties with interest, expertise or authority in water management, water quality, or fish management and with the ability to contribute to restoring and maintaining the health of the waters of the Klamath Basin and the Fish Species. Prior to execution of the TAT Charter, the members of the TAT shall only

perform those TAT functions outlined in the Agreement that do not involve recommendations for the Federal Agency Parties.

During the period prior to execution of the TAT Charter, development and submittal of recommendations or advice for Federal Agency Parties will be by an Interim Technical Team consisting of state, federal and local government and tribal Parties with expertise as described above, in compliance with the Unfunded Mandates Reform Act of 1995. The TAT Charter shall establish the organization and membership of the TAT, as modeled on the structure outlined herein.

**C. Roles and Responsibilities.**

The roles and responsibilities of the TAT are set out in the Agreement, and as described in specific detail below with respect to Managed Environmental Water. Generally, the TAT shall review and evaluate data gathered under and outside the Agreement, make recommendations for management of resources, provide technical expertise, and evaluate implementation of the Agreement as it relates to management of Environmental Water that affects Upper Klamath Lake and the lower Klamath River mainstem ecosystems in the period before, during and after Facilities Removal. The TAT will make technical recommendations to the KBCC and/or KBAC, the Federal Agency Lead Party (Secretary) or other Parties as provided in the Agreement, and shall provide opportunities for public input. The TAT will coordinate with Fish Managers responsible for developing and implementing the restoration, reintroduction and monitoring plans for Fish Species and their habitats.

**D. Operations.**

Upon the Effective Date of the Agreement, the Parties will initiate an Interim Technical Team, consisting of federal, state and local government and tribal Parties, for the purpose of providing recommendations for Federal Agency Lead Parties. Otherwise, all Parties to the TAT will fulfill other technical advisory functions under the Agreement that do not involve recommendations for Federal Agency Parties.

The appropriate Federal Agency Party shall immediately undertake the formal steps to obtain an independent FACA Charter for the TAT. The TAT Charter will specify the relationship between the TAT and the KBCC and/or KBAC, and specify the Designated Federal Official to oversee TAT meetings.

During the period prior to execution of the TAT Charter, the Interim Technical Team will perform any of the roles, responsibilities, operations and other functions established in the Agreement that involve recommendations for the Federal Agency Parties. The Interim Technical Team will seek input from the public, and from non-member Parties on an individual basis, in development of such advice or recommendations. Following execution of the TAT Charter pursuant to FACA, the TAT shall assume all functions outlined under the Agreement, and the Interim Technical Team shall be disbanded.

Voting members of the TAT and the Interim Technical Team shall be designated representatives of member Parties, (except that representatives for Federal Agency Parties, to which recommendations are directed, shall not be voting members for purposes of developing recommendations for Federal Agency Parties) (Appendix Table D-2). The designated TAT representatives shall seek the input of their member Parties to ensure effective representation in voting matters. Parties shall form their own rules for selection of representatives. If Parties are not able to select representatives, a procedure for selection shall be defined within the KBAC or TAT Charter (whichever is more appropriate).

**Appendix Table D-2. Party Representation for TAT\***

Parties	Representation	Members
Dept. of Interior	3	FWS, BOR, BIA
Dept. of Commerce	1	NOAA/NMFS
Dept. of Agriculture	1	FS
State of Oregon	3	ODEQ, ODFW, OWRD
State of California	1	CDFG
Klamath Tribes	1	
Yurok Tribes	1	
Karuk Tribes	1	
Humboldt County	1	
Siskiyou County	1	
Parties related to KRP**	1	
Off-Project representative***	1	
Conservation/Restoration Groups	1	
Commercial Fishing	1	
<b>Total</b>	<b>18</b>	

\* Final representation will be revised to include only Parties to the Agreement.

\*\* Klamath Reclamation Project. This Party shall be KWAPA unless a majority of the Parties related to the Klamath Reclamation Project as identified in Section 1.1.1 of the Agreement designate another Party from among these Parties.

\*\*\* Off-Project Signatory Parties will select one representative. If these Parties are not able to agree, the TAT will select a representative from nominees from each Off-Project signatory party.

At all times, the TAT shall operate in accordance with Applicable Law, including providing public notice of meetings and access to meetings, meeting minutes, and other TAT documents. Prior to issuance of the FACA Charter, Parties who are not members of the Interim Technical Team shall be given the maximum practicable opportunity under Applicable Law for input to the Interim Technical Team in preparation of recommendations for Federal Agency Parties. In carrying out its purposes, the TAT will seek public participation and the best and most current technical information. Meetings shall typically be on a twice-monthly basis during the water delivery and use period. The TAT shall report to the KBCC and/or KBAC on a scheduled basis.

The TAT shall use its discretion to establish subcommittees for various purposes. Subcommittees shall report directly to the TAT.

**E. Decisions and Dispute Resolution.**

The TAT shall strive for consensus in developing advice and recommendations for Federal Agency Parties. If consensus is not achieved, a minority report, or alternative recommendation, may be provided to the Federal Agency Party for its consideration by those who do not support the majority decision. Only policy disagreements (i.e., those that relate to terms within the Agreement) should be referred to the KBCC for further discussion and resolution. The KBCC will respond to the dispute in accordance with the dispute resolution procedures set forth in Section 6. It is not intended that the KBCC resolve or mediate technical issues related to TAT recommendations. Disputes involving a recommendation for a Federal Lead Agency Party may be referred to the KBAC for further discussion and resolution.

**F. Public Participation.**

The public may provide input on an issue at scheduled TAT meetings or outside the TAT process as provided under the Charter for the TAT and its public processes. However, general public participation may be limited when phone conferencing is necessitated during in-season operations.

**G. Emergency Meetings.**

Any voting member of the TAT may call a meeting when an emergency situation requires action of the TAT, as provided in the Agreement. Such a meeting must comply with the public notice provisions that may be required under the Charter. Otherwise, emergencies may be addressed by federal, state, local government and tribal Party TAT representatives only (Appendix Table D-2), without public notice, if critical action is time sensitive.

**III.  
Managed Environmental Water**

Once chartered, the TAT shall provide recommendations to the Secretary of the Interior concerning Managed Environmental Water in accordance with Sections 20.3 of the Agreement and Applicable Law.

The TAT is a year-round technical body. Winter activities (November through February) will consist of development of recommendations for use of Managed Environmental Water in an Annual Water Management Plan, and recommending actions on management of winter lake and river operations, especially pertaining to storage and release rates at Link River Dam in light of changing forecasts. In-season (March through October), the TAT will ensure that timely recommendations are forwarded to the Secretary of the Interior (Secretary) to accomplish the purposes of Sections 20, consistent with recommendations in the Annual Water Management Plan as adjusted on the basis of

continuous information and analysis. A significant task will be balancing releases from Link River Dam with irrigation diversions and return flows to achieve desired fishery conservation objectives. Post-season activities will consist of a review of the previous year's analyses and performances, and updating **TAT** operating procedures as needed. The **TAT** will report to the KBCC on a scheduled basis and upload information on the Internet regularly.

### **Operating Procedures for Managed Environmental Water**

#### **A. Annual Water Management Plan and Environmental Water Management Recommendations.**

No later than March 15 each year, the **TAT** shall recommend to the Secretary the preferred timing of Managed Environmental Water to optimize benefits for fish and wildlife resources. This will be done through recommendations in an Annual Water Management Plan based on the run-off forecast and other factors specific to that year and the guidance principles as provided in the Agreement. This plan will set recommendations for “default operations” for the year, subject to alteration due to hydrologic or other changes in circumstance. All interested Parties may participate in plan development and the public will be given an opportunity to review and comment on the draft plan. The plan will be subject to continuous adjustment based upon comments from Basin stakeholders and real-time hydrological and biological data on conditions within the Basin.

In-season, the **TAT** will provide to the Secretary technical recommendations on Managed Environmental Water for the succeeding two weeks based on available information and pending recommendations. These recommendations should state flow or lake level objectives (e.g., keep flows at a location X in a W-Z range, or keep Upper Klamath Lake at level A through time period B), the biological or other basis for the recommendation, the biological risks and benefits associated with implementing the proposed recommendation, and information on how well the recommendation comports with regulatory requirements. Expected Klamath Reclamation Project operations will be evaluated and taken into account consistent with Section 15.1.1.A of the Agreement.

The recommendations should state the identity of those **TAT** voting members who have reviewed and support the recommendation. The **TAT** will strive for consensus in developing recommendations. In the absence of consensus, majority and minority reports (or alternative recommendations) may be produced, with minority reports prepared by those who do not support the majority recommendation. Parties shall have the option of pursuing the disputes as described in the Decision and Dispute Resolution Section (II E).

When a recommendation has been properly submitted, the Secretary should be prepared to timely describe for the record the operational options and implications of meeting the recommendation. If the decision by the Secretary is to adopt and implement the recommendation, the recommendation and decision will be documented for the minutes. If the Secretary does not agree to implement the recommendation, the Secretary will

describe for the minutes both the intended operation and the basis for that decision. If the Secretary believes the best available biological information supports a position that differs from that of the recommendation, the explanation should acknowledge this difference and should include whatever information is necessary to support the alternative view.

**B. In-Season Management Data.**

Consistent with the Agreement and in particular with Appendix E-1, the TAT will use the Natural Resource Conservation Service (NRCS) 50% exceedance forecast for inflow to Upper Klamath Lake as the basis for its recommendations, but may develop or use other short-term forecasts to better inform its recommendations. The types of forecasts employed and the specific protocols for those forecasts are expected to be developed by the TAT and to evolve in response to adaptive management operations.

During critical times of year for Fish Species, TAT members will produce and distribute biological information on those Species. TAT members will provide relevant information on other wildlife resources. Information will be posted on a website.

**C. Meetings**

Between the last week of February, and up to at least September 30 of each year, the TAT will meet twice monthly, or more often if necessary, to facilitate in-season operations related to Managed Environmental Water. The principal purpose of the meetings will be to review the status of the preceding week's recommendations and operations, project operating data, biological data, and to make new recommendations on management of Environmental Water for Klamath River flows and lake levels for the following week(s). Consistent with Section 19, equal consideration will be given to Upper Klamath Lake and Klamath River flow issues, as they are part of the same ecosystem.

A Designated Federal Official shall facilitate the meetings and be the responsible party for operational logistics.