

Recitals

- A. The Parties are working to achieve four co-equal goals:
 - (i) To support the economic development interests of the Klamath Tribes;
 - (ii) To provide a stable, sustainable basis for the continuation of agriculture in the Upper Klamath basin;
 - (iii) To manage and restore riparian corridors along streams that flow into Upper Klamath Lake in order to achieve Proper Functioning Conditions permanently; and
 - (iv) To resolve controversies regarding certain water right claims and contests in the Oregon Klamath Basin Adjudication.
- B. A main purpose of this Agreement in Principle (AIP) is to provide a common set of principles and concepts that the Parties will present to their respective constituents to receive their feedback and input in formulating a Final Agreement.
- C. Where specific terms are used in this AIP, the intent is to illustrate tentative agreements for purposes of making the proposed terms clear to constituents, and the Parties recognize that such terms may change in a Final Agreement. Capitalized terms are defined in section 14 or where they are first used.

NOW, THEREFORE, the Parties agree as follows:

1. FINAL AGREEMENT

- 1.1. The Parties agree to continue good-faith negotiations with the goal of reaching a Final Agreement consistent with the principles and concepts outlined in this AIP by January 17, 2014, or as soon thereafter as is reasonably practicable in order to allow timely Congressional action on legislation implementing the Final Agreement. This AIP will terminate on December 31, 2014, it also being the intent of the Parties that it be replaced by a Final Agreement.
- 1.2. Notwithstanding subsection 1.1., until a Final Agreement is reached, the only sections of this AIP that are intended to be binding on the Parties are sections 1, 2, 12, and 13, to the extent set forth in those sections.

2. KLAMATH BASIN ADJUDICATION

The Parties agree that upon execution of this AIP, the Parties who are claimants or contestants in the Klamath Basin Adjudication (Adjudication) will support extending the deadline for the filing of exceptions in the Klamath County Circuit Court by 90 days. Nothing in this section or this AIP is intended to state or imply that there is any other limitation on the Parties' participation in the Adjudication apart from the 90-day extension.

3. ECONOMIC DEVELOPMENT

- 3.1. **Economic Self-Sufficiency.** The non-Federal Parties will work to support efforts by the Klamath Tribes to address short-term and long-term economic goals.
- 3.2. **Mazama Forest.** The non-Federal Parties support the acquisition of the Mazama Forest for the use of the Klamath Tribes for economic development purposes.
- 3.3. **Water Use Program.** The Water Use Program described in section 4 is expected to provide economic and other benefits for instream and out-of-stream water uses in the Upper Klamath basin.

4. 2014 WATER USE PROGRAM

- 4.1. The Parties intend to work (prior to a Final Agreement) to develop and implement a program to acquire water rights for instream purposes within the Off-Project Restoration Area, including leases of water rights, lease/options, and agreements for forbearance of water use by the holders of water right claims in the Adjudication. The Parties anticipate that this program will be commenced for the 2014 irrigation season in the event that a Final Agreement is reached and federal legislation is enacted consistent with the Final Agreement. The water right forbearance agreements, leases and lease/options are expected to incorporate provisions affording third party enforcement rights to the Klamath Tribes and the United States to assure the agreements are implemented.
- 4.2. The Parties anticipate developing interim arrangements for the administration of the Water Use Program in 2014, including identification of priority areas to focus Water Use Program measures.
- 4.3. In the Final Agreement, the Parties anticipate including a limitation on calls for the regulation of water rights based on the Tribal Water Right for water levels in Upper Klamath Lake during 2014, if the Parties

succeed in reducing water use by a specified amount. In addition, the Parties anticipate a similar arrangement regarding regulation of water use in the Wood, Williamson and Sprague sub-basins, such that regulation would be to Specified Instream Flows, as generally described in section 6 of this AIP.

- 4.4. It is the intent of the Parties that this 2014 Water Use Program transition into a permanent program, as described in section 6 of this AIP.

5. OTHER INTERIM STEPS

- 5.1. The non-Federal Parties will work (prior to the Final Agreement) to identify and secure funding for outreach to residents in the Off-Project Restoration Area, and for the Klamath Tribes to provide outreach to tribal members on the terms of this AIP, and the proposed terms of the Final Agreement.

- 5.2. The Parties will begin work (prior to the Final Agreement) to form the Joint Management Entity and the Landowner Entity(ies) described in sections 9 and 10 of this AIP.

6. WATER USE PROGRAM

- 6.1. The Parties recognize that the Klamath Tribes and the United States will participate actively with landowners and other partners in planning, designing, and carrying out the Water Use Program described in this section of the AIP.

- 6.2. The Final Agreement is expected to include a Water Use Program designed to:

6.2.1. Permanently increase instream flows into Upper Klamath Lake over Baseline Conditions by 30,000 acre-feet on an average annual basis by increasing inflows from the Off-Project Area. (“WUP Volume”).

6.2.2. Establish Specified Instream Flow (“SIF”) thresholds measured at a network of locations within the Off-Project Restoration Area from which regulation of water rights junior to the Tribal Water Rights would proceed. These SIF thresholds will usually vary with hydrological conditions, will be established based on the expected instream flow outcomes of water use reductions, will be lower than the Tribal Water Rights in certain hydrological conditions, and also will be conditional based on

performance of other portions of the Final Agreement, including the Riparian Management and Restoration Program described in section 7 of this AIP. Calls for SIF-based regulation of water rights junior to the Tribal Water Rights are expected to be infrequent relative to what could otherwise occur under the Tribal Water Rights. An illustration of a SIF threshold is provided in Exhibit B.

- 6.3. The means of accomplishing permanent increases in inflows into Upper Klamath Lake and instream flows in the Off-Project Area is expected to include the retirement of consumptive use water rights for the benefit of instream flows, and may also include measures that are demonstrated to reduce net consumptive use of water in a quantifiable and predictable manner, such as, but not limited to:
 - 6.3.1 Long-term leasing of water rights for instream use, including split season leasing;
 - 6.3.2 Water conservation and efficiency measures that reduce the consumptive use of water;
 - 6.3.3 Agreements to forbear the use of water rights claims in the Adjudication;
 - 6.3.4 Agreements to rotate the use of water among water right holders;
 - 6.3.5 Storage (natural or artificial) of water;
 - 6.3.6 Land or water management in uplands (including juniper removal, crop rotations, and other similar measures); and
 - 6.3.7 Water use metering and measuring.
- 6.4. The Parties are exploring whether to include operation of Four-mile Lake and Four-Mile Lake Creek in the Water Use Program in terms of the potential for increased inflow into Upper Klamath Lake, recognizing that alternative storage or other supply options would be needed in the Rogue Basin and that there are instream water needs in that basin as well.
- 6.5. The Parties intend that initial determination of whether, and when, an average annual increase of 30,000 acre feet in inflow into Upper Klamath Lake, has been achieved will be made collaboratively by the Klamath Tribes, the Landowner Entity(ies), the United States, and OWRD. If these parties are unable to agree, then OWRD will appoint an

independent person to review the evidence from the parties and make the determination. The determination will be made based on Baseline Conditions and on both permanent water use reductions and increases (if any) since 2001, with the exception of the Williamson River Delta, Agency Lake Ranch, Barnes Ranch, and Wood River Wetland Restoration Projects, as defined in Klamath Basin Restoration Agreement subsections 18.2.1 through 18.2.3. The Final Agreement will contain provisions that specify how inflow increases will be monitored over time, using a combination of streamflow measurements and quantification of particular measures including retirement of water use.

- 6.6 The Parties intend that SIF thresholds will be established at a network of sites above Upper Klamath Lake. The Parties anticipate that the SIF thresholds will be established based on the expected instream flow outcomes of that portion of the WUP Volume assigned to the area(s) upstream of each SIF location. At the end of each month, the SIF threshold for the next month will be calculated based on flow conditions measured in the current month. As a result, SIF thresholds will vary with hydrological conditions. An illustration of a SIF threshold is included as Exhibit B to this AIP.
- 6.7. The Parties intend that retirement of groundwater rights may be included in the Water Use Program, particularly where it is determined that there is a sufficient degree of connectivity between the groundwater source and nearby streams such that retirement of the water rights will result in timely additional stream flow.
- 6.8. The Parties recognize that a number of factors may affect or influence the design of the Water Use Program. These factors may include, for example: ecological factors; water right priority dates; and availability of water rights.
- 6.9 Within this framework, the Water Use Program will encourage retirement of both surface water and groundwater rights with a priority date junior to 1905. While the Parties intend to minimize the retirement of pre-1905 water rights, they also recognize that achieving the goals of this AIP and a Final Agreement may necessitate retirement of some pre-1905 water rights. When a surface water right is retired, any supplemental groundwater right for that place of use must also be retired.
- 6.10. In working to reach the Final Agreement, the Parties intend to examine issues collaboratively concerning net consumptive use, particularly how retirement of water use in particular areas will affect stream flows.

- 6.11. The Parties expect that the Final Agreement will include limitations on the extent of water use retirement in each sub-basin, with the purpose of assuring the long-term viability of agriculture in each area. Preliminarily, the Parties are exploring an overall cap on retirements of no more than 18,000 acres within the Off-Project Area. In addition, the Parties are exploring caps for each sub-basin that equitably spread the effects of the program on agricultural users, while also assuring that SIFs typically are met without regulation.
- 6.12. **Increased Inflow Into Upper Klamath Lake.** The Parties expect that the WUP Volume into Upper Klamath Lake will be met by January 1, 2018. The Final Agreement will specify what will happen if the increase fails to occur by that date, as well as what will happen if the increase is not maintained over time.
- 6.13 **Specified Instream Flows in the Tributaries.** As described in subsection 6.2., the Final Agreement is expected to provide that flows in the Off-Project Restoration Area will be subject to regulation based on a series of SIF thresholds, which will apply at specified locations (the “SIF Measurement Locations”). The SIF Measurement Locations that the Parties are exploring are shown in Exhibit A. Above each SIF Measurement Location, the Final Agreement is expected to include obligations to:
- 6.13.1 Achieve and maintain a specific portion of the WUP Volume increase in inflow into Upper Klamath Lake;
 - 6.13.2 Manage remaining water use so that instream flows do not drop below the SIF thresholds; and
 - 6.13.3 Achieve and maintain agreed-upon levels of participation by landowners in management and restoration of Riparian Management Corridors as described in section 7 of this AIP.
- 6.14. Once the Final Agreement is fully implemented, the SIF threshold at each SIF Measurement Location will be established at its long-term value. In the event that the obligations in 6.13 are not met, the Parties anticipate that the Final Agreement will provide that the applicable SIF threshold will be incrementally increased such that regulation of water rights in the area of non-compliance above the SIF Measurement Locations will shift from the long-term SIF threshold up to the Tribal Water Right at a rate depending on the duration and severity of non-compliance. By moving back towards compliance, regulation of water rights in the non-compliant area would move back towards the

long-term SIF threshold, to which regulation would return once full compliance is re-established.

- 6.15. In addition to the primary SIF Measurement Locations described in subsections 6.13 and 6.14, above, the Final Agreement is expected to include secondary SIF Measurement Locations. The secondary SIF Measurement Locations that the Parties are exploring are shown on Exhibit A. The obligations described in subsection 6.13 are also expected to apply to the secondary SIF Measurement Locations in the Final Agreement. However, when a SIF threshold is not met at or above a secondary SIF Measurement Location, the initial response will be for the Landowner Entity(ies) to use tools such as rotation agreements and other shorter-term measures to address the non-compliance. Both regulation to and increase of the affected SIF thresholds would occur only if the Landowner Entity(ies) fail to achieve compliance within a specified period of time.
- 6.16. The Parties also intend to develop a short-term water leasing program in the Final Agreement to address atypical conditions when SIF thresholds are not met.
- 6.17. In addition to the SIFs based on the WUP Volume, the Final Agreement is anticipated to provide that irrigators will not cause a stream that is subject to a Tribal Water Right to be dewatered. The Final Agreement will include more specific terms to avoid dewatering.
- 6.18. The Parties anticipate that the Final Agreement will consider circumstances under which OWRD regulation of groundwater would be timely and effective.
- 6.19. It is the Parties' expectation that any water use retirement will be compensated based upon values mutually agreed to by purchaser and seller, as informed by appraisals. The Parties recognize that the value of water rights in the Off-Project Restoration Area is in a state of uncertainty and flux as a result of the Final Order of Determination and the ongoing Klamath Basin Adjudication. The Parties also anticipate that retirement of water rights may have a higher ecological value in certain locations, warranting a higher value for acquisition. Eminent domain will not be used to acquire water rights under the Water Use Program described in this section.
- 6.20. The Parties intend that the Final Agreement will include support for measures to provide adequate livestock watering. Such measures may include, but are not limited to, off-stream watering systems,

groundwater, limited-access stream and ditch watering, or other similar measures.

7. RIPARIAN MANAGEMENT AND RESTORATION PROGRAM

7.1. The Final Agreement is expected to include a Riparian Management and Restoration Program.

7.2. The Parties recognize that the Klamath Tribes and the United States will participate actively with landowners and other partners in planning, designing, and carrying out the Riparian Management and Restoration Program described in this section of the AIP.

7.3. The objective of the Riparian Management and Restoration Program is to achieve and/or maintain Proper Functioning Conditions within the Riparian Management Corridors above each primary and secondary SIF Measurement Location, or where such a Corridor is established in an area not associated with a SIF Measurement Location. In some cases, this is expected to require active restoration actions, in others it will require only management and maintenance.

The Parties intend that the Final Agreement will include a minimum threshold for Eligible Riparian Landowner participation in the Riparian Management and Restoration Program. Preliminarily, the Parties are exploring a level of participation of 75 to 80 percent of the length of the Riparian Management Corridors owned by Eligible Riparian Landowners (Sufficient Participation). Participation will be in the form of the Riparian Management Agreements, described in subsections 7.4. and 7.6 – 7.8

7.4. The Riparian Management and Restoration Program is expected to be carried out primarily within Riparian Management Corridors through Riparian Management Agreements that are permanent, and that run with the land. An illustration of a Riparian Management Corridor is attached as Exhibit C.

7.5. The Parties intend that the Riparian Management and Restoration Program will be developed collaboratively, and will include prioritization of areas and actions based on recommendations from a technical team, as well as development of protocols for Riparian Management Agreements and the actions included in such agreements. The technical team will include experts from the Klamath Tribes, the Landowner Entity(ies), the United States, and the State.

- 7.6. The Parties intend that the Joint Management Entity, comprised of the Landowner Entity(ies), the Klamath Tribes, the United States, and the State will develop a standard set of terms for Riparian Management Agreements. The Final Agreement is expected to make the Landowner Entity(ies) responsible for negotiating the draft of each proposed Riparian Management Agreement. The Riparian Management Agreements will identify:
 - 7.6.1 The area covered;
 - 7.6.2 What actions or management will occur;
 - 7.6.3 Who is responsible for particular actions;
 - 7.6.4 How monitoring will occur;
 - 7.6.5 How actions will be paid for; and
 - 7.6.6 How the agreements will be enforced over time.
- 7.7. Restoration actions identified in Riparian Management Agreements may include:
 - 7.7.1 Fencing of riparian areas;
 - 7.7.2 Treatment or elimination of surface return flows;
 - 7.7.3 Removal or breaching of levies and dikes;
 - 7.7.4 Stream channel realignment; and
 - 7.7.5 Installation of fish screens.
- 7.8. Management actions identified in Riparian Management Agreements may include:
 - 7.8.1 Grazing management; and
 - 7.8.2 Other vegetation management.
- 7.9. It is the intent of the Parties that Riparian Management Agreements will contain terms that are expected to qualify for regulatory assurances under the federal Endangered Species Act. It is also the intent of the Parties that the Agreements will be consistent with applicable provisions

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of the Oregon Department of Agriculture's Water Quality Management Program and associated rules for the Upper Klamath Basin.

- 7.10. The Parties intend that the Final Agreement will provide that each Riparian Management Agreement must be approved by the Klamath Tribes and the United States, as well as by the Landowner Entity(ies) and the Eligible Riparian Landowner, before it becomes final. The Joint Management Entity also will review the Riparian Management Agreements for consistency with the Riparian Action Plan (as described in section 9.2).
- 7.11. As described in subsections 6.13 and 6.14, if the minimum levels of landowner participation are not achieved, or are not maintained, the Parties expect that the Final Agreement will provide that the SIF threshold applicable to that area will increase over time, up to (if uncorrected) the applicable Tribal Water Right.

8. ADDITIONAL AGREEMENTS

- 8.1. **Access for Exercise of Treaty Rights.** The Parties expect that the Final Agreement will provide for non-Federal Parties to support the acquisition of access sites at which Klamath Tribal members may exercise their fishing, gathering and/or hunting Treaty rights.
- 8.2. **Four-mile Lake.** It is the intent of the Parties to explore adding the Bureau of Reclamation and the holders of water rights to Four-mile Lake to the Final Agreement. The Parties intend to explore the potential for use of Four-mile Lake to provide storage within the Upper Klamath Basin, recognizing that alternative storage or other supply options would be needed in the Rogue Basin and that there are instream water needs in that basin as well.
- 8.3. **Klamath Reclamation Project.** Recognizing that the Final Agreement is intended to provide the WUP Volume into Upper Klamath Lake, it is the intent of the Parties to explore adding the Bureau of Reclamation, districts within the Klamath Reclamation Project, and U.S. Fish and Wildlife Service to the Final Agreement, and to work with these entities with the goal of minimizing or eliminating the likelihood of a call for regulation of water based on the entities' water rights associated with the Klamath Reclamation Project.
- 8.4. **KBRA and KHSa.** The Parties, other than the United States, agree mutually to promote, support and strive to obtain funding and authorizations necessary to implement the Final Agreement, and agree that they will not oppose authorization and implementation of the

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Klamath Basin Restoration Agreement (KBRA) or the Klamath Hydroelectric Settlement Agreement (KHSA), including any legislation required to authorize and implement those agreements.

- 8.5 **Economic Development.** The Final Agreement shall address economic development and additional matters between the United States and the Klamath Tribes necessary to complete a final water rights settlement.
- 8.6. **Communications.** The Parties agree to cooperate and coordinate in the development of individual or joint press releases or public statements with respect to this AIP.

9. JOINT MANAGEMENT ENTITY

- 9.1. The Final Agreement will address the formation of a Joint Management Entity. The Joint Management Entity will work with the Parties to identify priorities for funding for the Water Use Program and the Riparian Management and Restoration Program. The Joint Management Entity will include representatives from: (a) the Klamath Tribes; (b) the United States; (c) the State; and (d) the Landowner Entity(ies).
- 9.2. The Joint Management Entity is expected to establish and maintain an Upper Klamath Basin Riparian Management and Restoration Action Plan (the “Riparian Action Plan”) that: (a) is consistent with the means of providing regulatory assurances under the Endangered Species Act as contemplated in section 7.9, and (b) that identifies geographic priorities and funding sources for the Riparian Restoration and Management Program. In addition, the Joint Management Entity will be responsible for overseeing the Water Use Program described in section 6 and the Riparian Restoration and Management Program described in section 7.
- 9.3. The non-Federal Parties expect that the Joint Management Entity will be formed with funding from the United States and Oregon, along with foundation and other sources of funding. It is the intent of the Parties that the Joint Management Entity has sufficient core funding to continue on a sustained basis to carry out its roles and responsibilities.
- 9.4. The Parties expect that the Joint Management Entity will appoint a Technical Advisory Team of technical experts to assist in carrying out its roles and responsibilities.

10. LANDOWNER ENTITY(IES)

- 10.1. The Parties expect that Eligible Landowners within the Off-Project Area will form one or more entities to manage the Water Use Program and the

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Riparian Management and Restoration Program. The Landowner Entity(ies) will include mechanisms for landowner participation on a fair and equitable basis, and will have the authority to enter into agreements with Federal, state, Tribal, and local governments, and the Joint Management Entity.

- 10.2. The Parties expect that the Landowner Entity(ies) will enter into an agreement with the Klamath Tribes and the United States to ensure that the Water Use Program and the Riparian Management and Restoration Program will continue to perform over time.
- 10.3. As described in section 7, the Parties expect that the Final Agreement will provide that the Landowner Entity(ies) will contract with Eligible Riparian Landowners to perform Riparian Management Agreements.
- 10.4. The Parties anticipate that the Landowner Entity(ies) may receive funding from the Joint Management Entity or from other sources.

11. PHASED IMPLEMENTATION

- 11.1. The Parties anticipate that adoption and implementation of the Final Agreement will be contingent upon acceptance by the Parties and their constituent members. The Parties also anticipate that it will take time to develop and arrange individual agreements for water use reduction and riparian area management as described in sections 6 and 7 of this AIP. The Parties expect to incorporate a phased approach in the Final Agreement that sets interim performance requirements until the performance measures described in sections 6 and 7 of this AIP are fully realized with appropriate limitations based on adequacy and timing of funding and other considerations. At this time, the Parties anticipate that it will take three to five years to achieve the levels of water use reduction and participation in riparian management called for in sections 6 and 7.
- 11.2. The Parties contemplate that the Final Agreement will provide that the transition period will end, and the Final Agreement will become permanent when each of the following conditions is achieved:
 - 11.2.1 Federal legislation is enacted authorizing federal participation in the Water Use Program materially consistent with the Final Agreement;
 - 11.2.2 Federal legislation is enacted authorizing federal participation in the Riparian Restoration and Management Program materially consistent with the Final Agreement;

- 11.2.3 Federal legislation is enacted that is materially consistent with the KBRA and KHSA;
- 11.2.4 Federal legislation is enacted that is materially consistent with the Final Agreement;
- 11.2.5 Federal funds have been appropriated in amounts sufficient to carry out actions and programs implementing the Water Use Program and the Riparian Restoration and Management Program materially consistent with the Final Agreement;
- 11.2.6 Federal funds have been appropriated in amounts sufficient to carry out actions and programs in the water, fisheries, and tribal sections of the KBRA as established in Appendix C-2 of the KBRA;
- 11.2.7 The WUP Volume has been supplied to Upper Klamath Lake, materially consistent with the Water Use Program in the Final Agreement;
- 11.2.8 There is Sufficient Participation in the Riparian Restoration and Management Program described in the Final Agreement; and
- 11.2.9 Other aspects of bargained for benefits that the Parties agree to place in the Final Agreement.

12. MEET AND CONFER

In the event any Party to this AIP believes that a term is not being fulfilled by one or more other Parties, the Party may request that the Parties involved meet and confer to seek a resolution of the dispute. The Parties must meet and confer in good faith to attempt to determine mutually agreeable resolution of outstanding issues prior to resorting to any other available remedy. The Parties expect that the Final Agreement will include more specific dispute resolution provisions.

13. GENERAL TERMS

- 13.1. If a Final Agreement is not fully executed by all the Parties on or before December 31, 2014, this AIP shall terminate and the Parties shall have no further obligations to each other except for those obligations set forth in subsections 13.3 to 13.6 of this AIP. The Parties may agree to an extension of this AIP in writing signed by each Party.

- 13.2. Nothing in this AIP shall be construed to limit or remove existing rights of Allottees to complete development of practicably irrigable acreage.
- 13.3. The Parties agree that they will keep all drafts of this AIP and the Final Agreement confidential among the Parties except as required by applicable law; however, the Parties may agree unanimously to release documents that would otherwise be confidential. The executed AIP will be a public document. This subsection is binding on the Parties, survives termination of this AIP, and remains binding on all Parties notwithstanding the exercise of a right of Withdrawal by a Party or Parties.
- 13.4. This AIP is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, similar requirements of Oregon law, and the availability of appropriated funds. Nothing in this AIP is intended or may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or a state general fund. This paragraph is binding on the parties, survives termination of this AIP, and remains binding on all Parties notwithstanding the exercise of a right of Withdrawal by a Party or Parties.
- 13.5. The Parties agree that there are no binding obligations or commitments contained in this AIP other than as expressly stated in this AIP. There shall be no remedy for any potential or alleged breach of non-binding provisions of this AIP. For the breach of any binding provision, the exclusive remedy shall be a right of Withdrawal, exercised after first attempting to resolve the matter through Meet and Confer procedures.
- 13.6. Neither this AIP nor any part thereof may be construed as an admission against interest or be used in any legal or regulatory proceeding by a Party against any other Party. The Parties agree that the documents, analyses, and positions shared in negotiating this AIP and the Final Agreement are protected from subsequent dissemination to the fullest extent under Federal Rule of Evidence 408 and similar Oregon statutes as applicable. This paragraph is binding on the Parties, survives termination of this AIP, and remains binding on all Parties notwithstanding the exercise of a right of Withdrawal by a Party or Parties.
- 13.7. This AIP may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single agreement. Delivery of an executed counterpart of a signature page of this AIP electronically or by telecopy shall be effective as delivery of a manually executed counterpart of this AIP.

14. DEFINITIONS

As used in this Agreement in Principle, the following terms have the following meanings, throughout this Agreement in Principle:

- 14.1. "Allottee" means a member of the Klamath Tribes and a lineal descendant of a member of the Klamath Tribes who owns an allotment within the former Klamath Reservation and who has a water right based on the Klamath Tribes Treaty of 1864.
- 14.2. "Baseline Conditions" means the WURP (Water Use Retirement Program) baseline described in section 16.2 of the KBRA.
- 14.3. "Eligible Landowner" means an Allottee, and any other person or nongovernmental entity that holds a ground water right or a surface water right in the Off-Project Area.
- 14.4. "Eligible Riparian Landowner" means an Allottee, and any other person or non-governmental entity that owns land in Klamath County that is:
 - (a) Zoned by Klamath County for farm use or mixed farm and forest use; and
 - (b) Irrigated by a surface water right or a ground water right, with a place of use that includes land within a Riparian Management Corridor.
- 14.5. "Final Agreement" means a binding agreement among those parties signatory to it, pertaining to and consistent with the subject matter of this AIP.
- 14.6. "Joint Management Entity" means an entity comprised of the Landowner Entity(ies), the Klamath Tribes, the United States, and the State that represents the interests of the Parties and that is responsible for overseeing the functions described in section 6 and 7 of this AIP.
- 14.7. "Landowner Entity(ies)" means one or more groups, associations, or legal entities existing as of the date of this AIP or later formed by Eligible Landowners that is responsible for performing the functions described in sections 9 and 10 of this AIP.
- 14.8. "Off-Project Area" means the area by that name shown in Exhibit A.
- 14.9. "Off-Project Restoration Area" means the area by that name shown on Exhibit A.

- 14.10. “OWRD” means the Oregon Water Resources Department.
- 14.11. “Parties” or “Party” means the signatories to this AIP.
- 14.12. “Proper Functioning Conditions” means vegetation and soil conditions in a Riparian Management Corridor that are consistent with their long-term potential given stream size, gradient, soil type, elevation, and other related variables. See for example “Process for Assessing Proper Functioning Condition, BLM Tech. Report 1737-9 1993; Chaney, Elmore and Platts “Managing Change Livestock Grazing on Western Riparian Areas” EPA, July 1993; Chaney, Elmore and Platts, EOA, August 1993.
- 14.13. “Riparian Management Agreement” means an agreement between the Landowner Entity(ies) and an Eligible Riparian Landowner for restoration and/or management of lands within a Riparian Management Corridor that meets the standards and guidelines developed as described in section 7 of this AIP.
- 14.14. “Riparian Management Corridor” means the lands within the Off-Project Restoration Area that are adjacent to a perennial stream that is subject to a Specified Instream Flow and where vegetation is strongly influenced by the presence of stream water, or where such a corridor is established in an area not associated with a SIF Measurement Location.
- 14.15. “SIF Measurement Locations” mean the points in the Off-Project Restoration Area where Specified Instream Flows are measured for purposes of compliance with the obligations described in section 6 of this AIP.
- 14.16. “State” refers to the State of Oregon, acting by and through its Water Resources Department.
- 14.17. “Sufficient Participation” means a minimum threshold for Eligible Riparian Landowner participation in the Riparian Management and Restoration Program. Preliminarily, the Parties are exploring a level of participation of 75 to 80 percent of the length of the Riparian Management Corridors owned by Eligible Riparian Landowners.
- 14.18. “Tribal Water Rights” means the water rights jointly held by the Klamath Tribes and the United States in trust for the Klamath Tribes, as determined in the Klamath Basin Adjudication cases designated as 277, 279, 280, 281, 282, 284, 285, and 286 in the proceedings before Oregon’s Office of Administrative Hearings.

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- 14.19. “United States” refers to the United States Department of the Interior. It is anticipated that the United States Departments of Commerce and Agriculture will participate in negotiation of a Final Agreement.
- 14.20. “Withdrawal” refers to the right of a Party, after engaging in a Meet and Confer process described in section 12 with the other affected Parties and giving at least 30-days written notice to all other Parties, to fully withdraw from this AIP for any reason.

UPPER KLAMATH BASIN AGREEMENT IN PRINCIPLE

December 2, 2013

Signed this __ day of December 2013 by Governor John Kitzhaber, State of Oregon.

Signed this __ day of December 2013 by Don Gentry, Chair, Klamath Tribes.

Signed this __ day of December 2013 by Michael Connor, Commissioner, U.S. Bureau of Reclamation.

Signed this __ day of December 2013 by John Bezdek, U.S. Department of the Interior.

Signed this __ day of December 2013 by Phil Ward, Director, Oregon Water Resources Department.

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Signed this __ day of December 2013 by Garrett Roseberry, Resource Conservancy, and Sprague River Water Resource Foundation.

Signed this __ day of December 2013 by Roger Nicholson, Fort Klamath Critical Habitat Landowners.

Signed this __ day of December 2013 by Matthew Walter, Upper Klamath Basin Water Users Association.

Signed this __ day of December 2013 by Becky Hyde, Upper Klamath Water Users Association.

Signed this __ day of December 2013 by Cheri Little, Upper Klamath Water Users Association.

UPPER KLAMATH BASIN AGREEMENT IN PRINCIPLE

December 2, 2013

Signed this __ day of December 2013 by Alan Foreman.

Signed this __ day of December 2013 by Kevin Newman.

Signed this __ day of December 2013 by Larry Nicholson.

Signed this __ day of December 2013 by Linda Long.

Signed this __ day of December 2013 by Melissa Hess.

Signed this __ day of December 2013 by Randall Kizer

UPPER KLAMATH BASIN AGREEMENT IN PRINCIPLE

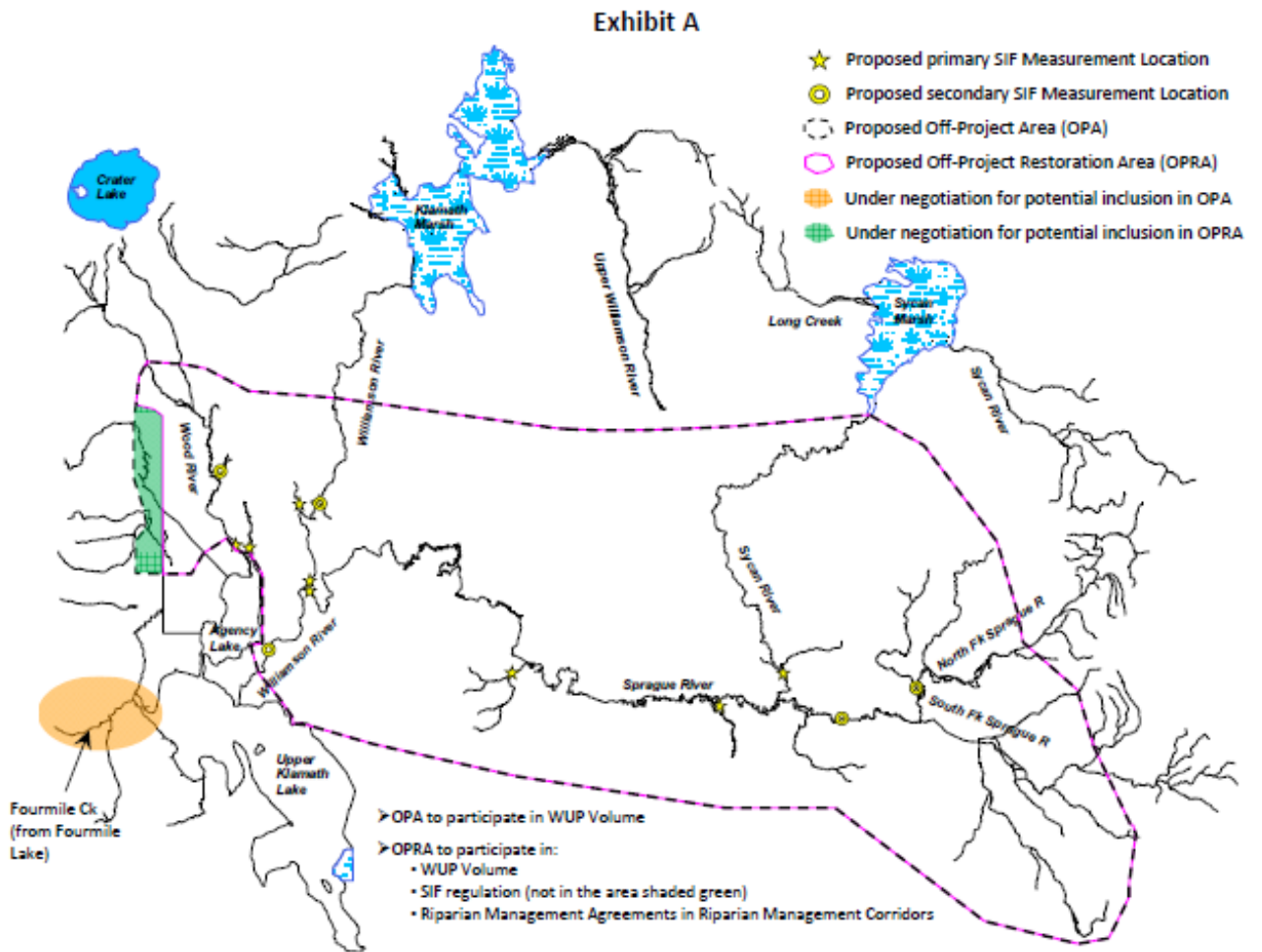
December 2, 2013

Signed this __ day of December 2013 by Todd Mathis for the Mathis Family Trust.

Signed this __ day of December 2013 by Tom Burns.

UPPER KLAMATH BASIN AGREEMENT IN PRINCIPLE

December 2, 2013



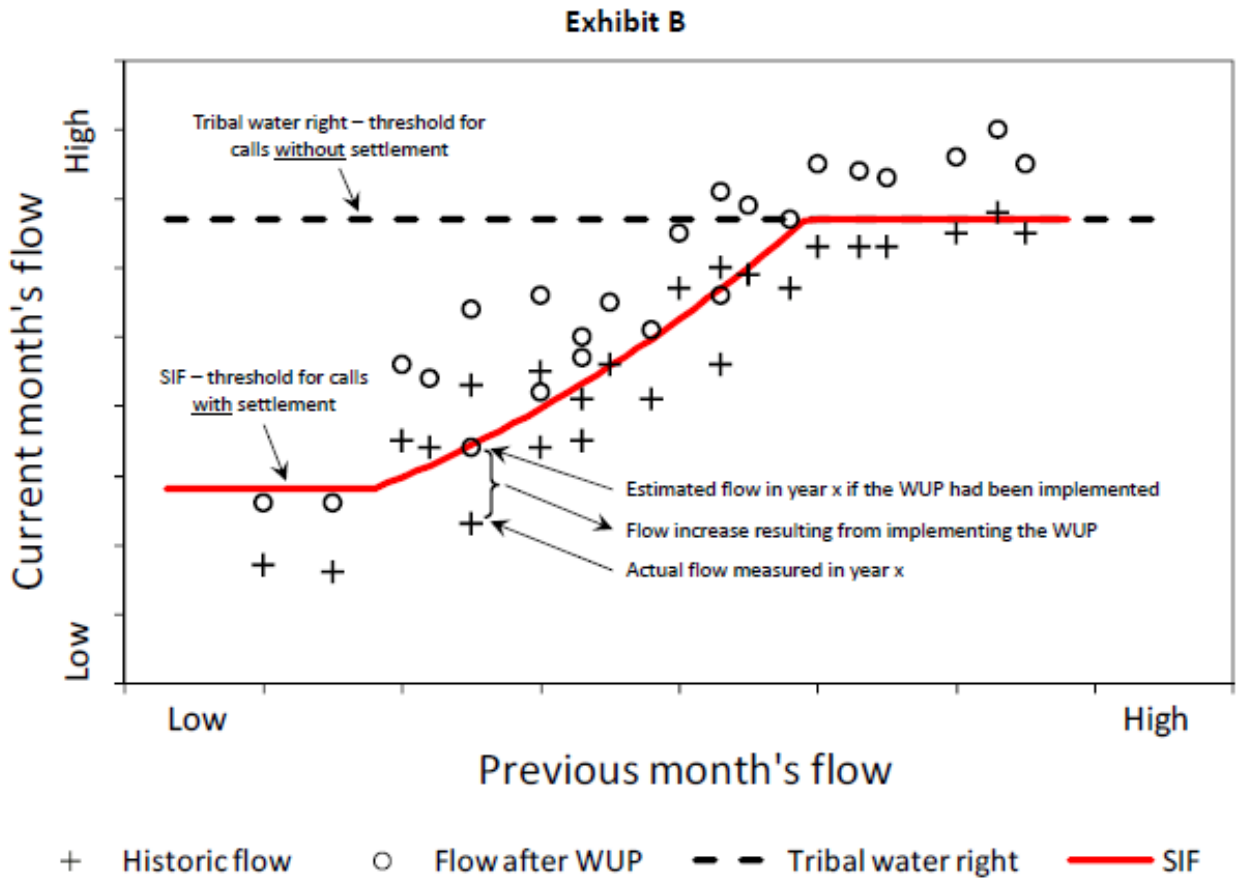
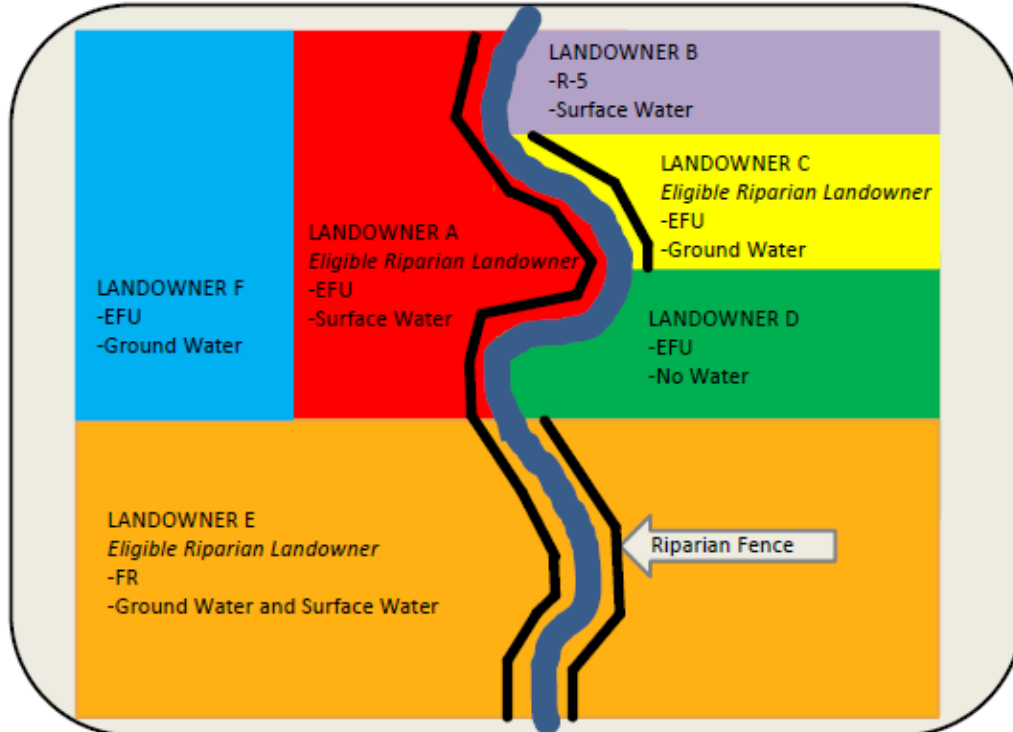


Exhibit C

OFF PROJECT RESTORATION AREA



EFU – Exclusive Farm Use Zoning FR—Forest /Range Zoning R-5—Residential Zoning
Eligible Riparian Landowners will participate in Riparian Management Agreements.