Memorandum

July 9, 2013

To: The Klamath Basin Task Force

From: Ed Sheets, Facilitator for Klamath Basin Agreement

Subject: Power for Water Management Program Eligibility

The Klamath Basin Restoration Agreement includes a Power for Water Management Program (see Section 17). The Parties to the Agreements adopted amendments to these provisions in December. The text below reflects the amended language. I have also attached the eligibility criteria developed by the Klamath Basin Power Alliance.

17.3. **Eligibility**

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

17.3.1. **On-Project Power Users**

A. **General**

On-Project Power Users shall be eligible for the benefits of the Power for Water Management Program and each of its elements, subject to B below and any limitations that may exist under Applicable Law for any user or class of users based on geography or other factors.

B. **Ineligibility**

Any individual landowner listed in Section 1.1.1 as among Parties related to the Klamath Reclamation Project who does not enter into this Agreement shall not be an eligible Power User. In addition, with respect to any entity listed in Section 1.1.1 as among Parties related to the Klamath Reclamation Project which is a Klamath Project Water Entity, any such entity which does not enter into this Agreement shall not be an eligible Power User with respect to pumps owned by such entity, and any Power User within such entity shall not be an eligible Power User; *provided*, that the KBCC will create a mechanism by
which a Power User within any such entity may become eligible by supporting this Agreement and the Hydroelectric Settlement.

17.3.2. **Off-Project Power Users**

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

A. The Off-Project Power User shall support this Agreement and the Hydroelectric Settlement. For this purpose, within three months of the Effective Date, the KBCC shall adopt procedures for the Off-Project Power User to provide written support of these agreements and specification of such obligations.

B. Until the WURP pursuant to Section 16.2.2, Restoration implementation pursuant to Section 16.3.2, and the Regulatory Assurances Program pursuant to Section 22.2 are underway, each Off-Project Power User, whether ground or surface water user, shall be eligible to receive the benefits of the Power for Water Management Program, provided such Off-Project Power User has complied with (A) above, and enrolled in the Power for Water Management Program, as appropriate. For this purpose, within three months of the Effective Date, the KBCC shall adopt procedures for enrollment.

C. After the WURP pursuant to Section 16.2.2, Restoration implementation pursuant to Section 16.3.2, and the Regulatory Assurances Program pursuant to Section 22.2 are underway, any Off-Project Power User, who is a surface water irrigator or has riparian lands that qualify for the Restoration Program, shall be eligible to receive the benefits of Power for Water Management Program, provided such Off-Project Power User is participating in the WURP, in Restoration implementation, or the regulatory Assurance program. For the purpose of determining eligibility for these benefits through such participation, the KBCC shall within one year of the Effective Date, adopt a process for developing and applying criteria for eligibility, in coordination with the Lead Agencies of the respective programs.

D. After the WURP pursuant to Section 16.2.2, Restoration implementation pursuant to Section 16.3.2, and the regulatory Assurances program pursuant to Section 22.2 are underway, any
Off-Project Power User who is a groundwater irrigator and is not eligible for such programs shall be eligible to receive the benefits of the Power for Water Management Program; provided that such Off-Project Power User has achieved conservation criteria, or has a conservation plan which will result in achieving conservation criteria, which shall be developed by the KBCC, in consultation with the Natural Resources Conservation Service (NRCS) or other relevant federal, state, or local partner, and which shall attempt to utilize existing NRCS conservation standards to the extent applicable. The KBCC, in consultation with the NRCS or other federal, state, and or local partner, as applicable, shall develop procedures to evaluate and certify whether the Off-Project Power User’s land meets the conservation criteria, or whether the Off-Project Power User is actively implementing the conservation plan. Such procedures also will provide for reasonable access, with notice, to the Off-Project Power User’s land for purposes of monitoring implementation of a conservation plan. If the Off-Project Power User has not achieved the required conservation criteria, or is not actively implementing their conservation plan, then such Off-Project Power User’s enrollment in the Power for Water Management Program shall be terminated, pursuant to procedures which shall be developed by the KBCC prior to commencement of the WURP, Restoration implementation, and the Regulatory Assurances Programs, described in this Section 17.3.2.D, being underway.

17.3.3. Notification

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