



2455 Patterson Street | Suite 3 | Klamath Falls, Oregon 97603 | 541.850.2503 | 541.883.8893 fax | www.kwua.org

## 2010 Land Idling Program

March 22, 2010

This program is intended to assist Klamath Project irrigation water users during an emergency situation for the year 2010. Upper Klamath Lake stands at a level that likely will prevent the delivery of irrigation water to the Klamath Reclamation Project in amounts sufficient to sustain the production of crops. Current conditions indicate that deliveries of surface water from Upper Klamath Lake will be delayed and in insufficient quantity to produce crops on the land not irrigated by ground water. The Klamath Basin is facing an agricultural economic disaster. Therefore it is appropriate to implement a program to provide some amount of financial assistance to people who will agree to not irrigate some or all of their land with surface water during the 2010 irrigation season ("land idling") to decrease the demand for surface and ground water in the Klamath Reclamation Project.

To implement the land idling program, KWAPA will solicit applications for financial assistance for voluntary idling of irrigated land that meets the following criteria:

- 1) The parcel must be within the Klamath Reclamation Project and normally irrigated with surface water from Upper Klamath Lake or the Klamath River;
- 2) The parcel must be 20 or more contiguous acres in size and must have clear boundaries separating it from adjoining and adjacent irrigated land;
- 3) The parcel must be land that would have been irrigated except for land idling;
- 4) If the applicant is not the land owner, the applicant must present a letter authorizing the applicant to idle owner's land. The letter must state to whom and the address payment will be made;
- 5) The parcel must have been irrigated with surface water in 2009; and
- 6) If the parcel is accepted into the land idling program it may not be irrigated during the 2010.
- 7) The parcel to be idled has not received any irrigation water between November 1, 2009 and the date of the contract.

The process for selecting applications for which financial assistance will be provided will be:

- 1) The Applicant shall submit a written bid on a form provided by KWAPA. An acceptable bid will contain the following:
  - a) Name and contract information of applicant;
  - b) Name and contract information of landowner if different than applicant;
  - c) Description of the land to be idled including site address and tax lots;
  - d) Type of crop that was irrigated in 2009;
  - e) Type of crop that intended to be grown in 2010;
  - f) Acres offered to be idled; and

- g) The amount of financial assistance per acre the Applicant is requesting to idle.
- 2) The Applicant must present a map showing the land to be idled and the Point of Delivery from the corresponding irrigation district's system.
- 3) Applications must be submitted in sealed envelopes and must be received in the office of KWAPA on or before the date and time to be set.
- 4) The Applications will be opened in public on the date and time to be set.
- 5) After opening the bids KWAPA will provide a map showing the location of each parcel offered to each irrigation district for the district's review and comment.
- 6) Qualified bids will be listed by least cost first and the available funds will be applied until the funds available are dispersed or the acreage set by the KWAPA Board to be idled has been reached. Least cost shall be based on the cost per acre foot of water not used. This will be calculated by the KWAPA Executive Director taking into account the crop, soil type, evapotranspiration, and such other criteria as the Executive Director shall determine appropriate. The determination of the Executive Director of KWAPA, in his sole and absolute discretion, and shall not be set aside unless a qualified bidder challenging that decision demonstrates with clear and convincing evidence that the Director acted in bad faith and in an arbitrary and capricious manner. KWAPA will be allowed reasonable access to the parcels included in the Program to confirm compliance with the Program criteria and rules.

Each Applicant whose parcel is accepted into the Program shall:

- 1) Sign and enter into KWAPA's Land Idling Program Contract. Applicants may review a copy of the Contract at KWAPA's office;
- 2) Institute measures designed for the prevention of erosion and the control of weeds on the parcel in compliance with State and County ordinances;
- 3) The Applicant may plant such crops as will grow with no irrigation and to derive such economic benefit as is possible in addition to the idling payment;
- 4) Institute reasonable measures to prevent wildfire and control pests on the parcel; and
- 5) The Applicant is responsible for the payment of all taxes, assessments, and any other obligations related to participating in this program.

KWAPA may terminate Applicant's participation in the land idling program due to the failure of the Applicant to abide by the terms and conditions of the program and the Contract; and/or refusal of the Applicant to allow KWAPA and/or district access to the parcel to monitor compliance with the program and contract.

The Applicant shall indemnify and hold KWAPA harmless from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death, or property damage of any nature arising from Applicant's participation in this Program or related to or arising out of the contract between KWAPA and Applicant.

This program is not yet funded. Payment for idling is subject to funding.



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## Land Idle 2010

Applicant: \_\_\_\_\_ (if applicant is not the owner, must provide authorization to represent the owner.)

Mailing address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Owner (if other than applicant): \_\_\_\_\_

Owner mailing address \_\_\_\_\_

Owner phone number: \_\_\_\_\_

Tax lot number of the land to be idled: \_\_\_\_\_

Only one contiguous parcel per application. If bidding multiple fields, use multiple forms.

Acres to be idled: \_\_\_\_\_

Bid price per acre to be idled: \_\_\_\_\_

Crop intended to be grown and irrigated in 2010: \_\_\_\_\_

Crop grown and irrigated in 2009: \_\_\_\_\_

This field is located in irrigation district: \_\_\_\_\_

The boundaries of the idled area are identified by: \_\_\_\_\_

I hereby swear and affirm that I have read and understand the policy set by the KWAPA Board of Directors relating to idling crop land in the Klamath Project for 2010 and that this bid is in complete compliance with said policy. I further affirm that I understand that the selection of the land to be idled will be based on the most water saved based on soil and crop type. I also understand this program does not have adequate funding as of the date of this bid. This bid is in full compliance with the Sherman Act as it pertains to collusion and price fixing.

Signed \_\_\_\_\_

Date \_\_\_\_\_

**KLAMATH WATER AND POWER AGENCY  
2010 LAND IDLING PROGRAM CONTRACT**

THIS CONTRACT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Klamath Water and Power Agency ("KWAPA") and the Applicant whose name, address, and signature appear below ("Applicant").

**1. RECITALS**

A. KWAPA is a governmental agency formed pursuant to an Intergovernmental Cooperation Agreement. Its authority includes investigating and designing a program within the Klamath Reclamation Project water user community to develop and manage a water management program. KWAPA has received an Assistance Agreement Grant from the United States Department of Interior, Bureau of Reclamation, which provides a limited amount of funding to provide assistance to applicants who agree that they will not irrigate their land during the 2010 irrigation season.

B. By this Agreement, the parties desire to provide for the payment by KWAPA of an allowance to Applicant in consideration for Applicant agreeing to refrain from irrigating the land described below from any source during the 2010 irrigation season.

NOW, THEREFORE, in consideration of the terms and conditions herein, the parties agree as follows:

**2. TERM**

This Contract shall be effective on the date of execution and shall remain in effect through October 31, 2010, unless terminated as provided herein.

**3. DRYLAND OPERATION**

- (a) This Contract applies to the use of \_\_\_\_\_ acres of land identified as County tax lot \_\_\_\_\_ and located as shown on the attached map(s), Exhibit A, hereinafter referred to as the Land.
- (b) Applicant represents and warrants to KWAPA: (1) that he/she is the legal owner of the Land, or if Lessee, has written authorization from the Land owner; (2) that the Applicant has the right to apply surface irrigation water to the Land; (3) that the Land was irrigated in 2009 but that the land has not been irrigated after November 1, 2009; and (4) that the Land will not be irrigated during the term of this Contract.
- (c) The Applicant is responsible for all taxes, assessments, and any other obligations related to any of the Land covered by this Contract.
- (d) Grazing and harvesting of crops on the Land will be allowed.
- (e) The Applicant is responsible to ensure control of soil erosion by wind or water and to minimize dust on bare field units no later than April 30, 2010.
- (f) As required by State and County ordinances, at the Applicant's expense, all common and noxious weeds on the Land shall be controlled in order to minimize spreading of seeds.
- (g) The Applicant shall ensure that pest insect populations are controlled to levels that do not adversely affect adjacent lands, as determined in Oregon by the Oregon Department of Agriculture and in California by the appropriate County Agricultural Commissioner.
- (h) Vegetation shall be controlled to prevent wildfire.
- (i) Applicant is not subject to backup withholding and Applicant's social security number or tax identification number is: \_\_\_\_\_.

**4. PAYMENT**

All payments by KWAPA under this Contract shall be made by check or some other mutually agreeable method of payment. KWAPA shall pay the Applicant \$ \_\_\_\_\_ in a lump sum, mailed to Applicant's address set forth below no later than November 30, 2010. This amount is based on the Applicant's application request of \$ \_\_\_\_\_ per acre for \_\_\_\_\_ acres, and when paid to the Applicant shall be the total due to the Applicant under this Contract.

**5. ACCESS TO FACILITIES**

KWAPA and the irrigation or drainage district in which the Land is located shall have reasonable access to Lands under this Contract to the extent KWAPA determines such access is necessary. Prior to such access to the Lands, KWAPA shall make a reasonable attempt to provide at least 24 hours advance notice to the Applicant.

**6. TERMINATION**

This Contract shall be terminated by KWAPA upon failure of the Applicant to abide by the terms and conditions of this Contract including, but not limited to, refusal of the Applicant to allow KWAPA and/or the district access to the Land to monitor compliance with this Contract. Upon termination of this Contract for cause, the Applicant shall not be entitled to any portion of the payment described in article 5 of this Contract.

**7. ADDITIONAL TERMS AND CONTRACTS**

- (a) Except as specifically stated herein, this Contract does not constitute, and shall not be construed as, an admission by either party with respect to any issue of law or fact other than the enforceability of this Contract according to its terms, nor be considered as precedent with respect to any future action of the parties.
- (b) Nothing in this Contract or the implementation of this Contract affects, diminishes, or shall be construed to diminish or affect in any way, the validity of any water rights held by any party, including rights to the use of surface water for lands of the Applicant or other lands in the Project, or any claim or right to compensation that Applicant or the Land owner may have against a third party, and this Contract shall be construed to have no such effect.
- (c) KWAPA, to the best of its knowledge and belief, has obtained, or shall obtain all necessary permits or authorizations from Federal, State, or County agencies required for execution and implementation of this Contract, and has fully complied with all applicable laws.
- (d) This Contract: is not a "contract" as that term is defined for purpose of Title II of Public Law 97-293; and for this and other reasons Title II of Public Law 97-293 is inapplicable.

**8. LIABILITY**

- (a) The Applicant shall indemnify and hold harmless KWAPA from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death, or property damage of any nature caused by the Applicant or any person, firm or corporation acting on the Applicant's behalf related to or arising out of this Contract.
- (b) KWAPA agrees to hold harmless the Applicant for any negligent acts of KWAPA or any person, firm or corporation acting on KWAPA's behalf related to or arising out of this Contract.

**9. ASSIGNMENT -- SUCCESSORS AND ASSIGNS OBLIGATED**

This Contract shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto. The Applicant shall not make any assignment or transfer of this Contract or any right or interest therein until approved in writing by KWAPA and such approval shall not to be unreasonably withheld. This Contract may be amended by either party, only if both parties agree in writing to any such amendment.

**10. SEVERABILITY**

In the event any provision of this Contract is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**11. PAYMENT CONTINGENT ON RECEIPT OF GRANT FUNDS**

This Program is funded solely by a grant from the United States Bureau of Reclamation. The expenditure or advance of any money or the performance of any obligation of KWAPA under this Contract shall be contingent upon its receipt of such funds. No liability shall accrue to the KWAPA in the event the United States fails to provide said funds.

**12. NOTICES**

Notices and other communications required under this Contract shall be first done via a telephone call to the number listed below, personal delivery to the address listed below, or by mail and shall be deemed to have been duly given on the date of service, if served personally on the person to whom notice is to be given, or on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To Applicant:

\_\_\_\_\_  
(name)  
\_\_\_\_\_  
\_\_\_\_\_  
(Mailing Address)  
Telephone: \_\_\_\_\_

To KWAPA:

Klamath Water and Power Agency  
735 Commercial Avenue  
Klamath Falls, OR 97601  
Telephone: (541) 850-2503

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

KWAPA:

Applicant:

\_\_\_\_\_  
Its Executive Director

\_\_\_\_\_