

KLAMATH WATER AND POWER AGENCY
2010 GROUND WATER PUMPING PROGRAM CONTRACT

THIS AGREEMENT is made this 25th day of March, 2010 by and between Klamath Water and Power Agency ("KWAPA") and the Well Owner whose name, address, and signature appear below ("Well Owner").

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 manage a supplemental water management program. KWAPA received an Assistance Agreement Grant from the United States Department of Interior, Bureau of Reclamation, which provides funding for the feasibility study and program development and funding for this Agreement.

B. Well Owner is legally entitled by applicable state law, rules, and regulations to use ground water from a well or wells for irrigation of land within the Klamath Project. Those well(s) and lands are described on the map marked by Well Owner and located at KWAPA's business office.

C. KWAPA adopted and instituted a program to provide financial assistance to well owners who use their wells for irrigation in 2010 in lieu of using surface water from Upper Klamath Lake or the Klamath River. Well Owner desires to participate in the 2010 Ground Water Pumping Program.

D. By this Agreement, the parties desire to provide for the payment by KWAPA of an allowance to Well Owner in consideration for Well Owner agreeing to use its well to provide irrigation water during the 2010 irrigation season.

AGREEMENT

1. Term. This Agreement shall be effective on the date hereof and shall remain in effect through October 31, 2010, unless terminated as provided herein.

2. Provision and Use of Ground Water. In consideration for the payments described below and in strict conformance with the terms and conditions set forth below, Well Owner agrees, upon notice from KWAPA's Executive Director or his designee, to use ground water for the purpose of irrigation of the land located within the Klamath Reclamation Project which may be legally irrigated from Well Owner's well. Well Owner warrants and represents to KWAPA:

a. That it has the right to apply irrigation water to land within the Klamath Reclamation Project as represented in paragraph B, above, which Recital is incorporated herein by this reference;

b. That it holds a valid Supplemental, Certificated, and/or Drought Water Right Permit or Certificate to apply ground water to the same land within the Klamath Project;

c. That it has acquired and installed to factory standards a commercially-available propeller flow meter, which accurately measures the true quantity of the ground water pumped that will pumped under this Agreement;

d. That Well Owner shall, at all times, maintain the flow meter in good working condition and that it shall maintain daily pumping records to document, to KWAPA's satisfaction, the quantity of ground water pumped pursuant to this Agreement;

e. That the electrical power for the well pump is metered separately from other electrical power used by Well Owner, or that Well Owner and KWAPA have determined the portion of the electricity metered that is properly attributable to the well pump;

f. That Well Owner shall use the water beneficially and without waste. Only that amount of water that will not harm other crops and uses of ground water shall be pumped;

g. That the Pacific Power & Light meter number for the meter that serves the well pump is: _____; and

H. That Well Owner's is not subject to back up withholding and its social security number or tax identification number is:_____.

Well Owner shall provide to KWAPA, in writing, initial meter readings from the electrical meter and the flow meter taken prior to any pumping by Well Owner under the terms of this Agreement. The initial reading is to occur not more than 24 hours prior to initiation of pumping under this Agreement, and shall be provided to KWAPA within 72 hours after initiation of pumping under this Agreement. Thereafter, monthly, Well Owner shall provide a true copy of its electrical bill for the well pump and a monthly flow meter reading to KWAPA. Finally, Well Owner shall provide to KWAPA, on or before November 5, final meter reading records for all pumping that occurred during the term of this Agreement.

Well Owner shall utilize its well and ground water at all times in strict conformance with the terms of its Water Right Permit or Certificate, if any, and all laws, rules, and regulations applicable thereto.

3. Use of Well. Well Owner covenants and agrees that it will utilize its ground water to the greatest extent reasonable to reduce the demand for surface water.

4. Assistance. In consideration for Landowner's strict compliance with this Agreement, KWAPA agrees that it shall reimburse Well Owner for the actually cost of electrical power used to operate the well pump and an additional \$10 per acre foot of water pumped from the well by Well Owner under this Agreement. KWAPA shall issue payment to Well Owner within 20 days after receipt by KWAPA of the meter readings described above or as soon thereafter as KWAPA receives grant funds for this Program from the Bureau of Reclamation.

5. Discontinuance of Payment. If KWAPA determines that it does not have and will not receive from the Bureau of Reclamation adequate funding to pay the assistance described above, it shall endeavor to promptly notify Well Owner and all other well owners participating in the Program. Said notice may be delivered orally, directly to Landowner, or by written notice delivered to Well Owner's address set forth below. Well Owner's right to the assistance provided under this Agreement shall terminate on the date and at the time provided in the notice from KWAPA's Executive Director or his designee to terminate pumping of ground water pursuant to this Agreement. Upon termination of pumping under this Agreement, Well Owner shall promptly provide to KWAPA final meter readings. If allowed by applicable laws, rules, and regulations, Well Owner may continue to use its ground water source after such notice of termination, but shall not be entitled to assistance under this Agreement for such additional pumping. In the event that the funding available to KWAPA from the Bureau of Reclamation grant is not sufficient to pay participants the assistance provide by this Program, each well owner who has promptly provided final meter readings shall receive a prorated payment.

6. Costs of Operation. Well Owner shall be solely responsible for any and all costs associated with its performance of this Agreement including, but not limited to, operation and maintenance of wells, power, piping, conveyance, and overhead costs. KWAPA's only obligation under this Agreement is to pay the assistance provided in section 4, above.

7. Access to Facilities. For the limited purpose of insuring compliance with this Agreement, KWAPA shall have reasonable access to all lands, wellheads, and power and flow meters employed in carrying out this Agreement. Prior to such access, KWAPA shall attempt to provide not less than 24 hours advance notice to Landowner, which notice may be made orally directly to Landowner, by telephone directly to Landowner, or by written notice delivered to Landowner's address set forth below. In the event KWAPA is denied access, then KWAPA's obligations to provide assistance to Well Owner under the terms of this Agreement shall terminate effective on the date the notice was provided.

7. Termination. This Agreement may be terminated by either party upon not less than ten days' prior written notice to the other party. Upon termination, the parties shall reconcile any amounts then owed as compensation pursuant to the terms of this Agreement in a timely manner.

8. Additional Terms.

a. Nothing in this Agreement or the implementation of this Agreement affects, diminishes, or shall be construed to diminish or affect in any way the validity of any water rights held by any party;

b. The implementation of this Agreement is subject to the rules, regulations, and determinations of all regulatory agencies having jurisdiction of the water and water rights utilized in carrying out the terms of this Agreement. In the event that Well Owner is unable to continue the use of ground water due to unforeseen events beyond Well Owner's control, such as unacceptable or unresolved third-party impacts or well failure, the obligation of Well Owner to

use ground water under this Agreement shall terminate and Well Owner shall receive an allowance for the actual quantity of water pumped pursuant to the terms of this Agreement. Sufficient evidence of such unforeseen events, including unacceptable or unresolved third-party impacts or well failure may be provided either by Well Owner or KWAPA and may include supporting evidence from the federal, state, or local authorities with jurisdiction or other evidence deemed reasonable to KWAPA; and

c. The timing of Landowner's implementation of the use of ground water or the termination of the use of ground water may be adjusted as necessary to comply with the rules and regulations of the irrigation district or other source of the surface water available for the irrigation of Landowner's land. Further, if Well Owner is using facilities owned, operated, or maintained by a third party, Well Owner shall be solely responsible for obtaining such permits, agreements or permission to use those facilities, for coordinating the use of those facilities and shall act in strict compliance with the rules, regulations, and other requirements of that third party.

9. Liability. Well Owner shall indemnify and hold harmless KWAPA and the district, their officers, agents, and employees from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind, and for injury to or death of a person or for loss of or damage to any property or claim for such related to or arising out of Landowner's participation in this Agreement.

10. Funding. KWAPA's obligation to pay the compensation described in section 4, above, shall be and is subject to KWAPA receiving from the Bureau of Reclamation timely payments under the Assistance Agreement between KWAPA and the Bureau of Reclamation, which provides the funding for this Agreement. KWAPA agrees that it shall exercise reasonable care in complying with the terms of the Assistance Agreement including, but not limited to, applying in a timely manner for the funds reasonably required to assist Well Owner as provided in this Agreement.

11. Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto. Provided, however, that Well Owner shall not make any assignment or transfer of this Agreement or any right or interest therein without the prior written approval of KWAPA.

12. Cooperation in Operations and Monitoring. The parties shall mutually cooperate in good faith with respect to all operations, monitoring, and reporting required under the terms of this Agreement or required by any third-party regulatory agency with jurisdiction over any portion of the use of ground water made pursuant to this Agreement.

13. Notices. Notices or other communication required under this Agreement may be provided via telephone call to the number listed below, in conversation directly between the undersigned Well Owner and KWAPA's Executive Director or his designee, or may be made in writing, delivered to the address of the party to be notified set forth below, which shall be deemed to have been duly given on the date of such personal telephone call or at the time of actual delivery of the notice to the address. Further, notice may be given by first-class mail,

postage prepaid, and addressed to the party at the address set forth below. Any mailed notice shall be deemed to have been received on the third business day following mailing.

To KWAPA: Klamath Water and Power Agency
735 Commercial Avenue
Klamath Falls OR 97601

Executive Director: Hollie Cannon
Telephone No.: 541.883.6100

To Landowner:

Street Address

City, State, Zip

Name

Telephone Number

In witness whereof, the parties hereto have executed this Agreement as of the date and year first written above.

KLAMATH WATER AND POWER AGENCY

By: _____
Hollie Cannon, Executive Director

LANDOWNER

Print Name