

AGREEMENT FOR PROVISION OF IRRIGATION WATER

THIS AGREEMENT is made this 17th day of December 2017, by and between the Central Oregon Irrigation District ("COID"), and the North Unit Irrigation District ("NUID"), and collectively ("the Districts"), both of which are irrigation districts operating pursuant to the provisions of Oregon Revised Statutes Chapter 545.

RECITALS

A. In 2015, the U.S. Fish and Wildlife Service ("USFWS") listed the Oregon spotted frog as a threatened species under the provisions of the Endangered Species Act.

B. The Districts hold water rights for the storage of water in reservoirs located near the headwaters of the Deschutes River in the State of Oregon, including Crane Prairie Reservoir and Wickiup Reservoir. The Districts' ability to store and deliver water for irrigation from said reservoirs has been severely restricted as a result of recent litigation by environmental groups against the Districts and the U.S. Bureau of Reclamation ("USBR") involving the Endangered Species Act and the Oregon spotted frog. This litigation resulted in a settlement agreement, which requires water previously stored and delivered by the Districts to be dedicated to Oregon spotted frog purposes. In addition, the settlement agreement requires that USBR consult with USFWS, which is anticipated to result in a biological opinion and incidental take statement by July 31, 2017. The settlement agreement also anticipates the completion of a Habitat Conservation Plan ("HCP") by July 31, 2019. The implementation of the settlement agreement, biological opinion, and HCP will severely limit the 50,000 acre-feet of water rights for storage and use of water from Crane Prairie Reservoir and the 200,000 acre-feet of water rights for storage and use of water from Wickiup Reservoir.

C. A significant portion of the stored water that is unavailable to the Districts for the reasons described above can be replaced with water conserved through piping of canals in COID and potentially by combining the diversions from the Deschutes River of NUID and COID into a single piped conveyance structure. In addition to conserving substantial amounts of water, piping of COID's canals and other conveyance structures will result in COID's ability to deliver water under pressure to its members, relieving individual members of the need to use on-farm pumps, and allow COID to generate hydroelectric power.

D. The Districts desire to work together to manage the currently available supply of water to mitigate the impacts of the Endangered Species Act, and to conserve water to replace the stored water made unavailable as a result of the Endangered Species Act.

Therefore, COID and NUID agree as follows:

AGREEMENT

1. COMMUNICATION AND COOPERATION.

1.1 The Districts agree to implement the Short Term Agreement made by and between them dated October 6, 2016, which provides for cooperation in the use of the available supply of water during the period from the date of the Short Term Agreement to July 31, 2017.

1.2 The Districts shall coordinate the release of water from storage and diversion of water for beneficial use. Each District shall provide notice to the other District not less than 24 hours prior to any effective change in releases from the reservoirs with the goals of maintaining minimum flows in the Deschutes River required for Oregon spotted frog habitat (as set forth in the settlement agreement described in Recital B above, and as may be required by the biological opinion and HCP referenced in Recital B above) and to deliver and divert all water available in the Deschutes River for irrigation at the Districts' respective diversion points.

1.3 The Districts shall work side by side in identifying and obtaining funding for conservation projects likely to produce conserved water for the use and benefit of the Districts.

1.4 The Districts agree that in the event that either District has a concern about the other District's use and management of irrigation water, it shall address the concerns directly to the other District and, thereafter, work with the other District to resolve the concern. Both Districts shall refrain from making disparaging public comments about the use and management of water in the Deschutes Basin by the other District and its water users.

2. WATER SUPPLY.

2.1 The terms of this section 2. Water Supply are intended to address some of the water deficiencies resulting from inability to store water as described in the Recitals above for the period of time from the date of this Agreement until the HCP is approved by USFWS and the Districts' ability to store and deliver water as provided for in the HCP is known. The Districts anticipate that pursuant to requirements set forth in the HCP, Crane Prairie Reservoir could eventually be fully dedicated to Oregon spotted frog purposes, and if so, operation of Crane Prairie and Wickiup Reservoirs, the terms of the 1938 Agreement between the Districts for the operation of the reservoirs, and the terms of this section 2 will be adjusted. Therefore, the provisions of this section 2 shall terminate on the earlier of July 31, 2019 or the time the HCP is approved by USFWS, unless extended by the written mutual agreement of the Districts.

2.2 COID shall provide or facilitate a temporary water transfer program for the partial or full idling of land and the transfer of irrigation water from land in COID made available through land idling or conservation practices from COID water users to NUID. The amount of water that may be made available through the program shall not exceed the amount of water appurtenant to 2,000 acres of land in COID and may be further limited by COID as reasonably necessary to retain sufficient irrigated land on each of COID's canals and laterals to provide the necessary rate of flow to serve the remaining irrigated land on those canals or laterals. The Districts shall seek to identify the least costly process for making the temporary transfers. NUID will pay the actual cost of the transfer, plus an amount equal to the COID's annual operating and maintenance charges applicable to the land from which the water is transferred.

2.3 As the water level in Wickiup Reservoir drops each year, COID shall release from Crane Prairie Reservoir and store in Wickiup Reservoir not less than 5,000 acre-feet and not more than 12,000 acre-feet of water for use by COID, Arnold Irrigation District ("AID"), and Lone Pine Irrigation District ("LPID") during that year. COID, AID, and LPID may use not more than 5,000 acre-feet of water from Wickiup Reservoir each year before July 1. COID, AID, and LPID may use the water released from Crane Prairie Reservoir and stored in Wickiup

Reservoir in excess of 5,000 acre feet after July 1, but limited to the quantity of water that has been stored in Wickiup Reservoir that year for their use. NUID agrees to direct the Watermaster to release said stored water from Wickiup Reservoir at such times and in such quantities as COID may request. Any portion of such water stored in Wickiup Reservoir in a given year not released from Wickiup Reservoir for COID, AID, and LPID's use prior to October 31 in that same year shall become stored water available for NUID's use, whether for winter instream flow requirements at the WICO gage or for NUID irrigation demand in the following year.

2.4 The Districts may undertake to make available for COID's use water released from storage during the early shoulder season, which is defined to mean the period of the irrigation season between April 1 and May 1, to supplement COID's diversion rights from the Deschutes River during that time period. In exchange, COID, subject to the requirements of Oregon water law and the rights of other water users, will make available to NUID water from the Deschutes River that is in excess of COID's demand during the months of July and August. There will be no payment by one District to the other for water made available pursuant to this subparagraph, as the Districts' intent is to fully utilize the water available from the Deschutes River for diversion and use by the Districts' members to the greatest extent possible.

2.5 If hydrologic conditions, such as a dry year, substantially impact the water available for storage and use, the Districts agree to meet and adjust the terms of this section 2.

3. CONSERVATION PROJECTS AND USE OF CONSERVED WATER.

3.1 COID has made preliminary studies of opportunities within its delivery system for conservation projects, such as piping of canals and other portions of the delivery system. An Executive Summary of the Preliminary System Improvement Plan was published September 19, 2016.

3.2 The Districts agree to work together to identify and obtain third-party funding for said conservation projects. COID shall retain sole authority for determining the order of priority of construction of said conservation projects and shall be solely liable for the cost of the projects that is not paid by third parties.

3.3 Many of the conservation projects provide the opportunity for the generation of hydroelectric energy. COID may incorporate hydropower components in any of said projects, and shall be solely responsible for negotiating power sales agreements, licenses, leases, or other types of agreements for the construction, operation, and maintenance of those hydropower projects, and COID shall be entitled to receive and retain all revenue generated by those projects.

3.4 To the extent that improvements made in the COID delivery system result in conservation of water that is then available for use by COID, COID agrees that NUID shall have the first option to receive 90 percent of the net conserved water. The term "net conserved water" means the amount of water actually conserved and made available based on engineering studies conducted after the project is completed (which includes completed phases of larger projects, when conserved water from such phases is available and susceptible to transfer and use by NUID), reduced by the amount of water that must be transferred instream pursuant to Oregon law. COID may retain the remaining 10 percent of the net conserved water for use by COID

members, other districts, or for other purposes. NUID shall pay to COID annually an amount equal to the same rate per acre charged by COID to its members, as determined by it pursuant to ORS 545.484. Said annual charges shall be due and payable to COID on the same dates as applicable to its members. The number of acres that NUID shall pay said charges for shall be equal to the amount of water in acre-feet provided by COID to NUID, divided by 4.0. NUID shall also pay one "account fee" annually to COID. It is the Districts' intent that the provision of said water by COID to NUID shall continue for so long as NUID is able to make beneficial use of the water for irrigation of land in NUID. COID will install measuring devices at each point where water is delivered from COID's conveyance system into NUID's conveyance system and shall provide daily flow rates from each such measuring device to NUID. Water shall be provided at a rate of 1/40th cubic foot per second for each acre of land in NUID irrigated with the water provided by COID. The Districts shall cooperate and work with each other to comply with any applicable regulations for the delivery of this water to NUID.

3.5 The Districts shall cooperate and work with each other to cause the conserved water transferred instream to be credited toward obligations imposed on the Districts to provide water instream for endangered species, and as mitigation credits for the City of Bend and other municipalities or entities that require mitigation credits. If it is beneficial to the Districts, the conserved water may also be used for instream flow in the Crooked River. NUID shall be solely responsible for the cost of compliance with regulations and permitting necessary to accomplish the provisions of this paragraph.

4. OTHER JOINT PROJECTS.

4.1 The Districts agree to work with other districts that divert water from the Deschutes River to establish a central water management office or entity with the goal of minimizing loss of water and maximizing utilization of the available water supply.

4.2 The Districts agree to work together to investigate the opportunity to obtain ownership of the North Canal Diversion Dam and to develop an operations and maintenance plan for the dam should one or more of the Districts obtain ownership of the dam.

4.3 The Districts agree that they shall cooperate in investigation of the potential to combine their facilities that divert water from the Deschutes River into a single diversion and piped conveyance structure.

5. GENERAL PROVISIONS.

5.1. Binding Effect. This Agreement is binding on and inures to the benefit of the Districts and their respective heirs, personal representatives, successors, and assigns.

5.2 Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any party without the prior written consent of the other District, which consent will not be unreasonably withheld.

5.3 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

5.11 Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

5.12 Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

5.13 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

5.14 Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

5.15 Injunctive and Other Equitable Relief. The Districts agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other District will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

5.16 Venue. Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the Districts in Deschutes County Circuit Court or Jefferson County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the Districts consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

5.17 Severability. If any provision of this Agreement is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be impaired in any way.

5.18 Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the Districts with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, between the Districts with respect to such subject matter.

THIS AGREEMENT is effective as of the date set forth above.

Central Oregon Irrigation District ("COID")

By: Carroll Penhollow
Its Board President

Date: 12-7-17

By: GHC
Its Board Secretary

Date: 12.7.17

North Unit Irrigation District ("NUID")

By: Martin Bissard
Its Board President

Date: 12/7/17

By: W. B. Smith
Its Board Secretary

Date: 12/7/17