

## **KLAMATH PROJECT DROUGHT RESPONSE AGENCY 2021 ASSISTANCE PROGRAM – NO IRRIGATION POLICY**

### **A. Program Summary**

The Klamath Project Drought Response Agency (KPDRA), was formed by an Intergovernmental Cooperation and Joint Exercise of Powers Agreement (Agreement) in 2018 to do all things necessary or incident to the maximization of water supply for the members of the KPDRA and all irrigation water users in the Klamath Reclamation Project (Project), including but not limited to, the design and implementation of conservation and management programs through the coordination, incentives, and compensation indicated in the Recitals of the Agreement to the extent permitted by the laws and regulations governing such operations.

United States Natural Resource Conservation Service and Bureau of Reclamation's forecasts for 2021 indicate that inflows to Upper Klamath Lake, Clear Lake, and Gerber Reservoir will be significantly below normal, resulting in a water supply that will not meet normal irrigation demands within the Project. The purpose of this Assistance Program (Program) is to help align Project water supplies and demand for irrigation water by providing financial assistance to agricultural producers for reducing the demand and use of the water as defined in this Policy. The KPDRA will administer the program through which qualifying producers can apply for this financial assistance. Funds for the program will be provided by a cooperative agreement with the United States Department of Interior, Bureau of Reclamation, pursuant to the Klamath Basin Water Supply Enhancement Act of 2000, P.L. 106-498, as amended by P.L. 115-270 and P.L. 116-191. The purpose of this Policy is to describe the requirements for agricultural producers to be eligible for financial assistance under the Program. The KPDRA Board of Directors has determined these requirements to be reasonable and fair. Any payment provided by this Program is not intended to compensate for the value of lost crop or the value of the use of the water which was lost by the participant.

### **B. Eligibility**

To qualify for this 2021 Assistance Program, the parcel or parcels of land designated by the Applicant with the Application form must meet all of the following criteria:

1. The parcel or parcels must be five or more contiguous acres of irrigable land in size and must have clear boundaries separating it from adjoining and adjacent irrigated land so that the district that provides irrigation water to the parcel and/or KPDRA can readily confirm the size of the parcel and that it did not receive irrigation water during this irrigation season;
2. The area of the parcel subject to payment must have been irrigated with Project surface water and produced a crop in 2018, 2019 or 2020, or participated in the 2018 or 2020 KPDRA Programs.
3. The Applicant must have paid any applicable annual charges or assessments of the irrigation, drainage, or other district in which the land is located;
4. The Applicant must warrant to KPDRA that the Applicant is legally authorized to apply for and receive funds under this program; and

5. The parcel must be: a) identified as having a water right in the Klamath Project according to the Klamath River Adjudication Amended and Corrected Findings of Fact and Final Order of Determination, or an exception filed thereto; or b) part of the irrigable area designated by a perpetual contract with the United States for water from the Klamath Project.

The Applicant may be asked to provide proof that they and/or the parcel meet all the eligibility criteria. The following lands are not eligible to participate:

1. Parcels to which water from any source except natural precipitation was applied between November 1, 2020 and October 31, 2021 (“the irrigation season”);
2. Parcels irrigated using only groundwater, in a year of normal Project water supply;
3. Federally owned lands;
4. Land in walking wetlands or other similar programs where water was applied, and no agricultural crop was produced and harvested; and
5. Parcels within a District determined by the Bureau of Reclamation to have failed to comply with the 2021 Klamath Project Bureau of Reclamation Operating Plan

### **C. Application/Qualification Process**

KPDRA will provide notice of its 2021 Programs and the availability of Applications forms for participation in the 2021 KPDRA Assistance Program by posting on its website, news releases to local media, and requests to districts and Klamath Water Users Association to post notices on their websites and physical notices in their offices. However, KPDRA or its authorized representative may modify this process at any time at its sole discretion.

Applicants shall complete and submit a 2021 Assistance – No Irrigation Program Application.

Application forms may be obtained from the offices of the Klamath Irrigation District, the Tulelake Irrigation District, and the Klamath Water Users Association; downloaded from the KPDRA website: [klamathwaterbank.com](http://klamathwaterbank.com); or by calling 541-630-0752; or by emailing [info@klamathwaterbank.com](mailto:info@klamathwaterbank.com). All information requested on the Application form must be completed and all documentation required by the Application form must be provided with the Application. Incomplete Applications may be rejected. A complete “Application” shall include:

1. The fully completed Application form;
2. A map showing the land to be entered into the 2021 Program. The map must clearly show the boundaries of the parcel. Separate, noncontiguous parcels require separate applications. If any water from any source except natural precipitation is applied to any portion of the parcel during the irrigation season, the entire parcel will be disqualified from participating in this Program. A Google map or aerial photo showing the parcel to be entered in the program clearly outlined is preferred. If Applicant participated in one of KPDRA’s 2018 or 2020 Programs with the exact same parcel, a new map is not required, but the Applicant must clearly indicate on the Application that the parcel is the exact same parcel that was included in a previous Program and identify the year of participation; and

3. An IRS form W-9 completed and signed by the person or entity to whom KPDRA will make the Program payment.

The Application must be received by KPDRA on or before 5 p.m., July 30, 2021.

Applications may be submitted:

1. In person to the office of Parks and Ratliff, PC., 620 Main Street, Klamath Falls, Oregon;
2. Email the application to [info@klamathwaterbank.com](mailto:info@klamathwaterbank.com); or
3. Mail the application to KPDRA, PO Box 1944, Klamath Falls, OR 97601 (Must be received by deadline.)

The qualified acreage will be determined by KPDRA using Geographic Information Systems mapping of the area actually irrigated in the recent past. County tax map records, district assessment records and farm agency mapping acreages often include non-crop acreage (roadways, farm building, canals, and drains) and will not be used to determine the actual area of the parcel included in the Program. The determination of qualified acreage by KPDRA shall be final and shall not be subject to challenge.

The Application form will be reviewed for completeness and reasonableness. The Applicant may be asked to provide additional information to aid in the processing of the Application. The Applicant will have 10 calendar days to respond and provide the requested information. Failure to respond may result in the Application being rejected.

KPDRA will provide a map showing the location of each proposed parcel to the district that delivers water to the parcel for the district's verification of the following information:

1. That the district delivers water to the parcel;
2. That all charges and assessments owed to the district have been paid in full; and
3. That the boundaries of the parcel are distinct so that the district will be able to periodically observe the parcel during the irrigation season to verify that it received no water except natural precipitation during the irrigation season.

Prior program restrictions on eligibility and verification requirements which had the effect of disqualifying lands from which water has been transferred have been removed from this 2021 No Irrigation Program. Nevertheless, it is fully anticipated that such restrictions may become a part of future KPDRA programs. No applicant or irrigator should rely upon the removal of this condition for participation in any future years and the KPDRA specifically reserves the right to include such conditions in future programs.

For parcels that are within the Project, but not served by a district, the verification process provided in this section and the "Payment" section, below, will be performed by KPDRA consultants or others designated by the Board of Directors.

The KPDRA Board of Directors retains the authority to reject any or all application forms where the Board, in its sole and absolute discretion, finds that the approval of an application would not sufficiently further the goals of this program.

By submitting an Application, the Applicant is deemed to represent and warrant to KPDRA and its consultants:

- a. That the Applicant has the legal right to claim and receive any proceeds from this Program that may be paid by KPDRA to Applicant for non-irrigation of the parcel described in the Application;
- b. That the information included on the Application is complete and correct, and that the Applicant and the parcel described on this Application form will comply with the criteria set forth in this Policy for participation in this program;
- c. That the Applicant agrees that neither KPDRA nor its consultants have an obligation to verify the information provided by the Applicant or to otherwise investigate, correct, supplement, or verify the information provided on or with the Application. Applicant waives any claims, counterclaims, other assertions, or defenses Applicant may now have or may hereafter discover that KPDRA or its consultants failed in any manner to independently investigate and determine that the eligibility of the Applicant or the parcel to qualify for participation in this program; and
- d. That the Applicant agrees and warrants that Applicant shall indemnify and hold harmless KPDRA, its officers, contractors, consultants, advisors, and agents from any loss or damage, including, but not limited to attorney fees and costs of suit, and from any claim or liability arising from Applicant's submittal of the Application and Applicant's participation or non-participation in this program.

#### **D. Contracts**

Contracts in the form approved by the KPDRA Board and posted on the KPDRA website will be mailed or delivered to each Applicant selected for inclusion in the program.

#### **E. Payment**

KPDRA anticipates receiving not less than \$15,000,000 for its 2021 programs; however, it is possible that the amount received may be less than this amount or substantially more. KPDRA may not know the total amount of funding available until the end of the 2021 irrigation season. KPDRA will use a portion of the funds received to administer its 2021 programs and will allocate the remaining funds across its programs in a fair and equitable manner, consistent with the Cooperative Agreement with Reclamation, and its discretionary authority. Funds allocated to this Program will be distributed, based on the total amount of funds, the number of qualified acres of land enrolled in this Program. As a result, although KPDRA may provide estimates of the timing and payment rates which might be possible under its 2021 programs, KPDRA makes no firm commitment of when payment will be made or how much money, if any, an Applicant may receive.

In November 2021, KPDRA will provide a list of the parcels initially determined to qualify for this Program to its consultants and the district that delivers irrigation water to the parcels listed for verification that no water from any source, except including natural precipitation, was applied to any part of the parcel during the irrigation season.

Following receipt of district verification and determination by the Board of the amount to be paid per acre, if any, KPDRA will process and mail the payments to the person or entity directed in the Application.

KPDRA is not responsible for the payment of taxes, assessments, irrigation district charges, or any other obligations related to participation in this program.

If KPDRA discovers that any of the information provided on the Application was not accurate, the land will be disqualified from the program and no payment will be made to the Applicant.

## **G. Other Provisions**

KPDRA has not yet received funding to make payments under this Program. KPDRA is working diligently with Reclamation to obtain funding for the 2021 Program's fiscal year. However, the receipt of funding is subject to conditions that may not be reasonably attainable or which KPDRA may determine, in its sole discretion, would be detrimental to the water users in the Klamath Project. Therefore, there may be insufficient funds or no funds available to make the payments provided by this Program to landowner who do not receive any irrigation water this year under this Program.

All decisions made by or on behalf of KPDRA will be made by its Board of Directors. Consultants will provide such assistance to the Board of Directors as it may request, however, the consultants are not authorized to make and will not make any decisions in administering the Program.

Any decision made by KPDRA or any action taken by or on behalf of the KPDRA may be appealed to the Board of Directors of KPDRA for reconsideration, which will hear such appeal after due notice at a public meeting. Any Applicant may initiate an appeal for reconsideration by written notice provided to Nathan Ratliff, Parks and Ratliff PC., 620 Main Street, Klamath Falls, Oregon 97601, legal counsel for KPDRA. Any Notice may be delivered or mailed to Counsel at said address. Any Notice must be delivered within 30 days of the date of the KPDRA decision or act that is the subject to the appeal. The Notice must describe the decision or action being appealed, provide detailed information describing the impact of the decision on the person appealing the decision, and must include the appellant's contact information including telephone number and mailing address. KPDRA may request additional information and will provide a full copy of the appeal Notice and information to the KPDRA Board of Directors. KPDRA will provide timely Notice to the appellant by telephone or United States mail of the date, place, and time of the meeting at which the Board of Directors will consider the appeal for reconsideration. Although it is the intent of KPDRA that any such hearing be informal with a goal of timely resolving the appeal for reconsideration, the person making the appeal may be represented by legal counsel and may provide additional information and witnesses at the appeal hearing. The Board of Directors will consider the information provided, shall plan decide the appeal for reconsideration, and will notify the person making the appeal of its decision.

# KLAMATH PROJECT DROUGHT RESPONSE AGENCY 2021 NO IRRIGATION PROGRAM APPLICATION

FOR LAND THAT WILL NOT BE IRRIGATED BETWEEN NOVEMBER 1, 2020 AND OCTOBER 30, 2021  
~Submit Application Form, and a new map if required, via mail, electronically, by fax, or in person at Parks & Ratliff~

**Received no later than 5 p.m. on July 30, 2021**

Submit via Mail (must be received by July 30, 2021):  KPDRA PO Box 1944 Klamath Falls, OR 97601	Submit Electronically to: <a href="mailto:info@klamathwaterbank.com">info@klamathwaterbank.com</a>  Note: If you do not receive a verification email within 48 hours, or if you have any questions please call (541) 630-0752.	Submit in person at:  Parks & Ratliff 620 Main Street Klamath Falls, Oregon
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## APPLICANT CONTACT INFORMATION

Applicant:

*(If applicant is not the owner, must provide authorization to represent owner.)*

Mailing Address:

City:	State:	ZIP Code:
Phone:	Cell:	Email:

## LEGAL OWNER OF PROPERTY / CONTACT INFORMATION

Owner *(If other than applicant):*

Mailing address:

City:	State:	ZIP Code:
Phone:	Cell:	E-mail:

## PROPERTY INFORMATION

Number of irrigable acres not irrigated: \_\_\_\_\_

I confirm that the irrigable acres have not been and will not be irrigated between November 1, 2020 and October 31, 2021: (Must Circle) Yes

Tax lot,or TID number: \_\_\_\_\_

In which of the last three years was the parcel of land shown on the map submitted with this Application (“parcel”) irrigated with surface water and produced an irrigated crop? (Circle)

2018      2019      2020

Or was the parcel enrolled in the 2018 or 2020 KPDRA Program? (circle) Yes      No

Name of district(s) that provides Irrigation water to the parcel: \_\_\_\_\_

## **WARRANTIES AND REPRESENTATIONS**

By completing and submitting this Application, Applicant represents and warrants to the Klamath Project Drought Response Agency (“KPDRA”):

1. That the Applicant has the legal right to claim and receive any proceeds from this program that may be paid by KPDRA to Applicant for the parcel;
2. That the information included on this Application and the documents submitted with this Application is complete and correct, and that the Applicant and the parcel comply with all of the criteria set forth in the Klamath Project Drought Response Agency 2021 Drought Response Program Policy for participation in this program;
3. Applicant agrees that neither KPDRA nor MBK Engineers has an obligation to verify the information provided by the Applicant or to otherwise investigate, correct, supplement, or verify the information provided on or with this Application form. Applicant waives any claims, counterclaims, other assertions, or defenses Applicant may now have or may hereafter discover that KPDRA or MBK Engineers failed in any manner to independently investigate and determine that the Applicant or the land qualify for participation in this Program;
4. Applicant agrees and warrants that Applicant shall indemnify and hold harmless KPDRA, its officers, contractors, consultants, advisors, and agents from any loss or damage, including, but not limited to attorney fees and costs of suit, and from any claim or liability arising from Applicant's submittal of the Application and Applicant's participation or non-participation in this program; and
5. Applicant is not subject to backup withholding and Applicant certifies that its social security number or tax identification number is:

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Date

### **Application Checklist**

**Make sure you have submitted:**

- Application due by 5p.m. on July 30, 2021
- Map CLEARLY marked with an outline of the parcel(s) for which you are applying. (Google Earth Map, County Tax Lot Map)

**Please submit a separate application for each non-contiguous parcel you desire to enter in this Program.**