

## **Excerpted from Exhibit “H” of the Pelton Round Butte Settlement Agreement:**

### **III. Purpose, Use, and Administration of Water Rights Fund**

- A. The Water Rights Fund shall be used to acquire or lease instream water rights, or participate in water conservation projects, each of which result in instream flows that benefit aquatic habitat (“Water Projects”). The Licensees may partner with one or more established conservation entities in the development, funding, or implementation of a proposed Water Project. The Licensees shall actively pursue opportunities for increasing instream flows and document their efforts in the annual Water Rights Fund report as provided in Section III.F.1.
- B. Water Projects will be located in the Deschutes Basin, including the Middle and Lower Deschutes River, the Crooked River, the Metolius River, and any tributaries to those river segments.
- C. In determining whether a proposed Water Project satisfies the criteria and factors listed below, the Licensees will consult with appropriate resource agencies. However, expenditures of funds from the Water Rights Fund shall not be subject to review or approval by the Governing Board, except as provided in Section III.F.3 below.
- D. Criteria and Factors for Approval of Water Projects and Fund Expenditures
  - 1. Proposed Water Projects must be consistent with Federal, State and Tribal laws and policies in effect at the time the project is proposed. Licensees shall obtain all permits and regulatory approvals required by law for the implementation of any proposed Water Project. Water Projects will be identified, approved, and funded in accordance with the criteria and factors described below.
  - 2. Funds may be used for locating appropriate rights, purchase/lease costs, title expenses, and ongoing monitoring and for conservation projects pursuant to the Conserved Water Act, ORS 537.455 et. seq., which yield legally protected instream water rights. The percentage of conserved water protected instream via a Conserved Water Act project must, at a minimum, equal the percentage of Water Rights Fund monies used to finance the conservation measures.
  - 3. Funds may not be used to acquire water rights that serve as mitigation for the impacts of groundwater development in the Deschutes River Basin, or as credit for a mitigation obligation of any person or entity other than an obligation of the Licensees associated with the PRB Project.
  - 4. Water rights acquisitions must go instream at times and locations that improve aquatic habitat values beyond existing conditions.
  - 5. Any Water Project must result in net benefit to aquatic resources. In determining whether a proposed acquisition will result in net benefit to aquatic resources, the

Licensees shall evaluate whether a project's beneficial impacts will be greater than its detrimental impacts. Such evaluations shall consider the effects of the project in conjunction with the effects of any previously completed water rights acquisition projects in the basin.

6. Acquisition of permanent water rights shall be accorded a higher priority than acquisition of temporary water rights.
7. In evaluating any potential Water Project, the Licensees shall undertake an analysis of and consider the price of comparable transactions.

#### E. Decision-Making Process

Decisions on the use of the Water Rights Fund shall be made by the Licensees and documented in an annual report. Prior to funding a Water Project, the Licensees may consult with any appropriate Implementation Committee to determine whether the proposed project satisfies the criteria and factors set forth in Section III.D. The cost of such consultation shall not be assessed against the Water Rights Fund. In no event shall approval of a resource agency or Implementation Committee be a prerequisite to a decision by the Licensees to undertake a Water Project.

#### F. Milestones and Reporting

The activities carried out under the Water Rights Fund shall be reviewed periodically as provided in this Section and in Proposed License Article [61] of the New License. Upon periodic review, the Licensees shall demonstrate progress towards achieving increased instream flows in the Deschutes and Crooked River basins.

1. Annual Report to Governing Board. The Licensees shall submit to the Governing Board for review and comment an annual report that describes the amount of payments credited to and disbursed from the Water Rights Fund. The annual report will describe: (i) progress toward water rights acquisitions; (ii) consultation efforts with resource agencies or Implementation Committees; (iii) a comparison of the prices paid for completed Water Projects with other similar projects in the Deschutes River Basin; and (iv) consistency of Water Projects with the criteria and factors described in Section III.D above. If appropriate, the annual report shall include any monitoring information collected regarding any Water Projects implemented through the Water Rights Fund.
2. Annual Report to FERC. Licensees will file an annual report to FERC describing activities of the Water Rights Fund. This report will be prepared in consultation with the Governing Board and will consist of the annual report to the Governing Board and comments by the Governing Board members, as well as any response by the Licensees to those comments.

3. Periodic Review. In 2010 and 2018, and every five years after 2018 for as long as funds in the Water Rights Fund remain unspent, the Governing Board may determine that some or all of the funds then credited to the Water Rights Fund but not yet committed or allocated to Water Projects may be made available for Resource Projects funded by the General Fund. The Governing Board's determination shall be in accordance with the decision-making process described in Section II.G above, and shall be based on: (i) a report prepared by Licensees pursuant to this paragraph; or (ii) an independent review conducted under Section IV.A.2. The report prepared by the Licensees shall describe the Licensees' progress to date in implementing Water Projects, including a summary of acquisitions made to date with fund dollars, acquisitions made by others in the Deschutes Basin, and potential upcoming projects. If the New License is not issued in 2004, the years shown above shall be adjusted accordingly.

#### G. Compliance with Laws

Notwithstanding the fact that the Governing Board shall have no authority to approve Water Projects undertaken through the Water Rights Fund, all Water Projects implemented through the Water Rights Fund must comply with applicable laws and are subject to the approval of any agency with permitting authority and/or jurisdiction over the Water Project.