

EXHIBIT H

The Pelton Round Butte Fund Implementation Plan

I. Establishment of PRB Fund

The Licensees for the Pelton Round Butte Project (“Project”), Portland General Electric (“PGE”) and the Confederated Tribes of the Warm Springs Reservation (“CTWS”), shall establish the Pelton Round Butte Fund (the “PRB Fund”) to support resource protection measures for Project-related impacts not otherwise covered by specific license conditions, including projects that enhance and improve wetlands, riparian and riverine habitats, and riparian, aquatic and terrestrial species connectivity that may be affected by the continued operation of the Project. The PRB Fund shall consist of two parts: a General Fund and a Water Rights Fund, whose separate purposes are described below in Sections II and III, respectively.

- A. Within six months after issuance of the New License, the Licensees shall establish the PRB Fund. The Fund shall be a tracking account maintained by the Licensees with all accrued interest being credited to the Fund. The total amount, excluding interest, to be credited to the Fund shall be \$21.5 million, stated in 2003 dollars, which amount will be credited to the Fund as described in Section I.B. below.
- B. The Licensees shall credit the Fund with the amounts shown below at the times shown. The amount of each transfer has been determined using an assumed Gross Domestic Product (“GDP”) deflator of 2.5% for the first four payments and 4.0% for the fifth payment, and is not subject to further adjustment for escalation, except as provided in Section I.E.

NOTE that 2005 will have an additional \$1M added to the water fund

Year	Amount (2003\$)	Amount Deposited
2005	\$3,500,000	\$3,677,000
2007	\$3,000,000	3,311,000
2011	\$5,000,000	6,092,000
2013	\$7,000,000	8,961,000
2020	\$3,000,000	5,844,000
Total	\$21,500,000	\$27,885,000

- C. Funds shall be allocated to the Water Rights Fund and the General Fund as follows:

Year	Water Fund		General Fund	
	Amount (2003\$)	Amount Deposited	Amount (2003\$)	Amount Deposited
2005	\$ 3,000,000	\$3,152,000	\$ 500,000	\$525,000
2007	--		\$3,000,000	\$3,311,000
2011	\$5,000,000	6,092,000	--	
2013	\$2,000,000	\$2,560,000	\$5,000,000	\$6,401,000
2020	--		\$3,000,000	5,844,000

Totals	\$10,000,000	\$11,804,000	\$11,500,000	\$16,081,000
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- D. Licensees will seek a water acquisition project to undertake in 2004 worth approximately \$1 million. If this project cannot be completed in 2004, the Licensees shall complete an equivalent project in 2005 or as soon thereafter as practicable. If such a project cannot be substantially completed by the date of the first deposit to the Water Rights Fund, the Licensees may, instead of completing such project, increase the first payment to the Water Rights Fund by \$1,000,000. This payment shall be disregarded in the calculations performed pursuant to Section I.E.
- E. After the Licensees complete the credit to the Fund in 2020, they shall determine the total amount that would have been credited to the PRB Fund if each payment had been adjusted to reflect the actual inflation during the period from license issuance to the date of that payment. The actual inflation rate shall be determined based on the Gross Domestic Product Implicit Price Deflator inflation index as reported by the Bureau of Economic Analysis, U.S. Department of Commerce, or any successor agency, over the time period from license issuance to the New License anniversary date in 2020.
1. If the total amount that would have been credited to the PRB Fund is *less than* \$27,885,000, then the Licensees shall credit no further amounts to the PRB Fund.
 2. If the total amount that would have been credited to the PRB Fund is *more than* \$27,885,000, then the Licensees shall, in 2025, credit the General Fund with an amount equal to the difference between \$27,885,000 and that amount that would have been so credited to the PRB Fund if each payment had been adjusted to the actual inflation rate. However, the amount of this payment shall not exceed \$2,460,000, which is the difference between the amount credited to the Fund and the amount (\$30,345,000) that would have been credited to the Fund if each payment had been adjusted using an assumed GDP deflator of 4.0%. The amount of this credit shall be escalated according to the formula in Section I.J below from 2020 to 2025.
- F. The Licensees shall credit the PRB Fund's tracking account with the amounts shown above on the anniversary of the issuance date of the New License. If the New License is not issued in 2004, the years shown above shall be adjusted accordingly.
- G. Funds credited to the tracking account but not yet spent on projects shall accrue interest, which shall be credited to the appropriate fund to be used for purposes described herein. The accrued interest rate shall be the yield in percent per year, compounded daily, on U.S. Treasury securities at a constant maturity of one year, as reported in the Federal Reserve Statistical Release H-15 (Daily Update on Selected Interest Rates for January 1), or the most recent reporting date prior to January 1 of any given year.
- H. If at the end of the license term, including any annual licenses, contributions and accrued interest remain unallocated or uncommitted to a specific project, they shall be returned to the Licensees.

- I. Section IV(B)(3)(d)(8) of the Fish Passage Plan specifies the measures the Licensees will undertake at their own expense regarding the upgrade and reactivation of existing fish passage facilities in Lake Simtustus. Any request for additional measures regarding these facilities in Lake Simtustus shall consider data from the Fish Passage Plan’s program of Test and Verification studies, including but not limited to data on disease, predation, and outmigrant movement during both Temporary and Permanent Downstream Passage, and data from the Fish Passage Plan’s Permanent Downstream Passage recruits per spawner evaluation and other pertinent information. In the event that any Party requires or requests another agency to require the Licensees to take, without the Licensees’ agreement, additional measures regarding these facilities, beyond those specified in Section IV(B)(3)(d)(8) *Upgrade and Reactivation of Existing Fish Passage Facilities in Lake Simtustus*, including to evaluate or improve passage efficiency at the Pelton skimmer; to construct or retrofit fish protection, guidance or collection facilities at Pelton Dam during the term of the new license; or to evaluate or improve the Round Butte Dam Upstream Fish Trap before volitional passage is established, the costs for such measures or evaluations that the Licensees are required to undertake or implement shall be deducted from the amount remaining unallocated or uncommitted to specific projects or yet to be contributed to the General Fund; *provided that* if the total amount remaining unallocated or uncommitted in the General Fund and yet to be contributed to the General Fund is not sufficient to undertake the required measures or evaluations, the remaining cost shall be deducted from the Water Rights Fund; and *provided further that* if the total amount remaining unallocated or uncommitted in the PRB Fund and yet to be contributed to the PRB Fund is not sufficient to undertake the required measures or evaluations, the remaining cost shall be an obligation of the Licensees.
- J. The amount, if any, to be credited to the PRB Fund in 2025 pursuant to Section I.E above, shall escalate according to the following formula:

$$AD = D \times \frac{NGDP}{IGDP}$$

WHERE:

- AD = Adjusted dollar amount as of anniversary of the issuance of the license in the year in which the adjustment is made.
- D = Dollar amount as calculated pursuant to Section I.B prior to adjustment.
- IGDP = GDP-IPD for the quarter of the year before the date of the transfer in 2020.
- NGDP = GDP-IPD for the quarter of the year before the date of the transfer in 2025.

“GDP-IPD” is the value of the Gross Domestic Product Implicit Price Deflator inflation index published by the Bureau of Economic Analysis of the U. S. Department of Commerce, or any successor agency, in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis, or any successor agency, may be substituted by the agreement of the Governing Board and the Licensees. If the base year for GDP-IPD is changed or if publication of the index is discontinued, the Licensees shall promptly make adjustments or, if

necessary, select an appropriate alternative index acceptable to the Governing Board to achieve the same economic effect.

- K. Except as provided in Section I.I, funds deposited to the Water Rights Fund shall not be used for any other purpose, unless such funds are transferred between the Water Rights Fund and the General Fund as provided in Section III.F, below.

II. Purpose, Use, and Administration of the General Fund

- A. The General Fund shall be used to provide for habitat mitigation and enhancements (“Resource Projects”) related to increasing the success of anadromous fish reintroduction at the Project and the sustainable and harvestable fishery in the Deschutes River, not otherwise covered by specific resource protection, mitigation, and enhancement (“PME”) measures identified in the new license or elsewhere in the Settlement Agreement, and not otherwise funded by the Water Rights Fund pursuant to Section III, below. Resource Projects may be associated with identified PME measures carried out pursuant to the terms of the new license or the Settlement Agreement.
- B. Resource Projects funded 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. Necessary studies designed to evaluate or monitor the potential benefits or environmental effects of the projects may comprise a part of the below-described potential projects. Resource Projects funded by the General Fund are limited to:
1. Land acquisition or lease of riparian, wetlands, and uplands. Funds may be used for locating appropriate parcels, purchase costs, purchase and title expenses, surveying, and ongoing restoration, monitoring, and management for the life of the new license.
 2. Water rights acquisition or lease. Funds may be used for locating appropriate rights, purchase/lease costs, purchase and title expenses, and ongoing monitoring, to the extent such rights are not otherwise obtained through the Water Rights Fund.
 3. Water conservation. Funds may be used 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 General Fund monies used to finance the conservation measures.
 4. Conservation easements. Funds may be used for locating appropriate parcels, establishment of easements, surveying, and ongoing restoration, monitoring and enforcement.
 5. Construction of fish passage facilities and removal of fish passage barriers. Funds may be used for private, non-federal dam and diversion removal, construction or improvement of fish passage facilities and screens, including planning, design, and

effectiveness monitoring, *provided*, however, that no General Fund monies may be used for improvement or removal of barriers at other Federal Energy Regulatory Commission (“FERC”)-licensed projects.

6. Instream habitat improvements. Funds may be used for projects that improve or enhance fish habitat such as cover, pool and riffle structure, spawning beds, and water quality, including planning, design, and effectiveness monitoring.
7. Riparian and wetland protection and enhancement. Funds may be used to protect riparian corridors and wetlands from grazing, provide for native species plantings, non-native plant species management, and erosion control, including planning, design, and effectiveness monitoring.
8. Off-Project recreation impacts. Funds may be used to protect and restore riparian corridors, wetlands, and spawning and rearing habitats that are adversely impacted by off-Project recreation use. Such projects may include planning, design and effectiveness monitoring.

C. Projects not described in the eight categories above may be funded only if (1) the Licensees include them in their proposed project recommendations to the Governing Board as described below, and (2) the proposed projects receive unanimous support from the Governing Board.

D. Criteria and Factors for Resource Project Approval and General Fund Expenditures

1. Proposed Resource Projects must be consistent with Federal, State and Tribal laws and policies in effect at the time the project is proposed. Resource Projects will be identified, approved, and funded in accordance with the criteria and factors described below.
2. Within six months after issuance of the New License, the Licensees will develop a system to evaluate potential Resource Projects. The evaluation system must be unanimously approved by the Governing Board. Without otherwise limiting the incorporation of additional criteria, the evaluation system will use the criteria set forth in Section II.B. above and the following criteria, listed in order of priority:
 - (a) Activities upstream of the Project that will support the anadromous reintroduction program by helping to achieve a self-sustaining chinook salmon population and a sustainable salmon harvest.
 - (b) Activities in the lower Deschutes River mainstem and tributaries that increase the likelihood of adult and juvenile salmonid survival as the fish pass through the Pelton Round Butte Project to and from the upper basin.
 - (c) Activities that enhance existing or reintroduced populations of resident and anadromous fish and terrestrial wildlife above and below the Pelton Round Butte Project.

3. In determining whether a Resource Project meets these criteria, the Governing Board will consider any relevant information gathered during the test and verification studies provided for under the Fish Passage Plan.
4. If passage is determined to be infeasible and is to be replaced by alternative mitigation, the Licensees shall revise the above criteria and evaluation system as necessary to be consistent with the then- applicable objectives expressed in the Fish Passage Plan and the License, and submit them to the Governing Board for approval. The revised criteria and evaluation system shall become effective upon unanimous approval by the Governing Board.
5. In determining whether to fund a Resource Project, the Governing Board shall give preference to Resource Projects that do not contemplate or require the inclusion of additional lands or property rights within the Project boundary .
6. The evaluation system must also include consideration of the following factors to reflect the feasibility of proposed Resource Projects and to give priority to projects that are more practical to implement:
 - (a) Whether the activity may be planned and initiated within one year.
 - (b) Whether the activity will provide benefits for at least the life of the license, or in the case of water right leases, for at least the length of the lease.
 - (c) Whether the activity will provide a measurable positive cost-benefit as compared to similar activities (e.g., a project that improves two miles of riparian corridor for the same cost as another project that improves only one mile of similar corridor for the same cost).
 - (d) Whether the activity will be cost-shared with other funding sources.
 - (e) The likelihood of project success and level of community support.

E. Use of Funds

1. Decisions on the use of the General Fund, including any accrued interest, will be made by a Governing Board made up of the entities described in Section II.F.
2. The following approach will be used for Resource Project proposal, review and selection:
 - Step 1: Any person or private or governmental entity, including the Licensees, may propose a Resource Project to the Licensees. In addition, the Licensees may solicit Resource Project proposals from any person or private or governmental entity.

- Step 2: The Licensees will review all Resource Project proposals in consultation with any appropriate Implementation Committee established pursuant to the Settlement Agreement, applying the criteria and factors set forth in Section II.D in accordance with the approved evaluation system. Not later than October 31 of each year, the Licensees will provide a report describing proposed Resource Project recommendations to the Governing Board for review and approval. The report will include a description of all proposed Resource Projects, an evaluation of each Resource Project, and the basis for why each Resource Project is or is not being recommended for funding. The report shall describe any determination reached by the Implementation Committee consulted, but the approval of an Implementation Committee is not required before the Licensees can propose a Resource Project to the Governing Board. The cost of any Implementation Committee review shall not be assessed against the General Fund.
- Step 3: The Governing Board will confirm that the Licensees applied the criteria correctly, propose any modifications as needed, and use the decision-making process set forth in Section II.G below to approve Resource Projects and funding.

F. Membership on the Governing Board

The Governing Board shall be comprised of eleven signatories of the Settlement Agreement, including one representative or designee from the following agencies or organizations:

1. Licensees (one representative collectively)
2. CTWS Branch of Natural Resources (“CTWS BNR”)
3. CTWS Water Control Board (“CTWS WCB”)
4. US Fish and Wildlife Service (“USFWS”)
5. National Marine Fisheries Service (“NOAA Fisheries”)
6. Bureau of Indian Affairs (“BIA”)
7. US Forest Service (“USFS”)/Bureau of Land Management (“BLM”)(one representative collectively)
8. Non-Governmental Organizations (American Rivers, Oregon Trout, Trout Unlimited, Native Fish Society, WaterWatch of Oregon [one representative collectively])
9. Oregon Department of Fish and Wildlife (“ODFW”)
10. Oregon Department of Environmental Quality
11. Oregon Water Resources Department

G. Decision-Making Process

1. Voting. Each member shall have one vote on all matters to be decided by the Governing Board.
2. Meetings. The Licensees shall convene a meeting of the Governing Board on an annual basis, or whenever requested by two or more members of the Governing Board.
3. Quorum. No action may be taken at a meeting of the Governing Board unless a quorum consisting of at least one representative of each of the following blocs of Governing Board members is present: the Licensees; CTWS (BNR or WCB); the federal agencies (USFWS, NOAA, USFS/BLM or BIA); and ODFW. However, any of these representatives may choose not to attend and notify the members of the Governing Board in writing that the Governing Board is authorized to act in the absence of the representatives providing such notice.
4. Conduct of Meetings. Meetings will be chaired by a member of the Governing Board elected annually by the members.
5. Resource Project and Funding Decisions. A negative vote, as opposed to abstention, by two or more Governing Board members is required to deny a Resource Project and funding proposal. In the event of a negative vote by two or more members, or any other dispute regarding the General Fund, any member of the Governing Board may seek dispute resolution as provided in the Settlement Agreement.

H. Resource Project Implementation

Upon approval of a Resource Project and General Fund expenditure by the Governing Board, the Licensees shall implement the Resource Project, or fund implementation of the Resource Project by another entity, in accordance with the approved terms and schedule. If a Resource Project approved by the Governing Board includes a commitment of funds for future mitigation, monitoring, or maintenance measures, such funds shall be considered to be committed as of the date of the approval by the Governing Board, but shall continue to accrue interest (which interest shall not be considered to be allocated to the Resource Project so approved) as provided in Section I.G, until actually spent in accordance with the approved terms and schedule.

I. Milestones and Reporting

The activities carried out under the General Fund shall be reviewed annually. The Licensees shall submit to the Governing Board for review and comment a written draft annual report that describes the amount of payments credited to and disbursed from the General Fund. Upon completion of review and comment by the Governing Board, the Licensees shall submit the annual report to FERC in accordance with Proposed License Article [61]. The

annual report shall include any monitoring information collected regarding any Resource Projects implemented through the General Fund.

J. National Environmental Policy Act (“NEPA”) Compliance

For any ground or habitat-disturbing activities on National Forest or BLM lands required to implement a Resource Project, the Licensees shall, unless such analysis has been conducted by the party recommending the activities, conduct an environmental analysis, using General Fund monies. The analysis shall include such procedures and analyses as are required to comply with USFS or BLM regulations in existence at the time the process is initiated. The Licensees may refer to or rely on any previous NEPA analysis for the activity to the extent that such analysis is not out of date, as determined by the appropriate land management agency. Any contractors selected by the Licensees to conduct the NEPA process shall be approved by the land management agency in advance of any work. Following scoping, the Licensees shall submit the scope of work for the environmental analysis, including, but not limited to, the range of alternatives that shall be addressed, to the appropriate land management agency.

The Licensees shall make reasonable efforts to initiate and complete the NEPA process sufficiently in advance of Resource Project implementation dates to accommodate time lines for preparation and publication of a NEPA decision by the responsible land management agency, and any administrative appeals of the NEPA decision.

K. Habitat Monitoring

Funding for any riparian habitat improvements undertaken as part of a Resource Project below the Project, will include funds to monitor condition of the riparian habitat being restored and managed and to gauge the effectiveness of such Resource Project. Monitoring programs will be determined in consultation with the Fish Committee and the Terrestrial Resources Work Group, and will be consistent with the strategies detailed in the Terrestrial Resources Management Plan. Monitoring of riparian condition may include the following parameters: vegetation species composition; bank stability, herbaceous cover; tree/juniper/shrub cover; height and diameter of trees; canopy cover; growth and physical condition of vegetation; and distribution of vegetation. Regardless of the outcome of such monitoring, the Licensees will have no ongoing obligation to maintain projects once they have been completed.

L. Compliance with Laws

Notwithstanding the affirmative vote of an agency that is a Governing Board member, all Resource Projects implemented through the General Fund must comply with applicable laws and are subject to the approval of any agency with permitting authority and/or jurisdiction over the site of the Resource Project. Such compliance will be a condition for implementing any Resource Project.

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.

IV. General Provisions

A. Administrative and Technical Support

1. The Licensees shall provide administrative support for meeting minutes, record keeping, and other PRB Fund management duties. The Licensees shall bear the cost of all reasonable administrative, legal, and overhead costs associated with the management of the PRB Fund and shall not assess any such costs against the PRB Fund.
2. The Governing Board may choose to conduct an independent review of PRB Fund activities at any time. The cost of an independent review shall be borne by the General Fund.

B. Information and Education

The Licensees and the Governing Board will collaborate with the Parties to provide public information communicating the benefits of Resource Projects and Water Projects undertaken under the auspices of the PRB Fund. The cost of providing such information to the public shall not be borne by the PRB Fund.