

## **BRYCE CANYON NATIONAL PARK WATER RIGHTS AGREEMENT**

This Agreement is made and entered into by the United States of America ("United States") and the State of Utah ("Utah" or the "State").

### **RECITALS**

A. The area of Bryce Canyon National Park lies within both the Paria River drainage (Area 89) and the Upper Sevier River drainage (Area 61).

B. Utah has initiated a statutory adjudication of water rights that includes the Paria River drainage (Area 89) entitled, "IN THE MATTER OF THE GENERAL DETERMINATION OF ALL RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE COLORADO RIVER IN KANE, GARFIELD, WAYNE, PIUTE, EMERY, SEVIER AND SANPETE COUNTIES, UTAH, AND EXCLUSIVE OF THE GREEN RIVER AND VIRGIN RIVER DRAINAGES," filed in the Sixth Judicial District, Wayne County, State of Utah, as Civil No. 435 (the "Southwestern Colorado River Adjudication"). That adjudication encompasses the majority of the area within which Bryce Canyon National Park (the "Park") is located. In October 1975, prior to the United States' joinder to that adjudication, the Utah State Engineer issued a Proposed Determination of water rights for Area 89. The United States was subsequently joined as a party to that adjudication pursuant to the provisions of 43 U.S.C. § 666 and, on December 13, 1983, filed a "MASTER STATEMENT OF WATER USER'S CLAIMS AND OBJECTIONS TO STATE ENGINEER'S PROPOSED DETERMINATION OF WATER RIGHTS" ("Master Statement") which "claims reserved rights in those portions of Bryce Canyon National Park included in the area encompassed by this adjudication." The State Engineer has not issued an Addendum to the Proposed Determination to address the claims of the United States included in its Master Statement, and the court has not issued a decree for Area 89 of that adjudication.

C. On February 21, 1926, the Utah State Engineer issued a Proposed Determination of water rights for the Sevier River and its tributaries, including the Upper Sevier River drainage (Area 61), in a statutory adjudication of water rights entitled "RICHLANDS IRRIGATION COMPANY v. WEST VIEW IRRIGATION COMPANY," filed in the Fifth Judicial District, Millard County, State of Utah, as Case No. 843 (herein the "Sevier River Adjudication"), and, on November 30, 1936, the court issued a decree in that adjudication. However, the United States was never joined as a party to the Sevier River Adjudication.

D. In order to remove any causes of present and future controversy over the use of water at the Park, the United States and Utah have conducted negotiations regarding a federal reserved water right for the Park.

E. These negotiations have resulted in the recognition of a federal reserved water right of the United States for the Park, subject to the terms and conditions set forth herein.

## **AGREEMENT**

NOW, THEREFORE, based on the mutual promises and agreements contained herein, the parties agree to the following:

1. Establishment of Bryce Canyon National Park. Bryce Canyon National Monument (the "Monument") was established on June 8, 1923 by Presidential Proclamation No. 1664, 43 Stat. 1914, issued pursuant to the Antiquities Act of June 8, 1906, 34 Stat. 225, 16 U.S.C. § 431. On June 7, 1924, pursuant to the National Park Service Organic Act of August 25, 1916, 64 Stat. 535, 16 U.S.C. § 1, Congress, in Public Law 68-227, 43 Stat. 593 (as amended by Public Law 70-374, 45 Stat. 502, dated May 12, 1928), established Utah National Park by including the lands comprising the Monument within the Park. On February 25, 1928, Congress, in Public Law 70-74, 45 Stat. 147 (as amended by Public Law 70-374, 45 Stat. 502, dated May 12, 1928), changed the name of Utah National Park to

Bryce Canyon National Park (the "Park") and added certain lands to the Park. On January 5, 1931, pursuant to Public Law 71-352, 46 Stat. 582, dated June 13, 1930, the Park was expanded by Presidential Proclamation, 46 Stat. 3042 (as amended by Public Law 71-675, 46 Stat. 1166, dated February 17, 1931). On May 4, 1931, pursuant to Public Law 71-675, 46 Stat. 1166, dated February 17, 1931, the Park was expanded by Presidential Proclamation No. 1952, 47 Stat. 2455 (as amended by Public Law 77-485, 56 Stat. 141, dated March 7, 1942)). On December 31, 1971, through Special Warranty Deed U51130 from the Utah Parks Company to the United States of America, the Park was expanded by 100 acres. The purposes for which the Monument and the Park were established include the preservation in their natural state and protection of areas containing outstanding scenic features; the preservation of areas for scientific interest and importance; the preservation of the area as a public park for the benefit and enjoyment of the people; and the conservation of "the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. § 1). The lands comprising the Park and the dates on which the lands were reserved from the public domain or otherwise acquired for Park purposes are shown in the attached Appendix A and are described in the applicable proclamations, and public laws identified herein.

2. Recognition of Federal Reserved Water Right. To fulfill the purposes for which the Park was established and subject to the terms and conditions of this Agreement, the United States has a federal reserved water right to all naturally occurring water underlying, originating within, or flowing through the Park (which includes perennial, intermittent and ephemeral streams, springs, seeps, groundwater, and other natural sources of water) that was unappropriated as of the relevant dates of reservation or acquisition of the lands now within the boundaries of the Park. The United States' federal reserved water right shall have a single priority date of June 8, 1923 for the administrative uses discussed in paragraph 3.1 below, and five separate priority dates for the in situ and instream uses discussed in paragraph 3.2 below, which priority dates shall correspond to the five dates on which the lands comprising the Park were reserved from the public domain or otherwise acquired for Park purposes: June 8, 1923, February 25, 1928, January 5,

1931, May 4, 1931, and December 31, 1971, with the priority date of a particular place of use being the date of reservation or acquisition of those lands, as shown in Appendix A.

3. Uses of Federal Reserved Water Right. The United States' federal reserved water right may be used as follows:

3.1 Administrative Uses. In the exercise of its federal reserved water right, the United States may, for administrative uses, divert no more than 184 acre-feet per year (AFY) and deplete no more than 156 AFY from within the boundaries of the Park. Such administrative uses include but are not limited to: domestic, culinary, irrigation, landscaping, and campground uses; the excavation, restoration, and preservation of buildings and ruins; road construction and maintenance; the construction, operation, and maintenance of visitor facilities; and other administrative uses that shall satisfy the existing and future requirements for the operation and protection of the Park. In addition, the United States may divert such additional amounts of water as are necessary for emergency fire suppression within the Park, and such diversions shall not be charged against the maximum annual diversions and depletions that the United States may make for administrative uses, as described in this paragraph. As set forth in Paragraph 4 herein, the water for such administrative uses shall be first satisfied under the United States' Water Right No. 61-893, a state-based appropriative right established under Utah law.

3.2 In Situ and Instream Uses. The remainder of the water reserved to the United States pursuant to its federal reserved water right shall remain in its free flowing and natural condition for in situ and instream uses (collectively "in situ uses") that shall satisfy and promote the purposes for which the Park was established. Such in situ uses include but are not limited to providing water for: riparian and wetland vegetation and ecosystems; geomorphologic processes; wildlife habitat and watering; and other uses that shall satisfy and promote the scenic, conservation, preservation, protection, recreational, and other purposes for which the Park was established.

4. Use of Water Right No. 61-893 for Administrative Uses. Water Right No. 61-893 is a decreed water right with a priority date of 1888 and a maximum annual diversion of

181 AFY. Upon execution of this Agreement, Water Right No. 61-893 shall continue to be administered under Utah law. The water for the administrative uses within the Park shall be first satisfied under Water Right No. 61-893. In the event the amount of water produced under Water Right No. 61-893 is not sufficient for such administrative uses, water may be diverted within the boundaries of the Park for such uses under the United States' federal reserved water right according to its priority date.

5. Subordination of In Situ Uses. The United States hereby subordinates the portion of its federal reserved water right held for in situ uses (but not administrative uses) as follows:

5.1 Subordination to Existing Water Rights. The United States hereby subordinates the portion of its federal reserved water right held for in situ uses to the following (collectively "Existing Water Rights"): (1) all valid existing water rights held by third parties that have been perfected or decreed and are of record in the Utah Division of Water Rights (the "Division") as of the date of the last party's signature to this Agreement (the "Effective Date"); and (2) any valid diligence claims that are submitted by third parties to the Division after the Effective Date.

5.2 Inapplicability of Subordinations. The foregoing subordinations shall no longer be operative as to any Existing Water Rights that subsequently are withdrawn, forfeited, abandoned, lost through nonuse, or otherwise terminated or reduced. The subordinations also shall not apply to or otherwise affect the portion of the United States' federal reserved water right held for administrative uses. Further, the subordinations shall not be construed as providing consent to any applications to appropriate, change, or exchange water inside or outside the Park filed with the Division after the Effective Date and shall not limit the United States' right to protest any such applications.

6. Right-of-Way Permits. The Tropic & East Fork Irrigation Company (the "Company"), of Tropic, Utah, has a permit for the operation and maintenance of an underground irrigation water pipeline and the Water Canyon Dam, located within the boundaries of the Park, authorized pursuant to Right of Way Permit No. RW 1330-14-001

issued to the Company by the National Park Service on December 10, 2013. The Town of Tropic (the "Town") has a permit for the operation and maintenance of an underground culinary water conveyance system, located within the boundaries of the Park, authorized pursuant to Right of Way Permit No. RW 1330-15-001 issued to the Town by the National Park Service on November 12, 2015. The National Park Service will continue to cooperate with the Company and the Town in the administration of these right-of-way permits, nothing in this Agreement shall affect or modify in any way these permits, or the permitting process in the future, and this Agreement shall have no effect on any rights-of-way that predate creation of the Park.

7. Relationship Between United States' Federal Reserved Water Right and Its State-Based Appropriative Water Rights. In addition to the federal reserved water right recognized by this Agreement, the United States also currently owns six state-based appropriative water rights for the Park, which are listed and summarized in the attached Appendix B (the "state-based rights").

7.1 Partial Merger of State-Based Appropriative Rights. Upon the issuance of a final, non-appealable decree in the Southwestern Colorado River Adjudication, and in any subsequent statutory adjudication including the Upper Sevier River drainage (Area 61) confirming and adjudicating the federal reserved water right recognized by this Agreement, the United States' state-based appropriative rights represented by Water Right Nos. 61-48, 61-121, 89-10, 89-11, and 89-1486, as more particularly described in the Appendix B, shall be merged into the federal reserved water right recognized by this Agreement.

7.2 Federal Reserved Water Right Number. Upon execution of this Agreement, the State Engineer shall assign a water right number in the Utah Division of Water Rights' records for the federal reserved water right recognized by this Agreement.

8. Entirety of Federal Reserved Water Right. The federal reserved water right recognized herein includes all water rights of every nature and description derived under

federal law from the doctrine of federal reserved water rights from all sources of water, both surface and underground, and includes all types and kinds of uses whatsoever, and encompasses the entire federal reserved water right held by the United States for the Park as now constituted. Absent Congressional or Presidential action, the federal reserved water right for the lands now constituting the Park shall not be enlarged, expanded, or re-quantified.

9. Issuance of Proposed Determinations and/or Addenda. For the water rights within the Park recognized by this Agreement and tributary to the Paria River drainage (Area 89), the State Engineer will prepare a Proposed Determination for such water rights consistent with this Agreement for submission to the court, and the parties hereto will cooperate to obtain an interlocutory decree. There is no active statutory adjudication in the Upper Sevier River drainage (Area 61), since the Sevier River was adjudicated in 1936. If and when a new adjudication is undertaken in this drainage area, and the United States is joined in the adjudication, for the water rights within the Park and tributary to the Upper Sevier River drainage, the State Engineer will prepare a Proposed Determination for such water rights consistent with this Agreement for submission to the court, and the parties hereto will cooperate to obtain an interlocutory decree. Subject to paragraph 10 herein, until such time that the parties are successful in obtaining such respective interlocutory decrees, this Agreement shall nevertheless remain binding on the parties.

10. Modification of Agreement. The provisions of this Agreement may be modified in writing and upon the mutual consent of the parties to this Agreement, which consent shall not be unreasonably withheld. Further, if a third party objection to this Agreement is sustained by the district or appellate courts that diminishes or limits the federal reserved water right recognized by this Agreement or if the district or appellate courts do not otherwise ratify and approve the federal reserved water right without conditions, the United States may request the initiation of good faith negotiations with the State in an attempt to address the issue or issues underlying the district or appellate courts' action and seek to resolve this matter without litigation. If the parties do not agree that the issue or issues underlying the district or appellate courts' action can be resolved



through good faith negotiations, or are not able to resolve such issue or issues following such negotiations, the United States shall have the option of voiding this Agreement, including but not limited to the quantification provisions of Paragraph 3.1, the subordination provisions of Paragraph 5.1, and the merger provision of Paragraph 7.1, upon delivery of written notice of termination to the Division.

11. Limitations on Effect of Agreement. Nothing in this Agreement shall constitute an admission, waiver, or precedent as to any party for any other federal reserved water right claim, or create any third party rights. Without limiting the foregoing, nothing in this Agreement shall be construed or interpreted to:

11.1 In any way affect any water rights of the United States other than the water rights held by the United States for the Park within the context of the Southwestern Colorado River Adjudication and/or any future statutory adjudication of water rights in the Upper Sevier River drainage (Area 61);

11.2 Establish any precedent or standard to be used for the quantification of federal reserved water rights, including the water rights of any Indian Tribe, in any other judicial or administrative proceeding;

11.3 Limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;

11.4 Restrict the power of the United States to reserve water in the future, or to acquire additional rights to the use of water under the laws of Utah;

11.5 Restrict the power of Utah or the State Engineer to allocate, administer, or distribute the waters of the State, except as expressly provided in this Agreement;

11.6 Settle other federal reserved water rights of the United States;

11.7 Provide consent to any applications to appropriate, change, or exchange water within or outside the Park filed with the Division after the Effective Date or limit the United States' right to protest any such applications; or

11.8 Limit in any way the United States' permitting, land use, administrative, or other regulatory authority, including but not limited to its authority to issue, modify, or terminate right-of-way permits or other authorizations on Park lands.



12. Protection of Federal Reserved Water Right Under State Law. The federal reserved water right of the United States, as set forth and quantified herein, shall be administered and protected under State law in the same manner as any water right originating under State law, without losing its character as, or the attributes of, a federal reserved water right as provided under federal law. Pending the issuance of interlocutory and/or final decrees in the Southwestern Colorado River Adjudication and/or any future statutory adjudication of water rights in the Upper Sevier River drainage (Area 61) confirming and adjudicating the federal reserved water right recognized by this Agreement, the United States may develop water for administrative uses under the federal reserved water right in accordance with the diversion and depletion limits set forth in Paragraph 3.1 above, provided that it gives at least 90 days prior written notice to the State Engineer before drilling a new well or otherwise developing a new point of diversion.

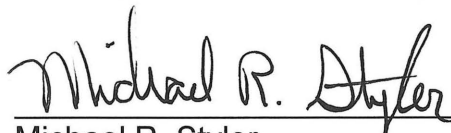
13. Duplicate Copies. This Agreement may be executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 18<sup>th</sup> day of January, 2017.

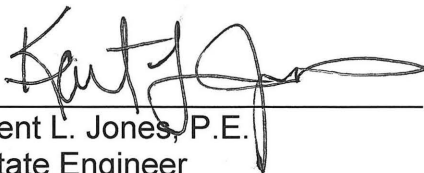
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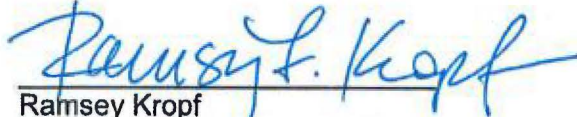


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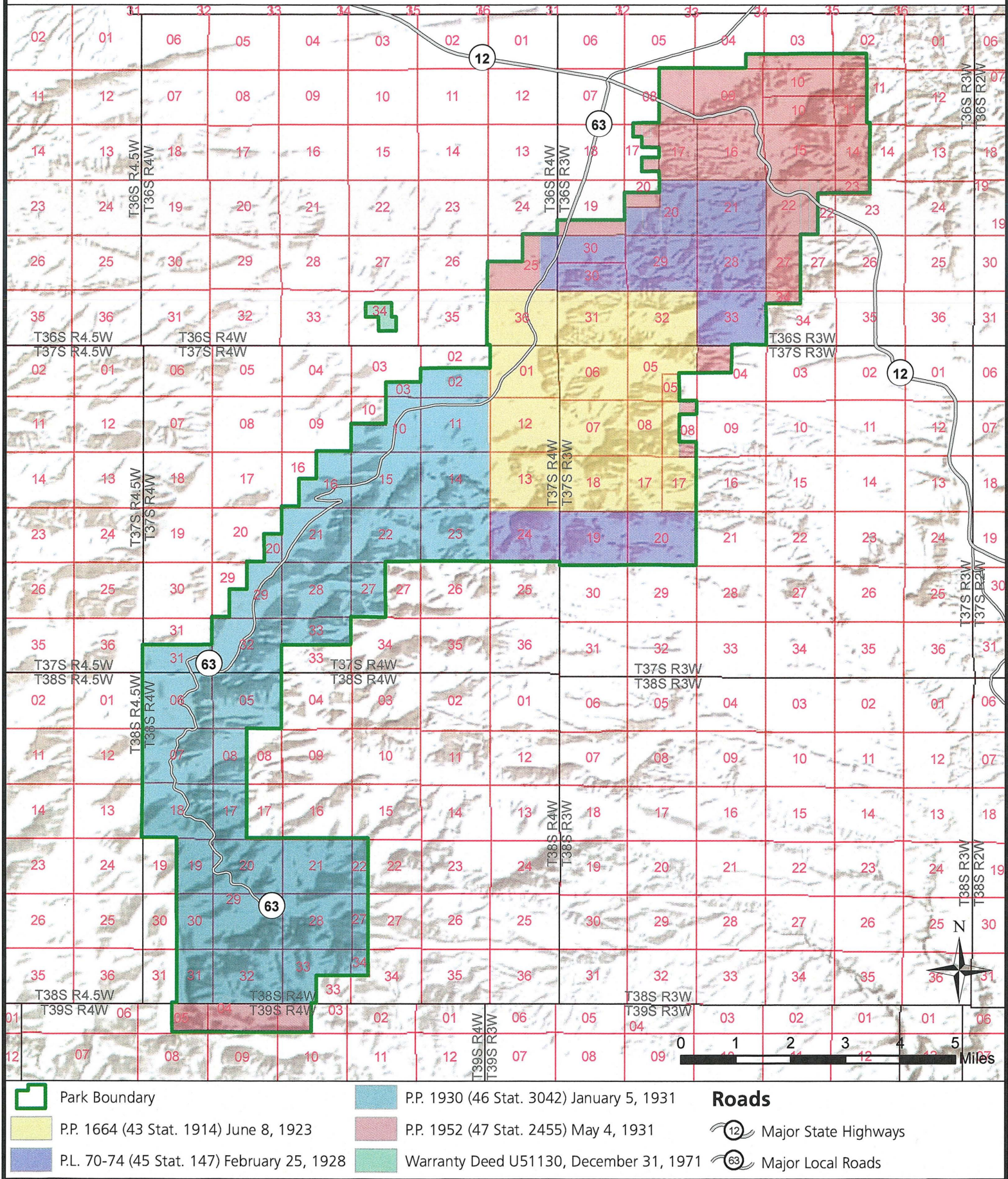
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# Appendix A

## Bryce Canyon National Park

### Land Reservations





## APPENDIX B

The United States' six state-based appropriative water rights for administrative uses in the Park as of the Effective Date.

Water Right No.	Water Source	Priority Date	Point of Diversion (Salt Lake Base and Meridian)	Place of Use	Type of Use	Period of Use	Current Diversion Rate (cfs)
61-48	Trough Spring	October 18, 1923	S. 4238 ft., W. 1288 ft. from NE Cor. Sec. 16, T37S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.05
61-121	Underground Water Well	February 09, 1951	S. 2450 ft., W. 2035 ft. from NE Cor. Sec. 36, T36S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.003
61-893	Underground Water Wells	1888	(1) S. 1636 ft., W. 368 ft. from N4 Cor. Sec. 34, T36S, R4W  (2) S. 1939 ft., W. 100 ft. from N4 Cor. Sec. 34, T36S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.25
89-10	Hopkins Spring	August 8, 1921	S. 2050 ft., W. 1415 ft. from NE Cor. Sec. 01, T37S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.0011
89-11	Shaker Spring	January 02, 1923	S. 2800 ft., W. 2120 ft. from NE Cor. Sec. 16, T37S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.2
89-1486	Yovimpa Springs	October 19, 1948	S. 564 ft., W. 168 ft. from NE Cor. Sec. 32, T38S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.0343