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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

PROVO RIVER PROJECT, UTAH



MEMORANDUM OF AGREEMENT AMONG THE UNITED STATES OF AMERICA, THE PROVO RIVER WATER USERS ASSOCIATION AND THE UTAH DEPARTMENT OF NATURAL RESOURCES CONCERNING THE ADMINISTRATION AND DEVELOPMENT OF LANDS AND FACILITIES AT DEER CREEK RESERVOIR FOR RECREATION PURPOSES

THIS MEMORANDUM OF AGREEMENT made this 4th day of January, 1971, in pursuance of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, among THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting in this behalf by the Regional Director, Region 4, Bureau of Reclamation; the PROVO RIVER WATER USERS ASSOCIATION, a Utah corporation, which operates and maintains the Provo River Project pursuant to contracts with the United States, hereinafter referred to as the Association, and the UTAH DEPARTMENT OF NATURAL RESOURCES (pursuant to Section 63-34-1 et seq., Utah Code Annotated 1953, as amended), hereinafter referred to as the Department. The parties above stated do hereby agree that the following terms and conditions shall govern the development, operation and administration of all recreational uses of Deer Creek Reservoir and certain lands related thereto comprising a part of the Provo River Project:

1. On January 1, 1971, the Department shall assume the responsibility for the development, operation, and administration of all recreational uses of the Deer Creek Reservoir and of those portions of the lands related thereto embraced within Sections 3, 4, 5, 6, 7, and 8, Township 5 South, Range 4 East, and Sections 10, 11, 14, 15, 21, 22, 23, 27, 28, 29, 32, 33,

and 34, Township 4 South, Range 4 East, Salt Lake Base and Meridian as shown on the attached Exhibit "A" and by this reference made a part hereof and hereinafter referred to as "Recreation Use Area." Provided, however, that the occupancy by the Department of the Recreational Use Areas under this Agreement shall be subordinate to the rights of the United States and the Association for all Provo River Project purposes.

2. The use of the Recreational Use Areas for recreational purposes as provided for in the preceding paragraph 1 shall at all times be subject to:

(a) That certain contract between the United States and the Association dated June 27, 1936, and all contracts between the United States and the Association amendatory or supplemental thereto.

(b) The use, operation, maintenance and management by the United States and/or the Association of the Deer Creek Reservoir and the lands, works, and facilities, related thereto for present or future reclamation.

(c) The primary right of the United States and/or the Association to control and regulate the quantities of water impounded, stored and released from Deer Creek Reservoir and to fluctuate the surface water elevation thereof and control the algae therein in their operation and management of Deer Creek Reservoir.

(d) The right of the public to fish under appropriate State regulations without charge in Deer Creek Reservoir as set forth in paragraph 29 and the use of unimproved land for public recreational purposes without charge of the lands as described

and set forth in paragraph 30, respectively, in that certain contract between the United States and the Association dated June 27, 1936.

(e) All existing agricultural leases, licenses or permits on any of said lands.

(f) All existing boat camp leases, licenses or permits on any of said lands until December 31, 1972, or the prior termination thereof.

(g) That certain contract among the United States, Association, State Road Commission of Utah and Wasatch County dated March 15, 1938, designated as Contract No. ILr-1034.

(h) The right of the United States and/or the Association, their agents, contractors, lessees or permittees, upon written notice to the Department, to remove from the lands comprising the Recreation Use Areas any and all materials necessary for the construction, operation and maintenance of the Provo River Project facilities. There is also reserved to the United States, its agents, lessees or permittees the right to prospect and carry on the development for oil, gas, coal and other minerals and the right to issue leases or permits to prospect for oil, gas or other minerals on said land under the Act of February 25, 1920 (21 Stat. 437), and acts amendatory thereof or supplementary thereto and the Act of August 7, 1947 (81 Stat. 913). The Department or its concessionaire will be reimbursed by the United States, as prescribed by the mineral leasing laws, for damages to recreational developments incurred in the exercising of any mineral rights.

3. In the development and administration of the recreational uses of the area the Department will generally follow the General Recreation Development Plan prepared by the National Park Service attached hereto, marked Exhibit "B" and by this reference made a part hereof. All development work to be undertaken by the Department or its designated agents shall be reviewed and approved by the United States and the Association prior to the commencement of construction thereof.

4. The Department may invoke charges for use of the recreation facilities when good and sufficient cause is made therefor, subject to the provisions of paragraph 2(d) hereinabove and provided that such charges have prior written approval of the United States and the Association. The Department agrees that in connection with its recreational administration, operation and maintenance of the Recreational Use Areas no portion of the shore line of Deer Creek Reservoir will be reserved for private use.

5. The Department may issue and administer licenses, permits or contracts to persons or associations for the purpose of regulating the privileges to be exercised and concession contracts under which services are made available to the public in the Recreation Use Areas. All such licenses, permits and contracts shall be submitted to the United States and the Association for their approval prior to issuance, and all instruments used for such purposes throughout said areas shall be subject to the applicable terms of this Agreement and shall contain the necessary language recognizing the primary project purposes of Deer Creek Reservoir and effecting releases and indemnifications to and for the United States and the Association, their successors and assigns and their officers,

agents and employees. The term of such licenses, permits or contracts shall not exceed the term of this Agreement. Such licenses, permits or contracts shall provide that in the event of the termination of this Agreement the United States and the Association shall stand in the stead of the Department as grantor for the remainder of the term of said leases, licenses, permits or contracts.

6. The Department shall cause all improvements located on the Recreational Use Areas to be maintained in a state of good repair, reasonable wear and tear excepted. The Department shall be responsible for the clean-up of all Recreational Use Areas and shall maintain the same free of all litter, debris, refuse and dead fish. The Department shall adopt and carry out a reasonable program to protect the soil from unnecessary erosion and the vegetation from fire, and shall keep the land and water under its recreational administration in a clean, sightly and sanitary condition. In fulfilling its responsibilities under this paragraph the Department shall comply with all standards and requirements of sanitation as prescribed by the Utah State Board of Health.

7. The Department shall, within the limits of its operation and administration of the recreation uses, make and enforce such rules and regulations for the use of the Recreation Use Areas as are necessary and desirable to protect the waters of Deer Creek Reservoir from pollution and contamination and to protect the health and safety of persons using the area and for the preservation of law and order in the interest of public safety. Provisions shall be included in all permits, licenses and contracts which will preclude pollution or contamination of the reservoir waters. The Department shall prepare and submit to the United States

and the Association at the close of each calendar year a report of the public recreation use and facilities, using annual summary report forms provided for such use by the United States.

8. The Department shall have the right to collect and retain all receipts derived from licenses, leases, permits or contracts which it issues or administers. Such receipts shall be used only for the administration, development and maintenance of the Recreational Use Areas. The Department shall submit to the United States and the Association not later than March 1 of each year during the term of this Agreement a report of all such receipts and expenditures from such receipts during the preceding calendar year. Every third year, the Department shall transfer to the United States any surplus or receipts over expenditures for the preceding three calendar years in excess of \$20,000.00, which shall be credited to the Association's repayment of the costs of construction of the project under its contracts with the United States. On termination of this Agreement any and all remaining excess of such receipts over expenditures shall be paid to the United States in full within thirty (30) days after such termination, which likewise shall be credited to the Association's repayment of said construction costs. All improvements constructed in whole or in part with expenditures from such receipts shall be and remain the property of the United States and shall become a part of the Provo River Project facilities. All improvements constructed by the Department at its sole cost or expense shall be and remain the property of the Department. The Department shall maintain such accounting records as are necessary to satisfy the requirements of this paragraph and will have those records available for inspection by the United States

and/or the Association upon request.

9. The Department shall not do or omit to do or knowingly suffer or permit to be done by others anything by which act or omission any person may be endangered or injured by the use of the Recreational Use Areas and facilities. Neither the United States nor the Association shall be responsible for any claim on account of any personal injury or property damage by reason of anything done or knowingly suffered or omitted to be done by the Department in its exercise of the privileges granted by this Agreement, and the Department shall hold the United States and the Association, their agents, servants and employees harmless therefrom. Nothing in this Agreement shall be construed or interpreted as authorizing the Department, its agents or employees to act as agent or representative for or on behalf of the United States or the Association or to incur any obligation of any kind in their behalf.

10. The term of this Agreement shall be for a period of twenty-five (25) years from the date hereof, unless sooner terminated, and may be renewed for additional periods of twenty-five (25) years, but in no event beyond fifty (50) years from the date hereof. The Department shall be given preferential consideration in negotiating a new agreement upon termination of a satisfactory fifty (50) year period of operation.

11. This Agreement shall terminate and all rights of the Department hereunder, except as hereinafter provided, shall cease

(a) Upon expiration of the term, as provided in paragraph 10.

(b) Upon the failure of the Department to observe any of the conditions, exceptions or reservations set out in this Agreement,

the United States and/or Association shall give written notice to the Department of the obligations that are in default or the provisions of this Agreement that have been violated, and the Department shall have ninety (90) days in which to correct the default or violation. Unless the Department shall have corrected such default or violation this Agreement shall terminate on the ninety-first (91st) day following service of the written notice herein provided, unless the Department is showing satisfactory evidence of progressing toward correcting the default or violation.

(c) Upon failure of the Utah Legislature to provide adequate administrative funds in any fiscal year to enable the Department to carry out its part of this Memorandum of Agreement, the Bureau and the Association, at their option, may give written notice to the Department of their intent to cancel this Agreement within ninety (90) days unless such funds are made available, and to enter into an agreement with another agency.

12. The provisions of Exhibit "C", attached hereto and made a part hereof, governing employment under Government contracts as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, shall be applicable to this Agreement. In compliance with Rules and Regulations issued under Executive Order No. 10925 the Department is hereby bound and agrees to include in each subcontract, which it shall make with a subcontractor, provisions (1) through (7) of Exhibit "C", in any contract with a concessioner who may be involved in retail sales or the furnishing of accommodations, facilities, services or privileges.

13. The Department warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Department for the purpose of securing business. For breach or violation of this warranty the United States shall have the right to annul this Agreement without liability.

14. The performance of any obligation or the expenditure of any funds by the United States under this Agreement is made contingent on the Congress making the necessary appropriations. In case such appropriation as may be necessary to carry out this Agreement is not made, the Department hereby releases the United States from all liability due to the failure of Congress to make such appropriation. Likewise, in the event the Legislature of the State of Utah fails to appropriate funds in any fiscal year to enable the Department to carry out its part of this Agreement, then the United States hereby releases the Department from all liability due to the failure of the Utah Legislature to make such appropriation, but this provision does not affect the provisions of paragraphs 9 and 11 (c) hereof.

15. Any notice authorized or required to be given to the United States shall be delivered or mailed, postage prepaid, to the Regional Director, Bureau of Reclamation, P. O. Box 11568, Salt Lake City, Utah 84111. Any notice authorized or required to be given to the Association shall be delivered or mailed, postage prepaid, to Provo River Water Users Association, 217 First Security Bank Building, Provo, Utah 84601. Any notice authorized or required to be given to the Department shall be

delivered or mailed, postage prepaid, to the Utah Department of Natural Resources, State Office Building, Salt Lake City, Utah 84114. The designation of the addressee or the address given above may be changed by notice given in the same manner as provided in this paragraph for other notices.

16. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this Agreement if made with a company or corporation for its general benefit.

17. The purpose of this Agreement is to provide for the development, operation and administration of the recreational uses by the Department of the Deer Creek Reservoir and of those portions of the lands related thereto designated herein as Recreational Use Areas, and this Agreement shall not alter, change or amend the rights and duties of the United States and the Association under the contract between them dated June 27, 1936, and the contracts between them amendatory or supplemental thereto.

18. This Agreement shall become effective on the First day of January 1971 and shall remain in force until terminated as provided in paragraph 10 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this

Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ David L. Crandall
Regional Director, Region 4
Bureau of Reclamation

ATTEST:

PROVO RIVER WATER USERS ASSOCIATION

By /s/ Frances Hunn
Secretary

By /s/ F. E. Seal
Its President

Approved:

UTAH DEPARTMENT OF NATURAL RESOURCES

By /s/ Frank Nelson
Asst. Attorney General,
State of Utah

By /s/ Gordon E. Harmston
Executive Director

By /s/ Calvin L. Rampton
Governor, State of Utah

I concur:

By /s/ Harold J. Tippetts
Director, Utah Division of Parks
and Recreation

By /s/ John E. Phelps
Utah Division of Fish and Game