

AMENDED CONTRACT

THIS AGREEMENT is made and entered into this 10th day of June, 1981, by and between the LOWER GUNLOCK RESERVOIR CORPORATION, a Utah non-profit mutual water company, hereinafter referred to as the "Corporation", and the UTAH DIVISION OF WILDLIFE RESOURCES, a body politic of the State of Utah, hereinafter referred to as "Division".

W I T N E S S E T H:

WHEREAS, the parties entered into a written contract of March 20, 1970 for the joint financial participation, construction and use of a water storage reservoir to be located on the Santa Clara River in Washington County, State of Utah, a copy of which is attached hereto and incorporated by reference herein; and,

WHEREAS, although the agreement of March 20, 1970, has been fully executed and both parties have fully performed thereunder, there is disagreement among the parties relative to the interpretation of the certain provisions of the contract and the use of 580 acre-feet of storage capacity which was in excess of the original designed capacity of the reservoir and not addressed in the original contract, and, the allocation of sedimentation losses due to the fact that sedimentation has occurred in areas of the reservoir unanticipated by the parties; and,

WHEREAS, the parties are currently involved in litigation in the Fifth Judicial District Court in and for Washington County, Civil No. 7090, in which the parties hereto seek a declaratory judgment of the Court regarding their respective rights, duties, and obligations under the above-referenced contract, which governs the operation of the reservoir and the use and release of waters therefrom; and,

WHEREAS, the Division desires to improve the fishery within the Lower Gunlock Reservoir, which requires that the surface level of the reservoir be stabilized during the late spring and early summer of each year, which stabilization

program was not part of the original contractual agreement between the parties; and,

WHEREAS, the parties desire to fully resolve their present disputes, and to provide for an improved fishery by hereby amending the existing contract. This amended contract shall supersede the above-referenced agreement, and shall hereafter control the rights, duties, and obligations of the parties and the pending lawsuit shall be dismissed upon the grounds that the dispute therein has been hereby settled.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and the dismissal of the above pending litigation, the parties mutually agree as follows:

1. Representations of the Parties.

The parties mutually agree and acknowledge that both parties have fully complied with all of the covenants and conditions contained in the agreement of March 20, 1970, regarding the funding and construction of the reservoir; securing the required approvals of the State Engineer for the segregation and change of nature and place of use; to provide the required water for the maintenance of a 1,500 acre-foot sedimentation pool, a 2,300 acre-foot fish conservation pool, and a 7,080 acre-foot irrigation pool in accordance with the allocations set forth in this agreement, for the application for and the obtaining of Federal construction grants to assist in the financing of the construction of the Lower Gunlock Reservoir; and, that neither party is in default under any of the terms and conditions of the prior written agreement in any respect.

2. Allocation of Actual Storage Space.

The reservoir as constructed has 10,880 acre-feet of storage space before siltation, which space shall be allocated between the parties as follows:

(a) The bottom 1,500 acre-feet of storage space shall be set aside as dead storage capacity for use as a

sedimentation pool, and the water stored therein shall not be available for withdrawals by either party;

(b) The Division shall have the exclusive right to the use of the 2,300 acre-feet of storage space for the maintenance of a permanent fish conservation pool, which water has been provided for by the Corporation from its vested water rights. Additionally, the Division shall have the right to utilize all of the water stored in the reservoir specifically including the sedimentation pool as set forth in subparagraph (a) hereof for fish culture purposes, subject to the Corporation's rights to withdraw its water from the irrigation pool as set forth in subparagraph (c) hereof in accordance with the needs of its shareholders.

(c) The Corporation shall have the exclusive right to use the 7,080 acre-feet of active storage space, which shall be comprised of the 6,000 acre-foot space originally allocated to the Corporation, plus all of the additional 580 acre-feet of storage capacity created through the construction of a larger reservoir plus 500 acre-feet out of the original 2,000 acre-foot sedimentation pool which pool by agreement has been reduced to 1,500 acre-feet as set forth in subparagraph (a) hereof;

3. Allocation of Existing Sedimentation Loss.

The Lower Gunlock Reservoir has been in operation approximately eight years, and during that period of time substantial amounts of sediments have been deposited within the reservoir, reducing the actual storage capacity by approximately 500 acre-feet. The parties agree to allocate the existing sedimentation loss in proportion to their allocated storage space in the reservoir. Accordingly, the Corporation shall reduce its active storage by 300 acre-feet, which will leave 6,780 acre-feet of available storage capacity. The Division shall similarly reduce its allocated storage space by 200 acre-feet, which will leave the Division with 2,100 acre-feet of available storage capacity in its fish pool.

4. Minimum Surface Elevation.

The parties agree to the establishment of a minimum surface elevation or contour line for the purpose of defining and separating the permanent dead storage pool and the fish conservation pool from the Corporation's active irrigation storage pool. The original minimum surface elevation of 3,554 feet provided for in the original contract is hereby adjusted and established at 3,548 feet above sea level. This new minimum surface elevation represents the present allocation of storage space as set forth in paragraph 2 above, as adjusted to reflect the existing sedimentation losses as allocated in paragraph 3 above. This 3,548 foot contour line is intended to insure that there will exist below that minimum contour line 1,500 acre-feet within the sedimentation pool and 2,100 acre-feet in the fish conservation pool. The water stored in the reservoir above this minimum contour line shall represent the 6,780 acre-feet of water owned by the Corporation in accordance with allocations of paragraph 2 and 3 hereof. The water stored below the minimum contour line shall represent the 1,500 acre-feet of water held in dead storage within the sedimentation pool, and, the 2,100 acre-feet of water reserved for use by the Division in accordance with the allocations of storage space and existing sedimentation set forth in paragraphs 2 and 3 above. The minimum contour line shall be subject to periodic adjustments for siltation, as provided for in paragraph 6 hereof.

5. Maintenance of the Minimum Surface Elevation.

The Corporation agrees that it will not withdraw water from the reservoir so as to lower the surface elevation below the prevailing minimum contour line as established from time to time, except that the Corporation shall be entitled to drain the reservoir in accordance with the lawful directions of the State Engineer or the State of Utah or any other governmental entity having jurisdiction over the dam itself;

provided that any water withdrawn below the minimum surface elevation established as of the date of the withdrawal in accordance with lawful instructions from the State Engineer or other such governmental entity, shall be replaced through the storage of natural flows by the Corporation within a reasonable time and without cost to the Division.

6. Allocation of Future Sedimentation Losses.

Future sedimentation losses shall be allocated to the parties in accordance with the following formula:

(a) All sedimentation actually deposited into the sedimentation pool space shall be allocated totally (100%) to the Division.

(b) Any sedimentation actually deposited into the fish conservation pool shall be shared one-half by the Corporation and the other one-half by the Division.

(c) Actual sedimentation deposited in the irrigation storage pool shall be allocated a one-third to the Division and two-thirds to the Corporation.

The parties acknowledge that these fractional shares are not in exact proportion to their actual allocated share of the reservoir's storage capacity, but they have agreed to this fractional division for the ease of administration. The actual storage capacity of the parties shall be reduced and the contour line established by paragraph 4 hereof shall be readjusted to reflect the increased actual sedimentation losses. Should the minimum elevation require adjustment, the adjusted level shall be calculated by the engineer chosen by the parties to conduct the siltation surveys as set forth in paragraph 7 hereof, and such new minimum elevation shall be set down in writing and attached as an amendment to this agreement.

7. Measuring of Future Sedimentation Losses.

Additional sedimentation will occur within the reservoir as a natural result of the operation of the reservoir and the impoundment of waters. The parties believe it generally will be desirable to conduct a sounding study at five (5) year

intervals to determine the extent of additional sedimentation encroachment and the location of the same, and thus to determine the loss of additional storage capacity, and to allocate the additional sedimentation losses between the parties in accordance with the provisions of paragraph 6 above.

Accordingly, the parties agree that the minimum elevation line established in paragraph 4 hereof shall hold for the next five years from the date hereof. Upon conclusion of the this five year period, a sounding study will be conducted by an engineer mutually acceptable to the parties. The costs thereof shall be paid 60% by the Corporation and 40% by the Division. The minimum contour line will then be adjusted as provided for herein to meet the actual conditions as determined by the sounding study.

(a) Sounding studies will then be repeated at five year intervals at the joint and agreed proportionate expense of the parties as provided above.

(b) If the parties mutually agree that such a study is not required at the end of any given five year interval, then the study for that period of time can be mutually waived; provided however, that if either party wants to have the five year study done at that time, the study will be conducted at the joint and proportionate expense of the parties as set forth above.

(c) If either party believes that sedimentation is occurring more heavily in its allocated storage space, then the entity complaining shall be entitled to request a sedimentation study to be conducted earlier than the required five year intervals, but in that event, the study shall be conducted at the sole expense of the party requesting it. If such an earlier study is made by an engineer mutually agreeable to the parties, the contour line and space allocations will be adjusted at that time and shall remain fixed at this level for the next five years or until another study is made in accordance with the terms hereof. In no event shall

the minimum surface elevation be adjusted more often than on an annual basis.

8. Stabilization.

The Division wishes to enhance its fishery in the Lower Gunlock Reservoir. The fish eggs are generally laid near the surface of the reservoir, and have a tendency to follow the water level upwards if there is any increase in the amount of water stored in the reservoir. The eggs, however, will not follow the water downward if it recedes in the reservoir, and thus if any substantial quantity of water is withdrawn during the spawning period, the eggs are left exposed to the natural elements and may not hatch. The parties therefore acknowledge that the fish in the reservoir require a relatively stabilized condition during the spawning period, which season will fluctuate annually as a result of weather conditions and water temperatures.

The parties also acknowledge that the primary benefit of a storage water reservoir is the ability to utilize water in storage during drought conditions. The parties therefore acknowledge that it is not economically practical for the corporation to be precluded from using its stored water during drought conditions.

The parties therefore agree that the Division shall, upon reasonable notice to be given by May 1st, have the right to annually designate a three week period which must fall within the time period of May 7th through June 13th of each year, and which shall in any event end as of June 13th of each year, during which time the surface elevation of the reservoir will be maintained at a stable level, subject to the following terms and conditions:

(a) During normal or wet water years, which is defined as those years when the natural inflow to the Lower Gunlock Reservoir during the May 7th-June 13th period always equals 15 cfs or more, that the Corporation may make withdrawals from the reservoir, but the outflow from the reservoir shall not exceed the total quantity of water

flowing into the reservoir from the Santa Clara River and all other sources during the agreed three week stabilization period. In other words, the Corporation shall not make withdrawals from storage (as distinguished from use of inflow) when the inflow to the reservoir from the Santa Clara River and all other sources is 15 second-feet or more.

(b) During drought conditions, or other periods of natural or manmade shortages reasonably beyond the control of either party, defined as that period of time during the May 7th-June 13th period when the inflow to the reservoir is less than 15 second-feet, then the Corporation shall have the following rights:

(i) To withdraw an amount equal to all the natural inflow to the reservoir, and in addition, the Corporation shall have the right to make withdrawals from its water previously stored in the reservoir (but only to the extent provided for herein) in order to augment the natural inflows of the stream during the selected stabilization period.

(ii) The rate at which the corporation shall make any such withdrawal from storage shall be within the sole discretion of the Corporation; provided however, that the Corporation shall not during the designated stabilization period drawdown the surface elevation of the reservoir more than a total of one and one-half vertical feet from the elevation line existing as of the start of the designated three week stabilization period.

(iii) During periods of drought when the stream is flowing less than 15 cfs, it is acknowledged that the Corporation may obtain better irrigation efficiency by storing the inflows and then releasing the natural flows, plus some stored water, to provide a larger irrigation stream during periods of use. It is thus agreed that the Corporation may store the inflow during the stabilization period. However, if such storage builds up the elevation of the reservoir above the elevation which existed at the time

the designated stabilization period starts, the drawdown from such increased storage elevation will not be more than one and one-half vertical feet below any level reached which is above the level reached at the start of the stabilization period.

Thus, the elevation of the reservoir will be noted at the start of the designated season. If the stream drops below 15 cfs, the corporation can withdraw an amount equal to the inflow, plus stored water, so long as the combined withdrawals do not lower the reservoir elevation more than 18 inches. If the natural inflow is stored, so that the elevation goes up above the elevation at the beginning of the designated period, then the eggs will be inclined to follow the water upward, and the new elevation becomes the point from which the 18 inches must be measured.

(iv) The right to make withdrawals from storage shall continue only so long as the inflow to the reservoir is less than 15 second-feet, or until the stabilization period has terminated, which in no event shall run beyond June 13th of each year. Thus if at any time during the course of the stabilization period, the inflows should return to 15 secondfeet or more, the right to make releases from storage shall cease. If the inflow shall again drop below 15 second-feet at any time during the stabilization period, the corporation shall again have the right to make releases from storage to augment the natural inflow, provided that the surface elevation of the reservoir is not drawdown below one and one-half vertical feet below the level of the reservoir when the natural inflow to the reservoir is less than 15 second-feet.

(c) Nothing contained herein shall preclude the Corporation from storing the inflow to the reservoir in excess of 15 cfs during the stabilization period for later release, even though the storage of additional water will increase the surface elevation of the reservoir.

(d) Upon conclusion of the stabilization period the Corporation shall resume normal operation of the reservoir in accordance with the needs of its shareholders and the terms and conditions of the agreement.

9. Operation of the Reservoir.

The Corporation shall pay all expenses for operation, maintenance, repair and replacement of the dam and reservoir and all appurtenant structures and facilities, and shall hold the Division free of liability of any nature whatsoever arising out of or in connection with the maintenance, operation, repair and replacement of the dam, reservoir and appurtenant structures and facilities. The Corporation shall have the right to operate the reservoir according to the needs of its shareholders, so long as the reservoir is not lowered below the applicable minimum elevation in accordance with the terms of this agreement.

Additionally, the Corporation will maintain sufficient water in storage at all times to provide the water necessary to replace evaporation, transpiration and seepage from the reservoir. Water required to replace evaporation, transpiration and seepage losses shall be in addition to the water required to maintain the fish conservation pool, less future sedimentation losses, as required by this agreement. Any water stored and not used to replace evaporation, transpiration and seepage losses, as segregated out from Application #11929, may be used for all other authorized purposes by the Corporation in accordance with its ownership interest as reflected herein.

10. Public Access.

The Corporation shall at all times provide free public access for ingress and egress to and from the dam and reservoir, and access to the entire shoreline and surface of said reservoir for fishing, hunting, boating and all other related activities. In the event the Corporation enters into an agreement with another entity to administer the land and water areas of the reservoir, said agreement shall contain

the language to permit the aforementioned free access to the shoreline and surface areas of the reservoir. In addition, several free public parking areas shall be provided contiguous to the reservoir, and their shall be no charge for the use of minimal facilities such as garbage cans and sanitary units which may be provided in other than major developed areas.

11. Costs and Attorney's Fees.

In the event either party defaults in the performance of the covenants and conditions herein contained, the defaulting party hereby agrees to pay all costs incurred in the enforcement of this agreement, including a reasonable attorney's fee, whether such enforcement comes through litigation or otherwise.

12. Notice.

Any notice to be given hereunder shall be given to the parties at the following designated addresses:

Lower Gunlock Reservoir Corporation
c/o Rudger McArthur
St. George, Utah 84770

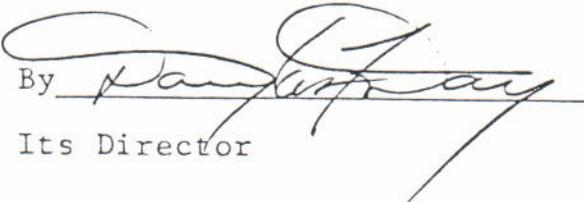
Division of Wildlife Resources
1596 West North Temple
Salt Lake City, Utah 84116
Attention: Don Andriano

13. Binding Effect.

The foregoing constitutes the full and complete agreement by and between the parties, and shall supersede all prior or oral or written agreements or representations of the parties, and shall specifically supersede a written agreement between these parties of March 20, 1970, and shall be binding upon the parties hereto and upon their heirs, successors, administrators and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first set forth above.

UTAH DIVISION OF WILDLIFE
RESOURCES,

By 
Its Director

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES,

By *John E. Hamrick*
Its Executive Director

APPROVED AS TO FORM:

ATTORNEY GENERAL, STATE OF UTAH,

By *Michael M. Quirely*
Its Assistant Attorney General

LOWER GUNLOCK RESERVOIR
CORPORATION,

By *Paul Martin*
Its President