

AN AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
AND THE
CENTRAL UTAH WATER CONSERVANCY DISTRICT
FOR THE SHARING OF COSTS
PURSUANT TO SECTION 204 OF THE
CENTRAL UTAH PROJECT COMPLETION ACT

PREAMBLE

This Agreement is made this 11th day of August, 1993, pursuant to Section 204 of the Central Utah Project Completion Act (Titles II through VI of Public Law 102-575, 106 Stat. 4605, Oct. 30, 1992), hereinafter "the Act", between the United States of America, hereinafter "the United States", acting through the Secretary of the Interior, hereinafter "the Secretary", and the Central Utah Water Conservancy District, a water conservancy district under the laws of the State of Utah, and particularly under the Water Conservancy Act, Utah Code Ann. § 17A-2-1401, et seq. (1991), hereinafter "the District".

ARTICLE I. EXPLANATORY RECITALS

Whereas, the Act amends the Act of April 11, 1956 (Pub. L. 84-485, 70 Stat. 105) to authorize additional appropriations for the completion of certain features of the Central Utah Project; and,

Whereas, the Act provides that funds expended by the District on studies prior to the execution of this Agreement shall be credited towards the District's cost sharing obligations required by the Act; and,

Whereas, under the Act, the Secretary is directed to retain responsibility for implementing the Act, and is authorized and directed, under certain conditions, to contract with the District to plan, design, and construct certain features authorized in the Act; and,

Whereas, pursuant to Section 204 of the Act, the Secretary is authorized and directed to execute an agreement with the District which binds the District to provide annually such sums as may be required to satisfy the non-Federal share of the separate features authorized and approved for construction pursuant to the Act; and,

Whereas, the Act provides that the District shall, under the conditions specified in the Act, complete the planning, design and construction of the facilities identified in the Act in lieu of the work being carried out by the Secretary; and,

Whereas, the Utah State Legislature has enacted a Joint Resolution committing the State and the District to meet future cost sharing obligations for approved features;

NOW, THEREFORE, it is agreed as follows:

ARTICLE II.

DEFINITIONS

Where used in this Agreement:

- A. "construction" shall mean the significant commitment of resources for actual work on Project features, such as final design work after a feature has been approved for construction by the Secretary, significant preliminary land acquisition, and excavation of, or placing concrete on, Project features.
- B. "DPR" shall mean the final Definite Plan Report required by Section 205 of the Act, which shall consist of the 1964 Definite Plan Report for the Bonneville Unit of the Central Utah Project, the 1965 addendum, and the May 1988 Draft Supplement, as amended by the District to incorporate changes to the Project required by the Act, including a revised allocation of Project costs.
- C. "Federal funds" shall mean funds provided by the Secretary as appropriated by Congress and any interest earned on such funds prior to expenditure by the District.
- D. "fiscal year" shall mean the fiscal year of the United States Treasury as defined by 31 U.S.C. 1102.
- E. "NEPA" shall mean the National Environmental Policy Act (43 U.S.C. 4321 et seq.).

- F. "the parties" shall mean the District and the Secretary.
- G. "Project" shall mean the Central Utah Project.
- H. "Repayment Contract" shall mean the contract between the United States and the District dated December 28, 1965 (Contract No. 14-06-400-4286) and the supplement thereto dated November 26, 1985.
- I. "Secretary" shall mean the Secretary of the Interior, or a designated representative.
- J. "year" shall mean the calendar year.

ARTICLE III. PRIOR CONTRACTS

A. The rights and obligations of the parties under this Agreement are in addition to those provided for in the Repayment Contract or as said Repayment Contract may be further supplemented or amended, and nothing herein shall be interpreted as changing or negating anything in said Repayment Contract.

B. Upon completion of each Project feature, the Secretary or his designee shall transfer operation and maintenance responsibilities for that feature to the District pursuant to the provisions of the Cooperative Operation and Maintenance Agreement dated December 29, 1986 (Contract No. 7-07-40-R400) and the Repayment Contract.

ARTICLE IV. TERM OF THE AGREEMENT

This Agreement will become effective on the day and year set forth in the Preamble above and shall continue until modified or superseded by the parties or until the Secretary, after consultation with the District, has declared in writing that the Project is substantially complete.

ARTICLE V. ALLOCATION OF FUNDS

A. With regard to the Federal funding of studies authorized by Title II of the Act:

- (1) the Secretary shall provide not more than 50 percent of the annual funding towards completion of the studies identified in Sections 202(a)(2), 202(a)(3)(A), 202(a)(4), 205(a)(3), 207(c) and (d), and 100 percent of the costs

of the study in Section 202(a)(5); the remainder of these costs shall be paid concurrently by the District;

(2) the Secretary shall provide 65 percent of the annual funding towards completion of the studies authorized in Sections 205(a)(1) and (2); the remainder of these costs shall be paid concurrently by the District;

(3) the Federal share of the District's authorized expenditures on the studies identified in paragraphs (1) and (2) above prior to the execution of this Agreement and the agreement required by Section 205(b) of the Act will be reimbursed in the form of credits against the District's share of annual budgeted expenditures as authorized in Section 204 of the Act; provided that such credits are contingent upon receipt by the Secretary of a complete accounting for such expenditures;

B. With regard to Federal funding for construction of the features authorized in Sections 202 and 203 of the Act:

(1) the Secretary shall not provide Federal funds for construction of any feature until the DPR, feasibility studies, and all environmental documentation undertaken to comply with the NEPA for the feature have been approved, in writing, by the Secretary;

(2) The Secretary shall not provide Federal funds for the construction of any feature until the District provides written assurances, acceptable to the Secretary, that it will provide annually such sums as may be required to satisfy the total non-Federal share necessary to complete the feature;

(3) the District shall pay 35 percent, concurrently with the Federal share, of the total reimbursable costs of the design, engineering, and construction of the Project features authorized in Sections 202 and 203 of the Act; provided that, with respect to the facilities specified in Section 202(a)(6) of the Act, the District shall pay 35 percent of the costs allocated to irrigation beyond the ability of the irrigators to repay.

C. With regard to Federal funding for implementation of the conservation measures authorized in Section 207(b) of the Act:

(1) the Secretary shall provide funding for the implementation of the conservation measures only after the Secretary has approved the Water Management Improvement Plan referenced in Section 207(b), and any required supplement, in writing;

(2) the Secretary shall provide not more than 65 percent of the annual funding towards implementation of the conservation measures required by Section 207(b); the remainder of these costs shall be paid concurrently by the District.

D. Subject to the terms of this Agreement, the agreement required by Section 205(b) of the Act, and Federal legislation enacted subsequent to the Act, the Secretary will comply with Section 201(d) of the Act.

E. The Secretary agrees that annual budget proposals submitted to the Office of Management and Budget will not include the Secretary's oversight, administration, approval and trust responsibilities under the Act as part of the cost ceilings authorized in the Act.

F. If the Secretary finds that the District is not in compliance with this Agreement, all Federal fish, wildlife, recreation and environmental laws, or the Act, the Secretary will notify the District, in writing, of the specific reasons why the District is not in compliance, and the District shall, within 30 days, either come into compliance, or present a plan of action to come into compliance, that is acceptable to the Secretary. If at the end of 30 days, the District has not received written notification from the Secretary that it is in compliance, or that it has developed a plan acceptable to the Secretary, the District will immediately cease to obligate, expend, or borrow against Federal funds provided pursuant to this Agreement. When the District is subsequently in compliance, the Secretary shall issue a written notice of compliance. Upon receipt of the Secretary's written notice of compliance, the District may again obligate, expend, or borrow against Federal funds.

G. The Federal share of the total cost of the features authorized by Sections 202 through 207 of the Act shall not exceed a total ceiling of \$326,038,000. The available cost ceiling in each fiscal year shall be calculated by subtracting the previous fiscal year's appropriation from the previous fiscal year's available cost ceiling and adjusting the difference by the appropriate cost indices. The available ceilings for each authorization referenced in title II of the Act shall be calculated separately. The Secretary shall calculate the available cost ceilings and report them to the District by December 15th of each year.

ARTICLE VI.

FUNDING

A. Federal funds shall not be made available, nor shall the District obligate, expend, or borrow against such funds to begin construction of features authorized under Title II of the Act until:

(1) analyses to determine the feasibility of the separate Project features for which a feasibility study is required under the Act have been approved and accepted in writing by the Secretary; and,

(2) for the features in Section 202(a)(1) and (6), the DPR has been approved and accepted in writing by the Secretary; the Secretary may withhold approval of the DPR only on the basis of the inadequacy of the document, and specifically not on the basis of the findings of its economic analyses; and,

(3) the requirements of the NEPA (43 U.S.C. 4321 et seq.) have been satisfied; and,

(4) for the features in Sections 202(a)(1) and 203(a)(1) through (4) of the Act, the District submits a plan to prevent any harmful contamination of the waters associated with the Project from selenium or other toxicants, which has been developed with, and approved in writing by, the United States Fish and Wildlife Service; and,

(5) For features identified in Sections 202(a)(1)(A), 202(a)(3)(B), or 203(a)(1) through (4) of the Act, the binding contracts specified in sections 202(a)(1)(C), 202(a)(3)(E), and 203(c) of the Act have been executed.

B. In the event that Federal funds are not expended in the fiscal year in which they are made available to the District, such funds shall become a part of the District's budget for the succeeding fiscal year, provided that, in no event shall any Federal funds carried over from preceding fiscal years be deemed to be a part of the District's non-Federal cost-share amount in any fiscal year.

C. The District shall maintain a separate interest-bearing account in a Federally-chartered bank exclusively to fund the activities governed by this Agreement. Immediately upon receipt, the District shall deposit all Federal funds associated with this Agreement into the account. The District shall deposit the non-Federal cost share amounts specified in Article V of this Agreement into the same account. The District may withdraw Federal funds from the account only if it concurrently withdraws non-Federal funds in the appropriate cost-share amount specified in Article V of this Agreement. Interest accrued on the account shall be divided pro-rata based on the

amount and timing of the Federal and non-Federal deposits. Interest accrued on the Federal funds shall be considered part of the Federal cost share amount. The District may draw upon the account only to fund the activities authorized in Sections 202 through 207 of the Act, and only in accordance with the budget approved by the Congress.

ARTICLE VII. CONTINGENCIES

A. Federal funds shall be provided to the District only in accordance with appropriations of the Congress of the United States made pursuant to the Act. The parties agree that, notwithstanding the existence of this Agreement, the Secretary's obligation to provide Federal funds to the District is contingent upon the Congress making appropriations pursuant to the authorizations in the Act.

B. Notwithstanding any other provision of this Agreement, the Secretary shall not provide Federal funds to the District until the District and the Secretary have executed an agreement in accordance with Section 205(b) of the Act.

ARTICLE VIII. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this Agreement shall apply to and bind the successors and assigns of the parties, but no assignment or transfer of this Agreement or any part or interest herein shall be valid until approved by the Secretary.

ARTICLE IX. THIRD PARTY CLAIMS

The District agrees that it will not seek reimbursement from nor sue the United States nor any office, agent, or employee thereof, for expenses incurred in defending third party claims for personal injury, death, or property damage arising out of the District's own actions or omissions.

ARTICLE X. CONTRACTS WITH THIRD PARTIES

The United States shall not be a party to or obligated in any manner by contracts entered into between the District and other parties, except as provided in this Agreement. The District is the responsible authority, without recourse to the Secretary, regarding the settlement and satisfaction of all subcontractual and administrative issues arising out of the subcontracts the District awards in support of the authorizations of the Act and the requirements of this Agreement.

ARTICLE XI.

NOTICES

Any notice, demand, or request regarding this Agreement shall be deemed to have been delivered when mailed, postage prepaid, or delivered directly, in the case of the United States, to:

Secretary of the Interior
ATTN: Assistant Secretary - Water and Science
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

and in the case of the District, to:

General Manager -
Central Utah Water Conservancy District
355 West 1300 South
Orem, Utah 84058

The designation of the addressees or addresses given above may be changed by notice given in the same manner as provided in this Article for other notices.

ARTICLE XII.

OFFICIALS NOT TO BENEFIT

No member of, or delegate to, Congress, or official of the District, shall be admitted to any part or share of this Agreement, or any benefits arising from it except than as a water user or landowner within the Project in the same manner as other water users or landowners within the Project.

ARTICLE XIII.

AMENDMENT/MODIFICATION

This Agreement may be modified or superseded only upon mutual written consent of the parties.

ARTICLE XIV.

SEVERABILITY

If any provision of this Agreement shall, for any reason, be determined to be illegal or unenforceable, the parties, nevertheless, intend that the remainder of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth in the Preamble above.

Central Utah Water
Conservancy District

United States of America

By Bary D. Palmer
Chairman, Board of Directors

By Richard J. Thompson
for Assistant Secretary
for Water and Science

Attest:

Don A. Christensen
Secretary