

**UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
MONTANA AREA OFFICE**

CONCESSION AGREEMENT

**FOR THE DEVELOPMENT, OPERATION AND MAINTENANCE
OF A
CONCESSION OPPORTUNITY AT
LAKE ELWELL**

**LOWER MARIAS UNIT
PICK-SLOAN MISSOURI BASIN PROGRAM
LIBERTY COUNTY, MONTANA**

TABLE OF CONTENTS

1. TERM.....	2
2. SPECIAL CONDITIONS.....	2
A. Concession Site	2
B. Fees	2
C. Gross Revenues	3
D. Use and Financial Data.....	3
E. Record Keeping	3
F. Required Services	3
G. Authorized Services	4
H. Operating Season.....	4
I. Rate Schedules	4
3. RECLAMATION PROVIDED IMPROVEMENTS	4
A. Facilities	4
B. Inspection.....	5
C. Facility Ownership.....	5
D. Property Identification.....	5
4. CONCESSIONAIRE PROVIDED IMPROVEMENTS	5
A. Concessionaire Property	5
B. Improvements	6
C. Property Removal	6
5. LIMITATIONS	6
A. Plan Approval.....	6
B. Additional Services.....	6
C. Assignment	7
D. Concessionaire Occupancy.....	7
E. Equipment Storage.....	8
F. Construction Schedules.....	8
G. Right of Entry	8
H. Damages	8
I. Suspension	8
J. Exclusive Use	8
K. Seasonal Use.....	8
L. Concessionaire Livestock	9
M. Visitor's Pets and Livestock.....	9
6. CONCESSIONAIRE OPERATION AND MAINTENANCE RESPONSIBILITIES	9
A. Annual Operating and Maintenance Plan.....	9
B. Concessionaire Responsibilities	9

7. RECLAMATION OPERATION AND MAINTENANCE RESPONSIBILITIES	10
8. TERMINATION	11
A. Termination	11
B. Voluntary Termination	11
C. Property to be Vacated.....	11
D. Service of Written Notice.....	12
E. Interim Operation.....	12
9. COMPENSATION.....	12
A. Just Compensation.....	12
B. Agreement Expiration or Termination Where Operations Are To Be Continued.....	12
C. Agreement Expiration or Termination Where Operations Are To Be Discontinued ...	13
D. Agreement Termination for Default for Unsatisfactory Performance.....	13
10. INSURANCE AND BONDING	13
A. Indemnification.....	13
B. Insurance.....	13
C. Bond.....	14
11. GENERAL CONDITIONS	14
A. Public Access	14
B. Non-Exclusive Use	14
C. Compliance.....	15
D. Hazardous Materials.....	15
E. Accident Reporting	16
F. Amendment.....	16
G. Permissive Water Use	16
H. Site Environment.....	16
I. Safety Program.....	16
J. Pest Control	16
K. Signs	17
L. Legal Effect of the Agreement	17
M. Risk.....	17
N. Advertising	17
O. Current Address.....	17
P. Incorporation of Section Two - Scope of Work, of the Prospectus	18
Q. Equal Opportunity Requirements	18
12. COVENANT AGAINST CONTINGENT FEES	19
13. HISTORIC AND ARCHEOLOGICAL VALUES.....	19
14. OFFICIALS NOT TO BENEFIT	20

EXHIBITS

- Exhibit A Location Map
- Exhibit B Bureau of Reclamation Concessions Management Policy & Directives and Standards
- Exhibit C Reclamation Provided Buildings and Improvements
- Exhibit D Montana Department of Fish, Wildlife and Parks Provided Buildings and Improvements
- Exhibit E Memorandum of Understanding Between the Bureau of Reclamation and Montana Department of Fish, Wildlife and Parks
- Exhibit F Boat Dock Standards
- Exhibit G Section 2 - Scope of Work

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This Concession Agreement (Agreement) made this 9th day of May, 2003, pursuant to the Act of Congress dated June 17, 1902 (32 Stat 388) and acts amendatory thereof, or supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, is entered into by and between the United States of America, Bureau of Reclamation, hereinafter referred to as "Reclamation", represented by the officer executing this Agreement, and Sarah A. Oehlke, and Janice A. Oehlke, hereinafter referred to as the "Concessionaire":

Witnesseth That:

WHEREAS, Lake Elwell is administered by Reclamation for flood control, irrigation, fish and wildlife, recreation, and municipal and industrial benefits; and,

WHEREAS, Reclamation has determined that certain facilities and services that are necessary and appropriate for the public use and enjoyment of Lake Elwell should be provided; and,

WHEREAS, Reclamation desires the Concessionaire to operate, maintain and supply certain facilities and services for the public use and enjoyment of Lake Elwell, at reasonable rates, under the general administration and regulations of Reclamation; and

WHEREAS, the Concessionaire desires to provide the operation, maintenance and supply of such facilities and services for the public use and enjoyment of Lake Elwell:

Now, Therefore, pursuant to the authority contained in Reclamation Law, other pertinent Federal Laws, Executive Orders, rules and regulations, and Reclamation Policies and Directives and

Standards, in effect now or as may be modified or amended in the future, Reclamation and the Concessionaire agree to enter into this Agreement in order to provide concession-related facilities and services to the public at Lake Elwell. The parties hereby agree to adhere to and abide by the terms and conditions set forth in the following Articles.

1. TERM

The term of this Agreement shall commence on May 9, 2003 and shall expire at midnight on December 31, 2013. This Agreement shall not be renewed. Should Reclamation determine that continued commercial services are necessary and appropriate, such business opportunities shall be advertised for public competition and a new concession agreement issued.

2. SPECIAL CONDITIONS

A. Concession Site. Subject to the terms and conditions specified in this Agreement, Reclamation provides to the Concessionaire approximately 29.1 acres of land and water area for the operation of a public service concession at Lake Elwell. The concession site is located in the NE 1/4, Section 30, T30N, R4E, as shown in **Exhibit A**, attached hereto, and is commonly known as Tiber Marina. No other commercial or private entity shall be permitted to provide concession services within the designated concession site unless the Concessionaire declines to offer additional services as may be proposed by Reclamation. In addition, this Agreement affords the Concessionaire the non-exclusive right to operate temporary, mobile concession facilities and services at other Lake Elwell developed sites.

B. Fees.

1) The Concessionaire agrees to pay to Reclamation an annual franchise fee for use of the Concession site and Reclamation provided buildings and improvements as follows:

- 2% of gross revenues; and,
- A minimum, advance, non-refundable annual fee of \$500, regardless of gross revenues.

Except for the first year of operation, the annual \$500 minimum fee will be due and payable to Reclamation by January 31, of each year of the Agreement. The franchise fee for the first year of operation is waived in its entirety. The balance of the annual fee (gross revenues x appropriate %, minus minimum advance fee), shall be due and payable by April 20, of the year following the first year of operation. Therefore, the first annual franchise fee shall be due in its entirety on April 20, 2005.

2) Late Payment:

a) Late Payment Interest Charge: The Debt Collection Act of 1982 requires the assessment of a late charge if payment(s) is not received within thirty (30) days of the due date. Payments received after the thirty (30) day period will accrue daily interest at five percent (5%) per ANNUM from the due date through the date of payment.

b) **Administrative Charge:** The cost of handling the delinquent account will be assessed if the payment becomes more than sixty (60) days past due and again if it becomes over ninety (90) days past due.

c) **Penalty Charge on Delinquent Account:** An assessment of five percent (5%) per ANNUM penalty charge will be made for each day the payment is delinquent if the debt becomes ninety (90) days past due.

C. Gross Revenues. Gross revenues shall mean any and all revenues received from all concession operations under the terms and conditions of this Agreement, excepting the sale of hunting and fishing licenses, sale of postage stamps, and gasoline sales tax.

D. Use and Financial Data. The Concessionaire shall submit an Annual Financial Report to Reclamation by April 20, of each year reflecting concession operations for the previous calendar year (January 1 - December 31). Unless Reclamation provides the Concessionaire with a specific reporting form and format, the report will list, at a minimum, the gross revenues received from all operations related to the concession operation, by operation; all expenses incurred by the Concession operation, by operation and net income of the concession operation, by operation. The Concessionaire shall also report monthly visitation rates including the number of campsites rented and occupied. All reports shall be typed, and shall be dated and signed by the Concessionaire. Reclamation may also require additional levels of financial reviews of the Concessionaire's books as may be described within Reclamation's Concessions Management Policy and Directives and Standards (**Exhibit B**). Such additional financial reviews are at the Concessionaire's expense.

E. Record Keeping. Reclamation and the Comptroller General of the United States, or any of their duly authorized representatives, shall at any time up until the expiration of five (5) calendar years after the expiration of this Agreement, maintain access to and the right to examine any of the Concessionaire's pertinent books, documents, papers, and records, including Federal and State income tax returns (collectively called "documents"), and such proprietary or affiliate companies of the Concessionaire.

F. Required Services. The Concessionaire is required to provide the following services under the terms of this Agreement:

- 1) Gasoline and motor oil sales.
- 2) Groceries, snacks and sundries appropriate for the types of recreation use occurring at Lake Elwell.
- 3) Non-alcoholic beverage sales.
- 4) Tourist and directional information to the public.
- 5) Fishing tackle and supplies.
- 6) Camping and day use facilities.
- 7) Camping and day use supplies.
- 8) Courtesy boat dock.

G. Authorized Services. The Concessionaire is authorized, but not required to provide the following visitor services during the term of this Agreement:

- 1) Boat rentals.
- 2) Photo and film supplies.
- 3) Prepared food (Reclamation must be provided with Health Inspection Compliance reports.)
- 4) Liquor, beer and wine, subject to Montana state licensing requirements.
- 5) Interpretive materials (books, postcards, posters, photographs).
- 6) Boat launching, for a fee, when specifically requested.
- 7) Boat docks (up to 25)
- 8) Propane sales.
- 9) Seasonal boat and trailer storage.
- 10) Fishing and hunting licenses, subject to approval of the Montana Department of Fish, Wildlife and Parks.
- 11) Short-term cabin rentals.
- 12) Development of additional camping sites.
- 13) Pay Phone Service.

H. Operating Season. The minimum recreation season shall be May 1 through the Labor Day holiday weekend each year. Services shall be available from 8 AM to 6 PM a minimum of five (5) days a week, Thursday through Monday, and the Memorial Day, Independence Day, and Labor Day holiday weekends. Additional services may be provided and dates and times of services may be expanded with prior Reclamation written approval.

I. Rate Schedules. All rates and services charged to the public by the Concessionaire for camping, boat docking, and dry storage shall be subject to review, regulation and written approval by Reclamation prior to such rates and prices being instituted. By March 1 of each year, the Concessionaire shall provide such a listing of prices and charges to Reclamation. In addition, Reclamation reserves the right to review and approve the quality, type, and price of any and all merchandise sold at concession authorized sites.

3. RECLAMATION PROVIDED IMPROVEMENTS

A. Facilities. Reclamation provides to the Concessionaire at the concession site, in good working condition, those items shown in the attached **Exhibit C**. Buildings and improvements provided by the Montana Department of Fish, Wildlife, and Parks (MDFWP) are provided on **Exhibit D**. Should an item described in Exhibit C be damaged, destroyed, or rendered unserviceable due to negligence by the Concessionaire, Reclamation may require the Concessionaire to replace the item at the Concessionaire's expense. The Concessionaire shall immediately report the damage, destruction or unserviceable condition of any Reclamation provided improvements to Reclamation. The Memorandum of Understanding (MOU) between Reclamation and MDFWP regarding the fish cleaning station is attached as **Exhibit E**.

1) Residence. During the term of this Agreement, Reclamation reserves the right to remove the current residence. At such time, the Concessionaire shall provide a mobile residence for their personal use or the use of staff during the term of this Agreement if the Concessionaire or designated staff plans to live on-site during the recreation season. Reclamation will provide electrical, water, and sewage hookups and a concrete pad for a mobile residence, at a location to be determined by Reclamation and the Concessionaire.

2) Store. Reclamation reserves the right to remove and replace the store during the term of this agreement. Any new store must meet all accessibility codes.

The residence and store are required to meet all current building codes.

B. Inspection. An inspection of these facilities will be conducted by Reclamation and the Concessionaire during the first operating season in 2003. A copy of the inspection report shall be made an attachment to this Agreement. The Concessionaire accepts the concession site and Reclamation-provided property and improvements, subject to the findings of the inspection, in full knowledge that the property is used, and cannot be expected to perform as new. Except for normal wear and tear, the Concessionaire must maintain these facilities and equipment in a good state of repair and service. The Concessionaire and Reclamation will review the condition of the premises and all improvements and facilities on a periodic basis as deemed necessary by Reclamation.

C. Facility Ownership. Title to Reclamation-owned property shall remain with the Federal Government.

D. Property Identification. Each item of movable Reclamation property provided to the Concessionaire under the terms of this Agreement shall be physically identified as Reclamation property, by Reclamation.

4. CONCESSIONAIRE PROVIDED IMPROVEMENTS

A. Concessionaire Property. The Concessionaire shall provide at their expense all equipment, furnishings, and supplies needed to fulfill their obligations under the terms and conditions of this Agreement, including but not necessarily limited to the following:

- 1) All equipment necessary to operate the concession store.
- 2) All property or equipment for recreation-related services the Concessionaire is required to provide and any equipment needed for additional services offered.
- 3) Vehicular support for the concession operation.
- 4) Tools and maintenance equipment needed for maintenance of facilities.
- 5) Temporary mobile residence, if required. The Concessionaire must receive prior written approval from Reclamation regarding the type and quality of the temporary mobile residence to be used. The mobile residence may not be constructed or placed in a permanent manner - it must be maintained in a condition that allows it to be removed from the concession site, at the Concessionaire's expense, at the termination of this Agreement, if so required.

B. Improvements. The Concessionaire hereby agrees that Concessionaire provided or constructed improvements to the concession site, being those placed underground or permanently attached to a Reclamation owned building or improvement, including but not limited to decks and walkways, landscape work, underground utility placements or replacements, shall, upon termination of this Agreement, stay with the land and shall become Reclamation property without any compensation to the Concessionaire.

At the termination of this Agreement, Reclamation reserves the right to require the Concessionaire to remove any Concessionaire provided or constructed fixed or personal improvements from the concession site. The Concessionaire is not guaranteed reimbursement for any Concessionaire provided personal capital improvements made at the concession site.

C. Property Removal. Unless directed otherwise or as provided for elsewhere herein, within thirty (30) days following the termination date of this Agreement, the Concessionaire shall have removed any and all of its personal property, fixed or otherwise, including store inventory, personal effects, boat docks, movable buildings or storage structures or other moveable personal property owned or leased by the Concessionaire and shall restore the premises to a condition satisfactory to Reclamation. All property not removed within thirty (30) days of the termination date of this Agreement shall thereafter be considered abandoned and will automatically become the property of Reclamation and subject to disposal under Federal property regulations. Removal of property and/or any required repair or restoration of Reclamation land or facilities by Reclamation after thirty (30) days following the termination date of this Agreement will be performed by Reclamation and the Concessionaire will be billed for all costs associated with the performance of this work.

5. LIMITATIONS.

A. Plan Approval. Plans for new improvements or construction activities, or the modification of existing improvements must be submitted in writing to Reclamation for its prior review and written approval. No improvements or construction activities may commence until prior written approval is granted. All docks placed within the concession site must comply with the standards established in **Exhibit F**, "Boat Dock Standards". All utility lines shall be placed underground. Improvements and/or construction activities may require the completion of National Environmental Policy Act (NEPA) reviews, cultural resource compliance, and US Army, Corp of Engineers permitting requirements before any improvements and/or construction activities commence. As such, and depending upon the extensiveness of proposed improvements, the Concessionaire must plan their activities in advance and provide Reclamation sufficient time to review all drawings and proposals, prepare NEPA documentation, etc.

B. Additional Services. The Concessionaire's use of the property and improvements provided by Reclamation shall be limited to the activities or services listed in this Agreement. The Concessionaire may develop, offer or provide other activities or services not specifically listed

in this Agreement, only upon prior review and written approval by Reclamation. Should the Concessionaire decide to exercise its option under this Agreement, to operate temporary mobile concession facilities and services at other developed recreation sites on Lake Elwell, prior Reclamation review and written authorization shall be required. Reclamation retains the right to establish additional terms and conditions on the Concessionaire's use of the other sites.

C. Assignment. This Agreement may only be assigned for its un-expired term and only with prior written consent of Reclamation. Reclamation shall review the business management capability of the proposed concessionaire, shall require a background survey including financial profile and felony arrest record report of the proposed concessionaire, and may require that a financial analysis of the concession operation including an appraisal of real property improvements be conducted before approving an assignment of the Agreement.

The Concessionaire shall provide Reclamation with ninety (90) days prior written notice of a sale or transfer of the Agreement so any requested analysis or study can be completed in a timely manner. The Concessionaire shall pay Reclamation an initial administrative transfer fee of \$200 upon notification of a potential assignment. The Concessionaire must also agree to pay any additional charges Reclamation incurs as a result of the assignment.

Conditions of the Agreement are subject to change by Reclamation before approval of a sale or transfer. The length of the term may be reduced but not extended.

Reclamation understands that the Concessionaire may have made financial investments in the concession site and Reclamation will work with the Concessionaire and any potential concessionaire to expedite the sale and transfer of the Agreement to a Reclamation approved person, firm or corporation. In the event of the death of the Concessionaire during the term of the Agreement, Reclamation will honor the transfer of the Agreement to any designate heirs as prescribed by and in accordance with due process of law, provided that, such heirs are determined capable of managing the Concession in a manner consistent with the terms and conditions of the Agreement.

The Concessionaire may not develop business partnerships with other individuals or companies to provide goods and services at the Concession, without the prior written approval of Reclamation. No such partnership or business arrangement shall provide for the continual presence of anyone on the concession site but the Concessionaire or its employees. The Concessionaire may not sub-concession any activities or services required by this Agreement, or other services or activities not specifically addressed herein.

D. Concessionaire Occupancy. Occupation of the concession site by the Concessionaire or his/her employee(s) is permitted one month prior to the start of the season of operation through one month following the end of the season of operation. Additional time for occupation may be granted with prior written approval from Reclamation. Year-round residence at the concession site is not authorized, without prior written approval from Reclamation.

E. Equipment Storage. The Concessionaire may not store any personal equipment (except as may be determined appropriate by Reclamation) at the concession site or elsewhere at Lake Elwell which does not specifically support the daily operation of the services required under the terms and conditions of this Agreement.

F. Construction Schedules. The Concessionaire agrees to schedule and conduct any construction activity in the concession site in a manner that minimizes hazards and inconvenience to the public.

G. Right of Entry. There is reserved to the United States, its successors, agents, and assigns, the right to remove from said lands material for construction, operation and maintenance of Federal facilities and to construct, operate, and maintain such facilities thereon.

There is reserved to the United States, its successors, agents, and assigns, the right to prospect and carry on developments for oil, gas, coal, and other minerals, on said lands, under the Act of October 2, 1917 (40 Stat. 297), and the Act of February 25, 1920 (41 Stat. 437), or the Act of August 7, 1947 (61 Stat. 913).

There is reserved to the United States, its successors, agents, and assigns, the right of the officers, agents, employees, licensees, and permittees, or the United States and designees of public bodies, at all proper times and places, freely to have ingress to, passage over, and egress from all of said lands, for the purpose of exercising, enforcing, and protecting their rights and the terms and conditions described in and reserved by this Agreement.

H. Damages. The Concessionaire hereby holds harmless the United States from all claims for damages to Concessionaire owned facilities, structures, or improvements, authorized by this Agreement, or to the property stored or used in connection therewith, resulting from reservoir fluctuation, blowing silt, or from any future modification of the dam, reservoir, or adjoining Reclamation lands.

I. Suspension. Reclamation reserves the authority to suspend all or portions of this Agreement as deemed necessary by Reclamation, to enhance or protect project purposes, resources, visitor safety, health and enjoyment. In the event of such suspension, Reclamation shall not be liable for any compensation to the Concessionaire for any losses, including, but not limited to lost income, profit, wages, or other compensation which may be claimed by the Concessionaire. In the event Reclamation determines that such a suspension is sufficient to prevent the continued operation of this Agreement, said Agreement shall be terminated in accordance with other provisions of this Agreement.

J. Exclusive Use. The Concessionaire shall not allow the development of exclusive uses within the concession site. Reclamation retains the right to determine the definition or instances of exclusive use.

K. Seasonal Use. Seasonal use of campsites shall meet the following requirements:

1) The Concessionaire shall develop, for Reclamation's prior review and written approval, a seasonal camping permit, proposed length of seasonal permit, proposed number of campsites to be used for seasonal camping (but not more than 50% of the total sites available), location of seasonal campsites, and campground rules and regulations, before seasonal camping is permitted.

2) No permanent camping or residency is authorized.

3) Seasonal permits may not be issued for periods of time before or after the recreation season.

4) No seasonal camping permittee owned improvements are permitted, i.e. decks, fencing, etc.

5) Mobile homes may not be used for seasonal camping by permittees and Reclamation reserves the right to determine what constitutes a mobile home.

6) Permittees may not store other, non-recreation related personal property on the seasonal campsite.

7) Current registration must be displayed on all vehicles, boats, trailers, etc.

8) At the end of the recreation season, all seasonal permits will terminate and all permitted personal property must be removed from the campsites (if secured, dry storage area is available, the Concessionaire may provide year round opportunities for storage of trailers and boats.)

L. Concessionaire Livestock. Livestock, farm animals, domestic fowl, etc., are prohibited within the concession site, unless such animals are necessary for the operation of the Concession. Written approval from Reclamation shall be obtained prior to the use or placement of such animals within the Concession.

M. Visitor's Pets and Livestock. The Concessionaire is allowed to accommodate clients and visitors with domestic pets or livestock, provided adequate, safe, and sanitary corrals, pens, or other appropriate containment is provided. Dogs, cats, and other domestic pets may not be allowed free access of the concession site and must be restrained at all times when outdoors, or in public areas within buildings.

6. CONCESSIONAIRE OPERATION AND MAINTENANCE RESPONSIBILITIES

A. Annual Operating and Maintenance Plan. The Concessionaire shall prepare and annually revise by March 1, an operation and maintenance (O&M) plan for Reclamation's review and approval. The O&M plan shall describe how often maintenance activities will be performed at the concession site, how the Concessionaire will provide services to the public, proposed hours of operation, how often trash pick-up will occur, protection of public health, safety and the environment, and emergency plans in the event of fire or hazardous material spills. The plan shall contain sufficient detail to enable Reclamation to monitor operations for compliance.

B. Concessionaire Responsibilities. The Concessionaire accepts responsibility for the management, operation, and maintenance of the premises during the term of this Agreement as

B. Concessionaire Responsibilities. The Concessionaire accepts responsibility for the management, operation, and maintenance of the premises during the term of this Agreement as described herein. Concessionaire responsibilities include, but are not limited to, the following:

- 1) Payment of monthly operation fees for the concession site telephone systems.
- 2) Mowing lawn areas, and watering lawn areas and trees within the concession site.
- 3) Picking up trash and litter within the concession site, and disposing of garbage off-site at a Montana approved waste facility site.
- 4) Payment of all utility costs incurred by the Concession, including LP gas and electricity.
- 5) Securing and winterizing the Concession buildings and improvements at the end of the recreation season.
- 6) Obtaining all licenses and permits necessary to operate the concession. The Concessionaire shall provide Reclamation with a copy of all licenses and permits within thirty (30) days of receiving such documents.
- 7) Placing, anchoring, adjusting, or otherwise operating and maintaining service docks and the boat ramp courtesy dock.
- 8) Maintenance, repair or replacement of the irrigation system (including the floating irrigation pump and irrigation supply line from the lake pump to the utility building), domestic water supply, heating systems, septic system, telephone and electrical systems, utility system for the 5 existing RV campsites, and the above ground portions of the gasoline system, including the pump and delivery hoses, except as described in Section 7. Reclamation Operation and Maintenance Responsibilities.
- 9) Pump out and dispose of sewage effluent from the RV dump station, two outdoor pre-cast concrete vault toilets, and concession septic tank as needed.
- 10) Maintenance and repair of the storage compound.
- 11) Assist in the collection of data related to recreation uses occurring within the concession site (Reclamation will provide the form on which to collect such data).
- 12) Provide potable water to the Concession for personal and public use, including any testing and permitting requirements imposed by the Montana Water Quality Bureau. NOTE: Potable water must be hauled to the site.
- 13) Maintain and repair the fish cleaning station during the recreation season, in accordance with the MOU with MDFWP.
- 14) Winterize the concession plumbing systems at the end of each recreation season.

In the event the Concessionaire does not maintain concessionaire owned buildings or improvements to meet codes or standards of Reclamation, Reclamation will give the concessionaire 30 day written notice to correct the problem, or remove the subject property from Reclamation property.

7. RECLAMATION OPERATION AND MAINTENANCE RESPONSIBILITIES

Reclamation agrees to perform extraordinary maintenance or replacement of Reclamation-owned buildings or improvements (including those systems identified in Paragraph 6.B.8 above), if determined to be necessary and appropriate by Reclamation, provided that, the maintenance or replacement of the buildings or improvements aren't covered under the Concessionaire's insurance

policy or the actions aren't considered routine operations and maintenance activities. Reclamation reserves the right to remove without replacement, modify or replace any Reclamation owned buildings or improvements requiring extraordinary maintenance.

It is the understanding of the Concessionaire and Reclamation that buildings requiring extraordinary maintenance that generate revenue under 2.F. required services, for the Concessionaire and should be replaced unless the parties jointly agree not to replace because of non-use, etc.

8. TERMINATION

A. Termination.

- 1) Reclamation may terminate this Agreement in whole or in part for default.
- 2) Operations under this Agreement may be suspended in whole or in part at the discretion of Reclamation when necessary to enhance or protect area resources or visitor enjoyment or safety.
- 3) Termination or suspension shall be by written notice to the Concessionaire and, in the event of proposed termination for default, Reclamation shall give the Concessionaire a reasonable period of time to correct stated deficiencies.
- 4) Termination for default may be utilized in circumstances where the Concessionaire has breached any requirement of this Agreement, including, but not limited to, failure to maintain and operate facilities and services to the satisfaction of Reclamation in accordance with Reclamation's requirements hereunder.
- 5) In the event of termination or expiration of this Agreement, the total compensation to the Concessionaire for such termination or upon expiration shall be as described in the "Compensation" section of this Agreement.
- 6) In the event it is deemed necessary by Reclamation to suspend operations under this Agreement, in whole or in part to enhance or protect area resources or visitor enjoyment or safety, Reclamation shall not be liable for any compensation to the Concessionaire for losses occasioned thereby, including but not limited to, lost income, profit, wages, or other monies which may be claimed.
- 7) To avoid interruption of services to the public upon the expiration or termination of this Agreement for any reason, the Concessionaire, upon the request of Reclamation, may continue to conduct all operations hereunder for a reasonable period of time to allow Reclamation to select a successor Concessionaire.
- 8) Failure of the Concessionaire to make required concession payments within sixty (60) days of the due date may be grounds for termination of this Agreement.
- 9) Any activity deemed to be illegal on Federal lands will be cause for immediate termination of the Agreement.

B. Voluntary Termination. This Agreement may be terminated by the Concessionaire upon 60 days advanced written notice to Reclamation of voluntary termination.

C. Property to be Vacated. Upon termination of this Agreement, all rights of the

Reclamation provided facilities and improvements in like condition as when received, except for reasonable wear and damage.

D. Service of Written Notice. Written notices shall be served by certified mail, addressed to the respective post office or mailing addresses given at the foot of this Agreement, or to the last known addresses of the respective parties. The mailing of any such notice properly enclosed, addressed, stamped, and certified, shall be considered served.

E. Interim Operation. Reclamation may select an interim operator in the event this Agreement is terminated for default prior to its termination date. A new Concessionaire may be selected as the interim operator if Reclamation deems it to be in the best interests of the Federal government.

9. COMPENSATION

A. Just Compensation. The compensation described in this Section shall constitute full and just compensation to the Concessionaire from Reclamation for all losses and claims occasioned by the circumstances described below.

B. Agreement Expiration or Termination Where Operations Are To Be Continued. If, for any reason, including Agreement expiration or termination as described herein, the Concessionaire shall cease to be required by Reclamation to conduct operations hereunder, or substantial part thereof, and, at the time of such event Reclamation intends for substantially the same or similar operations, using Reclamation identified Concessionaire owned property and improvements, to be continued by a successor, whether a private person, corporation or an agency of the Government; (i) the Concessionaire may sell and transfer to the successor designated by Reclamation its property and improvements in, if any, as defined under this Agreement, used or held for use within the concession site in connection with such operations; and, (ii) Reclamation may allow, but not require such successor to purchase from the Concessionaire such property and improvements, if any, and such other property, and to pay the Concessionaire the fair value thereof, and (iii) the Concessionaire has the option to remove concessionaire owned removable or temporary property for disposition at their discretion, and (iv) Reclamation may consider purchasing any improvements from the Concessionaire at fair value.

1) The initial fair value of any property and improvements in existence before the effective date of this Agreement shall be \$0 as of the effective date of this Agreement. In the event of Agreement termination or expiration, the Concessionaire's right to fair value for such property and improvements shall be the depreciated amount.

2) The fair value of property and improvements made after the effective date of this Agreement shall be, unless calculated in accordance with Section 9(D) hereof, the original cost of the property and improvements less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years. In the event that such property and improvements are acquired by a successor, the successor will not be permitted to revalue such property and

improvements, or, alter its depreciation schedule or useful life.

3) The fair value of merchandise and supplies shall be actual cost including transportation.

4) The fair value of equipment shall be its book value.

C. Agreement Expiration or Termination Where Operations Are To Be Discontinued. If for any reason, including Agreement expiration or termination as described herein, the Concessionaire shall cease to be required by Reclamation to conduct operations hereunder, or substantial part thereof, and Reclamation at the time chooses to discontinue such operations, or substantial part thereof, within the Area, the Concessionaire shall removal all of its property and improvements from the concession site, and restore the concession site to the standards and guidelines stipulated by Reclamation. Any Concessionaire property and improvements that have not been removed by the Concessionaire within ninety (90) days following such determination shall become the property of the United States without further compensation.

D. Agreement Termination for Default for Unsatisfactory Performance. Notwithstanding any other provision of this Agreement to the contrary, in the event of termination of this Agreement for default for failure to maintain and operate facilities and services hereunder to the satisfaction of Reclamation in accordance with Reclamation's requirements, compensation for property and improvements, if any, except for property and improvements in existence before the effective date of this Agreement, shall be as set forth in Section 9(B) hereof or at book value, whichever is less.

10. INSURANCE AND BONDING

A. Indemnification. The Concessionaire shall save, hold harmless, defend, and indemnify the United States of America, its agents, and employees from losses, damages, or judgments and expenses due to fire or other peril, bodily injury, death, or property damage or from claims for bodily injury, death, or property damage of any nature whatsoever, and by whomsoever made, arising out of any activity associated with this Agreement.

This indemnification excludes Reclamation employees and its agents from losses, damages, or judgments due to their negligence.

B. Insurance. The Concessionaire shall furnish proof of insurance, such as a certificate of insurance, to Reclamation prior to the commencement of this Agreement and each year thereafter by March 1, that this agreement is in effect. Reclamation reserves the right to review and approve the insurance policy prior to issuance. The holder shall send an authenticated copy of any insurance policy obtained by the holder pursuant to this clause to Reclamation immediately upon issuance of the policy. Any insurance policies obtained by the Concessionaire pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United State as required under this clause. Such policies shall also specify that the insurance company shall give 30 day prior written notice to Reclamation of cancellation of or any modification to the policies. Minimum amounts of coverage and other insurance requirement are subject to change at the sole discretion of Reclamation on the anniversary

date of this agreement.

1) **Liability.** The Concessionaire shall have in force liability insurance covering losses associated with the use and occupancy authorized by this Agreement arising from personal injury or death and third-party property damage in the minimum amount of:

\$1,000,000 for injury or death to one person,
\$1,000,000 for injury or death to more than one person, and
\$1,000,000 for third-party property damage.

2) **Casualty.** The Concessionaire shall have in force casualty insurance for the federal government property covered by this agreement, including the land and government-owned improvements in the minimum amount of \$250,000 per occurrence. The types of loss to be covered by this clause shall include but not be limited to fire suppression costs and damage to government-owned improvements and lands covered by this agreement. At the sole discretion of Reclamation, the agency may require the Concessionaire to use all proceeds from property damage insurance policies to repair, rebuild, restore, or replace damaged government property covered by the policy, or may obtain payment of those proceeds from the Concessionaire or insurance company.

C. Bond. The Concessionaire shall procure and maintain within 14 days after the execution of this Agreement, for the term of this Agreement, a performance bond or similar instrument in the amount of \$10,000 to indemnify Reclamation from failure of the Concessionaire to perform under any of the terms or conditions of this Agreement, to cover any unrepaired or uncompensated damages to Reclamation facilities, improvements, or resources, and to cover any cleanup or site restoration necessary after the Agreement terminates.

The bond shall provide that at Reclamation's sole discretion the surety shall pay the United States for any loss covered by the bond or, in the event of complete default under the agreement, shall pay a third party to operate the concession for the balance of the agreement term, without prejudice to any other rights and remedies of the United States. The bond shall also provide that selection of a third party to operate the site is subject to Reclamation approval.

11. GENERAL CONDITIONS

A. Public Access. The Concessionaire may restrict public access within the concession site for security and/or health and safety reasons, upon prior written approval by Reclamation. The Concessionaire shall have no other control over public access to or use of the reservoir and surrounding Federal lands. The Concessionaire may not charge the public for the use of any boat ramps, however, the Concessionaire may assess a charge should a member of the public specifically ask the Concessionaire to launch or retrieve their boat for them. The Concessionaire may charge for launching at the Marina.

B. Non-Exclusive Use. The use and occupancy authorized by this Agreement is not exclusive. Reclamation reserves a continuing right of access to the concession site, including a continuing right of physical entry to the area for inspection, monitoring, or any other purpose

consistent with any right or obligation of the United States under any law or regulation. Reclamation reserves the right to allow others to use the concession site in any way that is not inconsistent with the Concessionaire's rights and privileges under this Agreement, after consultation with all parties involved. Except for any restrictions that the Concessionaire and Reclamation agree are necessary to protect the installation and operation of authorized structures and developments, the lands and waters covered by this Agreement shall remain open to the public for all lawful purposes. To facilitate public use of this area, all existing roads shall remain open to the public, except for roads that may be closed by joint agreement of the Concessionaire and Reclamation.

C. Compliance. The Concessionaire shall comply with all applicable Federal, State, and local laws, orders, rules and regulations, and Reclamation policies and directives and standards, in effect now or as may be modified or amended in the future.

D. Hazardous Materials.

1) The Concessionaire may not allow contamination or pollution of Federal lands, waters or facilities and for which the Concessionaire has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

2) The Concessionaire shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed on or in Federal lands, waters or facilities.

3) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., and the regulations promulgated pursuant to that Act.

4) Upon discovery of any event which may or does result in contamination or pollution on Federal lands, waters or facilities, the Concessionaire shall initiate any necessary emergency measures to protect health, safety, and the environment and shall report such discovery and full details of the actions taken to Reclamation. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

5) Violation of any of these provisions, as determined by Reclamation, may constitute grounds for termination of this Agreement. Such violations require immediate corrective action by the Concessionaire and shall make the Concessionaire liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

6) The Concessionaire agrees to include the provisions contained in paragraphs 1) through 5) above, in any subcontract or third party contract, permit, or agreement, it may enter into

pursuant to this Agreement.

7) Reclamation agrees to provide information, as requested, necessary for the Concessionaire using reasonable diligence, to comply with the provisions of this Article.

E. Accident Reporting. The Concessionaire shall immediately report to Reclamation any event which results in the death or injury to concession employee(s) or member(s) of the general public.

F. Amendment. This Agreement may be amended by mutual consent of the parties hereto, or by unilateral action of Reclamation when necessary to conform to reservoir-specific operations or public laws, rules, regulations or policies. The length of term of this Agreement may not be extended except as described in the Concessions Management Policy and Directives and Standards, or renewed for additional terms. At the end of the first four (4) years of operation, Reclamation may require a review of the Concessionaire's financial records. At the end of the first five (5) years of operation, Reclamation may evaluate the concession operation to determine if the established franchise fee is appropriately established, and may, at its sole discretion, adjust the franchise fee to a rate that reflects a fair return to the government.

G. Permissive Water Use. All water obtained directly from the reservoir is considered project water. Permission is granted to the Concessionaire to pump water from the Reservoir for domestic purposes, including irrigation of the Concession Site. Such use is permissive only and conveys no water rights to the Concessionaire. It is understood by the Concessionaire that permission to pump project water from the Reservoir does not preclude Reclamation from requiring the Concessionaire to enter into an appropriate water service contract if it is determined to be a requirement of such water use in the future. Reclamation does not warrant the quality of the water for domestic use, assumes no liability for water used for such purposes, and is under no obligation to construct or furnish water treatment facilities.

H. Site Environment. It is the responsibility of the Concessionaire to provide employees and visitors a safe, orderly, sanitary, and visually acceptable concession site.

I. Safety Program. The Concessionaire shall develop and implement a safety program to be submitted by March 1 of each year for Reclamation review and concurrence. The program should include a self-inspection of all equipment, facilities and work processes by qualified concession personnel to verify compliance with established Federal, State, and local safety and occupational health regulations.

J. Pest Control. The Concessionaire shall be responsible for managing vermin and other pests, including weeds, on all lands and facilities within the Concessions Management Area. Prior to initial operations, the Concessionaire shall develop and submit for Reclamation approval, a pest management plan detailing safe and environmentally sensitive control and/or eradication of potential pests at the concession site. Plants and animals that are native to Montana or the immediate area may not be removed or harmed except with the prior written approval of Reclamation. All pest management activities will be guided by the concepts and practices of an

approved Integrated Pest Management (IPM) plan as adopted by Reclamation. The Concessionaire is responsible for complying with all training (Federal, State, and local), operational requirements, and licensing requirements pertinent to and required for the application of pesticides in Montana.

K. Signs. Signs or other advertising posted on Reclamation lands shall be subject to prior written approval of Reclamation as to location, design, size, color and content. Signs shall be maintained to standards determined by Reclamation.

L. Legal Effect of the Agreement. This Agreement is revocable and terminable. It is not real property, does not convey any interest in real property, and may not be used as collateral for a loan unless prior written Reclamation approval is granted. In such cases, Reclamation shall review and approve, in advance, any documents related to such an action.

M. Risk. The holder assumes all risk of loss of the property. Loss to the property may result from, but is not limited to, theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the authorized improvements are destroyed or substantially damaged, Reclamation shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, all or portions of this Agreement may be terminated.

N. Advertising. Advertisements, signs, circulars, brochures, letterheads, and other media or materials shall not misrepresent in any way the accommodations or services provided or the status of the Agreement or concession site. The fact that the concession site is located on Reclamation land shall be made readily apparent in all the Concessionaire's brochures and printed advertising regarding use of the concession site.

O. Current Address and Point of Contact. The Concessionaire and Reclamation shall keep each other informed of current mailing addresses, including those necessary for payment of fees.

Reclamation's mailing address and point of contact are as follows:

Manager, Resources Management Division
Bureau of Reclamation
Montana Area Office
P.O. Box 30137
Billings, MT 59107-0137

Reclamation's street address is as follows:

Bureau of Reclamation
Montana Area Office
2900 4th Avenue North
Billings, MT 59101

Concessionaire's mailing address and point of contact are as follows:

Sarah A. Oehlke
7 Bismarck Ct.
Conrad, MT 59425

Concessionaire's street address is the same as above.

P. Incorporation of Section Two - Scope of Work, of the Prospectus. Section Two - Scope of Work, of the "Prospectus for the Development, Operation and Maintenance of a Concession Operation at Lake Elwell, Near Chester, Montana," is hereby incorporated as part of the Agreement as **Exhibit G**.

Q. Equal Opportunity Requirements. 1) The Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Concessionaire will take affirmative action to ensure that such applicants are employed, and that employees are treated fairly during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity clause. Copies of such notices may be obtained from Reclamation upon request.

2) The Concessionaire will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Concessionaire's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3) The Concessionaire shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

4) The Concessionaire shall furnish all information and reports required by said amended Executive Order, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by Reclamation and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

5) In the event of the Concessionaire's non-compliance with the Equal Opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and the Concessionaire may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

6) The Concessionaire shall include the provisions of paragraphs 1) through 5) of this section, in all purchase orders unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each vendor. The Concessionaire will take such action with respect to any subcontract or purchase order as Reclamation may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the Concessionaire becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by Reclamation, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

12. COVENANT AGAINST CONTINGENT FEES

The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty, Reclamation shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. HISTORIC AND ARCHEOLOGICAL VALUES

The Concessionaire shall be particularly alert in any construction operations to take all reasonable and necessary precautions to protect and preserve any and all antiquities or other objects of archaeological, paleontological, cultural, historic, or scientific interests on Reclamation lands within the concession site. Objects under consideration include but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and other artifacts. Should such sites or objects, or evidence of sites or objects, be discovered the Concessionaire shall immediately suspend any and all work involving the area in question, make a reasonable effort to protect such discovery, and advise Reclamation of the existence of such discovery. The Concessionaire shall immediately provide an oral notification to Reclamation of the discovery of human remains on Reclamation lands. The Concessionaire shall forward a written report of their findings to Reclamation within 48 hours by certified mail. The Concessionaire shall cease activity, stabilize, and protect such discoveries until authorized to proceed by Reclamation. Protective and mitigative measures specified by Reclamation shall be the responsibility of the Concessionaire. Reclamation shall promptly have the area inspected to determine its historical significance and the appropriate actions to follow (salvage, test excavation, etc., and resumption of construction). Cost of any salvage work will be borne by the United States. All objects salvaged from public lands are the property of the United States Government and will be turned over to Reclamation for disposition.

14. OFFICIALS NOT TO BENEFIT

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 here from. This restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names as of the date first-above written.

Janice A. Dehke 5/8/03
Concessionaire Date

Janice A. Dehke 5/8/03
Concessionaire Date

Swan Kelly 5-9-03
Area Manager Date
Montana Area Office
Great Plains Region
Bureau of Reclamation

Exhibit A

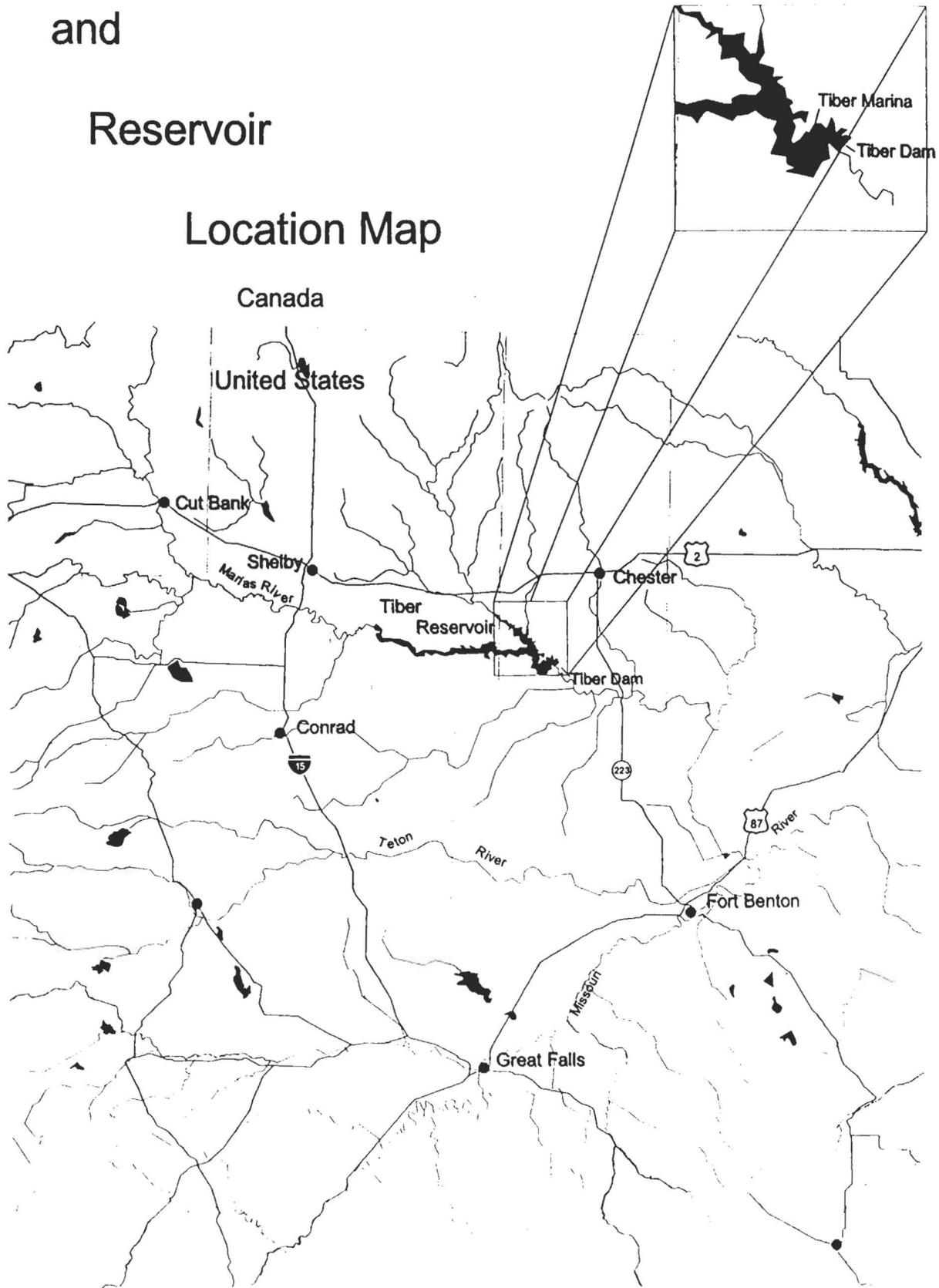
Location Map

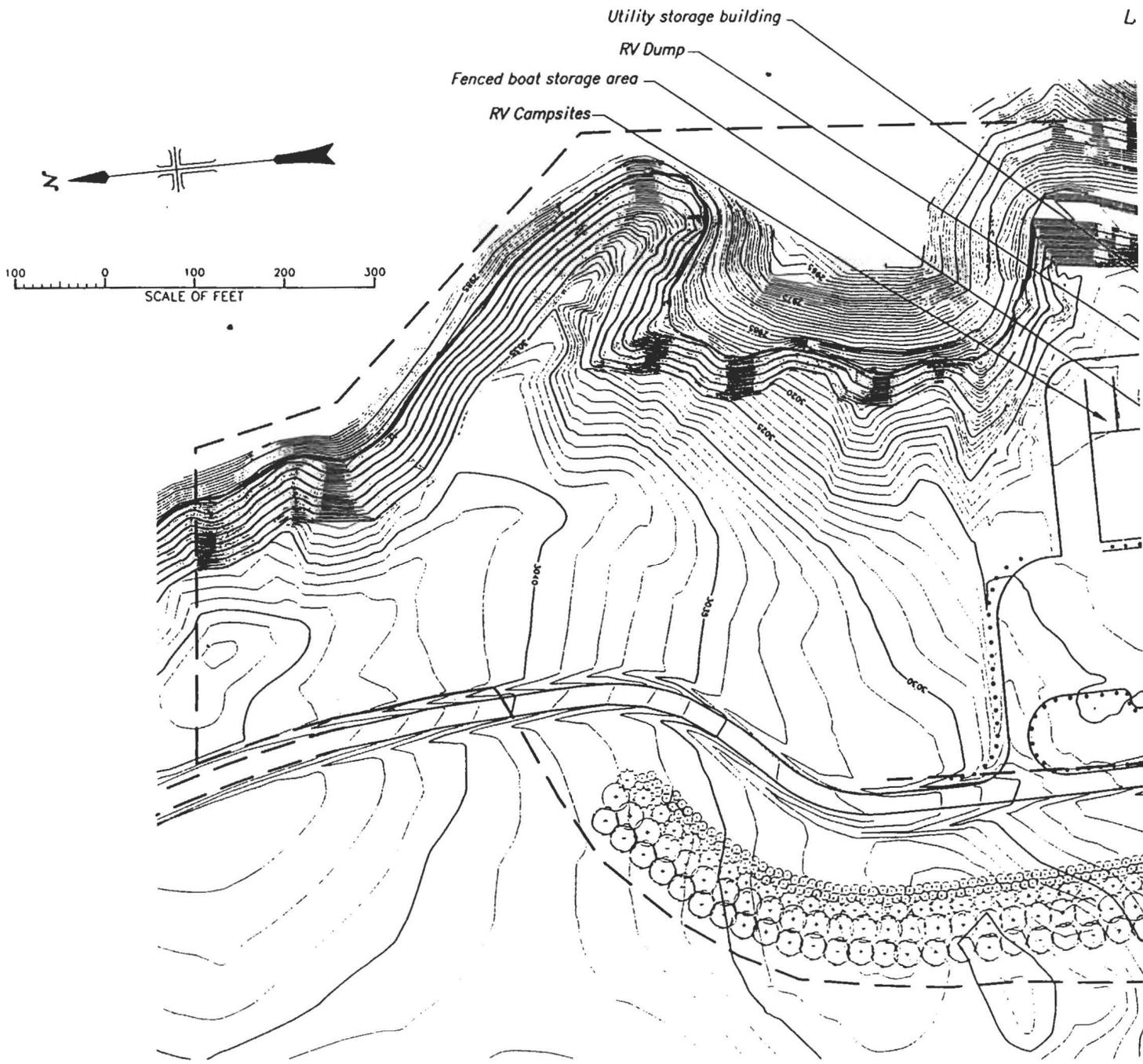
Tiber Dam

and

Reservoir

Location Map

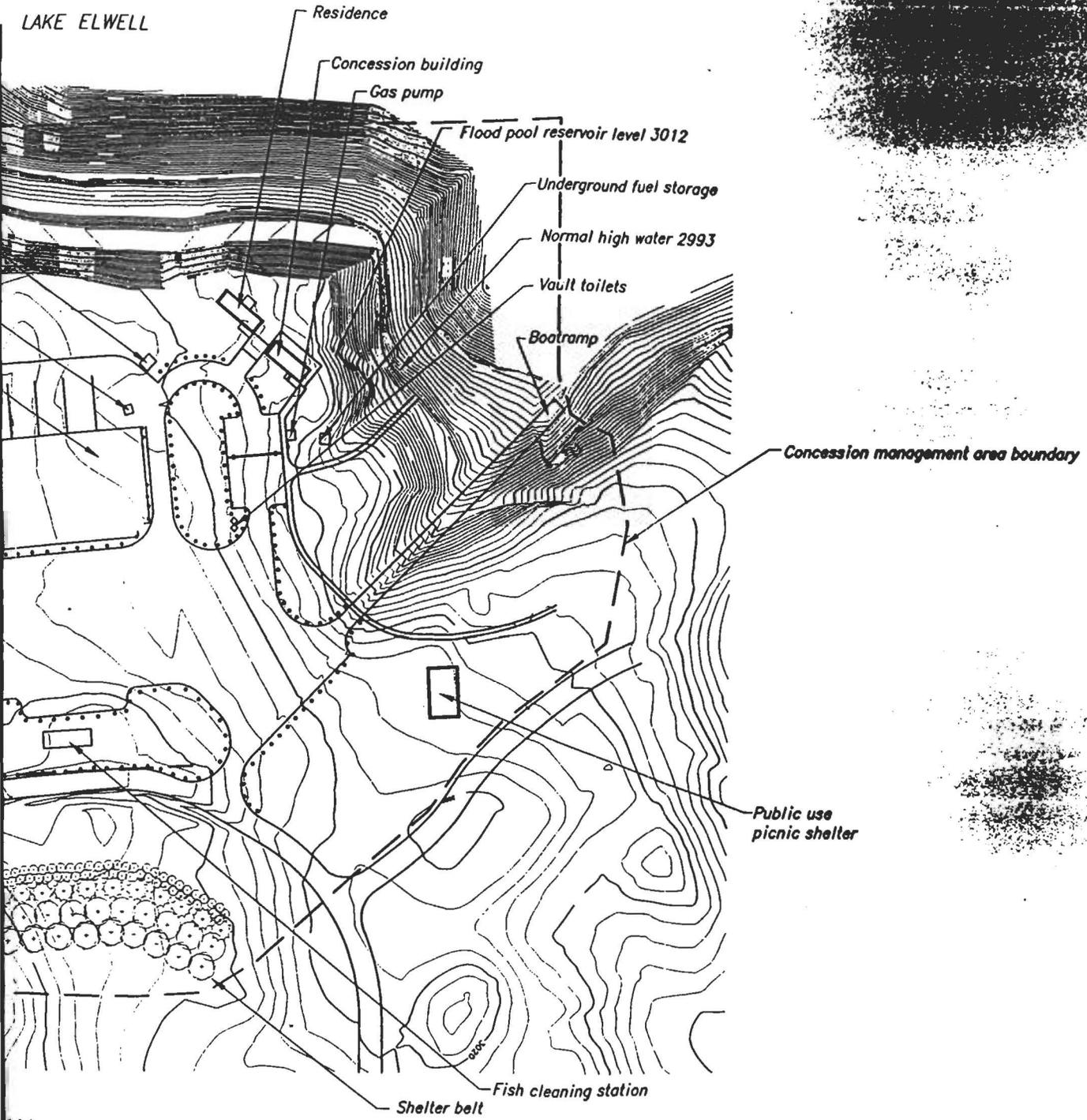




EXISTING CONDITIONS

Note: Concession Management Area is Approximately 29.1

LAKE ELWELL



9.1 Acres

Exhibit B

Bureau of Reclamation Concessions Management Policy and Directives and Standards

Reclamation Manual

Policy

Subject: Concessions Management

Purpose: Sets forth the policy for planning, development, management, and operation of concessions at Reclamation projects.

Authority: Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.

Contact: Land, Recreation, and Cultural Resources Office, D-5300

1. Concessions Management Policy.

- A. **Stewardship.** Reclamation and its managing partners will ensure that concessions are planned, developed, and managed to meet public needs, are compatible with the natural and cultural resources, and provide a variety of services which are consistent with authorized project purposes.
- B. **Authorization of Concessions.** Based on the principles contained in this policy, Reclamation will authorize concessions which establish or continue to provide necessary and appropriate facilities and services.

2. Definition.

- A. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.

3. Concessions Principles. The following principles guide the planning, development, and management of concessions:

- A. Concessions will provide quality recreation facilities and services accessible to persons with disabilities, and appropriate visitor goods and services at reasonable rates.
- B. Concession operations will provide for the protection, conservation, and preservation of natural, historical, and cultural resources.
- C. Commercial facilities and services will be planned and developed through a commercial services planning and public involvement process, in cooperation with other public agencies.

Reclamation Manual

Policy

- D. Concessionaires will be provided with opportunities for a reasonable profit and may be compensated for Reclamation-approved improvements that will remain the property of the United States.
 - E. Reclamation will ensure fair competition in the awarding of concessions contracts and will not allow preferential rights of renewal.
 - F. Exclusive use of the Federal estate will not be allowed and existing exclusive use will be removed as soon as possible.
 - G. Concessions will comply with applicable Federal, State, and local laws.
4. **Supporting Directives and Standards and Guidelines.** Implementation of the Concessions Management Policy is accomplished through the use of the Reclamation Manual Directives and Standards, and Guidelines.
- Concessions Management by the Bureau of Reclamation, LND 04-01.
 - Concessions Management by Non-Federal Partners, LND 04-02.
 - Concessions Management Guidelines.

Reclamation Manual

Directives and Standards

Subject: Concessions Management by Reclamation¹

Purpose: Sets forth the directives and standards for planning, development, and management of concessions at Reclamation projects.

Authority: Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.

Contact: Land, Recreation, and Cultural Resources Office, D-5300

1. Definitions.

- A. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.
- B. **Cooperating Association.** A cooperating association is a nonprofit organization. It is a Federal 501(c) tax-exempt entity incorporated within the State in which it operates, and it is governed by a volunteer board of directors. Cooperating associations assist in enhancing interpretive programs, providing visitor information, funding research, and supporting various resource themes.
- C. **Exclusive Use.** Exclusive use is any use that excludes other appropriate public recreation use or users for extended periods of time. Exclusive use includes, but is not limited to, boat docks, cabins, trailers, manufactured or mobile homes, structures, roads, or other amenities that are determined by Reclamation to be exclusive use.
- D. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.
- E. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
- F. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.

¹ The following directives and standards apply to concessions managed directly by Reclamation. Separate directives and standards address concessions managed by non-Federal partners

Reclamation Manual

Directives and Standards

- G. Incidental Revenues.** Incidental revenues are generally defined as those revenues generated from the use of Reclamation's project lands and facilities that are incidental to authorized project purposes. Although recreation and concession facilities are authorized project purposes, it has been determined that revenues generated from the use of the Federal estate by concessionaires are to be credited as incidental revenues.
- H. Total Benefits to the Government.** Total benefits include:
- (1) **Direct Returns.** These are revenues generated by authorized concession contracts and paid directly to the United States Treasury and credited in accordance with Reclamation Manual (RM), *Crediting of Incidental Revenues*, PEC 03-01.
 - (2) **Direct Benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.
 - (3) **Indirect Benefits.** These are services performed by the concessionaire that benefit the public or improvements made to the Federal estate by the concessionaire.

2. Existing Concession Contracts.

- A. Compliance.** Existing concession contracts must be brought into compliance with the Concessions Management Policy and Directives and Standards at the first legal opportunity, for example; if the contract is amended. If a concession contract expires or is terminated because of contract default or for other reasons, any subsequent concession contract must comply with the Concessions Policy and Directives and Standards.
- B. Unusual Circumstances.** In the event that unusual circumstances prevent Reclamation from issuing a new contract in a timely manner, a one-time, temporary contract may be issued. The temporary contract must comply with the Concessions Management Policy and Directives and Standards and may be issued for a period not to exceed 2 years.

3. Concessions Planning.

- A. General.** Before issuing a concession prospectus and Request for Proposal (RFP), Reclamation will complete a formal commercial services plan and financial feasibility evaluation.

Reclamation Manual

Directives and Standards

- (1) **Commercial Services Plan.** The commercial services plan can be an addendum to a resource management plan or similar planning document. If there is no other planning document, the commercial services plan may stand on its own. At a minimum, the commercial services plan must determine the number of concessions necessary to meet the public needs, the type of facilities and services to be provided, the financial feasibility of the concession(s), and the location(s) appropriate for commercial activities. The complexity of commercial services plans will vary according to location, past visitor use, anticipated revenues, and other factors.
 - (2) **Financial Feasibility Evaluation.** The financial feasibility evaluation, included in the commercial services plan, will include, at a minimum, a documented determination of the financial viability of the proposed concession operation, including, the estimated fees to be returned to the Government, a justification for the proposed length of the term of the concession contract and the underlying assumptions regarding concessionaire capital investment in the concession.
 - (3) **Planning for New Concessions Contracts.** It is essential that area and regional offices allow adequate time to complete the commercial services planning process, develop an RFP and contract, and receive the Commissioner's Office review and approval of the RFP and contract. In some cases, the planning for new concession contracts(s) must begin several years in advance of the date anticipated the contract(s) will be awarded.
- B. Commercial Services Plan.** Decisions to contract for concessions must be based on the results of the commercial services planning process, which will include public involvement, financial feasibility evaluation, and environmental analysis. During the planning process, the following criteria will be applied to determine appropriate facilities and services:
- (1) Facilities and services must be necessary and appropriate for a broad spectrum of public use and enjoyment.
 - (2) Commercial facilities must not be developed or expanded on the Federal estate if existing facilities, on or off the Federal estate, adequately meet current and projected needs.
 - (3) Facilities and services must reflect the general public's needs rather than the desires of a particular individual or group. Existing concessionaires may provide input through the public involvement process.
 - (4) The financial feasibility evaluation must consider the concession's:

Reclamation Manual

Directives and Standards

- (a) Gross revenues (receipts) by operating department (lodging, food, and beverage).
 - (b) Operating expenses:
 - (i) Direct expenses by operating department (including labor and cost-of-goods sold).
 - (ii) Unallocated expenses (including utilities and repair and maintenance).
 - (iii) General and administrative expenses (including overhead, officer salaries, office supplies, and travel).
 - (iv) Fixed expenses (including rent, interest, depreciation, and reserve accounts).
 - (v) Franchise fees.
 - (c) Earnings before interest, depreciation, taxes, and amortization. (EBIDTA is a standard accounting value representing net operating income)
 - (d) Capital investment costs:
 - (i) Working capital.
 - (ii) Furniture, fixtures, and equipment.
 - (iii) Ongoing capital replacement.
 - (iv) New facility development costs.
 - (e) Cash flow analysis.
 - (f) Other appropriate factors that influence the concession's business opportunity (including length of season, rates, visitation, inflation, cost of capital, and appropriate target rate-of-return to concessionaire).
- (5) Facilities and services must be compatible with Reclamation project purposes.
- (6) Facilities, services, or sites considered to be exclusive use will not be allowed and should not be considered as a part of any commercial services planning alternative. Existing exclusive use facilities, services, and sites must be removed when a contract expires or, if possible, sooner.

Reclamation Manual

Directives and Standards

- (7) Potential impacts to natural and cultural resources must be considered in the development of facilities and services.
- (8) Facilities must be harmonious in form, line, color, and texture with the surrounding landscape.
- (9) The planning process will consider whether existing concession facilities should be relocated because: (a) they would serve the public better at a different location, (b) they are situated in an area that is topographically limited (steep slopes, soils subject to erosion, limited space for expansion, or the site cannot accommodate the demand) and cannot provide the best public services and facilities, or (c) the financial feasibility evaluation determines that combining one or more existing concessions would create a more financially stable concession.
- (10) If existing fixed assets are proposed to be retained as a part of any new concession operation, they must first be formally evaluated to determine if their existing condition and useful life is sufficient to last through the duration of any new contract. If the evaluation determines that any fixed asset would have to have significant maintenance or would need to be replaced during the term of the new contract, then the fixed asset must be removed prior to issuing a new contract.
- (11) Concession contracts and operations must comply with all applicable laws, rules, regulations, Executive Orders, and policies.

4. Concessions Contracting.

- A. **General Application.** These directives and standards will apply to existing concessions contracts only if agreed to by both Reclamation and the concessionaire. Existing contracts may not be renewed, nor can the length of the term be extended. Existing contracts that are amended or modified within the current term must adhere to these Concessions Management Directives and Standards. New or replacement contracts will be awarded on a fully competitive basis.
- B. **Request for Proposals (RFP).** An RFP will be issued to actively solicit offers from interested parties. To allow for a wide distribution, the RFP will be published in the appropriate media and the following approach will be applied:
 - (1) **Fair Competition.** To ensure fair competition before and during the RFP process, meetings to discuss the RFP with existing or potential concessionaires or other outside parties must not be conducted. It is appropriate to have meetings with existing concessionaires to deal with ongoing operational or

Reclamation Manual

Directives and Standards

contractual issues and programs. The RFP should include a schedule of meetings in which all interested parties can discuss requirements of the RFP. Other meetings requested by individual interested parties must be declined.

- (2) **Equal Access to Information.** All information must be equally available to all interested parties during the RFP process.
 - (3) **Written Explanation.** Following release of an RFP, explanations or clarifications will be provided only in writing and must be sent to all parties who already have received the RFP and to any parties who are to receive it in the future.
 - (4) **Existing Concessionaires.** Existing concessionaires must respond to the RFP as a bidder to be considered for the new contract. If any existing concessionaire has a contract that includes a "Preferential Right of Renewal," the RFP must state that, if selected, the concessionaire's contract will be subject to all terms and conditions as outlined in the RFP. The RFP must also state how the preferential right of renewal will be applied in the bid process. No preferential right of renewal will be authorized for new, modified, or amended concession contracts.
- C. **Review of Proposals.** A panel composed of Reclamation "subject matter experts" (e.g., financial, recreation, and concession experts) will be convened to review submitted proposals. If Reclamation desires, it may contract with external experts to analyze offers. The panel will forward a recommendation to the selecting official. The selecting official will provide selection criteria and a crediting plan to the panel.
- D. **Contract Terms and Conditions.** The following items should be specifically addressed in concession contracts:
- (1) **Standard Contract Language.** Reclamation's standard concession contract language will be used to ensure compliance with all applicable laws, rules, regulations, Executive Orders, and Concessions Management Policy and Directives and Standards. Standard contract language can be found in the Concessions Management Guidelines. (See paragraph 5E.)
 - (2) **Interim Operator.** Reclamation may select an interim operator if a contract is not in place at the time the existing contract expires or is terminated. Interim contracts will generally follow the existing contract provisions; however, contract terms and conditions must be modified to reflect current policies and directives and standards. Reclamation may select the existing concessionaire as the interim operator if the existing concessionaire is performing in a

Reclamation Manual

Directives and Standards

satisfactory manner. The interim operation will not exceed 2 years. A new contract must be awarded as expeditiously as possible.

- (3) **Required and Authorized Visitor Services.** Contracts must outline the specific types of services, facilities, and activities that a concessionaire is **REQUIRED** to offer. The contract should also specify any other services or activities the concessionaire is **AUTHORIZED** to offer. It must be clear that those required services are not optional and must be provided. Any service, facility, or activity not identified in either category is not authorized without a contract amendment or written authorization from the contracting official (Regional Director or delegate).
- (4) **Sale and Transfer.** Concessionaires or parties holding interests in a concession contract may not sell, assign, or transfer their interests or a part of their interests to another party without the prior written approval of the contracting official (Regional Director or delegate). Concessionaires must complete and submit all sale and transfer information as required by Reclamation before approval of a sale or transfer of all or any portion of a concession operation will be considered.
 - (a) **Proposed Transfer.** A proposed transfer of interest is subject to the same evaluation process that is performed for a new concession contract. The Reclamation-designated official may choose not to approve a proposed sale or transfer or may choose to place conditions on the approval.
 - (b) **Change of Original Contract Terms.** Concession contracts will provide that the terms and conditions are subject to change by Reclamation before approval of a sale or transfer. The length of the term may be reduced but not extended.
- (5) **Default and Nonperformance.** Clauses addressing default, penalty, and termination will be included in all concession contracts. The review and evaluation process will be critical to help determine if a concessionaire is in default or not meeting the terms of the contract. [See paragraph 4D(27).] The contract will also allow Reclamation to require a surety or performance bond at any time, collect penalties and administrative costs for default and nonperformance, and terminate the contract.
- (6) **Length of Term.** The term of all contracts will be limited to the shortest period practical and will be based primarily on the investment required of the concessionaire, as determined through the financial feasibility evaluation. The term of a contract requiring minimal or no new capital investment should generally not exceed 5 years. When substantial investment is required, the

Reclamation Manual

Directives and Standards

term will be based on the financial feasibility evaluation to ensure that concessionaires receive a reasonable return on their investment. New contracts cannot contain renewal clauses.

- (7) **Subconcessions.** Subconcessions are not permitted.
- (8) **Concessions Building and Improvement Program.** All designs for construction must be approved by Reclamation and must comply with applicable environmental regulations and building code requirements, including those for accessibility and historic preservation. In areas where State or local construction standards are not available, Reclamation may provide appropriate standards. Where required and before construction, the concessionaire must obtain all required building permits from the local authorities. All the concessionaires' facilities will be harmonious in form, line, color, and texture with the surrounding landscape.
- (9) **Environmental Compliance.** Concession contracts will address all activities with potential environmental impacts resulting from the release of hazardous materials to the environment including, but not limited to, the following: pesticides, herbicides, sewage effluents, petroleum products, and liquid waste (gray water). Concessionaires are required to follow all applicable Federal, State, and local laws, rules, and regulations related to hazardous substance use, storage, and disposal. Application for and acquisition of all required certifications and permits are the responsibility of the concessionaire.
- (10) **Interpretation and Thematic Programs.** Contracts should require concessionaires, to the extent possible, to support Reclamation's educational efforts through such actions as developing interpretive and area thematic messages in printed material (menus, marketing, correspondence, etc.), using outdoor signs, and, as appropriate, developing formal programs.
- (11) **Operation and Maintenance Plan.** Concessionaires will prepare an annual operation and maintenance plan, which must be approved by Reclamation. Concession contracts must clearly state what the plan will contain. Reclamation's Concessions Management Guidelines provide a list of operation and maintenance items that should be considered for inclusion in the plan. (See paragraph 5E.)
- (12) **Preference for Renewal.** Concession contracts will not include a preference right of renewal.
- (13) **Reimbursement for Fixed Assets Constructed by Concessionaires.** Concession contracts will specify whether fixed assets located on the Federal

Reclamation Manual

Directives and Standards

estate by a concessionaire will remain on the Federal estate or be removed at the end of the contract.

- (a) **Assets That Remain With the United States.** Title to all capital investments will be held by the United States and not the concessionaire. Concessionaires do not automatically have a right to compensation from the United States in fixed asset improvements upon contract expiration or termination. However, at the option of Reclamation, and when appropriated funds are available, Reclamation may purchase a concessionaires remaining assets that have not been amortized and the amount paid to the concessionaire will not exceed cost less depreciation.
 - (b) **Approval of Improvements.** Any new investment in fixed asset improvements by the concessionaire must be approved, in writing, by Reclamation before commencement of construction. This written approval will specify (i) the amount of money to be spent to construct or rehabilitate the fixed asset, (ii) the allowed depreciable life of the improvement (according to the IRS schedule), and (iii) the construction details and schedule.
 - (c) **Assets That Remain to be Purchased by a New Concessionaire.** Upon expiration, termination, or sale or transfer of a concession contract some fixed assets may not have been fully amortized. If Reclamation determines the fixed assets are still needed for the concession operation, the unamortized value must be purchased by the new concessionaire and based on the original cost less depreciation.
- (14) **Area of Operation.** Each contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. The contract must include a legal description and a detailed map. Concession boundaries will be surveyed by Reclamation and must be easy to recognize by the visiting public.
- (15) **Additional Facilities or Services.** A concessionaire may request contract amendments for limited additional facilities or services that meet public needs and were not identified in the RFP. A major expansion of facilities or services is not permitted. Additional facilities or services are not allowed without advance approval by Reclamation.
- (16) **Total Benefits to the Government.** Reclamation will determine and recover fair compensation, including direct returns and direct and indirect benefits, for the use, rights, and privileges granted under a concession contract. The

Reclamation Manual

Directives and Standards

concession contract will specify the direct returns and direct and indirect benefits.

- (a) **Thresholds.** Targeted thresholds of total benefits will be developed to determine the optimal combination of payments. These will be used in advertisements, RFPs, and renegotiations to seek appropriate benefits to the Government and the public.
 - (b) **Direct Returns (Disposition of Fees).** The appropriate disposition of recreation or concession fees depends on the land status and authority used to collect the fees. Fees collected under the authority of the Land and Water Conservation Fund Act are to be deposited in the Recreation, Entrance, and User Fee Account, which is a special account for Reclamation established in the United States Treasury. For specific information, refer to the RM, *Crediting of Incidental Revenues*, PEC 03-01. Except as provided otherwise in a project specific authorization, fees collected pursuant to Reclamation law will be disposed of as follows:
 - (i) Fees generated by concessions or recreation activities on withdrawn project lands are deposited in the Reclamation Fund.
 - (ii) Fees generated by concessions or recreation activities on lands acquired for project purposes are deposited in the Reclamation Fund, to the credit of the project.
- (17) **Utility Services Provided by Reclamation.** The value for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. If the financial feasibility evaluation determines that it would not be feasible for the concessionaire to pay rates which would compensate Reclamation for its total capital and operating costs, Reclamation must determine the utility service rates that would be feasible and applied. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
- (18) **Exclusive Use.** Exclusive use facilities are not authorized in new concession contracts. If existing concession contracts are amended, a new provision must be included that requires exclusive use to be phased out as soon as possible, before the contract expires. A mandatory timetable for this phase out must be included in the amended contract. The concessionaire and a person hired to guard the concessionaire's investment may reside on the Federal estate, with the written approval of the contracting officer.

Reclamation Manual

Directives and Standards

- (19) **Sale of Personal Property.** The sale of personal property by anyone other than the concessionaire is prohibited on the Federal estate. Concessionaires will be permitted to sell their personal property on the Federal estate only to Reclamation or a succeeding concessionaire.
- (20) **Rates and Merchandise.** Rates charged by concessionaires for all facilities, services, and merchandise will be based on charges for comparable facilities, services, facilities, and merchandise provided by the private sector in similar situations. Approved rates will ensure a fair return to the concessionaire and a reasonable charge to the public. Reclamation will approve such rates or rate schedules when the concessionaire proposes to change rates. Any rates in excess of comparable rates must be thoroughly justified and supported in writing by the concessionaire and approved by Reclamation.
- (21) **Concessions Safety Program.** Concessionaires are responsible for providing and ensuring a safe and healthful environment for both the visiting public and employees by developing, implementing, and administering health, safety, and educational programs to ensure that concession areas are managed in compliance with Federal, State, and local laws, rules, and regulations.
- (22) **Insurance Program.** Concessionaires must have an insurance policy that will indemnify the United States and meet applicable State requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and will provide that the United States is named as an additional insured. Reclamation must be provided with a certificate of insurance by the insurance agent to confirm that the above requirements are met before development begins or operations commence. The concessionaire must also provide Reclamation with a copy of each insurance renewal certificate throughout the term of the concession contract. The Regional Director or delegate will establish a minimum insurance requirement based on the facilities and services offered by individual concessions.
- (23) **System of Recordkeeping.** Concessionaires will complete Reclamation's Annual Financial Report (AFR) form and provide any other financial information that may be requested. The annual financial reports will conform to the standard AFR form, without exception or modification.
- (24) **Food Sanitation.** Concessionaires' food services will comply with Federal, State, and local food handling and sanitation laws, rules, and regulations.
- (25) **Advertising and Signs.** Use of the Reclamation seal, logo, or name must be approved by Reclamation before it is displayed in advertisements or on signs.

Reclamation Manual

Directives and Standards

Outdoor signs or other forms of advertising must not be displayed on the Federal estate without the approval of Reclamation.

- (a) The Reclamation logo or name will be obvious at all entrances to all concessions.
- (b) Concessionaires will be required to notify the public that they are authorized by Reclamation to conduct business on the Federal estate. All promotional material, regardless of media format (i.e., printed, electronic, broadcast), provided to the public by the concessionaire in connection with the services provided under the concession contract must be approved in writing by Reclamation. At a minimum, all such information will identify the concessionaire as an authorized concessionaire of the Bureau of Reclamation, Department of the Interior.

(26) **Statistical Data.** Concessionaires will furnish information as specified in Reclamation's Recreation Use Data Report on an annual basis or as otherwise requested.

(27) **Concessions Review and Evaluation.** Reclamation's Concessions Management Guidelines contain instructions on how to determine an appropriate rating and how to ensure that the concessionaire is in compliance with the terms of the contract. There are two types of review, the "local review" and the "external review."

- (a) **Local Review.** The local review will be conducted by the Reclamation office directly responsible for oversight of the concession. The local review will be conducted at least twice annually. One of the inspections must be conducted during the high use season. The combined reviews will determine the annual performance rating. The review will include, at a minimum, items listed in the Concessions Management Guidelines. The possible ratings are Satisfactory, Marginal, or Unsatisfactory. A copy of the completed review and rating will be sent to the regional office and the concessionaire and entered into the Recreation Use Data Report. The local Reclamation office will maintain all concession program management files and records.
- (b) **External Review.** The external review will be conducted and documented by a team of technical specialists who are not employees of the office directly responsible for oversight of the concessions. At a minimum, contracts with a term of 5 years or less will be reviewed once, midterm; contracts with a term exceeding 5 years will be reviewed every 5 years.

Reclamation Manual

Directives and Standards

A copy of the review will be sent to the area and regional offices and the concessionaire. The external reviews will examine, at a minimum:

- (i) The extent to which the concession operation meets Reclamation's Concessions Management Policy, Concessions Management Directives and Standards, and Concessions Management Guidelines.
 - (ii) The extent to which the concession activities are consistent with resource management plans and commercial services plans.
 - (iii) The extent to which the concessionaire is in compliance with the contract provisions, especially with respect to building improvements, operations, prices charged by concessionaires, fees returned to the Government, and annual financial reporting to Reclamation.
 - (iv) The quality and condition of the facilities and services related to the health and safety of the employees and the visiting public.
 - (v) The recordkeeping system(s) used by the local Reclamation office to determine that the concessionaire uses generally accepted accounting practices.
 - (vi) The recordkeeping system(s) used by the local Reclamation office to conduct quarterly and annual reviews.
 - (vii) The local Reclamation office records regarding the annual reviews and annual rating.
- (c) **Corrective Actions.** If either the local or external review identifies operational or administrative deficiencies in the operation of a concession, a timetable must be established by the area office and approved by the Regional Director or delegate to correct these deficiencies. The contract must specify the actions that will be taken for marginal or unsatisfactory ratings. The possible actions will include suspension of all or part of the concession operation or termination of the concessions contract.
- (d) **Disputes.** Disputes between Reclamation and the concessionaire are to be resolved through informal negotiations and discussions. In the event that such disputes fail to reach resolution, either party may request a formal, nonbinding arbitration process. Each party selects one member for the arbitration panel and, together, these two members will select the third (neutral) panel member. The panel will treat each party equally and

Reclamation Manual

Directives and Standards

fairly. Recommendations must be made by a majority of the panel members. If either party disagrees with the arbiter's recommendation, he or she may file an appeal with the Secretary of the Interior under 43 CFR, Part 4, Subpart G. The Secretary's determination is final and binding.

- (e) **Officials Not to Benefit.** No member of the executive, legislative, or judicial branches of the Federal Government may be a party to any concession contract or receive any benefits from a concessions contract.

5. Miscellaneous.

A. RFP and Contract Review. All RFPs and concession contracts must be reviewed and approved by the Commissioner's Office. The following sequence of steps must be followed:

- (1) Area or regional offices must submit the proposed RFP and contract along with supporting information to the Commissioners's Office. The supporting information must include appropriate planning documentation and financial feasibility evaluation.
- (2) The Commissioner's Office will establish a review team appropriately suited to the complexity and scope of the RFP and the contract. The team will evaluate the RFP and the contract for sufficiency and compliance with the Concessions Management Policy and Concessions Management Directives and Standards.
- (3) The Commissioner's Office will return the approved RFP and contract, or return the RFP and the contract for modification and resubmittal if necessary.

B. Training. All Reclamation offices are responsible for ensuring that Reclamation personnel involved with concessions have received training commensurate with their responsibilities.

C. Nonprofit Organizations.

- (1) In certain circumstances, it may be appropriate for cooperative associations or nonprofit organizations to sell goods or provide visitor services to meet Reclamation's goals and objectives. All cooperative association arrangements must be approved by Reclamation if the cooperative associations operate within a concession.
- (2) The cooperative association will be responsible for maintaining its accounting system, and the system cannot be combined with the annual financial report submitted by a concessionaire. Nonprofit organizations will also be given very

Reclamation Manual

Directives and Standards

clear allowances and restrictions identifying the type of business they are authorized to conduct and the type of goods or services they may provide. Just as with concessionaires, nonprofit organizations are prohibited from providing items or services not specifically authorized. All nonprofit organizations must provide written proof of their nonprofit status.

- D. Employment of Reclamation Personnel or Family Members².** Reclamation employees or family members(s) may not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, nor may they have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under these directives and standards. Reclamation employees are further prohibited from using their public office for private or family gain. A Reclamation employee involved in activities concerning preparing specification formulation, contract award, or operational administering a concession may not participate in that activity if the employee or a family member is involved in any phase or operation of that concession. Any Reclamation employee responsible for any phase of a concession contract will be excused from duties related to the contract if the employee or a family member is involved in the competition for the contract or the Reclamation employee or a family member may benefit financially from the award of the contract.
- E. Concessions Management Guidelines.** The Concessions Management Guidelines contain additional information that will assist Reclamation offices in complying with the Concessions Management Policy and the Concessions Management Directives and Standards.

² Guidance on this issue should be obtained from an ethics counselor in the servicing Reclamation Personnel/Human Resources Office.

Exhibit C

Bureau of Reclamation Provided Buildings and Improvements

BUREAU OF RECLAMATION PROVIDED BUILDINGS AND IMPROVEMENTS

1. One 19 foot by 53 foot residence building, unfurnished, 3 bedrooms, 1 bathroom, cedar board and batten siding, electric forced-air furnace.
2. One 19 foot by 53 foot concession building, unfurnished, with inside food service counter, product display area, two handicapped accessible public rest rooms with showers, outside covered and open decks, propane gas forced-air furnace.
3. A 16-foot by 24.5-foot wood frame, cedar sided utility building containing water pump, pressure tank, and storage space.
4. A 4-foot by 60-foot floating courtesy dock.
5. Approximately 50 wooden fence posts (which makes the existing fenced storage area).
6. A fiberglass underground gasoline storage tank, fiberglass supply lines, and pump.
7. Utility systems including:
 - a. A pressurized water system with a pressure tank, electric centrifugal pump and piping, supplied from an above ground 2200 above ground tank and a 1,500-gallon buried cistern.
 - b. A 2000-gallon (two 1000 gallon tanks in series) septic drain field system.
 - c. Outside lighting consisting of five 250-watt sodium-vapor lamps on 30-foot wood poles; and, two 500-watt quartz flood lamps for the service dock.
8. Two pre-cast concrete vault toilets located adjacent to the parking area.
9. Five campsites consisting of the following: three campsites with water, sewer, and electrical hook-ups (20 amp breakers); and, two campsites with electrical hook-ups (20 amp breakers) only.
10. One RV dump station.
11. Graveled roads and parking areas.
12. Concrete boat launch ramp

Exhibit D

Montana Fish, Wildlife and Parks Provided Buildings and Improvements

**MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS PROVIDED
BUILDINGS AND IMPROVEMENTS**

1. Fish Cleaning Station

Exhibit E

**Memorandum of Understanding
Between the Bureau of Reclamation and
Montana Department of Fish, Wildlife and Parks**

**MEMORANDUM OF UNDERSTANDING
BUREAU OF RECLAMATION (B.O.R)
AND MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS
FOR THE CONSTRUCTION AND MAINTENANCE
OF A FISH CLEANING STATION**

THIS Memorandum of Understanding, entered into this 1st day of JUNE, 1998, between the State of Montana, DEPARTMENT OF FISH, WILDLIFE & PARKS (FWP), whose main address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701, and BUREAU OF RECLAMATION (B.O.R), whose main address is P.O. Box 30137, Billings, Montana 59107-0137.

RECITALS

The Bureau of Reclamation owns and controls certain real property known at Tiber Reservoir Marina, located in Liberty County, Montana, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

FWP is desirous of constructing a fish cleaning station at Tiber Reservoir that will be accessible by the public, and the Bureau of Reclamation wishes to assist FWP by providing a location for the fish cleaning station at Tiber Reservoir.

AGREEMENT

In consideration of the mutual promises, terms, and provisions of this MOU, the parties agree to the terms and provisions set forth below:

1. PURPOSE: The purpose of this MOU is to establish responsibilities for construction, operation and maintenance of a fish cleaning station at Tiber Reservoir, according to the terms and conditions outlined in this MOU.

2. **TERM:** This MOU will remain in full force and effect for a term of twenty (20) years unless otherwise terminated, as provided in this MOU.
3. **CONSTRUCTION:** FWP agrees to diligently provide all of the design and construction of the fish cleaning station at Tiber Reservoir. The design details include geometrics template, utility details, sign location, septic tank/drain field, and other details. Construction will be contingent on obtaining necessary approvals from the other agencies with jurisdiction. The location of the fish cleaning station will be mutually determined by FWP and Reclamation, within the boundary of the Tiber Marina Concession Area. The location will conform to the Tiber Marina Master Plan prepared by Reclamation (expected completion date of may 15, 1998). FWP is responsible for obtaining any construction and operation of the fish cleaning station. Reclamation is responsible for compliance with the national Environmental Policy Act (NEPA). FWP will complete construction of the facilities by September 1, 1998.
4. **UTILITIES:** FWP will provide at its expense a graded area and necessary utilities for proper placement and operation, of the fish cleaning station, including electricity and nonpotable water.
5. **OPERATIONS AND MAINTENANCE:** The duly authorized operator of the Tiber Marina Concession Area (Concessioner) will provide for day to day cleaning and minor maintenance of the fish cleaning station. Any repairs or maintenance items costing more than five dollars (\$5) will be the responsibility of FWP. In the event the concessioner defaults or otherwise terminates his concession contract with Reclamation, or if the concession is closed for the

season (typically September 15 to May 15, annually) FWP will be responsible for operation and maintenance of the fish cleaning station.

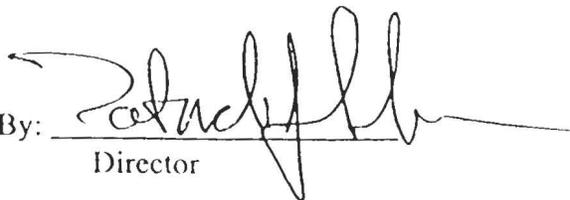
6. SIGN. FWP may install and maintain an appropriate sign at the area which states, among other things, that FWP constructed the fish cleaning station and provides information about the area.
7. TERMINATION : Either FWP or the Bureau of Reclamation may terminate the MOU by giving the other written notice of termination at least 180 days in advance of the date specified for termination, unless an earlier date for termination is mutually agreed to by FWP and the Bureau of Reclamation. Upon termination, FWP will close the station in accordance with applicable law and regulation. The parties acknowledge that such law and regulation may not require complete removal of the station's fixtures and equipment.
8. LIAISONS. FWP designates its Region 4 Supervisor in Great Falls and the Bureau of Reclamation designates its on-site manager to act as liaisons between FWP and the Bureau of Reclamation for the operation of this MOU.
9. MODIFICATIONS. This document constitutes the sole and entire MOU between the parties. No statements, promises or inducements made by either party which are not contained in this MOU are valid or binding unless evidenced in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this MOU.

MONTANA FISH,
WILDLIFE & PARKS

By:

Director



THE BUREAU OF RECLAMATION

By:

B.O.R. Area Manager

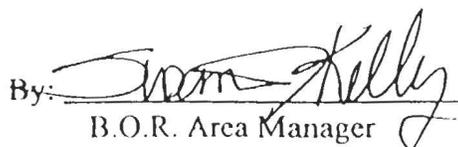


Exhibit F

Boat Dock Standards

BOAT DOCK STANDARDS

Introduction. The standard and drawings used here are adopted from the U.S. Army Corps of Engineers (Corps) Minimum Design Standards For Moorage Facilities, the Corp's Marina Safety Standards For Commercial Concessions and Gasoline Docks, and from recommendations from the National Park Service, and commercial dock manufacturers. All floating facilities approved by Reclamation shall meet or exceed the minimum design standards listed below.

1. Boat Docks (Moorage and Service Docks):

- a. Wood Frame Construction:
 - (1) All wood in the structure including the deck must be treated with a preservative. The preservative used will not be toxic to fish and wildlife if leached from the wood. CCA treatment is acceptable.
 - (2) Floor joists and flotation frames shall not be less than 2"X 6" dimension material and spaced in such a manner to allow for expansion. No part of the wood frame shall rest in the water under minimum live load conditions.
 - (3) All wood frame docks shall comply with the attached drawing, "Suggested Construction Plans For A Safer Boat Dock".
- b. Other Construction Requirements:
 - (1) Docks using other than wood frame construction (aluminum, steel, plastic, etc.) must be commercially engineered and manufactured.
 - (2) Horizontal joints on the walking surface (decking) may not exceed ½" in width (for instance, cross-plank spacing), and vertical joints on the walking surface may not exceed ¼" in height (thresholds, the joint where two dock sections meet, etc.) unless they are sloped back to 1:12 (8.3%). In constructing new wood decking, care should be taken to insure that shrinkage will not form gaps in the decking that exceed ½" in width.
 - (3) Finger docks (walkways between boat slips) shall be a minimum 36" wide (48" is recommended). Main docks serving the public (basically all other public docks, service docks, walkways, gas docks, etc.) shall be a minimum of 48" wide (60" wide is recommended).
 - (4) Decking shall be firm and slip-resistant. If exposed wood decking is used as a surfacing material, planks should run perpendicular to the direction of travel.
- c. In construction, all connections will be secured with sheet metal, steel plates, metal straps, or plywood gussets to resist wave action.
- d. Storage compartments and other mounted or built-in marina equipment are permissible on docks, providing walkways at least 48" wide are provided around any and all equipment stored or mounted on the dock.
- e. All electrical service on docks must be installed, operated and maintained in accordance with the requirements of the National Electrical Code (NEC), the National Electrical Safety Code, and applicable State and local codes. Concessioners must obtain a certificate from a licensed/certified and practicing electrician stating that all electrical wiring is in compliance with the NEC and local codes.
- f. Reclamation reserves the right to allow fuel dispensing from service docks. The concessioner is responsible for developing and submitting detailed plans for Reclamation's review and approval of a dock-based fuel dispensing system. The concessioner will be required to strictly comply with all applicable Federal, State and local codes or guidelines regarding fuel dispensing, storage and safe handling.
- g. Storage of fuel or any other flammable substance on docks is not permitted.
- h. Docks shall be designed for a minimum structural load of 50 lbs. per square foot.
- i. Variance from any of the standards set forth in this Exhibit may be granted by Reclamation only after a review of detailed plans submitted by the concessioner, subject to the approval of the Corps, and subject to a final inspection of the finished structure.

2. Walkways (Connecting Finger Piers And Accessing Other Docks And The Shore):

- a. Walkways will be at least 48" in width (60" minimum is recommended).

- b. Walkways connecting main piers to the shore, including ramps, gangways, and stairs, shall be constructed with handrails at each side of the walkway. Handrails shall be approximately 42" in height, with an intermediate rail approximately 22" in height below the handrail. Posts for handrails should be spaced no farther than 8 feet apart. Handrails must have a smooth surface and be able to withstand a load of at least 200 pounds applied in any direction at any point with a minimum of deflection.
- c. Walkways shall be structurally sound. If lumber is used, it will have a minimum size of two inches by six inches or be of equivalent strength. The lumber shall be free of knots, splits, decay, and protruding nails, or conditions which would decrease the strength and impair the safety of the walkway.
- d. Walkways from shore to dock shall be free from excessive spring, deflection, or lateral movement and adequately supported with flotation where necessary. Walkways shall be accessible from the shore along a clearly marked path. Walkways from shore to dock shall be adjusted with changing water levels so as to minimize the slope of the walkway, but shall not be allowed to exceed a 1:3 running slope (1 foot drop in 3 foot run, or 33%).

3. Flotation:

- a. Freeboard. Flotation shall be adequate to support the top of the decking no less than 12" and no more than 20" above the water level under dead load conditions (the entire weight of the floating units and all permanently mounted equipment), and no less than 8" above the water level under minimum live load conditions. Flotation shall be designed for a minimum dead load of 19 lbs. per square foot (p.s.f.), and a minimum live load of 30 lbs. p.s.f.
- b. Flotation shall consist of commercially manufactured polyethylene flotation structures (billets) injected with polystyrene or urethane foam. Reclamation may consider allowing other commercially manufactured flotation structures if the alternate flotation will not:
 - (1) sink or become water-logged if punctured,
 - (2) be subject to damage by animals,
 - (3) deteriorate on contact with petroleum products
 - (4) contaminate the water when punctured.
- c. Docks must be maintained in such a manner that they are easily visible above the surface of the water. Some portion of the structure must be at least 18 inches out of the water (i.e., handrails, surface of the dock, storage cabinets. etc.)
- d. Existing dock flotation may be allowed by Reclamation until it has deteriorated to the point of contaminating the environment, or is no longer capable of meeting the freeboard requirements of Item 3(a), above. All new or replacement flotation shall comply with Item 3(b), above.

4. Anchorage:

- a. An anchorage system shall be provided which will insure secure mooring of the structure. The anchorage shall provide safety against extreme water fluctuations, currents, drift impact, and wave action.
- b. The use of vegetation or the placement of permanent structures on the shoreline as an anchorage system is not allowed.

Exhibit G

Section 2 - Scope of Work

SCOPE OF WORK

A. Services

The Concessionaire is required to provide the following services under the term of the Agreement:

- 1) Gasoline and motor oil sales.
- 2) Groceries, snacks and sundries appropriate for the types of recreation use occurring at Lake Elwell.
- 3) Non-alcoholic beverage sales.
- 4) Tourist and directional information to the public.
- 5) Fishing tackle and supplies.
- 6) Camping and day use recreation facilities.
- 7) Camping and day use recreation supplies.
- 8) Courtesy boat dock.

The Concessionaire is authorized, but not required, to provide the following visitor services during the term of the Agreement:

- 1) Boat rentals.
- 2) Photo and film supplies.
- 3) Prepared food (Reclamation must be provided with Health Inspection Compliance reports.)
- 4) Liquor, beer and wine, subject to Montana state licensing requirements.
- 5) Interpretive materials (books, postcards, posters, photographs).
- 6) Boat launching assistance, for a fee, when specifically requested.
- 7) Boat docks/slips (up to 25).
- 8) Propane sales.
- 9) Seasonal boat and trailer storage.
- 10) Fishing and hunting licenses, subject to approval of the Montana Department of Fish, Wildlife and Parks.
- 11) Short-term cabin rentals.
- 12) Development of additional camping sites.
- 13) Pay phone services.

Additional services, enhancements to existing buildings, and improvements may be proposed by the Concessionaire. All proposals must be approved in writing by Reclamation prior to placement, construction, or implementation.

Any additional services above the minimum will be considered using the following criteria:

- 1) The service must directly serve the short-term recreating public use of Lake Elwell.
- 2) It must not present a hazard or nuisance to reservoir operations, to the Public or resources at the area.

- 3) It must be legal and otherwise compatible with Reclamation Policy.
- 4) It should not overly compete with other privately provided services in the immediate area of the concession.

B. General Requirements

The Concessionaire must keep the premises and facilities in an orderly and sanitary condition, that is visually aesthetic and in a good state of maintenance and repair, as determined by Reclamation.

The Concessionaire may restrict public use at specific areas within the concession site for the purpose of protecting private property or for health and safety purposes, subject to Reclamation approval. The Concessionaire shall have no control over areas outside the perimeter of the concession site, and may not restrict public access through the concession site to those areas.

All properties and facilities within the concession area, whether Reclamation owned or Concessionaire owned, shall be kept safe for public use by the Concessionaire during the term of the Agreement. The Concessionaire shall be responsible for maintaining the courtesy dock, and keeping it and the boat ramp operational during the recreation season.

The Concession must be operated with a high degree of courtesy and fairness to all patrons and the general public.

Landscaped lawn areas will be watered and well maintained. Weeds and other vegetation will be kept mowed or removed to prevent seeding and fire hazard.

As water level elevations fluctuate, water based concession facilities (courtesy boat dock, picnic tables, etc.) must be re-anchored or moved appropriately. Any facilities located in the water such as docks, must be entirely removed from the Reservoir by the Concessionaire after the recreation season and reinstalled before the start of the next recreation season.

C. Operating Requirements

The Agreement shall terminate on December 31, 2013, unless extended as provided for in Reclamation's Concessions Management Policy and Directives and Standards (**Exhibit B**). No renewals shall be automatically granted to the then existing Concessionaire. No rights of first renewal, nor preference points shall be granted to the then existing Concessionaire.

During the term of the Agreement, the dry storage area within the concession site may need to be relocated. At such time, Reclamation and the Concessionaire shall work together to position the dry storage area within the concession site. The Concessionaire shall be responsible for the relocation and shall dismantle the existing dry storage fence. The Concessionaire may utilize any serviceable materials from it for the new fence. The design of the dry storage area must be approved in writing by Reclamation prior to start of construction.

During the term of the Agreement, Reclamation reserves the right to remove the current

residence. At such time, the Concessionaire shall provide a mobile residence for their personal use or the use of staff during the term of the Agreement if the Concessionaire or designated staff plans to live on-site during the recreation season. Reclamation will provide electrical, water, and sewage hookups and a concrete pad for a mobile residence, at a location to be determined by Reclamation and the Concessionaire. The mobile residence may not be constructed or placed in a permanent manner - it must be maintained in a condition that allows it to be moved from the concession site, at the Concessionaire's expense, at the termination of the Agreement if so required.

Reclamation reserves the right to remove and/or replace the store during the term of the Agreement. In the event Reclamation exercises this right, Reclamation will develop water, sewage, and electrical service connections for a new store at a site determined by Reclamation and the Concessionaire. The residence and store shall continue to meet all current building codes and all accessibility requirements.

The Concessionaire is afforded the opportunity to develop additional campsites within the concession site, with the approval of Reclamation. At a minimum, each campsite, whether newly developed or existing, shall be provided with a picnic table, fire ring and/or grill, campsite number and site delineation. New campsites shall provide parking space for two (2) vehicles and a level site for an RV or tent, and may be enhanced with electricity, and water and sewer hook-ups (if water is provided at each campsite, sewer hook-ups shall also be provided.) Reclamation will provide the picnic tables, fire rings and/or grill. The Concessionaire shall be responsible for all other campsite developments and improvements. Additionally, five percent (5%) of all campsites within the concession site must be developed for handicap accessibility.

All additional utility enhancements, for the mobile residence and store, and the campsites are at the Concessionaire's sole expense without compensation at the termination of the Agreement. Title to the improvements is vested with the United States.

The Concessionaire shall provide, at a minimum, seasonal recreation operation, and shall be fully operational from May 1 through the Labor Day weekend. The Concessionaire, or a designated representative, shall provide at a minimum the required services between the hours of 8 a.m. and 6 p.m., Thursday through Monday of each week during the recreation season, including the Memorial Day, Independence Day, and Labor Day holidays. Alterations to these hours are permissible only with prior written authorization from Reclamation.

The Concessionaire shall assume full responsibility for the premises and is required to operate and maintain all facilities and equipment within the concession site, including those provided by Reclamation as well as those owned or provided by the Concessionaire. If the Concessionaire is not present during the non-recreation season, Reclamation will visit the concession site on a weekly basis to inspect buildings and improvements located within the concession site, however, Reclamation is not responsible for site security.

Each bidder is required to prepare and submit with their proposal, a preliminary draft Operations and Maintenance plan for the 2003 recreation season. Within 30 days of contract award, the Concessionaire must submit to Reclamation for its review and approval, a final draft Operations

and Maintenance plan for the 2003 recreation season. By March 1, of each year thereafter, the Concessionaire must submit to Reclamation for its review and approval, an updated Operations and Maintenance Plan for the coming recreation season.

The Concessionaire, in cooperation with Reclamation, must prepare a Hazardous Materials Spill Prevention Plan prior to dispensing or selling fuel. An Integrated Pest Management Plan, including weed control, and other plans may be determined necessary by Reclamation in the future. The Concessionaire shall be responsible for obtaining any specialized materials, permits, licenses, certifications, etc., necessary to perform their duties and responsibilities as defined in the plans.

Only equipment and facilities specifically required for the operation of the Concession site, and in serviceable condition, may be stored on site. The Concessionaire may submit for review, a Special Storage Request for additional vehicles or equipment.

All utility costs for the Concession site, including LP gas, potable water, septic tank pumping, telephone, and electricity are the responsibility of the Concessionaire. Maintenance requirements for the fish cleaning station are described in **Exhibit E**.

It is the Concessionaire's responsibility to obtain and keep current all licenses and permits required to operate the concession required services and facilities. The Concessionaire shall provide Reclamation a copy of each permit within 30 days after it is initially obtained or renewed.

The concession site may be inspected by Reclamation staff and its representatives at Reclamation's discretion. Reclamation will provide the Concessionaire a minimum advance notice of 48 hours for inspections. The Concessionaire shall participate with Reclamation in such inspections.

The Concessionaire must provide Reclamation copies, within five (5) calendar days after their receipt, of any and all reports, notices of deficiencies, etc., resulting from inspections or reviews conducted by another Federal agency, or state or local agency. The Concessionaire must comply with any and all stipulated remedies required by the reports or notices of deficiencies, unless such remedies do not meet Federal codes or standards. In such instances, the Concessionaire must remedy the deficiencies to meet Federal codes or standards, within the time as originally stipulated. If the regulatory required remedy exceeds Federal code or standard, the more stringent requirement must be met.

Reclamation guarantees the Concessionaire that no other agreements for these same services will be granted to another party within the concession site during the term of the Agreement. Should Reclamation determine that additional services are to be provided within the concession site, and should the existing Concessionaire decline the opportunity to provide the additional services, Reclamation may offer the opportunity to another qualified concessionaire.

The Concessionaire may not interfere with members of the public who choose to purchase merchandise or services elsewhere and bring it for consumption or use within the concession

site.

Concession facilities and operating procedures must comply with all Federal, state and local health and safety requirements, Reclamation law, other pertinent Federal laws, Executive Orders, rules and regulation, and Reclamation policies and directives and standards, in effect now or as may be modified or amended in the future.

A minimum of one person on the concession staff must have basic training in First Aid and cardiopulmonary resuscitation (CPR). Proof of certification must be available upon request by Reclamation.

Prices of goods and services offered shall be comparable to similar operations in like areas of Montana. Annually, the quality and prices of goods and services to be provided by the Concessionaire will be submitted to Reclamation by January 31st for review before the start of the next recreation season.

Any additional facilities and/or construction activities proposed by the Concessionaire at the Concession site must be approved in writing by Reclamation prior to start of construction. A professional quality plan or drawing must be submitted for review and approval. All construction will be considered a Federal undertaking and must adhere to Federal Laws, such as the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the Uniform Federal Accessibility Standards. All construction activities shall meet current code standards and shall be performed by a contractor licensed to perform such activities. All improvements to the site, either underground, landscaping related, or permanently attached to Reclamation provided buildings and improvements, shall stay with the land and buildings and improvements, and shall become Reclamation property without any compensation to the Concessionaire.

The Concessionaire must carry levels of liability and property insurance as identified in Section 10, Tiber Marina Concession Agreement, to protect Reclamation owned property. Reclamation shall be named co-insured on all coverage, and a copy of all policies shall be provided to Reclamation as required in the Agreement.

Law enforcement on the Federal lands at the reservoir is provided by the appropriate county (Liberty or Toole) Sheriff's Department. Fish, wildlife, and water safety laws are enforced by the Montana Department of Fish, Wildlife and Parks. Reclamation is to be notified if any Federal property is damaged or destroyed within five (5) calendar days of such damage.

The Concessionaire shall be required to submit to Reclamation annual financial reports. Unless Reclamation provides the Concessionaire with a specific report form and format, the report will list the gross revenues and expenses for each service offered to the public, and any other concession related revenue/expenses incurred by the Concessionaire. The report shall be typed, dated and signed by the Concessionaire. Reclamation may also require additional levels of financial reviews of the Concessionaire's books as may be described within Reclamation's Concessions Management Policy and Directives and Standards. Such additional financial reviews are at the Concessionaire's expense.

Concession facilities will be constructed, operated, and maintained so as to be accessible by disabled persons. Discrimination on the basis of handicap or physical disability is prohibited. Reclamation will conduct accessibility evaluations during the term of this agreement.

Exclusive use of Reclamation land is prohibited. Other than limited housing opportunities for concession employees, no mobile homes, cabins or other privately owned improvements, other than those placed on the concession site by the Concessionaire for short-term business purposes, shall be placed on the concession site for long-term recreation use. Reclamation retains the right to define and determine instances of long-term exclusive uses.

Contracting out services to a sub-concessionaire shall not be allowed.

The Concessionaire shall provide at his/her expense the following:

- 1) All appliances, furniture, equipment, needed to operate the Concession, as well as all merchandise, potable water, fuel, propane, propane distribution system, etc., to be sold or furnished to the public. (See Exhibit C for Reclamation Provided Buildings and Improvements.)
- 2) The Concessionaire is responsible for any retro-fits as requested by Reclamation.
- 3) Equipment for recreation-related services the Concessionaire is required to provide and any equipment needed for additional services offered.
- 4) Vehicular support for the Concession operation.
- 5) Tools and maintenance equipment needed for maintenance of facilities.
- 6) Record keeping, monitoring, and reporting documents required for the underground fuel storage and distributions system.

The previous concessionaire may have some equipment or merchandise for sale. The successful bidder may, but is not required, purchase the equipment or merchandise.