

## **Agreement between the United States Bureau of Reclamation and the Emery Water Conservancy District for the Transfer of Title to the Emery County Project**

Pursuant to and in accordance with 43 U.S.C. §§ 2901-2907 (the Title Transfer Act) this Agreement is made and entered into by the United States, acting by and through the Department of the Interior, Bureau of Reclamation, (Reclamation) and the Emery Water Conservancy District (District), a water conservancy district organized under the laws of the State of Utah, with its principal place of business in Emery County, Utah (collectively, the Parties).

### **Background**

The Emery County Project (Project), located in east-central Utah, was authorized for construction as a participating project of the Colorado River Storage Project under Section 1.(2) of the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105). The Project was constructed from 1963 to 1966 to serve irrigation, recreation, fish and wildlife, and later, municipal and industrial purposes (collectively, the Project Purposes). The Project never generated hydropower.

Project Assets include a) the Joe's Valley Dam, Reservoir and outlet works, the Huntington North Dam, Dikes, Reservoir and outlet works, the Swasey Diversion Dam, the Cottonwood Creek – Huntington Canal, the Huntington North Service Canal, Huntington North Feeder Canal, the Huntington North Evacuation Pipeline, and the Upper Lakes Reservoirs (collectively, Project Facilities), b) federal lands and interests acquired or withdrawn for the Project (collectively, Project Lands), and c) water rights appropriated under state law for the benefit of the Project, including water right numbers 93-952, 93-953, 93-980, 93-954, 93-1003, 93-949, 93-985, 93-987, 93-997 (collectively, Project Water Rights).

The Project was constructed with federal funding under the terms of the Repayment Contract No. 14-06-400-2427 between the United States and the District, dated May 15, 1962, as supplemented and amended on November 17, 1972, August 10, 1976, and September 8, 1987 (collectively, the Repayment Contract). Under the Repayment Contract, the District is responsible for the care, operation, and maintenance of the Project. The District is also responsible for the repayment to the United States of all reimbursable Project construction costs. In November 2016, the District fully satisfied the repayment obligation, leaving no further repayment required by the District. Title to the Project Assets is currently in the name of the United States for the benefit of the Project.

For a number of reasons, including the District's full satisfaction of its repayment obligation, the District's need to finance current and future repair and replacement of certain Project Facilities, and Reclamation's desire to reduce federal obligations, costs, and liability, the District and Reclamation now seek to transfer title of the Project Assets to the District. In

accordance with the Title Transfer Act and Reclamation policy, the Parties have entered into a Memorandum of Agreement, dated September 18, 2019, and now enter this Title Transfer Agreement.

### **Required Findings**

As required by the Title Transfer Act, Reclamation finds:

A. The District is a qualifying entity. The District is a Utah governmental entity acting under the Utah Limited Purpose Local Government Entities – Local Districts Act, Utah Code Title 17B, Chapter 1 and the Utah Water Conservancy District Act, Utah Code Title 17B, Chapter 2a, Part 10. Pursuant to the Repayment Contract, the District has been the operator of the Project and the representative of the Project water users for more than fifty (50) years. Reclamation recognizes that the District has the capacity, technical capabilities, and financial resources to continue to manage the Project for the same Project Purposes for which it was constructed and since operated. Further, the District has agreed to accept title to the Project Assets.

B. The Project is an eligible facility. The Project does not include facilities that are considered reserved works, that generate hydropower marketed by a federal power marketing administration, or that are managed for recreation under a lease, permit, license, or management agreement that contributes to capital repayment.

C. The transfer of title is in the financial interest of the United States. The District has satisfied its Project repayment obligation and this transfer of title divests the United States of its financial obligations directly related to the Project Assets.

D. The District, as a qualifying entity, is committed to the continued management of the Project for its current Project Purposes and, therefore, a) this transfer of title will not have an unmitigated significant effect on the environment, b) the public aspects of the Project Assets, including flood control and fish and wildlife, will be protected, and c) there will be no adverse impacts on the continued fulfillment of present water delivery obligations.

E. By notice posted on the State of Utah Public Notice Website and in the local newspaper and by specific individualized notice, the Parties have made Emery County residents and all potentially affected state, local, and federal agencies aware of this title transfer effort and process. All interested persons and entities have been given the opportunity to comment in writing and in person at local public meetings. The Parties have also provided full access to information as requested. Accordingly, this process was conducted in an open and public manner. All stakeholders and beneficiaries that directly benefit from the Project, including Emery County, Orangeville City, Castle Dale, Huntington City, the Cottonwood Creek Consolidated Irrigation Company, the Huntington Cleveland Irrigation Company, PacifiCorp, and the State of Utah through its Department of Natural Resources (Division of Water Rights, Dam Safety, Division of Wildlife Resources (DWR), and State Parks) have consented to the transfer of title.

F. This transfer of title does not affect Reclamation trust responsibilities for any federally recognized Indian Tribe.

G. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.) requirements have been satisfied.

H. The Project Assets and the water bodies on which they are located do not contain threatened or endangered species or include critical habitat under the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.). However, DWR has identified three sensitive species of fish in the San Rafael River. Therefore, the Parties recognize the importance of the 3 cubic feet per second (cfs) of water delivered into Cottonwood Creek above its confluence with the San Rafael River under the September 12, 2013 Contract among the United States Fish and Wildlife Service, the United States Bureau of Reclamation, the District, and the Cottonwood Creek Irrigation Company (CCCIC) for DWR fish recovery purposes (2013 Contract). Accordingly, the District, together with its primary stakeholder CCCIC, have affirmatively represented to DWR that their obligations under the 2013 Contract, including the secure delivery of the 3 cfs into the Creek for the 40-year contract term and subsequent renewal periods, will remain unchanged by the transfer of title to the Project from the United States to the District.

I. Reclamation finds that the Project Assets contain limited historic properties and has a memorandum of agreement in effect for the mitigation of said properties under subtitle III of title 54, U.S.C – Historic Preservation (NHPA). To the extent any withdrawn Project Lands include historical sites, the District and the United States Forest Service have agreed to maintain existing protections and protocols to ensure that there are no impacts these historic sites.

Now, therefore, in consideration of the mutual covenants and agreements set forth herein Reclamation and the District agree as follows:

### Agreement

#### **I. NOTICE TO CONGRESS.**

Reclamation has submitted to Congress the written notice, attached hereto as Exhibit **A**, of this proposed transfer of title to the District which includes a description of the reasons for such transfer (the Notice to Congress).

#### **II. CONVEYANCE OF PROJECT ASSETS.**

If Congress does not pass a joint resolution disapproving of this transfer of title to the District within ninety (90) days of its receipt of the Notice to Congress, the Parties shall execute this Agreement as soon as possible, and then the following shall occur:

- a. The District shall pay to the United States ninety thousand dollars (\$90,000) which is the appraised fair market value (FMV) for the 60+/- acres of

withdrawn lands within the Primary Jurisdiction Zone (PJZ), specifically described at Exhibit C, which include the Joe's Valley Dam and outlet works based on their historical or existing uses minus twenty four thousand fifty dollars and 23/100 (\$24,050.23) which is the decrease in Reclamation's future land management costs for the PJZ, for a payment total of sixty five thousand nine hundred forty nine dollars and 77/100 (\$65,949.77). The conveyances described in (b) below shall occur after such payment is received.

b. Upon receipt of payment in (a) above, Reclamation shall:

- (1) convey to the District by a written instrument, in the form attached hereto as Exhibit B, all the United States' right, title, and interest in the Project Facilities, the PJZ, and all Project Lands, except for those included and described as Easement Area in the Easement described in II.b.2, immediately below.;
- (2) Acknowledge and agree to the United States Forest Service's conveyance to the District by a written instrument in the form attached hereto as Exhibit D, an easement over the withdrawn Project Lands (specifically described at Exhibit C) and those specific acquired Project Lands located in T17S, R6E, Section 32 (specifically described at Exhibit C); and
- (3) pursuant to that separate Water Rights Conveyance Agreement, convey to the District by a written instrument all the United States' rights, title, and interest in the Project Water Rights.

### **III. ACCEPTANCE OF TITLE WITHOUT WARRANTY AND PROJECT ASSETS AS-IS.**

Upon such conveyances to the District, the District shall accept title without warranty, and accept the Project Assets as-is.

### **IV. JOE'S VALLEY DAM AND RESERVOIR WITHDRAWN LANDS.**

a. Primary Jurisdiction Zone (PJZ) Withdrawn Lands. The withdrawn lands within the 60-acre +/- PJZ, specifically described at Exhibit C, which includes the Joe's Valley Dam and outlet works are determined by the Secretary to be unsuitable for return to the public domain and therefore, subject to subsection d., below, shall be conveyed to the District in fee by that written instrument referenced at II.b.1, above.

b. Non-PJZ Withdrawn Lands. With respect to the withdrawn lands outside the PJZ, specifically described at Exhibit C, which include primarily the Joe's Valley Reservoir, the Secretary has determined these lands to be unsuitable for return to the public domain and therefore, acknowledges and agrees to the United States Forest Service conveyance to the

District of an easement for the existence, care, and operation of the Reservoir for Project Purposes by that written instrument referenced at II. b. 2, above.

c. USFS Jurisdiction. The District accepts and acknowledges current and future Forest Service jurisdiction and use of the Joe's Valley Reservoir for recreation and fish and wildlife purposes as described in that easement attached hereto as Exhibit **D**.

## **V. DISTRICT MANAGEMENT OF PROJECT AND USE OF PROJECT ASSETS.**

Project Management and Use. The District agrees to manage the Project and use the Project Assets for substantially the same purposes for which the Project is used at the time of title transfer. The District hereby acknowledges that it has used and had operation and maintenance responsibility for the Project and Project Assets for more than 50 years, and hereby agrees to accept the Project Assets "as-is" and also accepts liability for them from the date of transfer forward, subject to applicable local, state and Federal law.

## **VI. RECLAMATION ASSIGNMENT AND DISTRICT ASSUMPTION OF PROJECT CONTRACTS.**

a. To the extent assignable by the United States and except as specifically stated below, when all the conditions precedent described in this Title Transfer Agreement are met, the Reclamation hereby assigns and the District hereby accepts all rights privileges, duties, responsibilities and obligations of Reclamation stated only in those valid and existing contracts as they relate to the Project. Such contracts include, but are not limited to, those contracts described and listed in Exhibit **E**.

b. The District shall honor the terms of each valid and existing contract and shall provide the rightful holder of each such contract with the same allowances that it receives from Reclamation.

c. The District agrees to indemnify and hold the United States harmless from all claims arising out of such valid and existing contracts.

d. Utah State Park's 12 Park Agreement. As required at subsection 5(d) of the October 26, 2018 Lease Agreement Between the Bureau of Reclamation and the State of Utah for the Planning, Development, Administration, Operation, Maintenance, and Replacement of Recreation at Deer Creek, East Canyon, Echo, Huntington North, Hyrum, Jordanelle, Red Fleet, Rockport, Scofield, Starvation, Steinaker, and Willard Bay (the "12 Park Agreement"), the District hereby agrees to be bound by the terms of the 12 Park Agreement and accepts all rights and obligations of the United States.

e. As more detailed in Reclamation's calculations shown at Exhibit **F**, the base present value of the future revenue streams to the United States under the three contracts listed immediately below is fully offset by the future decrease in contract administration and Project administration costs. These three contracts are:

1. Contract No. 14-06-400-5167 dated October 8, 1969 among the United States, Emery Water Conservancy District, Cottonwood Creek Consolidated Irrigation Company, and the Ephraim Irrigation Company for the storage and exchange of water.
2. Contract No. 14-06-400-5234 dated March 27, 1970 among the United States, Emery Water Conservancy District, Cottonwood Creek Consolidated Irrigation Company, and the Horseshoe Irrigation Company for the storage and exchange of water.
3. Contract No. 11-WC-40-419 dated August 15, 2011 among the United States, Emery Water Conservancy District, and Cottonwood Creek Consolidated Irrigation Company for conveyance of Non-Project water.

## **VII. TERM.**

This Agreement is effective in perpetuity unless it is terminated by mutual written agreement of the Parties.

## **VIII. DIVESTITURE OF FEDERAL OWNERSHIP, INTERESTS AND RESPONSIBILITIES.**

Upon the transfer of the Project Assets, they will no longer be considered part of a Reclamation project, and Reclamation shall be deemed to be entirely divested of all rights, interest and responsibilities related to the Project. Such Project Assets shall no longer be eligible for benefits available only to Reclamation projects. Further, the Project shall no longer be authorized for federal use, shall no longer be held in federal ownership, and the water supply represented by the Project shall no longer be under any Reclamation control or jurisdiction.

## **IX. TERMINATION OF REPAYMENT CONTRACT.**

The Repayment Contract provides for the repayment of reimbursable costs of the Project, as well as for operation and maintenance of the Project Assets. The Project Assets being transferred to the District constitute the entire Project. As such, the provisions of this Agreement will render unnecessary the provisions of the Repayment Contract. Therefore, the Repayment Contract shall terminate upon completion of the transfer of title to the Project Assets as contemplated in this Agreement.

## **X. GENERAL PROVISIONS.**

a. No Future Obligation. Nothing herein shall be construed to obligate Reclamation to expend or involve the United States in any contract or other obligation for the future payment of money in excess of the appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.

b. No Binding Rights or Obligations. Nothing in this Agreement is intended to create any right or benefit, substantive or procedural, enforceable at law by a non-party against the United States, its agencies its officers, or any other person. Nothing in this Agreement shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. §§ 2671 *et seq.*).

c. No Sharing of Benefits. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of the Agreement or to any benefit that may arise out of it.

d. Freedom of Information Act. Any information furnished to Reclamation under this Agreement is subject to the Freedom of Information Act (5 U.S.C. § 552). Any information furnished to the District under this Agreement may be subject to the Utah Government Records Access and Management Act, Utah Code §§ 63G-2-101 *et seq.*

e. Compliance with Federal Laws. All parties to this Agreement agree to comply with all Federal statutes relating to nondiscrimination, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the Education amendments of 1972, as amended, which prohibits discrimination on the basis of sex; the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended, which prohibits discrimination based on age against those who are at least 40 years of age; and the Equal Pay Act of 1963.

f. THE INFORMATION CONTAINED IN THIS NOTICE IS IN ACCORDANCE WITH THE AUTHORITY OF REGULATIONS PROMULGATED UNDER SECTION 120(h) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE LIABILITY, AND COMPENSATION ACT (CERCLA OR "SUPERFUND"), 42 U.S.C. SECTION 9620(h).

The United States has completed a Low-Intensity Real Property Questionnaire Checklist for the property being conveyed, including a site visit on October 31, 2019 and a search of files at the Bureau of Reclamation to identify available information with respect to hazardous substances that were stored for one year or more, known to have been released, or disposed of on the property. The property is being conveyed to said District in the same condition as existed on the date of said site inspection and as described in the questionnaire.

Said District stipulate that they are the potentially responsible party and accept the premises and appurtenances as is; therefore, releasing the United States of all current and future liability.

g. Non-assignability. This Agreement and the rights and obligations hereunder are not assignable without the express written consent of the Parties.

h. Principal Contacts. Until changed by written notice or practice, the principal contacts for the Parties are:

**Reclamation – Provo Area Office**

Justin Record  
302 E Lakeview Parkway  
Provo, UT 84606  
[jrecord@usbr.gov](mailto:jrecord@usbr.gov)  
801-379-1072

**District**

Jay Mark Humphrey  
50 S 100 E  
Castle Dale, UT 84513  
[jay.humphrey@ewcd.org](mailto:jay.humphrey@ewcd.org)  
435-381-2311

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the last date written below.

\_\_\_\_\_  
Bureau of Reclamation  
Brenda Burman, Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Emery Water Conservancy District  
\_\_\_\_\_, Board Chair

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_, Board Secretary

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