

APR 27 1987

AGREEMENT

WATER RIGHTS  
SALT LAKE

THIS AGREEMENT is made and entered into in Salt Lake City, Utah, this 27 day of <sup>Feb.</sup> January, 1980, by and among the UNITED STATES OF AMERICA, acting through the Secretary of Interior, and pursuant to Federal Reclamation laws, and the Fish and Wildlife Coordination Act, hereinafter called "United States"; STATE OF UTAH, by and through its Governor, hereinafter called "Utah", and CENTRAL UTAH WATER CONSERVANCY DISTRICT, a water conservancy district organized and existing pursuant to the laws of the State of Utah, hereinafter called "District",

RECITALS:

The United States and the District have heretofore entered into a Repayment Contract (Contract No. 14-06-400-4286), dated December 28, 1965. This contract acknowledged that Congress, on April 11, 1956 (70 Stat. 105) authorized the construction, operation and maintenance of the Initial Phase of the Central Utah Project. This is a participating project of the Colorado River Storage Project. The Bonneville Unit, the subject of this agreement, is a part thereof. Said Repayment Contract describes the facilities to be constructed, the project water supply to be developed, and contains provisions for the repayment by the District of the reimbursable costs of constructing the Bonneville Unit.

The Bonneville Unit has a number of features, specifically including the Strawberry Aqueduct and Collection system, the enlarged Strawberry Reservoir, a transbasin diversion of waters from the Colorado River Basin to the Bonneville and Sevier Basins, and the construction of other features in the Bonneville and Sevier Basins. The Strawberry Aqueduct and Collection system is a series of reservoirs, aqueducts and tunnels some 37 miles in total length, which intercept a number of streams flowing on national forest lands of the Uinta Mountains, and into the Duchesne River. The water thus intercepted will be taken through the Strawberry Aqueduct and Collection system to the enlarged Strawberry Reservoir. The Soldier Creek Dam, which was designed

600 - mile stream level

to enlarge the Strawberry Reservoir, has been completed. Some features of the Strawberry Aqueduct and Collection system are completed, and some water is being intercepted thereby, and is currently being stored.

The Bonneville Unit, as described in the above noted Repayment Contract, contemplates the average annual development of 313,000 acre-feet of water for consumptive and other uses. Of this total, the present project plan contemplates the transbasin diversion of 136,600 acre-feet of water through what is known as the Syar Tunnel and Diamond Fork Power System, to a reregulating reservoir known as the Hayes Dam and Reservoir, and thence the water will be utilized in the Bonneville and Sevier Basins for municipal, industrial, irrigation and other uses.

In the planning, and through the ensuing construction of the Bonneville Unit, there has been a continuing concern for the preservation of minimum stream flows, to maintain fisheries in the streams in the Uintah Basin on which some of the project works are being constructed.

On April 12, 1965, a resolution dealing with minimum stream flows and water for fisheries was adopted and signed by the Utah State Department of Fish & Game and the Utah Water & Power Board, with the Governor of Utah concurring therein. This resolution requested the United States Bureau of Reclamation to amend the Definite Plan Report for the Bonneville Unit of the Central Utah Project, to incorporate provisions of the resolution relating to certain fish, wildlife and recreation proposals. The parties hereto acknowledge that they are familiar with the resolution and its contents, and a copy thereof is attached hereto and incorporated herein by reference. Par. 4 of that resolution specifically provided:

4. That 6,500 acre-feet of water be made available annually for fishery releases as provided below:

a. That flows of Rock Creek as measured at the north boundary of the Uintah-Ouray Indian Reservation be not less than 25 c.f.s. To accomplish this minimum flow, spills at the Upper Stillwater Dam, bypasses for downstream irrigation and natural inflow, will be augmented by not more than 3,500 acre-feet of stored water annually.

b. That 3,000 acre-feet of stored water plus any unused portion of the 3,500 acre-foot storage allocation for Rock Creek be available annually for release to the Strawberry River below Soldier Creek Dam.

Construction on the Bonneville Unit facilities started May 31, 1967, and although the project has encountered many delays, construction has continued. In connection with that construction, the then Bureau of Reclamation (now the Water and Power Resources Service), has applied to the Corps of Army Engineers for what are commonly referred to as Dredge and Fill Permits, under Sec. 404 of the Federal Water Pollution Control Act, (23 U.S.C.A. 1344). Protests have been filed by a number of state and federal agencies to the issuance of those permits, primarily on the grounds that the provision made for minimum stream flows in the April 12, 1965, resolution, is inadequate.

The parties to this agreement, and those concurring herein, have reexamined the minimum stream flow and fishery problem, in an effort to arrive at a mutually acceptable solution thereof. It is mutually acknowledged that it is desirable and necessary that more water be made available for these purposes than the 6,500 acre-feet provided for in the resolution of April 12, 1965, and it is also mutually acknowledged that the project itself must maintain an adequate cost-benefit ratio, and that reductions in the annual transbasin diversion of 136,600 acre-feet of water will adversely affect the power generating facilities, and reduce the supply of water available for municipal, industrial and irrigation uses in the Bonneville and Sevier Basins.

The parties jointly agree to acquire additional water through all available means, including, but not limited to, the development through appropriation and construction; conservation through such things as additional canal linings, reduction of evaporation losses and similar conservation practices, (and an appropriation where possible of the water thus saved); through cloud seeding; and through the purchase of existing rights, so that, to the extent possible, the 313,000 acre-feet of water developed by the Bonneville Unit will not be impaired, and yet additional amounts of water above the 6,500 acre-feet can be made available for minimum stream flows and fisheries.

It is agreed and acknowledged that the 1,500 acre-feet committed by the April 12, 1965, resolution will remain available. It is intended that the District will provide 15,800 acre-feet, either from the project (thus to that extent reducing the 313,000 acre-foot project water supply) and/or from conservation and purchase, etc., as set forth above. The other parties hereto, and the agencies concurring herein, will endeavor to acquire at least an additional 22,100 acre-feet. Water acquired solely by or for the Utah Division of Wildlife Resources and/or the U.S. Fish and Wildlife Service for instream flows shall not be used as a credit to offset the 15,800 acre-feet provided by the District. This additional water is intended to go beyond the initial 22,300 acre-feet, in order to achieve the goal of 44,400 acre-feet for instream flows. The District will cooperate in such acquisition, but without expense to the District.

The parties also mutually acknowledge that many of the project works are not yet completed, and, the transbasin diversion of 136,600 acre-feet is not possible today, and will not be possible for several years. The parties also acknowledge that although the Soldier Creek Dam is complete, and water can now be stored in the enlarged Strawberry Reservoir, there is a degree of flexibility in the time for filling the reservoir. Upper Stillwater and Jordanelle Reservoirs have not yet been constructed. Operating criteria will, as a part of this agreement, be developed, so that as facilities become available, (a) existing demands for project water can be met; (b) up to 44,400 acre-feet of water can be made available for minimum stream flow and fishery purposes; and (c) water can be placed in storage in the Strawberry Reservoir, and the other reservoirs as they are constructed under these filling criteria at an annual rate, which will reasonably assure that the reservoirs will be full when project facilities are sufficiently completed to implement project deliveries to meet project needs, estimated to be about 1994.

NOW, THEREFORE, it is mutually agreed as follows:

1. The parties hereto mutually agree that operating and reservoir filling criteria will be developed, so that between the

date hereof and the date the Strawberry Aqueduct and Collection System, and transbasin diversion facilities are completed, the water supply can accomplish the following:

(a) As features of the project are completed, making it possible to supply water to meet demands, water can be sold and delivered by the District for all contemplated project uses, as they develop, and in accordance with the agreement.

(b) Water can be placed in storage in the project reservoirs on a schedule which will reasonably assure that the project reservoirs (Strawberry, Jordanelle, and the Upper Stillwater Reservoirs) will be full by the time the transmountain diversion facilities are completed and available for use.

(c) Water will be released or bypassed to provide 44,400 acre-feet annually for fisheries, so long as the filling of the reservoirs is in accord with the filling schedule and current project water use demands are being met.

(d) A minimum of 22,300 acre-feet (which includes the 6,500 acre-feet set aside by the resolution of April 12, 1965), will be released or bypassed for fisheries, in the event filling of the reservoir is behind the filling schedule, or current project water use demands are not being met.

2. It is agreed that the water provided hereby and released hereunder will stay in the streams above the confluence of the Strawberry and Duchesne Rivers, to maintain minimum stream flows. However, at any given time water released or bypassed from the reservoir may fulfill multiple roles of project use, meeting prior rights, and of providing minimum stream flows between the point of release and the point of rediversion. Other water may be released only for maintaining stream flow. To the extent possible, the agreed minimum quantities provided for herein will be available, on an annual basis, to maintain minimum flows. It is mutually acknowledged that the minimum and the desired stream flows are to be reflected in cubic feet per second. At any given

point on each stream, the water available may consist of natural flows, water released or bypassed for project use, or to provide water for prior rights, and water released or bypassed for minimum stream flows, as provided for herein. The objective is to provide enough stream flow to retain 50% of the historic adult trout habitat in Strawberry River, Rock Creek, West Fork Duchesne River and Currant Creek, as shown in the report of May 1979 entitled "Summary of Analyses of Alternate Stream Flows." This report was prepared by representatives of Utah Division of Wildlife Resources, U. S. Fish and Wildlife Service, U. S. Forest Service and the Water and Power Resources Service. Gauging stations will be established immediately below each reservoir or diversion facility, and at appropriate downstream points. Schedules will be developed, showing the desired and minimum flows at the various gauging stations, and the 22,300 acre-feet provided hereby will be utilized to maintain the minimums, and any additional water acquired within the 44,400 acre-feet total will be utilized to attain the more desirable levels to meet 50% of the historic stream habitat. Below the confluence of the Duchesne and Strawberry Rivers, it is agreed that water released for augmenting stream flows may be rediverted by the District and used for such uses as are consistent with the water rights comprising the same. Thus, water acquired by the District, or released as project water by the District to comprise the 15,800 acre-feet provided for herein, may be rediverted below this point. Thus, project water, or other acquired water, may be released or bypassed from project works, which may serve the dual role of (a) stream maintenance, and (b) project and other uses, and yet may be credited against said 15,800 acre-feet allocation, if the point of rediversion is downstream from said point of confluence.

3. During the interim period before construction is completed, the following specific conditions shall govern project operation, and shall be a part of the operation and reservoir filling criteria, to be developed in accordance with par. 1 hereof:

(a) The District will insert in all long-term contracts for the sale and delivery of Bonneville Unit water, specific provisions, which will enable it, notwithstanding said sales contracts, to assure that it can supply 15,800 acre-feet of water for maintenance of minimum stream flows and fisheries. This 15,800 acre-feet, when added to the commitment of 6,500 acre-feet, will assure 22,300 acre-feet of water for such purposes. Such provisions shall be contained in all future water allotment and sales contracts (allotting or selling any part of the 313,000 acre-feet of project water supply). No firm contract will be made which will have the effect of preventing the District and the United States from providing the agreed 15,800 acre-feet of project water, if needed in accordance herewith.

(b) Operation of project facilities during the interim period, including the bypass of water and deliveries of project water by the Water and Power Resources Service, in cooperation with the District, shall take into account all stream flow forecasting information capabilities available in keeping with the advanced "state of the art".

(c) The Water and Power Resources Service shall utilize information provided by the Utah Division of Water Resources and Water Rights, and shall be directed by the U. S. Fish and Wildlife Service, in cooperation with the Utah Division of Wildlife Resources and U. S. Forest Service to provide optimum distribution of available releases.

4. When the Strawberry Aqueduct and Collection system and the transbasin diversion facilities are completed, so that the project water supply can be used, water will be provided as follows:

(a) The 6,500 acre-feet committed by the April 12, 1965 resolution will remain available for the uses specified in that resolution.

(b) The District will provide, at its expense, an additional 15,800 acre-feet of water annually for minimum stream flows. To obtain such additional water, the District

will first endeavor to develop or acquire water through conservation measures, construction of facilities, appropriation, purchase of existing water rights, or other lawful means, or any combination thereof. Any part of said 15,800 acre-feet of water that is not obtained by the District through the measures mentioned above will be provided from the project water supply.

(c) Additional quantities of water, up to at least 22,100 acre-feet (making a total of 44,400 acre-feet) will be provided, so far as possible, through additional conservation, construction and appropriation, or through acquisition, purchase or otherwise, by the parties to this agreement other than the District. The District will cooperate in such additional acquisition, but without expense to the District.

5. The parties, in seeking water supplies for instream flows, will give due consideration to the impact of various alternatives on existing water rights, and will work toward viable solutions - including such items as earmarking stored water for downstream releases, and the seeking of legislative action, if necessary, to guarantee against preemption of such instream waters by present or potential downstream water rights.

6. The United States, through the Water & Power Resources Service, shall immediately complete all applications needed for 404 Permits for all features of the Strawberry Aqueduct and Collection system. Those applications will be filed, and the parties hereto and all agencies who have concurred herein, will cooperate in securing the issuance of all such 404 Permits. The parties hereto and those concurring herein further agree that they will not raise the minimum stream flow problems related to the Strawberry Aqueduct and Collection System, as a basis for opposing any other feature of the Bonneville Unit of the project. All protests heretofore made to the issuance of any pending 404 Permit, by any of the parties hereto or concurring herein, will be withdrawn, and the parties hereto and the parties concurring herein will recommend that the Corps of Army Engineers issue all

of the 404 Permits needed for all features of the Strawberry Aqueduct and Collection system. Such joint effort for issuance of such permits shall not await the processing of all of them, but the parties shall seek the approval of such permits as are now pending, so that individually and collectively these permits can be obtained as rapidly as possible, since it is mutually acknowledged that the absence of said permits is delaying the construction of Bonneville Unit facilities.

7. The District may provide the agreed 15,800 acre-feet, by utilizing its own funds to purchase existing rights and move them to the project reservoirs by change application. Once said water has been bypassed for minimum stream flow purposes through the agreed critical stretches of the streams, it will remain the District's water, and may be rediverted for any proper use below the confluence of the Duchesne and Strawberry Rivers. The District may also discharge its obligation in conjunction with the United States through new construction, using reimbursable (Sec. 5) funds. Under such an arrangement the United States will do the necessary development and construction work, and the District will pay the required reimbursable costs. In that event, the water will be project water, belonging to the United States. If the District discharges its obligation to provide water for minimum stream flows, in whole or in part, with project water from the original 313,000 acre-feet, the project facilities will necessarily be used to provide the water, and the costs allocated to the water will be reallocated by the United States in accordance with Federal Reclamation Law. In this regard it is recognized that project water developed <sup>exclusively</sup> for minimum stream flows and fisheries <sup>and not used for subsequent reduction</sup> is nonreimbursable, and the District shall not be required to reimburse the United States for moneys expended therefor. All other parties hereto, and those concurring herein will cooperate, without expense to them, in the acquisition by the District of the water.

8. Beyond the acquisition of the 22,300 acre-feet of water, (comprised of the 15,800 acre-feet noted above and the 6,500 acre-feet provided under the April 12, 1965 resolution), all of

the parties hereto will cooperate with each other in acquiring additional water, with the goal and intent of acquiring a minimum of 44,400 acre feet. The District shall not be required to share in the cost thereof. If the United States participates therein, it will be with non-reimbursable funds. Water made available by conservation practices may have to be appropriated in accordance with State law under a savings type application, and where necessary and proper, this will be done.

9. The parties will cooperate with each other in getting any water hereafter developed or purchased or made available by conservation practices transferred into the project reservoirs by change or exchange applications, or otherwise, so that the water will be in storage and available on call to meet minimum stream flows and fishery needs. The 6,500 acre-feet reserved under the resolution of April 12, 1965, is to be delivered through the project works. To the extent, if at all, the 15,800 acre-feet additional minimum must come from project water, it too will be in the project reservoirs and on call. The Utah Division of Wildlife Resources and U. S. Fish and Wildlife Service, in consultation with the U. S. Forest Service and the Utah Division of Water Resources, shall jointly have the ultimate determination as to where the water reserved for stream flows and fisheries will be utilized. Some streams may be better habitats than others, some may have better public access than others, and the Utah Division of Wildlife Resources and Fish & Wildlife Services are to have broad discretion as to the releases, so that they can optimize the benefits therefrom.

10. Those federal and state agencies which have responsibility for fishery resources will make a diligent examination of things which may be done to improve the streams themselves, so that the maximum benefits can be realized for the fishery habitats from the water to be released, as provided for herein. All of the parties to this agreement, and those concurring herein, will cooperate in the completion of the Bonneville Unit of the Central Utah Project, and will seek to avoid delays and impediments to the completion of the project.

11. In supplying the 15,800 acre-feet of water (whether from purchase of existing rights, new appropriations, salvage of water, project releases, or some combination thereof) it is acknowledged that the District intends to make said water available for minimum stream flows and fisheries, but that below the confluence of the Duchesne and Strawberry Rivers, the District intends to provide uses and points of rediversion, so that the District can endeavor to recoup the cost of acquisition. Efforts will be made, as aforesaid, to move any additionally acquired water into the project reservoirs, where it can be released to the streams from the reservoir and/or to other streams by exchange, to provide the needed minimum flows. Once these waters are so changed and committed, the ability on the part of the District to move that water to other streams is limited, and the District's obligation in regard to said 15,800 acre-feet shall not be enlarged by the fishery interests shifting emphasis to some other stream where such purchased water may not thereafter be moved. However, the District will endeavor to develop and acquire such additional water at such places and in such amounts so that releases for minimum stream flows will be available for a reasonable allocation, division or apportionment to augment critical stretches of Rock Creek, Currant Creek <sup>Strawberry</sup> and West Fork of the Duchesne River. It is contemplated that uses for such released water will develop below the points of confluence of the Strawberry and Duchesne Rivers, and that at least part of the water released to meet the fishery obligations will occur at times when the water can be rediverted and reused under the water rights for other district and project uses, and if the water stays in the stream from the point of release or bypass to a point below said confluence, credit shall be given therefor, even though the water thus serves a dual purpose and is to be rediverted and reused.

12. The parties will annually consult with each other in regard to all of the problems related to the administration of the project, to maximize the benefits through coordinated efforts.

13. Water reserved for maintaining minimum stream flows will be administered on a water year basis, and if any of such reserved water is not utilized by October 1 (the end of the water year) the water will simply become a part of the common project pool. The agreed minimum of 22,300 acre-feet will be available, and may be called upon, both to maintain the agreed minimum flows, and to attain, to the extent possible, the desired flows.

14. Where there are reservoirs located on the streams, water can be released from the reservoir or bypassed through the facilities, for the purpose of augmenting stream flows. Also, the aqueduct can bring water from Upper Stillwater, and releases can be made therefrom into some of the streams. However, on some of the streams, such as the West Fork of the Duchesne River, the aqueduct is substantially below the stream bed, and it may not be economically feasible to release water therefrom. Facilities will be constructed, so that the natural flow can be bypassed, but the obligation to augment the natural flow from reservoir releases will be dependent upon facilities for so doing, and there is no commitment on the part of the District to construct or pay for special facilities for making releases, where those facilities are not presently planned in the project.

15. To the extent required by Utah law, appropriate filings will be made with the Utah Division of Water Rights for any proposed appropriation, transfer, change or exchange for the use of water.

16. It is expressly understood by the parties to this agreement that any activity carried out by the United States, pursuant to this agreement that may require appropriation of money by the Congress of the United States or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

IN WITNESS WHEREOF, the parties hereto have executed this

agreement the day and year first above written.

UNITED STATES OF AMERICA,

By James A. Joseph  
Its

STATE OF UTAH

By Wesley C. Wells  
Governor

CENTRAL UTAH WATER CONSERVANCY  
DISTRICT

Attest:

James A. Joseph  
Secretary

By [Signature]  
Its President

The following concur in and agree to the foregoing.

UTAH DIVISION OF WATER RESOURCES

By James Lawrence

UTAH DEPARTMENT OF NATURAL  
RESOURCES

By Robert E. Hammon

UTAH DIVISION OF WILDLIFE  
RESOURCES

By Douglas Day

U. S. FISH & WILDLIFE RESOURCES

By Lynn A. Greenwalk

U. S. FOREST SERVICE

By Wesley Hamme

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT is made and entered into in Salt Lake City, Utah, this 10<sup>th</sup> day of September, 1990, by and among the UNITED STATES OF AMERICA, acting through the Secretary of Interior, and pursuant to Federal Reclamation laws, and the Fish and Wildlife Coordination Act, hereinafter called "United States"; STATE OF UTAH, by and through its Governor, hereinafter called "Utah"; and CENTRAL UTAH WATER CONSERVANCY DISTRICT, a water conservancy district organized and existing pursuant to the laws of the State of Utah, hereinafter called "District",

RECITALS:

The parties to this Amendment to Agreement heretofore entered into an Agreement dated February 27, 1980, providing for the Bonneville Unit of the Initial Phase of the Central Utah Project (hereinafter called "Project"), to provide up to 22,300 acre-feet of Project water for instream use, to assist in a cooperative effort to secure enough water for stream flow maintenance to retain 50% of the historic adult trout habitat in Strawberry River, Rock Creek, West Fork Duchesne River and Currant Creek, as shown in a report of May 1979 entitled "Summary of Analyses of Alternate Stream Flows", and as more particularly set forth in said 1980 Agreement.

Federal funding authorizations for the Colorado River Storage Project ("CRSP") and consequently the Bonneville Unit of the Central Utah Project, a subdivision of the CRSP, are anticipated to soon be exhausted, leaving the Project substantially short of completion. The District is presently petitioning

Congress for funding authorization which would permit completion of the Project.

It is anticipated that Congress will require as a condition to increasing the funding authorization for CRSP that the amount of Project water to be committed to stream flow maintenance will be increased from the present 22,300 acre-feet committed by the above noted 1980 Agreement to 44,400 acre-feet. The purpose of this Amendment is to subject any such additional Project water committed to stream flow maintenance to the terms and conditions of the 1980 Agreement and to provide for the downstream recapture of said water by the Project and to otherwise amend said 1980 Agreement in regard thereto, as herein provided.

NOW, THEREFORE, the parties hereto agree to the following terms and conditions:

1. It is mutually agreed that any additional Project water appropriated under state law hereafter committed by Congress to the maintenance of minimum stream flows for fish habitat protection in the Uinta Basin shall be subject to and shall be delivered and used in accordance with the terms and conditions of the said Agreement of February 27, 1980, as supplemented hereby.

2. The parties acknowledge that the 1980 Agreement committed the parties to endeavor to increase the water available for stream flow maintenance to 44,400 acre-feet by additional construction, appropriation, purchase or otherwise. Such an increase above the 22,300 acre-feet of Project water heretofore committed has not occurred. It is, however, acknowledged that the District and the United States have voluntarily undertaken to provide 44,400 acre-feet of water annually for stream flow

maintenance during the interval between the 1980 Agreement and the time when full Project demand will occur. The District is also willing to forego part of the planned transmountain diversion, so as to permit a total of 44,400 acre-feet of Project water, except during periods of drought, to be retained in the Uinta Basin for fish habitat protection, but only if Congress authorizes construction of the proposed irrigation and drainage system, as heretofore planned, and also authorizes and funds the federal portion of a state and federal program for construction of the proposed irrigation and drainage system, as heretofore planned. However, this Amendment will not become effective and will be null and void unless and until legislation providing such congressional authorization and funding has been enacted. All Project water committed by the Congress, or by the 1980 Agreement, as supplemented hereby, will be governed by the 1980 Agreement, as so supplemented, and these agreements shall be construed and administered under and in accordance with the laws of the State of Utah. In this regard the District asserts that it was agreed in the 1965 Repayment Contract, as supplemented, that the District would pay the reimbursable costs of the irrigation, municipal and industrial water to be developed by the Project, as said costs are allocated under Federal Reclamation law, and in return the United States agreed that the District would, in perpetuity, have the use of the Project water supply. Out of the 313,000 acre-feet of water which the Project initially proposed to develop, it was contemplated that 136,600 acre-feet would be available to be diverted by transmountain diversion from the Uinta Basin to the Bonneville Basin. The Project also was

intended to develop an additional 6,500 acre-feet (that is, additional to the 136,600) for maintenance of Uinta Basin stream flows. Part of the 136,600 acre-feet of water was intended to be used by exchange as needed to replace water in Utah Lake so that Provo River water can be withheld and stored in Jordanelle Reservoir, and that use may still be required. The plan proposed to take most of the remainder of said transmountain diversion water to the south to be used for irrigation purposes, but with the right to convert to municipal and industrial uses, all as is set forth in the Repayment Contract between the District and the United States.

3. This commitment of Project water in the amount of 44,400 acre-feet will supersede the provisions of the 1980 Agreement, which committed the parties to proceed jointly to develop or acquire additional water (above the 22,300 acre-feet of Project water committed thereby) for stream flow maintenance. In lieu of said commitment to proceed jointly to develop or acquire additional water, the District and the United States have hereby increased the commitment of Project water for stream flow maintenance from 22,300 acre-feet committed in the 1980 Agreement to 44,400 acre-feet agreed to herein. Therefore, said Agreement for joint development of water is superseded hereby.

4. The 44,400 acre-feet of Project water committed for fish habitat protection under the terms of this Amendment, include the 6,500 acre-feet committed by the District in the April 12, 1965 Agreement, and the 15,800 acre-feet committed by the 1980 Agreement (making the combined total of 22,300 acre-feet of water previously committed). The increase to 44,400 acre-feet of water

per year is thus the total of all Project water committed to stream flow maintenance. However, it is mutually acknowledged that the maintenance of minimum stream flows equal to 50% of the historic adult trout habitat on the four streams identified above would require approximately 54,900 acre-feet and that the difference will be made up by irrigation by-passes and spills to the stream (hereinafter "base flows").

5. It is anticipated that the long-time average annual Project yield of the Strawberry Aqueduct and Collection System, including carry-over storage in the Enlarged Strawberry Reservoir, will provide an average of 44,400 acre-feet for fish habitat protection and an average 100,000 acre-feet per year for transmountain diversion. It is acknowledged that the 44,400 acre-feet will be an annual operational commitment to stream flow maintenance. The 44,400 acre-feet may be used annually, except when sharing shortages, as provided for herein, or on a space available basis may be placed in carry-over storage for future stream flow maintenance. However, it is not contemplated that the use of Project water for transmountain diversion will necessarily be 100,000 acre-feet each and every year; rather, during wet cycles the existing local sources may supply much of the needed water and less Project water may be used during such wet years. In such years, when the water diverted from storage for transmountain diversion is less than 100,000 acre-feet, the excess water will be held in storage, but it will remain Project water. Then at other times more than 100,000 acre-feet may be used for transmountain diversion. There also will be set aside

10,500 acre-feet of storage space in Strawberry Reservoir for minimum stream flow maintenance and water allocated for minimum stream flow maintenance which is unused in any one year may be carried over in such space and will not be spilled when the reservoir fills. Said 10,500 acre-feet of storage space will be filled once with Project water and thereafter will have to be supplied from unused water under the annual allocation, which subject to shortages will be 44,400 acre-feet. All other unused minimum stream flow water which is carried over in storage for minimum stream flow maintenance will become Project water, if it is computed that the reservoir would fill. Water allocated annually for stream flow maintenance may also be carried over in storage on a space available basis from the current year for one more calendar year, but any of such carry-over water not used by December 31st of the said second year will become Project water after said date, or when the reservoir fills, whichever occurs first. In this regard it is recognized that there is no spillway on the Soldier Creek Dam, which creates the present Enlarged Strawberry Reservoir, and elevations of water in Strawberry Reservoir will be controlled by diversions to Strawberry Reservoir by the Strawberry Aqueduct and Collection System and by releases from the reservoir. Thus, when the diversion or releases of water to or from Strawberry Reservoir are stopped because the available storage space is filled, it will be considered, for the purposes of this paragraph, that the reservoir has in legal effect spilled, and any carry-over of minimum stream flow maintenance water, other than such water stored in the above

noted 10,500 acre-feet of reservoir space will become Project water.

6. All Project water released for stream flow maintenance purposes may be rediverted by the District for Project use. Unless the water is retained in the stream because of existing law, or by agreement, the rediversion for Project use may occur at any point below the confluence of the Strawberry River and the Duchesne River, and water up to, but not exceeding 12,000 acre-feet per year may be stored in Starvation Reservoir, so long as such storage does not cause the flows at any point between the Knight Diversion and the confluence of the Duchesne and Strawberry Rivers to drop below 15 c.f.s., nor cause the flows between the Starvation Dam and the confluence of the Strawberry River with the Duchesne River to be reduced to less than 15 c.f.s. In this regard it is acknowledged that the by-pass valve and pipeline have a capacity of 15 c.f.s. when the reservoir is low and a maximum capacity of 22 c.f.s. when the valve and by-pass line are operating under the pressure of a full reservoir. Thus, the flows between Starvation Dam and the confluence of the Strawberry River and the Duchesne River will necessarily fluctuate between a low of 15 c.f.s. and a high of 22 c.f.s. After the Section 7 consultations under the Endangered Species Act are completed, the parties will jointly explore retrofitting the outlet works using Section 8 funds to increase the capacity to by-pass said water. The Utah Division of Wildlife Resources and U. S. Fish & Wildlife Service will retain the option granted in the 1980 Agreement to vary the place of use, such as to decrease the amount in the stream below the Knight Diversion Dam and

increase the flows in the Strawberry River, or make other changes. Until it is resolved whether existing law will require that said entire 44,400 acre-feet of water remain in the Duchesne River until its confluence with the Green River, the District will not redivert above said confluence. In this regard it is mutually acknowledged that instream uses may not, under the present laws of the State of Utah, be considered to be beneficial uses and that water released for instream and/or fishery protection purposes, without any Project plan or intention to recapture the same, may be subject to diversion and use by others holding valid water rights. The right of the Project to recapture and reuse said water will both enhance the economic benefits of the Project and help assure that water released for stream flow maintenance and/or fishery purposes will not be diverted by others with water rights in the same source, but will remain Project water and shall be subject to rediversion and reuse by the Project. The District, after consultation with the U. S. Department of Interior will be responsible for establishing points of rediversion, as required by Utah law.

7. The parties hereto mutually acknowledge that there may be shortages. In the event of shortages, the shortages will be shared on a pro rata basis between the 44,400 acre-feet committed for stream flow maintenance and that portion of the 100,000 acre-feet initially committed for transmountain diversion for irrigation use. As noted above, part of the transmountain diversion water may be needed for exchange purposes in Utah Lake, so that Provo River water may be utilized by the Project for municipal and industrial use. The Deer Creek-Strawberry Exchange Agreement, dated May 16, 1986, among the U. S. Department of the

Interior, through its Bureau of Reclamation, Provo River Water Users' Association, Central Utah Water Conservancy District and Metropolitan Water District of Salt Lake City (which agreement will terminate when Jordanelle Reservoir becomes operational) presently utilizes water from the Strawberry Collection System for municipal use by virtue of that Exchange Agreement. It is agreed that municipal and industrial uses (from the transmountain diversion water) shall be administered as though they had a higher priority than either irrigation or stream flow maintenance water. This will not apply to any water hereafter converted from irrigation to municipal or industrial use.

8. It is contemplated by the parties hereto that in addition to the commitment of 44,400 acre-feet of water to stream flow maintenance that in order to maintain the desired 50% of historic adult trout habitat, that a base flow in each of the four streams noted above is needed to obtain the said 50% level. The base flows available during the irrigation season are there because existing water rights of downstream users entitle them to receive said water. Any upstream change in point of diversion, or place of use, or other use of said water which would adversely affect minimum stream flows will be subject to the requirement that a change application be filed and approved in accordance with state law. Any proposal to divert such water for power generation purposes would also be subject to the requirement that an application to appropriate water for that purpose be filed in accordance with Utah law. The approval process under Sec. 73-3-8 Utah Code Anno. 1953, as amended, involves consideration of the public interest, protection of the natural stream environment and

protection of prior rights, and the United States and the District will join in resisting any such new hydro-power application, including any federal license or permit, which would adversely affect the intent of the parties to provide for stream flow maintenance.

9. The 1980 Agreement in paragraph 3(a) provides that the District will insert in all long-term contracts for the sale and delivery of Bonneville Unit water specific provisions which will enable it, notwithstanding said sales contracts, to assure that it can supply 15,800 acre-feet of water for maintenance of minimum stream flows and fisheries. It also provides that this 15,800 acre-feet, when added to the commitment of 6,500 acre-feet, will assure 22,300 acre-feet of water for such purposes, etc. The District and the United States hereby agree that they will reference that 1980 Agreement and this Amendment in all such future long-term contracts, but will not seek to re-write existing contracts.

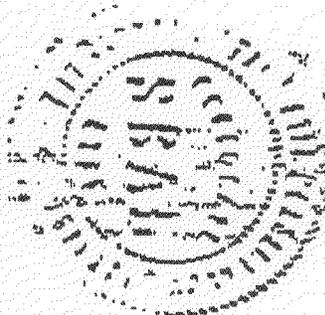
10. Any provision of the 1980 Agreement which is inconsistent herewith is superseded and replaced by this Amendment to Agreement. In all other respects the Agreement of the parties entered into on the 27th day of February, 1980 shall remain in full force and effect and unchanged, and all of the provisions thereof will apply to the 44,400 acre-feet, rather than to the 22,300 acre-feet specified in the said 1980 Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Agreement the day and year first above written.

UNITED STATES OF AMERICA

By Robert Robinson

Its



STATE OF UTAH

GOVERNOR

CENTRAL UTAH WATER CONSERVANCY DISTRICT

Attest:

Yon A. Christensen  
Secretary

BY R. Ross Barrett  
Its President

The following concur in and agree to the foregoing.

U. S. FISH & WILDLIFE SERVICE  
(formerly U. S. Fish & Wildlife Resources)

BY [Signature]

U. S. FOREST SERVICE

BY Robert C. Joslin

UTAH DEPARTMENT OF NATURAL RESOURCES

[Signature]

UTAH DIVISION OF WATER RESOURCES

BY D. Jerry Anderson

UTAH DIVISION OF WILDLIFE RESOURCES

BY Darrell H. Nish

## RESOLUTION 90-09-11

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CENTRAL UTAH WATER  
CONSERVANCY DISTRICT FOR WATER SUPPLY AND WATER EXCHANGE,  
BONNEVILLE UNIT, CENTRAL UTAH PROJECT

WHEREAS, the Central Utah Water Conservancy District (District) with other parties entered into an agreement dated February 27, 1980, providing among other things, for the Bonneville Unit of the Central Utah Project (Project) to supply up to 22,300 acre-feet of Project water for instream use and to assist in a cooperative effort with other parties to obtain additional water for instream flow fish habitat; and

WHEREAS, the parties to the February 27, 1980 agreement propose to enter into an amendment to said agreement which will provide, among other things, a total of 44,400 acre-feet of Project Water to be retained in the Uinta Basin for stream flow maintenance, but only if Congress approves construction and authorizes and funds the federal portion of an authorized state and federal program for funding the proposed Irrigation and Drainage Systems of the Project; and

WHEREAS, it is proposed in said amendment to the February 27, 1990 Instream Flow Agreement for District to re-regulate the instream flow Project Water in Starvation Reservoir, unless the water is required to be left in the stream by existing law, and thus increase the yield of Starvation Reservoir by an estimated 12,000 acre-feet of Project Water for use in the Duchesne River Area; provided, however, if under state or federal law the water is required to remain in the stream, the District agrees to hereby commit to provide the Duchesne River Area up to 12,000 acre-feet from other sources such as diversions from Strawberry Aqueduct, purchased water, or by exchange from Flaming Gorge Reservoir if such water can be obtained; and

WHEREAS, the District will exercise its best and good faith effort to obtain a reclassification of lands in the Duchesne River area so that the additional 12,000 acre-feet of Project Water can be used in that area for supplemental irrigation.

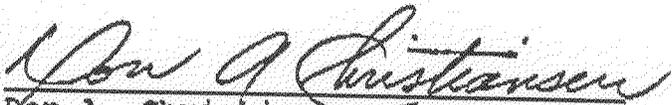
NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the Central Utah Water Conservancy District in an official special meeting held September 7, 1990, has reviewed an AMENDMENT TO AGREEMENT, attached hereto, between the United States acting through the Secretary of the Interior, and pursuant to Federal Reclamation laws and the Fish and Wildlife Coordination Act, the State of Utah by and through its governor, the Utah Department of Natural Resources and the Central Utah Water Conservancy District and the Board does hereby approve the agreement and authorizes the execution and delivery of the agreement by its officers.

BE IT ALSO RESOLVED, that the Board of Directors of the Central Utah Water Conservancy District support the re-regulation of the Instream Flow Project Water in Starvation Reservoir to increase the yield of Starvation Reservoir for supplemental irrigation use in the Duchesne River Area and to provide, if necessary, the replacement of that water by other waters to be obtained by the District.

BE IT FURTHER RESOLVED, that the Board of Directors of the Central Utah Water Conservancy District encourage the reclassification of lands in the Duchesne River area so that additional water representing the increased yield from Starvation Reservoir may be put to beneficial use in the Duchesne River Area.

CERTIFICATE

I certify that the forgoing is true and accurate copy of a resolution adopted by the Board of Directors of the Central Utah Water Conservancy District in a special meeting on September 7, 1990.

  
Don A. Christiansen, Secretary

