

EXHIBIT D

ISC Ute Reservoir Shoreline Management Plan (2016)

License No. _____

**ISC and _____ BOAT DOCK
ENCROACHMENT LICENSE AGREEMENT**

This Encroachment License Agreement (this "Agreement") is made and entered as of the date of execution by all parties below, by and between the New Mexico Interstate Stream Commission, an agency of the State of New Mexico, (the "Commission") and _____ Boat Dock, ("Licensee") (herein collectively "the Parties").

RECITALS

THE PARTIES HERETO enter into this Agreement on the basis of the following facts, understandings, and intentions:

- A. The Commission, pursuant to NMSA 1978 § 72-14-3, has the authority to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of this state, interstate or otherwise.
- B. The Commission owns certain fee simple real property in Quay County, New Mexico, which is generally known as Ute Reservoir (the "Commission's Fee Property").
- C. The Commission also retained a perpetual flowage easement in the property bordering the above described property up to an elevation of 3,806 feet in Quay County, New Mexico, that surrounds and is used in conjunction with Ute Reservoir (the "Commission's Flowage Easement").
- D. The Commission's Fee Property and the Commission's Flowage Easement shall be collectively referred to herein as the "Commission Property".
- E. Licensee owns certain real property in Quay County, New Mexico, commonly known as the _____ (the "Licensee Property"), which is adjacent to the Commission Property.
- F. Licensee desires to construct and maintain certain improvements on the Commission Property (the "Licensed Improvements") as generally depicted on the General Site Plan, attached as Exhibit A-1. Licensed Improvements shall consist of all paths, walkways, and infrastructure necessary to install, operate, access and maintain a community boat dock. Pursuant to Section 7.3.1.1.2 of the ISC Ute Reservoir Shoreline Management Plan, Approved Sept. 29, 2010, a community boat dock ("Community Boat Dock") means a private, non-commercial boat dock for use by the owner-members or other authorized residents of a residential community, such as a planned unit development or condominium, and is not available for commercial use.
- G. The Commission has agreed to allow the Licensed Improvements on the Commission Property subject to all of the terms, covenants, and conditions of this Agreement.

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AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Encroachment License. The Commission hereby grants to Licensee a license (the "License") to construct, operate, access and maintain the Community Boat Dock adjacent to Licensee's Property on the Commission's Property. Nothing herein shall be deemed to allow the Licensee to expand the Licensed Improvements or make any other use of the Commission Property without the express, written permission of the Commission. Additionally, nothing herein shall be deemed to grant a real property interest to the Licensee in the Commission Property or otherwise.
2. Term. The License shall become effective as of date of the last signature below. The License shall terminate on December 31, 2021, unless sooner terminated pursuant to Paragraph 5, Termination, below.
3. Renewal. The License may be renewed by providing written notification to the Commission six months prior to the date of expiration. The Commission reserves the right to not renew the License. The Commission may renew the License if the Licensee is in compliance with this Agreement and has requested to renew the Community Boat Dock Permit with the New Mexico State Parks Division. If the Licensee seeks to alter the existing encroachment license upon renewal, Licensee must submit a new site plan with the request to renew. The Commission will determine if the alteration will be allowed and incorporate the change into the renewed license agreement.
4. Commission Requirements. The Licensed Improvements shall, at a minimum: (i) not in any way adversely affect the water quality of Ute Reservoir and its purpose as a public drinking water supply; (ii) not pose a threat to the operation of Ute Reservoir or Ute Dam; (iii) not cause any erosion or sedimentation; (iv) be maintained in a safe and secure condition; (v) not include habitable structures, storage units, or sanitary facilities; (vi) not include motor vehicle and/or boat access ramps and/or roads; (vii) not inhibit pedestrian movement along the Commission's Fee Property; and (viii) not be a threat to public safety. In addition, none of the Commission's Fee Property shall be posted or otherwise represented as "private property."
5. Termination. The License shall be terminated immediately upon denial of the State Parks Division of a Community Boat Dock Permit or upon revocation by the State Parks Division of a Community Boat Dock Permit. In the event that, in the sole and absolute discretion of the Commission, any of the requirements set forth in Paragraph 4 are violated, or the Licensee has violated any of the terms, covenants or conditions of this Agreement, the License shall be terminated immediately and Licensee shall remove the structure(s) and restore the Commission Property in accordance with Paragraph 16. In addition, the License and this Agreement may be terminated by the mutual, written agreement of the Commission and Licensee, which termination shall be effective upon: 1) recordation in the Official Records of Quay County; and, 2) Licensee's removal of the Licensed Improvements from the Commission Property and the restoration of the Commission Property by Licensee.

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6. Annual License Fee. Licensee shall pay an Annual License Fee at the rate of Fifty Cents (\$0.50) per square foot of Commission Property occupied. The License Fee shall be pro-rated for the first year to the date of execution of this Agreement. The parties agree that the Licensed Improvements shown on the Site Plan, attached hereto, occupy (or will occupy once constructed, as the case may be) approximately two hundred square feet (200 sq. ft.) of Commission Property. The first Annual License Fee payment shall be due to the Commission within thirty (30) days of the execution of this Agreement. Thereafter, the Annual License Fee shall be due to the Commission annually on within thirty (30) days of approval by New Mexico State Parks Division of the Community Boat Dock Permit. Failure to pay the Annual License Fee within thirty (30) days shall be grounds for termination of the License. The Annual License Fee shall be due to the Commission for the period that this Agreement is in effect, whether or not the Licensed Improvements have been installed or, alternatively, have been removed. The Annual License Fee payment due under this Agreement shall only terminate upon the termination of this Agreement as provided above.
7. Grant of Easement.
 - a. Access Easement. Licensee hereby grants to the Commission a permanent easement (the "Access Easement") to enter across and upon the Licensee Property for the purposes of inspecting the Licensed Improvements and, if the License expires or is terminated for any reason and Licensee fails to remove the Licensed Improvements or to properly restore the Commission Property, then for the additional purposes of removing the Licensed Improvements and restoring the Commission Property all at the expense of Licensee. The Access Easement shall expire three (3) years after the expiration or earlier termination of the License.
 - b. Flowage Easement. The License is subject and subordinate to the Commission's Flowage Easement.
8. Indemnity. Licensee shall indemnify, defend (with counsel reasonably acceptable to the Commission), and hold harmless the State of New Mexico and its agencies (including the Commission), officers, and employees, from and against any and all loss, cost, liability, or expense for damage to property (including water quality in Ute Reservoir) or personal injury, directly or indirectly caused by or accruing from any action or inaction of Licensee on Licensee Property, on Commission Property, or otherwise, and/or related to the Licensed Improvements, their construction, existence, maintenance, or removal, or otherwise. Licensee shall further indemnify the Commission for any attorneys' fees incurred in connection with, and/or staff attorneys' salaries allocable to, any action the Commission takes to enforce this Agreement. Provided, however, that if Sections 56-7-1 or 56-7-2, N.M.S.A. 1978, apply to this Agreement, the forgoing indemnities will not extend to any liability, claims, damages, losses, or expenses related to any event or act for which indemnification is precluded by those statutes. Licensee's indemnity obligations under this Agreement shall survive the expiration or earlier termination of this Agreement.
9. Insurance. Licensee shall procure and maintain in full force and effect during the term of this Agreement liability insurance against property damage and bodily injury for not less than One Million Dollars (\$1,000,000) per occurrence, which policy shall name the State of New Mexico and its agencies, including the Commission, as an additional insureds, and shall be in a form acceptable to the Commission. A company authorized to write such insurance in New Mexico

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shall write such policy of insurance. Licensee shall furnish the Commission with a certificate of such policy in a form satisfactory to the Commission on an annual basis concurrently with the payment of fee as required by this Agreement. Such certificate (and policy) shall provide that advance written notice be given to the Commission before the policy is canceled, materially changed, or not renewed. The Commission reserves the right to reject insurance or insurers tendered by Licensee. In the event such insurance or insurer is rejected, reasonable additional time (in the Commission's discretion) will be granted to Licensee to obtain alternative coverage acceptable to the Commission.

10. Assignment. This License may not be assigned without the Commission's prior written approval.
11. Rules and Regulations. The Licensed Improvements shall at all times be kept in good and safe condition and repair and comply with all applicable laws, statutes, regulations, and rules of federal, state, and local authorities having jurisdiction. In the event of concurrent jurisdiction of any federal, state, and/or local authority(ies), the Licensed Improvements shall comply with the more restrictive requirements. The License is subject and subordinate to the Commission's Flowage Easement.
12. Surety Bond. Licensee shall procure and maintain in full force and effect during the term of this Agreement a surety bond for Ten Thousand Dollars (\$10,000) or Five Dollars per square foot (\$5.00 per sq ft.), whichever is greatest, in a form satisfactory to and payable to the New Mexico Interstate Stream Commission to ensure the faithful performance by Licensee of all of the terms, covenants, and conditions of this Agreement, and to ensure removal of structure(s) and the restoration of the Commission Property at the expiration or earlier termination of the License. If Licensee fails to faithfully perform any of the terms, covenants, and conditions of this Agreement, the Commission may, in its discretion, use or apply any part of the surety to cure Licensee's failure to perform or to compensate the Commission for any loss, damage, or expense incurred (including attorneys' fees) by the Commission as a direct or indirect result of Licensee's failure to perform.
 - a. Additional Surety Requirements. A company authorized to write such bonds in New Mexico shall write such surety. Licensee shall furnish the Commission with a certificate of such surety in a form satisfactory to the Commission on an annual basis concurrently with the payment of the annual fee as required by this Agreement. Such surety shall provide that advance written notice be given to the Commission before the bond is canceled, materially changed, or not renewed. The Commission reserves the right to reject surety or bonding tendered by Licensee. In the event such surety or bonding is rejected, reasonable additional time (in the Commission's discretion) will be granted to Licensee to obtain alternative surety acceptable to the Commission.
13. Notices. All notices and communications required or permitted under this Agreement (including change of address set forth below) shall be in writing and shall be deemed given and delivered to, and received by, the receiving party: (i) in the case of notices to Licensee, when posted on the Licensee Property; (ii) when hand-delivered to the street address of the receiving party set forth below; (iii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street address set forth below; or (iv) three (3) days after deposit in the U. S. mail,

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certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

The Licensee: _____

The Commission: Canadian Basin Manager
New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102

with a copy (which shall not be deemed notice) to:
Ute Dam Caretaker
P.O. Box 281
Logan, NM 88426

14. Incorporation. Each and all of the recitals set forth at the beginning of this instrument are hereby incorporated herein by this reference. Each and all of the exhibits referenced herein and attached hereto are hereby incorporated herein by this reference.
15. Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, i.e., including Saturdays, Sundays, and holidays as observed by the State of New Mexico; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or such observed holiday, the day for such act shall be first day following such Saturday, Sunday, or observed holiday that is not a Saturday, Sunday, or such observed holiday.
16. Restoration. As used herein, where Licensee is obligated to restore Commission Property, such restoration shall be to a safe, secure, and sightly condition to the satisfaction of the Commission.
17. Severability. If any provisions of this Agreement, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby; provided, however, that the remainder of this Agreement remains enforceable in substantial accordance with the original intent of the Parties hereto.
18. Release. Licensee understands and acknowledges that nothing in this Agreement shall be deemed to guaranty, imply, or otherwise affect the water level in Ute Reservoir, either above or below the location where the Licensed Improvements are installed. The Commission is under no obligation whatsoever to Licensee to maintain, or attempt to maintain, the level of Ute Reservoir in such a manner as to facilitate Licensee's enjoyment of the Licensed Improvements or prevent damage to the Licensed Improvements. The Commission shall have no liability to Licensee for any Licensed Improvement that becomes submerged, which becomes "high and dry," or otherwise. Licensee hereby releases the State of New Mexico, its agencies, officers, and employees, from all liabilities and obligations whatsoever based upon a claim related to any of the foregoing.
19. Governing Law. The laws of the State of New Mexico shall govern this Agreement. All legal proceedings arising from unresolved disputes under this Agreement shall be brought in Santa Fe before the First Judicial District Court of the State of New Mexico.

DATE

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20. Modification. Any modification of this Agreement must be made in writing and must be executed by the parties.
21. Recordation. This Agreement shall be recorded in the Official Records of Quay County, New Mexico. Licensee shall record the Agreement within sixty (60) days of execution or the Agreement shall be terminated. Licensee shall bear the cost of such recordation.
22. Authority. The individuals executing this Agreement represent that each has the unconditional authority to execute and deliver this Agreement on behalf of his respective Party and to bind the same to the terms and conditions herein.
23. Entire Agreement. This Agreement incorporates all the agreements, covenants, promises, and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants, promises, and understandings have been merged into this Agreement. No prior agreement, covenant, promise, or understanding of the parties, verbal or otherwise, shall be valid or enforceable unless embodied in this Agreement. Nothing in this Agreement shall impair the State of New Mexico ability to fulfill its rights or obligations under the 1959 Canadian River Compact or the 1993 U.S. Supreme Court Stipulated Judgment and Decree.
24. Execution. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[Signatures and approvals on following page.]

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IN WITNESS WHEREOF, the parties hereto have entered into this Encroachment License Agreement.

LICENSEE

By: _____ Date: _____

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COMMISSION

New Mexico Interstate Stream Commission,
An agency of the State of New Mexico

By: _____ Date: _____
Deborah K. Dixon, P.E.
Director

Approved as to form:

By: _____ Date: _____
Agency Attorney

Attachments: Exhibit A-1 General Site Plan

[Acknowledgements of parties in interest on following page.]

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ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2016 by _____.

Notary Public
My Commission Expires:

