

EXHIBIT E

ISC MODEL VEGETATION REMOVAL LICENSE AGREEMENT

This Vegetation Removal License Agreement (“Agreement”) is made and entered as of _____, 201____ by and between the New Mexico Interstate Stream Commission, an agency of the State of New Mexico, (“Commission”) and _____, a landowner, (“Licensee”).

RECITALS

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

A. The Commission owns certain fee simple real property in Quay County, New Mexico, which, taken together, is generally known as Ute Reservoir (“Commission’s Fee Property”), including those lands more particularly described in that certain Warranty Deed from Richard & Cecilia Wirt Simms, a Married Couple, to the Commission dated March 27, 1963, and recorded in the official records of Quay County on March 27, 1963.

B. The Commission also owns certain “flowage easements” in real property in Quay County, New Mexico, that surround and are used in conjunction with Ute Reservoir, including those interests more particularly described in that certain Warranty Deed from Richard and Cecilia Wirt Simms, a Married Couple, to the Commission dated March 27, 1963, and recorded in the official records of Quay County on March 27, 1963.

C. Licensee owns certain real property in Quay County, New Mexico, commonly known as _____ (“Licensee Property”).

D. Licensee desires to remove undesirable vegetation, such as saltcedar and noxious weeds, on Commission Fee Property and from the Commission Flowage Easement Property located adjacent to the Licensee’s Property described above. The attached photographs show exact areas of vegetation removal.

E. The Commission has agreed to allow said removal on the Commission Fee Property and the Commission Flowage Easement Property adjacent to the Licensee’s Property subject to all of the terms, covenants, and conditions of this Agreement.

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. **Undesirable Vegetation**. The Commission hereby grants to Licensee a revocable license (“License”) to remove undesirable vegetation, including saltcedar and/or the following types of noxious weeds and on Commission Fee Property and from the Commission Flowage Easement Property located adjacent to the Licensee’s Property described above:

EXHIBIT E

- a. _____
- b. _____
- c. _____
- d. _____

Nothing herein shall be deemed to allow the Licensee to make any other use of the Commission Property without the express, written permission of the Commission.

2. **Term and Termination.** The License shall automatically expire on _____, 201____ and shall not be extended beyond _____, 201____ (the “Maximum Termination Date”). At any time, in the Commission’s sole and absolute discretion, the Commission may terminate the License upon thirty (30) days written notice to Licensee (or immediately in the case of emergency).

3. **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 this License. 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.

4. **Removal Methods.**

4.1 **Mechanical and Manual Control:** The Licensee shall take measures to minimize soil disturbance that may cause erosion or sedimentation in connection with the removal activities granted under this License.

4.2 **Chemical Control:** No chemical controls on Commission Property are granted by this License.

4.3 **Controlled Burning:** No controlled burning on Commission Property is granted by this License.

4.4 **Biological Control:** No biological controls on Commission Property are granted by this License.

5. **Re-Seeding.** At the sole discretion of the Commission, Licensee, following consultation with the Ute Dam Caretaker shall be required to re-seed all Commission Property subject to the removal activities granted by this License with native grasses in a manner sufficient to insure the propagation of such native grasses.

EXHIBIT E

6. **Disposal of Material.** Licensee shall dispose of all vegetation and brush removed from Commission Property pursuant to this License, as well as all other materials used in the course of such removal to the satisfaction of the Commission.

7. **Assignment.** The License is personal to Licensee and is not assignable either voluntarily or by operation of law. If Licensee is an organization, the transfer (either in a single transaction or a series of transactions) of a controlling interest in the organization shall be deemed an assignment and cause the automatic termination of the License. Upon the attempted assignment of the License, or the sale of the Licensee Property, the License shall automatically terminate. The Commission may assign this Agreement to another governmental unit, including any assignment necessitated by any governmental reorganization.

8. **Notices.** All notices and communications required or allowed 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: (1) 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, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

The Licensee: _____

The Commission: 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 55
Logan, NM 88426

9. **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.

10. **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.

EXHIBIT E

11. **Interpretation**. The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the terms thereunder, and shall not be deemed to limit, define, or enlarge the terms of this Agreement. Whenever used herein, unless otherwise indicated by the context, the singular shall include the plural, the plural shall include the singular, the use of any gender shall include all genders, and the use of the words “include” and “including” shall be construed as if the phrases “without limitation” or “but not [be] limited to” were annexed thereafter. The parties were, or had ample opportunity to be, represented by counsel, and as such this Agreement shall not be interpreted for or against either party based on authorship. If Licensee is other than a natural person, the use herein of “Licensee” shall, where reasonable in the best interests of the Commission, be deemed to indicate and/or include all of the owners, partners, members, and employees of Licensee; provided, however, that such interpretation shall not be used in connection with Licensee’s indemnity obligations contained in this Agreement.

12. **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.

13. **Waiver**. No term of this Agreement shall be deemed waived unless such waiver is in writing signed by the party making the waiver. No delay or omission by either party in exercising or enforcing any right or power hereof shall impair such right or power or be construed to be a waiver thereof. No custom or practice that may evolve between the parties shall be construed to lessen the right of a party to require the performance of the other party in strict accordance with the terms of this Agreement. A waiver by one party of a failure of the other party to fully comply with any of the terms of this Agreement shall not be construed to be a waiver of any subsequent failure to comply or any other failure to comply.

14. **Cumulative Remedies**. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies hereunder, at law, or in equity.

15. **Joint and Several Obligations**. If more than one person or organization executes this Agreement as Licensee, their execution of this Agreement will constitute their covenant and agreement that (i) each of them is jointly and severally liable for the keeping, observing, and performing of all of the terms, covenants, and conditions of this Agreement to be kept, observed, and performed by Licensee, and (ii) the term “Licensee” as used in this Agreement means and includes each of them jointly and severally. The act of or notice from, or notice or refund to, or the signature of any one or more of them, with respect to this Agreement, including any renewal, extension, expiration, termination, or modification of this Agreement, will be binding upon each and all of the persons executing this Agreement as Licensee with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed. If Licensee executes this Agreement as an organization, then Licensee and the persons executing this Agreement on behalf of Licensee represent and warrant that such entity is duly qualified and in good standing to do business in New Mexico and that the individuals executing this Agreement on Licensee’s behalf are duly authorized to execute and deliver this Agreement on its behalf.

EXHIBIT E

16. **Governing Law and Venue**. Each party agrees that it shall perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect. 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.

17. **Modification**. Any modification of this Agreement must be made in writing and must be executed by the parties.

18. **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 US Supreme Court Stipulated Judgment and Decree.

[Signatures and approvals on following page.]

EXHIBIT E

IN WITNESS WHEREOF, the parties hereto have entered into this Vegetation Removal License Agreement as of the date first written above.

LICENSEE

DATE

COMMISSION

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

By: _____

Estevan López, P.E., Director

DATE

New Mexico Interstate Stream Commission

Approved as to form:

By: _____

Agency Attorney

[Acknowledgements of parties in interest on following page.]

