

**MEMORANDUM OF AGREEMENT
BETWEEN THE NEW MEXICO INTERSTATE STREAM COMMISSION;
NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT;
AND THE NEW MEXICO DEPARTMENT OF GAME AND FISH
REGARDING UTE RESERVOIR AND UTE LAKE STATE PARK**

THIS MEMORANDUM OF AGREEMENT (Agreement) is made and entered into by and between the New Mexico Interstate Stream Commission (NMISC); the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), acting through its State Parks Division (Division), and the New Mexico Department of Game and Fish (NMDGF), hereinafter collectively referred to as the "Parties", to regulate, manage, and control recreational use at Ute Reservoir (Reservoir) and to develop, operate, maintain, manage, and supervise recreation at Ute Lake State Park (Park).

WHEREAS, NMISC is authorized to investigate water supply and 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, and to negotiate agreements to carry out such provisions, pursuant to NMSA 1978, § 72-14-3; and

WHEREAS, EMNRD is empowered by NMSA 1978, § 9-5A-4 to maintain, manage, and supervise all state parks and state owned or leased recreation areas; and

WHEREAS, New Mexico State Game Commission is empowered by NMSA 1978, § 17-1-14 and § 17-4-1 to acquire, develop, improve, and manage lands for game refuges, hatcheries, game farms, resting and nesting grounds, dams, lakes, ditches, flumes, waterways, rights of way, trails, roads, pipelines, canals, field stations, and bird refuges, and for all purposes incidental to the propagation, preservation, protection, and management of the game, birds, fish, and wildlife of the State of New Mexico; and

WHEREAS, Laws of 1959, Chapter 69, Section 1 provided an appropriation to the NMISC for the construction of Ute Dam and the creation of the Reservoir on the Canadian River; and

WHEREAS, Section 1B of the 1959 appropriation required that before dam construction could begin, NMISC must have reasonable assurance that the project would have sufficient income to support ongoing operation and maintenance costs after construction was complete; and

WHEREAS, NMISC and NMDGF entered an agreement dated August 20, 1962 (the 1962 NMISC/NMDGF Agreement), by which NMDGF agreed to provide funds for support of ongoing operation and maintenance costs at the Dam and

Reservoir in return for NMISC's transfer of jurisdiction over fishing and recreational use of the Reservoir to NMDGF; and

WHEREAS, NMDGF and the New Mexico Park and Recreation Commission entered an agreement dated March 24, 1964 (the 1964 NMDGF/Division Agreement), by which the Park and Recreation Commission agreed to provide funds to NMDGF to help defray NMDGF's commitment to NMISC for operation and maintenance of the dam in return for NMDGF's transfer of jurisdiction of recreational use of the Reservoir, excluding fishing, licensing of anglers, and all fisheries management; and

WHEREAS, Laws of 1987, Chapter 234, Section 1-85 abolished the Park and Recreation Commission, combined the Natural Resources Department and other related agencies, and formed a new EMNRD under the executive authority of the Governor through the Secretary of EMNRD; and

WHEREAS, the 1964 NMDGF/Division Agreement was amended in 1987 to remove the provision by which EMNRD provided funds to NMDGF; and

WHEREAS, EMNRD is the successor agency of the Park and Recreation Commission; and

WHEREAS, NMISC is the owner and operator of the Reservoir and owner of the waters allocated to the state of New Mexico pursuant to the Canadian River Compact; and

WHEREAS, NMISC, EMNRD, and NMDGF have amended and extended the terms of the 1962 and 1964 agreements repeatedly to present and this process of amending the original agreements has now become obsolete; and

WHEREAS, NMISC, EMNRD, and NMDGF believe it is in their mutual interests to incorporate the intent of previous intergovernmental agreements into this Agreement to clarify responsibilities, financial obligations, and administrative processes regarding recreational authority, maintenance and operation of the Dam, and facilities at the Park, thereby superseding previous agreements between the Parties; and

WHEREAS, NMISC diverts water from the Reservoir pursuant to New Mexico Office of the State Engineer Permit No. 2900 and is responsible for compliance with all terms and conditions of that Permit; and

WHEREAS, NMISC is responsible for the protection and monitoring of water quality, water availability, and conservation of water resources in the Reservoir; and

WHEREAS, NMISC administers and manages Ute Dam and Reservoir to protect and sustain the Reservoir as a primary drinking water source for Eastern New Mexico communities;

WHEREAS, NMISC is responsible for the maintenance and operation of Ute Dam and Reservoir and all related works, including but not limited to, the storage and release of water pursuant to the terms of the Canadian River Compact; and

WHEREAS, NMISC is responsible for the administration of fee lands adjacent to the Reservoir and below the 3,787 ft. elevation, including below the Reservoir's surface; certain leases above the 3,787 ft. elevation; and certain flowage easements up to 3,806 ft. elevation; such real property interests are shown on the map and described in the legal descriptions comprising Attachments 1 and 3 to this Agreement, attached hereto, and incorporated herein, in their entirety by reference; and

WHEREAS, NMISC is party to certain lease agreements with Village of Logan related to recreation at the Reservoir; and

WHEREAS, NMISC is party to certain lease agreements with EMNRD related to recreation at the Reservoir relating to recreational sites and boat ramps on fee land owned by NMISC above the 3,787' ft. elevation, including sites at Roger's Park, Logan Park, Ute Lake Marina, Windy Point Campground, North Area Campground, South Area Campground, and Mine Canyon; and

WHEREAS, NMISC is responsible for representation of state interests in all discussions, negotiations, and agreements with the Ute Reservoir Water Commission, the Eastern New Mexico Water Utility Authority, and their agents, successors, and assigns; and

WHEREAS, NMISC is responsible for compliance with all federal and state statutory requirements, regulations and permits related to the use and operation of the dam and Reservoir and all other state laws related to the use, administration and conservation of state water resources at the Reservoir; and

WHEREAS, EMNRD is empowered by NMSA 1978, § 9-5A-4 and § 16-2-7 to develop, maintain, manage, and supervise all state parks. Certain real property owned in fee by the NMISC adjacent to the Reservoir is designated for recreational use at the Park. Such areas are described on the map comprising Attachment 2 to this Agreement and attached hereto, and incorporated herein, in its entirety by reference; and

WHEREAS, the Parties agree it is in their respective interests to collaborate on the ways to best develop, operate, maintain, and supervise recreational use of the Reservoir and the Park; and

WHEREAS, the Parties agree that it is in the public interest to establish clear authority to regulate recreation and administer the operation of Ute Dam and Reservoir and agree to exercise their respective powers with regard to recreation, operation, and maintenance of the Reservoir and the Park resulting in a higher level of service to the citizens of the state; and

WHEREAS, the NMISC, EMNRD, and NMDGF desire and intend to enter into this Agreement to regulate recreation, fishing, and boating and to operate and maintain Ute Dam and Reservoir; water resources; facilities located at Ute Lake State Park; and to enforce contracts, promulgate rules and regulations, and to undertake all things necessary to protect, preserve, and carry out the public purposes set out herein.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants and promises contained herein, NMISC, EMNRD, and NMDGF agree as follows:

1. Definitions

- A. Boat dock – means a structure extending from the shore into the water to allow the landing and mooring of vessels; the structure includes the anchoring system and any catwalks or bridges that attach to the dock itself.
- B. Community boat dock – means a private, non-commercial boat dock for use by owners-members or other authorized residents of a residential community, such as a planned unit development or condominium, and is not available for commercial or public use. The imposition of a fee for the maintenance or use of a community boat dock by owners-members or other residents of a residential community serviced by a community boat dock will not result in the boat dock being characterized as a commercial boat dock.
- C. EMNRD State Parks Division Ute Park Management Plan – means the management and development plan established, and updated periodically, for Ute Lake State Park under 19.5.3 NMAC.
- D. Marina – means a commercial facility, operating under a concession contract to provide services to the general public, such as secure moorage or dockage or supplies and services for pleasure boats.
- E. NMISC fee property – means NMISC lands owned in fee, generally those lands below the Reservoir surface and up to 3,787 ft. elevation and others.
- F. NMISC flowage easement – means public or private fee lands where ISC owns a flowage easement, generally those lands between 3,787 ft. elevation and 3,806 ft. elevation.

- G. NMISC Ute Reservoir Shoreline Management Plan – means the policy approved by the NMISC on September 17, 2010 that governs the use of and access to NMISC fee property, flowage easement lands, and Ute Reservoir.
- H. NMISC/Ute Reservoir Water Commission Water Purchase Contract – means the November 2010 contract, as may be amended, between the NMISC and the Ute Reservoir Water Commission, and other limited parties, for the option to purchase and the purchase of water from Ute Reservoir.
- I. Private boat dock – means boat docks licensed by the NMISC prior to August 27, 2010 and renewable under the NMISC Ute Reservoir Shoreline Management Plan.
- J. Ute Reservoir (Reservoir) – means the body of water and flooded lands created by Ute Dam along the Canadian River that is owned and administered by the NMISC as drinking water reservoir for communities in eastern New Mexico. Under this Agreement, the surface of Ute Reservoir is subject to EMNRD authority where the NMISC has expressly delegated such authority to EMNRD and to NMDGF with respect to fishing.
- K. Ute Lake State Park (Park) – means EMNRD fee lands, NMISC fee property leased to the Division for recreational use, and the NMISC's delegation by this Agreement of its recreational jurisdiction over the surface of Ute Reservoir to EMNRD for management as Ute Lake State Park.

2. Purpose

The Parties desire to enter into this Agreement for the purposes of clarifying the rights and responsibilities of the Parties relating to the operation and control of NMISC fee property and flowage easement lands and the surface waters of Ute Reservoir. Specifically,

- A. NMISC delegates to EMNRD all authority over recreational activity on ISC fee property leased to the Division and the surface waters of the Reservoir as shown in Attachments 1, 2, and 3.
- B. NMISC delegates to the Division recreational authority to operate the Park on the NMISC fee property leased to the Division and the surface area of the Reservoir, and that this recreational authority shall include inspection and enforcement of private boat docks; permitting, inspection, and administrative enforcement of community boat dock, marina, mooring area, and boat launching permits; boating; and launch, day-use, camping,

and other facilities and programs within the Park. The recreational authority delegated under this paragraph expressly excludes recreational authority over fishing or wildlife. See Attachments 2 and 3.

- C. NMISC grants and assigns to NMDGF recreational authority for fishing and wildlife on NMISC fee property leased to the Division and the surface area of the Reservoir.
- D. The parties further desire to enter into this Agreement to establish the existing right of NMDGF, acting on behalf of the New Mexico State Game Commission, to have the sole responsibility and authority to regulate the use of the Reservoir for wildlife, fishing, and related activities other than those specifically reserved to EMNRD in this Agreement, and to establish the parameters of NMDGF's funding/financial obligations with respect to the Reservoir.

3. Powers and Duties

A. NMISC Powers and Duties

- (1) NMISC retains its sole authority to operate the Reservoir to comply with the terms and conditions of the Canadian River Compact and the 1993 U.S. Supreme Court Stipulated Judgment, as modified.
- (2) NMISC retains its sole authority to administer water under the NMISC's State Engineer Surface Permit No. 2900, as amended, and as limited under Paragraph 3.A (10) of this Agreement.
- (3) NMISC retains its sole authority to administer the terms of the NMISC/Ute Reservoir Water Commission Water Purchase Contract.
- (4) NMISC retains its sole authority to administer and maintain the NMISC fee property and flowage easement around the Reservoir, provided that EMNRD concurs with NMISC in determining public boating access to the Reservoir, in accordance of the NMISC Ute Reservoir Shoreline Management Plan, Section 7.4.3.
- (5) NMISC retains its sole authority to administer license and other agreements not subject to the terms of this Agreement.
- (6) NMISC may make plans and conduct studies and coordinate such studies with NMDGF and EMNRD where appropriate.
- (7) NMISC personnel retain access to the areas designated for the Park at all times. The NMISC may use the Park free of charge for

meetings and activities that relate directly to the work of the NMISC. NMISC shall coordinate any meetings and activities through the Park Superintendent with advance notice of at least one week.

- (8) NMISC may adopt policies necessary to carry out the purpose of this Agreement.
- (9) By entering this Agreement,
 - (a) NMISC delegates to the Division its authority over inspecting the 20 private boat docks existing prior to the effective date of this Agreement and its authority over the application, permitting, inspection, and enforcement processes for community boat docks.
 - (b) NMISC delegates to the Division its recreational authority over the surface waters of the Reservoir, with the exception of recreational authority over fishing and wildlife.
 - (c) NMISC delegates to NMDGF its authority over fish and wildlife recreation at the Reservoir.
- (10) NMISC shall maintain water in the Reservoir, insofar as inflow will permit, at or above the 3,741.6 ft. elevation, which will provide a water surface area of approximately 2,350 acres and storage of approximately 50,000 acre feet of water.
 - (a) Should the water level approach the 3,741.6 ft. elevation, the NMISC shall consult with EMNRD and NMDGF on efforts and measures that the State may take to avert the need to discontinue releases or deliveries and to mitigate impacts of a declining water level.
 - (b) If the water level falls to or below the 3,741.6 ft. elevation, the NMISC shall
 - i. discontinue releases or deliveries from the Reservoir, and
 - ii. consult and coordinate with EMNRD and NMDGF on developing measures to manage and mitigate impacts on fish, wildlife, recreation, and other resources at the Reservoir.
- (11) NMISC, coordinating with the Division, shall provide encroachment licenses on NMISC fee property and over NMISC flowage

easement lands for privately-owned or operated marinas, community boat docks, mooring facilities, or boat launches on the Reservoir.

- (12) NMISC grants to the Division for its use a license over NMISC fee property and NMISC flowage easements for walkways, paths, piers, boat launches, or courtesy docks accessing the Reservoir that the Division owns or controls and may require to complete its responsibilities as part of the EMNRD State Parks Division Ute Park Management Plan.
- (13) Projects developed and approved by NMISC will promote fisheries habitat and fish spawning habitat, when possible.
- (14) Marker buoys and buoy lines at Ute Dam. NMISC and EMNRD shall share equally the costs of replacing buoys and buoy lines that restrict access to the Dam.
- (15) NMISC may perform any other lawful power or action reasonably necessary to execute the foregoing express powers and duties.

B. EMNRD Powers and Duties

- (1) EMNRD shall develop, maintain, manage, and supervise recreation, other than fishing, at the Park and on the surface waters of the Reservoir, which may include, boating, camping, day use, private boat docks, community docks, marinas, and mooring and boat launching facilities.
- (2) EMNRD shall operate and maintain those areas designated in Attachment 2 in accordance with rules adopted by the Division including, but not limited to, charging fees or issuing permits for recreational activities related to operating the Park.
- (3) EMNRD has law enforcement authority within the Park. Such authority is concurrent with other law enforcement agencies such as the Quay County Sheriff and the New Mexico State Police.
- (4) EMNRD may charge and collect fees and other charges pursuant to Division rules for use of the Park or its facilities.
- (5) EMNRD may develop and adopt plans, such as the EMNRD State Parks Division Ute Park Management Plan, and conduct studies needed for EMNRD improvements within the Park or for operation of the Park. NMISC and NMDGF may be consulted on such plans, and the Division shall provide NMISC with prior notice of proposed

improvements on NMISC fee property or NMISC flowage easement lands.

- (6) As the NMISC exercises its authority to administer and maintain the NMISC fee property and flowage easement around the Reservoir, EMNRD shall consult, concur, and coordinate with the NMISC in determining public boating access to the Reservoir and in observation of the NMISC Ute Reservoir Shoreline Management Plan, Section 7.4.3.
- (7) EMNRD may impose conditions on the use of Park facilities pursuant to Division rules, provided such rules do not unreasonably impede or prohibit use of the Reservoir for licensed fishing.
- (8) Projects developed or approved by EMNRD will promote fisheries habitat and fish spawning habitat when possible.
- (9) Marker buoys and buoy lines at Ute Dam. NMISC and EMNRD shall share equally the costs of replacing buoys and buoy lines that restrict boat access to the Dam. EMNRD shall be responsible for the labor associated with maintaining the buoy lines.
- (10) EMNRD may perform any other lawful power or action reasonably necessary to execute the foregoing express powers and duties.

C. NMDGF Powers and Duties

- (1) NMDGF shall retain jurisdiction over management of the fishery, licensed angling, and related recreation as provided by NMSA 1978, Chapter 17, including authority and access by NMDGF personnel for enforcement of Chapter 17 and regulations enacted pursuant thereto.
- (2) NMDGF may make plans and conduct studies, and coordinate such studies with EMNRD and NMISC where appropriate.
- (3) NMDGF may perform any other lawful power or action reasonably necessary to execute the foregoing express powers and duties.
- (4) Neither NMISC nor EMNRD shall have the right or authority to charge anglers duly licensed by NMDGF for fishing or access to fishing on the Reservoir or from its immediate shoreline other than the right of EMNRD to charge licensees regular and customary park access and use fees.

- (5) NMDGF will manage and maintain wildlife and fish resources at Ute Reservoir in accordance with its authority under NMSA, Chapter 17 and will stock fish as it deems appropriate.
- (6) Working with NMISC and the Division, NMDGF will coordinate programs to monitor and combat aquatic invasive species at the Park.

4. Previous Agreements

A. This Memorandum of Agreement is intended to terminate and replace the following agreements, if not already terminated, between the parties:

- (1) Memorandum of Agreement between the New Mexico Interstate Stream Commission and the New Mexico State Game Commission dated August 20, 1962;
- (2) Memorandum of Agreement between the New Mexico State Game Commission and the New Mexico State Park and Recreation Commission dated March 24, 1964;
- (3) Recreational Lease (Ute Dam Area) between the New Mexico Interstate Stream Commission and the New Mexico State Park and Recreation Commission dated July 7, 1964;
- (4) Recreational Lease Ute Dam North Area between the New Mexico Interstate Stream Commission and the New Mexico State Park and Recreation Commission dated November 14, 1964;
- (5) Recreational Lease Mine Canyon Area Ute Reservoir between the New Mexico Interstate Stream Commission and the New Mexico State Park and Recreation Commission dated February 24, 1971;
- (6) Amended Recreation Lease Mine Canyon Area Ute Reservoir between the New Mexico Interstate Stream Commission and the New Mexico State Park and Recreation Agreement dated October 1, 1971;
- (7) Amended Recreational Lease Mine Canyon Area, Ute Dam North Area and Ute Dam Area Ute Reservoir between the New Mexico Interstate Stream Commission and the New Mexico State Park and Recreation Commission dated November 29, 1976;
- (8) Second Amended Recreational Lease Ute Dam North Area, Ute Reservoir between the New Mexico Interstate Stream Commission and the New Mexico State Park and Recreation Commission dated July 21, 1977;
- (9) Third Amended Recreational Lease Ute Dam North Area, Ute Reservoir between the New Mexico Interstate Stream Commission and the Energy, Minerals and Natural Resources Department dated December 9, 1987;

- (10) Joint Powers Agreement between the New Mexico Department of Game and Fish and the Energy, Minerals and Natural Resources Department governing the management of Cimarron Canyon and Ute Reservoir dated February 13, 1989; and
 - (11) Joint Powers Agreement between the New Mexico Department of Game and Fish and the New Mexico Energy, Minerals and Natural Resources Department dated October 18, 2001, DGF# 02-516-47, EMNRD# 02-521-05-142.
- B. This Memorandum of Agreement is not intended to terminate and replace the following agreements between the parties:
- (1) Ute Reservoir Water Contract No. 3 between the New Mexico Interstate Stream Commission and the State Park and Recreation Commission for Furnishing Water dated October 23, 1968; and
 - (2) Joint Powers Agreement between New Mexico Interstate Stream Commission and the New Mexico Department of Game and Fish concerning coordinating efforts regarding water flows and Endangered Species Act habitat, dated April 2, 2002.
- C. Where other agreements exist that are not listed in paragraphs A and B above and that conflict with this Memorandum of Agreement, this Memorandum of Agreement shall supersede those agreements.

5. Private and Community Boat Docks

A. Private Boat Docks

(1) NMISC shall

- (a) Not permit additional private boat docks at the Reservoir, after the effective date of this Agreement, beyond the 20 private boat docks existing pursuant to License Agreements that were in effect prior to the effective date of this Agreement.
- (b) Consider a one time, five-year renewal license application for private boat dock licenseholders existing pursuant to license agreements that were in effect prior to the effective date of this Agreement.
- (c) Collect license fees for existing private boat docks, and transfer these fees to EMNRD for inspection costs of these docks.

- (d) Provide copies of licensing and approval documentation, including any bonds, in NMISC possession to EMNRD for the existing 20 private boat docks.
- (e) Join EMNRD in any administrative or civil action taken against an owner of one of the 20 existing private boat dock, including removal of the boat dock, if the existing private boat dock does not or is not able to comply with the NMISC private boat dock license agreement, 18.17.3 NMAC, or the NMISC Ute Reservoir Shoreline Management Plan.

(2) EMNRD shall

- (a) Initiate an inspection process for the 20 existing private boat docks no later than 90 days after the effective date of this Agreement.
- (b) Require the 20 existing private boat docks comply with 18.17.3 NMAC for the duration of the private boat dock license.
- (c) For any violations that pose a threat to health, safety, or welfare of the boat dock owner or other Park users, require private boat dock owners to correct the violations within 30 days of receipt of written notice of the violation.
- (d) For all other violations not considered a threat to health, safety, or welfare of the boat dock owner or other Park users, require private boat dock owners to correct the violations within the time provided within the written notice, but not later than 90 days after receipt of notice.
- (e) Join the NMISC in any administrative or civil action taken against an owner of one of the 20 existing private boat dock, including removal of the boat dock, if the existing private boat dock does not or is not able to comply with the NMISC private boat dock license agreement, 18.17.3 NMAC, or the NMISC Ute Reservoir Shoreline Management Plan.

B. Community Boat Docks

- (1) NMISC, the Division, and NMDGF may allow a community boat dock, as defined by 18.17.3.7.F NMAC and in this Agreement, upon consideration of elements described in the NMISC Ute Reservoir Shoreline Management Plan (Section 7.3.2.3) and after concluding that the proposed dock location complies with 18.17.3 NMAC.

(2) Collection of Fees Associated with Community Boat Docks

- (a) NMISC shall collect and retain fees for encroachment licenses for community boat dock permits.
- (b) EMNRD will consult and advise NMISC on setting fees for a community boat dock permit. NMISC will collect such fees, until EMNRD may do so under its rules, and transfer such fees to EMNRD.
- (c) Should a rule for community boat dock permit fees not be promulgated within five years of full execution of this Agreement, Parties may, but shall not be obligated to, renegotiate Paragraph 5.B .

(3) NMISC shall

- (a) Provide encroachment licenses for any community boat dock application approved by NMISC and the Division and permitted by the Division pursuant to Paragraph 5.B(1).
- (b) Take administrative or civil actions for violations of the encroachment license for a community boat dock permit, provided however, that EMNRD will join administrative or civil actions that also affect a community boat dock permit.

(4) EMNRD shall

- (a) Receive and review applications for community boat dock permits.
- (b) Once approved, issue a community dock permit in conjunction and coordination with the NMISC issuing an encroachment license for the community boat dock.
- (c) After inspection and notice of non-compliance, take enforcement actions pursuant to 18.17.3 NMAC on community boat docks that do not comply with 18.17.3 NMAC.
- (d) EMNRD shall take any administrative or civil actions for violations of the community boat dock permit, provided however, that the NMISC will join administrative or civil actions that also affect an encroachment license for a community boat dock.

6. Events, Programs and Commercial Activities

EMNRD shall operate, authorize, or contract for such events; commercial activities, which may include marinas; and programs within the Park as are

consistent with EMNRD rules and consistent with the NMISC Ute Reservoir Shoreline Management Plan.

7. Improvements and Site Disturbances

A. EMNRD shall operate, maintain, and improve the Park in accordance with the EMNRD State Parks Division Ute Park Management Plan and the NMISC Ute Reservoir Shoreline Management Plan.

~~B.~~ B. NMISC shall notify and consult with EMNRD concerning any permanent developments NMISC proposes with the Park. EMNRD shall notify and consult with NMISC concerning any proposed permanent developments of EMNRD at the Park or proposed activities outside the scope of normal operations undertaken by EMNRD pursuant to the EMNRD State Parks Division Ute Lake Park Management Plan.

C. EMNRD shall comply with all federal, state, and local environmental laws and obtain all federal, state, and local environmental approvals required for EMNRD projects.

D. NMISC shall comply with all federal, state, and local environmental laws and obtain all state, local, and federal environmental approvals required for NMISC projects.

8. Funding/Financial Responsibilities of the Parties

A. NMISC

(1) shall be responsible for operation of the Reservoir to comply with the terms and conditions of the Canadian River Compact and the 1993 U.S. Supreme Court Stipulated Judgment, as modified; administering and operating its flowage easement around the Reservoir; administering its License Agreements; funding the administration, operation, and maintenance of Ute Dam and observe the terms of the NMISC/Ute Reservoir Water Commission Water Purchase Contract; and any plans or studies NMISC undertakes.

(2) shall collect fees for operation and maintenance of Ute Dam and Reservoir and fees related to encroachment licenses and other agreements to meet obligations in Paragraph 8.A(1).

(3) Shall collect and transfer fees to EMNRD according to Paragraph 5. Such transfers shall occur annually, beginning with state fiscal year 2012.

B. NMDGF annually shall transfer to NMISC up to a maximum of \$100,000.00 to reimburse NMISC for verifiable costs incurred by NMISC in the operation and maintenance of the dam associated with the Reservoir. Such costs shall not include those associated with or arising solely by reason of NMISC contracts or commitments with third parties other than such contracts or commitment are for operating of the dam for purposes required as the date of this agreement and any maintenance as may be required for any purpose. Any such costs in excess of \$100,000.00 annually shall be addressed by the parties in a accordance with subparagraph D, below.

C. EMNRD

(1) shall be responsible for funding the operation and maintenance of the Park and for any improvements it makes to the Park.

(2) shall collect fees associated with recreational activities, other than fishing, described in this Agreement and to meet obligations in Paragraphs 5 and 8.C(1).

D. The parties shall meet annually and cooperatively seek additional funding sources to cover existing, or unexpected costs for operation and maintenance of Ute Dam in excess of the \$100,000.00 maximum to be reimbursed by NMDGF, such sources may include development impact fees; federal and state appropriations and programmatic funding; increases in user fees, if necessary; and any other opportunities reasonably jointly available to the parties.

9. Communication and Problem Solving

A. The Parties shall seek to resolve any requests or other matters that may arise in connection with the Park that are otherwise not addressed in this Agreement. Such procedures for resolution may include, but are not limited to, meetings and correspondence at the staff level and formal written requests for involvement and resolution by senior staff within NMISC, EMNRD, and NMDGF.

B. The Parties agree to send notice of all proposed rules affecting the Park or Ute Reservoir to the other Parties not less than 30 days prior to a proposed rule or policy being published or adopted or before the time any notice is published in the New Mexico Register.

10. Strict Accountability for Receipts and Disbursements

NMISC, EMNRD, and NMDGF shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to all parties, the New Mexico Department of Finance and Administration, and the New Mexico State Auditor, upon request and shall maintain all such records for three years in accordance with state and federal records retention rules. The financial records involving services and

procurement under this Agreement shall be annually available for audit pursuant to all federal, state, and local government audit requirement, in particular, OMB Circulars A-102, A-87, and A-1-33.

11. Post-Execution

Should it become necessary, after this Agreement has been executed for the Parties to take further action or sign additional documents to effectuate the agreements reached as reflected in this Agreement, the Parties agree to act in good faith and use due diligence to take such action or sign such documents.

12. Term

This Agreement shall be effective on the date when fully-executed by the parties hereto. This Agreement shall continue until October 1, 2075.

13. Termination

The participation of any party to this Agreement may be terminated by any party upon written notice delivered to the other parties at least 180 days prior to the intended date of termination. Any party may initiate immediate termination for good cause. Prior to a party's termination becoming effective, the parties must consult and meet in good faith to resolve issues. By such termination, no party may nullify obligations incurred herein for performance or failure to perform prior to the intended date of termination. If one party terminates the Agreement, the obligations of the remaining parties under this Agreement shall remain and the non-terminating parties shall continue to be bound by the terms of the Agreement; provided, further, that upon termination by either NMISC or EMNRD, EMNRD shall have no further interest in NMISC property described in Attachment 3 and the Reservoir.

14. Third Party Beneficiaries

This Agreement is not intended to create in the public, or any member thereof, a third party beneficiary claim or to authorize anyone not a party to this Agreement to maintain a suit for wrongful death, bodily injury, or personal injury to person, damage to property, or any other claim(s) whatsoever pursuant to the provisions.

15. Amendment

This Agreement shall not be altered, changed, or amended except by written instrument executed by the Parties hereto.

16. Equal Opportunity Compliance

The Parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Parties assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If a party is found not to be in compliance with these requirements during the life of this Agreement, that party agrees to take appropriate steps to correct these deficiencies.

17. Permanent Development and Improvements

Permanent developments and permanent site improvements at the Park funded by EMNRD or NMDGF shall become the property of NMISC upon termination of this Agreement. If this Agreement is terminated, EMNRD and NMDGF may retain ownership of those developments and improvements that can be removed without damage to the real property owned by NMISC.

18. Procurement, Utilization, and Disposition of Funds and Property

Except for the treatment of permanent developments and site improvements provided through this Agreement, if upon expiration or termination of the Agreement, any Party has funds or property in its possession belonging to another Party, the same shall be returned in proportion to the Party's original contribution.

19. Contracting

Contractors may complete approved work at the Park under this Agreement on behalf of the Parties. Any contractor Agreement shall include provisions necessary to allow the Parties to meet their obligations and requirements under this Agreement.

20. Liability and Indemnification

No party to this Agreement shall be responsible for liability incurred as a result of another party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. Each party shall be solely responsible for fiscal or other sanctions, penalties or fines occasioned as a result of its own violation or alleged violation of requirements applicable to the

performance of this Agreement. Each party shall be liable for its acts or failure to act in accordance with this Agreement, subject to immunities and limitations of the New Mexico Tort Claims Act.

21. Compliance with Fund Source Conditions

The Parties shall comply with all applicable compacts, federal and state statutes, rules, and regulations for areas and facilities subject to those compacts, federal and state statutes, rules, and regulations.

22. Appropriations

The terms of this Agreement are contingent upon sufficient appropriation and authorization being granted by the New Mexico State Legislature and available to the Parties. If sufficient appropriation or authorization is not granted, any party may terminate this Agreement, or suspend performance pending approval of sufficient appropriation or authorization, upon written notice from one to the others. Any party's decision as to whether sufficient appropriations are available shall be final, binding, and accepted by the others.

23. Authority

Nothing contained in this Agreement shall in anyway be interpreted to limit the ability of each party to exercise their inherent authority, and each party specifically retains the right in their sole discretion, to reject any advice or proposals of any other party or entity, and to pursue whatever course of action they deem to be in their best interest.

24. Governing Law

This Agreement shall be governed by the laws of the State of New Mexico and venue for any litigation concerning this Agreement shall be in the County of Santa Fe.

IN WITNESS, WHEREOF, the parties hereto have executed the above Agreement.

New Mexico Interstate Stream Commission

By: 
Director

Date: 12/20/10

New Mexico Department of Game and Fish

By: 
Director

Date: 12-22-2010

New Mexico Energy, Minerals and Natural Resources Department

By: 
Secretary or Designee

Date: 12.21.10

ATTACHMENTS

- 1 Map, NMISC Real Property Interests – Fee and Flowage Easements
- 2 Map, Ute Lake State Park
- 3 Legal Descriptions for NMISC/EMNRD, State Parks Division Leases:
Ute Dam Area, Ute Dam Area North, and the Mine Canyon Area

ATTACHMENT 1 – NMISC REAL PROPERTY INTERESTS

Fee Lands and Flowage Easements

Explanation of Map Legend Titles

“NMISC Fee (1984 Survey)” means NMISC fee lands from below the surface of Ute Reservoir level up to the red line as identified in NMISC Ute Reservoir Survey (Bohannon Huston, Inc.; May 1984 – July 1986, and as revised)(“NMISC Survey”) and the legal descriptions from the Patent for State Land, N.M. State Land Office to NMISC, March 19, 1963, Exhibit B.

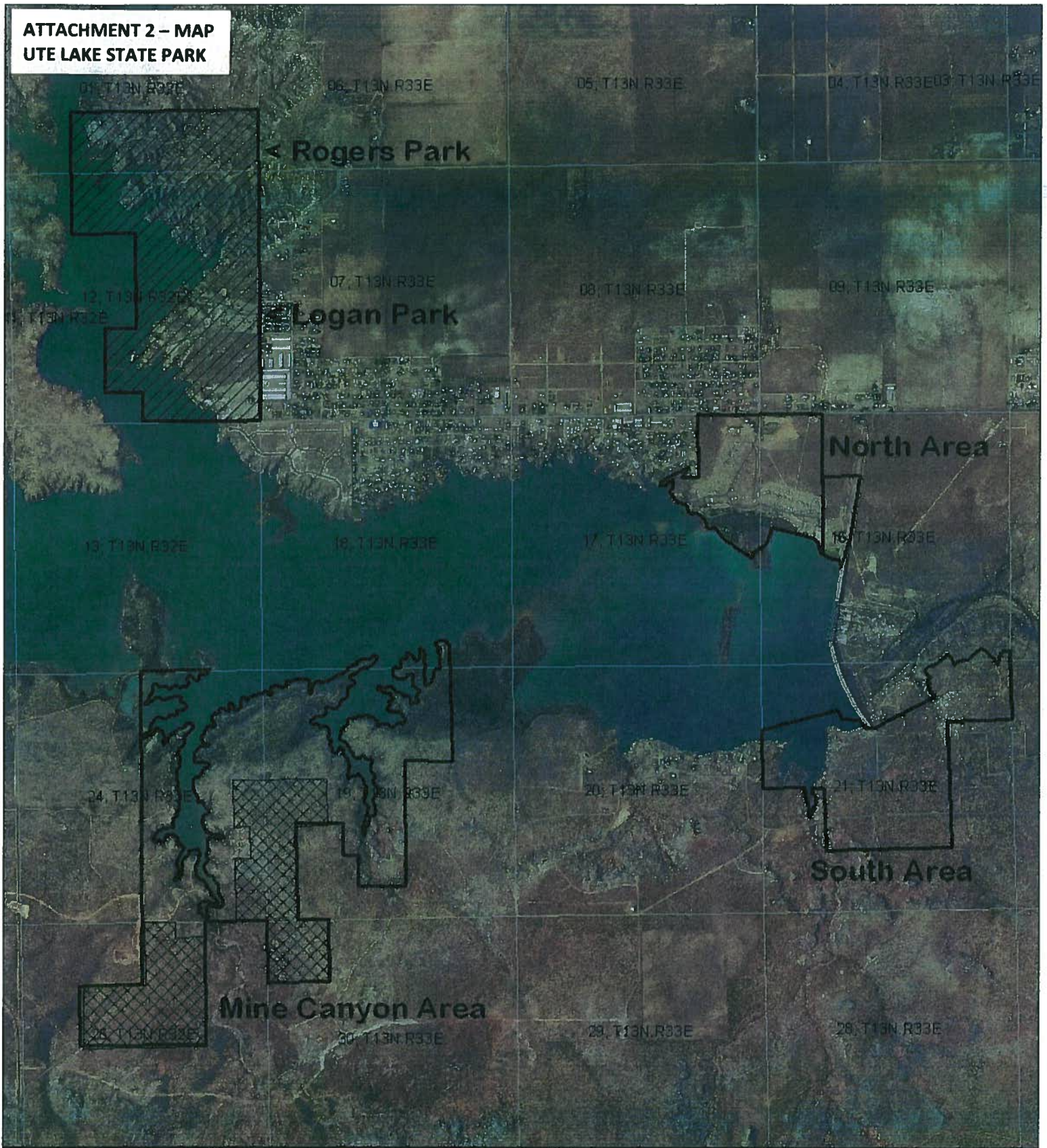
“NMISC Fee – 3,787’ Elevation” means NMISC fee lands from below the surface of Ute Reservoir up to the 3,787 foot elevation around Ute Reservoir, though the NMISC also owns fee lands above this elevation and up to the red line identified by the NMISC Survey.

“NMISC Easement (1984 Survey)” means state or private lands where the NMISC owns a flowage easement from the surface of Ute Reservoir up to the green line as identified in NMISC Survey and including parcels described in the Grant of Easement, N.M. State Land Office to NMISC, March 6, 1987.




“NMISC Easement – 3,806’ Elevation” means state or private lands where the NMISC owns a flowage easement from the surface of Ute Reservoir up to the 3,806 foot elevation around Ute Reservoir, though the NMISC also owns flowage easements above this elevation and up to the green line identified by the NMISC Survey.

“State Lands” means lands owned by other state agencies or offices where the NMISC maintains a flowage easement.

**ATTACHMENT 2 – MAP
UTE LAKE STATE PARK**



Ute Lake State Park

-  Areas Subject to this Agreement
-  State Parks Division Land
-  Park Area Not Subject to this Agreement



State Parks Division
Created November 2010
Datum NAD 83 UTM 13N
2009 Orthophoto
1:35,000

ATTACHMENT 3 –

Legal Descriptions for NMISC/EMNRD, State Parks Division Leases:
Ute Dam Area, Ute Dam Area North, and the Mine Canyon Area

UTE DAM AREA

A portion of Sections 16 and 21, T13N R33E, N.M.P.M. lying south of the Canadian River and more particularly described as follows:

Beginning at a point on the south abutment of Ute Dam from whence the East $\frac{1}{4}$ corner of Section 21, T13N R33E, N.M.P.M. bears S. $67^{\circ} 45' E.$, 3,120.62 feet distant;

Thence S $82^{\circ} 09' W$, 189.05 feet to an X marked on a sandstone boulder;

Thence N $38^{\circ} 48' W$, 213.1 feet to a point;

Thence N $8^{\circ} 35' W$, 25.0 feet to a point;

Thence S $81^{\circ} 25' W$, 300 feet to a point;

Thence N $68^{\circ} 35' W$, 130 feet to a point;

Thence N $17^{\circ} 35' W$, 150 feet to a point, said point being at or near water level contour elevation 3,740 feet of Ute Reservoir;

Thence S $76^{\circ} 54' W$, 1,659.7 feet to a point on the west line of Section 21, T13N R33E, said point being 1,100.0 feet more or less, north of the west $\frac{1}{4}$ corner of Section 21, T13N, R33E, N.M.P.M. and located at or near water level contour 3,740.00 of Ute Reservoir;

Thence south along the west Section line of Section 21, T13N R33E, N.M.P.M. to the west of the $\frac{1}{4}$ corner of said Section 21;

Thence east along the south line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T13N R33E N.M.P.M. to the SE corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Thence south along the west line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, T13N R33E N.M.P.M. to the SW corner of said NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Thence east along the south lines of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T13N R33E N.M.P.M. to the SE corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Thence north along the east lines of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21 T13N R33E N.M.P.M. to the NE corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$;

Thence east along the south line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21, T13N R33E N.M.P.M. to the east line of said Section 21;

Thence north along the line common to Sections 21 and 22 to the corner common to Sections 15, 16, 21, 22 T13N R33E N.M.P.M.;

ATTACHMENT 3 –

Legal Descriptions for NMISC/EMNRD, State Parks Division Leases:
Ute Dam Area, Ute Dam Area North, and the Mine Canyon Area

Thence north along the line common to Sections 15 and 16, T13N R33E N.M.P.M. about 250.0 feet more or less to elevation 3,750 feet on the south bank of the Canadian River;

Thence meandering westward along the 3,750 ft. contour line on the south bank of the Canadian River to a point that bears N 63° 40' E, 1,400 ft. from the point of beginning;

Thence S 63° 40' W, 1,400 ft. to the point of beginning;

EXCEPT, HOWEVER, that lessor reserves easements for pipe line or electrical transmission purposes or for other facilities for the operation and maintenance of the Ute Dam Project, within the above described area, said easements being more particularly described as follows:

A) A strip of land 50' in width extending around the perimeter of the lands herein described; and,

B) A strip of land fifty feet wide, the western boundary of which commences at a point on the lease boundary that bears N 63° 40' E, 150 feet distance from the beginning point of the above description thence bearing S 00° 59' E and extending to the southern boundary of the lease area.

All in Quay County, New Mexico and containing 259.52 acres more or less.

ATTACHMENT 3 –

Legal Descriptions for NMISC/EMNRD, State Parks Division Leases:
Ute Dam Area, Ute Dam Area North, and the Mine Canyon Area

UTE DAM NORTH AREA

That portion of Sections 16, 17, 20, and 21, T13N, R33E, N.M.P.M., situated north of Ute Reservoir and described as follows:

Beginning at a point on the fence line on the south side of the road coincident with the Section line common to Sections 9 and 16 and approximately 4 miles west of Logan, New Mexico, and being the northeast corner of the lease area herein described, whence the northwest corner of Section 16, T13N, R33E, N.M.P.M. bears N88° 18' W; about 1310 feet distant;

Thence in a southerly direction along the east line of the W ½ W½ of said Section 16 to a point, said point being 10 feet, more or less, north of the limit of the excavated spillway approach channel of Ute Dam;

Thence in a southwesterly direction along a meander line parallel to and 10 feet distant from the limit of the excavated spillway approach channel to a point coincident with the water's edge on the north shoreline of Ute Reservoir;

Thence in a westerly and thereafter upstream direction along a meander line coincident with the water's edge of said north shoreline to that point at which the north shoreline intersects the west line of the NE¼, Section 17, T13N, R33E, N.M.P.M.;

Thence in a northerly direction to an angle point of the "Lease Survey", which survey defines the land ownership boundaries of the New Mexico Interstate Stream Commission, said point being the northwest corner of the lease area herein described;

Thence N. 27° 36' E., 371.51 feet to a point;

Thence S. 25° 39' E., 241.00 feet to a point;

Thence N. 69° 58' E., 130.95 feet to a point;

Thence S. 16° 27' E., 168.00 feet to a point;

Thence S. 89° 42' E., 168.70 feet to a point;

Thence N. 64° 08' E., 534.76 feet to a point;

Thence S. 19° 46' W., 249.53 feet to a point;

Thence S. 89° 44' E., 306.92 feet to a point;

said point being a 2½ inch brass cap, set in concrete and marked N.M.I.S.C. 1962;

ATTACHMENT 3 –

Legal Descriptions for NMISC/EMNRD, State Parks Division Leases:
Ute Dam Area, Ute Dam Area North, and the Mine Canyon Area

Thence N. 0° 14' E., 1325.24 feet to a point, said point being a 2 ½ inch brass cap, set in concrete and marked N.M.I.S.C. 1962;

Thence in an easterly direction along the fence line on the south side of the road coincident with the Section line common to Sections 8 and 17 and common to Sections 9 and 16, a distance of about 2600 feet, more or less, to the point of beginning; the area thus described being situated in Quay County, New Mexico, and containing 374 acres, more or less;

EXCEPT, HOWEVER, that lessor reserves an easement for pipeline or electrical transmission purposes or for other facilities for the operation and maintenance of the Ute Dam Project within the above described area, said easement being more particularly described as follows:

A) a strip of land, 50 feet in width, extending along and adjacent to the northern boundary from the northeast corner to the northwest corner of the lease area.

NOTE REGARDING UTE DAM NORTH AREA

Ute Lake State Park includes an un-surveyed parcel of NMISC fee property adjacent to and east of the Ute Dam North Area (North Area) that is shown on Attachment 2 and is located in the SE¼ NW¼, Section 16, T13 N, R33 E, N.M.P.M, which is west of the dam, and NE¼ SW¼ Section 16, T13 N, R33 E, N.M.P.M, which is west of the dam and north of a meander line coincident with the water's edge of said north shoreline. By December 31, 2011, the State Parks Division will survey said land and provide a legal description to the NMISC and NMDGF. Once surveyed and pursuant to Paras. 4.C and 11 of this Agreement, the Parties will incorporate the correct and accepted legal description of this parcel here in Attachment 3.

ATTACHMENT 3 –

Legal Descriptions for NMISC/EMNRD, State Parks Division Leases:
Ute Dam Area, Ute Dam Area North, and the Mine Canyon Area

MINE CANYON AREA

The Mine Canyon lease area is situated south of Ute Reservoir and described as that portion of Sections 24 and 25, T13N, R32E and Sections 18 and 19, T13N, R33E, N.M.P.M. lying above the water's edge and within the following subdivisions:

$S\frac{1}{2}$ $SE\frac{1}{4}$ $SW\frac{1}{4}$; $SW\frac{1}{4}$ $SW\frac{1}{4}$ $SE\frac{1}{4}$; $W\frac{1}{2}$ $W\frac{1}{2}$ $SE\frac{1}{4}$ $SW\frac{1}{4}$ $SE\frac{1}{4}$ Section 18, T13N, R33E.

$NW\frac{1}{4}$ $NE\frac{1}{4}$; $NE\frac{1}{4}$ $NW\frac{1}{4}$; $NW\frac{1}{4}$ $NW\frac{1}{4}$; $N\frac{1}{2}$ $SW\frac{1}{4}$ $NE\frac{1}{4}$; $W\frac{1}{2}$ $SW\frac{1}{4}$ $SW\frac{1}{4}$ $NE\frac{1}{4}$; $W\frac{1}{2}$ $W\frac{1}{2}$ $NW\frac{1}{4}$ $SE\frac{1}{4}$; $W\frac{1}{2}$ $NW\frac{1}{4}$ $SW\frac{1}{4}$ $SE\frac{1}{4}$; $SE\frac{1}{4}$ $NW\frac{1}{4}$; $N\frac{1}{2}$ $NE\frac{1}{4}$ $SW\frac{1}{4}$; $E\frac{3}{4}$ $S\frac{1}{2}$ $NE\frac{1}{4}$ $SW\frac{1}{4}$; $NE\frac{1}{4}$ $SE\frac{1}{4}$ $SW\frac{1}{4}$; $N\frac{3}{4}$ $SW\frac{1}{4}$ $NW\frac{1}{4}$ Section 19, T13N, R33E.

$S\frac{1}{2}$ $NE\frac{1}{4}$ $NE\frac{1}{4}$; $NE\frac{1}{4}$ $NE\frac{1}{4}$ $NE\frac{1}{4}$; $W\frac{1}{2}$ $SE\frac{1}{4}$ $NE\frac{1}{4}$; $N\frac{3}{4}$ $E\frac{1}{2}$ $SE\frac{1}{4}$ $NE\frac{1}{4}$; $SW\frac{1}{4}$ $NE\frac{1}{4}$; $NW\frac{1}{4}$ $SE\frac{1}{4}$; $W\frac{1}{2}$ $NE\frac{1}{4}$ $SE\frac{1}{4}$; $W\frac{1}{2}$ $SE\frac{1}{4}$ $NE\frac{1}{4}$ $SE\frac{1}{4}$; $W\frac{1}{2}$ $SE\frac{1}{4}$ $SE\frac{1}{4}$; $SW\frac{1}{4}$ $SE\frac{1}{4}$ Section 24, T13N, R32E.

$N\frac{1}{2}$ $NE\frac{1}{4}$ $NW\frac{1}{4}$ $NE\frac{1}{4}$ Section 25, T13N, R32E.

The area thus described being situated in Quay County, New Mexico and containing 420 acres, more or less.