

Contract No. 94-07-40-R1690

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
AND  
BUREAU OF RECLAMATION

DEER CREEK RESERVOIR/JORDANELLE RESERVOIR  
OPERATING AGREEMENT

AMONG THE UNITED STATES OF AMERICA, THE  
PROVO RIVER WATER USERS' ASSOCIATION AND THE  
CENTRAL UTAH WATER CONSERVANCY DISTRICT

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This Operating Agreement is made and entered into this 1st day of November 1994, pursuant to the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplementary thereto, and particularly the Act of April 11, 1956, (70 Stat. 105) and Titles II-VI of the Act of October 30, 1992, (106 Stat. 4600), by and among the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF THE INTERIOR ("DOI") and the BUREAU OF RECLAMATION ("USBR"), collectively referred to as the ("United States"); the PROVO RIVER WATER USERS' ASSOCIATION ("PRWUA"), a nonprofit corporation and water users association organized and existing under the laws of the State of Utah, with its principal place of business in Orem, Utah; and the CENTRAL UTAH WATER CONSERVANCY DISTRICT ("CUWCD"), a water conservancy district organized and existing under the laws of the State of Utah, with its principal place of business in Orem, Utah.

PREAMBLE

WITNESSETH, That the following statements are made in explanation:

WHEREAS, the Senate Committee on Energy and Natural Resources in their report (Report 102-267) on CUPCA states that "Section 209 embodies the Committee's expectation [but not PRWUA's expectations] that the District, in consultation with the Commission, will apply its best efforts to achieve operating agreements to facilitate the purposes of Titles II-VI of this Act with the Secretary and affected water users along the Provo River Drainage to govern the storage and releases of water in Jordanelle Reservoir, Deer Creek Reservoir, Utah Lake, and in Strawberry Reservoir. The coordinated use of these facilities has the potential to yield substantial benefits through efficient water management for municipal, industrial, irrigation, recreational, and fish and wildlife needs. These agreements will also assist the District in maintaining the minimum stream flows identified in these titles. Operating agreements for these facilities can increase project yield and conserve water resources for future use"; and

WHEREAS, the United States constructed the Provo River Project ("PRP") which includes, among other things, the Deer Creek Dam and Reservoir, the enlarged Provo Reservoir Canal, the enlarged Weber-Provo Diversion Canal and the Duchesne Tunnel and PRWUA has contracted with the United States to repay the cost of

construction of certain PRP facilities, and the care, operation and maintenance of said facilities have been transferred to PRWUA by USBR in accordance with the respective repayment contracts between the United States and PRWUA ("PRP Repayment Contracts"), and pursuant thereto, PRWUA is entitled to utilize the storage capacity of Deer Creek Reservoir, together with the total yield of storage water therefrom and a permanent right to the exclusive use of the water made available by the PRP under the water rights therefor standing in the name of USBR ("PRP Water Rights") and through the operation of the PRP Repayment Contracts; and

WHEREAS, pursuant to the respective PRP Repayment Contracts between the United States and PRWUA and the stock subscription contracts between PRWUA and its respective stockholders ("PRP Subscription Contracts"), the PRP storage waters are allocated to the stockholders of PRWUA in Deer Creek Reservoir and those stockholders are entitled to call for their storage waters in such quantities and at such times as they elect or to holdover in Deer Creek Reservoir any stored water to which they may be entitled when there is storage capacity in said reservoir for release in future years in accordance with the terms and conditions thereof; and

WHEREAS, the annual allocation of the PRP waters to the stockholders of PRWUA under the PRP Subscription Contracts is 100,000 acre-feet ("AF") annually, together with the right to use any water above that required for storage purposes which may be

available from or under PRP Water Rights. The PRP water in any year available in excess of a supply of one (1) acre foot per share of PRWUA stock may be disposed of by PRWUA to shareholders or others subject to the approval of such disposition by the Secretary of the Interior (the "Secretary"); and

WHEREAS, pursuant to that certain contract entered into among USBR, PRWUA, Utah Power & Light Co. (now "PacifiCorp") and others, dated December 20, 1938, ("1938 Power Contract") USBR and PRWUA are entitled to withhold in Deer Creek Reservoir an average of 5,000 acre feet annually of Provo River "power water" during a progressive ten year period but not in excess of 10,000 acre feet in any one year during the period from approximately October 15 through approximately April 15 of the following year ("Winter Period") provided that the resulting loss of energy at the Olmsted Powerplant be replaced as provided for therein; and

WHEREAS, pursuant to that certain contract between USBR and PRWUA dated June 20, 1958, PRWUA performs the operation and normal maintenance of the Deer Creek Powerplant for USBR ("1958 DC Powerplant Contract") so as to not impair the yield of water from the PRP nor interfere with the operation of the PRP for the primary purpose of utilizing the total PRP water supply for PRP purposes other than power; and

WHEREAS, the 1958 DC Powerplant Contract provides, among other things, that electric power and energy produced at the DC Powerplant is utilized to make replacements of capacity and

energy losses to PacifiCorp as provided for in the 1938 Power Contract; and for marketing surplus power and energy generated at the DC Powerplant with the net power and energy revenues to be applied on the construction charges of the PRP due or to become due until all obligations of PRWUA to USBR shall have been liquidated; and

WHEREAS, USBR has constructed a portion of the Bonneville Unit ("BU") of the Central Utah Project (initial phase) ("CUP"), a participating project under the Colorado River Storage Project Act (70 Stat. 105), including among other features, the Jordanelle Reservoir and the enlarged Strawberry Reservoir, and CUWCD is constructing the remaining features of the BU pursuant to the Central Utah Project Completion Act ("CUPCA") comprising Titles II-VI of the Act of October 30, 1992 (106 Stat. 4600, Public Law 102-575), and the care, operation and maintenance of the BU facilities has or will be transferred to CUWCD; and

WHEREAS, USBR holds certain approved water right applications for the storage of natural flow waters of the Provo River in Jordanelle Reservoir and/or Deer Creek Reservoir, including waters which otherwise would be required to flow to Utah Lake to satisfy prior rights therein, by exchange for BU waters replaced into Utah Lake from releases from the enlarged Strawberry Reservoir (collectively "BU Water Rights") and upon the exercise of those BU Water Rights, storage of the natural flows of the Provo River in Jordanelle Reservoir and/or Deer



Creek Reservoir can be satisfied without impairing existing water rights in the Provo River or in Utah Lake; and

WHEREAS, USBR acquired PacifiCorp's non-consumptive Provo River natural flow water rights for 429 cubic feet per second ("cfs") by condemnation on April 20, 1989, defined as "The 429 cfs Water" comprising 229 cfs with a priority of 1897 and 200 cfs with a priority of November 11, 1917, under paragraph 1.m of that certain agreement among USBR, CUWCD and PacifiCorp Electric Operations For the Exchange of Water and Power and Settlement of Olmsted Condemnation dated September 20, 1990 ("1990 Olmsted Condemnation Settlement Agreement"). The 429 cfs Water identified above is referred to as "The Olmsted Power Right" in this Operating Agreement; and

WHEREAS, CUWCD has granted and USBR has approved certain BU petitions for BU municipal and industrial ("M&I") water stored in Jordanelle Reservoir as allocated therein to such petitioners and those petitioners are entitled to call for their annually allotted storage waters in such quantities and at such times as they elect, including quantities and flows in excess of their approved petitions but limited to the average quantities covered by their approved petitions; and

WHEREAS, CUWCD has contracted with USBR to repay the reimbursable costs of construction of the BU ("BU Repayment Contracts") and pursuant thereto CUWCD will be entitled to the waters made available thereby which will include, among others,

M&I and irrigation uses within Summit County, Wasatch County, Utah County and Salt Lake County, Utah for use by CUWCD and its petitioners; and

WHEREAS, USBR, PRWUA, CUWCD and the Metropolitan Water District of Salt Lake City entered into that certain Interim Operating Agreement for Implementation of Deer Creek and Strawberry Exchange of Bonneville Unit Project Water dated May 16, 1986, ("1986 Interim Operating Agreement") which by its terms shall continue in full force and effect until November 1, 2010, or until Jordanelle Reservoir is constructed and becomes operational so as to make available to USBR up to 20,000 AF of water annually of Bonneville Unit water for M&I use by CUWCD, whichever event occurs first; and

WHEREAS, it is acknowledged that the diversion and storage of Provo River natural flow water in Deer Creek Reservoir under the PRP Water Rights and in Jordanelle and/or Deer Creek Reservoir under the BU Water Rights and the use of the waters of Utah Lake under the Utah Lake water rights acquired by CUWCD ("CUWCD Utah Lake Water Rights") as implemented by the Water Distribution Plan for the Utah Lake Drainage Basin adopted by the Utah State Engineer as of November 1, 1992 (the "Utah Lake Distribution Plan") may change the prior existing conditions in Utah Lake and it is necessary that Deer Creek Reservoir and Jordanelle Reservoir be operated and managed consistent with the

Utah Lake Distribution Plan while such plan remains in effect;  
and

WHEREAS, the parties hereto desire to enter into this Operating Agreement to supersede the 1986 Interim Operating Agreement and to provide for a new operating agreement whereby Deer Creek Reservoir and Jordanelle Reservoir shall be managed and operated in a coordinated manner for the purposes and objectives hereinafter stated.

NOW, THEREFORE, it is mutually understood and agreed by and among the parties hereto as follows:

#### DEFINITIONS

Where used in this Operating Agreement, the term:

- a. "BU" means the Bonneville Unit of the Central Utah Project (initial phase).
- b. "BU Repayment Contracts" means Contract No. 14-06-400-4286, dated December 28, 1965, as amended and supplemented, between the United States and the Central Utah Water Conservancy District.
- c. "BU Water Rights" means all water rights of record in the Utah Division of Water Rights standing in the name of the United States of America, Bureau of Reclamation, covering the Bonneville Unit of the Central Utah Project (initial phase).

d. "1979 BU FEIS" means the Central Utah Project Bonneville Unit Municipal and Industrial System Final Environmental Statement, dated October 25, 1979.

e. "1987 BU SEIS" means the Central Utah Project Bonneville Unit Municipal and Industrial System Final Supplement to the Environmental Statement , filed March 16, 1987.

f. "Commission" means the Utah Reclamation Mitigation and Conservation Commission established by Section 301 of the Central Utah Project Completion Act.

g. "CUP" means the Central Utah Project (initial phase).

h. "CUPCA" means the Central Utah Project Completion Act comprising Titles II through VI of the Reclamation Projects Authorization and Adjustment Act of 1992, enacted on October 30, 1992 (106 Stat. 4600, Public Law 102-575).

i. "CUWCD" means the Central Utah Water Conservancy District.

j. "1958 DC Powerplant Contract" means the contract between the United States and the Provo River Water Users' Association dated June 20, 1958 (Contract No. 14-06-400-752) as amended and supplemented.

k. "Deer Creek Reservoir" means a feature of the Provo River Project located on the Provo River downstream from Jordanelle reservoir, about 16 miles northeast of Provo, Utah, with a storage capacity of 152,564 acre-feet.

l. "DOI" means the United States Department of the Interior.

m. "1986 Interim Operating Agreement" means the Interim Operating Agreement for Implementation of Deer Creek and Strawberry Exchange of Bonneville Unit Project Water among the United States, Provo River Water Users' Association, Central Utah Water Conservancy District, and Metropolitan Water District of Salt Lake City, dated May 16, 1986.

n. "Jordanelle Reservoir" means a feature of the Bonneville Unit located on the Provo River about 6 miles north of Heber City, Utah, with a storage capacity of approximately 350,000 acre-feet.

o. "M&I" means municipal and industrial.

p. "MOU" means Memorandum of Understanding.

q. "1990 Olmsted Condemnation Settlement Agreement" means that certain agreement among United States, the Central Utah Water Conservancy District, and PacifiCorp Electric Operations For the Exchange of Water and Power and Settlement of Olmsted Condemnation dated September 20, 1990 (Contract No. 0-07-40-P0170).

r. "The Olmsted Power Right" means the 429 cfs water right which is comprised of 229 cfs with a priority of 1897 and 200 cfs with a priority of November 11, 1917, under paragraph 1.m of the 1990 Olmsted Condemnation Settlement Agreement.

s. "1938 Power Contract" means the contract among the United States, the Provo River Water Users' Association, the Weber River Water Users' Association, the Utah Power and Light Company (now "PacifiCorp"), and the Utah Light and Traction Company, dated December 20, 1938.

t. "PRP" means the Provo River Project.

u. "PRP Subscription Contracts" means contracts between the Provo River Water Users' Association and its respective stockholders collectively subscribing for a total of 100,000 shares of stock issued by the Provo River Water Users' Association.

v. "PRP Repayment Contracts" means the contract between the United States and the Provo River Water Users' Association dated June 27, 1936 (Contract No. Ilr-874) and all contracts amendatory or supplementary thereto).

w. "PRP Water Rights" means all water rights of record in the Utah Division of Water Rights standing in the name of the United States of America, Bureau of Reclamation, covering the Provo River Project.

x. "PRWUA" means the Provo River Water Users' Association.

y. "Secretary" means the Secretary of the Interior, or duly authorized representative.

z. "USBR" means the United States Bureau of Reclamation.

aa. "Utah Lake Distribution Plan" means the Water Distribution Plan for the Utah Lake Drainage Basin adopted by the Utah State Engineer on November 1, 1992. .

bb. "Water Year" means the period from November 1 through October 31.

cc. "WBP" means the Weber Basin Project.

dd. "WRP" means the Weber River Project.

#### PURPOSES, OBJECTIVES AND LIMITATIONS

1. The primary purposes and objectives of this Operating Agreement are to coordinate the operations of Deer Creek Reservoir and Jordanelle Reservoir in accordance with the PRP Water Rights and the BU Water Rights (1) to fully utilize the yield of the PRP waters for use by PRWUA and its stockholders without adversely affecting the rights of CUWCD and/or its petitioners; (2) to fully utilize the yield of the BU waters for use by CUWCD and its petitioners without adversely affecting the rights of PRWUA and/or its stockholders; and (3) without impairing the existing water rights in the Provo River, Weber River, Duchesne River or Utah Lake. It is acknowledged that in achieving those purposes and objectives, it will be necessary to store BU water in Deer Creek Reservoir as provided for in the BU Water Rights and in this Operating Agreement.

2. PRWUA and CUWCD will coordinate the operations of Deer Creek Reservoir and Jordanelle Reservoir under this Operating

Agreement to: (1) insure and protect the water supplies available for the PRP and the BU, and not impair the water supplies of either the Weber River Project (the "WRP"), or the Weber Basin Project (the "WBP") pursuant to each project's water rights and the priorities thereof, in accordance with Utah State law, the respective repayment contracts, and applicable Federal Reclamation law; (2) insure that BU water is released by CUWCD to meet the minimum flows required by CUPCA, and/or the "Central Utah Project Bonneville Unit Municipal and Industrial System Final Environmental Statement" dated October 25, 1979, ("1979 BU FEIS") and as supplemented by the "Central Utah Project Bonneville Unit Municipal and Industrial System Final Supplement To The Final Environmental Statement" filed March 16, 1987, ("1987 BU SEIS"); (3) assist CUWCD, when practicable, in providing additional fish, wildlife, and recreation benefits on the Provo River; (4) assist the Utah Reclamation Mitigation and Conservation Commission (the "Commission") in its implementation of Title III of CUPCA and assist CUWCD in its implementation of § 207 of CUPCA, insofar as such implementations do not interfere with or impair PRWUA's and CUWCD's contractual rights under the PRP Repayment Contracts and BU Repayment Contracts, respectively; and (5) assist the Utah State Engineer in real time data collection and enhanced water accounting of the PRP and BU water supplies. This Operating Agreement is limited to the coordinated



operations of Deer Creek Reservoir and Jordanelle Reservoir for the purposes and objectives stated above.

3. It is acknowledged that § 209 of CUPCA requires that CUWCD, in consultation with the Commission and the Utah Division of Water Rights, shall apply its best efforts to achieve operating agreements for the Jordanelle Reservoir, Deer Creek Reservoir, Utah Lake and Strawberry Reservoir within two years of the date of the enactment of CUPCA. This Operating Agreement is intended to satisfy the requirement of said § 209 only as regards the Jordanelle Reservoir and Deer Creek Reservoir operating agreement. It is further acknowledged that § 205 and Title III of CUPCA impose certain environmental, fish, wildlife, and recreation responsibilities on CUWCD, USBR, and the Commission. Additional agreements among CUWCD, USBR, the Commission, and/or third parties may be required to satisfy the environmental, fish and wildlife mitigation provisions of CUPCA, which agreements shall be consistent with the terms and conditions of this Operating Agreement, as it may be amended pursuant to paragraph 42 hereafter.

#### PRIOR CONTRACTS

4. This Operating Agreement shall not alter, modify or amend the PRP Repayment Contracts or the BU Repayment Contracts. The exercise of the PRP Water Rights and the operation of the PRP works and facilities by PRWUA under this Operating Agreement

shall be in accordance with Utah State law, applicable Federal Reclamation law, the PRP Water Rights, the PRP Repayment Contracts, the PRP Subscription Contracts, and the prior transfers of the care, operation and maintenance of the PRP works and facilities to PRWUA from USBR. The operation of the Deer Creek Powerplant by PRWUA for USBR shall be pursuant to and in accordance with the 1958 DC Powerplant Contract. The exercise of the BU Water Rights and the operation of the BU works and facilities by CUWCD under this Operating Agreement shall be in accordance with Utah State law, applicable Federal Reclamation law, the BU Water Rights, the BU Repayment Contracts, the BU Petitions and the prior and future transfer of the care, operation and maintenance of the BU works and facilities to CUWCD from USBR.

#### OPERATING AGREEMENT AUTHORITY

5. The parties acknowledge, in accordance with Section 6 of the Act of June 17, 1902, 43 U.S.C. § 498, that title to the PRP, the WRP, the WBP, and the BU, and all project water rights appertaining thereunto, and the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the name of United States until otherwise provided by Congress. The parties further acknowledge, in accordance with Section 5 of the Act of August 13, 1914, 43 U.S.C. § 499, that the Secretary has transferred the

care, operation and maintenance of all or part of the project works of each such project to the appropriate water user organization subject to such rules and regulations as the Secretary may prescribe. PRWUA and CUWCD shall coordinate the operation of the PRP and the BU in accordance with this Operating Agreement pursuant to the foregoing authorities.

#### PROJECTS OPERATIONS

6. This Operating Agreement shall supersede the 1986 Interim Operating Agreement on November 1, 1994, and shall continue in full force and effect unless terminated pursuant to paragraph 42 hereinafter. In the event the Utah Lake Distribution Plan is terminated or is otherwise set aside, the parties will use their best efforts to amend this Operating Agreement as necessary to fulfill the purposes, objectives and limitations of the foregoing paragraphs 1 and 2 in the absence of such Utah Lake Distribution Plan. Any such amendment shall be accomplished in accordance with the provisions of § 209 of CUPCA.

7. The parties agree that the diversions and storage of waters in Deer Creek Reservoir and Jordanelle Reservoir under the PRP Water Rights and BU Water Rights shall be administered and regulated by the Utah State Engineer and his duly appointed Water Commissioners. Subject to the provisions of paragraph 5 above, PRWUA and CUWCD, in consultation with the Utah State Engineer, shall continue to elect from which sources and at what flows and

quantities thereof each will divert and/or store such waters under the PRP Water Rights and BU Water Rights, respectively. In exercising these elections, PRWUA will use its best efforts to minimize adverse impacts on the BU Water Rights, and the WRP and WBP water rights; and CUWCD will use its best efforts to minimize adverse impacts on the PRP Water Rights, and the WRP and WBP water rights.

8. The releases of PRP storage water from Deer Creek Reservoir by PRWUA shall be in such flows in cfs and quantities in AF and at such times as called for by the PRWUA stockholders in accordance with the PRP Subscription Contracts and PRP Water Rights and for all other PRP purposes. The releases of BU storage waters from Jordanelle Reservoir and releases of BU water stored in Deer Creek Reservoir on a space available basis by CUWCD shall be in such flows in cfs and quantities in AF and at such times as called for by petitioners of BU water in accordance with the BU Water Rights, BU Petitions, BU M&I and irrigation contracts, and for all other BU project purposes. Nothing contained herein shall be construed so as to prevent CUWCD and/or USBR from releasing water from Jordanelle Reservoir as required by the U.S. Corps of Army Engineers Flood Control Manual for the operation of Jordanelle Dam and Reservoir.

PRP AND BU STORAGE WATER

9. All Provo River natural flow water in excess of prior direct flow rights of third parties on the Provo River available at Jordanelle Dam shall be stored in Jordanelle Reservoir. All Provo River natural flow water in excess of prior direct flow rights of third parties on the Provo River available at Deer Creek Dam shall be stored in Deer Creek Reservoir. The waters so stored will be allocated between PRWUA as PRP waters and CUWCD as BU waters as if stored in the following order in accordance with the designated water rights:

(a) PRP Provo River natural flow water stored in Deer Creek Reservoir under PRP Water Right Nos. 55-7060 (a1902) and 55-7061 (a1903) during the irrigation season between the respective dates specified therein.

(b) PRP Provo River natural flow water stored in Deer Creek Reservoir under PRP Water Right Nos. 55-262 (A12144), 35-8756 (A12141) and 55-295 (A16642) whenever the natural flow of the Provo River at the Olmsted Diversion Dam required to satisfy the Olmsted Power Right is 429 cfs or less, as adjusted downward by any Provo River natural flow water concurrently diverted and stored under subparagraph 9(d) hereof, and provided that PRWUA shall elect on or before May 1 of each year whether the waters under this subparagraph 9(b) will be allocated in whole or in part to PRWUA as PRP waters on the following terms and conditions:

(1) the water stored during the "Winter Period" up to an average of 5,000 AF over a progressive ten year period, but not in excess of 10,000 AF in any one year will be subject to the replacement to PacifiCorp of all resulting energy losses at the Olmsted Powerplant in accordance with paragraphs 11 and 16 of the 1938 Power Contract;

(2) the water stored in excess of the preceding subparagraph 9(b)(1) when the combined total under PRP Water Right Nos. 55-262 (A12144) and 35-8756 (A12141) exceeds the average of 5,000 AF over a progressive ten year period or 10,000 AF in any one year, but not to exceed an additional 20,000 AF, will be subject to the "Non-Project Interference" provisions of the 1990 Olmsted Condemnation Settlement Agreement;

(3) the water stored under PRP Water Right Nos. 55-262 (A12144) and 35-8756 (A12141) may be stored when the active storage level of Utah Lake is at or below the primary storage level as defined in the Utah Lake Distribution Plan and will be considered priority storage thereunder; and

(4) the water stored under PRP Water Right No. 55-295 (A16642), when the combined total under PRP Water Right Nos. 55-262 (A12144) and 35-8756 (A12141) is less than the average of 5,000 AF over a progressive

ten year period or 10,000 AF in any one year and whenever the active storage in Utah Lake exceeds the primary storage level of Utah Lake as defined in the Utah Lake Distribution Plan, will be considered either priority storage or system storage thereunder which shall govern whether such storage waters, in whole or in part, may be converted to priority storage or may be subject to release to Utah Lake.

(c) BU Provo River natural flow water stored in Jordanelle Reservoir and/or Deer Creek Reservoir [subject to the foregoing subparagraphs 9(a) and 9(b)] under BU Water Right No. 55-4494 (A40523) by exchange under BU Water Right No. E398 (55 AREA), whenever the active storage level in Utah Lake is at or below the primary storage of Utah Lake as defined in the Utah Lake Distribution Plan and will be considered priority storage thereunder, provided that CUWCD

(1) shall replace the loss of electric power and energy generation at the Deer Creek Powerplant under PRP Water Right No. 55-941 (A31021) resulting from such storage; and

(2) shall concurrently and/or in advance replace in Utah Lake like quantities of water, less BU return flows stored in Utah Lake, by releases of BU water from the enlarged Strawberry Reservoir.

(d) BU Provo River natural flow water stored in Jordanelle Reservoir and/or Deer Creek Reservoir [subject to the foregoing subparagraphs 9(a) and 9(b)] under BU Water Right No. 55-4494 (A40523) and/or by exchange under BU Water Right No. E398 (55 AREA) whenever the active storage in Utah Lake exceeds the primary storage level of Utah Lake as defined in the Utah Lake Distribution Plan and during such times when the natural flow of the Provo River at the Olmsted Diversion Dam required to satisfy the Olmsted Power Right is 429 cfs or less, as adjusted downward by any Provo River natural flow water concurrently diverted and stored under this subparagraph 9(d), and made available to CUWCD for storage pursuant to the 1990 Olmsted Condemnation Settlement Agreement, provided that

(1) CUWCD shall replace the loss of electric power and energy generation at the Deer Creek Powerplant under PRP Water Right No. 55-941 (A31021) resulting from such storage;

(2) the water stored under BU Water Right No. 55-4494 (A40523) by exchange under BU Water Right No. E 398 (55 AREA) shall require replacement in Utah Lake of like quantities of water, less BU return flows stored in Utah Lake, by releases of BU water from the enlarged Strawberry Reservoir and will be considered priority storage under the Utah Lake Distribution Plan; and



(3) the water stored under BU Water Right No. 55-4494 (A40523) without exchange under BU Water Right No. E 398 (55 AREA) will be considered either priority storage or system storage as defined in the Utah Lake Distribution Plan, which shall govern whether such storage waters, in whole or in part, may be converted to priority storage or may be subject to release to Utah Lake.

(e) PRP Provo River natural flow water stored in Deer Creek Reservoir under PRP Water Right No. 55-295 (A16642) in excess of the waters stored pursuant to the foregoing subparagraph 9(b)(4), whenever the active storage in Utah Lake exceeds the primary storage level of Utah Lake as defined in the Utah Lake Distribution Plan and during such times when the natural flow of the Provo River at the Olmsted Diversion Dam required to satisfy the Olmsted Power Right is in excess of 429 cfs, as adjusted downward by any Provo River natural flow water concurrently diverted and stored under the foregoing subparagraph 9(d), provided that the combined total quantities stored under PRP Water Right No. 55-295 (A16642) pursuant to the foregoing subparagraph 9(b) and this subparagraph 9(e) shall not exceed 100,000 AF in any one year. The waters so stored will be considered either priority storage or system storage under the Utah Lake Distribution Plan which shall govern whether such

storage waters, in whole or in part, may be converted to priority storage or may be subject to release to Utah Lake.

(f) BU Provo River natural flow waters stored in Jordanelle Reservoir and/or Deer Creek Reservoir [subject to the foregoing subparagraphs 9(a), 9(b) and 9(e)] under BU Water Right No. 55-4494 (A40523) and/or by exchange under BU Water Right No. E398 (55 AREA) whenever the active storage in Utah Lake exceeds the primary storage level of Utah Lake as defined in the Utah Lake Distribution Plan and during such times when the natural flow of the Provo River at the Olmsted Diversion Dam required to satisfy the Olmsted Power Right is in excess of 429 cfs, as adjusted downward by any Provo River natural flow water concurrently diverted and stored under the foregoing subparagraph 9(d), provided that

(1) CUWCD shall replace the loss of electric power and energy generation at the Deer Creek Powerplant under PRP Water Right No. 55-941 (A31021) resulting from such storage;

(2) the water stored under BU Water Right No. 55-4494 (A40523) by exchange under BU Water Right No. E 398 (55 AREA) shall require replacement in Utah Lake of like quantities of water, less BU return flows stored in Utah Lake, by releases of BU water from the enlarged Strawberry Reservoir and will be considered priority storage under the Utah Lake Distribution Plan; and

(3) the water stored under BU Water Right No. 55-4494 (A40523) without exchange under BU Water Right No. E 398 (55 AREA) will be considered either priority storage or system storage as defined in the Utah Lake Distribution Plan, which shall govern whether such storage waters, in whole or in part, may be converted to priority storage or may be subject to release to Utah Lake.

(g) PRWUA will store all waters available from the Provo River under the PRP Water Rights in accordance with subparagraphs 9(a), 9(b), and 9(e) above and all waters available from the Weber River drainage and Duchesne River drainage under the PRP Water rights until Deer Creek Reservoir initially fills. Deer Creek Reservoir shall be considered initially full for the purposes of paragraph 13 hereafter when the combined total of PRP carryover water in Deer Creek Reservoir (excluding any PRWUA stockholders holdover water), plus BU waters stored in Jordanelle Reservoir under BU Water Right No. 55-4494 (A40523) under subparagraph 9(f) above, except for that water exchanged under BU Water Right No. E398 (55-AREA), plus the PRP waters stored in Deer Creek Reservoir under the PRP Water Rights equals the total storage capacity of Deer Creek Reservoir (152,564 acre-feet).

(h) It is acknowledged that the above allocations between PRWUA as PRP waters and CUWCD as BU waters and the conditions thereof are based on the existing PRP water rights and existing

BU water rights, respectively. Nothing herein contained shall preclude the replacements of water in Utah Lake by CUWCD from sources other than from releases of BU water from the enlarged Strawberry Reservoir under additional water rights which might be acquired by CUWCD for that purpose, subject to compliance with applicable Utah State law and without interfering with or impairing the PRP water rights.

DEER CREEK/JORDANELLE EXCHANGE - ALLOCATED WATER

10.(a) The allocations provided for in the preceding paragraph 9 shall be made as the Provo River natural flow waters are stored in Deer Creek Reservoir and/or Jordanelle Reservoir. Waters stored in Jordanelle Reservoir in excess of the quantities allocated to CUWCD will be exchanged under BU Water Right No. E398 (55-AREA) for like quantities of BU storage water in Deer Creek Reservoir which will be credited to PRWUA as PRP water. A running accounting of the waters stored, allocated and exchanged will be maintained by the Utah State Engineer in accordance with paragraph 20.(a) hereinafter, and a final allocation between PRWUA as PRP waters and CUWCD as BU waters of the waters so stored will be made at 12:00 Midnight on the date (the "Final Allocation Date") on which storage of Provo River surplus flows ceases under the preceding paragraph 9, excluding subparagraph 9(a) thereof.

(b) In the event the quantity of BU water in storage in Deer Creek Reservoir is less than the quantity of the water stored in Jordanelle Reservoir in excess of the quantities allocated to CUWCD on the Final Allocation Date, such excess quantity will be released from Jordanelle Reservoir at the request of PRWUA and under the direction of the Utah State Engineer for storage in Deer Creek Reservoir as PRP water.

DEER CREEK/JORDANELLE EXCHANGE - IMPORT WATER

11. BU water stored in Deer Creek Reservoir under BU Water Right No. 55-4494 (A40523) may be exchanged under BU Water Right No. E398 (55 AREA) for storage in Jordanelle Reservoir of like quantities of PRP water diverted by PRWUA from the Weber River drainage and/or the North Fork of the Duchesne River drainage under the PRP Water Rights subject to the following:

(a) the BU water so stored in Deer Creek Reservoir will be credited to PRWUA as PRP water concurrently with the storage in Jordanelle Reservoir of like quantities of PRP water diverted from the Weber River drainage and/or North Fork of the Duchesne River drainage, and

(b) the stored water credited to PRWUA as PRP water in Deer Creek Reservoir will be considered priority storage under the Utah Lake Distribution Plan, and

(c) the water stored in Jordanelle Reservoir as BU water will be considered either priority storage or system storage as governed by the Utah Lake Distribution Plan.

DEER CREEK/JORDANELLE EXCHANGE - PROVO RIVER WATER

12. BU water stored in Deer Creek Reservoir under BU Water Right No. 55-4494 (A40523), may be exchanged under BU Water Right No. E398 (55 AREA) for storage in Jordanelle Reservoir of like quantities of PRP Provo River natural flow water subject to the following:

(a) the BU water so stored in Deer Creek Reservoir will be credited to PRWUA as PRP water concurrently with the storage in Jordanelle Reservoir of like quantities of PRP Provo River natural flow water, and

(b) the water credited to PRWUA as PRP water in Deer Creek Reservoir will be considered either priority storage or system storage as defined in the Utah Lake Distribution Plan, which shall govern whether such storage waters, in whole or in part, may be converted to priority storage or may be subject to release to Utah Lake, and

(c) the water stored in Jordanelle Reservoir as BU water will be considered either priority storage or system storage as governed by the Utah Lake Distribution Plan.

#### DIRECT FLOW RIGHTS

13. It is acknowledged that the provisions of the foregoing paragraph 9 specifically apply to the allocation of PRP and BU storage waters between PRWUA and CUWCD and, it is agreed that the diversion and use of the Provo River natural flow waters under the PRP direct flow water rights and BU direct flow water rights shall be in accordance with their respective priorities under Utah State law. It is further agreed that when Deer Creek Reservoir is full, or declared full, in accordance with subparagraph 9(g) above, PRP water from the Weber River drainage and the Duchesne River drainage in any year available in excess of a supply of one acre-foot per share of PRWUA stock, may be disposed of by PRWUA to shareholders or others subject to the approval of such disposition by the Secretary. After the BU Water Rights have been satisfied in full, it is further agreed that the PRP water from the Provo River natural flow in any year available in excess of a supply of one acre-foot per share of PRWUA stock, may be disposed of by PRWUA to shareholders or others subject to the approval of such disposition by the Secretary.

#### SYSTEM STORAGE AND CONVERSION TO PRIORITY STORAGE

14. Any system storage releases to Utah Lake required by the Utah Lake Distribution Plan will be satisfied first from the BU waters stored in Deer Creek Reservoir and/or Jordanelle

Reservoir under BU Water Right No. 55-4494 (A40523) pursuant to the foregoing subparagraph Nos. 9(d)(3), 9(f)(3), 11(c) and 12(c), and second from the PRP waters stored in Deer Creek Reservoir under PRP Water Right No. 55-295 (A16642) pursuant to the foregoing subparagraph Nos. 9(b)(4) and 9(e). Conversions of system storage to priority storage provided for under the Utah Lake Distribution Plan will be made first from the PRP waters stored in Deer Creek Reservoir under PRP Water Right No. 55-295 (A16642) pursuant to the foregoing subparagraphs 9(b)(4) and 9(e) and second from BU waters stored in Deer Creek Reservoir and/or Jordanelle Reservoir under BU Water Right No. 55-4494 (A40523) pursuant to the foregoing subparagraphs 9(d)(3), 9(f)(3), 11(c) and 12(c).

15. In the event that PRP system storage in Deer Creek Reservoir is required to be released to Utah Lake under the Utah Lake Distribution Plan, CUWCD will be entitled to exchange BU water in storage and/or BU water that is being released for storage in Utah Lake under BU Water Right No. 398 (55 AREA) for like quantities of such PRP system storage in Deer Creek Reservoir in lieu of releasing such PRP system storage to Utah Lake. Provided, however, that CUWCD shall replace the loss of electric power and energy generation at the Deer Creek Powerplant which would have been generated by the release of such PRP system storage through the Deer Creek Powerplant. The waters so



exchanged will be considered BU priority storage under the Utah Lake Distribution Plan.

#### CUWCD PURCHASED WATER RIGHTS IN UTAH LAKE

16. It is acknowledged that CUWCD has acquired CUWCD Utah Lake Water Right Nos. 57-7624, 59-14, 59-15 and 59-20 and CUWCD may elect to not divert the waters thereunder or under such other Utah Lake water rights as CUWCD might acquire, except as necessary to maintain such water rights in good standing and/or to fulfill CUWCD's existing lease obligations thereof. If CUWCD elects to not divert its Utah Lake Water Rights, the net effect thereof will be a reduction in the demand of the primary storage and secondary storage water rights in Utah Lake resulting in a downward adjustment to the quantity of water required to convert system storage to priority storage under the Utah Lake Distribution Plan, thereby accelerating such conversions from system storage to priority storage. It is understood, however, that CUWCD is not obligated by this Operating Agreement, or otherwise, to leave its Utah Lake Water Rights in Utah Lake for BU project purposes.

#### BU STORAGE WATER IN DEER CREEK RESERVOIR

17. CUWCD will be entitled to store BU water in Deer Creek Reservoir in accordance with the existing BU Water Rights on a space available basis, provided that CUWCD shall not acquire

thereby any ownership interest in Deer Creek Reservoir. Spills from Deer Creek Reservoir will be charged first against the BU water stored therein and second against the PRP water stored therein. Carryover storage rights of PRWUA in Deer Creek Reservoir and holdover storage rights of PRWUA stockholders in Deer Creek Reservoir will be preserved and storage of BU water in Deer Creek Reservoir shall at all times be subject to those carryover and holdover storage rights.

SEEPAGE, EVAPORATION, AND CONVEYANCE LOSSES

18. All PRP water stored in Deer Creek Reservoir, including any holdover storage water of PRWUA stockholders, and any BU water stored in Deer Creek Reservoir on a space available basis, including any BU carryover water, shall bear their pro rata share of Deer Creek Reservoir seepage and evaporation losses while in storage. The Utah State Engineer will compute the seepage and evaporation losses at Deer Creek Reservoir and charge PRP and BU proportionally based on the average daily quantities of PRP and BU water in storage. All exchanges of BU water provided for in the foregoing subparagraphs 9(c), 9(d), 9(f), 10, 11 and 12, shall bear their own conveyance losses in effectuating such exchanges. After release from storage, all BU water and PRP water shall bear its own seepage and evaporation losses in the conveyance thereof from Jordanelle Reservoir and/or Deer Creek Reservoir, respectively, to their ultimate places of use.

#### COORDINATED OPERATIONS AND PUBLIC MEETINGS

19.(a) Two public meetings, to inform the public and review the ongoing coordinated operations under this Operating Agreement, will be held and conducted by USBR, in consultation with the Commission, in the spring and fall of each year. USBR will hold additional meetings at the written request of any party hereto, the Utah State Engineer, or the Commission. The time and place for all such meetings will be jointly fixed by the parties and CUWCD will provide reasonable public notice thereof and will invite interested persons, entities, and the public. The purposes of such meetings will be: (1) to review the actual coordinated operations since the last meeting; (2) to review future coordinated operations; (3) to discuss issues and/or problems such as data collection, water measurements, and water accounting; and (4) to discuss past and projected water deliveries for irrigation, M&I, and fish and wildlife purposes. The public will be afforded an opportunity to comment on the ongoing coordinated operations. Minutes of each public meeting will be prepared by CUWCD and upon approval thereof by the parties hereto, CUWCD will distribute copies thereof to attendees and other interested parties.

(b) Nothing in this Operating Agreement shall prohibit the parties from holding meetings as often as necessary to discuss the coordinated operations, purposes and objectives, and/or

performance pursuant to this Operating Agreement, or to obtain public input needed to comply with CUPCA.

#### WATER ACCOUNTING AND REAL-TIME MEASUREMENTS

20.(a) Accounting of the water diverted, stored, exchanged, and released under the PRP Water Rights and BU Water Rights pursuant to this Operating Agreement will be maintained by the Utah State Engineer. Updates of the Utah State Engineer's accounting of these waters will be furnished to the parties to this Operating Agreement at least weekly in paper or electronic form. These records will also be available to all interested individuals and entities electronically.

(b) Real-time measuring devices are presently being installed by USBR as the M&I portion of a Supervisory Control and Data Acquisition (SCADA) system for the BU. If additional real-time measuring devices are required to deliver water pursuant to this Operating Agreement, USBR and/or CUWCD at their own cost will install such devices and will provide the instantaneous measurements of necessary stream flows and reservoir elevations to the Utah State Engineer for the purpose of distributing and accounting of water under this Operating Agreement. The PRP measuring devices will be routinely serviced and maintained by PRWUA. The BU measuring devices and the SCADA system will be routinely serviced and maintained by CUWCD to assure accuracy and operation. PRWUA or CUWCD will promptly repair or calibrate

their respective measuring devices upon the request by the Utah State Engineer. The Utah State Engineer will provide the data from these devices to interested individuals and entities electronically.

(c) Additional costs and expenses incurred by the Utah State Engineer from the Provo River Distribution System funds that are directly associated with implementing this Operating Agreement and are directly associated with fish, wildlife and recreation benefits will be paid for by CUWCD. USBR agrees to reimburse CUWCD these additional costs and expenses pursuant to the BU Repayment Contracts and will consider these costs and expenses to be non-reimbursable BU project costs.

#### PROVO RIVER MINIMUM FLOWS

21. CUWCD, in cooperation with the Commission, will provide from BU water the Provo River minimum stream flows as required under §§ 303(c)(2), 303(c)(3), and 303(c)(4) of CUPCA and the 1979 BU FEIS and the 1987 BU SEIS. No PRP water will be required to satisfy any of the Provo River minimum stream flows required by CUPCA, and/or the 1979 BU FEIS and 1987 BU SEIS. PRWUA shall not store in Deer Creek Reservoir as PRP water any BU water released from Jordanelle Reservoir to satisfy Provo River minimum stream flows below the confluence of Deer Creek and the Provo River required by CUPCA, and/or the 1979 BU FEIS and the 1987 BU SEIS. The parties agree that the BU water provided to meet such

minimum flows, and PRP water utilized pursuant to paragraph 22, will be administered and protected by the Utah State Engineer from unlawful diversion and/or storage.

22. PRP waters diverted from the Weber River drainage and/or the Duchesne River drainage en route to Deer Creek Reservoir may be utilized by CUWCD to satisfy the required Provo River minimum stream flows from the base of Jordanelle Dam to Deer Creek Reservoir. Any PRP waters released from Deer Creek Reservoir and/or BU waters released from Deer Creek Reservoir or Jordanelle Reservoir and rediverted at the Olmsted Diversion Dam may be utilized by CUWCD to satisfy the required Provo River minimum stream flows from the confluence of Deer Creek and the Provo River to the Olmsted Diversion, provided that such waters as otherwise would be diverted into the Salt Lake Aqueduct at the base of Deer Creek Dam, will be replaced into the Salt Lake Aqueduct through CUWCD'S transfer pumps near the Utah Valley Water Treatment Plant at the initial cost and expense of CUWCD. The associated pumping costs shall be reimbursed to CUWCD by USBR and shall be nonreimbursable in accordance with the terms and conditions of the BU Repayment Contracts. USBR will not reimburse CUWCD in the event the transfer pumps are operated to accommodate other purposes.

23. Prior to Jordanelle Reservoir being declared operational, the Provo River minimum stream flows from the confluence of Deer Creek and the Provo River to the Olmsted

Diversion will be maintained by CUWCD at a minimum of 100 cfs. The Memorandum of Understanding relating to interim minimum flows of the Provo River dated September 22, 1989 ("1989 MOU"), shall terminate upon the termination of the 1986 Interim Operating Agreement.

• 24. The use of BU water and/or the by-passing of the natural flow waters of the Provo River to satisfy the Provo River minimum stream flow requirements of CUPCA and the 1979 BU FEIS, and the 1987 BU FEIS, except as specified in Paragraph 23 of this Operating Agreement, shall commence on the date the delivery of such water is first deemed feasible as determined by the Commission, in consultation with the United States Fish and Wildlife Service ("FWS"), and the Utah Division of Wildlife Resources ("DWR") subject to the following:

(a) It is acknowledged that the minimum stream flows in the Provo River from the base of Jordanelle Dam to Deer Creek Reservoir required by § 303 (c) (2) of CUPCA may be difficult to implement and maintain until the filling criteria of the USBR for Jordanelle Dam and Reservoir have been satisfied. Until these events occur, CUWCD shall use its best efforts to achieve an interim Memorandum of Understanding (MOU) with the Commission, the FWS, the DWR, and/or other interested parties to annually provide reasonable minimum stream flows in that reach of the Provo

River until the Provo River minimum flows required by § 303 (c) (2) are implemented and maintained.

(b) It is acknowledged that the ability of the Provo River Water Commissioner to deliver BU water, PRP water, minimum stream flows, and local irrigation diversions will be greatly enhanced by the modification of certain irrigation diversion dams in the Provo River from the base of Jordanelle Dam to Deer Creek Reservoir so as to by-pass such waters and flows beyond these existing active irrigation diversion dams. The CUWCD, in consultation with the Commission and other interested parties, will use its best efforts to achieve priority funding from CUPCA and other sources to complete the modification of the diversion dams.

(c) It is acknowledged that the ability of the Provo River Water Commissioner to deliver the minimum stream flows in the Provo River from the Olmsted Diversion to Utah Lake provided for under § 303 (c) (4) of CUPCA will be greatly enhanced by the modification of existing or construction of new diversion structures on the Provo River below the Murdock Diversion Dam so as to by-pass such Provo River minimum stream flows beyond the existing active irrigation diversion dams, and through the acquisition by CUWCD of the water rights referred to in § 302 (a) of CUPCA. It is anticipated that funds will be appropriated by the United



States Congress for disbursement by the Commission in accordance with CUPCA for these purposes and CUWCD commits to have this work completed as soon as practicable once these funds are made available to CUWCD, and to pursue the acquisition of such water rights as soon as practicable.

. Until these events occur, CUWCD shall use its best efforts to achieve an interim MOU with the Commission, the FWS, the DWR, and/or other interested parties to annually provide reasonable minimum stream flows in that reach of the Provo River until the Provo River minimum flows as required by § 303 (c) (4) of CUPCA are implemented and maintained. It is acknowledged that the maintenance of the existing 25 cfs Provo River minimum stream flow below the Olmsted Diversion to Utah Lake is not dependent upon the availability of funds from the Commission.

(d) It is acknowledged that the storage of water in Deer Creek Reservoir on a space available basis in compliance with Utah State law, under water rights to be acquired by CUWCD for CUPCA required Provo River minimum stream flows and for fish and wildlife purposes, may assist CUWCD in maintaining such minimum stream flows and flows for fish and wildlife purposes. PRWUA agrees to review on a case by case basis, and in good faith, any such request of CUWCD to store in Deer Creek Reservoir on a space available

basis any such water rights acquired by CUWCD for such purposes.

25. All BU storage water released from either Jordanelle Reservoir and/or Deer Creek Reservoir to satisfy minimum stream flows in the Provo River required by CUPCA may be recaptured in Jordanelle Reservoir, Deer Creek Reservoir and/or Utah Lake by CUWCD and used for any and all BU purposes, subject to the terms and provisions of this Operating Agreement and in compliance with applicable Utah State law.

PAYMENT FOR USE OF DEER CREEK RESERVOIR STORAGE

26. Beginning on November 1, 1994, and extending through November 1, 1997, CUWCD shall pay four (4) annual payments of \$20,000 each to USBR as compensation for the BU water supply derived from storing BU waters in Deer Creek Reservoir that are exchanged for storage in Jordanelle Reservoir as provided for in Federal Reclamation law and this Operating Agreement. On November 1, 1998, the annual payment by CUWCD shall increase to \$38,300 for said use of Deer Creek Reservoir. This annual payment by CUWCD shall be based on a water year of November 1 to October 31, and the payments shall be made in advance to USBR on or before November 1 of each year. All payments shall be deposited in the Reclamation Fund as a credit to the PRP repayment obligation of PRWUA, and shall be credited as a back-end credit to the construction cost of the PRP thereby

accelerating the PRP repayment obligation of PRWUA. When repayment of the PRP is satisfied, these annual payments will continue, and shall be deposited in the Reclamation Fund as a credit to the BU repayment obligation of CUWCD, and shall be credited as a back-end credit to the construction cost of the BU thereby accelerating the BU repayment obligation of CUWCD. When repayment of the BU is satisfied, these annual payments will continue, and will be credited to the Reclamation Fund.

#### OPERATION AND MAINTENANCE COSTS

27. PRWUA will continue the care, operation and maintenance of the PRP facilities pursuant to and in accordance with the PRP Repayment Contracts and this Operating Agreement, and PRWUA will continue to perform the operation and normal maintenance of the Deer Creek Powerplant pursuant to and in accordance with the 1958 DC Powerplant Contract, the 1938 Power Contract and this Operating Agreement. CUWCD will operate and maintain the BU facilities in accordance with the BU Repayment Contracts and this Operating Agreement upon the transfer of the care, operation and maintenance thereof from USBR to CUWCD.

28. CUWCD shall pay to PRWUA seventeen percent (17.0 %) of the costs and expenses of the routine administration, operation, maintenance, repair and replacement of the PRP facilities (the "Routine O&M Costs"), excluding the Routine O&M Costs of the Provo Reservoir Canal and the Deer Creek Powerplant. Such

included Routine O&M Costs shall consist of those costs and expenses incurred by PRWUA in the normal day to day administration, operation, maintenance, repair and replacement of the foregoing included PRP facilities during the period from November 1 to October 31 of each year ("Water Year") and shall be paid by PRWUA as incurred. Payment by CUWCD shall be as follows:

(a) On or before the 15th day of November of each year, PRWUA and CUWCD jointly shall prepare a categorized list of the included Routine O&M Costs incurred by PRWUA during the previous Water Year. In the event PRWUA and CUWCD are unable to agree on whether any cost should be included, the dispute will be submitted to the USBR Regional Director of the Upper Colorado Region for decision within fifteen (15) working days thereafter, and the USBR Regional Director's decision shall be binding upon PRWUA and CUWCD; and

(b) On or before the 1st day of December of each year, PRWUA will provide CUWCD with a finalized itemized statement of such included Routine O&M Costs incurred during the previous Water Year; and

(c) CUWCD shall pay PRWUA the share of such included Routine O&M Costs allocated to CUWCD within thirty (30) days after receipt of the foregoing statement.

29. CUWCD shall pay PRWUA an equitable share of the costs and expenses of the extraordinary operation, maintenance, repair

or replacement of the PRP facilities ("Extraordinary O&M Costs"), excluding the Extraordinary O&M Costs of the Provo Reservoir Canal and Deer Creek Powerplant. Such included Extraordinary O&M Costs shall consist of those costs attributable to unforeseen and unusual operation and maintenance incurred as a result of drought, earthquakes, storms, landslides, and other emergencies or force majeure. PRWUA will consult with USBR and CUWCD prior to incurring such included Extraordinary O&M Costs unless emergency conditions render such prior consultations impracticable. The apportionment of such included Extraordinary O&M Costs between PRWUA and CUWCD shall be on a case by case basis. PRWUA shall provide CUWCD with an itemized statement of such included Extraordinary O&M Costs, together with a proposed allocation thereof between PRWUA and CUWCD, either prior to incurring such included Extraordinary O&M Costs or within thirty (30) days after such included Extraordinary O&M Costs are incurred in the case of an emergency, provided that in the event

(a) CUWCD agrees with the proposed allocation, CUWCD shall pay its allocated share to PRWUA within sixty (60) days after receipt of such itemized statement, or in the event

(b) CUWCD does not agree with the proposed allocation, PRWUA and CUWCD, in consultation with USBR, shall review the proposed allocation of such included Extraordinary O&M Costs and shall use their best efforts to agree to an equitable

allocation thereof and the manner and timing of any payment by CUWCD. In the event PRWUA and CUWCD are unable to agree thereon, the matter will be submitted to the USBR Regional Director of the Upper Colorado Region for decision within thirty (30) days after submission, and the USBR Regional Director's decision shall be binding upon PRWUA and CUWCD. Within thirty (30) days after such decision, CUWCD shall pay its allocated share of such included Extraordinary O&M Costs to PRWUA.

#### ELECTRICAL ENERGY REPLACEMENTS

30. It is acknowledged that under the 1958 DC Powerplant Contract electric power and energy produced at the Deer Creek Powerplant for station service use and for the requirements of the PRP to make replacements of capacity and energy losses as provided in the 1938 Power Contract are defined as electric power and energy for PRP purposes and that all other electric power and energy produced at the Deer Creek Powerplant shall be defined as surplus power and energy. It is further acknowledged that storage of Provo River natural flow waters in Deer Creek Reservoir and/or Jordanelle Reservoir under the BU water rights will reduce the electric power and energy which otherwise would have been generated by the Deer Creek Powerplant for PRP purposes and surplus power and energy, when the Deer Creek Powerplant is operating and there is turbine capacity to concurrently use the

waters so stored for the generation of electric power and energy. CUWCD shall use a portion of its entitlement of BU reserved power, or other power resources to:

(a) replace to PacifiCorp all reductions in the electric power and energy which otherwise would have been generated at the Deer Creek Powerplant for PRP purposes by the Provo River natural flow waters so stored during the Winter Period while PRP is operating under the 1938 Power Contract; and

(b) replace to PRP all reductions in the surplus electric power and energy which otherwise would have been generated at the Deer Creek Powerplant by the Provo River natural flow waters so stored while PRP is not operating under the 1938 Power Contract.

31. As identified in the preceding paragraph 30, the reductions in electric power and energy at the Deer Creek Powerplant in kilowatt hours ("Kwh") resulting from the storage of BU Provo River natural flow waters in Deer Creek Reservoir and/or Jordanelle Reservoir when the Deer Creek Powerplant is operating and turbine capacity exists ("AF Storage") will be determined on an average daily basis of the combined AF of BU water stored plus the actual AF flows through the Deer Creek Powerplant ("DCP Flows") multiplied by the Deer Creek Powerplant

average plant factor of 7.8 ("PF")<sup>1</sup> minus the actual Deer Creek Powerplant generation in Kwh ("DCP Kwh") based on the following formula:

$$\text{Kwh losses} = \frac{(\text{AF Storage} + \text{DCP Flows}) \text{ per day} \times \text{PF} \times 24}{1.9835} - \text{DCP Kwh}$$

The Kwh reductions will be accumulated for each month or part thereof for the replacements required under the above paragraph 30(a) while PRP is operating under the 1938 Power Contract and separately for the replacements by CUWCD required under the above paragraph 30(b) while PRP is not operating under the 1938 Power Contract. The method and procedures for making such replacements will be governed by a separate agreement similar to Contract No. 88-SLC-0070, dated October 7, 1988, among the Western Area Power Administration (the "Western"), PacifiCorp and the parties hereto.

32. It is acknowledged that in the event:

(1) the combined Provo River natural flows and the releases of PRP water at the Deer Creek Powerplant are less than the combined capacity of the Deer Creek Powerplant turbines; and

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<sup>1/</sup> The plant factor (PF) of 7.8 will be periodically reviewed not less than once every three (3) years, and adjusted based upon additional information, changes in plant equipment, etc.



(2) BU storage water is concurrently released from Jordanelle Reservoir and/or Deer Creek Reservoir and which flows through said turbines;

then additional electric power and energy will be generated at the Deer Creek Powerplant in excess of that generated by the combined Provo River natural flows and PRP releases. Such excess electric power and energy so generated will be determined on an average daily basis by dividing the BU AF flows through said turbines by the total AF flows through said turbines multiplied by the actual Deer Creek Powerplant generation in Kwh. However, the methods and procedures for accounting for such additional electric power and energy generation and any credits therefor will be governed by the separate agreement provided for in the preceding paragraph 31.

#### APPLICATION OF SURPLUS POWER REVENUES

33. All revenues received from the sale of surplus power and energy generated at the Deer Creek Powerplant and revenues paid by PacifiCorp in accordance with Article 16(d) of the 1938 Power Contract will be applied annually pursuant to Article 7 of the 1958 DC Powerplant Contract as follows:

- (1) First to the operation, maintenance and replacement cost of the Deer Creek Powerplant; and
- (2) Second, on the construction cost of the Deer Creek Powerplant until the total cost thereof is fully paid; and

(3) Third, to PRWUA's annual payments to USBR when due under the PRP Repayment Contracts until all obligations of PRWUA to USBR shall have been liquidated pursuant to Article 38(b) of the PRP Repayment Contract dated June 27, 1936, thereby reducing the amount of such annual payments made directly by PRWUA to USBR by the amount of such revenues as so applied; and

(4) Fourth, after all payments have been made by PRWUA to USBR in accordance with the PRP Repayment Contracts, the net power revenues shall be disposed of as Congress shall direct pursuant to Article 38(b)(2) of the PRP Repayment Contract dated June 27, 1936.

The amounts provided for in subparagraph 33.(3) above, whether credited by USBR or paid by other entities, shall be sufficient to fulfill USBR's commitments to assist PRWUA in repaying the costs of the Deer Creek Division of the PRP as contained in USBR's September 1952 Definite Plan Report for the Deer Creek Power Plant. Provided, however, that in the event extraordinary replacement costs are incurred at the Deer Creek Powerplant, the payment thereof shall take precedence over the annually applied revenues provided for under subparagraph 33.(3) above, which may be reduced or deferred until such extraordinary replacement costs are fully recovered.

ENDANGERED SPECIES ACT AND NATIONAL ENVIRONMENTAL POLICY ACT

34.(a) The parties acknowledge that the participation of USBR and DOI in this Operating Agreement requires compliance with the National Environmental Policy Act of 1969 (NEPA) and the Endangered Species Act of 1973, as amended (ESA). NEPA compliance will be a joint responsibility of USBR and DOI, and CUWCD will participate pursuant to its agreement with DOI dated August 11, 1993, and entitled "To Provide For Compliance With the Provisions of the Central Utah Project Completion Act".

(b) CUWCD agrees to comply with the applicable provisions of the ESA. Pursuant to the foregoing August 11, 1993, Compliance Agreement, NEPA compliance and the Section 7 ESA consultation for the M&I system of the BU are at the present time satisfied.

(c) The parties acknowledge that USBR has consulted with FWS under Section 7 of the ESA regarding the operation of the PRP and that the FWS has rendered a Final Biological Opinion (Opinion) dated September 22, 1994. The parties further acknowledge that the Opinion includes a Reasonable and Prudent Alternative (RPA) that USBR must implement. USBR agrees to implement this RPA in a manner consistent with the intended purposes of this Operating Agreement and consistent with the scope of USBR's legal authority and jurisdiction. The parties further acknowledge that USBR's implementation of the RPA requires the cooperation and assistance of the Commission, CUWCD,

the DWR, and others, and that USBR action(s) undertaken to implement the RPA may be subject to additional compliance with the procedural requirements of NEPA. It is further acknowledged that funding to implement the RPA may be made available through the applicable provisions of CUPCA. USBR and FWS will present a proposal to the Commission for such funding to begin in the 1995 fiscal year. USBR will work diligently with the FWS and other agencies to ensure that funding proposals for implementing the RPA are presented to the Commission. To the extent such funding is not available through the Commission, USBR shall be responsible therefor. If USBR can not implement the RPA, then USBR will re-initiate consultation with the FWS.

(d) PRWUA agrees to comply with the applicable provisions of the ESA. Pursuant to the foregoing paragraph 34(c), the Section 7 ESA consultation for the PRP is at the present time satisfied.

(e) The parties acknowledge the "Recovery Implementation Program For Endangered Fish Species In the Upper Colorado River Basin" (the "RIP") adopted on September 29, 1987, by the FWS and the January 22, 1988, Cooperative Agreement for RIP between the Secretary, the Governors of Colorado, Utah and Wyoming, and the Administrator of the Western Area Power Administration, and the document entitled "Agreement, Section 7 Consultation, Sufficient Progress, and Historic Projects, Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River

Basin" dated March 11, 1993. CUWCD and PRWUA agree that insofar as the implementation of RIP and the January 22, 1988, Cooperative Agreement do not interfere with or impair their contractual rights under the BU Repayment Contracts and PRP Repayment Contracts, respectively, CUWCD and PRWUA will not interfere with reasonable measures taken by Federal and/or State entities to implement the necessary steps as reasonable and prudent alternatives in the biological opinions of the FWS after consultation.

#### DEFAULTS AND REMEDIES

35. The failure of CUWCD to make the replacements of losses of electrical energy or to otherwise make provision therefor when and as required by the provisions of this Operating Agreement or the failure of CUWCD to make the payments when and as required by the provisions of this Operating Agreement or the failure of PRWUA to perform its respective obligations as required under this Operating Agreement shall constitute a default of the respective parties' obligations under this Operating Agreement. Upon the failure of the party so in default to remedy such default within thirty (30) days after written notice thereof, any party not in default shall have the right to pursue any remedy or remedies provided by law or equity and/or to terminate this Operating Agreement upon thirty (30) days written notice thereof

and thereafter to be fully released from any and all further obligations hereunder.

36. In carrying out the provisions of this Operating Agreement, PRWUA and CUWCD shall comply with all applicable Federal Reclamation laws and regulations of USBR, all applicable water and air pollution laws and regulations of the United States and of the State of Utah, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

#### INDEMNIFICATION

37. PRWUA and CUWCD agree to indemnify and save each other harmless from any and all claims, liens, losses, damages, and liabilities arising out of, or in any way related to, their operation and maintenance of the respective project facilities, the diversion, storage and distribution of water under their respective water rights and the exchange of water rights with each other under this Operating Agreement.

#### NOTICES

38. Any notice, demand, or request authorized or required by this Operating Agreement shall be deemed to have been given, on behalf of the DOI, when mailed, postage prepaid, or delivered to the Program Director, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, Utah 84606-7317, and on

behalf of the USBR, when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Salt Lake City, Utah 84147, and on behalf of PRWUA when mailed, postage prepaid, or delivered to the Provo River Water Users' Association, 1875 South State, #1100, Orem, Utah 84058, and on behalf of CUWCD, when mailed, postage prepaid, or delivered to Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058. The designation of the addressee or the address given above may be changed by notice given in the same manner as provided in this article for other notices.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENT OF FUNDS

39. The expenditure or advance of any money or the performance of any obligation of the United States under this Operating Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve PRWUA or CUWCD from any obligations under this Operating Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

40. The provisions of this Operating Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Operating Agreement or any part

or interest therein shall be valid until approved by all parties hereto.

#### OFFICIALS NOT TO BENEFIT

41. (a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Operating Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Operating Agreement if made with a corporation or company for its general benefit.

(b) No official of PRWUA or CUWCD shall receive any benefit that may arise by reason of this Operating Agreement other than as a landowner within the PRP and/or BU project and in the same manner as other landowners within such projects.

#### AMENDMENTS AND TERMINATION

42. This Operating Agreement may be amended or terminated by written mutual consent of all the signatory parties, which consent shall not be unreasonably withheld.



IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

APPROVED:

THE UNITED STATES OF AMERICA

By William Robert McConkie By Ronald Johnston  
Regional Solicitor Program Director  
Department of the Interior CUP Completion Act Office  
Department of the Interior

THE UNITED STATES OF AMERICA

By Charles A. Allmon  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

ATTEST:

PROVO RIVER WATER USERS'  
ASSOCIATION

Richard Paulsen  
Secretary

By W. B. Lafakis  
President

ATTEST:

CENTRAL UTAH WATER CONSERVANCY  
DISTRICT

Don A. Christensen  
Secretary

By Samuel Palmer  
President

CONSULTED AS PER SECTION 209 OF CUPCA:  
UTAH DEPARTMENT OF NATURAL RESOURCES

By

  
Executive Director