

MEMORANDUM OF AGREEMENT

This Agreement is made this 29th day of May, 2009, among the Ute Indian Tribe ("Tribe"); the Utah Reclamation Mitigation and Conservation Commission ("Commission"); and the United States Department of the Interior, ("Interior") herein referred to as the Parties, pursuant to the Central Utah Project Completion Act (Titles II through VI of Public Law 102-575, 106 Stat. 4605, October 30, 1992), as amended ("CUPCA"), particularly sections 313(c) and 505(b) of CUPCA, and the American Recovery and Reinvestment Act of 2009 (P.L. 111-5, February 17, 2009), ("Recovery Act")

RECITALS

WHEREAS, Congress has enacted CUPCA in part to provide significant additional funding to improve fish culture and increase fish production in Utah by constructing new and/or improved fish production facilities; and

WHEREAS, the Recovery Act accelerated appropriations for the completion of certain features of the Central Utah Project, including various fish, wildlife, and recreation mitigation projects as provided in CUPCA; and

WHEREAS, section 313(c) of CUPCA provides authorization for the construction and development of new fish hatcheries to increase the production of warmwater and coldwater fisheries for the areas affected by the Colorado River Storage Project ("CRSP") in Utah; and

WHEREAS, section 505(b) of CUPCA provides funds for the Secretary, in cooperation with the Tribe and in consultation with the Commission, to undertake stream improvements on certain streams within the Uintah and Ouray Reservation (Reservation); and

WHEREAS, the Tribe and the Commission have engaged in discussions with the intent of entering into an agreement for the construction of the Big Springs Tribal Fish Hatchery (Hatchery); and

WHEREAS, the Parties recognize that the construction and operation of a fish hatchery on the Reservation, while being implemented pursuant to section 313(c) of CUPCA, will also provide benefits to streams within the Reservation as contemplated in section 505(b) of CUPCA;

NOW, THEREFORE, in order to expedite the construction of the Hatchery, the Parties agree as follows:

I. ALLOCATION OF CONSTRUCTION COSTS

The Tribe, Commission, and Interior intend to fund the construction of the Hatchery utilizing several authorized funding sources: first, the Tribal funds as authorized by the Business Committee; second, CUPCA section 505(b) funds; and third CUPCA section 313(c). All construction costs are estimated based on October 2008 costs. Construction costs are defined as design, construction, and related costs.

- a) Tribe. Through Resolution 97-006, dated April 10, 1997, the Tribe will contribute at least 25% of the cost of construction of the Hatchery. The Tribes contribution will consist of \$1,700,000 of section 505(b) funding provided through Interior with any necessary remaining funds provided directly from the Tribe.
- b) Interior. Of the amount authorized in section 505(b) of CUPCA, Interior will approve up to \$1,700,000.00 for the Tribe to use in the design and construction of the Hatchery. This funding will be provided through the established DOI/Tribe Section 505 request-and-approval process. Upon the approval of a maximum of \$1,700,000.00, no further funding pursuant to section 505(b) will be authorized or approved for use in the design, construction, or operation and maintenance of the Hatchery unless specifically and mutually agreed by the Parties through other agreements not incorporated herein.
- c) Commission. Through funding agreement No 09FCUT-RA01 between the Commission and the Tribe, the Commission will contribute up to 75% of the cost of construction of the Hatchery not to exceed a maximum of \$5,500,000.00.

The Parties will diligently pursue implementation of the necessary agreements in order to commence and complete construction on the Hatchery to realize the stream improvement benefits within the Reservation as soon as possible.

II. AMERICAN RECOVERY AND REINVESTMENT ACT

If Hatchery construction funds are provided in whole or in part by the Federal Government from the Recovery Act then the provisions as outlined in the Memorandum of Agreement Between the Department of the Interior and the Utah Reclamation Mitigation and Conservation Commission (DOI No. WS-09-300-R/Commission No. MC-09-0047) relating to the American Recovery and Reinvestment Act of 2009 Appropriations for Programs, Projects and Activities Authorized by the Central Utah Project Completion Act shall apply to such funds.

III. ALLOCATION OF OPERATION AND MAINTENANCE COSTS

In accordance with section 313(c) of CUPCA, Interior will reimburse the Tribe for Operation and Maintenance (O&M) costs of the Hatchery pursuant to O&M Agreement, No. 09-FC-CU-TR010 (2009), which will be developed separately.

IV. TITLE TO FACILITIES AND REAL PROPERTY

Title to all facilities, real property, easements, rights-of-way, and other such property interest acquired pursuant to this Memorandum of Agreement (MOA) and the agreements listed herein shall be acquired in the name of the Tribe and shall remain vested in the Tribe unless otherwise provided by law.

V. BOOKS, RECORDS, AND REPORTS

The Tribe will establish and maintain accounts and records pertaining to the administration of the Hatchery and terms of this MOA, including financial transactions and O&M. Each party to this MOA will have the right to examine the records relating to matters covered by this MOA.

VI. CONTINGENT UPON APPROPRIATIONS

The obligations of the Commission and Interior are contingent upon appropriation and reservation of funds being made therefore.

VII. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, resident commissioner, or official of Tribe shall benefit from this MOA other than in the same manner as other Tribal members.


VIII. TERMINATION

This MOA may be terminated by any party upon thirty days (30) written notice to the other parties.

WS-09-310-R


IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

UTE INDIAN TRIBE

By: 
Business Committee Chairman

UNITED STATES DEPARTMENT OF THE INTERIOR

By: 
Program Director
Central Utah Project Completion Act

Approved: 
Intermountain Region Office of the Solicitor

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

By: 
Commission Chair