



United States Department of the Interior

OFFICE OF THE SECRETARY

Program Director
CUP Completion Act Office
302 East 1860 South
Provo, Utah 84606-7317

IN REPLY REFER TO:

CA-1000
PRJ-5.00

Mr. Michael C. Weland
Executive Director, Utah Reclamation
Mitigation and Conservation Commission
230 South 500 East, Suite 230
Salt Lake City, UT 84101-2328

Subject: Memorandum of Agreement MC-09-0047/ WS-09-300-R - American Recovery and Reinvestment Act of 2009 - Central Utah Project Completion Act (CUPA) - Section 201(d)

Dear Mr. Weland:

The American Recovery and Reinvestment Act of 2009 (ARRA) states: "*Provided further*, That \$50,000,000 of the funds provided under this heading may be transferred to the Department of the Interior for programs, projects and activities authorized by the Central Utah Project Completion Act (Titles II–V of Public Law 102–575)" On April 15, 2009, the Secretary of the Interior approved the transfer of funds for the CUPCA projects. Based on a recent review conducted by the Department, these ARRA funds are now available.

Enclosed is a fully executed original of the Memorandum of Agreement, No. MC-06-0033/WS-06-300. The execution of this agreement provides for \$8,730,000 of funds authorized under ARRA and CUPCA to be used by the Utah Reclamation Mitigation and Conservation Commission.

Thank you for your help with the ARRA projects and preparation of the agreement. If you have any questions, please contact me at 801-379-1237.

Sincerely,



Reed R. Murray
Program Director

Enclosure

MEMORANDUM OF AGREEMENT

BETWEEN THE

DEPARTMENT OF THE INTERIOR
AND THE
UTAH RECLAMATION MITIGATION
AND CONSERVATION COMMISSION

RELATING TO THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 APPROPRIATIONS
FOR PROGRAMS, PROJECTS AND ACTIVITIES AUTHORIZED BY THE
CENTRAL UTAH PROJECT COMPLETION ACT

PREAMBLE

This Memorandum of Agreement is made this 29th day of May, 2009, pursuant to the American Recovery and Reinvestment Act of 2009 (P.L. 111-5, February 17, 2009), hereinafter "Recovery Act", and to Sections 201(d) and 301(i) of the Central Utah Project Completion Act (Titles II through VI of Public Law 102-575, 106 Stat. 4605, Oct. 30, 1992, as amended), hereinafter "CUPCA", between the Department of the Interior, Central Utah Project Completion Act Office, hereinafter "the Department", and the Utah Reclamation Mitigation and Conservation Commission, a Federal Commission established pursuant to Section 301(b) of CUPCA, hereinafter "the Commission".

ARTICLE I. EXPLANATORY RECITALS

Whereas the Department has constructed a portion of the Central Utah Project; and

Whereas pursuant to CUPCA, the Commission, Central Utah Water Conservancy District, and Department are completing the project; and

Whereas CUPCA amends the Act of April 11, 1956 (Pub. L. 84-485, 70 Stat. 105) to authorize additional appropriations for the completion of certain features of the Central Utah Project, and includes an authorization ceiling for various fish, wildlife, and recreation mitigation projects as provided in CUPCA; and

Whereas Titles II, III and IV of CUPCA establish administrative and funding mechanisms to mitigate and conserve fish, wildlife, and recreation resources affected by the development of the Central Utah Project and other Federal reclamation projects throughout Utah to offset past effects; and

Whereas Section 301(b) of CUPCA establishes the Commission to administer the mitigation and conservation funds available under CUPCA to conserve, mitigate, and enhance fish, wildlife, and recreation resources affected by the development and operation of the Central Utah Project and other Federal reclamation projects in the State of Utah; 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 the Secretary of the Interior approved the funding for specific projects under CUPCA specified herein; and

Whereas the Department seeks to allocate Recovery Act funds to the Commission to implement mitigation and conservation projects and activities authorized by CUPCA as specifically approved herein; and

Whereas in the past, the parties have acted in accordance with the Memorandum of Agreement between the Commission and the Department dated September 21, 1994, for the transfer of appropriated funds to the Commission under CUPCA; and

Whereas the Recovery Act requires the establishment of a separate accounting and reporting process for tracking Recovery Act appropriations;

WHEREAS, for the purposes of the American Recovery and Reinvestment Act of 2009, reporting requirements being are implemented under Appendix 9 of the April 3, 2009 OMB Implementing Guidance Document;

NOW, THEREFORE, it is agreed as follows:

ARTICLE II.

DEFINITIONS

When used in this Memorandum of Agreement:

- A. "Recovery Act" shall mean the "American Recovery and Reinvestment Act of 2009" (P.L. 111-5, February 17, 2009).
- B. "appropriated funds" shall mean funds appropriated by Congress to the Department under the Recovery Act for the Commission for the activities authorized in CUPCA for expenditure by the Commission.
- C. "Commission" shall mean the Utah Reclamation Mitigation and Conservation Commission, or its duly authorized representative.

- D. "CUPCA Office" shall mean the Department's local office established in Utah to oversee the implementation of CUPCA and carry out the Department's responsibilities under CUPCA.
- E. "the parties" shall mean the Commission and the Department.
- F. "Project" shall mean the Central Utah Project.

ARTICLE III TERM OF THE MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) will become effective on the day and year set forth in the Preamble above and shall, unless terminated sooner pursuant hereto or by operation of law, continue until the completion of all expenditures and reporting requirements for the parties under the Recovery Act.

ARTICLE IV. ROLES OF THE PARTIES

A. The Commission

- 1. The Commission's authorities, duties, responsibilities, and obligations, which are provided for in CUPCA, and agreements entered into pursuant to the Recovery Act and CUPCA, include, but are not limited to:
 - (a) the Commission shall administer the Recovery Act funds herein made available in accordance with CUPCA and the Recovery Act, and guidance promulgated pursuant thereto, to conserve, mitigate and enhance fish, wildlife, and related recreation resources affected by the development and operation of Federal reclamation projects in the State of Utah (P. L. 102-575, Section 301(f)(1)); and
 - (b) the Commission shall account for and report the expenditure of all Recovery Act funds in the manner specified by the Department; and
 - (c) the Commission shall submit plans and reports of its activities to the Department as requested.

B. The Department

- 1. The Department's authorities, duties, responsibilities, and obligations, which are provided for in the Recovery Act and CUPCA, and agreements entered into pursuant thereto CUPCA, include, but are not limited to:
 - (a) the Department shall provide assistance to the Commission pursuant to the Recovery Act and CUPCA; and

- (b) the Department shall provide the Commission with the accounting fund code and other financial information necessary for all expenditure and reporting requirements; and
 - (c) the Department shall review and approve or disapprove the Commission's reports.
2. The Department will facilitate such meetings with the Commission and the Office of Management and Budget as the Department finds necessary to further the purposes of the Recovery Act and this MOA.
- C. The parties agree that, notwithstanding the existence of this MOA, the Department's obligation to provide Federal funds to the Commission is contingent upon the Congress making appropriations pursuant to the Recovery Act.

ARTICLE V. FUNDING

A. The Department shall make available to the Commission, subject to Congressional action, \$8,730,000 of the Recovery Act funds appropriated to the Department for programs, projects and activities authorized by CUPCA and approved by the Secretary to be expended as follows:

1. ARRA4-Ute Tribal Fish Hatchery \$6,000,000
Funds will be used to construct the Ute Tribal Big Springs Fish Hatchery. The hatchery will supply fish needed on the Uinta and Ouray Indian Reservation, and meet the commitment to the Ute Indian Tribe in accordance with the Fish Hatchery Production Plan.
2. ARRA5-Fisheries Development and Enhancement \$1,700,000
This project will include construction of facilities at the Whiterocks Fish Hatchery, modification of river diversions for fish passage, and river restoration. Implementation will support fish production and provide mitigation for CUP construction activities.
3. ARRA6-June Sucker Recovery \$500,000
Funds will be used in the recovery of the endangered June sucker fish to improve the care and preservation of the June sucker. Implementation will include improvements and rehabilitation of existing fish culture facilities.
4. ARRA7-Wetlands Conservation and Mitigation 260,000
This project would include wetland rehabilitation and facility construction including buildings, boardwalks, and solar power systems, and provide for weed control.
5. ARRA8-Lower Duchesne Wetlands 270,000
Funds will be used for development of wetlands including procurement of equipment and supplies for weed and mosquito control, and contracts with the private sector for wetlands delineation, final design, and construction oversight.

B. The Commission shall expend all funds received in accordance with the Recovery Act, CUPCA, and this MOA. The funds may be reprogrammed based upon the attached table (Attachment A) with additional reprogramming subject to approval by the Department. Funds must be expended by the first quarter of fiscal year 2011. The Commission will assume total responsibility for, be liable for, and accountable for the use of the funds that are transferred to the Commission pursuant to CUPCA and this MOA.

ARTICLE VI. FINANCIAL ACCOUNTING AND REPORTING PROCEDURES

A. Other Standard Terms and Conditions. All other policy terms and conditions contained in applicable Department Policy Statements apply unless they conflict or are superseded by the following terms and conditions implementing the American Recovery and Reinvestment Act of 2009 (ARRA) requirements below. Recipients are responsible for contacting the Program Director for any needed clarifications. Sub-awards include sub-contracts issued from this award.

B. Reporting. The Recipient will comply with all requirements specified in Division A of the ARRA (Public Law 111-005), including reporting requirements outlined in Section 1512 of the Act. For purposes of reporting, the Recipient will report on sub-recipient activities as specified below. Not later than 10 days after the end of each calendar quarter, starting with the quarter ending June 30, 2009 and reporting by July 10, 2009, the recipient will submit a report to the Program Director that will be posted to Recovery.gov, containing the following information:

1. The total amount of ARRA funds under this award;
2. The amount of ARRA funds received under this award that were obligated and expended to projects or activities;
3. The amount of unobligated award balances;
4. A detailed list of all projects or activities for which ARRA funds were obligated and expended, including
 - a. The name of the project or activity;
 - b. A description of the project or activity;
 - c. An evaluation of the completion status of the project or activity;
 - d. An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - e. For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and the name of the person to contact at the agency if there are concerns with the infrastructure investment.
5. Detailed information on any subcontracts awarded by the Recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282). For any sub-award equal to or larger than \$25,000, the following information:
 - The name of the entity receiving the sub-award;
 - The amount of the sub-award;
 - The transaction type;

- The North American Industry Classification System code or Catalog of Federal Domestic Assistance (CFDA) number, if applicable;
 - Program source;
 - An award title descriptive of the purpose of each funding action;
 - The location of the entity receiving the award;
 - The primary location of performance under the award, including the city, State, congressional district, and country; and
 - A unique identifier of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity.
6. All sub-awards less than \$25,000 or to individuals may be reported in the aggregate, as prescribed by the Program Director.

The Recipient must account for each ARRA award and sub-award separately. The Recipient will expend funds on an ARRA award by ARRA award basis. Pooling or commingling of ARRA award funds with other funds for drawdown or other purposes is not permitted. The definition of terms and data elements, as well as any specific instructions for reporting, including required formats, will be provided in subsequent guidance issued by the Department.

C. Buy American - Use of American Iron, Steel, and Manufactured Goods. The Recipient may not use any funds obligated under this award for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless the Department waives the application of this provision. (ARRA Sec. 1605)

D. Wage Rate Requirements. Subject to further clarification issued by the Office of Management and Budget and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this award shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code. (ARRA Sec. 1606)

E. Whistleblower Protection. The recipient and each sub-recipient awarded funds made available under the ARRA shall promptly refer to the Department's Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. (ARRA Sec. 1553) The Department of the Interior, Office of Inspector General can be reached at [1-800-424-5081](tel:1-800-424-5081) or <http://www.doioig.gov/>

F. DUNS/CCR. The Recipient must require that first tier sub-recipients begin planning activities, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR) (or update their existing CCR record)

no later than the first time ARRA data requirements are due.

G. Expenditures of Federal Awards. The Recipient agrees to separately identify the expenditures funded under ARRA consistent with the recipient reports required by ARRA Section 1512(c).

H. Responsibilities for Informing Sub-recipients. The recipient agrees to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, and amount of ARRA funds.

ARTICLE VII TITLE TO PROJECT

Title to real property acquired and features to be constructed thereon by the Commission pursuant to the Recovery Act and CUPCA shall be in the name of the United States and remain therein until it is transferred pursuant to Sections 301(h)(7), 301(k), or 305(a) of CUPCA.

ARTICLE VIII EMPLOYEE CONDUCT

The Commission's employees shall be bound by the regulations of the Office of Government Ethics promulgated in Title 5 of the Code of Federal Regulations, and successor regulations thereto.

ARTICLE IX CONTRACTS WITH THIRD PARTIES

The Department shall not be a party to or obligated in any manner by contracts entered into between the Commission and other parties. The Commission is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of the contracts the Commission awards in support of the Title II, III, and IV activities authorized in CUPCA.

ARTICLE X NOTICES

Any notice, demand, or request regarding this MOA shall be deemed to have been delivered when mailed, postage prepaid, or delivered directly, in the case of the Department to:

Program Director
CUP Completion Act Office
Department of the Interior
302 East 1860 South
Provo, Utah 84606-6154

and in the case of the Commission, to:

Executive Director
Utah Reclamation Mitigation and

Conservation Commission
230 South 500 East, Suite 230
Salt Lake City, Utah 84102

The designation of the addressees or addresses given above may be changed by notice given in the same manner as provided in this Article for other notices.

ARTICLE XI. OFFICIALS NOT TO BENEFIT

No member of, or delegate to, Congress, or official of the Commission, shall be admitted to any part or share of this MOA, or any benefits arising from it except as a water user or landowner within the Project in the same manner as other water users or landowners within the Project.

ARTICLE XII AMENDMENT/MODIFICATION/TERMINATION

This MOA may be modified or superseded only upon mutual written consent of the parties. Either party may terminate this MOA by providing at least 60 days advance written notice to the other party.

ARTICLE XIII. SEVERABILITY


If any provision of this MOA shall, for any reason, be determined to be illegal or unenforceable, the parties, nevertheless, intend that the remainder of the MOA shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the day and year set forth in the Preamble above.

Utah Reclamation Mitigation
and Conservation Commission

Department of the Interior

By 
Commission Chair

By 
Program Director

Approved


Regional Solicitor's Office

Attachment A

Central Utah Project Completion Act (CUPCA)
 American Recovery and Reinvestment Act of 2009
 (\$ in Thousands)

Project Summary

Category	States	Proposal			Days to Obligate	Expenditure Rate		
		Allocation	Delta	Approval		2009	2010	2011
Fish and Wildlife Mitigation and Conservation - Utah								
ARRA4 Ute Tribal Fish Hatchery	UT	\$6,000		\$6,000	30	75%	100%	
ARRA5 Fishery Development & Enhancement	UT	\$1,700	\$130	\$1,830	30	65%	85%	100%
ARRA6 June Sucker Recovery	UT	\$500		\$500	60	65%	85%	100%
ARRA7 Wetlands Conservation and Mitigation	UT	\$260	\$375	\$635	30	75%	100%	
ARRA8 Lower Duchesne Wetlands Project	UT	\$270	\$130	\$400	30	75%	100%	
Total		\$8,730	\$635	\$9,365				