

License No. _____

ENCROACHMENT LICENSE AGREEMENT

This Encroachment License Agreement (this "Agreement") is made and entered as of the date of execution by the State Contracts Officer, below, by and between the New Mexico Interstate Stream Commission, an agency of the State of New Mexico, (the "Commission") and _____, a _____, ("Licensee").

RECITALS

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

A. The Commission owns certain fee simple real property in Quay County, New Mexico, which, taken together, is generally known as Ute Reservoir (the "Commission's Fee Property"), including those lands more particularly described in that certain _____ from _____, a _____ to the Commission dated _____, 19____, and recorded in the official records of Quay County on _____, 19____.

B. The Commission also owns certain "flowage easements" and other interests in real property in Quay County, New Mexico, that surround and are used in conjunction with Ute Reservoir (the "Commission's Easement Property"), including those interests more particularly described in that certain _____ from _____, a _____ to the Commission dated _____, 19____, and recorded in the official records of Quay County on _____, 19____.

C. The Commission's Fee Property and the Commission's Easement Property shall be collectively referred to herein as the "Commission Property".

D. Licensee owns certain real property in Quay County, New Mexico, commonly known as _____ (the "Licensee Property"), as more particularly described on Exhibit A attached hereto, which is adjacent to the Commission Property.

E. Licensee desires to construct and/or maintain certain improvements on the Commission Property (the "Licensed Improvements") as generally depicted in Exhibit B attached hereto.

F. The Commission has agreed to allow the Licensed Improvements on the Commission Property subject to all of the terms, covenants, and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Encroachment License. The Commission hereby grants to Licensee a revocable license (the "License") to maintain the Licensed Improvements. Nothing herein shall be deemed to allow the Licensee to expand the Licensed Improvements or make any other use of the Commission Property without the express, written permission of the Commission.

2. Term and Termination. The License shall automatically expire on May 1, 20____. At any time prior to that date, however, if the Commission, in the Commission's sole and absolute discretion, determines that the Licensed Improvements pose a threat to the water quality of Ute Reservoir, that the Licensed Improvements pose a threat to the operation of Ute Reservoir or Ute Dam, or that Licensee has violated any of the terms, covenants, or conditions of this Agreement, the Commission may terminate the License upon thirty (30) days written notice to Licensee, and Licensee agrees to remove the Licensed Improvements from the Commission Property and restore the Commission Property, all prior to the date of termination of the License as specified in the termination notice. In addition, the License and this Agreement may be terminated by the mutual, written agreement of the Commission and Licensee, which termination agreement shall be effective upon recordation in the Official Records of Quay County. A prerequisite for the Commission's agreement to terminate this Agreement shall be Licensee's removal of the Licensed Improvements from the Commission Property and the restoration of the Commission Property.

3. Annual Rental. Licensee shall pay an annual Rental at the rate of Fifty Cents (\$0.50) per square foot of Commission Property occupied. The parties agree that the Licensed Improvements as shown on Exhibit B occupy (or will occupy once constructed, as the case may be) _____ square feet (____ sq. ft.) of Commission Property. The Annual Rental shall be due to the Commission annually on May 1st of each year, with the first year's rental being prorated for the partial year. Failure to pay the rental in any given year more than sixty (60) days after its due date shall be grounds for termination of the License. The Annual Rental shall be due to the Commission for every year that this Agreement is in effect, whether or not the Licensed Improvements have been installed or, alternatively, have been removed. Annual Rental payments due under this Agreement shall only terminate upon the termination of this Agreement as provided above.

4. Grant of Easement. Licensee hereby grants to the Commission an easement (the "Access Easement") to enter across and upon the Licensee Property for the purposes of inspecting the Licensed Improvements and, if the License expires or is terminated for any reason and Licensee fails to remove the Licensed Improvements and/or to properly restore the Commission Property, then for the additional purposes of removing the Licensed Improvements and restoring the Commission Property all at the expense of Licensee. The Access Easement shall expire three (3) years after the expiration or earlier termination of the License.

5. Indemnity. Licensee shall indemnify, defend (with counsel reasonably acceptable to the Commission), and hold harmless the State of New Mexico and its agencies (including the

Commission), officers, and employees, from and against any and all loss, cost, liability, or expense for damage to property (including water quality in Ute Reservoir) or personal injury, directly or indirectly caused by or accruing from any action or inaction of Licensee on Licensee Property, on Commission Property, or otherwise, and/or related to the Licensed Improvements, their construction, existence, maintenance, or removal, or otherwise. Licensee shall further indemnify the Commission for any attorneys' fees incurred in connection with, and/or staff attorneys' salaries allocable to, any action the Commission takes to enforce this Agreement. Provided, however, that if Sections 56-7-1 or 56-7-2, N.M.S.A. 1978, apply to this Agreement, the forgoing indemnities will not extend to any liability, claims, damages, losses, or expenses related to any event or act for which indemnification is precluded by those statutes. Licensee's indemnity obligations under this Agreement shall survive the expiration or earlier termination of this Agreement.

6. Insurance. Licensee shall procure and maintain in full force and effect during the term of this Agreement liability insurance against property damage and bodily injury for not less than One Million Dollars (\$1,000,000) per occurrence, which policy shall name the State of New Mexico and its agencies, including the Commission, as an additional insureds, and shall be in a form acceptable to the Commission. A company authorized to write such insurance in New Mexico shall write such policy of insurance. Licensee shall furnish the Commission with a certificate of such policy in a form satisfactory to the Commission on an annual basis concurrently with the payment of fee as required by this Agreement. Such certificate (and policy) shall provide that advance written notice be given to the Commission before the policy is canceled, materially changed, or not renewed. The Commission reserves the right to reject insurance or insurers tendered by Licensee. In the event such insurance or insurer is rejected, reasonable additional time (in the Commission's discretion) will be granted to Licensee to obtain alternative coverage acceptable to the Commission.

7. Running of Benefits and Burdens. This Agreement shall run with the land and shall be binding upon and inure to the benefit of Commission and the Licensee, any person(s) or organization(s) acquiring, holding, or owning an interest in or to the Commission Property or the Licensee Property, and their heirs, successors, and assigns.

8. Rules and Regulations. The Licensed Improvements shall at all times be kept in good and safe condition and repair and comply with all applicable laws, statutes, regulations, and rules of federal, state, and local authorities having jurisdiction. In the event of concurrent jurisdiction of any federal, state, and/or local authority(ies), the Licensed Improvements shall comply with the more restrictive requirements.

9. Commission Requirements. The Licensed Improvements shall, at a minimum: (i) not in any way adversely affect the water quality of Ute Reservoir and its purpose as a public drinking water supply; (ii) not cause any erosion or sedimentation; (iii) be maintained in a safe and secure condition; (iv) not include habitable structures, storage units, or sanitary facilities; (v) not include vehicle and/or boat access ramps and/or roads; (vi) not inhibit pedestrian movement along the Commission's Fee Property; and (vii) not be a threat to public safety. In the event that, and in the sole and absolute judgment of the Commission, any of these requirements are violated, or any of the Commission's Fee Property is posted or otherwise represented as "private property," the offending Licensee's License shall be terminated and Licensee shall remove the structure(s) and restore the

Commission Property. In the event that, and in the sole and absolute judgment of the Commission, any of these requirements are violated, or any of the Commission's Fee Property is posted or otherwise represented as "private property," the offending Licensee's License shall be terminated and Licensee shall remove the Licensed Improvements and restore the Commission Property.

10. Surety Bond. Licensee shall procure and maintain in full force and effect during the term of this Agreement a surety bond for Three Thousand Dollars (\$3,000) or Five Dollars per square foot (\$5.00 / ft²) whichever is greatest, in form satisfactory to and payable to the New Mexico Interstate Stream Commission to ensure the faithful performance by Licensee of all of the terms, covenants, and conditions of this Agreement, and to ensure removal of structure(s) and the restoration of the Commission Property at the expiration or earlier termination of the License. If Licensee fails to faithfully perform any of the terms, covenants, and conditions of this Agreement, the Commission may, in its discretion, use or apply any part of the surety to cure Licensee's failure to perform or to compensate the Commission for any loss, damage, or expense incurred (including attorneys' fees) by the Commission as a direct or indirect result of Licensee's failure to perform.

A company authorized to write such bonds in New Mexico shall write such surety. Licensee shall furnish the Commission with a certificate of such surety in a form satisfactory to the Commission on an annual basis concurrently with the payment of the annual fee as required by this Agreement. Such surety shall provide that advance written notice be given to the Commission before the bond is canceled, materially changed, or not renewed. The Commission reserves the right to reject surety or bonding tendered by Licensee. In the event such surety or bonding is rejected, reasonable additional time (in the Commission's discretion) will be granted to Licensee to obtain alternative surety acceptable to the Commission.

11. Notices. All notices and communications required or permitted under this Agreement (including change of address set forth below) shall be in writing and shall be deemed given and delivered to, and received by, the receiving party: (i) in the case of notices to Licensee, when posted on the Licensee Property; (ii) when hand-delivered to the street address of the receiving party set forth below; (iii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street address set forth below; or (iv) three (3) days after deposit in the U. S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below.

The Licensee: _____

The Commission: New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102

with a copy (which shall not be deemed notice) to:

Ute Dam Caretaker
P.O. Box 55

Logan, NM 88426

12. Incorporation. Each and all of the recitals set forth at the beginning of this instrument are hereby incorporated herein by this reference. Each and all of the exhibits referenced herein and attached hereto are hereby incorporated herein by this reference.

13. Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, *i.e.*, including Saturdays, Sundays, and holidays as observed by the State of New Mexico; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or such observed holiday, the day for such act shall be first day following such Saturday, Sunday, or observed holiday that is not a Saturday, Sunday, or such observed holiday.

14. Restoration. As used herein, where Licensee is obligated to restore Commission Property, such restoration shall be to a safe, secure, and slightly condition to the satisfaction of the Commission.

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

16. Severability. If any provisions of this Agreement, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby; provided, however, that the remainder of this Agreement remains enforceable in substantial accordance with the original intent of the parties hereto.

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

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

19. Release. Licensee understands and acknowledges that nothing in this Agreement shall be deemed to guaranty, imply, or otherwise affect the water level in Ute Reservoir, either above or below the location where the Licensed Improvements are installed. The Commission is under no obligation whatsoever to Licensee to maintain, or attempt to maintain, the level of Ute Reservoir in such a manner as to facilitate Licensee's enjoyment of the Licensed Improvements or prevent damage to the Licensed Improvements. The Commission shall have no liability to Licensee for any Licensed Improvement that becomes submerged, which becomes "high and dry," or otherwise. Licensee hereby releases the State of New Mexico, its agencies, officers, and employees, from all liabilities and obligations whatsoever based upon a claim related to any of the foregoing.

20. Governing Law. Each party agrees that it shall perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect. The laws of the State of New Mexico shall govern this Agreement. All legal proceedings arising from unresolved disputes under this Agreement shall be brought in Santa Fe before the First Judicial District Court of the State of New Mexico.

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

22. Recordation. This Agreement shall be recorded in the Official Records of Quay County, New Mexico. Licensee shall bear the cost of such recordation.

23. Entire Agreement. This Agreement incorporates all the agreements, covenants, promises, and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants, promises, and understandings have been merged into this Agreement. No prior agreement, covenant, promise, or understanding of the parties, verbal or otherwise, shall be valid or enforceable unless embodied in this Agreement. Nothing in this Agreement shall impair the State of New Mexico ability to fulfill its rights or obligations under the 1959 Canadian River Compact or the 1993 US Supreme Court Stipulated Judgment and Decree.

24. Contingency. This Agreement shall not become effective unless and until executed by the State of New Mexico Department of Finance and Administration.

[Signatures and approvals on following page.]

IN WITNESS WHEREOF, the parties hereto have entered into this Encroachment License Agreement as of the date of execution by the State Contracts Officer, below.

LICENSEE

_____	Date: _____
_____	Date: _____

COMMISSION

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

By: _____	Date: _____
A. Norman Gaume, Director	

Approved as to form:

By: _____	Date: _____
Agency Attorney	

DEPARTMENT OF FINANCE AND ADMINISTRATION

By: _____	Date: _____
State Contracts Officer	

[Acknowledgements of parties in interest on following page.]

ACKNOWLEDGMENTS

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 200__ by
_____.

Notary Public

My Commission Expires:

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me on _____, 200__ by
A. Norman Gaume as Director of the New Mexico Interstate Stream Commission.

Notary Public

My Commission Expires:

Exhibit A
to
Encroachment License Agreement

LICENSEE PROPERTY

Exhibit B
to
Encroachment License Agreement

LICENSED IMPROVEMENTS