

Metropolitan Water District of Salt Lake & Sandy  
Board Meeting Information  
Last Update: May 13, 2019

**Agenda Item:** Consider approval of agreement with Provo River Water Users Association regarding Deer Creek Dam site operations

**Objective:** Discuss and seek approval of Deer Creek Operating Agreement.

**Background:** The Provo River Water Users Association is the repayment and operation and maintenance (O&M) entity for the Deer Creek Division of the Provo River Project. The Association employs a full time operator at Deer Creek Dam to fulfill its O&M obligations of the outlet works of the Deer Creek Dam for the purposes of delivering water from Deer Creek Reservoir to Association shareholders and others and to provide site security of the Primary Jurisdiction Area (PJA).

The District is an Association shareholder and owns or co-owns several facilities at the PJA, including the SLA inlet (both old and new), stilling basin gates; operations building; emergency generator; and chlorine and scrubber buildings.

The operation of the Salt Lake Aqueduct (SLA) requires control of the level of water in the stilling basin by way of operating the stilling basin gates and the Deer Creek Dam Outlet works. The Association has a full-time operator at Deer Creek Dam site at all times in part to operate the stilling basin gates and SLA Intake Gates. The Association and District wish to document their understanding regarding the ownership of facilities within the PJA and the operation activities, including the sharing of costs incurred by the Association for their activities within the PJA which Reclamation is not obligated to reimburse.

**Committee Activity:** The Engineering Committee discussed the Deer Creek Operating Agreement on April 30.

**Recommendation:** The Engineering Committee recommended the Board authorize the General Manager to sign the Deer Creek Operating Agreement, either in its current format or with minor changes as considered in the District's best interest by the General Manager and counsel.

**AGREEMENT REGARDING DEER CREEK DAM SITE OPERATIONS  
BETWEEN  
PROVO RIVER WATER USERS ASSOCIATION  
AND  
METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY**

This Agreement Regarding Deer Creek Dam Site Operations (Agreement) is entered effective the \_\_\_\_ day of \_\_\_\_\_, 2019 between Provo River Water Users Association, a Utah non-profit mutual irrigation company (Association) and Metropolitan Water District of Salt Lake & Sandy, a Utah local district (District).

**AGREEMENT PURPOSES**

The Association is the repayment and operation and maintenance (O&M) entity for the Deer Creek Division of the Provo River Project (Provo River Project). These obligations of the Association are described in a number of documents, including a 1936 Repayment Contract between the Association and the United States, Department of the Interior, Bureau of Reclamation (Reclamation); the Deer Creek/Jordanelle Operating Agreement among the Association, Reclamation and Central Utah Water Conservancy District (CUWCD); as well as in Association Articles of Incorporation, Bylaws, Subscription Agreements between the Association and its shareholders, and Association Policies and Procedures. Among other things, the Association is responsible to O&M the outlet works of Deer Creek Dam for the purposes of delivering water from Deer Creek Reservoir to Association shareholders and others, and for the purposes of bypassing water which others have the rights to beneficially use. The Association has a full-time operator at the Deer Creek Dam site at all times in part for the purposes of operating the Deer Creek Dam Outlet Works.

The Association also has responsibility for O&M of the Deer Creek Power Plant pursuant to a 1958 Agreement with Reclamation, as that agreement has been amended from time to time. Under that 1958 Agreement as amended Reclamation reimburses the Association for costs incurred in the operation, maintenance and repair of Deer Creek Power Plant as described in that agreement. The Association has a full-time operator at the Deer Creek Dam site at all times in part to operate and maintain the Deer Creek Power Plant.

The District is an Association shareholder. The District owns the Salt Lake Aqueduct (SLA) and SLA Corridor, including the SLA Intakes, both old and new, that are immediately downstream of the Deer Creek Power Plant. The operation of the SLA requires control of the level of water in the Stilling Basin by way of operation of the Stilling Basin Gates and the Deer Creek Dam Outlet Works. The Association has a full-time operator at the Deer Creek Dam site at all times in part to operate the Stilling Basin Gates.

An area at the Deer Creek Dam Site is fenced for security purposes. This is a portion of the "Primary Jurisdiction Area" (PJA) over which Reclamation has retained certain rights and responsibilities for the security of Deer Creek Dam and Deer Creek Power Plant, and other purposes. The Association has a full-time operator at the Deer Creek Dam Site at all times in part for security purposes.

The Association and District jointly own an easement over the fenced portion of the PJA at the Deer Creek Dam Site. The Association and District jointly own an Operations Building located within the fenced area of the PJA at the Deer Creek Dam Site. The District separately owns a building and certain facilities located within the PJA at the Deer Creek Dam Site, including the old and new SLA Intakes.

The Association and District wish to document their understanding regarding the above matters, including the sharing of costs incurred by the Association for Association activities at the Deer Creek Dam Site which Reclamation is not obligated to reimburse.

To the extent that the parties' respective obligations for operations and facilities at the Deer Creek Dam Site are otherwise the subject of existing agreements, including the documents described in the Agreement Purposes above, this Agreement is not intended to modify those obligations in any respect.

## AGREEMENT TERMS

In consideration of the mutual promises below, the Parties agree as follows:

### 1. **District Responsibilities.**

**(a) District Building.** The District will be responsible for the operation, maintenance repair and replacement (OMR&R) of the District buildings, excepting the shared backup generator. The District will be responsible for providing any property insurance it requires or desires as to the District Buildings.

**(b) SLA Intakes and Stilling Basin Gates.** The District will be responsible for the maintenance, repair and replacement of the SLA Intakes, and the Stilling Basin Gates, excepting routine maintenance and repair as described by the equipment manufacturer and replacement of consumable parts as per manufacturer recommendations that can be performed by the Association operators and maintenance personnel. The District will be responsible for providing any property insurance it requires or desires as to the SLA Intakes and Stilling Basin Gates.

**(c) Reimbursement of Expenses.** Reclamation is, by separate agreement or agreements (which may change from time to time) obligated to reimburse the Association for certain costs of the OMR&R of the Deer Creek Power Plant and the fenced portion of the PJA, including the costs of employing operators at the Deer Creek Dam Site. After deducting the portion of the following expenses that Reclamation is obligated to reimburse to the Association, the District will reimburse the Association for

one half of the remainder of the costs reasonably incurred by the Association of employing operators at the Deer Creek Dam Site, the OMR&R of the Operations Building, the OMR&R of the shared backup generator, the OMR&R of the Stilling Basin, operation of the SLA Intakes and Stilling Basin Gates, maintenance performed by Association operators as part of their normal shift work on the SLA Intakes and Stilling Basin Gates, and the OMR&R of the area of the shared easement, including OMR&R of the access road, landscaping, pavement, fencing, security, and security systems. The District will also reimburse the Association for reasonable costs incurred by the Association in performing any additional, non-routine maintenance or repair of the SLA Intakes and Stilling Basin Gates performed by the Association, as approved or directed by the District. This reimbursement is separate and apart from the District's obligations under other documents that constitute the agreements between the Association and its shareholders for payment of the Association's general O&M assessments, which account for the District's proportionate share of the described costs to the extent they are not reimbursed to the Association by Reclamation, the District, or others.

## **2. Association Responsibilities.**

**(a) Operations Building.** The Association will be responsible for the OMR&R of the Operations Building and its contents. The Association will take reasonable steps to keep the Operations Building and its contents reasonably insured for the benefit of both Parties to this Agreement.

**(b) Shared Backup Generator.** The Association will be responsible for the OMR&R of the shared backup generator. The Association will be responsible for providing any property insurance it requires or desires as to the backup generator.

**(c) SLA Intakes, Stilling Basin and Stilling Basin Gates.** The Association will be responsible for the OMR&R of the Stilling Basin. The Association will be responsible for the operation of the SLA Intakes and Stilling Basin Gates, as well as routine maintenance as described by the equipment manufacturer and replacement of consumable parts as per manufacturer recommendations of the SLA Intakes and Stilling Basin Gates that can be performed by the Association operators and maintenance personnel. The Association will promptly notify the District of any additional maintenance or repair they note may be required with respect to the SLA Intakes and Stilling Basin Gates. All non-routine maintenance performed by the Association, as approved or directed by District, will be reimbursed by the District to the Association separate and apart from District's obligation under other documents that constitute the agreements between the Association and its shareholders for payment of the Association's general O&M assessments.

**(d) Area of the Shared Easement Over the Fenced Portion of the PJA.** The Association will be responsible for the area of the shared easement over the fenced portion of the PJA, including the OMR&R of the access road, landscaping, pavement, fencing, security, and security systems.

3. **Future Uses of Shared Easement.** The Parties will act diligently to coordinate any future additional uses of their shared easement over the fenced portion of the PJA and the access road so as to reasonably minimize conflicts and reasonably maximize future flexibility in uses of the shared easement.
4. **Other Agreements Not Affected.** The respective obligations of the parties relating to the Deer Creek Dam Site and facilities located there are the subject of other agreements, including the agreements described in the Agreement Purposes above. Nothing in this Agreement is intended to modify those other agreements.
5. **Liability and Worker's Compensation Insurance.** The Association will add the District as an additional insured on the Association's Commercial General Liability policy for claims arising out of the ownership, OMR&R or use of facilities located within the fenced portion of the PJA. Such additional insurance will be primary to any other insurance available to the District. Both parties will procure a waiver of subrogation as against the other by their respective Worker's Compensation insurers. The sole remedy for breach of any of the obligations described above in this section will be notice and a reasonable opportunity to cure. Under no circumstances will a party effectively become the insurer of the other party. The obligations described above in this section are not intended to benefit any insurer.
6. **Remedies.** Neither party will be considered to be in breach of this Agreement unless and until the other party gives notice of the claimed non-conformity and there has been an opportunity to cure that is reasonable under the circumstances. Any claim or dispute between the Parties will first be submitted to the authorized representative of the other party. If the matter is not resolved satisfactorily, the claim or dispute will be submitted in concise written form with any supporting documentation to Board of the other party, or committee assigned by that Board to hear the matter. If the matter is not resolved satisfactorily the dispute or claim will be submitted to non-binding mediation, with a qualified mediator selected by the parties, with each party equally sharing the cost of that non-binding mediation. After and only if these processes are first followed and the dispute or claim remains unresolved, an action may be brought. Under no circumstances will either party be liable for any consequential damages resulting from a breach of this Agreement.
7. **Notices.** Any notice required by this Agreement will be deemed given when mailed, delivered or emailed to:

Metropolitan Water District of Salt Lake & Sandy  
Attn: General Manager  
3430 East Danish Road  
Cottonwood Heights, Utah 84093  
Phone: (801) 942-1391  
Email: [devries@mwdsls.org](mailto:devries@mwdsls.org)

Provo River Water Users Association  
Attn: General Manager  
285 West 1100 North  
Pleasant Grove, Utah 84062  
Email: gkd@prwua.org

Each party may change the designation of the addressee or the address for that party to receive notice by sending written notice of the change.

PROVO RIVER WATER  
USERS ASSOCIATION

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY

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By: G. Keith Denos  
Its: General Manager

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By: Michael J. DeVries  
Its: General Manager