AGREEMENT BETWEEN THE MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION FOR THE ENLARGEMENT OF COMO DAM

Under the authority of Public Laws 95-578 and 98-404, the Reclamation Safety of Dams Act and Amendment.

Montana Department of Fish, Wildlife and Parks - under the authority of Section 87-1-201, MCA, 1993

This agreement is made and entered into by and between the Montana Department of Fish, Wildlife and Parks, acting by and through its Director, hereinafter referred to as Fish, Wildlife and Parks, and the U.S. Department of Interior, Bureau of Reclamation, acting by and through the Regional Director, Pacific Northwest Region, Boise, Idaho, hereinafter referred to as Reclamation. The purpose of this agreement is to provide for the funding, design, construction, and operation of an enlarged storage pool in Lake Como by raising the active storage level of the reservoir by 3.3 feet and to use the increased storage for instream flow purposes and recreation.

WITNESSETH THAT:

WHEREAS, Reclamation has performed major reconstruction of the embankment at Como Dam to correct serious Safety of Dams deficiencies, and

WHEREAS, Safety of Dams modifications to Como Dam spillway, outlet tower, and site features are scheduled for construction beginning in the summer of 1994, and

WHEREAS, Safety of Dams legislation (Public Laws 95-578 and 98-404) prohibits funding under the Acts of additional project benefits during modifications to resolve safety problems but directs that all alternatives, both structural and non-structural be evaluated, and

WHEREAS, a chronic shortage of instream flows exists during the summer months in the Bitterroot River downstream from Como Dam, and

WHEREAS, Como Lake is the primary motor boating site in the area and the boating season is usually cut short due to reservoir draw-down, and

WHEREAS, studies indicate that additional water supplies could be available from Rock Creek from an enlargement of Lake Como for enhancement of minimum late-season instream flows in the Bitterroot River, and

WHEREAS, extensive public involvement has identified widespread support from local and state governments, the Bitter Root Irrigation District, and the public for enlarging Lake Como, and

WHEREAS, the State of Montana legislature has authorized funding of $400,000 for an enlargement of Lake Como, and

WHEREAS, preliminary investigations indicate that a 3.3-foot raise of Como Dam is feasible and a mutual cost savings could be realized from combining the construction of Safety of Dams modifications and an enlargement of Como Dam:

NOW THEREFORE, BE IT RESOLVED, that the parties hereby enter into an agreement, the purpose of which is to provide funding for Reclamation to perform final designs and construction, including construction management,

contract administration and overhead, for an enlargement of Como Dam. Como Dam is owned and operated by the Bitter Root Irrigation District.

Project Title: Como Dam Enlargement
Agreement Number: 1425-4-MA-10-00950

To implement the forgoing, the parties agree as follows:

A. OPERATIONS

1. The enlargement of Lake Como will raise the active storage pool 3.3 feet, from the current active storage level of 4242.7 feet to 4246.0 feet at the crest of the new ogee overflow spillway. The intended purpose of the additional storage in Lake Como will be to enhance instream flows in the Bitterroot River during low flow periods of the year and lengthen the recreational boating season on Como Lake.

2. The additional storage in Lake Como created by the enlargement is 3,037 acre-feet, based on active storage values found in Reclamation's September 1992 area and capacity tables. This pool will be known as the "instream flow reserved storage." (Active capacity at elevation 4246.0 feet is 38,495 acre-feet and 35,458 acre-feet at elevation 4242.7 feet.)

3. The instream flow reserved storage in Lake Como will be operated as follows:

a. All water stored in Lake Como above elevation 4242.7 feet, not to exceed 3,037 acre-feet, will be credited and dedicated on an annual basis to instream flow reserved storage.

b. Fish, Wildlife and Parks will have the right to call for releases from instream flow reserved storage from July 15 to November 1 of each year.

c. The flow to be released will be within standard release practices of the Bitter Root Irrigation District.

d. Fish, Wildlife and Parks will provide a minimum of 24 hours notice prior to the release of water from the instream flow reserved storage.

e. At the end of the flow augmentation period, July 15 through November 1, all remaining water credited to instream flow reserved storage will revert to the irrigation storage pool within Lake Como.

f. No carryover storage will be credited to instream flow reserved storage.

4. Fish, Wildlife and Parks will be notified each year by July 1 as to the amount of water available in the instream flow reserved storage at Lake Como.

5. After receiving a valid request from Fish, Wildlife and Parks, releases to the specified amount and flow will be made from Lake Como within 24 hours.

6. The point of delivery for the instream flow releases during the irrigation season will be Rock Creek at the Bitterroot Irrigation District diversion dam. During the non-irrigation season, the point of delivery will be Como Dam outlet. The instream flow releases will be passed by the diversion dam.

7. Lake Como will be operated in a prudent manner to fill the instream flow reserve storage to the extent possible, while complying fully with any

space requirements based on flood control precautions as outlined in the Standing Operating Procedures for Como Dam.

B. FISH, WILDLIFE AND PARKS WILL:

1. Provide funding up to $400,000 for the total cost of the project. Up to $300,000 will be provided to Reclamation for final designs, construction, and construction management for enlarging Como Dam as outlined in this agreement. Up to $100,000 will be provided to Reclamation or other parties in separate orders for work associated with construction or operation of the enlarged Lake Como, including mitigation for cultural and recreational resources. Availability of project funds is contingent upon the prior approval of the project by the U. S. Fish and Wildlife Service.

2. Make application to the U.S. Fish and Wildlife Service for project approval and secure all necessary environmental and cultural resources clearances associated with operation of the enlarged Lake Como.

3. Enter into an agreement with the Bitter Root Irrigation District to reimburse the district for annual operation and maintenance costs associated with the operation of instream flow reserved storage in Lake Como.

4. Will indemnify and hold harmless Reclamation and the operators of Como Dam, the Bitter Root Irrigation District, against any claim or action challenging the use of the water under the terms of this Agreement.

5. Provide for a gaging station or other measuring devices on Rock Creek downstream from the point of delivery to measure releases from the instream flow reserved storage.

C. RECLAMATION WILL:

1. Perform final designs and construction, including contract administration and construction management, for enlargement of Como Dam as outlined in this agreement.

2. Enter into an operating agreement with the Bitter Root Irrigation District for the operation of instream flow reserved storage in Lake Como under the terms of this Agreement.

3. Mediate any disputes over quantity of water available or operation of the instream flow reserved storage in Lake Como between Fish, Wildlife and Parks and the Bitter Root Irrigation District.

4. Acknowledge Fish, Wildlife and Parks financial sponsorship, including Federal Aid in Sport Fish Restoration Program funding, at the project site and in pertinent literature, both during and after construction.

5. Provide the State of Montana with designs for Safety of Dams modifications and the enlargement and permit the site to be inspected by Montana Department of Natural Resources and Conservation and Fish, Wildlife and Parks.

D. IT IS MUTUALLY AGREED:

1. That nothing in this Agreement shall be construed as placing the Fish Wildlife and Parks in the position of the guarantor to Reclamation or to any third party, other than as is expressly set out in this Agreement.

2. That no member of or delegate to Congress, or resident commissioner shall be admitted to any part of this Agreement, or to any benefit that may arise therefrom.

3. That nothing herein shall be construed as obligating Reclamation, or Fish, Wildlife and Parks to expend funds, or as involving either party in any contract or other obligation for the future payment of money, in excess of appropriations authorized by law, and approved for expenditure.

4. That all improvements at Como Dam shall remain in title to the Bitter Root Irrigation District, the current owner of the dam.

5. That this agreement may be amended at any time by mutual written agreement of the parties hereto.

6. This Agreement will be in effect through the functional life of the Como Dam enlargement unless an earlier termination is mutually agreed to by the parties and the Bitter Root Irrigation District. If an earlier termination is agreed to, the Bitter Root Irrigation District may use the water in the instream flow reserved storage for other purposes.

7. That nothing in this Agreement shall be interpreted to work as an abandonment or as evidence of an intent to abandon any water right associated with Lake Como storage.

8. That nothing in this Agreement shall be construed as to impact the original grant from the U.S. Department of Interior to the District or any existing easements or Special Use Permits between the District and the U.S. Department of Interior or U.S. Department of Agriculture related to the irrigation storage pool and the embankment and appurtenant structures at Como Dam.

9. That all written communications which are to be given to the Fish, Wildlife and Parks under this Agreement will be delivered to:

Administrator
Fisheries Division
Department of Fish,Wildlife and Parks
1420 E. 6th Ave.
Helena MT 59620-0701

All written communications which are to be given to Reclamation under this agreement will be delivered to:

Regional Director
Bureau of Reclamation
1150 N. Curtis
Boise ID 83706

The above shall be effective until written notice of a change to the other party.

E. METHOD OF PAYMENT

1. Reclamation will submit quarterly billings for expenses associated with the final designs, construction, construction management, contract administration, and overhead associated with the enlargement of Como Dam.

2. Upon receipt of quarterly billings, Fish, Wildlife and Parks will process payment within 30 days.

3. Upon completion of the construction at Como Dam, Reclamation will prepare a report on the work accomplished and include a breakdown and full and final accounting of all expenditures related to the enlargement.

4. Reclamation will retain accounting records for three fiscal years after the completion of the project, subject to provisions of the Privacy Act and other applicable federal laws, and allow Fish, Wildlife and Parks or authorized representatives to inspect and review all related records during normal office hours at the Regional Office in Boise, Idaho.

IN WITNESS THEREOF the parties hereto cause this Agreement to be properly executed by their authorized representatives.

BY Patrick Graham 7-8-94
(signature) (date)

Director
Montana Department of Fish, Wildlife and Parks

BY Deborah L. Schwarz 7/29/94
(signature) (date)

Regional Director
Pacific Northwest Region
Bureau of Reclamation
U.S. Department of the Interior

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