

**MEMBER AGREEMENT FOR LEASING
SOUTH CACHE WATER USERS' ASSOCIATION SHARES
BETWEEN
HYRUM IRRIGATION COMPANY &
WELLSVILLE-MENDON CONSERVATION DISTRICT**

This water leasing agreement (“Agreement”) is made and entered into on 10/10/22 (“Effective Date”), by and between the Hyrum Irrigation Company (“HIC”), the Wellsville-Mendon Conservation District (“WMCD”), and the South Cache Water Users’ Association (“SCWUA”), collectively referred to herein as the “Parties.”

RECITALS

A. WHEREAS, WMCD is a Limited Purpose Local Governmental Entity organized as a conservation district under Utah Code Title 17D Chapter 3 for the purpose, among other duties, to distribute water to water users within its designated service boundary; and

B. WHEREAS, HIC is a mutual shareholder irrigation company organized under Utah Code Title 16 Chapter 6a of the Utah Revised Nonprofit Corporation Act for the purpose, among other duties, of delivering irrigation water to its shareholders; and

C. WHEREAS, SCWUA is a water user association organized under Utah Code Title 16 Chapter 16 Uniform Limited Cooperative Association Act for the purpose, among other duties, of contracting with the United States, through the Bureau of Reclamation (“BOR”), for the construction of certain irrigation works in Cache County, Utah, for the storage, diversion and beneficial use of the waters of the Little Bear River and its tributaries for irrigation and other purposes, consisting of a reservoir on the Little Bear River near Hyrum, Utah, known as the Hyrum Reservoir, and three associated canals known respectively as the Wellsville Canal (including a pumping plant in connection therewith), the Hyrum-Mendon Canal, and the Hyrum Feeder Canal (“collectively Hyrum Project”); and

D. WHEREAS, the BOR has acquired for and in connection with Hyrum Project, certain water and water rights in and from the Little Bear River and its tributaries to furnish supplemental water supplies (“Hyrum Project Water”) to water 6,800 acres of privately owned and cultivated project lands; and

E. WHEREAS, in 1933 SCWUA entered into a contract (contract ILR-745, as amended) with the BOR for the construction, repayment, and operation of the Hyrum Project and to distribute and furnish to its members, through the issuance of stock in SCWUA, Hyrum Project Water pursuant to the Reclamation Act of 1902 (Act of Congress of June 17, 1902, 32 Stat. 388 and amendatory acts); and

F. WHEREAS, HIC and WMCD represent two of three member organizations of SCWUA and have entered both Mortgage Agreements securing SCWUA’s debts for the Hyrum

Project and Subscription Agreements entitling HIC to 3,300 Shares in SCWUA and WMCD to 6,125 Shares in SCWUA; and

G. WHEREAS, 1 share in SCWUA represents 1 acre-foot of water and bestows the subscriber certain storage, distribution, and use rights to the Hyrum Project and Hyrum Project Water; and

H. WHEREAS, as of the late 1980s, SCWUA, through assessments levied on and paid by its member organizations, has repaid the original construction obligation due to the BOR for the Hyrum Project, thereby releasing SCWUA's members from compliance with the pricing and acreage limitations of the Reclamation Reform Act of 1982 as amended; and

I. WHEREAS, SCWUA continues to be bound by the terms and conditions of Contract No. ILR-745, as amended and supplemented, with BOR for the maintenance and operations of the Hyrum Project and distribution of Hyrum Project Water to its member organizations; and

J. WHEREAS, the "water year" for the Hyrum Project starts on April 1 of each year and concludes on October 31 of each year and Hyrum Project Water stored under SCWUA shares is not generally carried over from year to year, such that water in excess of SCWUA's storage contract can be "spilled" prior to the start of the water year as part of flood control operations; and

K. WHEREAS, at times, HIC Shareholders do not use all of the Hyrum Project Water represented by HIC's SCWUA shares and that water remains stored in Hyrum Reservoir and, depending on conditions, may go unused during a given water year and be "spilled" out of Hyrum Reservoir as part of spring flood control operations; and

L. WHEREAS, HIC is interested in expanding opportunities to preserve the full use of its SCWUA shares, maximizing the beneficial use of BOR's water rights and the State of Utah's water resources, and creating an additional revenue stream to support HIC's operation and mission; and

M. WHEREAS, at times water users within WMCD's boundary desire access to additional storage water in Hyrum Reservoir in the later part of the growing season to supplement their SCWUA shares; and

N. WHEREAS, the annual per-acre volume of SCWUA shares is less than the Utah State Engineer's duty value of 3 acre-feet per acre, allowing for additional water to be applied on lands within WMCD's boundary, up to the State's annual duty value for irrigation; and

O. WHEREAS, the Parties have had preliminary discussions exploring a mutually beneficial arrangement to meet WMCD's needs by leasing a portion of HIC's Hyrum Project represented by HIC's unused and stored SCWUA shares; and

P. WHEREAS, it is the intent of the Parties to distribute any leased water through the existing Hyrum Project infrastructure, use leased water within WMCD's existing service boundary,

and to use leased water for irrigation uses as authorized under the Hyrum Project water rights; and

Q. WHEREAS, this Agreement is intended to be a sub-contract between members of SCWUA organizing internal water management and use of SCWUA shares between HIC and WMCD and is not intended to implicate any agreements between SCWUA and the BOR; and

R. WHEREAS, the Parties desire to set forth their agreements on establishing a leasing arrangement for unused HIC SCWUA shares stored in Hyrum Reservoir.

AGREEMENT

Now, therefore, incorporating the foregoing recitals herein, the Parties agree to the following terms and conditions to establish a mutually beneficial leasing arrangement.

1. Definition of Water Leasing Structures

- a. Company Lease: A water lease provided by HIC to WMCD utilizing surplus water supplies in the Hyrum Project held by HIC but not assigned for allocation to HIC shareholders for the irrigation season.
- b. Shareholder Lease: A water lease provided by HIC to WMCD utilizing HIC shareholder water allocations that are dedicated by HIC shareholders for marketing purposes.

2. Notice of Available Water:

- a. Record Keeping: Prior to the Notice Date defined below, HIC is responsible for monitoring and maintaining verifiable records documenting the following:
 - i. The annual storage volume that will be allocated to HIC shareholders
 - ii. The annual storage volume that will not be allocated to HIC shareholders and may be available for a Company Lease.
 - iii. The storage volume of HIC shareholder allocations that have been dedicated by HIC shareholders for marketing purposes under a Shareholder Lease.
- b. Determination of Available Lease Water: By July 1 of each year, HIC will hold a Board meeting to determine the volume of water available for marketing purposes as both Company Lease and Shareholder Lease ("Available Water"). HIC is not obligated to commit any Available Water for lease to WMCD and the amount of Available Water is solely left to the discretion of HIC.
- c. Notice Date: By July 15 of each year, HIC will provide WMCD written notice of the amount, in acre-feet, of Available Water it is willing to lease to WMCD.
- d. Water Availability: Once HIC has notified WMCD of the amount of Available Water, that water is not available for use by HIC during the water year. If the full volume of Available Water is not leased to WMCD by the Lease By Date, discussed below, any unleased water shall be returned

to HIC control and can be subsequently used by HIC during the water year.

3. Annual Lease Contracts:

a. Annual Lease Contracts: Lease of Hyrum Project Water under HIC SCWUA shares will occur through and be documented with an Annual Lease Contract in a form substantially similar to Exhibit A to this Agreement (“Annual Lease Contract”). The Annual Lease Contract is a contract between HIC and WMCD and is intended to represent the lease terms between the two parties. The Annual Lease Contract shall specify the volumes of Company Lease and Shareholder Lease water. The allocation of leased water to individual WMCD users is an internal WMCD decision to be determined outside the terms of the Annual Lease Contract.

b. Proposed Annual Lease Contract: If HIC notifies WMCD that there is Available Water for lease by July 15 of each year, WMCD will provide to HIC a proposed Annual Lease Contract establishing at a minimum the volume (“Annual Lease Volume”), price, and delivery terms for lease. The terms of the proposed Annual Lease Contract may be adjusted and negotiated by the Parties up to and including the Lease By Date.

c. Lease By Date and Final Annual Lease Contract: By July 31 of each year (“Lease By Date”), the Parties shall sign and execute a Final Annual Lease Contract. Unless otherwise agreed to in writing, if a Final Annual Lease Contract is not signed by the Lease By Date, all lease negotiations conclude for the year and the Available Water returns to the exclusive control of HIC for use at HIC’s discretion.

d. Alternate Contracts for Leasing: The Parties may enter into alternative Annual Lease Contracts that differ from Exhibit A. The alternative Annual Lease Contracts shall comply with accounting and reporting requirements stated herein.

4. Annual Water Use Accounting:

a. Water Use Accounting: Prior to the Lease By Date for the first Annual Lease Contract contemplated under this Agreement, the Parties shall develop an annual water use accounting procedure that tabulates the following in annual acre-foot volume units:

- i. Volume of water allocated to HIC Shareholders:
 1. Volume of water delivered to HIC Shareholders
 2. Volume of water marketed as Shareholder Lease to WMCD
- ii. Volume of water marketed as Company Lease to WMCD.
- iii. Volume of water stored as storage carryover or lost as evaporation.
- iv. The annual accounting shall verify that the sum of 3.a.i through iii does not exceed HIC’s annual storage allocation in Hyrum Reservoir.

b. Water Commissioner Reporting: The Parties shall review the Water Commissioner annual water use accounting data to verify records described in 3.a at the end of the water year.

c. HIC Internal Accounting: To ensure accounting of Shareholder allocations, HIC shall develop an internal annual accounting procedure that tabulates the following in annual acre-foot volume units:

- i. Volume of water allocated to each HIC shareholder
- ii. Volume of water delivered to each HIC shareholder
- iii. Volume of water dedicated by each HIC Shareholder for marketing purposes as a Shareholder Lease
- iv. The annual accounting shall verify that the sum of 3.c.ii and iii is not greater than the volume of 3.c.i.

5. Water Delivery Schedule and Distribution:

a. Point of Delivery: Unless the Parties agree by mutual written agreement otherwise, the point of delivery and measurement for the Annual Lease Volume shall be a measurement station recording outflows from Hyrum Reservoir. The Parties shall ensure the measurement station is installed, operational, and sufficient to record the flow rate of any leased water. The measurement station shall be approved for use by the parties and the Water Commissioner.

d. Proposed Delivery Schedule: At least 10 days prior to the first delivery request anticipated under the Annual Lease Contract, WMCD will provide HIC with a Proposed Delivery Schedule for releasing the Annual Lease Volume from Hyrum Reservoir and delivering the leased water to WMCD.

e. Final Delivery Schedule: By the date of the first delivery request, the Parties shall cooperatively develop a Final Delivery Schedule. The Final Delivery Schedule will provide a schedule of storage water supply releases in units of cubic feet per second in satisfaction of the Annual Lease Contracts. The Parties shall provide the Water Commissioner with the Final Delivery Schedule upon its completion.

f. Delivery Schedule Modifications: HIC shall respond to any written requested modifications to the Final Delivery Schedule in a timely manner.

g. Coordination: HIC shall coordinate with SCWUA to fulfill WMCD's desired delivery schedule, subject to regulatory limits and capacity constraints.

h. Distribution: Once released from Hyrum Reservoir, WMCD is responsible for coordinating distribution of the leased water to water users within its boundaries pursuant to WMCD internal arrangements and policies for leased water and to use leased water for irrigation uses, as authorized under the Hyrum Project water rights. WMCD, and the other parties to the extent needed, agree to cooperate with the Water Commissioner regarding the monitoring, reporting, and shepherding of leased water through the Hyrum Project to water users within WMCD's boundary.

6. Term: The term of this Agreement shall be from Effective Date through December 31, 2030. The delivery of any and all leased water hereunder shall occur prior to December 31, 2030.

7. Annual Reporting: The Parties agree to cooperate in the development of an annual water leasing report which provides a summary of the annual water lease volumes described in 3.a. above. The annual report shall be submitted to Utah Board of Water Resources by December 31 of each year as a courtesy document to track water marketing activities in the State of Utah.

8. Operating Costs:

a. No Additional Cost Obligations: The Parties have not agreed to any cost obligations associated with this Agreement outside the agreed to price for leased water.

b. Costs to Point of Delivery: HIC shall be responsible for all costs associated with providing leased water to and including the Point of Delivery according to the Final Delivery Schedule. The costs incurred by HIC for providing lease water to and through the Point of Delivery are expected to be recovered through the negotiated lease price.

c. Costs to Distribute Leased Water: WMCD shall be responsible for all costs associated with the lease water downstream of the Point of Delivery and to distribute leased water to water users within its boundaries.

9. Termination: The Parties may terminate this Agreement with or without cause upon thirty (30) days written notice to the other Parties, and termination will be effective thirty (30) days after receipt of such termination notice. Upon such termination, the Parties will immediately cease all water lease actions and all Annual Water Lease Contracts will be immediately terminated. WMCD will provide compensation as defined under the Annual Water Lease contracts for the volume of water received up to the date of termination. After termination, the Parties shall have no further rights or obligations with respect to one another by reason of this Agreement.

10. No Assignment: The rights and obligations of the Parties may not be assigned or transferred without the prior written approval of each Party hereto. Any attempt to provide for assignment or transfer without that prior written approval shall be void and of no legal effect.

11. Approvals: The Parties recognize that the delivery of water under this Agreement may be subject to other approvals by various agencies. The Parties agree to cooperate to secure such any additional approvals necessary to implement this Agreement.

12. Force Majeure: All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, drought, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. Upon cessation of the force majeure condition, the obligation shall remain enforceable. In no event shall any liability accrue against a party, its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. When a party's performance is prevented by a cause identified herein, the

affected party shall provide written notice to the other parties as soon as reasonably practical of the force majeure condition. Such notice shall identify the cause of the prevention of performance and the estimated length that such prevention of performance will likely remain in place. Promptly after the prevention of performance is removed or ceases, the affected party shall provide written notice to the other parties that states that the prevention of performance has been removed or ceased and performance of the Agreement has been renewed.

13. Notices: All notices and other communications under this Agreement shall be in writing. Notices shall be deemed as duly received on the date of service, if served personally on the party to whom notice is to be given. Notices shall also be deemed as duly received five (5) days from the date said notice is mailed to the party to whom notice is to be given, either by first class mail, registered or certified, postage prepaid or by express delivery with handling prepaid, and properly addressed as stated below. Email notification is deemed an acceptable means of notification.

If to the Hyrum Irrigation Company:

Name, Title
Address
Address
Phone
Email

If to the Wellsville-Mendon Conservation District:

Name, Title
Address
Address
Phone
Email

If to the South Cache Water Users Association:

Name, Title
Address
Adress
Phone
Email

14. Conflict Resolution: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah. In the event of any dispute, claim, question, or disagreement arising from or relating to the Agreement or the breach thereof, the Parties agree as follows:

- (1) The Parties agree to initially submit such dispute to non-binding mediation in an effort to resolve the dispute.
- (2) In the event that formal legal proceedings are commenced in connection with this Agreement, the Parties agree that the local District Court shall be the sole, proper and exclusive forum and venue for such proceedings.

(3) In any action concerning the terms or enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, including any costs and attorneys' fees incurred in appellate proceedings.

15. Binding Effect: All of the covenants, conditions, and provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

16. Entire Agreement: This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings or oral or written agreements between the Parties respecting the within subject matter.

17. Severability: If any provision of this Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, but such other provisions shall continue in full force and effect.


18. No Third-Party Beneficiary: This Agreement is exclusively for the benefit of and governs only the Parties hereto. The only Parties entitled to enforce the terms of this Agreement are listed herein as the Parties. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

19. Indemnification: The Parties each indemnify the officers, subsidiaries, agents, and employees of the other parties to this agreement (the "Indemnitees") and shall hold the Indemnitees harmless for any damages, claims, demands, personal injury, illness, death, property damage, or other loss resulting in any manner in connection with the use of the water leased pursuant to this Agreement.


20. No Waiver: Forbearance in enforcing any right or remedy under this Agreement shall not be deemed a waiver nor shall it be the basis for an inference that any party hereto has waived any provision hereof or that a party has waived any right hereunder.

In witness whereof, the Parties hereto have caused this Agreement to be executed the day and year first above written.

HYRUM IRRIGATION COMPANY

Signed: 
Name: Jared Clawson
Title: President

WELLSVILLE MENDON CONSERVATION DISTRICT

Signed: 
Name: QUINN MORRAY

Title:

SOUTH CACHE WATER USERS' ASSOCIATION

Signed: *Thomas G. Bailey*

Name: *Thomas G. Bailey*

Title: *President*

In Concurrence with and Acknowledged by:

U.S. BUREAU OF RECLAMATION

Signed:

Name: Wayne G. Pullan

Regional Director