

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOU") entered into on this 17th day of December, 2001, by and between the United States Department of the Interior, Bureau of Reclamation, Lower Colorado Region ("BOR"), with its principal place of business located at 400 Railroad Avenue, P.O. Box 61470, Boulder City, Nevada 89006, and the Chemehuevi Indian Tribe ("Tribe") with its principal place of business located at 1990 Palo Verde Drive, P.O. Box 1976, Havasu Lake, California 92353. The BOR and the Tribe will hereinafter be referred to collectively as the "Parties").

RECITALS

The Parties are entering into this MOU in light of the following facts:

1. Since time immemorial, the Tribe has occupied the lands that presently comprise the Chemehuevi Indian Reservation ("Reservation") in the Chemehuevi Valley, California.
2. On February 2, 1907, the Secretary of the Interior issued an order to the general land office directing that the following lands be withdrawn from settlement and entry for the purpose of creating an Indian Reservation for the Tribe: Fractional Townships 4N., R. 25 E., T. 4N., R. 26 E., T. 5N., 25 E., 6 N., 25 E.; the E/2 of 5 N., R. 24 E, and Secs. 25, 26, 35, and 36, T. 6N., R. 24 E, S.B.M.
3. The Secretary of the Interior issued his order creating the Reservation under the authority granted to him by Congress under the Act of March 1, 1907, an "Act Making Appropriation for the Current and Contingent Expenses of the Indian Department, for Fulfilling Treaty Stipulations with Various Indian Tribes, and for Other Purposes, for the Fiscal Year Ending June 13, 1908." Kappler, Charles J. ("Kappler") Indian Affairs Laws and Treaties, Vol. III, p. 266.
4. On July 8, 1940, Congress passed an "Act for the Acquisition of Indian Lands for the Parker Dam and Reservoir Project, and for Other Purposes." Kappler, Vol. VI, pp. 88-89 (54 Stat. 744). Pursuant to the Act, the United States acquired all the right, title, and interest to certain tribal and allotted lands within the boundaries of the Chemehuevi Reservation in California, subject to the Secretary of the Interior designating that such lands were necessary for the construction of the Parker Dam project and the payment of just compensation to the Tribe for the lands taken for the project.
5. On November 25, 1941, pursuant to the Act of July 8, 1940, Secretary of the Interior Harold Ickes designated the lands within the Chemehuevi Indian Reservation that were necessary for the construction of Parker Dam and the creation of Lake Havasu. Pursuant to the designation, the United States acquired 7,776.12 acres of Reservation lands up to the 465 contour line of the Chemehuevi Valley.
6. After the United States acquired title to those portions of the Reservation designated

by the Secretary, the United States completed the construction of Parker Dam, and flooded the Chemehuevi Valley, thereby creating Lake Havasu. The Lake level, however, only rose to approximately the 450 contour line, leaving a strip of land ("Strip") owned by the United States of America, lying between the high water mark of Lake Havasu (i.e., 450 contour line) and the 465 contour line.

7. This Strip of land located within the boundaries of the Reservation, was administered by the Bureau of Land Management, the Bureau of Reclamation and the United States Fish and Wildlife Service until November 1, 1974.

8. On November 1, 1974, the Secretary of the Interior, Roger B. Morton, issued an order ("Restoration Order") restoring those portions of the Strip lying outside of the Havasu National Wildlife Refuge to the beneficial ownership of the Tribe subject to certain restrictions. One of these restrictions prohibited the Tribe from constructing "any buildings for human habitation . . . within three hundred (300) feet lakeward of Lake Havasu" as measured along a line horizontal to a perpendicular rising from the elevation level of four hundred fifty (450) foot M.S.L. ("300 Foot Setback.")

9. By Amendment No. 1 to the Secretarial Order of November 1, 1974, the Secretary ordered the November 1 Order to be modified further by inserting the following four sub-paragraphs after paragraph (b). Sub-paragraph (1) recited that the restriction on construction or installation of buildings for human habitation within 300 feet of Lake Havasu "shall not apply to lands restored to the Chemehuevi Tribe by [the Order of November 1, 1974] which are located between 34 27'40" and 34 28'10" of north latitude. Sub-paragraph (2) provided that "[b]efore the Superintendent of the Colorado Agency of the Bureau of Indian Affairs approves any lease for the development of the lands described in sub-paragraph (1), and prior to any construction or development of the land by the Chemehuevi Tribe, the Regional Director of the Lower Colorado River Region of the United States Bureau of Reclamation ("USBR") must approve of any such lease or development. Approval shall not be withheld unless the proposed lease or development interferes with the integrity of the Parker Dam Project including, but not limited to, the shoreline maintenance and stabilization program for Lake Havasu." Sub-paragraph (3) provided that "[a]mendments to [the Order of November 1, 1974] may be made by the Assistant Secretary-Indian Affairs with the concurrence of the Assistant Secretary-Water and Science." Sub-paragraph (4) provided that "[t]he United States and its agents do not warrant or suggest that the land subject to this amendment is capable of development or suitable for human habitation. Any development of the land by the Chemehuevi Indian Tribe, its lessees or assigns, is subject to the risks attendant to the reservoir operation of Lake Havasu. Thus, the United States assumes no responsibility or liability for damages to property, loss of income, or personal injury that may take place or occur on the land as a result of the operation of the reservoir and fluctuation of water elevation."

10. At the time that the Secretary issued the 1974 Restoration Order, the Tribe had only recently organized its government and had not yet comprehensively zoned the Reservation or adopted uniform standards for the development of the Reservation. The Tribe has now adopted comprehensive Zoning and Uniform Building Code Ordinances, copies of which are hereby

incorporated by this reference and attached hereto as Exhibits A and B respectively.

11. At present, the Reservation consists of approximately 36 miles of shoreline along the Colorado River and Lake Havasu. The prime area for development on the Reservation is lake-front primarily within the Strip.

12. In order to promote Tribal self-government and the economic development of the Reservation, the Parties desire to eliminate the 300 Foot Setback, provided that the interests of the USBR are protected to ensure that the USBR can: (1) exercise the rights reserved to it in the Restoration Order; (2) properly maintain and operate Parker Dam as required by law; and (3) limit its liability caused by the flooding of improvements within the 300 Foot Setback.

13. The Regional Director, Lower Colorado Region, of the Bureau of Reclamation is delegated the authority for the management and administration of USBR programs, assets, and responsibilities, including but not limited to those contained in the November 1, 1974, Order, as amended, and specifically including the management and disposition of lands and interests in lands located within the Lower Colorado Region of the USBR.

14. Based upon the foregoing facts and in consideration of the mutual promises contained herein, the Parties hereby mutually agree as follows:

AGREEMENT

1. The Regional Director, Lower Colorado Region, Bureau of Reclamation, by authority delegated to him, may enter into this Agreement pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and the Acts amendatory and supplementary thereto, all of which Acts are commonly known and referred to as the "Federal Reclamation Laws," and particularly pursuant to the Act of Congress of August 4, 1939 (53 Stat. 1187), as amended by the Act of Congress of August 18, 1950 (64 Stat. 463), and the Act of Congress of August 30, 1935 (1028 Stat. 1035). The Chemehuevi Tribal Council on behalf of the Chemehuevi Indian Tribe has the authority to enter into this MOU, pursuant to the authority delegated to the Tribal Council by Article VI, Section 2, Subsections (a) and (f) which grants to the Tribal Council the power to negotiate agreements with Federal agencies and to approve any acquisition of property or interests therein for the benefit of the Tribe.

2. This MOU provides for the appropriate and cooperative management, by the Chemehuevi Indian Tribe, of those certain USBR lands and interests therein reserved by the November 1, 1974 Order. The November 1, 1974 Order provides for a shoreline development setback of 300 feet, and for review and approval by the USBR of certain development therein by the Chemehuevi Indian Tribe; this constitutes a reserved land interest administered and managed by the USBR. The USBR agrees to waive specific management, review, and approvals as provided by the November 1, 1974 Order, and defer to the Tribe certain management oversight of this land interest, provided all activities and development by the Tribe within the present 300 Foot Setback are or shall be made in accordance with the following conditions:

The United States retains the right to flood said lands in connection with its operations under the Act of December 21, 1928 (45 Stat. 1057), the Act of August 30, 1935 (49 Stat. 28), and the Act of June 28, 1946 (60 Stat. 338), as amended and the Tribe will not construct or install or permit the construction or installation of any building for human habitation on any lands included in this corrected designation that are located within five (5) feet landward of Lake Havasu as measured along a line horizontal to a perpendicular rising from the elevation level of four hundred fifty (450) foot m.S.L. or except as the United States and the Tribe shall, from time to time, mutually agree; provided, however, that any such agreement shall be in writing and executed by the duly authorized representatives of the Tribe and the United States and provided further that in the event that any such agreement is terminated that the restriction set forth herein shall apply; provided further, however, that nothing herein shall be construed as imposing any restriction not now in existence with respect to any land not included in this corrected designation, which is contiguous to the land so included and which is within the above-described restriction on development for human habitation.”

“The Chemehuevi Indian Tribe, its lessees, assigns, or successors in interest hereby agree to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage whatsoever in nature resulting from the fluctuation of the water surface elevation of Lake Havasu, whether as a result of fluctuating water levels, wave action, seepage, flooding, or bank sloughing. The Tribe, its lessees, assigns, or successors in interest further hereby agree to indemnify and hold harmless the United States, its employees, agents, and assigns from any liability on account of personal injury, real or personal property loss or damage, or claims for personal injury or death arising out of the Tribe, its lessees, assigns, or successors in interest for any activities on these lands.”

3. Term and Termination of MOU. This MOU shall remain in effect until terminated by:

(a) mutual agreement of the Parties; (b) by either party upon thirty 30 days notice that a party materially breached a term or condition of this MOU, provided however, that the breach has not been cured within the thirty (30) day notice period and (c) by either party without cause upon the giving of one (1) year's written notice.

4. Waiver or Modification. No waiver, alteration, or modification of any of the provisions of this MOU shall be binding unless in writing and signed by a duly authorized representative of both parties to this MOU.

5. Governing Law. This MOU shall be governed by the laws of the United States, the Tribe and the State of California, in that order.

6. Previous Agreement. Any and all existing statement or agreements, whether oral or written, or renewals thereof, between the parties thereto, covering the same subject matter to the extent such statements or agreements are inconsistent with this Agreement, are hereby canceled and superseded by this MOU and such prior agreement to the extent of such inconsistency shall have no further force or effect.

7. Paragraph Headings. The paragraph headings contained herein are for convenience and reference only and are not intended to define or limit the scope of this MOU.

8. Notice. Whenever notice to a party is required by this MOU, it shall be deemed given when deposited with proper address and postage in the U.S. Mail or when personally delivered at the address set forth in the first paragraph of this MOU.

9. Duplicate Originals. This MOU may be executed in one or more duplicate originals bearing the original, signature of both parties and when so executed any such duplicate original shall be admissible as proof of the existence and terms of the MOU between the parties.

IN WITNESS WHEREOF, the BOR and the Tribe have executed this MOU in Chemehuevi Valley, California, on the day first written above.

CHEMEHUEVI INDIAN TRIBE
By: Edward D. Smith
Edward D. "Tito" Smith, Chairman

BUREAU OF RECLAMATION
By: Robert W. Johnson
ACTING FOR
Robert W. Johnson, Regional Director

ATTESTED:
Jaqueline Gordon
Jaqueline Gordon, Secretary-Treasurer