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COOPERATIVE AGREEMENT
BETWEEN
UTAH DIVISION OF WILDLIFE RESOURCES,
U.S. FOREST SERVICE, MANTI-LA SAL NATIONAL FOREST
AND
GENWALL COAL COMPANY

No. _____

THIS COOPERATIVE AGREEMENT, made and entered into between Utah Division of Wildlife Resources, hereinafter referred to as UDWR, the Manti-La Sal National Forest, U.S. Department of Agriculture, hereinafter referred to as Forest Service, and Genwall Coal Company, hereinafter referred to as Genwall;

WITNESSETH:

WHEREAS, Genwall has a need to expand existing mine facilities located in Crandall Canyon in Emery County, Utah, and in order to expand these facilities a 1350 foot section of Crandall Creek must be placed in a culvert;

WHEREAS, a small population of cutthroat trout, which are potentially Colorado River cutthroat, a Utah State, and Forest Service sensitive species, live year-long in this 1350 foot section of Crandall Creek;

WHEREAS, UDWR has management responsibility to manage, protect, and propagate all species of wildlife in the state, including Colorado River cutthroat trout, and the Forest Service is obligated to not authorize any federal action which could lead to the listing of any sensitive species;

WHEREAS, Genwall, UDWR and the Forest Service recognize that construction of the culvert is necessary for recovery of the coal resource, yet will render the majority of year-round habitat used by this sub-population unusable for the life of the project; and

WHEREAS, Genwall, UDWR and the Forest Service would like to work cooperatively to mitigate the loss of 1350 feet of cutthroat spawning and year-long habitat and for the recovery of Colorado River cutthroat trout on the Manti-La Sal National Forest.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

- A. UDWR Shall:
 1. Capture and move all fish from Crandall Creek to a secure location, such as Wilberg Pond in Emery County, before construction. Adult fish will be tested for genetic purity and individually marked;
 2. Identify a suitable, permanent location on the Manti-La Sal National Forest for Colorado River cutthroat trout. This will be accomplished by surveying fish populations in other streams in the Huntington Creek drainage and conducting habitat suitability analysis. In consultation with the Forest Service, a site will be selected. At that point the selected

drainage will be prepared for introduction of Colorado River cutthroat trout. This may include: construction of a barrier to prevent other fish species from swimming into the drainage; multiple rotenone treatments to remove existing fish populations; and habitat enhancement such as building fences to protect stream bank habitat, redistribution of livestock, or planting of riparian plants;

3. Release Colorado River cutthroat trout, either genetically pure adults and/or young from the relocated population, or from another source, into the selected drainage once site preparation is complete. Adult and/or young of cutthroat trout removed from Crandall Creek will be released above the Forest boundary once habitat enhancement work is complete;
4. Contact State and Institutional Trust Lands Administration to discuss analysis of their lands in the upper Crandall Creek drainage to determine cause of sedimentation problem in the stream. Conduct vegetation transects if requested. Discuss appropriate actions to alleviate problems;
5. Provide a fisheries biologist and other personnel necessary to assist with monitoring of livestock management improvements implemented to enhance stream habitat as mitigation for the loss of 1350 feet of riparian, cutthroat spawning and year-long habitat; and,
6. Maintain and operate a cooperative account for this project.

B. The Forest Service Shall:

1. Assist in selection of a suitable, permanent site for relocation of Colorado River cutthroat trout on the Manti-La Sal National Forest, and conduct any and all NEPA analysis required for the release and site preparation. Cooperate with UDWR to implement site preparation projects, such as construction of a fish passage barrier, redistribution of livestock, fencing of stream bank habitat, or planting riparian plants;
2. Conduct NEPA analysis and enhance pool and resting habitat in Crandall Creek above the Forest boundary. Sufficient habitat will be created to allow existence of a small cutthroat population. Either adults removed from the drainage or their offspring, or Colorado River cutthroat from another source will be released into the drainage by UDWR after habitat enhancement is complete;
3. Conduct vegetation transects and other analysis to determine cause of high sediment load in upper Crandall Creek on Forest Service lands;
4. As mitigation for the loss of the stream and spawning habitat, and the effects of the mine on water quality, the Forest Service shall implement stream and rangeland improvements in Upper Scad Valley. A sheep corral located in a wet meadow along the stream will be removed. The herders camp near the corral will be moved and ½ mile of road obliterated and reclaimed, thus eliminating a ford in the stream. Two or three new corrals will be built in upland areas to enhance livestock distribution and reduce impact

on Scad Valley Creek, enhancing about 2 miles of cutthroat spawning habitat. About ½ miles on several roads will be graveled into the new corrals. A toilet will be constructed in Huntington Canyon to enhance water quality in Huntington Creek. A monitoring plan will be implemented in cooperation with UDWR on Upper Scad Valley Creek to assess the effectiveness of the above rangeland improvements. Monitoring will be initiated during the first field season following relocation of the corral and camp. An interagency/interdisciplinary team composed of a Forest Service fisheries biologist and range conservationist, and a UDWR fisheries biologist shall locate permanent monument photopoints throughout Upper Scad Valley. Utilization cages shall also be placed within the riparian area. A small grazing enclosure will be located and constructed to provide a subsequent basis for comparisons between grazed and ungrazed vegetative communities. Photographs will be taken at the designated photopoints three times during each grazing season: once immediately before the sheep enter the area; once after they leave; and once at the end of the grazing season. Utilization cages will be checked when the monitoring team visits the photopoints. The team will also be responsible for conducting aquatic assessments using Binn's survey methodologies at mutually-agreeable locations within the drainage.

Five years following the initiation of this monitoring, this team will evaluate the effectiveness of the implemented mitigation projects. If sufficient recovery of stream habitat has not occurred, appropriate changes will be initiated. Information from this monitoring will be used in subsequent Allotment Management Plan analysis and decision making.

C. Genwall Shall:

1. Notify UDWR at least 2 weeks before initiating construction of the culvert to allow removal of the fish;
2. Make payment of \$20,000 to UDWR for relocation of the fish, surveying for other Colorado cutthroat trout populations, and genetic testing. Make payment to the Forest Service of \$80,000 for NEPA analysis and habitat enhancement of Upper Crandall Creek, and implementation of rangeland improvement projects described in section B.4. Make payment of \$115,000 to UDWR for deposit into an account requiring signatures from both UDWR and the Forest Service for any payment. These funds shall be used for: NEPA analysis of the relocation project; site preparation of the relocation site, including surveying existing fish population, genetic testing, construction of a barrier to fish passage, multiple rotenone treatments, habitat enhancement, or other actions deemed necessary; release of Colorado cutthroat trout into the drainage; and vegetation transects and other analysis in the headwaters of Crandall Creek.

Payment of these funds will satisfy Genwall's mitigation requirement for the culvert project.

D. It is Mutually Agreed and Understood By and Between the Said Parties That:

1. All habitat improvements constructed with these funds in whole or in part on Forest

Service lands shall be and remain the property of the United States of America.

2. Nothing herein shall be construed as obligating the Forest Service or UDWR to expend or as involving the United States, or the State of Utah, on any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this project.
3. No member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend in this agreement if made with corporation for its general benefit.
4. This agreement shall be effective upon signature of the affected parties.
5. This agreement may be terminated upon ninety (90) days written notice: Provided that any funds on deposit will be available for expenses incident to closing out the work beyond the period of written notice. Unless terminated by written notice, this agreement will remain in force for seven years. This agreement may be amended at any time by mutual consent.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last date written below.

Date

Director
Utah Division of Wildlife Resources

Date

Forest Supervisor
Manti-La Sal National Forest

Date

Mine Manager
Genwall Ccal Company

UTAH DIVISION OF WILDLIFE RESOURCES

Budget Officer

Approved:

UTAH STATE DIVISION OF FINANCE

COLLECTION AGREEMENT
between
UTAH DIVISION OF WILDLIFE RESOURCES,
U.S. FOREST SERVICE, MANTI-LA SAL NATIONAL FOREST
AND
GENWALL COAL COMPANY

AGREEMENT NO. 10-CC-97-016
MODIFICATION #1

Item B.4 clause beginning with "As mitigation for the loss of the stream and spawning habitat", shall be amended to change a toilet facility to two toilet facilities. The clause will read as follows:

"As mitigation for the loss of the stream and spawning habitat, and the effects of the mine on water quality, the Forest Service shall implement stream and rangeland improvements in the Upper Scad Valley. A sheep corral located in a wet meadow along the stream will be removed. The herders' camp near the corral will be moved and approximately 1/2 mile of road obliterated and reclaimed, thus eliminating a ford in the stream. Two or three new corrals will be built in upland areas to enhance livestock distribution and reduce impact on Scad Valley Creek, enhancing about 2 miles of cutthroat spawning habitat. About 1/2 mile of road will be graveled to new or relocated facilities. Two toilet facilities will be constructed in Huntington Canyon, below Electric Lake dam, for use primarily by area recreationists to enhance water quality in Huntington Creek."

Item B.5 clause beginning with "Issue a Bill for Collection to Genwall for \$85,000.00", shall be amended to read:

"Issue Bills for Collections totalling \$96,000.00 prior to commencement of work for deposits sufficient to cover costs for NEPA analysis and habitat enhancement in Crandall Canyon as described in section B.2 and B.3., and implementation of rangeland and water quality improvement projects described in section B.4."

Item C.1 clause beginning with "Genwall has requested the UDWR" shall be amended to read:

"Genwall has requested the UDWR and Forest Service perform all necessary actions as described in this agreement. Payment totalling \$226,000.00 is a voluntary contribution given by Genwall for mitigations listed in this agreement for the culvert project."

Item C.3 clause beginning with "Make payment of \$25,000.00 to UDWR" shall be amended to add \$11,000.00 to Forest Service for another toilet facility". The clause will read as follows:

"Make payment of \$25,000.00 to the UDWR for work described in sections A.1., A.3., A.4., A.5., and A.7. Make payment to the Forest Service of \$96,000.00 for work described in sections B.2 through B.4. Make payment of \$105,000.00 to UDWR for deposit into an account requiring signatures from both UDWR and the Forest Service for work described in sections A.2. and B.1. with payments/reimbursements to be made by UDWR as described in section A.6.

IN WITNESS WHEREOF, the parties hereto have executed this instrument (Modification #1) as of the last date written below.

John Kimball
Director
Utah Division of Wildlife Resources

12/04/97
Date

Cynthia Jensen
Budget Officer
Utah Division of Wildlife Resources

12/01/97
Date

Janette S. Kaiser
Forest Supervisor
Janette S. Kaiser
Manti-La Sal National Forest

11-19-97
Date

Dave Shaver For
Laine Adlaw
Mine Manager
Dave Shaver
Genwall Coal Company

12/15/97
Date

THE AUTHORITY AND FORMAT OF THIS INSTRUMENT
HAS BEEN REVIEWED AND APPROVED FOR SIGNATURE
Jana M. Moynier 11/3/97
AGREEMENTS COORDINATOR DATE

Item C.3 clause beginning with "Make payment of \$25,000.00 to UDWR" shall be amended to add \$11,000.00 to Forest Service for another toilet facility". The clause will read as follows:

"Make payment of \$25,000.00 to the UDWR for work described in sections A.1., A.3., A.4., A.5., and A.7. Make payment to the Forest Service of \$96,000.00 for work described in sections B.2 through B.4. Make payment of \$105,000.00 to UDWR for deposit into an account requiring signatures from both UDWR and the Forest Service for work described in sections A.2. and B.1. with payments/reimbursements to be made by UDWR as described in section A.6.

IN WITNESS WHEREOF, the parties hereto have executed this instrument (Modification #1) as of the last date written below.

John Kimball
Director
Utah Division of Wildlife Resources

12/04/97
Date

Cynthia Jensen
Budget Officer
Utah Division of Wildlife Resources

12/10/97
Date

Janette S. Kaiser
Forest Supervisor
Janette S. Kaiser
Manti-La Sal National Forest

11-19-97
Date

Mine Manager
Dave Shaver
Genwall Coal Company

Date

THE AUTHORITY AND FORMAT OF THIS INSTRUMENT
HAS BEEN REVIEWED AND APPROVED FOR SIGNATURE
Shirley M. Moynihan 11/3/97
AGREEMENTS COORDINATOR DATE