

**TIMPANOGOS CAVE NATIONAL MONUMENT
WATER RIGHTS SETTLEMENT AGREEMENT**

This Agreement is made and entered into by the United States of America (United States) and the State of Utah (Utah).

RECITALS

A. Utah has initiated a statutory adjudication of water rights entitled, "In the Matter of the General Determination of Rights to the Use of Water, Both Surface and Underground, within the Drainage Area of Utah Lake and the Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete and Juab Counties, Utah," filed as Civil No. 360057298 in the Third Judicial District Court in and for Salt Lake County, Utah. This adjudication is commonly referred to as the Utah Lake and Jordan River Adjudication ("Adjudication") and includes Timpanogos Cave National Monument.

B. The United States was joined as a party to the Adjudication pursuant to the provisions of 43 U.S.C. § 666. The United States filed a "Statement of Water User's Claim," dated May 7, 1987, which among other things claimed "that minimum amount of surface and ground water occurring on and under lands reserved from the public domain which is necessary to fulfill the purposes," including the preservation of "the Timpanogos Cave system and its associated environs; to secure favorable conditions of water flow; and, to provide for administration and visitation to the cave system and its associated environs." The United States also claimed "the right to divert and use 52 AF/annum from surface and ground water sources for picnic areas, visitor centers, concessions and other visitor-use areas; park administration facilities, shop, maintenance and storage facilities, ranger stations, entrance stations, visitor contact stations, employee residences, and attendant facilities; lawns surrounding park buildings and structures and other public-use areas to offset heavy human impact; construction of roads and

trails; revegetation activities, and waste water treatment facilities" and the right "to use non-quantifiable amounts of water for, but not limited to, controlling and suppressing wildfire and structural fires."

C. On or about December 10, 1990, the Utah State Engineer (State Engineer) issued a Proposed Determination for the area including the Timpanogos Cave National Monument (American Fork River Subdivision, Area 55, Book No. 2). Thereafter, on May 1, 1991, the United States filed its "Objection to the Proposed Determination" contesting perceived errors and an omission in listed state appropriative rights, and the omission of federal reserved water rights for the Timpanogos Cave National Monument.

D. To remove causes of present and future controversy over use of water at Timpanogos Cave National Monument, the United States and Utah have conducted negotiations regarding federal reserved and state appropriative water rights claims for the Monument, resulting in this agreement.

AGREEMENT

NOW, THEREFORE, to settle the issues recited above, and to recognize the federal reserved and state appropriative water rights of the United States for Timpanogos Cave National Monument, subject to conditions set forth below, and based on the mutual promises contained herein, the parties agree as follows:

1. Timpanogos Cave National Monument was established from the Wasatch Forest Reserve (Presidential Proclamation No. 3226 [34 Stat. 3225], dated August 16, 1906) by Presidential Proclamation No. 1640 (42 Stat. 2285), dated October 14, 1922, pursuant to the Antiquities Act of June 8, 1906, 34 Stat. 225, 16 U.S.C. § 431. The Proclamation and the National Park Service Organic Act of August 25, 1916, 64 Stat. 535, 16 U.S.C. § 1, establish the purposes for Timpanogos Cave National Monument:

to preserve "a natural cave" that "is of unusual scientific interest and importance...with as much land as may be necessary for the proper protection thereof" (Presidential Proclamation No. 1640) and to conserve "the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. § 1). The lands comprising Timpanogos Cave National Monument are shown in Appendix A and are described in Presidential Proclamation No. 1640.

2. The United States owns the following two types of water rights for Timpanogos Cave National Monument:

- a. A federal reserved water right to all naturally occurring water underlying, originating within or flowing through Timpanogos Cave National Monument, including perennial, intermittent and ephemeral streams, springs, seeps, lakes, ponds, ground water, and other natural sources of water, pertaining or belonging to the reserved lands, that was unappropriated as of the date of reservation of the lands now within the boundaries of the Monument, which water is to remain in a free flowing natural condition. This is a non-consumptive water right with a priority date of October 14, 1922.
- b. State based appropriative rights (identified under their respective water right numbers and priority dates as shown in Appendix B) owned by the United States for use at Timpanogos Cave National Monument. These are consumptive water rights.

The Utah State Engineer shall assign a separate water user claim number in his records for the water right described under 2a above. Claim numbers associated with the rights under 2b have been previously evaluated and assigned, and are as shown in Appendix B.

3. This agreement settles all water rights, of every type and character for Timpanogos Cave National Monument including those based on the federal reserved rights doctrine and Utah appropriation statutes. The federal reserved water rights recognized hereby include all water rights of every nature and description derived from the doctrine of federal reserved water rights from all sources of water, both surface and underground, and include all types and kinds of uses whatsoever, and encompasses all federal reserved water rights claims asserted by or through the United States for Timpanogos Cave National Monument as now constituted. The reserved water rights originate and are defined in federal law. Absent Congressional or Presidential action, the federal reserved water rights for the lands now constituting Timpanogos Cave National Monument shall not be enlarged, expanded or re-quantified.

4. In addition to the federal reserved water rights recognized herein, the United States has state appropriative water rights for Timpanogos Cave National Monument, which Utah hereby acknowledges and recognizes as valid. Appendix B lists the state appropriative water rights held by the United States and describes the present diversion works and water sources used by Timpanogos Cave National Monument pursuant to such rights. The table shows the source of water, priority date, point of diversion, type of use, period of use, and existing diversion rate for each diversion works and water source. The United States may divert a maximum of 0.1072 cfs, resulting in a maximum depletion of twelve (12) acre-feet per annum, from the sources and the points of diversion described in Appendix B to satisfy present and future requirements for the operation, administration, and protection of the Monument.

5. The American Fork River is an identifiable and discrete watercourse that flows through Timpanogos Cave National Monument. The parties recognize minimum instream flows within Timpanogos Cave National Monument, with a priority date of October 14, 1922, for the time periods and flow rates described below, to be

measured at the point where the river crosses the east boundary of the Monument, which is located at a point approximately North 440 feet and West 2,050 feet from the E $\frac{1}{4}$ corner of Section 27, T.4S., R.3E., SLB&M:

a. January 1 - January 31	6 cfs
b. February 1 - February 28	6 cfs
c. March 1 - March 31	6 cfs
d. April 1 - April 30	8 cfs
e. May 1 - May 31	10 cfs
f. June 1 - June 30	12 cfs
g. July 1 - July 31	7 cfs
h. August 1 - August 31	6 cfs
i. September 1 - September 30	6 cfs
j. October 1 - October 31	6 cfs
k. November 1 - November 30	6 cfs
l. December 1 - December 31	6 cfs

6. The United States hereby expressly subordinates its federal reserved water right for all non-consumptive purposes at Timpanogos Cave National Monument to all valid existing perfected water rights and approved applications with priority dates of January 1, 2000 or earlier.

7. Utah shall establish a ground-water protection zone for Timpanogos Cave National Monument as shown in Appendix C, which is attached hereto and made a part of this Agreement, to protect the flow of ground water and the hydrologic features of the Monument. The ground-water protection zone will include those portions of the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 27, within the Monument, and portions of the Uinta National Forest south of the Monument, including the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 27, and those portions of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, Section 34, Township 4 South,

Range 2 East, Salt Lake Base & Meridian. Utah will not approve any water rights applications to develop or use ground water in the protection zone.

8. The United States may seek enforcement of its water rights recognized herein through applicable law in the event the United States believes that specific water right applications in American Fork Canyon approved after January 1, 2000 are causing or may cause adverse impacts to Timpanogos Cave National Monument.

9. The United States agrees to follow procedures described under Utah law in exercising its state appropriative rights described in Appendix B.

10. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful and of no effect, the remaining provisions shall remain in effect and fully binding on the parties and, if necessary, the parties hereto shall resume negotiations to revise any such unlawful provision.

11. Upon a proper showing of necessity, the provisions of this Agreement may be modified only in writing and upon the mutual consent of the parties to this Agreement, which consent shall not be unreasonably withheld.

12. Because Timpanogos Cave National Monument is unique, nothing in this Agreement shall constitute an admission, waiver or precedent for any other federal reserved water right claim.

13. Nothing in this Agreement shall be construed or interpreted to:

- a. In any way affect the water rights of the United States for agencies and interests other than Timpanogos Cave National Monument;
- b. Establish any precedent or standard to be used for the quantification of federal reserved water rights in any other judicial or administrative proceeding;

- c. Limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
- d. Restrict the power of the United States to reserve water in the future, or to acquire additional rights to the use of water under the laws of Utah;
- e. Restrict the power of Utah or the State Engineer to allocate, administer or distribute the waters of the State; or
- f. Settle other federal reserved water right issues of the United States.

14. The federal reserved water rights of the United States, as set forth and quantified herein, shall be protected under State law in the same manner as any water right originating under State law, without losing their character or the attributes of a federal reserved water right as provided under federal law.

15. The provisions of this Agreement and the reserved water rights provided for herein shall be taken into consideration by the State Engineer in acting upon applications, under State law, for new appropriations or change applications located within the protection zone or up-gradient of Timpanogos Cave National Monument and shall be afforded the same consideration in such proceedings as state appropriative rights; however, the United States shall have the primary responsibility to protect its own rights and to file appropriate protests in any proceedings before the State Engineer.

16. The United States and Utah agree that this Agreement will define the United States' water rights for Timpanogos Cave National Monument in the Utah Lake and Jordan River Adjudication. Utah agrees to issue, within a reasonable time, an Addendum to the Proposed Determination for the area including Timpanogos Cave National Monument (American Fork River Subdivision, Area 55, Book No. 2). The parties hereto will then cooperate to obtain an interlocutory decree on the

Addendum. If the parties hereto are unsuccessful in securing the interlocutory decree, this Agreement shall nevertheless remain binding as between the parties until a final decree is issued incorporating the provisions of this agreement.

17. Utah water right records are available for public inspection. The State Engineer agrees to provide assistance to the United States in obtaining information regarding new water right applications near Timpanogos Cave National Monument.

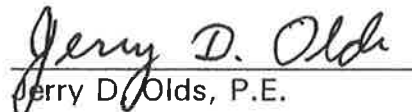
18. This Agreement is executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 22nd day of March, 2004.

For Utah:



Robert L. Morgan, P.E.
Executive Director, Department
of Natural Resources

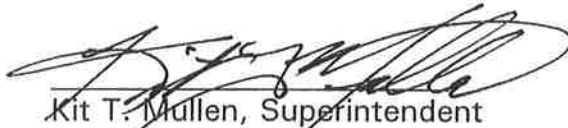


Jerry D. Olds, P.E.
State Engineer



Norman Johnson
Assistant Attorney General
Chief, Natural Resources Division

For the United States:



Kit T. Mullen, Superintendent
Timpanogos Cave National Monument

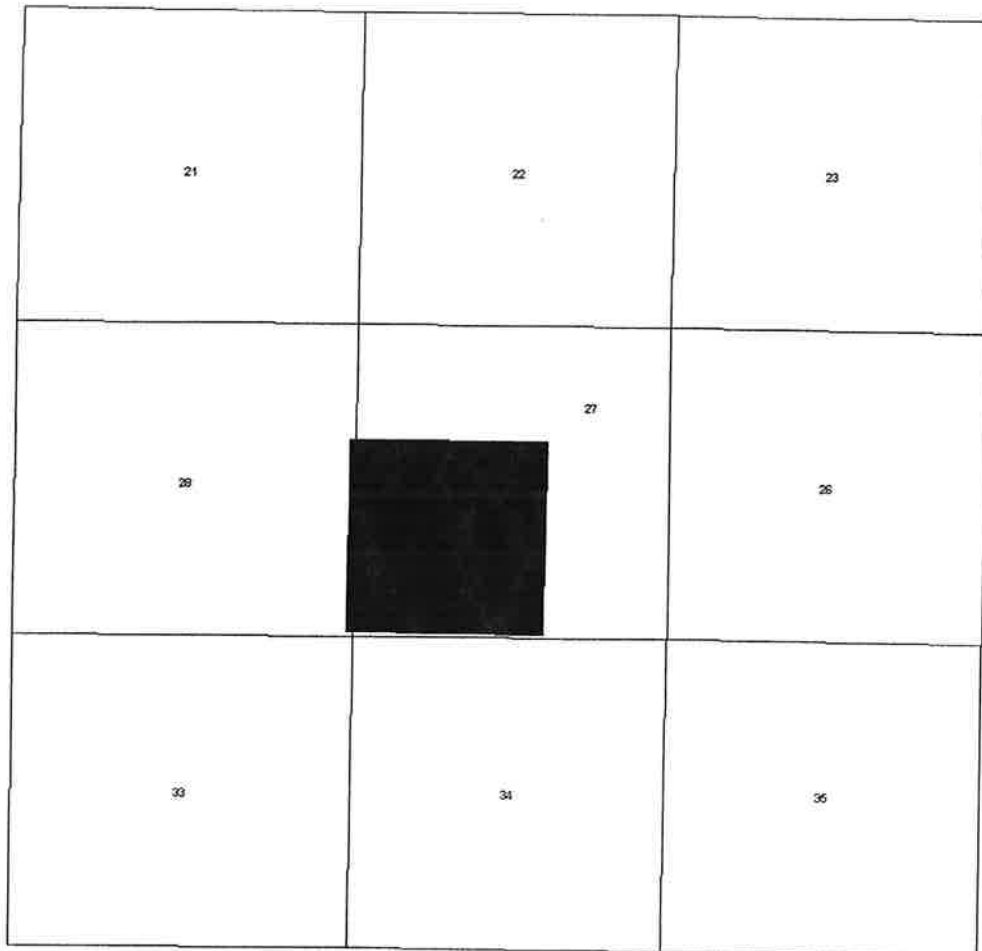


Lawrence J. Jensen
Acting Regional Solicitor
Intermountain Region



Andrew F. Walch
Department of Justice

Appendix A
Timpanogos Cave National Monument
Date of Land Reservation



(Township 4 South, Range 2 East, Salt Lake B & M)

Legend

 Proclamation of October 14, 1922
(Transferred to the NPS from the U.S. Forest Service on August 10, 1933.)



2000 0 2000 4000 Feet

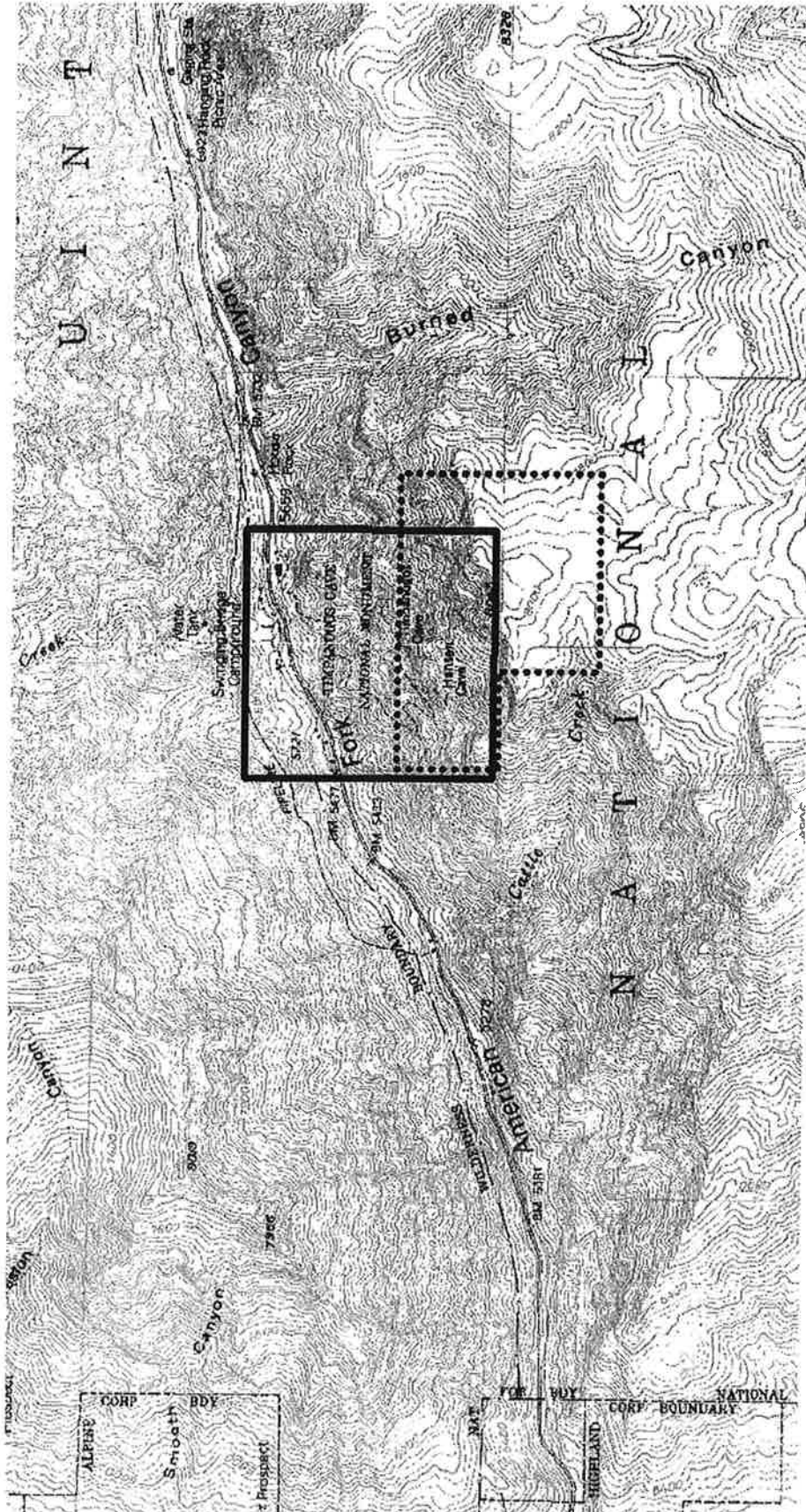


**State Appropriative Water Rights and
Diversion Works at Timpanogos Cave National Monument**

WUC No.	Right Evidenced By	Priority Date	Diversion Works	Water Source	Point of Diversion (Salt Lake Base & Meridian)	Place of Use	Type of Use	Period of Use	Volume (AF) And Diversion Rate (Acre-ft)
55-95	CERT a-393 in the name of the USA National Park Service	02/24/1930	Intake box, pipeline, gravity flow to existing reservoir	Swinging Bridge Canyon Spring	S. 89° 25' W 478.58 ft. from North Witness ¼ Cor. Sec. 27, T4S R2E, thence traversing W 150 ft., N 500 ft., E 300 ft., S 500 ft., W 150 ft., to beginning. or N 4839, E 2820 SW corner Sec. 27, T4S, R2E	Within the Exterior Boundaries of the Monument	Domestic, Administrative and Visitor Center, Campground and Related Monument Purposes	01/01 to 12/31	45.0 AF 0.0622 cfs
55-7074	CERT a1106 in the name of Lehi Irrigation Company	00/00 /1852	Intake box, pipeline, gravity flow to existing reservoir	Swinging Bridge Canyon Spring	N 4839, E 2820 SW corner Sec. 27, T4S, R2E	Within the Exterior Boundaries of the Monument	Domestic, Administrative and Visitor Center, Campground and Related Monument Purposes	01/01 to 12/31	3.5 AF 0.015 cfs
55-7075	CERT a1105 in the name of American Fork Irrigation Company	00/00 / 1859	Intake box, pipeline, gravity flow to existing reservoir	Swinging Bridge Canyon Spring	N 4839, E 2820 SW corner Sec. 27, T4S, R2E	Within the Exterior Boundaries of the Monument	Domestic, Administrative and Visitor Center, Campground and Related Monument Purposes	01/01 to 12/31	4.0 AF 0.015 cfs
55-7076	CERT a1082 in the name of Pleasant Grove Irrigation Company	00/00 / 1858	Intake box, pipeline, gravity flow to existing reservoir	Swinging Bridge Canyon Spring	N 5000, E 2400, SW corner Sec. 27, T4S, R2E	Within the Exterior Boundaries of the Monument	Domestic, Administrative and Visitor Center, Campground and Related Monument Purposes	01/01 to 12/31	4.5 AF 0.015 cfs

Appendix C

Ground-Water Protection Zone



Legend

- Ground-Water Protection Zone Boundary
- Timpanogos Cave National Monument Boundary

