

RAINBOW BRIDGE 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 the Colorado River in San Juan, Grand and Uintah Counties, Utah, and exclusive to the Green River Drainage," filed as Civil No. 810704477 in the Seventh Judicial Court in Grand County, Utah. This adjudication is commonly referred to as the Southeastern Utah Colorado River Adjudication ("Adjudication") and encompasses the Rainbow Bridge National Monument within the San Juan River drainage (Area 09). The United States has not been served with a summons in this Adjudication and has not filed a Water User's Claim for the Monument. In order to remove causes of present and future controversy over use of water at Rainbow Bridge National Monument, the United States and Utah have conducted negotiations regarding inchoate reserved water rights claims for Rainbow Bridge National Monument, resulting in the present agreement.

B. These negotiations have resulted in the settlement of issues and recognition of the federal reserved water rights of the United States for Rainbow Bridge National Monument, subject to certain conditions, as set forth herein. No other reserved water rights issues of the United States are settled by this Agreement.

AGREEMENT

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree to the following:

1. Rainbow Bridge National Monument was established by Presidential Proclamation No. 1043 [36 Stat. 2703], dated May 30, 1910, pursuant to the Antiquities Act of June 8, 1906, 59 Stat. 225. The purposes for which Rainbow Bridge National Monument was established are set forth in the Proclamation and the National Park Service Establishment Act of August 25, 1916, 64 Stat. 535, 16 U.S.C. § 1, those purposes being to preserve "an extraordinary natural bridge, having an arch which is in form and appearance much like a rainbow, and which is three hundred and nine feet high and two hundred and seventy-eight feet span, [and which] is of great scientific interest as an example of eccentric stream erosion" and to conserve "the scenery and the natural and historic objects and the wild life 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).

2. Subject to the provisions of paragraph 7 below, the United States has a federal reserved water right to all naturally occurring water underlying, originating within or flowing through Rainbow Bridge 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 dates of reservation of the lands now within the boundaries of the Monument, which water is to remain in a free flowing and natural condition.

3. The specific descriptions of the lands comprising Rainbow Bridge National Monument are set forth in the applicable proclamations and legislation identified above, and in Appendix A. The priority date of the federal reserved water rights shall be May 30, 1910. For its record-keeping and administrative purposes, Utah shall assign separate water right

numbers for the portions of the reserved rights for all naturally occurring water and administrative uses, respectively.

4. The water rights recognized hereby include all water rights of every nature and description derived from the federal reserved water rights doctrine, from all sources of water, both surface and underground, and include all types and kinds of uses whatsoever, and encompass all claims asserted by or through the United States for Rainbow Bridge National Monument as now constituted. The federal reserved water rights originate and are defined in federal law. Absent future Congressional or Presidential action, the federal reserved water rights for the lands now constituting Rainbow Bridge National Monument shall not be enlarged, expanded or re-quantified.

5. The National Park Service has a federal reserved water right for administrative purposes for Rainbow Bridge National Monument, which Utah hereby acknowledges and recognizes as valid. Under this water right, the National Park Service may deplete up to 2 acre-feet per annum from the Colorado River and its tributaries to satisfy future requirements for the operation, administration and protection of Rainbow Bridge National Monument, including but not limited to such uses as the operation of visitor facilities.

6. The United States agrees to provide at least 90 days prior written notice to the Utah State Engineer (State Engineer) before developing and/or using any new source of water for administrative purposes associated with the federal reserved water right provided for in paragraph 5 herein. Such notice will include the location and means of diversion, the source, quantity, and diversion rate of water, depth and diameter of well (if applicable), the nature of use, the anticipated date the water will be placed in use, and a map depicting the proposed development. This information will be publicly available.

7. Except for the portion of the federal reserved water right for administrative purposes, as set forth in paragraph 5, the United States hereby expressly subordinates that portion of its federal reserved water right for all naturally occurring water at Rainbow Bridge National Monument to all valid existing perfected water rights and all currently approved applications with priority dates prior to January 1, 2000.

8. The United States and Utah agree that this Agreement will define the United States' water rights for Rainbow Bridge National Monument in the Southeastern Utah Colorado River Adjudication. The United States has not been served with a summons in this Adjudication. Upon service of the United States in the Adjudication, Utah agrees to issue, within a reasonable time, a Proposed Determination that includes the water rights of Rainbow Bridge National Monument. The parties hereto will then cooperate to obtain an interlocutory decree on the Proposed Determination. If the parties are not successful in securing the interlocutory decree, this Agreement shall nevertheless remain binding as between the United States and Utah until a final decree is issued.

9. 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.

10. Because of the unique nature of Rainbow Bridge National Monument, nothing in this Agreement shall constitute an admission, waiver or precedent as to any party for any other federal reserved water right claim in Utah.

11. 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 Rainbow Bridge National Monument, including the water rights of any Indian tribe;

- 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; or
- e. restrict the power of Utah or the State Engineer in allocating, administering or distributing the waters of the State.

12. 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 federal reserved water rights as provided under federal law.

13. The provisions of this Agreement and the reserved 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 in reasonable proximity to Rainbow Bridge 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 for protecting its own rights and for filing appropriate protests in any proceedings before the State Engineer.

14. Upon written request from the United States, the State Engineer will provide information regarding new applications for and/or diversions of water located in reasonable proximity to Rainbow Bridge National Monument.

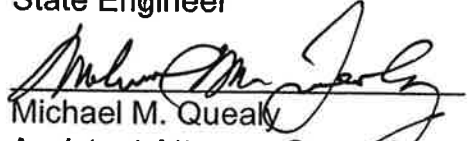
15. This Agreement is executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 16th day of January, 200~~7~~³.

For the State Utah:


Kathleen B. Clarke
Executive Director, Department
of Natural Resources

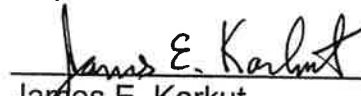

Robert L. Morgan
State Engineer


Michael M. Quealy
Assistant Attorney General
Chief, Natural Resources Division

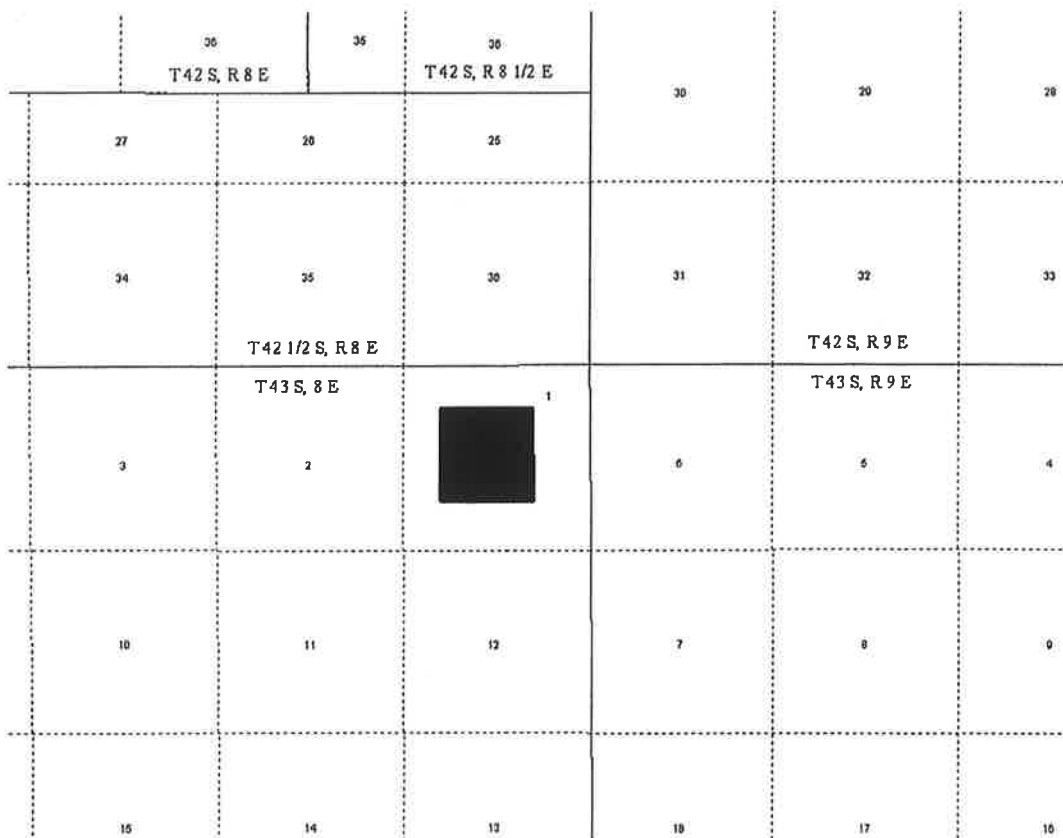
For the United States:


Kitty Roberts
Superintendent
Rainbow Bridge National Monument


Andrew F. Walch
Department of Justice


James E. Karkut
Office of the Field Solicitor

Appendix A **Rainbow Bridge National Monument** **Date of Land Reservation**



(PLS grid referenced to Salt Lake B & M.)

Legend

 Federal Reserved Land -- Proclamation No. 1043: May 30, 1910 (36 Stat. 2703)

