

Agenda Item: 8.

**To:** Programs, Projects and Operations Subcommittee

**From:** Jim Becic

**Date:** 26 April, 2013

**Re:** Financial assistance to the Nebraska Game and Parks Commission for Summit Lake State Recreation Area.

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The current 25 year lease agreement between the Papio-Missouri River NRD (District) and the Nebraska Game and Parks Commission (Commission), designating the Commission the authority to operate Summit Lake State Recreation Area in Burt County, Nebraska is in its fourth year.

While the lease agreement is ongoing, the level of the District's future financial contribution to assist with the Operation and Maintenance needs to be determined. Over the last four years, the District contributed \$30,000 annually, essentially matching the Commission's efforts at Summit Lake. In addition to routine operation and maintenance at the site, over the years the Commission has completed improvements at the site to include lake renovation, improved boat ramp/dock, better site access, camping pads, etc. and others are being considered. It should also be noted that while state funding support for operation and management at nearly all state recreation sites over the last ten years has experienced significant declines, costs for even minimum operation and maintenance at Summit Lake continue to increase.

The staff's recommendation for ongoing financial assistance is to extend District's (Lessors) Contribution in four year increments (beginning in July, 2013) and to increase the annual contribution for the next four years to \$40,000 a year to assist in the operation and management of the site. The proposed amendment to paragraph 10 of the lease agreement is enclosed.

**Therefore, it is management's recommendation that the Programs, Projects and Operations Subcommittee recommend to the Board, that the General Manager be authorized to execute the proposed Amendment 'A' to the "Lease Between Papio-Missouri River Natural Resources District and Nebraska Game and Parks Commission of Summit Lake Recreation Area" and to provide an annual, \$40,000.00 District contribution to the Nebraska Game and Parks Commission for the next four years beginning on or about July 1, 2013 subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.**

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**AMENDMENT "A" TO THE LEASE BY PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT TO THE NEBRASKA GAME AND PARKS COMMISSION OF SUMMIT LAKE RECREATION AREA, DATED MAY 16, 2009.**

WHEREAS, The Lessor has provided an annual financial contribution of \$30,000 to the Lessee to assist with the operation and maintenance needs associated with the recreational lands or facilities identified by the lease dated May, 16, 2009; and

WHEREAS, The Lessor has provided the financial contribution in each of the first four (4) years of the lease; and

WHEREAS, The Lease allows for an annual financial contribution for the balance of the lease term, years five through twenty-five; and

WHEREAS, The Lessor and Lessee have met, as prescribed by the lease, to determine the future financial contribution necessary to assist with the operation and maintenance needs upon the leased premises; and

WHEREAS, The Lessor desires to amend the lease to change the provision from an annual contribution in years five through twenty-five, and allow for the annual financial contribution to be identified, but designated for a series of four year periods, paid annually on or about July 1, subject to available funds, for the periods 2013 – 2016, 2017 – 2020, 2021 – 2024, 2025 – 2028, 2029 – 2032, with negotiations for the final year of the lease, 2033, to include the final annual contribution for this lease and discussions of a possible extension as allowed; and

WHEREAS, The Lessor desires to review their annual financial contribution in the last year of each four year period, and determine the amount of their annual payment for the following four year period, and designate their contribution via a letter to the Lessee;

NOW, THEREFORE, AND IN CONSIDERATION of the covenants and conditions of the lease dated May 16, 2009, this Amendment "A" is accepted and made effective when signed by the parties identified below.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment "A" effective as of \_\_\_\_\_ 2013.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

BY

\_\_\_\_\_  
General Manager

STATE OF NEBRASKA

Acting by and through the Nebraska Game and Parks Commission

BY

\_\_\_\_\_  
Director

**LEASE  
BETWEEN  
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT  
AND  
NEBRASKA GAME AND PARKS COMMISSION  
OF  
SUMMIT LAKE RECREATION AREA**

THIS LEASE ("this Lease") is effective as of the 16<sup>th</sup> day of May, 2009, by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("the Lessor") pursuant to Section 2-3235 of Revised Statutes of Nebraska, 1943, and the STATE OF NEBRASKA, ("the Lessee") acting by and through the Nebraska Game and Parks Commission, pursuant to Sections 81-805 and 81-815.27, Revised Reissued Statutes of Nebraska, 1943.

WITNESSETH:

WHEREAS, the Middle Missouri Tribs Natural Resources District constructed the Summit Lake reservoir and recreation area ("the Leased Premises") on lands acquired by the Middle Missouri River Tribs Natural Resources District in Burt County, Nebraska, for the purpose of flood control and recreation ; and

WHEREAS, the Summit Lake reservoir ("the Reservoir") creates public use value and interest for recreation, fish and wildlife, and related purposes;

WHEREAS, as of May 16, 1984, in a written lease (the "Prior Lease") the Middle Missouri Tribs Natural Resources District leased the Leased Premises to the Lessee for a term of 25 years, commencing on such date;

WHEREAS, on or about January 5, 1989, the Middle Missouri Tribs Natural Resources District merged with the Lessor and transferred to the Lessor all of its assets and liabilities, including the Leased Premises and the Prior Lease;

WHEREAS, the Lessor desires to continue leasing the Leased Premises to the Lessee the for the purpose of controlling and administering recreation, fish and wildlife, and related uses on the Leased Premises, including operation and maintenance of the lands and facilities so specified;

WHEREAS, the Lessee desires to lease the Leased Premises from the Lessor for the purpose of controlling and administering recreation, fish and wildlife and related uses thereupon;

WHEREAS, it has been determined to be to the advantage of the Lessor to be relieved of the control, supervision, management and responsibility as to recreation, fish and wildlife, and related purposes upon said lands, and the Lessee desires to assume such control, supervision, management and responsibility;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises,

covenants and conditions, herein contained, the Lessor does hereby lease to the Lessee the Leased Premises consisting of all the lands acquired by the Middle Missouri River Tribes Natural Resources District for the Summit Lake reservoir and recreation area, subject to the following terms and conditions, to-wit:

**1. EXCEPTIONS AND RESERVATIONS.** This Lease is subject to the following exceptions and reservations by the Lessor:

- a) Any prior rights which have attached by virtue of the Prior Lease.
- b) The right of the officers, directors, agents, employees and permittees of the Lessor, at all times and places to have the right of ingress and egress over and across the Leased Premises for the purpose of carrying on operations of the Lessor.
- c) The right to operate the dam located on the Leased Premises ("the Dam") and to regulate the water level in the Reservoir to the extent deemed necessary or desirable for the purposes of project operation and maintenance, as required by Nebraska Revised Statutes, Section 46-233.
- d) The right of to remove from the Leased Premises any and all material necessary for construction, operation and maintenance of the Dam and Reservoir or for other purposes, provided that no such removal shall be made without prior notice to the Lessee.
- e) Title to all oil, gas, coal and other minerals now existing or hereafter found on the Leased Premises, and the right to prospect and carry on the development for oil, gas, coal and other minerals including the right to issue leases or permits to prospect for oil, gas, or other minerals on said lands. The Lessee will be consulted and given an opportunity to comment concerning any proposals to exercise of such rights. Prior to the execution of any such lease or permit, the Lessor will give consideration to any adverse effect such action might have on recreation, fish and wildlife, and related uses.

**2. FACILITIES AND IMPROVEMENTS.** The Lessee may construct facilities for the purpose of its administration, control and management over recreation, fish and wildlife, and related uses wherein the areas of the Leased Premises.

- a) Any construction of facilities by Lessee in the Leased Premises shall be subject to approval in writing by the Lessor.
- b) The Lessee shall erect signs in conspicuous places at reasonable intervals within the area of the Leased Premises each containing a clear statement that the recreation, fish and wildlife, and related use areas affected hereunder are administered by the Nebraska Game and Parks Commission and maintained by the Commission.
- c) All improvements in the Leased Premises constructed by the Lessee at its sole cost and expense shall be and remain the property of the Lessee and may be removed by the Lessee at its sole cost and expense within 90 days from and after the termination of this Lease, or respective part thereof, and Lessee restore the Leased Premises to a safe and natural condition after any such removal.

d) All improvements constructed by the Lessor upon the Leased Premises and all improvements existing upon the Leased Premises at the time of execution of this Lease shall be the property of the Lessor and shall remain so vested; except that such improvements shall be subject to the tenancy created by this Lease. The Lessee shall make no additions, alterations or improvements thereto without the prior written consent of the Lessor and such improvements to existing structures shall become the property of the Lessor.

e) The Lessee shall employ good husbandry practices and keep and maintain all recreation improvements which shall be erected on the Leased Premises for administration and control purposes, in a good and reasonable state of repair, reasonable wear and tear excepted, at its own cost and expense, subject to available funds assigned by the Lessee for Summit Lake SRA, to preserve said improvements.

f) The Lessor shall operate and maintain the dam, outlet works for flood control, and other flood control works and improvements in the Leased Premises at such times and in such manner as the Lessor determines reasonable and necessary for flood control purposes.

**3. LESSEE'S RIGHTS.** The Lessee shall have the right to administer concession contracts under which services are made available to the public in the Leased Premises. Authorization for any such concession services shall be at the sole discretion of the Lessee. The Lessee may collect and retain all receipts derived from licenses or permits or camp fees which it issues or administers pursuant to fulfilling the obligations and responsibilities created by this Lease. The Lessee shall have the further right, at its sole discretion, to require motor vehicles entering the area to display a valid State park entry permit. The Lessee may collect and retain all receipts derived from the sale of such permits on the Leased Premises.

**4. TERM OF LEASE.** The term of this Lease shall be a period of 25 years from and after the effective date hereof, unless sooner terminated, and may be renewed for additional periods of 25 years upon the agreement of both parties.

**5. WATER DAMAGE.** Lessor assumes no liability hereunder for damages to Lessee's property or for injuries to the persons, or deaths of, the Lessee's officers, agents, servants or employees, who may be on said Leased Premises at the Lessee's invitation, arising from or incident to flood waters or the regulation of storage, routing and discharge of water through the Reservoir. The Lessee shall not be liable to Lessor for damage to the Leased Premises resulting directly or indirectly from the action of Reservoir waters.

**6. INDEMNIFICATIONS.** The Lessee agrees to hold harmless and to indemnify the Lessor from and against all liabilities, obligations, losses, damages, injuries, claims, demands, and actions arising from the negligence of Lessee's directors, officers, agents, or employees. Lessor agrees to hold harmless and to indemnify the Lessee from and against all liabilities, obligations, losses, damages, injuries, claims, demands, and actions arising from the negligence of Lessor's directors, officers, agents, or employees.

**7. ENFORCEMENT OF LAWS.** The Lessee shall assume responsibility for the enforcement of all game, fish and park laws, rules and regulations, on the Leased Premises and shall take all reasonable precautions and assist in the prevention, control and suppression of fires in the vicinity of the areas of the Leased Premises; and shall make and enforce such laws, rules and regulations applicable to the recreation, fish and wildlife use of the Leased Premises as it deems necessary and desirable to protect the health and safety of persons using the Leased Premises and for the preservation of law and order in the interest of public safety. The Lessee shall not engage in or permit any activity within the Leased Premises or allow any omission therein, which will interfere with the safety, protection and operation of the Dam and Reservoir.

**8. EROSION CONTROL.** Lessor, at its own cost and expense, as may be supplemented by State and Federal funds, shall use such erosion control measures as may be necessary and the Lessee shall comply with such control measures.

**9. NO AGENCY CREATED.** Nothing in this Lease shall be construed or interpreted as authorizing the Lessee, its agents or employees, to act as agents or representatives for or on behalf of the Lessor, or to incur any obligation of any kind on behalf of the Lessor. Nothing in this Lease shall be construed or interpreted as authorizing the Lessor, its agents or employees, to act as agent or representative for or on behalf of the Lessee or to incur any obligation of any kind on behalf of the Lessee.

**10. LESSOR'S CONTRIBUTION.** As of the first day of July, 2009, and as of the first day of July in each of the three succeeding years thereafter during the term of this Lease, Lessor will designate an annual financial contribution of \$30,000 to the Lessee to assist with the operation and maintenance needs associated with the recreational lands or facilities identified by this Lease. For the balance of the lease term years five through twenty-five, the Lessor, subject to available funds, will designate an annual financial contribution to the Lessee to assist with the operation, maintenance, and/or capital construction needs associated with the recreational lands or facilities identified by this agreement; the amount of such contribution to be determined during an annual meeting between representatives of the Lessee and Lessor. Any funds designated, and approved by the Lessor's governing board, shall be made available to the Lessee prior to July 1 of each year, which is the beginning of the Lessee's fiscal year.

**11. LIABILITY FOR PROPERTY DAMAGES.** The Lessor shall not be liable for any loss, injury, or damage of any kind or nature whatsoever to any building or other structure belonging to Lessee which may be constructed upon the Leased Premises, nor any loss, injury, or damage of any kind or nature whatsoever to the contents of any building or structure upon the Leased Premises or to any goods, merchandise, chattels, or any other property now or that may hereafter be upon the Leased Premises, whether belonging to the Lessee or others, and whether such loss, injury or damage results from fire or other cause; PROVIDED nothing herein excepts such damages as result from the negligence of the Lessor, its directors, officers, agents, or employees.

**12. TERMINATION.** This Lease shall terminate and all rights of the Lessee hereunder shall cease as hereinafter provided, to-wit:

- a) Upon expiration of the term of the Lease as provided hereinabove;

b) Upon the failure of the Lessee to observe any of the conditions, exceptions or reservations set out in the Lease, the General Manager of the Lessor shall give written notice to the Lessee of the obligations that are in default or the provisions of the Lease that have been violated and the Lessee shall have 90 days in which to correct the default or violation. Unless the Lessee shall have corrected such default or violation, this Lease shall terminate on the ninety-first (91st) day following service of the written notice herein provided;

c) Upon the failure of the Lessor to observe any of the conditions, exceptions, or reservations set out in the Lease, the Lessee shall give written notice to the General Manager of the Lessor of the obligations that are in default or the provisions of the Lease that have been violated and the Lessor shall have 90 days in which to correct the default or violation. Unless the Lessor shall have corrected such default or violation, this Lease shall terminate on the ninety-first (91st) day following service of the written notice herein provided.

d) Upon written notice by the Lessee to the General Manager of the Lessor or upon written notice by the General Manager of the Lessor to the Lessee, without assigning any reason therefore, effective as of January 1 of any year during the term of this Lease, delivered not less than one year in advance thereof and agreed to by the Lessor and Lessee.

**13. WAIVER.** No assent, express or implied, by either party to any breach of any of the other's covenants shall be deemed to be a waiver of any succeeding or continuing breach of the same covenant.

**14. SURRENDER ON TERMINATION.** Within ninety (90) days following termination of this Lease, the Lessee shall surrender the Leased Premises, together with all of the improvements thereon which are owned or become vested in the Lessor by virtue of the provisions in this Lease, in such repair and condition as shall be in accordance with the covenants herein contained.

**15. FEDERAL AID IMPROVEMENTS.** If during the term of this Lease any improvements in accordance with the Federal Aid to Wildlife Restoration Act of September 2, 1937 (50 Stat. 917; 16 U.S.C.A. 669a et seq.) as amended, and the Federal Aid in Fish Restoration Act of August 9, 1950 (64 Stat. 430; 16 U.S.C.A. 777, et seq.) as amended, and the Land and Water Conservation Fund Act of 1965 (Public Law 88-578; 16 U.S.C. 4601-4 et seq.) as amended, are made to the lands and waters in the Leased Premises, such improvements shall not be impaired by this Lease; and, further, that before this Lease is terminated, an agreement safeguarding such improvements shall be entered into between the Lessor and the Lessee.

**16. DISCRIMINATION.** The Lessee or its concessionaires shall not discriminate against any person or persons because of race, creed, color, sex or national origin in the conduct of its operations hereunder.

**17. APPROPRIATIONS.** The performance of any obligation or the expenditure of any funds by the Lessor under this Lease is made contingent on the necessary appropriation of funds by the Board of Directors of the Lessor. In case such appropriation as may be necessary to carry out this Lease is not made, the Lessee hereby

releases the Lessor from all liability due to the failure of its Board of Directors to make such appropriation. Likewise, in the event the Legislature of the State of Nebraska fails to appropriate funds in any fiscal year or to provide sufficient statutory authority to enable the Lessee to carry out its part of this Lease, then the Lessor hereby releases the Lessee from all liability or obligation undertaken herein, due to the failure of the State Legislature to make such appropriation.

**18. SHARING OF BENEFITS.** No director, officer, agent or employee of the Lessor shall be admitted to any share or part of this Lease or to any benefit that may arise hereto, but this restriction shall not be construed to extend to this Lease if made with a company or corporation for its general benefit.

**19. GOVERNING LAW** The Lessee represents that in executing this Lease, it has complied and will comply with all the applicable provisions of Nebraska law.

**20. EFFECTIVE DATE.** This Lease shall become effective when signed by the General Manager of the Lessor and by the Director or his designee, of the Nebraska Game and Parks Commission. This Lease shall remain in force until terminated as provided hereinabove.

**21. AMENDMENTS.** Any portion of this Lease may be amended in writing at any time by mutual consent of both parties.

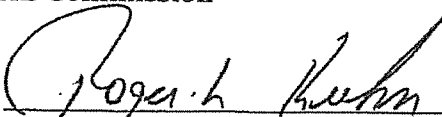
**22. BINDING EFFECT.** The provisions of this Lease shall bind the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Lease effective as of the day and year first above written.

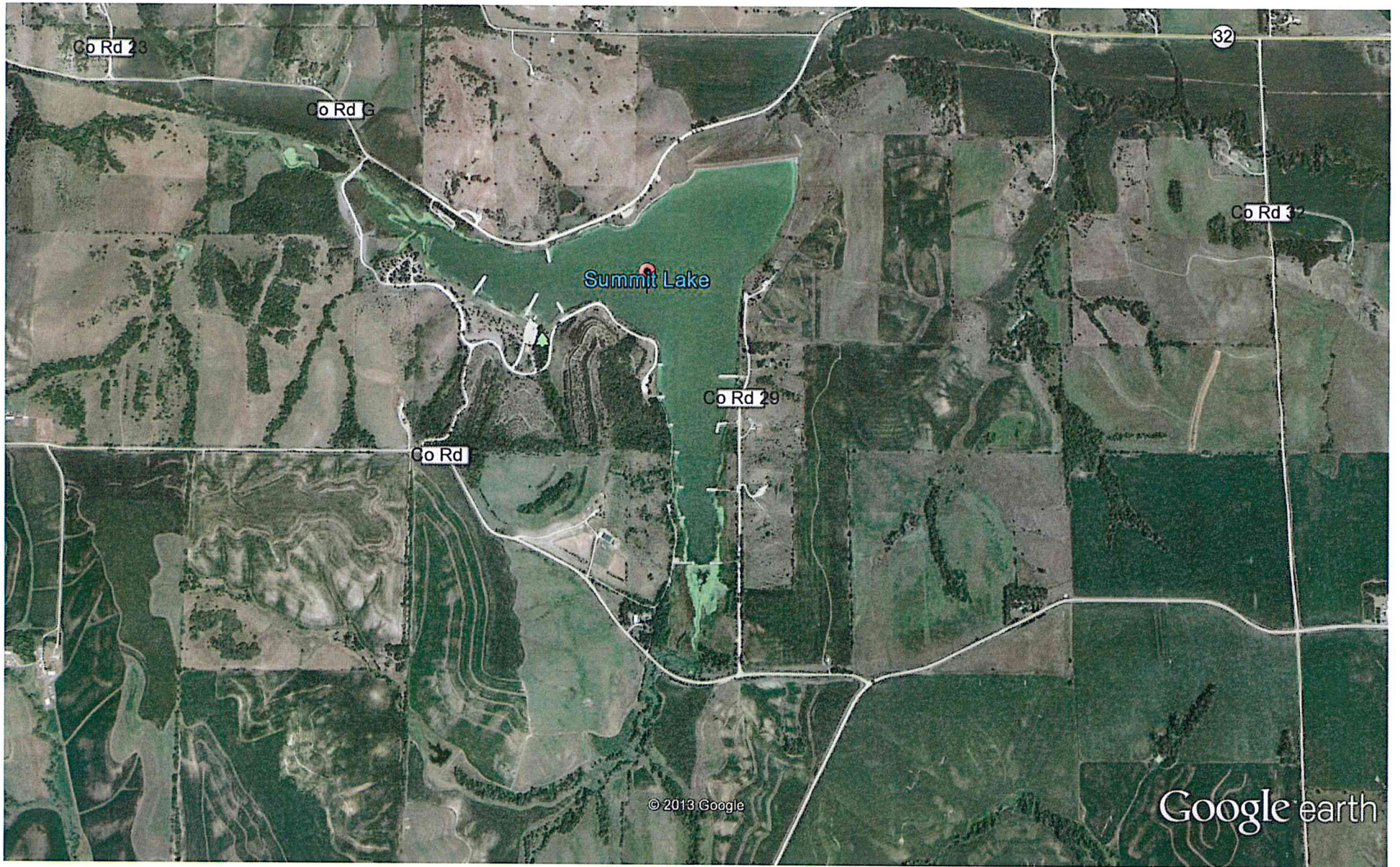
**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By   
GENERAL MANAGER

**STATE OF NEBRASKA**  
Acting by and through the Nebraska Game and  
Parks Commission

By   
Asst. DIRECTOR



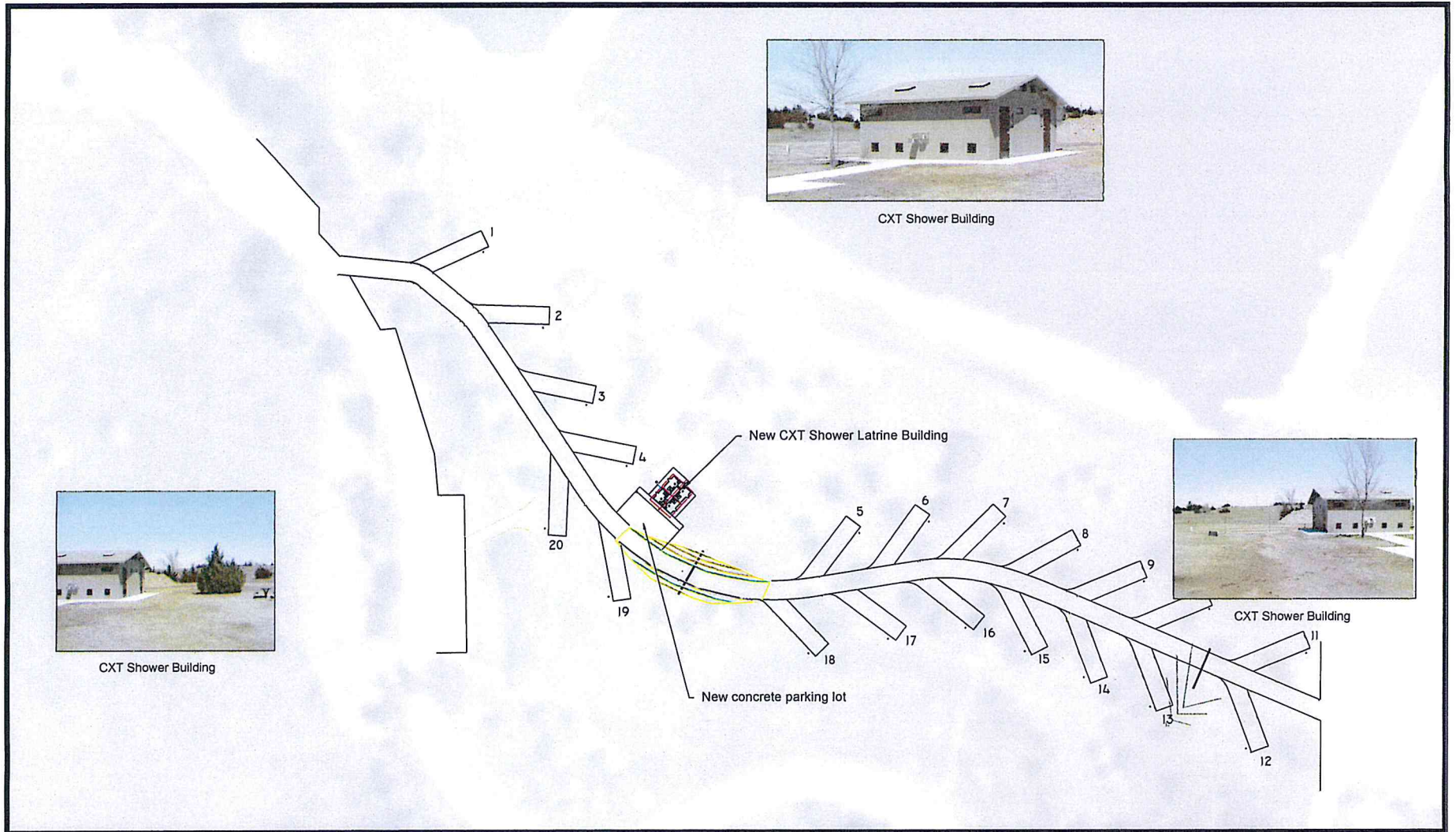


Google earth

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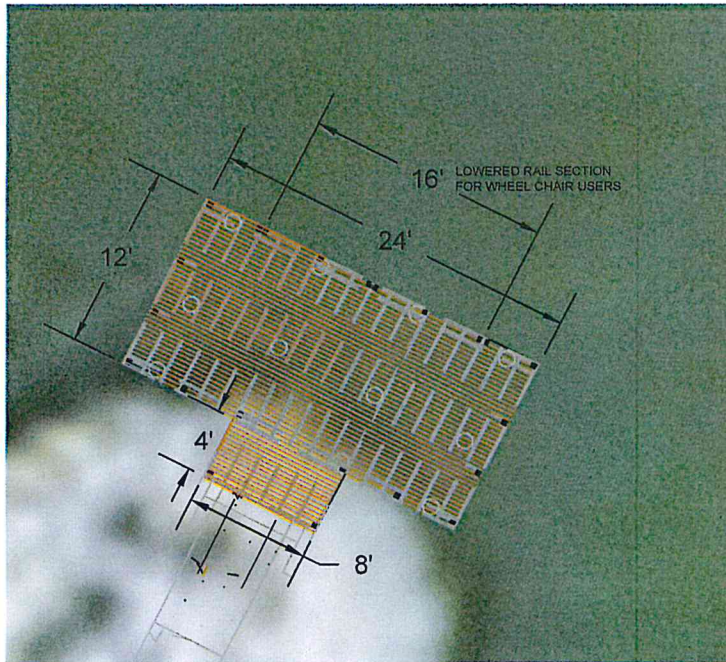




Summit Lake SRA



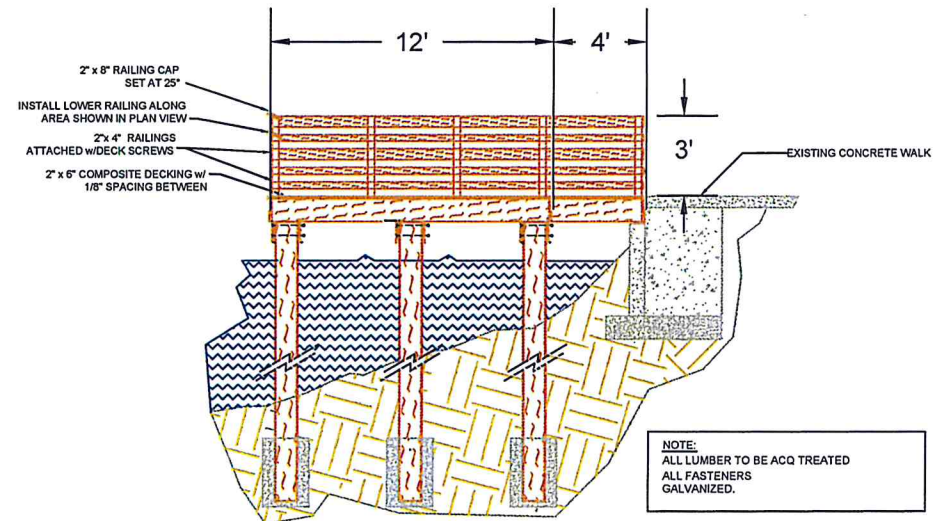
# Summit Lake ADA Fishing Pier



PLAN VIEW  
SCALE 1"= 1'

## APPROXIMATE QUANTITIES

12 Ø WOODEN PILINGS.....	12 EA
CONCRETE FOOTING & WALL...	3.5 CY
2"x12" TREATED LUMBER.....	384 LF
4" x 4" TREATED POSTS.....	88 LF
TREATED RAILING SECTIONS.....	80 LF
COMPOSITE DECKING.....	420 SF
POUNDS OF REBAR.....	180 LB



SECTION VIEW  
SCALE 1 1/2"= 1'

APPROVED BY:		NEBRASKA GAME AND PARKS COMMISSION		ENGINEER
DIRECTOR				DIVISION
DATE		SHEET NUMBER		PROJECT
DIVISION ADMINISTRATOR		1		ADA FISHING PIER
DATE		OF 1		LOCATION
				SUMMIT LAKE SRA
				DRAWING CONTAINS
				LOCATION/DETAILS
				DESIGN/DATE
				BY COW
				DATE M