

MEMORANDUM

To: Programs, Projects and Operations Subcommittee
Re: Summit Lake Lease Agreement between the Papio-Missouri River NRD and the Nebraska Game and Parks Commission.
Date: 30 April, 2009
From: Jim Becic

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 about to expire.

While significant site improvements have been made by the Commission over the years – lake renovation, improved boat ramp/dock, better site access, etc., and others are being considered – state funding support for operation and management over the last ten years have experienced significant declines. Costs to continue minimum operation and maintenance of Summit Lake has been reduced from approximately \$60,000/year (from a high of over \$100,000) to approximately \$30,000.

The attached draft agreement is for an additional 25 year term and provides for the District to contribute an annual amount of \$30,000 to the Commission for the first four years of the agreement to assist in the operation and management of the area. Following that time, financial contributions by the District will be determined from year to year.

Therefore, it is managements recommendation that the Programs, Projects and Operations Subcommittee recommend to the Board, that the General Manager be authorized to execute the proposed 25-year lease between the Papio-Missouri River Natural Resources District and the State of Nebraska Game And Parks Commission for Summit Lake State Recreation Area, subject to changes deemed necessary by the General manager and approved as to form by District Legal Counsel.

LEASE BETWEEN THE ~~MIDDLE MISSOURI TRIBS~~ Papio-Missouri River NATURAL
RESOURCES DISTRICT AND THE STATE OF NEBRASKA GAME AND PARKS
COMMISSION

THIS LEASE made this _____ day of _____, _____, between the ~~Middle Missouri Tribs~~ Papio-Missouri River Natural Resources District, hereinafter referred to as the ~~Middle Missouri Tribs~~ Papio-Missouri River NRD, pursuant to Sections 2-3235 of Revised Statutes of Nebraska, 1943, and the State of Nebraska, hereinafter referred to as 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~~ Papio-Missouri River NRD has constructed the Summit Lake reservoir and recreation area for the purpose of flood control and recreation in the ~~Middle Missouri Tribs~~ Papio-Missouri River NRD;

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

WHEREAS, the ~~Middle Missouri Tribs~~ Papio-Missouri River NRD therefore desires to exercise its option to continue leasing ~~lease~~ to the Lessee the lands hereinafter described for the purpose of controlling and administering recreation, fish and wildlife, and related uses on said lands, including operation and maintenance of the lands and facilities so specified;

WHEREAS, the Lessee desires to lease from the ~~Middle Missouri Tribs~~ Papio-Missouri River NRD said lands for the purpose of exclusively controlling and administering recreation, fish and wildlife and related uses thereupon;

WHEREAS, it has been determined to be to the advantage of the ~~Middle Missouri Tribs~~ Papio-Missouri River NRD to be relieved of, and the ~~Middle Missouri Tribs~~ Papio-Missouri River NRD desires to relinquish all assign control, supervision, management and responsibility as to recreation, fish and wildlife, and related purposes upon said lands;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, covenants and conditions, herein contained, the parties hereto agree as follows:

PREMISES LEASED

1. The ~~Middle Missouri Tribs~~ Papio-Missouri River NRD does hereby lease unto the Lessee, subject to the terms and conditions hereinafter provided, the premises, including water surface, described in Exhibit "A" annexed hereto and incorporated by this reference. Exhibit "A" may from time to time be amended, modified or enlarged in writing by the parties hereto by adding additional lands or areas thereto, and as otherwise hereinafter provided, without the necessity of re-executing this Lease or entering into a separate Lease.

DEVELOPMENT PLANS

2. The parties hereto agree to follow the adopted Reservoir Development Plan as to the reservoir area included in the leased premises herein recited in Exhibit "A" hereto. None of the provisions of this Lease shall be construed as preventing the further development of the reservoir area in accordance with this Reservoir Development Plan. Said Development Plan may be amended or supplemented by the parties from time to time.

It is agreed that any portion of the lands described in Exhibit "A" which shall be designated by the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD as lands not appropriate to the purposes of this Lease shall be excluded from the lands leased hereunder.

TERMS AND CONDITIONS

3. This Lease is subject to the following exceptions:

(a) Any prior rights which have attached before the date of this agreement, described in Exhibit "C" attached hereto and made a part hereof.

(b) The right of the officers, directors, agents, employees and permittees of the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD, at all times and places to have full ingress for passage over and egress from all of said lands for the purpose of carrying on operations of the ~~Papio-Missouri River~~.

(c) The ~~Middle Missouri Tribes Papio-Missouri River~~ NRD reserves the right to vary the water level 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 the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD, its directors, agents, employees, lessees or permittees to remove from said lands any and all material necessary for construction, operation and maintenance of the project facilities 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 or hereafter owned by the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD is excepted and reserved to the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD. There is also excepted and reserved to the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD, its directors, agents, employees, lessees, or permittees the right to prospect and carry on the development for oil, gas, coal and other minerals and the right to issue leases or permits to prospect for oil, gas, or other minerals on said lands. However, the Lessee will be consulted and given an opportunity to comment concerning any proposals in the exercising of such rights. Prior to the execution of such lease or permit, the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD will give consideration to any adverse effect such action might have on recreation, fish and wildlife, and related uses.

OPERATION, USE, LOCATION, ARCHITECTURE

4. The Lessee shall not be held liable for damage to the leased lands resulting directly or indirectly from the action of reservoir waters. The use by the Lessee of land areas within the leased premises and the location and architecture of the improvements and facilities existing thereupon and constructed by the Lessee thereon shall be in accordance with the minimum requirements provided in the applicable respective Development Plan incorporated herein by reference.

FACILITIES AND IMPROVEMENTS: NOTICE; REPAIR

5. 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, subject to the qualifications regarding use, location and architecture contained in the Development Plan or amendments. Any construction of facilities by Lessee shall be approved in writing by the ~~Middle Missouri Tribes Papio-Missouri River~~ NRD.

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.

6. All improvements constructed by the Lessee at its sole cost and expense shall be and remain the property of the Lessee; provided, however, the Lessee shall remove or cause to be removed the respective improvements at its sole cost and expense within 90 days from and after the termination of this Lease, or respective part thereof, and shall restore the land to a safe and natural condition.

7. All improvements constructed by the ~~Middle-Missouri-Tribs~~ Papio-Missouri River NRD 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 ~~Middle-Missouri-Tribs~~ Papio-Missouri River NRD and shall remain so vested; except that such improvements shall be subject to interests created by this Lease. The Lessee shall make no additions, alterations or improvements thereto without the prior written consent of the ~~Middle-Missouri-Tribs~~ Papio-Missouri River NRD and such improvements to existing structures shall become the property of the ~~Middle-Missouri-Tribs~~ Papio-Missouri River NRD.

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.

The ~~Middle-Missouri-Tribs~~ Papio-Missouri River NRD shall operate and maintain the dam, outlet works for flood control provided by the Summit Lake Project as indicated in the Standards of Operation and Maintenance, attached as Exhibit "B". Exhibit "B" may be modified in writing by the parties without the necessity of re-executing this Lease or entering into a separate Lease.

LESSEE'S RIGHTS

8. The Lessee shall have the right to administer concession contracts under which services are made available to the public in the area. 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, which it issues or administers pursuant to fulfilling the obligations and responsibilities created by this agreement.

The Lessee shall have the further right, at its sole discretion, to require motor vehicles entering the area to display a valid park entry permit. The Lessee may collect and retain all receipts derived from the sale of such permits on the area.

TERM OF LEASE

9. The term of this Lease shall be for a period of ~~25~~ 25 years from the date hereof, unless sooner terminated, and may be renewed for additional periods ~~of 25 years of 25 years~~. The addition or deletion of lands or areas from Exhibit "A" subsequent to the date of this Lease shall not operate to extend the term hereof.

MISCELLANEOUS

10. Middle-Missouri-Tribs Papio-Missouri River NRD assumes no liability hereunder for damages to property or injuries or death to the persons 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 the regulation of storage, routing and discharge of water through the reservoir, including flooding where applicable. The Lessee and the Middle-Missouri-Tribs Papio-Missouri River NRD each agree to hold harmless and to indemnify the other from and against all liabilities, obligations, losses, damages, injuries, claims, demands, and actions arising from the negligence of its own directors, officers, agents, or employees.

11. The Lessee shall assume the responsibility for the enforcement of all game and fish laws 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 areas 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 reservoir.

12. The Middle-Missouri-Tribs Papio-Missouri River NRD, at its own cost and expense, as may be supplemented by Stat and Federal funds, shall use such erosion control measures as may be necessary and the Lessee shall comply with such control measures.

13. 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 Middle-Missouri-Tribs Papio-Missouri River NRD, or to incur any obligation of any kind on behalf of the Middle-Missouri-Tribs Papio-Missouri River NRD. Nothing in this Lease shall be construed or interpreted as authorizing the Middle-Missouri-Tribs Papio-Missouri River NRD, 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. Lessee shall not subject or cause the leased premises, or any improvements thereon to be subjected to or pledged as security for any bond, lien, encumbrance, indebtedness or charge.

14. For years one through four, beginning July 1 of 2009, Papio-Missouri River NRD 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 agreement. For the balance of the lease term, years five through twenty-five, the Papio-Missouri River NRD, 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; amount of the contribution to be determined during an annual meeting between representatives of the Lessee and Lessor. Any funds designated, and approved by the Papio-Missouri River NRD 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.

~~14~~ 15. The ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD shall not be liable for any loss, injury, or damage of any kind or nature whatsoever to any building or other structure belonging to said 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 said 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.

TERMINATION

~~15~~ 16. This Lease shall terminate and all rights of the Lessee hereunder shall cease, as hereinafter provided:

- (a) Upon expiration of the term of the Lease as provided in Article (9) above;
- (b) Upon the failure of the Lessee to observe any of the conditions, exceptions or reservations set out in the Lease, the Chairman of the Board of Directors of the ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD 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 ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD to observe any of the conditions, exceptions, or reservations set out in the Lease, the Lessee shall give written notice to the ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD of the obligations that are in default or the provisions of the Lease that have been violated and the ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD shall have 90 days in which to correct the default or violation. Unless the ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD 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 Chairman of the Board of Directors of the ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD or upon written notice by the Chairman of the Board of Directors of the ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD 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 ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD and Lessee.

~~16~~ 17. 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.

~~17~~ 18. Ninety days following termination of this Lease under Article (9) or (15) above, or for any other reason, the Lessee shall surrender the applicable premises, together with all of the improvements thereon which are owned or become vested in the ~~Middle-Missouri-Tribs Papio-Missouri River~~ NRD by the provisions in this Lease, in such repair and conditions as shall be in accordance with the covenants therein contained. (Refer to Paragraph 6)

~~18~~ 19. If during the life 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, are made to the lands and waters covered by the Reservoir Development Plan hereinabove referred to, 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 ~~Middle-Missouri-Tribs-~~ Papio-Missouri River NRD and the Lessee.

~~19~~ 20. 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.

~~20~~ 21. The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty the ~~Middle-Missouri-Tribs-~~ Papio-Missouri River NRD shall have the right to annul this Lease without liability, or in its discretion to require the Lessee to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

~~21~~ 22. The performance of any obligation or the expenditure of any funds by the ~~Middle Missouri-Tribs-~~ Papio-Missouri River NRD under this Lease is made contingent on the necessary appropriation of funds by the Board of Directors of the ~~Middle-Missouri-Tribs-~~ Papio-Missouri River NRD. In case such appropriation as may be necessary to carry out this Lease is not made, the Lessee hereby releases the ~~Middle-Missouri-Tribs-~~ Papio-Missouri River NRD from all liability due to the failure of the 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 ~~Middle Missouri-Tribs-~~ Papio-Missouri River NRD hereby releases the Lessee from all liability or obligation undertaken herein, due to the failure of the State Legislature to make such appropriation.

~~22~~ 23. No director, officer, agent or employee of the ~~Middle-Missouri-Tribs~~ Papio-Missouri River NRD 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.

~~23~~ 24. The Lessee represents that in executing this Lease, it has complied and will comply with all the applicable provisions of Nebraska law.

~~24~~ 25. This Lease shall become effective when signed by the Chairman of the Board of Directors of the ~~Middle-Missouri-Tribs-~~ Papio-Missouri River NRD and by the Director or his designee, Nebraska Game and Parks Commission. This Lease shall remain in force until terminated as provided in Articles 9, ~~15~~ 16, and ~~21~~ 22 hereof. ~~It is an expressed condition of this Lease that appropriation of necessary funds from the General Fund by the Legislature, together~~

~~with authority to expend such funds, be made to the Commission prior to this Lease becoming fully effective. In the event such funds and authority are not forthcoming from the Legislature, or are not otherwise available or granted, the Commission is release from the terms and conditions of the Lease without further obligation.~~

~~25~~ 26. Any portion of this Lease may be amended in writing at any time by mutual consent of both parties.

~~26~~ 27. The provisions of this Lease shall bind the parties hereto, their successors and assigns.

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

ATTEST:

~~MIDDLE~~ ~~MISSOURI~~ ~~TRIBS~~
~~Papio-Missouri~~ ~~River~~ NATURAL
RESOURCES DISTRICT

(SEAL)

By: _____
Chairman, Board of Directors

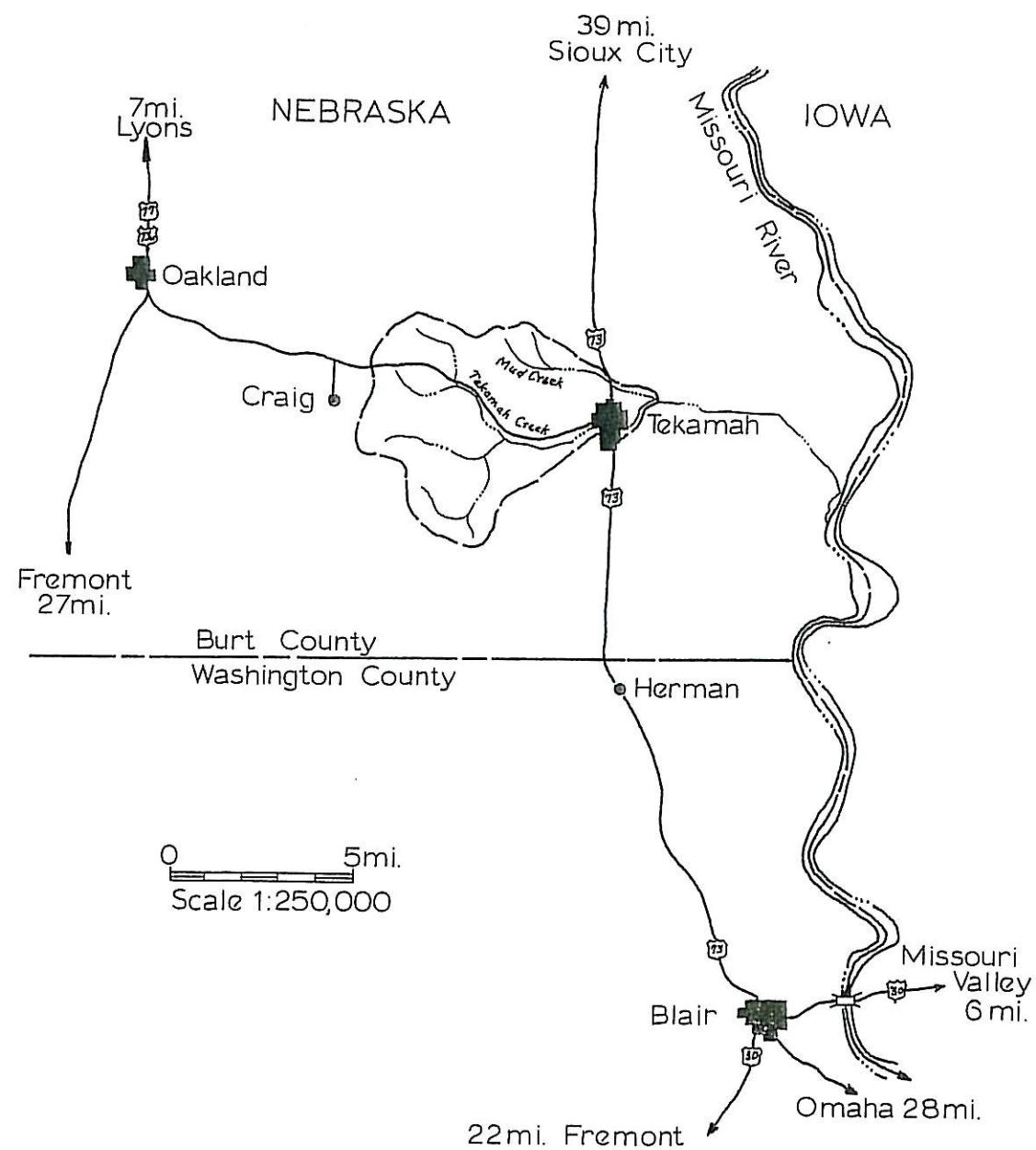
ATTEST:

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

(SEAL)

By: _____

PROJECT LOCATION MAP
TEKAMAH-MUD CREEK WATERSHED
BURT COUNTY, NEBRASKA



PROJECT MAP
TEKAMAH-MUD CREEK WATERSHED
BURT COUNTY, NEBRASKA

