

JUL 11 1997

EC-1340  
LND-8.00

## MEMORANDUM

To: Manager, Support Services Group  
Attention: GP-3800 (L.Frost)From: A: Jack Garner  
Area ManagerSubject: Memorandum of Understanding No. 97-AG-60-09220 - Recreation  
Management of the Larimer County Reservoirs - Bureau of Reclamation  
and the Larimer County Parks Department - Colorado-Big Thompson  
Project, Colorado

Attached is a fully executed original copy of the MOU between the Eastern Colorado Area Office and the Larimer County Parks Department for recreation management of Horsetooth Reservoir, Carter Lake, Flatiron Reservoir, and Pinewood Lake in Larimer County, Colorado. As discussed with Vic Grizzle of my staff, the only significant change from the last draft provided for your review was the Larimer County Attorney's request to move the signatures from the cover page to the back of the document. This MOU replaces our existing, 1954 agreement with Larimer County which would expire in the year 2004.

We appreciate the complete cooperation and assistance of Regional Office staff members Leatha Frost and Bert Schulle in the preparation and review of this MOU. If you have any questions, please contact Vic Grizzle at (970) 962-4366.

Attachment

cc: Mr. Jerry Westbrook  
Head, Land and Water Contract Services  
Northern Colorado Water Conservancy District  
P.O. Box 679  
Loveland CO 80539 (w/attachment)

Mr. John MacFarlane  
Director, Larimer County Parks Department  
1800 S. County Road 31  
Loveland CO 80537 (w/attachment)

bc: Manager, Resource Management Services Group  
Attention GP-2100 (w/attachment)

WBR:VGrizzle:tjs:7/9/97:g:\...\typing\m-mou.gp:LND-8.00 (Larimer County Parks  
-General)

**MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF  
RECLAMATION AND LARIMER COUNTY, COLORADO MOU No. 97-AG-60-09220**

The Bureau of Reclamation, United States Department of the Interior, hereinafter referred to as "Reclamation," and Larimer County Board of County Commissioners, hereinafter referred to as "County" enter into this Memorandum of Understanding ( MOU ) for the purpose of permitting the County to assume the responsibility of administering lands and facilities at Reclamation's reservoirs for public recreation purposes. The parties hereto have executed this MOU and will abide with the terms and provisions expressed or referenced herein.

**1. AUTHORITY AND OBJECTIVES**

This MOU is entered into by Reclamation, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, particularly the Act of August 4, 1939 (53 Stat. 1187), and the Act of October 12, 1982 (96 Stat. 1261), and pursuant to the laws of the State of Colorado. This MOU supersedes the following: MOU dated June 15, 1954, as amended by Contract Numbers 14-06-700-672 and 14-06-700-6398, between the United States of America and Larimer County, Colorado.

Reclamation and the County mutually agree to lease to the County the administration of Reclamation lands, waters and facilities at Horsetooth Reservoir, Carter Lake, Flatiron Reservoir and Pinewood Lake for public recreation purposes. Exclusion areas as described in Exhibit A are not a part of the leased premises. The County may not assign this MOU without the prior express written consent of Reclamation having been first obtained.

The County is vested with the responsibility for administration of public recreation uses within the leased premises. This includes the operation and maintenance of all associated recreation facilities.

The use by the County of land areas within the leased premises and the location of improvements and facilities existing thereupon and constructed by the County and Reclamation thereon shall be in accordance with the minimum requirements provided in the 1995 Resource Management Plan (RMP) incorporated herein by reference. The term "Resource Management Plan" as used in this MOU refers to the existing Reservoir Management Plans as well as new, or amended RMPs. RMP

Reclamation, its agents and assigns, shall have primary jurisdiction over those areas designated as the exclusion areas as shown on the drawings referred to in said Exhibit A. Such jurisdiction is maintained for the purpose of ensuring proper operation and protection of the dams, canals and reservoirs. However, such jurisdiction, as determined by Reclamation, its agents and assigns, to be compatible with its purposes, shall not preclude recreation use administration, and development by the County within the exclusion areas. Use of these areas, if desired by the County, can be permitted by letter agreement on a case-by-case basis. Primary  
Jurisdiction  
Areas

The reservoirs were constructed and are operated primarily for irrigation and electric power generation. The fulfillment of these purposes may require that the level of the reservoirs be fluctuated Reservoir  
Levels

to meet use demand. Reclamation, its agents, and assigns reserve the right to vary the respective water level to the extent deemed necessary or desirable for the purposes of project operations. The County will be notified when Reclamation becomes aware of significant changes in reservoir operation that might have an impact on operation and maintenance of the recreation facilities. Recreation, fish and wildlife resources will be considered when reviewing and or revising the Standard Operating Procedures for each respective reservoir.

## 2. TERM OF MOU

This MOU will be in effect for a period of 25 years from the effective date, unless sooner terminated by either party. The addition or deletion of lands or areas from Exhibit A subsequent to the date of this MOU shall not operate to extend the term hereof unless both parties agree. This MOU shall be renewable upon request of the County for an additional 25 years at the end of its term, the total term not to exceed 50 years, subject to consideration of changes in rules, policies, and legal requirements of Reclamation and the County. *Term*

## 3. LAWS AND REGULATIONS

The management of all areas covered by this MOU is subject to the laws of the United States, State of Colorado, and applicable orders, rules, and regulations of Reclamation and the County, whether they now exist or may hereafter be enacted during the term hereunder.

## 4. REVENUES AND FUNDING

The County has the right to collect and retain all receipts derived from leases, licenses, subcontracts, permits, user fees, or contracts which it issues or administers hereunder: Provided, however, That the County agrees that the income derived from such leases, licenses, subcontracts, permits, or contracts or an equivalent amount shall be used for the operation, maintenance, and replacement of the recreation areas facilities. All revenues generated from a particular reservoir project area may be used to fund management efforts on all other leased reservoirs. *Revenue*

The County shall submit to Reclamation, not later than May 1 of each year during the term of this MOU, a report showing such receipts and expenditures for the leased premises during the County's preceding fiscal year. *Annual Report*

Reasonable differences in public use entry fees may be charged on a basis of residence. Reservation, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents. *Differential Feez*

## 5. PUBLIC USE MANAGEMENT

The County will promulgate and enforce public use regulations applicable to the recreational use of the leased premises as it deems necessary and desirable to protect the safety and health of persons using the areas and for the preservation of law and order in the interest of public safety. The County shall not

engage in and will use its best effort to prohibit any activity within the leased premises or allow any omission therein which will interfere with the safety, protection, and operation of the reservoirs for irrigation, power generation and recreation.

## 6. FACILITIES AND IMPROVEMENTS

The County shall employ good husbandry and keep and maintain the leased premises in a good and reasonable state of repair, reasonable wear and tear excepted.

All permanent facilities in existence at the time of execution of this MOU, constructed by the County upon the leased premises are and shall be the property of Reclamation and shall remain so vested.

Funding for permanent facilities improvements and replacement is subject to both Reclamation and County's ability to secure adequate appropriation of funds.

The County may modify facilities of any kind whatsoever for the purposes of its administration and management over recreation uses within the areas of the leased premises. The modifications must meet the qualifications regarding use, location, and architecture contained in the RMP or mutually approved <sup>Improvements</sup> revisions. Both parties must approve all new improvements, construction, demolition of existing structures, and ground-disturbing activities not included in an updated RMP.

If cultural materials are found during any ground-disturbing activity, performed by or permitted by either Reclamation or the County, work will stop and the Reclamation Area Office Archeologist will be notified. The activity will not resume until clearance has been given by the Reclamation Area Office Archeologist.

## 7. COUNTY'S RIGHTS AND POLICY FOR ISSUING CONCESSION LICENSES

The County has the exclusive concession, licensing, and subleasing rights within the areas of the leased premises, both land and water, for the purposes of public recreation uses. The County may, through their concession policy, issue and administer licenses, leases, permits, and contracts to persons or associations for the purpose of regulating the privileges to be exercised and may grant concession contracts under which recreation uses and services to the public are made available within said areas, and which are in compliance with the intent of the Resource Management Plan. The term of said leases, licenses, permits, and contracts shall not exceed the un-expired term of this MOU. After execution, Reclamation shall be furnished a fully executed copy of all contracts.

Each concession lease, license, permit, contract or subcontract issued by the County for the purposes of recreation uses shall expressly provide:

"This (lease, license, permit, contract, subcontract) is expressly subject to the Memorandum of Understanding, and any and all modifications and amendments thereto, between the Bureau of Reclamation and Larimer County. The Reclamation reservoirs were constructed by

Reclamation for irrigation and electric power generation. The County has exclusive control and administration over the leased premises concerning recreation management. The (lessee, licensee, permittee, contractor, subcontractor) releases Reclamation and the Northern Colorado Water Conservancy District, their successors, assigns, officers, directors, agents, and employees (hereinafter collectively called the District) from any and all claims arising directly or indirectly from any acts, neglect, or the omission of Reclamation and/or of said District and each of them in connection with construction, operation, and maintenance of dam and irrigation project works."

*disclaimer*

"The (lessee, licensee, permittee, contractor) agrees to indemnify and hold Reclamation, Larimer County, and the District harmless from any loss, damage, or expense (including attorney fees) which may be suffered by Reclamation, Larimer County, or the District, directly or indirectly occasioned by any act, neglect, or omission of said (lessee, licensee, permittee, contractor)."

" In the event of the termination of the Memorandum of Understanding between Reclamation and Larimer County, dated July 10, 1997, Reclamation shall be deemed to stand in the stead of said County as grantor for the remainder of the term of this (lease, license, permit, contract): Provided, however, that in the event of such termination, Reclamation at any time within ninety (90) days thereafter may terminate this (lease, license, permit, contract). A sixty (60)-day written notice of termination must be given to the (lessee, licensee, permittee, contractor)."

The County shall not grant easements, or enter into agreements that convey an interest in Reclamation lands to a third party. Reclamation will consult with the County prior to granting easements on the leased premises to third parties.

*3rd party  
Agrs*

## 8. LIABILITY, AGENTS

The County shall require all concessionaires, permittees, lessees, and licensees engaged in commercial activities to carry adequate public liability insurance as is required by law for similar businesses under comparable circumstances.

Reclamation, its agents, and assigns assume no liability for damages to property or injuries or death to persons which may arise from or be incident to the use and occupation of the leased premises, nor for damages to property or injuries or death to the person of the County's officers, agents, servants, or employees or others who may be on said leased premises at their invitation or the invitation of any one of them, arising from or incident to the regulation, storage, routing, and discharge of water through the reservoir, including flooding where applicable, or arising from or incident to any other activities of Reclamation, its officers, directors, agents, or employees. Reclamation and the County each agree to hold harmless and to indemnify, to the extent practicable by law, the other from and against all liabilities, obligations, losses, damages, injuries, claims, demands and actions from the negligence of its own officers, agents, servants, or employees.

Reclamation assumes all liability arising out of any negligence of its employees within the terms and conditions of the Federal Tort Claims Act, 28 U.S.C., Secs. 2671-2680.

Nothing in this Memorandum of Understanding shall be construed or interpreted as authorizing the County, its agents, or employees to act as agents or representatives for, or on behalf of Reclamation, its agents, employees, or assigns, or to incur any obligation of any kind on behalf of Reclamation or its agents, employees, or assigns. Nothing in this MOU shall be construed or interpreted as authorizing Reclamation, its agents, or employees to act as agents or representatives for, or on behalf of, the County or to incur any obligation of any kind on behalf of the County.

It is understood and agreed that Reclamation, its agents, or assigns are not partners of the County and that, in the recreation administration and use of the leased lands, the parties are not engaged in a partnership or a joint venture, even though development funds may in part be supplied by either party. Reclamation and the County, its agents, or assigns are hereby excluded from any liability of Reclamation or the County, including but not limited to bonded or unsecured indebtedness, encumbrances, liens, or charges, and Reclamation and the County shall not subject or cause the leased premises or any improvements thereon to be subjected as security for any bond, lien, encumbrance, indebtedness, or charge.

## 9. TERMINATION

This MOU shall terminate and all rights of the County hereunder shall cease, as hereinafter provided:

Upon expiration of the term of the MOU.

Upon the failure of the County to observe any of the conditions, exceptions, or reservations set out in this MOU, Reclamation shall give written notice to the County of the obligations that are in default or the provisions of this MOU that have been violated, and the County shall have ninety (90) days in which to correct the default or violation. Unless the County shall have corrected such default or violation, this MOU shall terminate on the ninety-first (91st) day following service of the written notice provided. No assent, expressed or implied, by Reclamation to any breach of any of the County's covenants shall be deemed to be a waiver of any succeeding or continuing breach of the same covenant.

Upon written notice by the County to Reclamation or upon written notice by Reclamation to the County, without assigning any reason therefor, effective as of January 1st of any year, during the term of this MOU, delivered not less than (one) 1 year in advance thereof.

Upon termination of this MOU for any other reason, the County shall surrender the applicable premises, together with all of the permanent improvements thereon which are owned or become vested in Reclamation by the provisions of this MOU, in such repair and condition as shall be in accordance with the covenants herein contained. All permanent improvements constructed by the County and/or its successors, assigns, or subcontractors at their sole cost and expense shall be and remain the property of Reclamation: Provided, however, that the County shall remove or provide a plan acceptable to

Reclamation for removal of the respective movable improvements at its sole cost and expense within (one) 1 year from and after the termination of this MOU, or respective part thereof, and shall restore the land to a safe and natural condition. Movable improvements include such items as boat docks, buoys, trash containers, equipment and vehicles. If said movable improvements are not removed or a plan acceptable to Reclamation submitted for removal within a (one) 1-year period, title of movable improvements shall vest in Reclamation.

In the event Reclamation or the County terminate this MOU and Reclamation or another governing agency assumes the recreation management of the leased premises, Reclamation or the new governing agency shall pay to the County, the fair market value of the administration buildings and shop facilities erected by the County below Flatiron dam and at the South Bay area at Horsetooth Reservoir.

## **10. EXCEPTIONS**

This MOU is subject to the following exceptions:

Any prior rights which have been attached to the leased area before the date of this MOU.

The right of the officers, directors, agents, employees, and permittees of Reclamation 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 project operations of the United States.

The right of Reclamation, after 90-day written notice to the County, except during times of emergency, to make such use of the reservoir areas, or any portion thereof, as may be required in carrying out the purposes of the legislative acts authorizing construction of the project.

The right of Reclamation, its agents, lessees, or permittees to remove from said lands any and all material such as sand, gravel, rock, dirt, etc., necessary for the construction, operation, and maintenance of the project facilities. The County will be consulted in the exercise of these rights in order to minimize damage to recreation areas.

Title to all oil, gas, coal, and other minerals including sand and gravel now or hereafter owned by the United States is excepted and reserved to the United States. There is also excepted and reserved to the United States, its agents, lessees, or permittees the right to prospect and carry on the development for oil, gas, coal, and other minerals, including sand and gravel, and the right to issue leases or permits to prospect for oil, gas, or other minerals, including sand and gravel, on said lands under the Act of February 25, 1920 (41 Stat. 437), and acts amendatory thereof and supplementary thereto, and the Act of August 7, 1947 (61 Stat. 913). However, the County 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, Reclamation, in consultation with the appropriate governing agency, will give consideration to any adverse effect such action might have on recreation, fish and wildlife, and related uses.



## 11. MISCELLANEOUS

The County and Reclamation shall cooperatively control noxious weeds and land and water pollution as may be necessary and shall require its subcontractors, contractors, permittees, lessees, and licensees to comply with such control measures by express provisions contained in their respective subcontracts, contracts, permits, leases, or licenses.

Reclamation property boundary line designation and fencing will be the sole responsibility of Reclamation. The County will maintain property line fencing which Reclamation has installed, provided Reclamation provides adequate funding for said maintenance.

Colorado State Statute C.R.S. 30-10-513, requires the County Sheriff to be responsible for the control and suppression of wild fires in the county, including the areas of the leased premises.

Reclamation will have primary responsibility for identification and correction of shoreline erosion control within the leased premises.

The County shall submit to Reclamation a recreation and wildlife summary report for each reservoir area not later than May 1 of each year during the term of this MOU, for the preceding calendar year. The report form will be supplied by the appropriate Reclamation Area Office.

Reclamation and the County warrant that no person or selling agency has been employed or retained to solicit or secure this MOU 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 Reclamation or County for the purpose of securing business.

No member of or Delegate to Congress or Resident Commissioner and no officer, agent, or employee of the Department of the Interior or Larimer County shall be admitted to any share or part of this MOU or to any benefit that may arise herefrom.

Neither the County or Reclamation waives its sovereign immunity by entering into this agreement and fully retains all immunities and defenses provided by law with regard to any action based on this MOU.

### RESPONSIBLE PARTIES

The following positions will be responsible for monitoring activities included in this MOU:

Area Manager  
Eastern Colorado Area Office  
U.S. Bureau of Reclamation  
Loveland, Colorado

Director  
Larimer County Parks and Open Lands Dept.  
Loveland, Colorado

IN WITNESS WHEREOF, the parties have hereunto subscribed their names as of the date ~~first above~~<sup>above</sup> written.

BOARD OF COUNTY COMMISSIONERS, LARIMER COUNTY, COLORADO

By: [Signature]  
Title Chair  
Date June 17, 1997

DATE 6/4/97  
APPROVED AS TO FORM.

[SEAL] ATTEST: [Signature]  
Deputy Clerk

[Signature]  
County Attorney

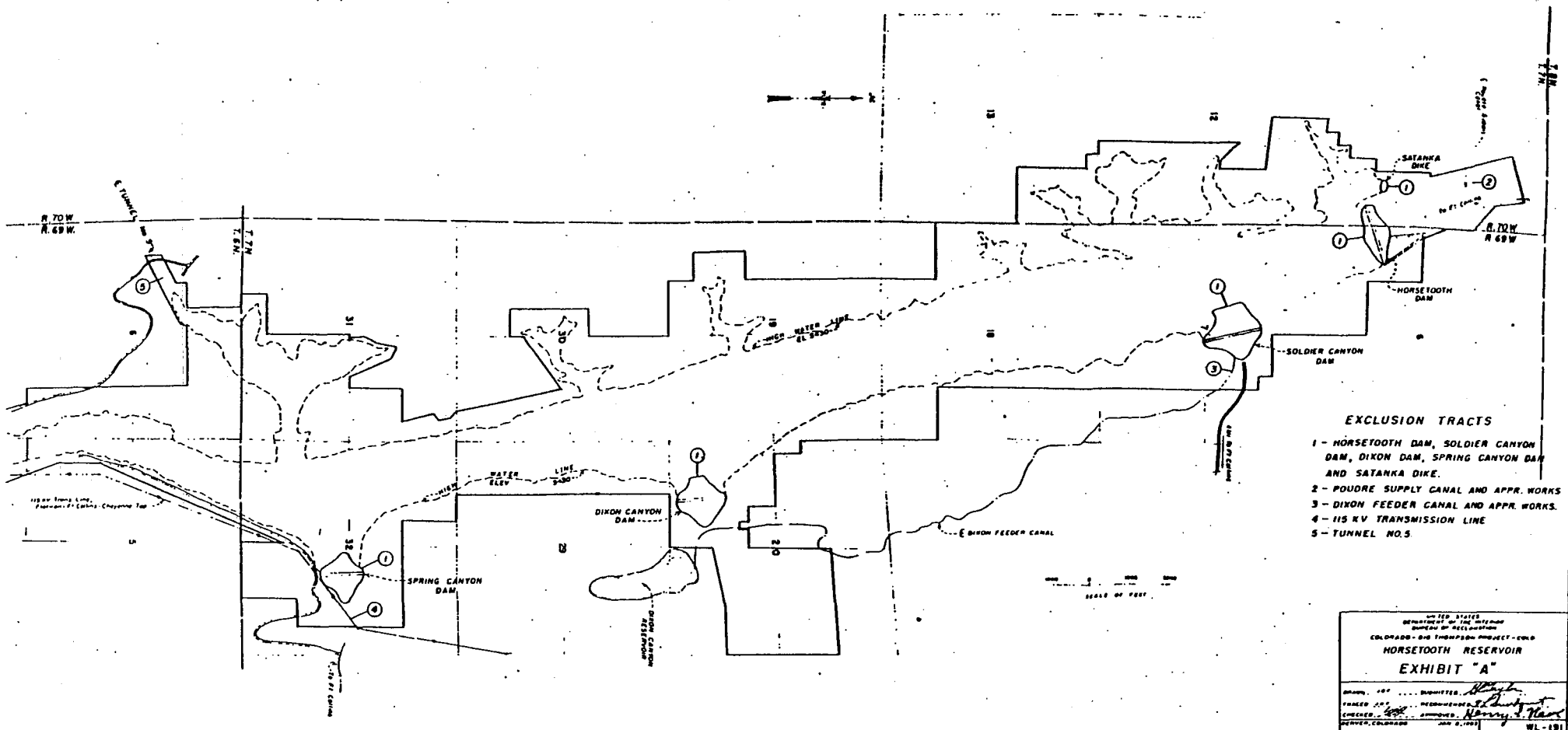
United States Department of Interior  
Bureau of Reclamation

By: [Signature]  
Title Area Manager ACTIWS  
Date 7/10/97

Consented To by Northern Colorado Water Conservancy District:

By: [Signature]  
Title GENERAL MANAGER  
Date 6/23/97

(computer file name: MEMUNDER.DOC)

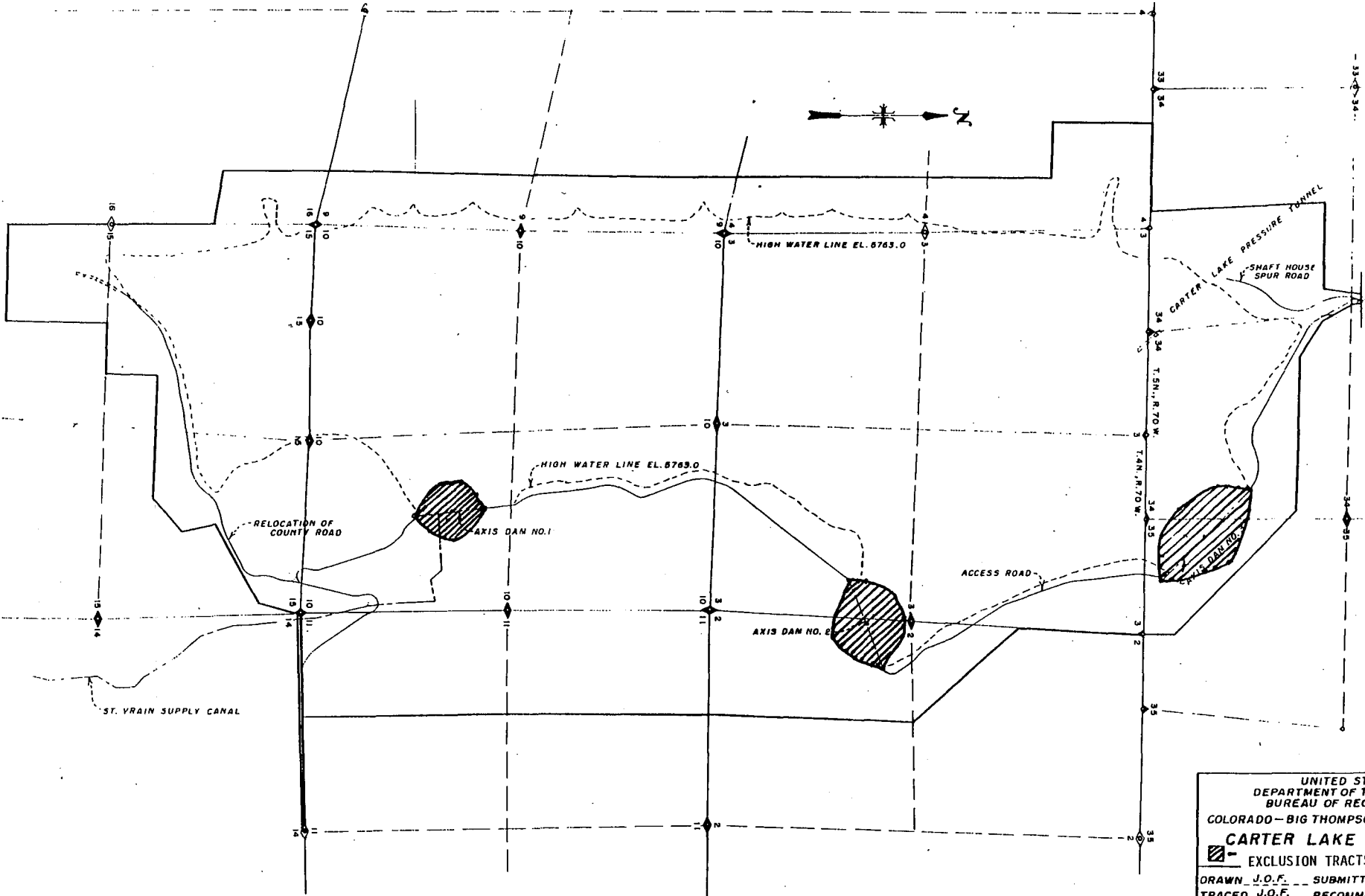


- EXCLUSION TRACTS**
- 1 - HORSETOOTH DAM, SOLDIER CANYON DAM, DIXON DAM, SPRING CANYON DAM AND SATANKA DIKE.
  - 2 - Poudre SUPPLY CANAL AND APPR. WORKS
  - 3 - DIXON FEEDER CANAL AND APPR. WORKS.
  - 4 - 115 KV TRANSMISSION LINE
  - 5 - TUNNEL NO. 5

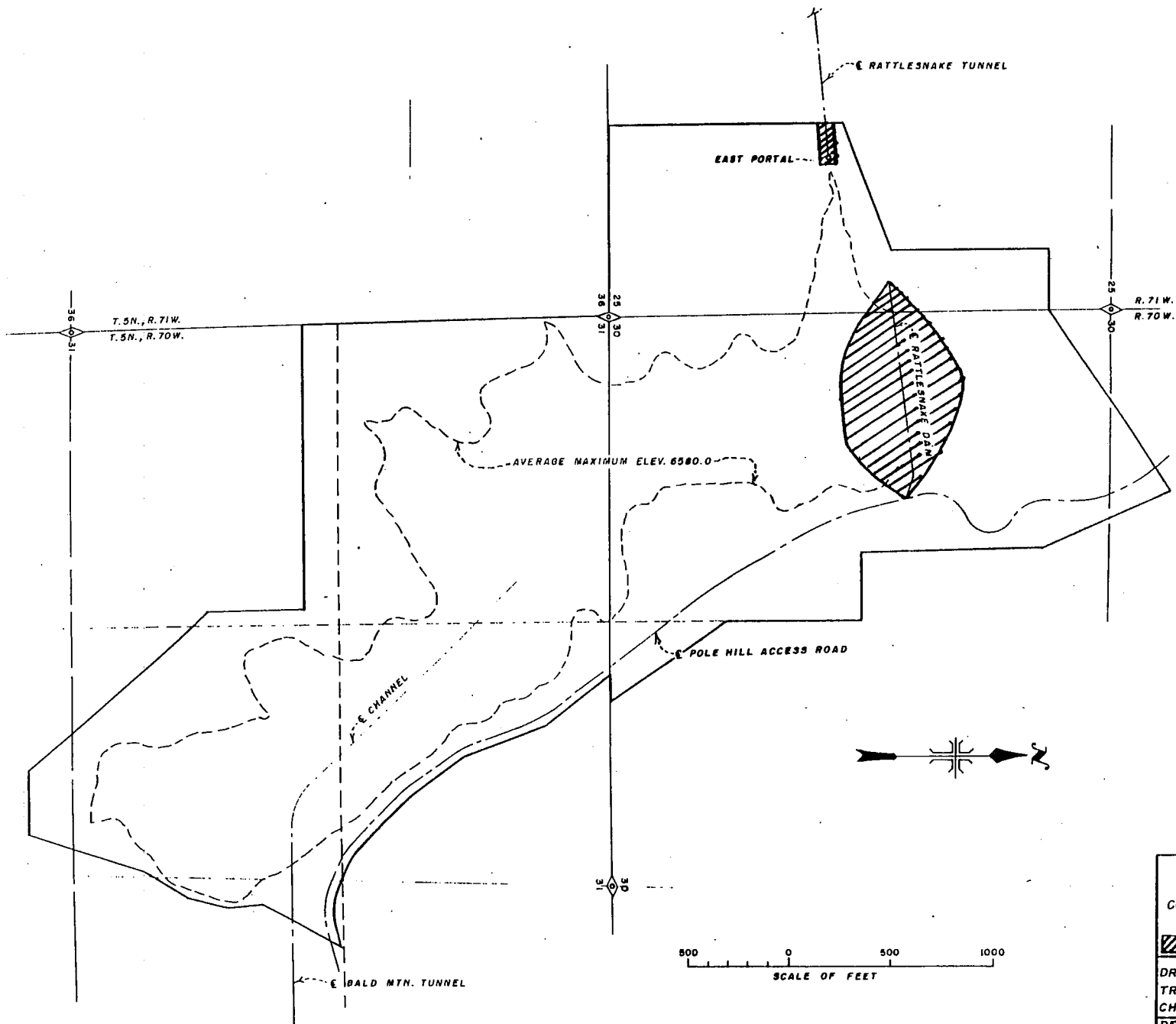
UNITED STATES  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF RECLAMATION  
 COLORADO - BIG THOMPSON PROJECT - COLORADO  
**HORSETOOTH RESERVOIR**  
**EXHIBIT "A"**

DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 ENGINEER: [Signature]  
 DENVER, COLORADO MAY 6, 1951 WL-191

MOU No. 97-AG-60-09220



UNITED STATES  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF RECLAMATION  
 COLORADO—BIG THOMPSON PROJECT—COLO  
**CARTER LAKE RESERVOIR**  
 [Hatched Box] EXCLUSION TRACTS  
 DRAWN J.O.F. SUBMITTED \_\_\_\_\_  
 TRACED J.O.F. RECOMMENDED \_\_\_\_\_  
 CHECKED \_\_\_\_\_ APPROVED \_\_\_\_\_  
 DENVER, COLO. 11-20-1953 | WL-306



UNITED STATES  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF RECLAMATION  
 COLORADO - BIG THOMPSON PROJECT - COLO.

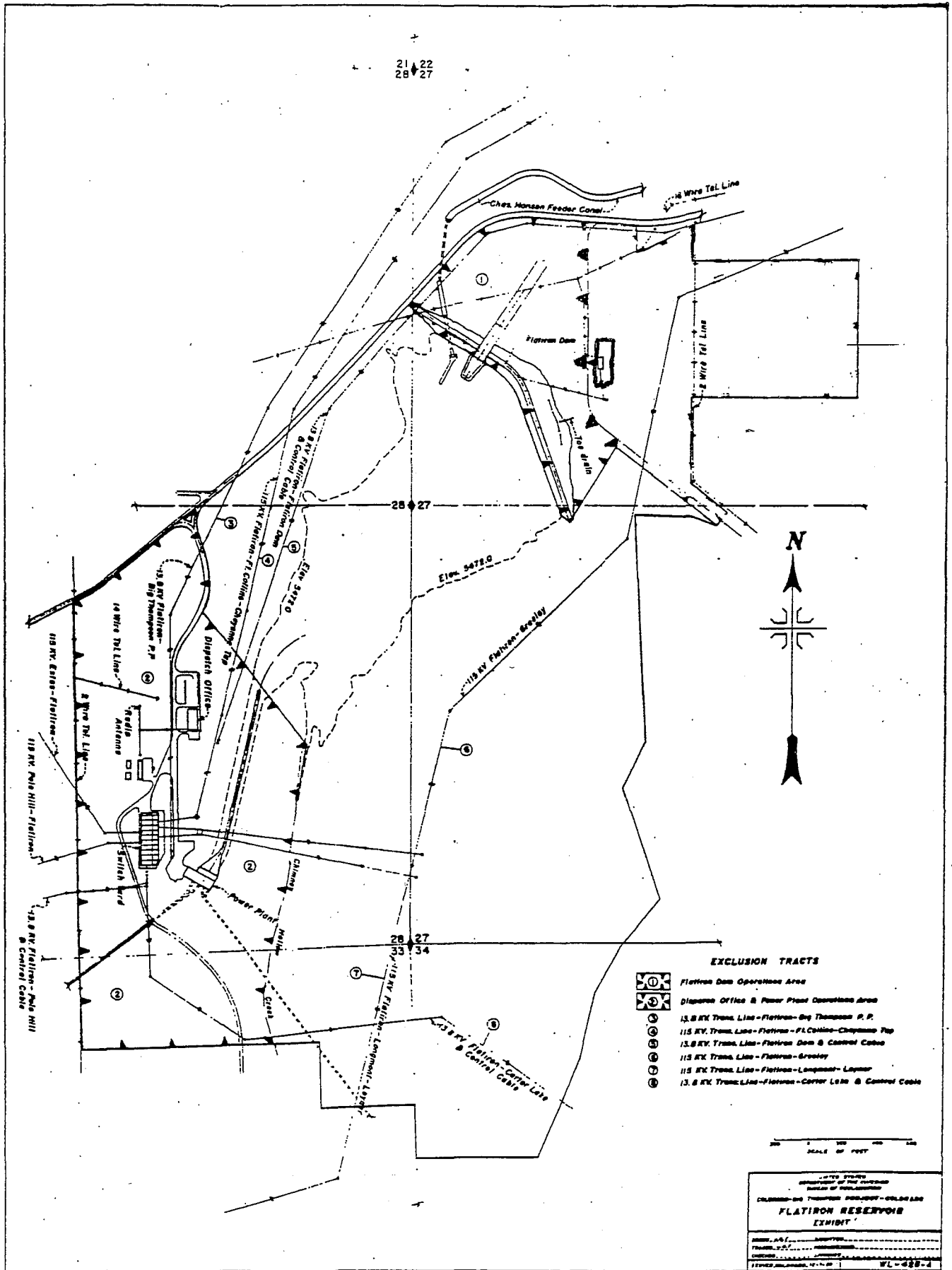
**RATTLESNAKE RESERVOIR**

EXCLUSION TRACTS

DRAWN J.O.F. SUBMITTED \_\_\_\_\_  
 TRACED J.O.F. RECOMMENDED \_\_\_\_\_  
 CHECKED \_\_\_\_\_ APPROVED \_\_\_\_\_

DENVER, COLO. 11-23-1953 | WL-307

21 22  
28 27



**EXCLUSION TRACTS**

- ① Flatiron Dam Operations Area
- ② Dispatch Office & Power Plant Operations Area
- ③ 13.8 KV Trans. Line - Flatiron - Big Thompson P. P.
- ④ 115 KV. Trans. Line - Flatiron - Ft. Collins - Cheyenne Tap
- ⑤ 13.8 KV. Trans. Line - Flatiron Dam & Control Cables
- ⑥ 115 KV Trans. Line - Flatiron - Greeley
- ⑦ 115 KV Trans. Line - Flatiron - Longmont - Layman
- ⑧ 13.8 KV. Trans. Line - Flatiron - Control Cables

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
COLUMBIA-BY THOMPSON PROJECT - COLORADO  
**FLATIRON RESERVOIR**  
EXHIBIT

DATE: 1967  
DRAWN BY: [unclear]  
CHECKED BY: [unclear]  
SCALE: AS SHOWN  
FILE NO. 488-1