

ACKLEY LAKE STATE PARK - LEASE AGREEMENT

THIS LEASE AGREEMENT (“Agreement”), made and entered into this _____ day of _____, 2021 (“Effective Date”), between the Montana Department of Natural Resources and Conservation, whose main address is 1625 Eleventh Avenue, Helena, Montana 59620, (hereinafter referred to as "DNRC") and the Montana Department of Fish, Wildlife, and Parks whose main address is 1420 East Sixth Avenue, Helena, Montana 59620 (hereinafter referred to as "DFWP").

WITNESSETH:

WHEREAS, the DNRC owns the Ackley Dam and Reservoir located in Judith Basin County, Montana, more particularly shown on the attached Exhibit A; and

WHEREAS, DFWP has been vested with duties and powers for the purposes of conserving recreational resources of the state and providing for their use and enjoyment (MCA 23-1-101) and lease land for the purposes related to public outdoor recreation (MCA 87-1-209) and is desirous to work closely with the State's landowners to provide quality recreational opportunities; and

WHEREAS, public use on a portion of the Ackley Reservoir has been managed for many years by DFWP as Ackley State Park with the approval of DNRC.

NOW, THEREFORE, in consideration of the following stipulations and agreements, it is mutually agreed as follows:

1. **PURPOSE AND PERMITTED USES.** DNRC agrees that DFWP shall have the right of control and management of public recreation on that portion of Ackley Reservoir generally described as lands located in the S½ of Section 22, Township 14 North, Range 14 East, more particularly depicted on the site map attached hereto as Exhibit A, and by this reference incorporated herein (the “Park”) in the manner described below, and that DFWP may make and enforce rules necessary to regulate the public use, subject to all restrictions, agreements, and easements presently existing or of record or as may be created by DNRC in the future; and subject, further, to DNRC's exclusive right to maintain, operate, and control reservoir level and operations. The control, management, and maintenance of the dam, reservoir level and spillway facilities and water measurement and recording devices is expressly reserved to DNRC, its assignees, and agents; it is understood that DNRC can exclude the general public from any areas (such as the dam, headgates, spillways) that could pose a safety risk to the public, and DNRC, its assignees, and agents, shall at all times have the right of ingress and egress on said lands to access such facilities. DFWP will not be held liable for any damages resulting from DNRC's retention of control, management, or maintenance of the dam, reservoir or spillway facilities or unlawful damage to DNRC facilities by third parties. DFWP agrees to exercise responsibility for the preservation of recreation related law, order, and safety in the area covered by this Agreement.

DFWP agrees that the general public shall not be excluded from reasonable and proper enjoyment of the natural or constructed recreational facilities provided in the Park, and that it will make such rules as are authorized and necessary to regulate the public use of the Park. DFWP shall be allowed to charge fees to the public users, in accordance with applicable law, for use of the Park; and DFWP shall further be allowed to issue and administer licenses, permits, and concession contracts under which services are made available to the public within the Park.

2. **REMOVAL OF IMPROVEMENTS.** DNRC expressly reserves to itself and its successors the right, at its discretion and pursuant to its authority, to construct or cause to be constructed such water resource facilities, including but not limited to, enlargement of the reservoir, irrigation canals, and mining of aggregate and rip rap as it considers necessary upon or near the Park and to flood the land as a result of said

facilities, in which case FWP shall remove any docks, buildings, roads, latrines or other structures, it has constructed or caused to be constructed within the Park, upon six (6) months written notice by the DNRC. DFWP agrees to clean the Park of all trash and debris to the reasonable satisfaction of DNRC. No compensation will be paid by the DNRC for any costs thus incurred by DFWP.

3. **WEED CONTROL.** The DFWP shall control state designated noxious weeds as defined in 7-22-2101(8)(a) MCA within the Park. Weed control activities shall be coordinated with the Judith Basin County Weed Control District and comply with all applicable State guidelines.
4. **HOLD HARMLESS.** DFWP shall not do or omit to do, or knowingly suffer or permit to be done by others anything by which act or omission any persons may be endangered or injured by the use of the Park. DFWP shall indemnify and hold DNRC harmless from and against any and all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising out of, or resulting from, the performance of this Agreement or the results of this Agreement, provided such damage to property or injury to persons is due, in whole or in part, to the error, omission, or negligent action of DFWP or any of its employees. DNRC shall indemnify and hold DFWP harmless from and against any and all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising out of, or resulting from, the performance of this Agreement or the results of this Agreement, provided such damage to property or injury to persons is due, in whole or in part, to the error, omission, or negligent action of DNRC or any of its employees. Nothing in this Agreement shall be construed or interpreted as authorizing DFWP, its agents, or employees, to act as an agent or representative for or on behalf of DNRC or to incur any obligation of any kind on behalf of DNRC.

5. **BOAT EXCLUSION AREA.** In conjunction with its operation of the Park, DFWP has approved, and DNRC hereby authorizes the development of a 100'x120' area within Ackley Lake more particularly depicted on the aerial photograph attached hereto as Exhibit "B" (and by this reference incorporated herein) for use exclusively for swimming and other non-motorized recreational use ("Boat Exclusion Area"). DFWP shall develop, maintain, and manage the Boat Exclusion Area on the following terms and conditions.

- a. **DFWP OPERATION.** DFWP shall be solely responsible for the construction, operation, and maintenance of the Boat Exclusion Area in a reasonable and safe manner and condition, and in compliance with all federal, state, and local laws, rules, or ordinances. DFWP is authorized to annually install and retrieve the following for the purpose of clearly marking the Boat Exclusion Area ("Markers"):
 - i. Two area markers
 - ii. 34 floating buoys
 - iii. 350' of rope
 - iv. 2 shackles and 80 feet of chain secured to anchors.
- b. **IMPROVEMENTS.** No improvements or alterations of any kind, beyond the annual installation and retrieval of the Markers, described above, shall be made to the Boat Exclusion Area without first obtaining consent, in writing, from DNRC.
- c. **SUBORDINATION.** Unless specifically stated to the contrary, herein, the use, operation, and maintenance of the Boat Exclusion Area shall, in all respects, be subordinate to, and shall in no way interfere with, the respective rights and obligations of DNRC and DFWP under the other terms of this Agreement.
- d. **INDEMNIFICATION.** DFWP, as a material part of its consideration hereunder to DNRC, hereby assumes all risk of damage to property or injury to persons, in, upon, or about the Boat Exclusion Area arising from any cause and DFWP hereby waives any and all claims with regard thereto against DNRC. Except for DNRC's gross negligence or willful misconduct, DFWP shall indemnify, protect, defend, and hold harmless DNRC and its agents from and against any and all claims,

damages, liens, judgments, penalties, attorneys' and/or consultant's fees, expenses, and/or liabilities arising out of, involving, or in connection with the construction, use, and/or operation and maintenance of the Boat Exclusion Area, as well as any and all fixtures, improvements, modifications, and/or appurtenances thereto, by any person, including, but not limited to, DFWP, its employees, agents, or representatives, or members of the general public. If any action or proceeding is brought against DNRC by reason of any of the foregoing matters, FWP shall, upon notice, defend the same at DFWP's sole cost and expense and DNRC agrees to reasonably cooperate with DFWP in such defense. It is the intent of DNRC and DFWP that this Paragraph 5.c. shall be in addition to, and shall in no way limit, Paragraph 4, hereof.

6. LIAISONS AND NOTICES. DFWP agrees that it will be responsible for the management of public access and recreational uses and facilities. DFWP designates its Region 4 Park Manager as its representative. DNRC designates its Project Management Section Supervisor, State Water Projects Bureau, Water Resources Division, as its representative.
7. TERM. The term of this Agreement shall commence as of the Effective Date and shall expire on December 31, 2024 ("Term"), unless renewed in writing and signed by all parties. This Agreement supersedes and terminates any previous lease covering the Park entered into by the DNRC and DFWP. This Agreement shall terminate and all rights of DFWP hereunder cease:
 - a. Upon expiration of the Term.
 - b. Upon six (6) months written notice of either party.
 - c. Upon failure of DFWP to observe any of the conditions, exceptions, or reservations set out in this Agreement.
8. RENTAL. DFWP's accommodations for public use of the Park is the consideration for this Agreement, and no cash rental will be paid during the term of the Agreement.
9. MODIFICATIONS. This Agreement constitutes the sole and entire agreement between the parties. No statements, promises or inducements made by either party which are not contained in this Agreement are valid or binding unless evidenced in writing and signed by both parties. DFWP shall not assign this Agreement or any interest therein without the written consent of DNRC, but the provisions of this Agreement shall apply and bind the successors and assigns of the DNRC and DFWP.
10. SANITARY FACILITIES - DFWP shall provide sanitary facilities. Plans for such systems shall be submitted to DNRC for written approval, and the systems shall be constructed and maintained in accordance with the rules, regulations, and recommendations of Judith Basin County and the Montana State Department of Environmental Quality, at the sole cost and expense of DFWP.
11. IMPROVEMENTS - At its sole cost and expense, FWP may place on the Park a reasonable amount of improvements directly related to the necessary use of the lands as specified in this Agreement. All construction, improvements, or alterations to the site, structures or appurtenances must be approved in writing in advance by DNRC. Requests for these improvements shall be submitted to DNRC, together with a schedule for completion of the proposed work, in writing at least thirty (30) days in advance of the date proposed for commencement of any such proposed work. Plans must include labeled drawings that specify dimensions, materials, and structural support design as well as plumbing and electrical design when appropriate. No work shall commence until written approval has been received from the DNRC. No improvements will be allowed until DFWP has obtained all necessary federal, state, or county permits from appropriate permitting agencies. Permits requiring landowner approval and signature shall be submitted to DNRC for signature. Approval and signature will not be unreasonably withheld. DFWP agrees to maintain improvements to a reasonable and safe condition. Maintenance of improvements (including replacement in-kind) does not require prior approval.

DFWP shall notify DNRC, pursuant to Section 6 of this Agreement, of any proposed third-party construction, improvements, or alterations to the site, structures or appurtenances at the Park, including the Boat Exclusion Area, no less than 30 days prior to the proposed commencement of any such construction, improvement or alteration. Any such construction, improvement or alteration shall be subject to all conditions of this Agreement.

12. WATER RIGHTS - Groundwater developed by DFWP for domestic purposes shall be developed in the name of the State of Montana, Department of Natural Resources and Conservation. Groundwater may not be developed for other than domestic purposes.
13. SIGNAGE – DFWP shall, at their own expense, maintain an existing sign for prominent display at the Park Entrance or other mutually agreed upon location. The sign shall display the DNRC logo and identify the DNRC as the land owner. It shall also include information about the historic and economic significance of the Ackley Project to the agricultural community. It shall also recognize the Ackley Lake Water Users Association as the primary financial contributors to the project. The sign shall be no smaller than 6 square feet. If the sign is vandalized or been removed, DFWP shall replace the sign at their expense at the discretion of DNRC. DFWP must coordinate sign design with DNRC for final approval prior to installation.
14. HEADINGS. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF we have hereunto set our hands and seals this _____ day of _____, 20__.

Amanda Kaster, Director
Department of Natural Resources and Conservation

STATE OF MONTANA)
) ss
COUNTY OF LEWIS AND CLARK)

On this _____ day of _____, 20__, before me, the undersigned a Notary Public in and for the State of Montana, personally appeared Amanda Kaster known to me to be the Director of the Montana Department of Natural Resources and Conservation and acknowledged to me that she executed the within and foregoing Agreement for and on behalf of the Department.

IN WITNESS WHEREOF, have hereto set my hand and affixed my Notarial Seal the day and year first above written.

(Seal)

NOTARY PUBLIC for the State of Montana
Residing at _____
My commission expires _____

Hank Worsech, Director
Montana Department of Fish, Wildlife, & Parks

STATE OF MONTANA)
) ss
COUNTY OF LEWIS AND CLARK)

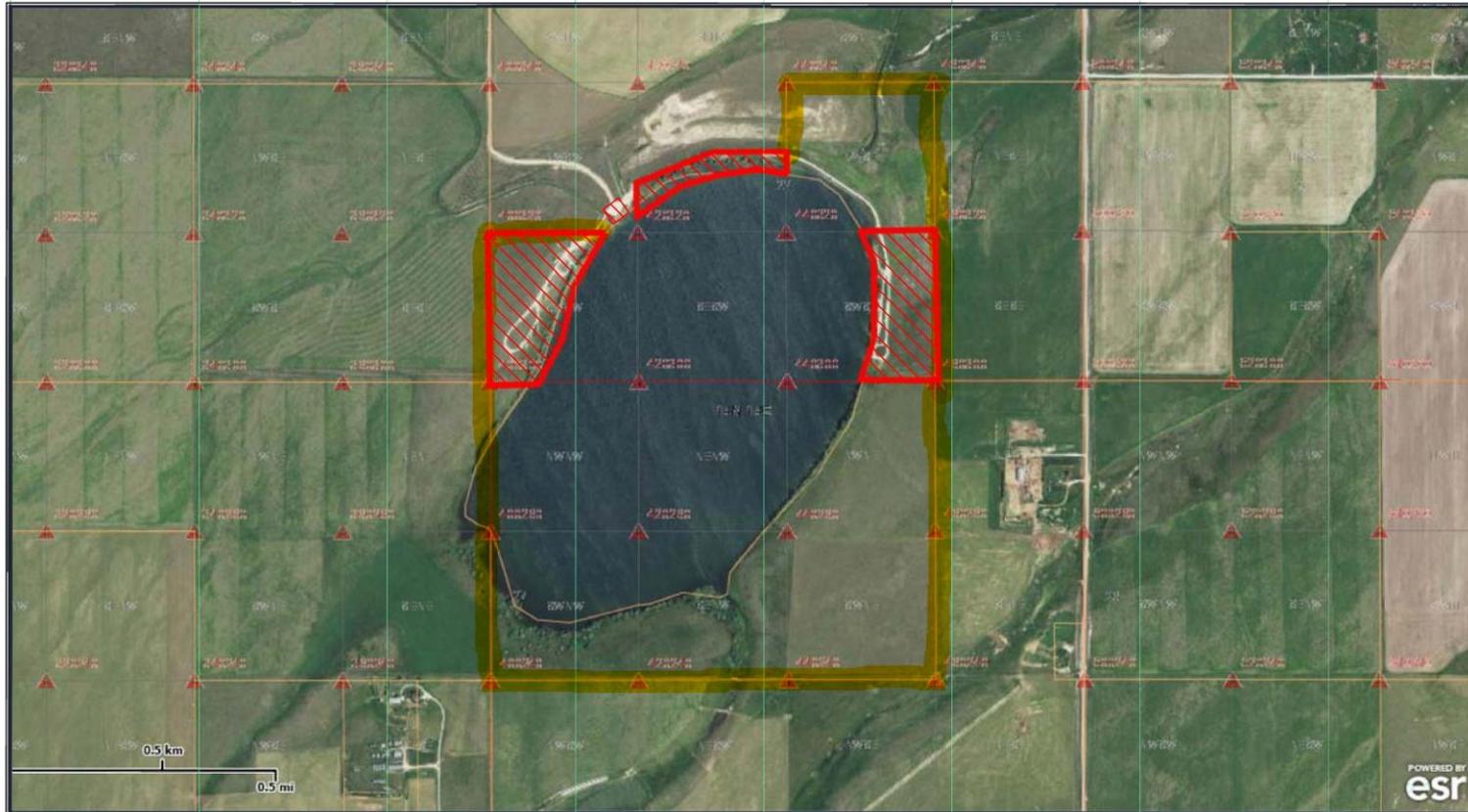
On this _____ day of _____, 20__, before me, the undersigned a Notary Public in and for the State of Montana, personally appeared Hank Worsech, known to me to be the Director of the Montana Department of Fish, Wildlife and Parks and acknowledged to me that he executed the within and foregoing Agreement for and on behalf of the Department.

IN WITNESS WHEREOF, have hereto set my hand and affixed my Notarial Seal the day and year first above written.

(Seal)

NOTARY PUBLIC for the State of Montana
Residing at _____
My commission expires _____

EXHIBIT A



Site Exhibit Map

DNRC Lease For DFWP Ackley Lake S. P.

Prepared by DNRC

Printed: Mar 14, 2016

LEGEND



Leased Area

WATER RESOURCES DIVISION
STATE WATER PROJECTS BUREAU
1424 9TH AVENUE, P.O. BOX 201601
HELENA, MONTANA 59620-1601
(406)444-6646



SITE MAP EXHIBIT
DNRC LEASE for DFWP ACKLEY LAKE STATE PARK

SHEET
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