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DEPARTMENT OF THE ARMY
LEASE
OF PROPERTY ON FORT HUACHUCA, ARIZONA

THIS LEASE, made between the SECRETARY OF THE ARMY, of the first part, and the STATE OF ARIZONA for the use of the ARIZONA GAME AND FISH COMMISSION, whose address is 105 Capitol Annex Building, Phoenix, Arizona, of the second part, WITNESSETH:

That the Secretary of the Army, by virtue of the authority contained in the Act of Congress approved 5 August 1947 (61 Stat. 774; 10 U.S.C. 1270), entitled "An Act to authorize leases of real or personal property by the War and Navy Departments, and for other purposes", and for the consideration hereinafter set forth, hereby leases to the party of the second part, hereinafter designated as the lessee, for a term of five (5) years, beginning 1 September 1951, and ending 31 August 1956, but revocable at will by the Secretary of the Army, the following described property for a Wildlife Refuge:

A parcel of land situated on an unsurveyed tract in the northwestern portion of Fort Huachuca, in Cochise County, Arizona as shown on map attached hereto and made a part hereof, marked "Exhibit A", and more particularly described as follows:

Beginning at a point on the South line of surveyed Section Thirty-one (Sec. 31), Township Twenty-one South (T21S), Range Nineteen East (R19E), Gila and Salt River Base and Meridian, said point being corner number one of the said military reservation; thence northerly along the said military reservation line approximately three and six-tenths miles (3.6 mi.) to corner number two of said reservation boundary, said point being approximately one-quarter mile (1/4 mi.) east of center Section Eighteen (Sec. 18), Township Twenty-one South (T21S), Range Nineteen East (R19E), Gila and Salt River Base and Meridian; thence easterly along said reservation boundary approximately six and one-half miles (6 1/2 mi.) to corner number three of said military reservation, said point being approximately one-quarter mile (1/4 mi.) East of West quarter corner of Section Eight (Sec. 8), Township Twenty-one South (T21S), Range Twenty East (R20E), Gila and Salt River Base and Meridian; thence southeast along said reservation boundary approximately one-eighth mile (1/8 mi.) to north gate entrance road to said reservation; thence southerly along said entrance road approximately four and one-fourth miles (4 1/4 mi.) to a point three-fourths mile (3/4 mi.) north of intersection of said road with railroad crossing; thence westerly across the north point of Marshall Ridge approximately five and three-eighths miles (5 3/8 mi.) to the point of beginning.

Containing 13,120 acres, more or less.

THIS LEASE is granted subject to the following conditions:

1. That the lessee shall pay to the United States rental in the amount of One (\$1.00) Dollar for period of this lease, receipt of which is hereby acknowledged, and the lessee shall also pay to the United States on demand any sum which may have to be expended after the expiration, revocation or termination of this lease in restoring the premises to the condition required by Condition 16 hereof. Compensation shall be made payable to the Treasurer of the United States and forwarded by the lessee direct to District Engineer, Los Angeles District, Corps of Engineers, U. S. Army, 751 South Figueroa Street, Los Angeles 17, California.
2. That the lessee has inspected and knows the condition of the leased property and it is understood that the same is hereby leased without any representation or warranty by the Government whatsoever, and without obligation on the part of the Government to make any alterations, repairs, or additions thereto.
3. That, subject to the limitations of Condition No. 16 hereof with respect to the restoration of the property, all portions of the leased property shall at all times be protected and maintained in good order and condition by and at the expense of the lessee.
4. That the lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without permission in writing from the District Engineer, Los Angeles District, Corps of Engineers, U. S. Army, 751 South Figueroa Street, Los Angeles 17, California, hereinafter designated as "said officer."
5. That the right is hereby reserved to the United States, its officers, agents, and employees to enter upon the said premises at any time for the purpose of inspection and inventory and when otherwise deemed necessary for the protection of the interest of the Government, and the lessee shall have no claim of any character on account thereof against the United States or any officer, agent, or employee thereof.
6. That the United States or its contractors or any of their officers, agents or employees shall not be responsible, except as otherwise provided in Condition No. 19 hereof, for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to the use and occupation of the said premises, or for damages to the property of the lessee, or for damages to the property or injuries to the person of the lessee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from activities of the United States or its contractors, and the lessee shall hold the United States and its contractors, and any of their officers, agents, or employees, harmless from any and all such claims.
7. That the lessee shall at all times exercise due diligence in the protection of the demised premises against damage or destruction by fire and other causes.
8. That any property of the United States damaged or destroyed by the lessee incident to the lessee's use and occupation of the said property shall be promptly repaired or replaced by the lessee to the satisfaction of the said officer, or in lieu of such repair or replacement the lessee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.

9. That the lessee shall cut no timber, conduct no mining or drilling operations, remove no sand, gravel, or kindred substances from the ground, except in the exercise of mineral rights heretofore reserved to the record owner thereof, commit no waste of any kind, or in any manner substantially change the contour or condition of the property hereby leased, except changes required in carrying out soil and water conservation measures.
10. That the lessee shall comply with all applicable laws, ordinances and regulations of the State, County, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters.
11. That any and all taxes which may be lawfully imposed by the State or its subdivisions upon the leasehold interest created hereunder, or upon the property of the lessee on the said leased premises, shall be paid promptly by the lessee.
12. That except as otherwise specifically provided in this lease, all disputes concerning questions of fact which may arise under this lease, and which are not disposed of by mutual agreement, shall be decided by the said officer, who shall reduce his decision to writing and mail a copy thereof to the lessee at its address shown herein. Within 30 days from said mailing the lessee may appeal to the Secretary of the Army, whose written decision or that of his designated representative or representatives or board, shall be final and conclusive upon the parties hereto. Pending decision of a dispute hereunder, the lessee shall proceed with the performance of this lease.
13. That this lease may be terminated by the lessee at any time by giving the Secretary of the Army, through the said officer, at least ten (10) days' notice thereof in writing.
14. That the use and occupation of the premises leased shall be in accordance with the land-use provisions marked "Exhibit B", attached hereto and made a part hereof, and shall be subject to the general supervision and approval of the officer having immediate jurisdiction over the property and to such rules and regulations as may be prescribed by him from time to time.
15. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.
16. That, on or before the date of expiration of this lease or its termination by the lessee, the lessee shall vacate the demised premises, remove the property of the lessee therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond the control of the lessee and due to fair wear and tear excepted. If, however, this lease is revoked, the lessee shall vacate the premises, remove said property therefrom, and restore the premises to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the Army, said property shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the premises to be restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.
17. That all notices to be given pursuant to this lease shall be addressed, if to the lessee, to Arizona Game and Fish Commission, 105 Capitol Annex Building, Phoenix, Arizona; if to the Government, to the District Engineer, Los Angeles

District, Corps of Engineers, U. S. Army, 751 South Figueroa Street, Los Angeles 17, California, or as may from time to time be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope or wrapper, addressed as aforesaid and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

18. That, except as otherwise specifically provided, any reference herein to "District Engineer" or "said officer" shall include his duly appointed successors and his authorized representatives.

19. That all uranium, thorium, and all other materials determined pursuant to section 5 (b)(1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by this instrument are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated as such from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.

20. That 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 bonafide employees or bonafide established commercial or selling agencies maintained by the lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the lessee to pay the full amount of such commission, percentage, brokerage, or contingent fee.

21. That this lease is subject to any existing easements for electric power, transmission lines, telephone or telegraph lines, water, gas, gasoline, oil, or sewer pipe lines, roads or streets, or other facilities located on the leased property.

22. That the right is hereby reserved to the United States, its officers, agents and employees to construct, or to permit the construction of, facilities

suitable for communication, electrical distribution or transmission, water supply, sewage disposal, and similar purposes on the leased premises, and the lessee shall have no claim for compensation or damages of any character on account thereof.

This transaction is not affected by Section 601 of the Act of Congress approved 28 September 1951 (Public Law 156 - 82nd Congress, 1st Session).

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____, 19__.

THIS LEASE is also executed by the lessee this _____ day of _____, 19__.

Approved _____, 1951

HOWARD PYLE, Governor
State of Arizona

STATE OF ARIZONA, by and through
ARIZONA GAME AND FISH COMMISSION

W. J. Richards
W. J. RICHARDS, Chairman

ATTEST:

WESLEY BOLIN, Secretary of State (SEAL)

ATTEST:

Thomas L. Kimball
THOMAS L. KIMBALL, Secretary (SEAL)

105 Capitol Annex Building
Phoenix, Arizona

APPROVED AS TO FORM

This 23 day of October, 1951
By *Samuel M. Lewis* Atty. Gen.

By _____
ASST. ATTY. GEN.

LAND USE PROVISIONS

Lease to Arizona Game and Fish Commission
Fort Huachuca, Arizona

1. The lessee may construct such permanent structures on the premises as will further the primary use of the area for military or grazing purposes, providing that prior to construction not otherwise designated herein the permission of the Commanding Officer shall be obtained, and provided further, that upon completion of construction, said structures shall become and remain the property of the United States, except as noted in Provision 9b(1).

2. The lessee shall maintain its existing perimeter fences, including water gates across arroyos, in such condition as to deter the unauthorized trespassing of cattle and livestock from outside the military reservation.

3. It is hereby stated as the intention of the Army to cooperate with the Arizona Game and Fish Commission in promoting stability of tenure of the existing wildlife reserve. Although this lease shall be revocable at the discretion of the Secretary of the Army, in the event of military requirements incompatible with the maintenance of the area or alternative areas as a wildlife refuge, every reasonable effort shall be made to allow sufficient time prior to revocation for the lessee to secure other useable areas for the buffalo and antelope herds, or to allow their removal to an unaffected portion of the reservation during such military exigency.

4. Grazing shall be limited, in general, to buffalo, antelope, and other wild animals. Nothing herein shall be construed, however, to prevent the grazing of animals required by the employees of the Arizona Game and Fish Commission for duties in connection with the administration or protection of the leased area.

5. Soil conservation and grazing limitations. The lessee shall, for the purpose of good management and soil conservation, at all times during the term of this lease, fully preserve the vegetative cover and constantly strive to improve the same by proper placement of salt away from water and in under-utilized areas, and by the employment of all generally accepted methods of good husbandry, and shall limit grazing and stocking according to the condition of plant growth of the important grass species as observed during the growing season, and the variance from normal precipitation, normal temperatures, and the moisture retentive qualities of the soils and vegetation. For empirical purposes of maintaining the range in good condition, the present buffalo stocking of approximately 370 head shall not be exceeded unless or until such time as a more adequate supply and distribution of water makes additional pasture available and prevents the over-utilization of pastures readily accessible to water.

6. The lessee shall control noxious vegetation, predators, and rodents within the leasehold in the manner and to the extent determined to be necessary by the Commanding Officer.

7. The lease contains certain restrictive conditions and hereby provides for joint use by the Army for military maneuvers or essential military training, provided that no live firing shall be conducted on the area except in such manner and at such times as will not interfere with propagation or preservation of the buffalo and other wild animals.

8. It shall be the privilege of the lessee to drill and improve wells, and to improve any springs or washes so as to make additional water available for fire fighting and grazing purposes. Provided that any such improvements shall be designed and engineered in such manner that hazards downstream from flash floods or cloudbursts will not be increased by the existence of such dam or water-retentive device in the opinion of the Post Commander. This implies specifically the provision for adequate spillways.

9. As part of the consideration of this lease and to assist in fire suppression by fire breaks, by the provision of additional supplies of water for fire suppression and by the promotion of fire hazard reduction through more even distribution of grazing, the lessee shall in addition to water improvements heretofore mentioned, perform the following services:

a. Maintain in useable condition the firebreaks indicated on the accompanying map, "Exhibit G", within the leasehold, following their construction by the military. This shall include the maintenance of such breaks in a traversable condition (if they are constructed as traversable) and the provision of a continuous trail to mineral soil, on one or both sides of which the major portion of inflammable vegetative cover has been removed for a total width of not less than ten feet.

b. The lessee during the first year after the commencement of this lease shall perform the following range improvements within the leasehold area:

- (1) Shall drill a well, estimated depth of 250', with 6" casing, place thereat a 12' mill on a 30' tower, with pump and necessary appurtenances capable of pulling water 170' at the rate of 390 gal. per hour in a 20-mi. per hour wind. Shall place a concrete trough 40' long, 4' wide and 30" deep with a float valve and necessary by-pass at the well. The mill shall remain the property of the Arizona Game and Fish Commission.
- (2) Shall fence all permanent water holes, either constructed or to be constructed, with a legal fence.
- (3) Shall proceed with immediate construction of Tabosa Tank (#4), engineering drawings of which have been approved by the Arizona Game and Fish Commission.
- (4) Shall construct five pot hole water developments to standards indicated herein. Such developments shall be distributed over the leased premises, in such places as may be conturred in by the Commanding Officer as providing a basis for evaluation under various conditions of rainfall, stream and soil conditions.

c. The lessee, during the second, third, fourth and fifth years of the lease, shall construct and maintain not less than 15 such pot hole water developments annually unless it is proven to the satisfaction of the Commanding Officer that other equivalent fire and grazing water developments should be constructed in lieu thereof and provided for in an amendment to this lease.

d. Recommended pot hole developments referred to in Provisions 9b(4) and 9c above, are diagrammatically shown on the accompanying drawings and described as follows:

- (1) On one side of the main channel of intermittent streams or washes, where the soil and proposed fill material is erosive, or in the main channel of smaller washes where silting-in and erosion is no problem, small but deep "tanks" shall be scooped out with a bulldozer or bucket. Size will be about 20 x 30 feet, more or less, depending on the location. One side shall not be steeper than a 1:2 slope.
- (2) Unless soil is of clay or other impervious composition sufficient 50-to-200 mesh Bentonite or similar substance shall be procured and worked into the top 4" to 6" of earth to provide a water-impervious lining of the pot hole. It will of course, be necessary to slope all walls to accomplish this lining. In addition, after the pot hole has been filled with water, additional coarse-ground Bentonite shall be

distributed evenly over the surface of the water to further seal the tank. ESTIMATED QUANTITIES: Fine Bentonite (to be worked into the first 4" to 6" of earth), 1 1/2# per square foot, or about 1200# per tank. Estimated cost - \$25.00 per ton at the Fort. Coarse Bentonite, approximately one-half pound per square foot, or 400# per pot hole. Total cost of Bentonite estimated at \$20.00 per pot hole.

- (3) A 1" or larger pipe should extend from a perforated 4" to 6" collection pipe set behind a concrete cutoff wall to the tank in washes where silting is a problem. The perforated collection pipe is set at right angles to the streambed, at the top of and just behind the cutoff wall, the center of which is almost flush with the lower portions of the undisturbed streambed. The object is to collect all possible ground water when the stream ceases a heavy flow. For this purpose, the use of Bentonite behind the cutoff wall in loose soils may be advisable. Bentonite should not be allowed to plug the collection pipe, however.
- (4) A ditch to utilize flood waters, with provisions to prevent erosion, should be installed approximately as shown in drawing. The intake of the flood ditch should be at the level of the natural streambed, and the outlet of the flood-ditch should be protected from cutting into the slopes of the pot hole by means of an erosion pavement.
- (5) A mound of earth should be left on the down-stream end and on both sides of the pothole as necessary to prevent change of the main channel into the pot hole during high water with probable total loss through silting-in. In no instance should the elevation of the top of the mound be less than that of the intake plus the height of probable high water.

10. If it should appear to the Commanding Officer, after consultation with and advice from the Arizona Game and Fish Commission that the protection from fire and local overgrazing would be served by the construction by the lessee of drift fences, lessee will construct and maintain same in such manner, place(s) and time as may be mutually advantageous to the government and to the lessee in the judgement of the Commanding Officer. Provided that the Commission shall not be required to construct more than one-half mile of such fences annually.

"Pot-hole" Water Development

