

**Agreement between
the United States Bureau of Reclamation
and Southern Utah Valley Power Systems
for the Transfer of Title to the Strawberry Valley Project
46kV Power Transmission System
in South Utah County, Utah**

Pursuant to and in accordance with 43 U.S.C. §§ 2901-2907 (the Title Transfer Act) this Title Transfer Agreement is made and entered into by the United States, acting by and through the Department of the Interior, Bureau of Reclamation (Reclamation), and Southern Utah Valley Power Systems (SUVPS), a non-profit political subdivision, organized under the laws of the State of Utah, with its principal place of business in Utah County, Utah (collectively, the Parties).

Definition: 46kV Power Transmission System

For purposes of this title transfer and this Agreement, the “46kV Power Transmission System” means the following: all poles, guy wires, anchors, conductors, steel structures, insulators, foundations, switches, earthing systems and other equipment within the 35.5-mile corridor depicted on Exhibit A, together with all prescriptive easements and/or rights of way, to a maximum corridor width of 30-feet on each side of the existing transmission system centerline, as the system exists at the execution of this Agreement. This easement corridor includes all outgrants issued by the United States to third parties.

Background

The Strawberry Valley Project (Project) was authorized by the Secretary of the Interior on December 15, 1905, under the provisions of the Reclamation Act of June 17, 1902, 32 Stat. 388, as supplemented and amended. The Project was one of Reclamation’s earliest projects and one of the first irrigation projects to develop hydroelectric energy. The electrical power from Project facilities was utilized to provide power for the construction of the Strawberry Tunnel. The Spanish Fork Diversion Dam, Strawberry Power Canal, and Upper Spanish Fork Power Plant were completed in 1908, and the entire Project was completed on June 30, 1922.

Once power was no longer needed for construction, a distribution system was constructed for the purpose of providing power to irrigators for pumping of Project water. Later additions to the power transmission system provided additional power generation facilities, transmission facilities at a higher voltage of 46kV, and a lower voltage distribution system to serve several local communities in Utah Valley.

Reclamation contracted with the Strawberry Water Users Association (Association) to perform operation, maintenance, and replacement (OM&R) of certain Project facilities under

provisions of Contract No. ILR-78, dated September 28, 1926 (1926 Contract). The 1926 Contract was superseded in 1940 by Contract No. ILR-78 (1940 Contract) with Sections 14 and 21 obligating the Association to perform OM&R of certain Project facilities. Among these facilities are high-voltage power transmission lines that connect the Project power plants and the substations serving local communities.

On April 15, 1977, Southern Utah Valley Power Project (SUVPP), the predecessor to SUVPS, was created as a joint power board by the Interlocal Cooperation Act, Utah Code 11-13.

On May 17, 1977, SUVPP, Utah Power and Light (UP&L), and the Association entered into the Substation Operating Agreement (SOA). The SOA described certain obligations associated with the coordinated operation of the SUVPP 138/46 kV equipment within UP&L's Spanish Fork Substation and the Project transmission system. These SOA obligations are a subset of the Association's complete transmission system obligations as described in Section 21 of the 1940 Contract.

On January 1, 2002, the members of SUVPP established SUVPS, by adopting the SUVPP Agreement for Joint and Cooperative Action.

On November 17, 2004, the Association executed the *Assignment of Transmission Service Agreement (TSA)*, assigning its interests and obligations under the TSA to SUVPS. On November 17, 2004, the Association also executed the *Assignment of Substation Operating Agreement (SOA)*, assigning its operation and dispatching responsibilities, as described in the SOA, to SUVPS. The assigned responsibilities are included in the Association's OM&R duties defined in the 1940 Contract and the TSA.

On October 27, 2015, Reclamation formally approved and recognized SUVPS as the OM&R contractor for the 46kV Power Transmission System by letter, as required in Section 33 of the 1940 Contract.

Under a separate agreement between SUVPS and the Association, dated June 2, 2022, SUVPS agreed to wheel up to 3.85 MW of Project power on the 46kV Power Transmission System, in perpetuity, without charge to the Association.

The 46kV Power Transmission System has been upgraded substantially over the last century and is currently an approximately 35.5-mile system connecting several substations serving the communities of Payson City, Salem City, Spanish Fork City, Springville City, Elk Ridge and Woodland Hills, and portions of unincorporated South Utah County.

Title to the 46kV Power Transmission System is currently in the name of the United States for the benefit of the Project. SUVPS and the United States have agreed to transfer title of the 46kV Power Transmission System for the following reasons:

A. Utah County has grown since the Project was built into an urbanized community with power demands now originating from nearby cities, unincorporated communities, and

industrial operation in place of historical agriculture-related use. Less than three percent of power carried by the current 46kV Power Transmission System is supplied by Project power, and the percentage will continue to decrease as population and related power demands increase.

B. SUVPS has expressed a desire to seek financing for current and future repairs and upgrades for the power transmission system to keep up with rising power demands.

C. Elimination of federal ownership and involvement, in favor of local administration and control, will allow for more efficient and cost-effective care, repair, upgrades, and management of the 46kV Power Transmission System.

D. The repayment obligation to the United States for the Project was fully satisfied in 1974.

E. The United States will be able to reduce federal obligations, costs, and liabilities.

In accordance with the Title Transfer Act and Reclamation policy, the Parties entered into a Memorandum of Agreement, dated June 17, 2022, and now enter into this Title Transfer Agreement.

Required Findings

As required by the Title Transfer Act, Reclamation finds:

A. SUVPS is a qualifying entity. SUVPS is a non-profit political subdivision, organized under the laws of the State of Utah, and comprises members from Payson City Power, Salem City Power, Spanish Fork City Power, Springville City Power, and South Utah Valley Electric Service District (SESD). SUVPS and its predecessors have developed facilities and expertise that have enabled and allowed SUVPS to provide electrical utility service to its members since the inception of SUVPP in 1977 to the present.

B. The 46kV Power Transmission System is an eligible facility. This system does not include facilities that are considered reserved works, that generate hydropower marketed by a federal power marketing administration, or that are managed for recreation under a lease, permit, license, or management agreement that contributes to capital repayment.

C. The transfer of title is in the financial interest of the United States. There is no outstanding repayment obligation to the United States for the Project, and this transfer of title divests the United States of its financial obligations directly related to the power transmission system.

D. SUVPS, as a qualifying entity, is committed to and capable of the continued management of the 46kV Power Transmission System for its current purposes. As a result of this commitment and capability, this transfer of title will not have an unmitigated significant effect on the environment, will protect the public aspects of the power transmission system, and

will have no adverse impacts on the continued fulfillment of present water or power delivery obligations.

E. By notice posted on the State of Utah Public Notice Website and in the local newspapers and by specific individualized notice, the Parties have made Utah County residents and all potentially affected state, local, and federal agencies aware of this title transfer effort and process. All interested persons and entities have been given the opportunity to comment in writing and in person at local public meetings. The Parties have also provided full access to information as requested. Accordingly, this process was conducted in an open and public manner. All stakeholders and beneficiaries that directly benefit from the Project, including Utah County, members of SUVPS, and the Association have consented to the transfer of title.

F. This transfer of title does not affect Reclamation trust responsibilities to any federally recognized Indian Tribe.

G. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*) requirements have been satisfied as of February 14, 2023 (Environmental Control Number PRO-CE-22-064).

H. The proposed action is a title transfer that would not result in any change to the current physical state of the transmission line on Reclamation land, nor would it affect current operation and maintenance activities. Therefore, the proposed action would have no effect on species protected by the U.S. Fish and Wildlife Service including those protected under the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 *et seq.*), Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act.

I. Reclamation completed a Class I Cultural Resource Literature Review and determined a finding of No Historic Properties Adversely Affected for the proposed undertaking. Due to the nature of the proposed action, no ground disturbance or construction is anticipated with this work, and it is strictly a contract action. Although Historic Properties are within the project area of potential effects, there is no anticipated impact to the cultural resources, and therefore, no mitigation actions were required under subtitle III of title 54, U.S.C – Historic Preservation (NHPA). The State Historic Preservation Office concurred with this finding via letter dated February 23, 2023 (Case No. 23-0238).

Now, therefore, in consideration of the mutual covenants and agreements set forth herein Reclamation and SUVPS agree as follows:

Agreement

I. NOTICE TO CONGRESS.

Reclamation has submitted to Congress the written notice, attached hereto as Exhibit C, of this proposed transfer of title to SUVPS which includes a description of the reasons for such transfer (Notice to Congress).

II. CONVEYANCE OF THE 46kV POWER TRANSMISSION SYSTEM.

If Congress does not pass a joint resolution disapproving of this transfer of title to SUVPS within ninety (90) days of its receipt of the Notice to Congress, the Parties will execute this Agreement as soon as possible, and:

- a. Reclamation shall convey to SUVPS by a separate deed, in the form attached hereto as Exhibit D, all of the United States' right, title, and interest in the 46kV Power Transmission System.
- b. Where the 46kV Power Transmission System alignment follows existing easements required by the Project for water conveyance facilities, the water conveyance facilities and related easements shall remain in United States ownership and have senior first rights to the land.
- c. If following the execution and recording of the quit claim deed, the United States acquires any title to or interest in the 46kV Transmission System by reason of an instrument in the United States' chain of title, or by operation of law, such after-acquired title or interest shall also be conveyed by the Secretary, subject to the provisions of this Title Transfer Agreement.

III. ACCEPTANCE OF TITLE TO THE 46kV POWER TRANSMISSION SYSTEM WITHOUT WARRANTY.

Upon such conveyances to SUVPS, SUVPS shall accept title without warranty, and accept the 46kV Power Transmission System as-is.

IV. SUVPS MANAGEMENT AND USE OF THE 46kV POWER TRANSMISSION SYSTEM.

SUVPS agrees to manage and use the 46kV Power Transmission System for substantially the same purposes for which the Project is used at the time of title transfer. SUVPS hereby acknowledges that it and its predecessors have used, operated, and maintained the 46kV Power Transmission System for over forty (40) years, and hereby agrees to accept this system "as-is" and accepts all liability for it from the date of transfer forward, subject to applicable local, state, and federal law.

In the event SUVPS performs OM&R within shared Project lands, SUVPS will restore in kind and to the satisfaction of Reclamation and its agents and assigns any natural landscape, fences, ditches, drains, utilities, or other improvements impacted by SUVPS activities. SUVPS will coordinate maintenance activities with Reclamation and its agents and assigns before beginning work so that an inspector may be present to coordinate protection measures for Project facilities. SUVPS shall notify Reclamation and its agents and assigns no less than 48-hours in advance of maintenance activities so an inspector may be present to monitor activities.

Reclamation for itself and its agents and assigns, further agrees that except in case of emergency, prior to performing any work on the Project facilities or shared access roads within the 60-foot transmission system corridor, Reclamation will give SUVPS a minimum of 48-hours of advance notice and will take precautions (which may include suggestions by SUVPS) to provide for the safety and operations of water conveyance facilities and appurtenances within high-voltage transmission system corridors. SUVPS may have an inspector present, at its discretion.

If Reclamation for itself and its agents and assigns need to remove or relocate any of the transmission system facilities to effectively operate or maintain (including repairing or replacing) any of the encroached Project water conveyance facilities, SUVPS will be responsible for replacing and restoring the facilities at SUVPS' cost. SUVPS will determine what is required to meet the replacement and restoration obligations of its facilities.

V. RECLAMATION ASSIGNMENT AND SUVPS ASSUMPTION OF CONTRACTS.

To the extent assignable by Reclamation and when all the conditions precedent described in this Title Transfer Agreement are met, Reclamation hereby assigns, and SUVPS hereby accepts, all rights, privileges, duties, responsibilities, and obligations of Reclamation stated only in those valid and existing contracts as they relate to the 46kV Power Transmission System.

The terms of all existing license agreements with Reclamation for the shared use of the Project's 46kV Power Transmission System poles are transferred to SUVPS, to be honored in perpetuity from the date of this Agreement – namely, those power distribution lines, transmission lines, or telecommunication lines owned and operated by members of SUVPS, or telecommunications corporations, i.e., Comcast/Utopia/CenturyLink – as the system exists at the enactment of this Agreement.

SUVPS will honor the terms of each valid and existing contract and will provide the rightful holder of each such contract with the same allowances that it receives from Reclamation.

SUVPS agrees to indemnify, and hold the United States, and all its duly authorized representatives harmless, from all claims arising out of such valid and existing contracts.

VI. TERM.

This Title Transfer Agreement shall survive the conveyances provided for herein.

VII. DIVESTITURE OF FEDERAL OWNERSHIP, INTERESTS AND RESPONSIBILITIES.

Upon the transfer of the 46kV Power Transmission System, it will no longer be considered part of a Reclamation project, and the United States shall be deemed to be entirely divested of all rights, interest, and responsibilities related to the 46kV Power Transmission System. The 46kV Power Transmission System shall no longer be eligible for benefits available

only to Reclamation projects. Further, the 46kV Power Transmission System shall no longer be authorized for federal use, will no longer be held in federal ownership, and will no longer be under any Reclamation control or jurisdiction.

VIII. APPLICABILITY OF CONTRACT TERMS.

The Repayment Contract provides for the repayment of reimbursable costs of the Project, as well as for operation and maintenance of the Project assets. The terms of the Repayment Contract regarding the Project's 46kV Power Transmission System are no longer valid.

The Subscription Contracts provide, among other things, that SUVPS will operate and maintain the 46kV Power Transmission System. The terms of the Subscription Contract are no longer valid with regard to the 46kV Power Transmission System.

IX. GENERAL PROVISIONS.

a. No Future Obligation. Nothing herein will be construed to obligate Reclamation to expend or involve Reclamation in any contract or other obligation for the future payment of money in excess of the appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.

b. No Binding Rights or Obligations. Nothing in this Agreement is intended to create any right or benefit, substantive or procedural, enforceable at law by a non-party against the United States or Reclamation, its agencies, its officers, or any other person. Nothing in this Agreement will be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. §§ 2671 *et seq.*).

c. No Sharing of Benefits. No member of or delegate to Congress, or resident Commissioner, will be admitted to any share or part of the Agreement or to any benefit that may arise out of it.

d. Freedom of Information Act. Any information furnished to Reclamation under this Agreement is subject to the Freedom of Information Act (5 U.S.C. § 552). Any information furnished to SUVPS under this Agreement may be subject to the Utah Government Records Access and Management Act, Utah Code §§ 63G-2-101 *et seq.*

e. Compliance with Federal Laws. All parties to this Agreement agree to comply with all Federal statutes relating to nondiscrimination, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the Education amendments of 1972, as amended, which prohibits discrimination on the basis of sex; the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination on the basis of disability; the Age Discrimination in Employment Act of 1967, as amended, which prohibits discrimination based on age against those who are at least 40 years of age; and the Equal Pay Act of 1963.

f. Low-Intensity Real Property Questionnaire Checklist. In accordance with the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response Liability and Compensation Act (CERCLA or "Superfund"), 42 U.S.C. section 9620(h):

The United States has completed a Low-Intensity Real Property Questionnaire Checklist for the property being conveyed, including a site visit on 11/17/2022 and a search of files at the Bureau of Reclamation to identify available information with respect to hazardous substances that were stored for one year or more, known to have been released, or disposed of on the property. The property is being conveyed to SUVPS in the same condition as existed on the date of said site inspection and as described in the questionnaire.

SUVPS stipulates that it is the potentially responsible party and accepts the premises and appurtenances as is, thereby releasing the United States of all current and future liability.

g. Non-assignability. This Agreement and the rights and obligations hereunder are not assignable without the express written consent of the Parties.

h. Principal Contacts. Until changed by written notice or practice, the principal contacts for the Parties are:

Reclamation – Provo Area Office

Justin Record
302 E Lakeview Parkway
Provo, UT 84606
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801-379-1072

Southern Utah Valley Power Systems

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Southern Utah Valley Power Systems
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801 673-2882

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date written below.

Bureau of Reclamation
M. Camille Calimlim Touton, Commissioner

Date

Southern Utah Valley Power Systems
Mike Mendenhall, Board Chairman

Date

Attest: _____, Board Secretary

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