

MEMORANDUM OF AGREEMENT BETWEEN THE
BUREAU OF RECLAMATION AND FISH AND WILDLIFE SERVICE
CONCERNING THE OPERATION AND MAINTENANCE OF THE
KIRWIN DAM AND RESERVOIR

This Memorandum of Agreement made and entered into this 23rd day of October, 1985, by and between the Bureau of Reclamation, hereinafter referred to as the Bureau, represented by the Regional Director, Lower Missouri Region, and the Fish and Wildlife Service, hereinafter referred to as the Service, represented by the Regional Director, Region 6, pursuant to the authorities included in the Reclamation Act of 1902, 43 U.S.C., sec. 371 et. seq., chapter 12, (1982) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668 dd (a)) as amended in 1976 by Public Law 94-233.

WHEREAS, the Bureau has acquired certain lands in Phillips County, Kansas, and constructed a dam for the operation of Kirwin Dam and Reservoir, Kirwin Unit, Solomon Division, Missouri River Basin Project, and

WHEREAS, pursuant to the Act of August 14, 1946 (60 Stat. 1080), there has been formulated a GENERAL PLAN dated June 17, 1954, for the use of the lands of the Kirwin Dam and Reservoir, Kirwin Unit, Solomon Division, Missouri River Basin Project, as a wildlife refuge to be managed by the Service, and the same has been approved by the Secretary of the Interior and the Director of the Kansas Fish and Game Commission:

WHEREAS, pursuant to Public Law 94-233 all areas administered by the Service as wildlife refuges are designated as part of the National Wildlife System:

NOW THEREFORE, it is mutually agreed in consideration of the covenants and releases hereinafter contained that:

1. The Bureau will have administrative jurisdiction of those lands designated as operation areas on exhibit "A" attached and made a part of this document for the operation and maintenance of Kirwin Dam and Reservoir, Kirwin Unit, Solomon Division, Missouri River Basin Program.

2. The Service will have administrative jurisdiction over those lands designated as wildlife refuge lands and waters on exhibit "A" and the use of said land and water areas by the service shall not interfere with the primary purpose of the project and operation and maintenance of said project by the Bureau.

3. All activities in the refuge area designated in number 2 above must comply with 50 CFR subchapter C.

4. Both parties agree to cooperate in the presuppression and suppression of all wildfires.

5. All rights-of-way applications for roads, telephone lines, power lines, and other similar uses, over, across, in, or upon the lands within the designated operations area will be granted by the Bureau, and all instruments granting an interest in the designated refuge lands within the maximum water elevation will be submitted to the Bureau for concurrence and must comply with 50 CFR 29.21.

6. The Bureau reserves the right to vary the water surface of Kirwin Reservoir above as well as below elevation 1729.25 feet as it deems necessary for operations and for maintenance of reservoir works. This reserved right will be recognized on all permits, leases, agreements, and contracts issued by the Service for use of lands and waters designated as part of the refuge.

7. All permits or leases for the exploration or removal and use of oil, gas, coal, and other minerals or geothermal resources on land under the Service's jurisdiction must comply with 50 CFR part 29, subpart c and shall have the Bureau's concurrence prior to the execution of a lease or permit. To ensure the safety of project structures and facilities the Bureau will prohibit oil, gas, and other mineral exploration within 1,000 feet of the dam axis and abutments.

8. The Service and the Bureau shall include provisions in all leases, licenses, permits, or contracts or any other authorizations for use of the reservoir area, requiring the lessee, licensee, permittee, or contractor to hold harmless and to indemnify the United States, its officers and agents, as to any liability for injury or damage to persons or property arising out of the acts or omissions, negligent or otherwise, of the lessee, licensee, permittee, or contractor.

9. This agreement shall become effective upon its approval by the Secretary and shall remain in force until terminated by mutual consent.

10. No member of or delegate to the Congress or resident commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this agreement if made with a corporation or company for its general benefit.

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

FISH AND WILDLIFE SERVICE

By *Robert B. Buttrough*
Regional Director
Region 6

BUREAU OF RECLAMATION

By *Samuel A. Lee*
Assistant Regional Director
Lower Missouri Region