

Mignone/mm/7128

September 11, 2000

Real Estate Division
Management and Disposal Branch

SUBJECT: Conemaugh River Lake, Lease, Contract No.
DACW591000009000; Cooperative Association Agreement

Mr. Mike Quinn
Conemaugh Valley Conservancy
1334 Franklin Street
P.O. Box 907
Johnstown, PA. 15907-0907

Dear Mr. Quinn:

Enclosed for your retention is a fully executed Lease and Cooperative Association Agreement authorizing the Conemaugh Valley Conservancy to maintain a multi-use trail across lands acquired for the Conemaugh River Lake project. The lease has been assigned Contract No. DACW591000009000. Please refer to this number in any future correspondence concerning the lease.

Your cooperation throughout this process has been appreciated, and I hope to see you at the signing ceremony. In the interim, if you have any questions, please contact me at 412/395-7128.

Sincerely,

Maria Mignone
General Attorney, Management and
Disposal Branch

Enclosures

cf:

CELRP-OR-TR

CELRP-OR-MC

CELRP-OR-M, w/o encl.

DEPARTMENT OF THE ARMY
LEASE TO NONPROFIT ORGANIZATION
FOR COOPERATIVE MANAGEMENT OF
CONEMAUGH DAM TRAIL
CONEMAUGH RIVER LAKE

INDIANA and WESTMORELAND COUNTIES, PENNSYLVANIA

THIS LEASE, made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and the CONEMAUGH VALLEY CONSERVANCY, a nonprofit organization duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office in the city of Johnstown, Pennsylvania, hereinafter referred to as the Lessee.

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and pursuant to a Cooperative Agreement dated September 7, 2000, hereinafter referred to as the Agreement, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the premises, for the development and management of an interpretive trail in cooperation with the Secretary.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of twenty five (25) years, beginning August 23, 2000 and ending August 22, 2025.

2. CONSIDERATION

The consideration for this lease is the operation and maintenance of the premises by the Lessee, in cooperation with the Secretary, for the benefit of the United States and the general public in accordance with the terms of this lease and those of the Agreement. It is understood and agreed that this lease will be controlling if there are any conflicts between the two documents.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to Mr. Richard H. Mayer, 1334 Franklin Street, P.O. Box 907, Johnstown, PA. 15907-0907, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, U.S. Army Corps of Engineers, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222-4186, or as from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, successors, and its duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer, including any special provisions that may be established due to the cooperative joint

management of the premises by the Lessee and the United States as contemplated by the Agreement.

6. APPLICABLE LAWS AND REGULATIONS

The Lessee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto except as may be required to carry out its responsibilities pursuant to the terms of the Agreement.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the said officer and the Lessee to reflect the condition of the said property and improvements. A copy of said report is on file at the Conemaugh River Lake Resource Manager's Office and is incorporated by reference into this lease. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such settlement will take into account the cooperative relationship of the parties, and will reflect an equitable apportionment of damages.

8. TRANSFERS AND ASSIGNMENTS

a. Without prior written approval of the said officer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The

Lessee will not subdivide nor develop the premises into private residential development.

9. FEES, RATES AND PRICES

The Lessee may charge a general admission fee and/or fees for visitor/interpretive services or special events. The said officer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. Monies received by the Lessee from operations conducted on the premises shall be utilized by the Lessee to fulfill its obligations under the Agreement. The Lessee shall furnish an annual report of itemized receipts and expenditures to said officer.

10. DEVELOPMENT AND MANAGEMENT PLANS

The Lessee shall construct, operate and maintain the premises in accordance with the Agreement. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of said officer.

11. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to the said officer, or at the election of the said officer, reimbursement made therefor by the Lessee in an amount

necessary to restore or replace the property to a condition satisfactory to the said officer.

12. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

13. INSURANCE

a. At the commencement of this lease, the Lessee shall obtain, from a reputable insurance company or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$1,000,000.00 whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require the insurance company or companies to furnish the said officer a copy of the policy or policies, or if acceptable to the said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the type of facilities, services and activities involved. The Lessee shall require that the insurance company give the said officer thirty (30) days written notice of any cancellation or change in such insurance. The said officer may require closure of

any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

14. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, 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, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

15. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the said officer, said property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed 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. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

16. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant

Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

17. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the said officer, interfere with the use of the premises by the Lessee.

18. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for ~~mineral~~ development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with

compliance with reasonable requests by the said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving Ninety (90) days prior written notice to the said officer in the manner prescribed in the Condition on NOTICES.

20. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, the said officer, upon discovery of any hazardous condition on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

21. PUBLIC USE

The Lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

22. PROHIBITED USES

The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the lessee, if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

23. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT**. The Lessee may salvage fallen or dead timber on the premises for use as firewood. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds ~~therefrom~~ shall not be available to the Lessee under the provisions of this lease.

24. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a

matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph C.(2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that-

(i) the claim is made in good faith; and

(ii) supporting data is accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by-

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render

a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided by the Act.

f. At the time a claim by the lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternate means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action ~~arising~~ under the lease, and comply with any decision of the said officer.

25. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any federal, state, interstate or local governmental agency having jurisdiction to abate or

prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. Services for waste disposal shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise becomes a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

26. ENVIRONMENTAL BASELINE SCREENING

An Environmental Baseline Screening (EBS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit B. Upon expiration, revocation, or relinquishment of this lease another EBS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining the environmental restoration requirements of the Lessee. Appropriate consideration will be given to the cooperative relationship between the parties.

27. HISTORIC PRESERVATION

Except as may be otherwise provided in the Agreement, the Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the said officer and protect the site and the

material from further disturbance until the said officer gives clearance to proceed.

28. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

29. COVENANT AGAINST CONTINGENT FEES

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 bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability, or, in its discretion, to require the lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

30. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

31. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall

apply to this condition as well as other conditions of this lease.

32. SUBJECT TO LICENSE

This lease is subject to the license issued by the United States of America to the Pennsylvania Game Commission, Contract No. DACW59-3-80-0037, for wildlife and game management purposes.

33. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344).

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 23rd day of August, 2000.

Maria Mijang
Witness

Witness

Patricia A. Monheim
PATRICIA A. MONHEIM
Chief, Management and
Disposal Branch
Real Estate Division

THIS LEASE is also executed by the Lessee this
_____ day of _____, 2000.

CONEMAUGH VALLEY CONSERVANCY,
a non-profit organization

[Signature]
Witness

By:

[Signature]

[Signature]
Witness

Title:

President


CORPORATE CERTIFICATE

I, Ronald E. Leibow, certify that I am the
Secretary of the Conemaugh Valley Conservancy, that
Richard H. Mayer who signed the foregoing lease on
behalf of the Conservancy was then President of
the Conservancy. I further certify that the said officer
was acting within the scope of powers delegated to this
officer by the governing body of the Conservancy in
executing said lease.

[Signature]

AFFIX CORPORATE SEAL

THIS INSTRUMENT WAS PREPARED BY:



MARIA MIGNONE, General Attorney
U.S. Army Corps of Engineers
Pittsburgh District
Real Estate Division