

SUPPLEMENTAL WATERSHED AGREEMENT No. 3

between

SPRING CREEK WATERSHED JOINT DISTRICT NO. 16

SEDGWICK COUNTY CONSERVATION DISTRICT

RENO COUNTY CONSERVATION DISTRICT

(Referred to herein as Sponsors)

State of Kansas

and the

**Natural Resources Conservation Service
(formerly Soil Conservation Service)
U.S. Department of Agriculture**

(Referred to herein as NRCS)

Whereas, the Watershed Work Plan for Spring Creek Watershed (the Plan), State of Kansas, executed by the Sponsors named therein and NRCS, became effective on the 14th day of April 1960; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsors named therein and NRCS, became effective on the 21st day of October 1971, which modified the Plan; and

Whereas, a 2nd supplemental agreement modifying the Plan, executed by the Sponsors named therein and NRCS, became effective on the 11th day of February 1972; and

Whereas, four floodwater retarding structures (FRS) have been installed within the watershed boundaries; and

Whereas, it has become necessary to upgrade one of the installed FRS (Spring Creek Site R-1) to meet current High Hazard Class (C) dam safety criteria due to increased vehicle traffic downstream; and

Whereas, the rehabilitation of said FRS No.R-1 has been authorized by Section 14 of P.L. 83-566 (enacted by Section 313 of P.L. 106-472), otherwise known as the "The Small Watershed Rehabilitation Amendments of 2000"; and

Whereas, modifying FRS No.R-1 to bring it up to current performance and safety standards necessitates supplementing the Plan; and

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act, as amended, has been assigned by the Secretary of Agriculture to the NRCS; and

Whereas, a Supplemental Watershed Plan/Environmental Assessment which modifies the watershed plan dated the 14th day of April 1960, for said watershed has been developed through the cooperative efforts of the Sponsors and the NRCS, which plan is annexed to and made a part of this agreement;

Now, therefore, in view of the foregoing considerations, the Secretary of Agriculture through the NRCS and the Sponsors hereby agree upon the following modifications of the terms, conditions, and stipulations of the Plan;

1. Term. The term of this agreement is for the installation period and evaluated life of the project (100 years) and does not commit NRCS to assistance of any kind beyond the end of the evaluated life unless agreed to by all parties.

2. Costs. The costs shown in this plan are **preliminary estimates**. Final costs to be paid by the parties hereto will be based on actual costs incurred for the installation of works of improvement and the cost-share percentages stated in this agreement. The Sponsors assume all responsibility for the entire Sponsors' share of the costs of rehabilitating FRS No. R-1.

3. Real property. The Sponsors will acquire such real property as will be needed in connection with the works of improvement. The amounts and percentages of the real property acquisition costs to be borne by the Sponsors and NRCS are as shown in Section 5 hereof.

4. Uniform Relocation Assistance and Real Property Acquisition Policies Act. The Sponsors hereby agree to comply with all of the policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 United States Code [U.S.C.] 4601 et. seq. as further provided by Uniform Relocation Assistance and Real Property Acquisition for Federally Assisted Programs, 49 Code of Federal Regulation [C.F.R.] Part 24, and 7 C.F.R. Part 21) when acquiring real property interests for this federally assisted project. If the Sponsors are legally unable to comply with the real property acquisition requirements of the Act, it agrees that before any federal financial assistance is furnished, it will provide a statement to that effect, supported by an opinion of the chief legal officer of the state containing a full discussion of the facts and law involved. This statement may be accepted as constituting compliance.

5. Rehabilitation of FRS No.R-1. The estimated amount and percentages of the total rehabilitation project cost to be paid by the Sponsors and the NRCS are as follows:

Works of Improvement	NRCS	Sponsors	Total
Cost Sharable Items			
Rehabilitation of Spring Creek Site R-1 (Construction Costs)	\$399,400	\$122,500	\$521,900
Relocation	\$0	\$0	\$0
Sponsors Planning Costs	NA	\$0	\$0
Sponsors Engineering Costs	NA	\$0	\$0
Sponsors Project Administration	NA	\$55,200	55,200
Land Rights Acquisition Cost	NA	\$37,400	\$37,400
Subtotal: Cost-Share Costs	\$399,400	\$215,100	614,500
Cost-Share Percentages^{a/}	65.0%	35.0%	100.0%
Non Cost-Sharable Items^{b/}			
NRCS Engineering and Project Administration	\$182,700	NA	\$182,700
Natural Resource Rights	NA	\$0	\$0
Federal, State and Local Permits	NA	\$300	\$300
Real Property	NA	\$0	\$0
Subtotal: Non Cost-Share Costs	\$182,700	\$310	\$183,000

^{a/} Maximum NRCS cost-share is 65 percent of cost-sharable Items not to exceed 100 percent of construction costs (including replacement-in-kind; required decent, safe, sanitary, and flood proofing of downstream properties).

^{b/} If actual non cost-sharable item expenditures vary from these figures, the responsible party will bear the change.

6. Floodplain Management. The Sponsors agree to participate in and comply with applicable federal floodplain management and flood insurance programs before construction starts.

7. Water and mineral rights. The Sponsors will acquire or provide assurance that landowners or resource users have acquired such water, mineral, or other natural resource rights pursuant to state law as may be needed in the installation and operation of the works of improvement. Any costs incurred shall be borne by the Sponsors and these costs are not eligible as part of the Sponsors' cost-share.

8. Permits. The Sponsors will obtain and bear the cost for all necessary federal, state, and local permits required by law, ordinance, or regulation for installation of the works of improvement. These costs are not eligible as part of the Sponsors' cost-share.

9. NRCS assistance. This agreement is not a fund-obligating document. Financial and other assistance to be furnished by NRCS in carrying out the plan is contingent upon the fulfillment of applicable laws and regulations and the availability of appropriations for this purpose.

10. Additional agreements. A separate agreement will be entered into between NRCS and the Spring Creek Watershed Joint District No. 16 before either party initiates work involving funds of the other party. Such agreements will set forth in detail the financial and working arrangements and other conditions that are applicable to the specific works of improvement.

The Spring Creek Watershed Joint District No. 16 will assume all responsibility for the entire Sponsors' share of the costs of rehabilitating FRS No. R-1.

11. Amendments. The Plan may be amended or revised only by mutual agreement of the parties hereto, except that NRCS may de-authorize or terminate funding at any time it determines that the Sponsors have failed to comply with the conditions of this agreement or when program funding or authority expires. In this case, NRCS shall promptly notify the Sponsors in writing of the determination and the reasons for the de-authorization of project funding, together with the effective date. Payments made to the Sponsors or recoveries by NRCS shall be in accord with the legal rights and liabilities of the parties when project funding has been de-authorized. An amendment to incorporate changes affecting a specific measure may be made by mutual agreement between NRCS and the Sponsors having specific responsibilities for the measure involved.

12. Prohibitions. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this plan, or to any benefit that may arise there from; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

13. Operation and Maintenance (O&M). The Spring Creek Watershed Joint District No. 16 assumes responsibility for the operation, maintenance, and any needed replacement of the works of improvement by actually performing the work or arranging for such work, in accordance with an O&M agreement. An O&M agreement will be entered into before federal funds are obligated and continue for the project life (102 years). Although the Sponsors' responsibility to the federal government for O&M ends when the O&M agreement expires, the Sponsors acknowledge that continued liabilities and responsibilities associated with works of improvement may exist beyond the evaluated life.

14. Emergency Action Plan. Prior to construction, the Sponsors shall prepare an Emergency Action Plan (EAP) for FRS No. R-1. The EAP shall meet the minimum content specified in Part 500.52 of the NRCS National Operation and Maintenance Manual, and meet applicable state agency dam safety requirements. The NRCS will determine that an EAP is prepared prior to the execution of fund obligating documents of the structure. EAPs shall be reviewed and updated by the Sponsors annually.

15. Nondiscrimination provisions. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial

status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer. By signing this agreement the recipient assures the USDA that the program or activities provided for under this agreement will be conducted in compliance with all applicable federal civil rights laws, rules, regulations, and policies.

16. Certification Regarding Drug-Free Workplace Requirements (7 CFR Part 3021). By signing this Watershed Agreement, the sponsors are providing the certification set out below. If it is later determined that the sponsors knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. Section 812) and as further defined by regulation (21 CFR Sections 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantees' payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification:

A. The sponsors certify that they will or will continue to provide a drug-free workplace by—

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is

prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

- (2) Establishing an ongoing drug-free awareness program to inform employees about—
 - (a) The danger of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1).
- (4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will—
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
- (5) Notifying the NRCS in writing, within 10 calendar days after receiving notice under paragraph (4)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees shall provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers of each affected grant.
- (6) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (4) (b), with respect to any employee who is so convicted—
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

B. The sponsors may provide a list of the sites for the performance of work done in connection with a specific project or other agreement.

C. Agencies shall keep the original of all disclosure reports in the official files of the agency.

17. Certification Regarding Lobbying (7 CFR Part 3018) *(for projects > \$100,000)*

A. The sponsors certify to the best of their knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the sponsors, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The sponsors shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by U.S. Code, Title 31, Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

18. Certification Regarding Debarment, Suspension, and Other Responsibility Matters—
Primary Covered Transactions (7 CFR Part 3017).

A. The sponsors certify to the best of their knowledge and belief, that they and their principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A(2) of this certification; and

(4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where the primary sponsors are unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

19. Clean Air and Water Certification.

(Applicable if this agreement exceeds \$100,000, or a facility to be used has been subject of a conviction under the Clean Air Act (42 U.S.C. Section 7413(c)) or the Federal Water Pollution Control Act (33 U.S.C. Section 1319(c)) and is listed by EPA, or is not otherwise exempt.)

A. The project sponsoring organizations signatory to this agreement certify as follows:

(1) Any facility to be utilized in the performance of this proposed agreement is (), is not () listed on the Environmental Protection Agency List of Violating Facilities.

(2) To promptly notify the NRCS-State administrative officer prior to the signing of this agreement by NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which is proposed for use under this agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(3) To include substantially this certification, including this subparagraph, in every nonexempt sub-agreement.

B. The project sponsoring organization(s) signatory to this agreement agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. Section 7414) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, issued there under before the signing of this agreement by NRCS.

(2) That no portion of the work required by this agreement will be performed in facilities listed on the EPA List of Violating Facilities on the date when this agreement was signed by NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

(4) To insert the substance of the provisions of this clause in any nonexempt subagreement.

C. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 of the Air Act (42 U.S.C. Section 7414) or an approved implementation procedure under section 112 of the Air Act (42 U.S.C. Section 7412).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. Section 1342), or by a local government to assure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. Section 1317).

(5) The term "facility" means any building, plan, installation, structure, mine, vessel, or other floating craft, location or site of operations, owned, leased, or supervised by a sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plan, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

20. Assurances and Compliance. As a condition of the grant or cooperative agreement, the Sponsor assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out below, which are hereby incorporated in this agreement by reference, and such other statutory provisions as a specifically set forth herein.

State, Local, and Indian Tribal Governments: OMB Circular Nos. A-87, A-102, A-129, and A-133; and 7 CFR Parts 3015, 3016, 3017, 3018, 3021, and 3052.

Non-Profit Organizations, Hospitals, Institutions of Higher Learning: OMB Circular Nos. A-110, A-122, A-129, and A-133; and 7 CFR Parts 3015, 3017, 3018, 3019, 3021 and 3052.

21. Examination of Records. The Sponsors shall give the NRCS or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement, and retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

The Sponsors and NRCS further agree to all other terms, conditions, and stipulations of said watershed agreement, as supplemented, not modified herein.

The signing of this agreement was authorized by a resolution of the Spring Creek Watershed Joint District No. 16 Board adopted at a meeting held on August 30, 2010.

Spring Creek Watershed Joint District No. 16
Sponsoring Local Organization

Tenell Black
PRESIDENT

9-20-2010
DATE

Jan J. [Signature]
SECRETARY

9-20-2010
DATE

The signing of this agreement was authorized by a resolution of the District Board of Supervisors adopted at a meeting held on _____.

Sedgwick County Conservation District
Sponsoring Local Organization

CHAIRMAN

DATE

SECRETARY

DATE

The signing of this agreement was authorized by a resolution of the District Board of Supervisors adopted at a meeting held on _____.

Reno County Conservation District
Sponsoring Local Organization

CHAIRMAN

DATE

SECRETARY

DATE

U.S. Department of Agriculture
Natural Resources Conservation Service

Eric B. Banks
ERIC B. BANKS
State Conservationist

11/19/10
DATE

The signing of this agreement was authorized by a resolution of the Spring Creek Watershed Joint District No. 16 Board adopted at a meeting held on _____.

Spring Creek Watershed Joint District No. 16
Sponsoring Local Organization

PRESIDENT

DATE

SECRETARY

DATE

The signing of this agreement was authorized by a resolution of the District Board of Supervisors adopted at a meeting held on 11-9-10.

Sedgwick County Conservation District
Sponsoring Local Organization

J. G. Mitchell
CHAIRMAN

11/9/10
DATE

Sam J. Elam
SECRETARY

11/9/10
DATE

The signing of this agreement was authorized by a resolution of the District Board of Supervisors adopted at a meeting held on _____.

Reno County Conservation District
Sponsoring Local Organization

CHAIRMAN

DATE

SECRETARY

DATE

U.S. Department of Agriculture
Natural Resources Conservation Service

ERIC B. BANKS
State Conservationist

DATE

RECEIVED
11/17/10

The signing of this agreement was authorized by a resolution of the Spring Creek Watershed Joint District No. 16 Board adopted at a meeting held on _____

Spring Creek Watershed Joint District No. 16
Sponsoring Local Organization

PRESIDENT

DATE

SECRETARY

DATE

The signing of this agreement was authorized by a resolution of the District Board of Supervisors adopted at a meeting held on _____

Sedgwick County Conservation District
Sponsoring Local Organization

CHAIRMAN

DATE

SECRETARY

DATE

The signing of this agreement was authorized by a resolution of the District Board of Supervisors adopted at a meeting held on 10/12/10

Reno County Conservation District
Sponsoring Local Organization

Margaret Deaux

CHAIRMAN

10/12/10

DATE

SECRETARY

DATE

U.S. Department of Agriculture
Natural Resources Conservation Service

ERIC B. BANKS
State Conservationist

DATE

RECEIVED
11/17/10