
WATERSHED AGREEMENT

Between the

Southern Conservation District

State Conservation Committee

Fayette County Commission

(Referred to herein as Sponsors)

and the

United States Department of Agriculture

Natural Resources Conservation Service

(Referred to herein as NRCS)

Whereas, application has been made to the Secretary of Agriculture by the Sponsors for assistance in preparing a plan for the Dunloup Creek Watershed, Fayette and Raleigh Counties, West Virginia, under the authority of the Watershed Protection and Flood Prevention Act, Public Law 83-566 (16 U.S. C. 1001-1008); 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 NRCS; and

Whereas, a plan has been developed through the cooperative efforts of the Sponsors and NRCS to address repetitive flooding concerns in the Dunloup Creek Watershed, West Virginia, hereinafter referred to as the Watershed Plan - Environmental Impact Statement (Plan-EIS), which is annexed to and made a part of this agreement;

Now, therefore, in view of the foregoing considerations, the Secretary of Agriculture, through NRCS, and the Sponsors hereby agree that this plan will be carried out in compliance with the terms, conditions, and stipulations provided for in this Plan-EIS, including the following:

1. **Cost Share.** As specified in Table 1 of the Plan-EIS and in this agreement, the NRCS and the Sponsors will jointly participate in the planned watershed project with the cost-share amounts as shown. The planned watershed project may also be referred to as the floodplain buyout or works of improvement. The program will primarily be administered by the Sponsors with assistance from the NRCS as needed and as further defined in this agreement. The NRCS will provide financial and technical assistance for the project through PL 83-566 funds. The non-federal funds will be provided by the Sponsors. The following table shows the total project cost and cost share responsibilities:

	Sponsors		NRCS		Total	
	Percent	Dollars	Percent	Dollars	Percent	Dollars
Voluntary Floodplain Buyout ^{1/}	10%	\$1,402,500	90%	\$12,525,000	100%	\$13,927,500

^{1/} Discrepancies are due to rounding

2. **Project Administration.** The Sponsors will provide project administration services including the following: soliciting applications, processing and ranking applications, notifying landowners, landowner negotiations, making offers to eligible applicants, arranging for appraisals, conducting real estate transactions, arranging required property inspections and surveys, and other tasks required to administer the planned watershed project. The NRCS will provide oversight and technical assistance for the project administration in accordance with the Plan-EIS. The NRCS will provide \$136,700 and the Sponsors will provide \$318,900 for project administration.
3. **Construction Costs.** The NRCS and Sponsors will provide construction funds for labor, materials, and equipment necessary to remove structures from the floodplain and restore the land to natural floodplain conditions. Such costs include demolition, disposal of materials, plugging of water wells, septic/sewage tank removal, grading and seeding of exposed ground, and other construction activities as needed. The NRCS will provide \$2,695,700 and the Sponsors will provide \$997,000 for construction costs.
4. **Real Property.** The NRCS will provide funds for all of the real property costs associated with the project. These costs include all expenses associated with obtaining the real property, including a relocation benefit for participants. The Sponsors will hold the titles to all real property acquired through the implementation of this Plan-EIS. The NRCS will provide 100 percent of the real property costs.
5. **Project Information.** The Sponsors will be responsible for providing information and education to eligible participants to inform the public and announce the program. This may include holding public workshops, distributing flyers, posting announcements, publishing newspaper articles, etc. The NRCS will support these efforts by providing technical assistance with these activities as needed and as requested by the Sponsors. Costs for these activities are included in the project administrative costs identified in Paragraph #2.
6. **Technical Assistance.** The NRCS will provide technical and engineering assistance to include the following: development of ranking criteria, assistance with eligibility determinations, application rankings, cultural resource mitigation assistance, development of technical standards for site demolition/restoration, technical oversight of contractor performance, site inspection, and other related technical/engineering assistance. As required, the technical standards will include written specifications for site demolition and restoration. The NRCS will also provide technical assistance with construction contract documents and contractor negotiations as needed. The NRCS will provide \$369,000 and the Sponsors will provide \$86,600 for project engineering.

7. **Cooperation.** The NRCS and Sponsors will share technology and expertise throughout the duration of the program to effectively address problems in the watershed. Unforeseen problems will be discussed and resolved as a team effort as they arise.
8. **Disposition of Land.** The Sponsors agree that all land acquired or improved with PL 566 financial or credit assistance will not be sold or otherwise disposed of for the evaluated life of the project except to a public agency which will continue to maintain and operate the land in accordance with any approved Operation and Maintenance Agreement.
9. **Property Restrictions.** Acquired lands will be perpetually restricted to uses compatible with open floodplain land uses. The Sponsors agree to ensure this occurs through their authority and by using deed restrictions. If or when the Sponsors transfer land ownership to other public entities, they shall ensure that the proper legal restrictions are placed in the deeds to prevent them from being used for unauthorized floodplain uses. The Property shall be used only for purposes compatible with floodplain functions. No new structures or improvements shall be erected on the property without the written consent of all Sponsors and NRCS.
10. **Floodplain Management.** The Sponsors agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.
11. **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.
12. **Uniform Relocation Assistance and Real Property Acquisition Policies Act.** This project is planned as a voluntary floodplain acquisition project; therefore portions of the Act may not apply. See the Watershed Plan for more information regarding compliance with this Act. The Sponsors hereby agree that they will comply with all of the required policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U. S. C. 4601 et seq. as implemented by 7 CFR, 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, they agree that, before any Federal financial assistance is furnished; they 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. In any event, the Sponsors agree that they will reimburse owners for necessary expenses as specified in 7 CFR, Part 21 and 49 CFR Part 24.
13. **Costs.** The costs shown in the Plan-EIS are preliminary estimates. Final costs to be borne by the parties hereto will be the actual costs incurred in the administration of

the planned watershed project, prorated in the cost share rates contained in the Plan-EIS.

14. **NRCS and Sponsors Assistance.** This agreement is not a fund-obligating document. Financial and other assistance to be furnished by NRCS and Sponsors in carrying out the plan is contingent upon the fulfillment of applicable laws and regulations and the availability of appropriations for this purpose.
15. **Additional Agreements.** A separate agreement will be entered into between NRCS and Sponsors before either party initiates work involving funds of the other party. Such agreement will set forth in detail the financial and working arrangements and other conditions that are applicable to the specific works of improvement.
16. **Amendments.** The Plan-EIS may be amended or revised only through mutual agreement of the parties hereto, except that NRCS may deauthorize or terminate funding at any time it determines that the Sponsors have failed to comply with the conditions of this agreement. In this case, NRCS shall promptly notify the Sponsors in writing of the determination and the reasons for the deauthorization of the project funding, together with the effective date. Payments made to the Sponsors or recoveries by NRCS shall be in accordance with the legal rights and liabilities of the parties when project funding has been deauthorized. An amendment to incorporate changes affecting a specific measure may be made by mutual agreement between NRCS and the Sponsor(s) having specific responsibilities for the measure involved.
17. **Prohibitions.** No member of or delegate to Congress, resident commissioner, or board member or other individual of the governing body of any sponsor, 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.
18. **Operation and Maintenance (O&M).** Perpetual operation and maintenance is not anticipated for this project since the goal of the project is to restore the floodplain to natural conditions. However, Sponsors may, at their own discretion, arrange for occasional mowing on a site-by-site basis, as needed. Because no federal funds may be used for O&M activities, such costs are the responsibility of Sponsors and are not specified in this agreement.
19. **Nondiscrimination Provisions.** The program conducted will be in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964, as amended, and the regulations of the Secretary of Agriculture (7 CFR 15), which provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, handicap/disabilities, marital status, or religion, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

20. **Term of Agreement.** The term of this agreement is for the expected life of the project (100 years) and does not commit the NRCS to assistance of any kind beyond that point unless agreed to by all parties.

21. **Certification Regarding Drug-Free Workplace Requirements (7 CFR 3021, Subpart F).**

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. 812) and as further defined by regulation (21 CFR 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 sub recipients or subcontractors in covered workplaces).

Certification:

A. The Sponsors certify they will provide or they 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 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 ten calendar days after receiving notice under paragraph (4)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must 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 number(s) 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 drug abuse assistance or rehabilitation program approved for such purposes by

Federal, State, or local health, law enforcement, or other appropriate agency.

- 7) Making a good effort to continue to maintain a drug-free work place through implementation of paragraphs (1), (2), (3), (4), (5) and (6).
- B. The Sponsors may provide a list of the site(s) 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.

22. Certification Regarding Lobbying (7 CFR 3018) (for projects over \$100,000).

- 1) The Sponsors certify to the best of their knowledge and belief, that:
 - (a) 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.
 - (b) 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.
 - (c) 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.
- 2) 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 Section 1352, Title 31, U. S. Code. 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.

23. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions (7 CFR 3017).

- 1) The Sponsors certify to the best of their knowledge and belief, that they and their principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or Agency.
 - (b) Have not within a three-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;
 - (c) 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 (1) (b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- 2) 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.

SIGNATURES

STATE CONSERVATION
COMMITTEE
Guthrie Agricultural Center
Charleston, WV 25305

By: Gus R. Douglass
Gus R. Douglass, Chairman

Date 3-6-07

By: Truman Wolfe
Truman Wolfe, Executive Director

Guthrie Agricultural Center
Charleston, WV 25305

Date 03/06/07

SOUTHERN
CONSERVATION DISTRICT
463 Ragland Road
Beckley, West Virginia 25801

By: C.W. Blankenship
C.W. Blankenship, Chairman

Date: 3-8-07

The signing of this plan was authorized by a resolution of the governing body of the
Southern Conservation District adopted at a meeting held on March 8, 2007.

Becky Floyd
Becky Floyd, Administrative Officer

463 Ragland Road
Beckley, West Virginia 25801

Date 3-8-07

FAYETTE COUNTY COMMISSION
Fayetteville, WV 25840

By: *Kenneth A. Eskew*
Kenneth Eskew, President

Date 3-23-07

The signing of this plan was authorized by a resolution of the Fayette County Commission at a meeting held on 3/23/07.

By: *Kelvin Holliday*
Kelvin Holliday, Fayette County Clerk

Fayette County Courthouse
Fayetteville, WV 25840

Date 3/23/07

NATURAL RESOURCES CONSERVATION SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE
75 High Street, Room 301
Morgantown, WV 26505

Approved by:

Kevin Wickey
KEVIN WICKEY
State Conservationist

Date: 4-4-07