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SUPPLEMENTAL WATERSHED PLAN AND AGREEMENT NO. II

FOR

LOWER EAST FORK LATERALS WATERSHED

of the

TRINITY RIVER WATERSHED

KAUFMAN COUNTY, TEXAS

**U.S. Department of Agriculture
Natural Resources Conservation Service
(Formerly the Soil Conservation Service)
Temple, Texas**

SEPTEMBER 2006

TABLE OF CONTENTS

Supplemental Watershed Agreement No. II	3
Introduction	10
Supplemental Watershed Plan No. II	12
Need For Supplement.....	12
Effects of the Proposed Changes.....	12
Comparison of Benefits and Costs	13
Revised Tables	14
Table 1 - Estimated Project Installation Cost.....	14
Table 2 - Estimated Cost Distribution.....	15
Revised Project Map	16

United States Department of Agriculture

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SUPPLEMENTAL WATERSHED AGREEMENT NO. II
LOWER EAST FORK LATERALS WATERSHED, TEXAS

Between the

Kaufman-Van Zandt-Rockwall Soil and Water Conservation District
Local Organization

Kaufman County
Local Organization

(hereinafter referred to as Sponsoring Local Organizations)
State of Texas

and the

Natural Resources Conservation Service
(Formerly the Soil Conservation Service)
United States Department of Agriculture
(Referred to herein as NRCS)

Whereas, the Watershed Work Plan Agreement for Lower East Fork Laterals Watershed, State of Texas, executed by the Sponsoring Local Organizations named therein and the NRCS, became effective on the 19th day of April 1951; and

Whereas, a Supplemental Watershed Work Plan Agreement for said watershed, executed by the Sponsoring Local Organizations named therein and the NRCS became effective on the 29th day of January 1976: and

Whereas, in order to carry out the watershed plan for said watershed, it has become necessary to modify said watershed agreement, as supplemented; 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 Agreement No. II, which modifies the Watershed Work Plan dated April 19, 1951, as supplemented, for said watershed has been developed through the cooperative efforts of the Sponsoring Local Organizations and NRCS and;

Now, therefore, the Secretary of Agriculture through the NRCS and the Sponsoring Local Organizations hereby agree upon the following modifications of the terms, conditions, and stipulations of said watershed agreement, as supplemented:

(1) Delete Floodwater Retarding Structure (FRS) No. 2A from the planned works of improvement in Kaufman County.

(2) Paragraph number 12 is added to read as follows:

The Sponsoring Local Organizations will acquire with other than Public Law 78-534 funds, such real property as will be needed in connection with the works of improvement. Estimated Cost \$910,800. (Base Price 2005)

(3) Paragraph number 14 is added to read as follows:

The amounts and percentages of construction costs of structural measures to be paid by the Sponsoring Local Organizations and by NRCS are as follows:

Works of Improvement	Sponsoring Local Organizations	NRCS	Estimated Construction Costs
12 FRS	0 %	100 %	\$3,758,000
Floodwater Diversion	0 %	100 %	\$574,600

(4) Paragraph number 15 is modified to read as follows:

The amounts and percentages of engineering costs to be borne by the Sponsoring Local Organizations and by NRCS are as follows:

Works of Improvement	Sponsoring Local Organizations	NRCS	Estimated Engineering Costs
12 FRS	0 %	100 %	\$517,000
Floodwater Diversion	0 %	100 %	\$75,000

(5) Paragraph number 16 is added to read as follows:

The Sponsoring Local Organizations and NRCS will each bear the costs of project administration that each incurs, estimated to be \$585,300 and \$32,700 respectively.

- (6) Paragraph number 17 is added to the plan agreement to read as follows:

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.

- (7) Paragraph number 18 is added to the plan agreement to read as follows:

The sponsors will be responsible 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. Although the sponsors' responsibility to the Federal Government for O&M ends when the agreement expires, the sponsors acknowledge that continued liabilities and responsibilities associated with works of improvement may exist beyond the project life.

- (8) Paragraph number 19 is added to the plan agreement in accordance with the certification regarding drug-free workplace requirements (7 CFR 3017, Subpart F) to read as follows:

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 (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 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 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 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 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.

(9) Paragraph number 20 is added to the plan agreement in accordance with the certification regarding lobbying (7 CFR 3018) to read as follows:

(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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients 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, of the 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.

(10) Paragraph number 21 is added to the plan agreement in accordance with the certification regarding debarment, suspension, and other responsibility matters – primary covered transactions (7 CFR 3017) to read as follows:

(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.

(11) Paragraph number 13 is added to read as follows:

The Sponsoring Local Organizations will acquire or provide assurance that landowners or water users have acquired such water, mineral, or other natural resources rights pursuant to State law as may be needed in the installation and operation of the works of improvement.

The Sponsoring Local Organizations and NRCs further agree to all other terms, conditions, and stipulations of said watershed agreement not modified herein.

Kaufman-Van Zandt-Rockwall Soil and Water Conservation District
Local Organization

By Kay [Signature]

Title Chairman KVZ & SWCD #505

Date 11/8/06

The signing of this agreement was authorized by a resolution of the governing body of the Kaufman/Van Zandt-Rockwall Soil and Water Conservation District adopted at a meeting held on 11/8/06.

Mark [Signature], acting
(Secretary, Local Organization)

Kaufman County
Local Organization

By Wayne [Signature]

Title County Judge

Date 11/29/07

The signing of this agreement was authorized by a resolution of the governing body of Kaufman County adopted at a meeting held on 11/21/07.

Laura A. Hughes
(Secretary, Local Organization)

Natural Resources Conservation Service
United States Department of Agriculture

Approved By Salvador Salinas Acting
NRCS State Conservationist

Date FEB 02 2007

INTRODUCTION

The plan for watershed protection and flood prevention for the Lower East Fork Laterals Watershed became effective on April 19, 1951. The plan was prepared by the local sponsoring organizations with technical assistance from the Natural Resources Conservation Service (formerly the Soil Conservation Service). The Texas State Soil and Water Conservation Board and the Natural Resources Conservation Service provided technical assistance for development of the plan.

Lower East Fork Laterals Watershed comprises an area of 44,100 acres (69 square miles). It is located in Kaufman County, Texas. The watershed heads at U. S. Highway 80 approximately 2 miles east of Forney in the northwestern part of Kaufman County and flows in a southerly direction to the confluence of the East Fork of the Trinity and the Trinity River near the town of Rosser. The total length of the watershed is approximately 21 miles with a maximum width near the center of about 6 miles. Historically, the primary watershed problem has been frequency of flooding along the east side of the East Fork of the Trinity as well as flooding of the principal tributaries of the Lower East Fork Laterals Watershed.

The original work plan developed to address this problem included the installation of 12 Floodwater Retarding Structures (FRS) and improvements to an existing floodwater diversion near the Rosser levee area along with specialized land treatment measures on approximately 12,000 acres of cropland and 6,000 acres of grazing land.

The plan has been supplemented one time since 1951. The supplement addressed the following items:

Supplement I – Effective date January 29, 1976, added land treatment measures and cost share assistance provisions for stabilization of critical areas on approximately 500 acres, added provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and added compliance provisions with respect to nondiscrimination as contained in the Civil Rights Act of 1964.

Approved structural changes by letter exchange resulted in the addition of FRS 2A to the work plan on August 15, 1980.

Actions to date include the installation of the 12 original FRS, improvements to the floodwater diversion, and the planned land treatment. Installation of these measures has reduced many of the resource problems in the watershed.

The purpose of this supplement is to further modify the plan at the request of the sponsoring local organizations to delete the remaining works of improvements (FRS No. 2A) and to update the agreement using current procedures and criteria.

The sponsors requested the deletion of the FRS No. 2A because it was determined that landrights would be impossible to obtain due to current land values and excessively high cost of obtaining easements. The sponsors are willing to accept the level of protection afforded by the 12 FRS, the floodwater diversion, and planned land treatment measures that have been completed. Land treatment measures continue to be carried out with assistance from other ongoing programs. The deletion of this structure will complete the project as planned and supplemented.

SUPPLEMENTAL WATERSHED PLAN NO. II
LOWER EAST FORK LATERALS WATERSHED
TRINITY RIVER WATERSHED
KAUFMAN COUNTY, TEXAS

Need For Supplement

Since the original Watershed Agreement became effective on the 19th day of April 1951, it has become necessary to modify that agreement in order to facilitate the completion of the project. The sponsoring local organizations have requested the following changes in the original watershed plan as supplemented:

- (1) Delete FRS No. 2A from the planned works of improvement in Kaufman County.
- (2) Update costs to 2005 prices.
- (3) Add required certifications on drug-free workplace.
- (4) Add required certifications on lobbying.
- (5) Add required certifications on debarment, suspension and other responsibility matters.
- (6) Add statement on obtaining required permits.
- (7) Add paragraph relating to operation and maintenance responsibilities.
- (8) Add paragraph relating to water and mineral rights.

Effects of Deleting the Works of Improvement

The flood protection provided by the planned works of improvement to be deleted at the request of the sponsoring local organizations will be foregone. Twelve (12) FRS and the floodwater diversion have been installed and are providing flood protection to the floodplain lands below the structures. Deletion of FRS No. 2A will result in floodwater damage reduction benefits being reduced from 99 percent to 93 percent. The secondary benefits associated with this structure will also not be realized. The sponsors are willing to accept the reduction in benefits to the work plan by the deletion FRS No. 2A.

Comparison of Benefits and Costs

The total average annual project cost (amortized land treatment and total structural measures costs) plus operation, maintenance and replacement is \$381,500. These measures are expected to produce average annual benefits of \$510,900. The benefit:cost ratio is 1.3 to 1.0.

Final Table I – Estimated Installation Cost
 Lower East Fork Laterals Watershed, Texas
 (Trinity River Watershed)

Installation Cost Item	Number		Estimated Cost (Dollars) ¹		
	Unit	Non-Fed. Land	PL-534 Funds	Other Funds	Total
			Non-Fed. Land NRCS ²	Non-Fed. Land	
LAND TREATMENT					
Cropland	Acres to be Protected	22,145	-	\$799,100	\$799,100
Grassland		16,372	-	\$914,800	\$914,800
Critical Area Stabilization		500	\$606,600	\$151,700	\$758,300
Technical Assistance			\$1,281,600	-	\$1,281,600
TOTAL LAND TREATMENT			\$1,888,200	\$1,865,600	\$3,753,800
STRUCTURAL MEASURES					
Floodwater Retarding Structures	No.	12	\$3,758,000	-	\$3,758,000
Floodwater Diversion	Miles	26	\$574,600	-	\$574,600
Subtotal – Construction			\$4,332,600	-	\$4,332,600
INSTALLATION SERVICES					
Engineering			\$592,000	-	\$592,000
Project Administration			\$585,300	\$32,700	\$618,000
Subtotal – Installation Services			\$1,177,300	\$32,700	\$1,210,000
OTHER COSTS					
Landrights			-	\$910,800	\$910,800
Subtotal – Other Costs			-	\$910,800	\$910,800
TOTAL STRUCTURAL MEASURES			\$5,509,900	\$943,500	\$6,453,400
TOTAL PROJECT			\$7,398,100	\$2,809,100	\$10,207,200
¹ 2005 Prices					
² Federal agency responsible for assisting in installation of works of improvement.					

September/2006

Final Table 2 - Estimated Cost Distribution - Structural and Non-structural Measures

Lower East Fork Laterals Watershed, Texas

(Trinity River Watershed)

(Dollars) ^{1/}

Signature Number or Name	Installation Cost - PL-534 Funds			Installation Cost - Other Funds				Total Installation Cost		
	Construction	Engineering	Project Administration	Total PL-534	Construction	Engineering	Land Rights		Project Administration	Total Other
Constructed Measures										
12 FRS	\$3,758,000	\$517,000	\$306,600	\$4,581,600	\$0	\$0	\$910,800	\$32,700	\$943,500	\$5,525,100
Floodwater Diversion	\$574,600	\$75,000	\$278,700	\$928,300	\$0	\$0	\$0	\$0	\$0	\$928,300
GRAND TOTAL	\$4,332,600	\$592,000	\$585,300	\$5,509,900	\$0	\$0	\$910,800	\$32,700	\$943,500	\$6,453,400

September 2006

^{1/} 2005 Prices

