

SUPPLEMENTAL WATERSHED AGREEMENT No. 3

**Between the
GEORGIA SOIL AND WATER CONSERVATION COMMISSION
COOSA RIVERSOIL AND WATER CONSERVATION DISTRICT
GORDON COUNTY, GEORGIA**

**(Referred to herein as Sponsors)
and the**

NATURAL RESOURCES CONSERVATION SERVICE

UNITED STATES DEPARTMENT OF AGRICULTURE

(Referred to herein as NRCS)

WHEREAS, a Public Law 83-566 Plan, which included the Sallacoa Creek Watershed was executed between the Sponsors and NRCS became effective on the thirty-first day August 1966; and

WHEREAS, in order to carry out the watershed plan for said watershed, it has become necessary to modify said watershed agreement; and

WHEREAS, application has heretofore been made to the Secretary of Agriculture by the Sponsor for assistance in preparing a Supplemental Watershed Plan and Environmental Assessment for works of improvement for the rehabilitation of Sallacoa Creek Watershed Structure No. 77, State of Georgia, under the authority of the Public Law 106-472, the Small Watershed Rehabilitation Amendments of 2000, which amends Public Law 83-566, Watershed Protection and Flood Prevention Act (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, there has been developed through the cooperative efforts of the Sponsors and NRCS a plan for works of improvement for the Sallacoa Creek Watershed Structure No. 77, State of Georgia, hereinafter referred to as the watershed plan-Environmental Assessment, 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 NRCS, and the Sponsor hereby agree on this plan and that the works of improvement for this project will be installed, operated, and maintained in accordance with the terms, conditions, and stipulations provided for in this watershed plan and including the following:

Floodplain Management. The Sponsors agree to comply with applicable federal flood-plain management and flood insurance programs before construction starts.

Real Property Rights. The Sponsors will acquire with other than Public Law 83-566 funds, such real property as will be needed in connection with the works of improvement. (Estimated Cost \$0)

Operation and Maintenance. 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 will continue for the project life (50 years). Although the sponsors' responsibility to the Federal Government for O&M ends when the O&M agreement expires upon completion of the evaluated life of measures covered by the agreement, the sponsors acknowledge that continued liabilities and responsibilities associated with works of improvement may exist beyond the evaluated life.

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 planned works of improvement. The costs of such permitting is not eligible as part of the sponsors cost-share requirements.

Water and Mineral Rights. The sponsors will acquire or provide assurance that landowners or resource 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. Any costs incurred must be borne by the sponsors and these costs are not eligible as part of the sponsors' cost share.

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 U.S.C. 4601 et. seq. as further implemented through regulations in 49 CFR Part 24 and 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, 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.

Cost-share for Watershed Project Plans. The following table will be used to show cost-share percentages and amounts for watershed project plan implementation.

Works of Improvement	NRCS	Sponsors	Total
Cost-Sharable Items ^{1/}			
Rehabilitation of dam (Construction Costs)	\$ 1,294,428.00	\$ 650,000.00	\$ 1,944,428.00
Rehabilitation of dam (Inspection)	\$	\$ 25,000.00	\$ 25,000.00
Sponsors' Planning Costs	\$	\$ 10,000.00	\$ 10,000.00
Land Rights Acquisition Cost	\$	\$ 12,000.00	\$ 12,000.00
Subtotal: Cost-Share Costs	\$ 1,294,428.00	\$ 697,000.00	\$ 1,991,428.00
Cost-Share Percentages	65.0%	35.0%	100.0%
Non Cost-Sharable Items ^{2/}			
NRCS Technical Assistance/Engineering	\$ 60,000.00	\$	\$ 60,000.00
Project Administration ^{3/}	\$	\$ 15,000.00	\$ 15,000.00
Federal, State and Local Permits ^{4/}	\$	\$ 10,000.00	\$ 10,000.00
Subtotal: Non Cost-Share Costs	\$ 60,000.00	\$ 25,000.00	\$ 85,000.00
TOTAL:	\$ 1,354,428.00	\$ 722,000.00	\$ 2,076,428.00

1/ Installation costs explanatory notes:

(a) List each multiple-purpose measure separately. Specific cost items and joint costs of multiple-purpose measures will be shown as separate line item entries. Single-purpose measures may be grouped by kind if the rate of assistance is the same for each measure or group.

(b) For watershed protection enduring measures, the following footnote should be included: 1/ The cost-share rate is the percentage of the average cost of installing the practice in the selected plan for the evaluation unit. During project implementation, the actual cost-share rate must not exceed the rate of assistance for similar practices and measures under existing national programs.

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

3/ The sponsors and NRCS will each bear the costs of project administration that each incurs. Sponsor costs for project administration include relocation assistance advisory service.

4/ The sponsors will acquire with other than Watershed Protection and Flood Prevention Act funds, such real property as will be needed in connection with the works of improvement. The value of real property is eligible as in-kind contributions toward the sponsors' share of the works of improvement costs. In no case will the amount of an in-kind

contribution exceed the sponsors' share of the cost for the works of improvement. The maximum cost eligible for in-kind credit is the same as that for cost sharing.

Emergency Action Plan. Prior to construction, the sponsors must prepare an emergency action plan (EAP) for each dam or similar structure where failure may cause loss of life or as required by state and local regulations. The EAP must meet the minimum content specified in NRCS Title 180, National Operation and Maintenance Manual (NOMM), Part 500, Subpart F, Section 500.52, 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 for construction of the structure. EAPs must be reviewed and updated by the sponsors annually.

Term. The term of this agreement is for the installation period and evaluated life of the project (51 years) and does not commit NRCS to assistance of any kind beyond the end of the evaluated life.

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

Costs. The costs shown in this agreement and plan are preliminary estimates. Final costs to be borne by the parties hereto, will be the actual costs incurred in the installation of works of improvement.

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

Additional Agreements. A separate agreement will be entered into between NRCS and the Sponsors 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.

Amendments. This plan may be amended or revised only by 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 or when the program funding or authority expires. In this case, NRCS must promptly notify the Sponsors in writing of the determination and the reasons for the deauthorization of project funding, together with the effective date. Payments made to the Sponsors or recoveries by NRCS must 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 Sponsors having specific responsibilities for the measures involved.

Nondiscrimination Provisions. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax, (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

By signing this agreement the recipient assures the Department of Agriculture 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.

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. 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 subrecipients or subcontractors in covered workplaces).

Certification:

- A. The Sponsors certify 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 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 must --
 - (a) Abide by the terms of the statement; and
 - (e) 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 must 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; and
- (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 will keep the original of all disclosure reports in the official files of the agency.

Certification Regarding Lobbying (7 CFR 3018) (applicable if this agreement exceeds \$100,000).

- A. The Sponsors certifies to the best of its 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 must complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The Sponsors must 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 must 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 31 U.S.C. 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.

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 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;

- (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 three-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 Sponsor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

Clean Air and Water Certification.

(Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. Section 7413(d)) 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 organization(s) signatory to this agreement certifies as follows:

- (1) Any facility to be utilized in the performance of this proposed agreement is _____, is not X 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 subagreement.

B. The project sponsoring organizations 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 thereunder 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, plant, 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, plant, installation, or structure, the entire location will 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.

Assurances and Compliance.

As a condition of the grant or cooperative agreement, the recipient 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 are specifically set forth herein.

State, Local, and 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.

Examination of Records.

The sponsors must 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.

GEORGIA SOIL AND WATER CONSERVATION COMMISSION

The signing of this plan was authorized by a resolution of the governing body of the Georgia Soil and Water Conservation Commission adopted at a meeting held on _____ [Date].

By _____

Title: Executive Director

Title: Secretary

Date _____

Date _____

COOSA RIVER SOIL AND WATER CONSERVATION DISTRICT, GA.

The signing of this plan was authorized by a resolution of the governing body of the Broad Soil and Water Conservation District adopted at a meeting held on _____ [Date].

By _____

Title: District Chairman

Title: Secretary

Date _____

Date _____

GORDON COUNTY

The signing of this plan was authorized by a resolution of the governing body of the Gordon County, Georgia adopted at a meeting held on _____ [Date].

By _____

Title: Chairman

Title: County Clerk

Date _____

Date _____

Address _____

Address _____

**NATURAL RESOURCES CONSERVATION SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE**

Approved by:

Terrance O. Rudolph
State Conservationist

Date: _____