

AMENDMENT NO. 1  
TO THE  
AGREEMENT  
BETWEEN THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF ARKANSAS  
ACTING THROUGH THE ARKANSAS GAME AND FISH COMMISSION, THE  
ARKANSAS NATURAL RESOURCES COMMISSION,  
THE ARKANSAS NATURAL HERITAGE COMMISSION, AND  
THE ARKANSAS WATERWAYS COMMISSION  
THE STATE OF MISSOURI  
ACTING THROUGH THE MISSOURI DEPARTMENT OF CONSERVATION AND  
THE MISSOURI DEPARTMENT OF NATURAL RESOURCES, AND  
THE NATURE CONSERVANCY  
FOR THE WHITE RIVER BASIN COMPREHENSIVE, AR & MO

THIS AMENDMENT is entered into this 6<sup>th</sup> day, of April, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the State of Arkansas acting through the Arkansas Game and Fish Commission, the Arkansas Natural Resources Commission, the Arkansas Natural Heritage Commission, and the Arkansas Waterways Commission, the State of Missouri acting through the Missouri Department of Conservation and the Missouri Department of Natural Resources, and the Nature Conservancy (hereinafter the "Sponsor"),

WITNESSETH, that

WHEREAS, on May 22, 2002, the Government and the non-Federal Sponsor entered into a Feasibility Cost Share Agreement to conduct a study of the White River basin pursuant to Section 729 of the Water Resources Development Act of 1986, Public law 99-662, as amended by Section 202 of the Water Resources Development Act of 2000 (Public Law 106-541); and

WHEREAS, Section 729 of the Water Resources Development Act of 1986 (Public Law 99-662) as amended by Section 202 of the Water Resources Development Act of 2000 (Public Law 106-541) as amended by Section 2010 of the Water Resources Development Act of 2007 (Public Law 110-114) specifies the cost sharing requirements applicable to the Study;

NOW, THEREFORE, the Government and the Sponsor agree to amend the Agreement as follows:

Article II, Paragraph B. shall read as follows:

In accordance with this Article and Article III Paragraphs A, B and C of this Agreement, the Sponsor shall contribute cash and in-kind services equal to twenty-five (25) percent of Study Costs other than excess Study Costs. The Sponsor may, consistent with the applicable law and regulations, contribute through the provision of in-kind services. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PSP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability,

and allowability.

Article II, Paragraph C. shall read as follows:

The Sponsor shall pay a twenty-five (25) percent share of excess Study Costs in accordance with Article III, Paragraph D. of this Agreement.

Article III, Paragraph A. shall read as follows:

The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs, and current projections of the amount of Study Costs that will result in excess Study Costs. At least quarterly, the Government shall provide the Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$8,548,100 and the Sponsor's share of the estimated Study Costs is \$2,137,025. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution or in-kind services currently estimated to be \$2,137,025. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the PSP, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

Article III, Paragraph B. shall read as follows:

The Sponsor shall provide its cash contribution or in-kind services required under Article II, Paragraph B. of this Agreement in accordance with the following provisions:

Article III, Paragraph B., subparagraph 1, shall read as follows:

For purposes of budget planning, the Government shall notify the Sponsor by 1 August of each year of the estimated funds or in-kind services that will be required from the Sponsor to meet the Sponsor's share of Study Cost for the upcoming fiscal year.

Article III, Paragraph B., subparagraph 2, shall read as follows:

No later than 30 calendar days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in writing of the funds or in-kind services the Government determines to be required from the Sponsor to meet its required share of Study Costs for the first fiscal year of the Study. No later than 15 calendar days thereafter, the Sponsor shall verify to the satisfaction of the Government that the Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Sponsor.

Article III, Paragraph B, subparagraph 3, shall read as follows:

For the second and subsequent fiscal years of the Study, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Sponsor in writing of the funds or in-kind services the Government determines to be required from the Sponsor to meet its required share of Study Costs for that fiscal year, taking into account any temporary divergences identified under Article II, Paragraph D. of this Agreement. No later than 30 calendar days prior to the beginning of the fiscal year, the Sponsor shall make the full amount of the required funds available to the Government through the funding mechanism specified in paragraph B.2. of this Article.




Article III, Paragraph D. shall read as follows:

The Sponsor shall provide its cash contribution, if required, for excess Study Costs as required under Article II.C of this Agreement by delivering a check payable to "FAO, USAED, Memphis District" to the District Engineer as follows:

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, Memphis District.

**DEPARTMENT OF THE ARMY**



Colonel, Thomas P. Smith  
Corps of Engineers  
District Engineer  
Memphis District

DATE: 6 April 2009

**THE STATE OF ARKANSAS**



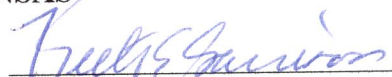
Scott Henderson  
Director, Arkansas Game and Fish  
Commission

DATE: MARCH 26, 2009



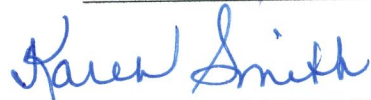
J. Randy Young  
Executive Director, Arkansas  
Natural Resources Commission

DATE: 3-16-9



Keith Garrison  
Director,  
Arkansas Waterways Commission

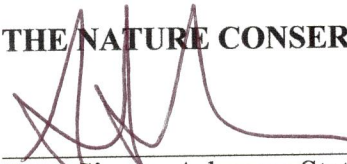
DATE: March 16, 2009



Karen Smith  
Director, Arkansas Natural  
Heritage Commission

DATE: 3/10/09

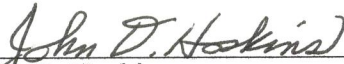
**THE NATURE CONSERVANCY**




Scott Simon, Arkansas State Director  
The Nature Conservancy  
Arkansas Field Office

DATE: 30 March 2009

**THE STATE OF MISSOURI**

  
\_\_\_\_\_  
John D. Hoskins  
Director, Missouri  
Department of Conservation

DATE: 3-23-09

  
\_\_\_\_\_  
Mark Templeton  
Director, Missouri Department  
of Natural Resources

DATE: 3-31-09

APPROVED AS TO FORM ONLY

  
\_\_\_\_\_  
GENERAL COUNSEL





**US Army Corps  
of Engineers.**  
Memphis District

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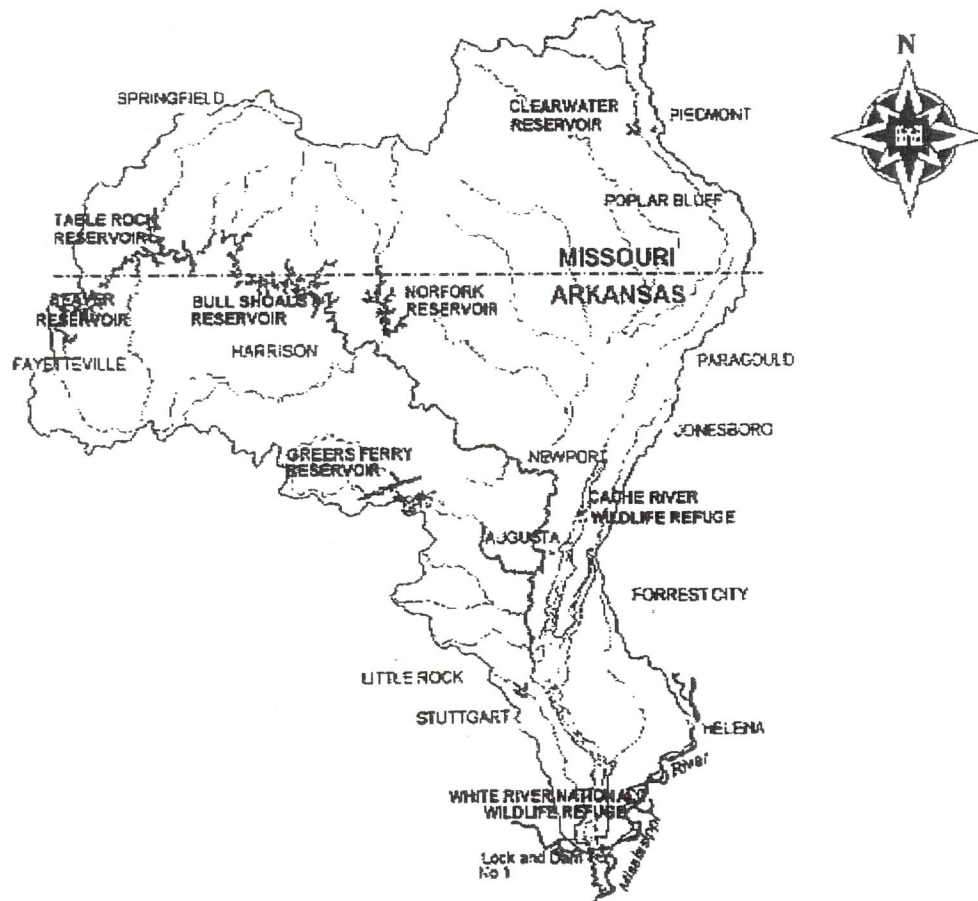
## White River Basin-Wide Comprehensive Study

A Section 729 of WRDA 1986 Study

Feasibility Cost Share Agreement

May 22, 2002

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AGREEMENT  
BETWEEN THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF ARKANSAS  
ACTING THROUGH THE ARKANSAS GAME AND FISH COMMISSION, THE  
ARKANSAS SOIL AND WATER CONSERVATION COMMISSION,  
THE ARKANSAS NATURAL HERITAGE COMMISSION, AND  
THE ARKANSAS WATERWAYS COMMISSION  
THE STATE OF MISSOURI  
ACTING THROUGH THE MISSOURI DEPARTMENT OF CONSERVATION AND  
THE MISSOURI DEPARTMENT OF NATURAL RESOURCES,  
THE NATURE CONSERVANCY, AND  
THE NATIONAL WILDLIFE FEDERATION  
FOR THE WHITE RIVER BASIN COMPREHENSIVE, AR & MO

THIS AGREEMENT is entered into this 22<sup>nd</sup> day, of May, 2002, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the State of Arkansas acting through the Arkansas Game And Fish Commission, Arkansas Soil And Water Conservation Commission, the Arkansas Natural Heritage Commission, and the Arkansas Waterways Commission, the State of Missouri acting through the Missouri Department of Conservation and the Missouri Department of Natural Resources, the Nature Conservancy, and the National Wildlife Federation (hereinafter the "Sponsor"),

WITNESSETH, that

WHEREAS, the Congress has authorized the Secretary of the Army to conduct a study of the White River basin pursuant to Section 729 of the Water Resources Development Act of 1986, Public Law 99-662, as amended by Section 202 of the Water Resources Development Act of 2000 (Public Law 106-541);

WHEREAS, Section 729 of the Water Resources Development Act of 1986 (Public Law 99-662) as amended by Section 202 of the Water Resources Development Act of 2000 (Public Law 106-541) specifies the cost sharing requirements applicable to the Study;

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in study cost sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, the Sponsor and the Government understand that entering into this Agreement in no way obligates either party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends upon, among other things, the outcome of the Study and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the



Sponsor, and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term "excess Study Costs" shall mean Study Costs that exceed the estimated Study Costs and that do not result from mutual agreement of the parties, a change in Federal law that increases the cost of the Study, or a change in the scope of the Study requested by the Sponsor.

D. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers Memphis District of initial Federal feasibility funds following the execution of this Agreement and ending when the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with the policies and programs of the President.

E. The term "PSP" shall mean the Project Study Plan, which is attached to this Agreement and which shall not be considered binding on either party and is subject to change by the Government, in consultation with the Sponsor.

F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the PSP.

G. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

## ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, using funds and in-kind services provided by the Sponsor and funds appropriated by the Congress of the United States, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III.A., III.B. and III.C. of this Agreement, the Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs other than excess Study Costs. The Sponsor may, consistent with applicable law and regulations, contribute up to 25 percent of Study Costs through the provision of in-kind services. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PSP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsor shall pay a fifty (50) percent share of excess Study Costs in accordance with Article III.D. of this Agreement.

D. The Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Sponsor temporarily diverging from the

obligations concerning cash and in-kind services specified in paragraph B. of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of this Article or the obligations concerning payment specified in Article III of this Agreement.

E. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsor, cumulative financial obligations of the Government and the Sponsor would result in excess Study Costs, the Government and the Sponsor agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsor agree to proceed. Should the Government and the sponsor require time to arrive at a decision, the Agreement will be suspended in accordance with Article X., for a period of not to exceed six months. In the event the Government and the sponsor have not reached an agreement to proceed by the end of their 6 month period, the Agreement may be subject to termination in accordance with Article X.

F. No Federal funds may be used to meet the Sponsor's share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

G. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsor with a third party in furtherance of this Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal laws and regulations.

### ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs, and current projections of the amount of Study Costs that will result in excess Study Costs. At least quarterly, the Government shall provide the Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$8,548,100 and the Sponsor's share of estimated Study Costs is \$4,274,050. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution currently estimated to be \$2,137,025. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the PSP, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The Sponsor shall provide its cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Sponsor by 1 August of each year of the estimated funds that will be required from the Sponsor to meet the Sponsor's share of Study Costs for the upcoming fiscal year.

2. No later than 30 calendar days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in



writing of the funds the Government determines to be required from the Sponsor to meet its required share of Study Costs for the first fiscal year of the Study. No later than 15 calendar days thereafter, the Sponsor shall verify to the satisfaction of the Government that the Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Sponsor.

3. For the second and subsequent fiscal years of the Study, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its required share of Study Costs for that fiscal year, taking into account any temporary divergences identified under Article II.D of this Agreement. No later than 30 calendar days prior to the beginning of the fiscal year, the Sponsor shall make the full amount of the required funds available to the Government through the funding mechanism specified in paragraph B.2. of this Article.

4. The Government shall draw from the escrow or other account provided by the Sponsor such sums as the Government deems necessary to cover the Sponsor's share of contractual and in-house fiscal obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsor in writing. No later than 60 calendar days after receipt of such notice, the Sponsor shall make the full amount of the additional required funds available through the funding mechanism specified in paragraph B.2. of this Article.

C. Within ninety (90) days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsor, the amount of any excess Study Costs, and credits for the negotiated costs of the Sponsor, and shall furnish the Sponsor with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over its required share of Study Costs, other than excess Study Costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of Study Costs other than excess Study Costs.

D. The Sponsor shall provide its cash contribution for excess Study Costs as required under Article II.C. of this Agreement by delivering a check payable to "FAO, USAED, Memphis District" to the District Engineer as follows:

1. After the project that is the subject of this Study has been authorized for construction, no later than the date on which a Project Cooperation Agreement is entered into for the project; or

2. In the event the project that is the subject of this Study is not authorized for construction by a date that is no later than 5 years of the date of the final report of the Chief of Engineers concerning the project, or by a date that is no later than 2 years after the date of the termination of the study, the Sponsor shall pay its share of excess costs on that date (5 years after the date of the Chief of Engineers' final report or 2 years after the date of the termination of the study).

#### ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsor and the Government shall appoint named senior representatives to an Executive Committee. Thereafter, the Executive Committee shall meet regularly until the end of the Study Period.

B. Until the end of the Study Period, the Executive Committee shall generally oversee the Study consistently with the PSP.

C. The Executive Committee may make recommendations that it deems warranted to the District Engineer on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions, and shall prepare periodic reports on the progress of all work items identified in the PSP.

E. The costs of participation in the Executive Committee (including the cost to serve on the Study Management Team) shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI - MAINTENANCE OF RECORDS

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study Costs. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments at 32 C.F.R. Section 33.20. The Government and the Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures for a minimum of three years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsor is required to conduct under the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other



applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and shared in accordance with the provisions of this Agreement.

#### ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

#### ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsor's rights and obligations under this Agreement, the Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

#### ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsor shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the parties to agree to extend the study under Article II.E. of this agreement, or upon the failure of the sponsor to fulfill its obligation under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. and III.D. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, Memphis District.

#### DEPARTMENT OF THE ARMY

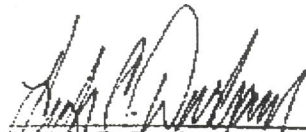


Colonel, Jack V. Scherer  
Corps of Engineers  
District Engineer  
Memphis District

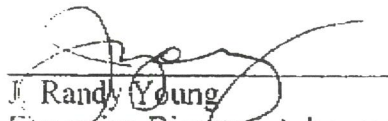
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FCSA

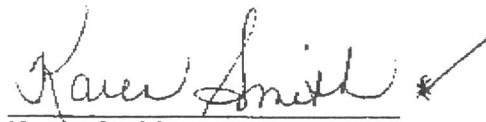
THE STATE OF ARKANSAS

  
Hugh C. Durham  
Director, Arkansas Game  
and Fish Commission

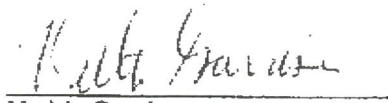
DATE: 5-6-02

  
Randy Young  
Executive Director, Arkansas Soil  
and Water Conservation Commission

DATE: 5/8/02

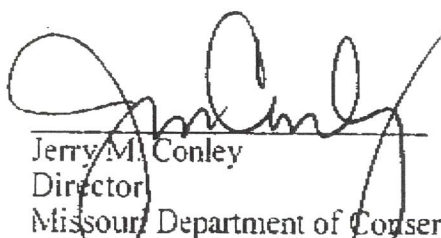
  
Karen Smith  
Director, Arkansas Natural  
Heritage Commission

DATE: 4/30/02

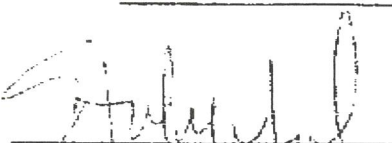
  
Keith Garrison  
Director,  
Arkansas Waterways Commission

DATE: 5/9/02

THE STATE OF MISSOURI

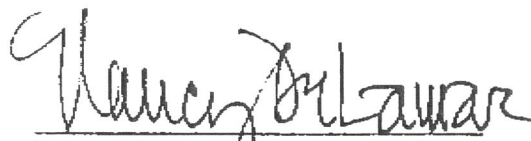
  
Jerry M. Conley  
Director  
Missouri Department of Conservation

DATE: 4-1-02

  
Stephen Mahfood  
Director  
Missouri Department of Natural Resources


DATE: 4/11/02

THE NATURE CONSERVANCY

  
Nancy DeLamar, State Director  
The Nature Conservancy  
Arkansas Field Office

DATE: 5/10/02

NATIONAL WILDLIFE FEDERATION

  
Susan Kaderka  
Director  
Gulf States Natural Resources Center  
National Wildlife Federation

DATE: \_\_\_\_\_