

MEMORANDUM OF AGREEMENT
Between the
Soil Conservation Service, Department of Agriculture
and the
Department of the Army

MOA - 11/14
15 Nov 78

I. PURPOSE. This Memorandum of Agreement (MOA) provides for cooperation between the Soil Conservation Service (SCS), Department of Agriculture, and the Department of the Army, acting through the Corps of Engineers (Corps), in the execution of emergency assistance authority for repair or restoration of non-Federal water control facilities damaged by flood. It establishes common policy guidelines for each agency to ensure that applicants to either agency will receive comparable emergency assistance. These guidelines apply independent of a major disaster or emergency declaration by the President in accordance with Public Law 93-288.

II. BACKGROUND.

- a. The Corps has authority under PL 84-99, (Section 5 of Flood Control Act of 1941, as amended) to repair any flood control work threatened or destroyed by flood.
- b. SCS has the authority under Section 403 of PL 95-334 (Agricultural Credit Act of 1978) to undertake emergency measures for runoff retardation and soil erosion prevention as needed to safeguard life and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or any other natural occurrence is causing or has caused a sudden impairment.
- c. The SCS has promulgated regulations in 7 CFR 624, and the Corps in 33 CFR 203, to govern the administration of the emergency authorities cited above.
- d. Certain non-Federal projects may be eligible for assistance from either agency.
- e. Differences between Corps and SCS policies in the areas of cost-sharing, beneficiaries, and sponsorship requirements have led to situations where applicants/sponsors of similar projects could receive different levels of Federal assistance from the Corps and SCS.

- f. When a major disaster or emergency is declared by the President, certain work that is not eligible under SCS and Corps programs may be eligible for Federal disaster assistance from FEMA under Public Law 93-288.

III. POLICY. The Corps and SCS agree to the following general guidance as a basis for consistent Federal policy for furnishing emergency assistance, on an event basis, to repair non-Federal facilities damaged by a natural occurrence. SCS and Corps shall use the following general guidelines in dividing responsibilities between the two agencies when a disaster occurs. Other assignments may be made by FEMA under the provisions of PL 93-288 and regulations issued pursuant to that act (see paragraph c below).

- a. The Corps is responsible for repair of flood damage to non-Federal water projects installed for the purpose of controlling flood waters, including appurtenant streambank erosion control and prevention. This will normally include repairs to non-Federal flood protection projects (channels, levees, or similar works) in urbanized areas regardless of watershed size (subject to the provisions of paragraph IIIc below).
- b. The SCS is responsible for repair of flood damage to non-Federal water projects that were installed:
- (1) in small watersheds of 400 square miles or less for the purpose of flood prevention; or
 - (2) for preventing erosion or damages caused by the products of erosion wherever located, except damages to features that are appurtenant to projects which are the responsibility of the Corps.
- c. At the call of either the SCS State Conservationist in a state affected by flooding or a Corps district or division engineer serving that state, a meeting of officials responsible for emergency assistance programs of SCS and the Corps is to be held at a location of mutual convenience to assess the flood damages and determine agency responsibilities for work on the different streams affected by the event. When a major disaster or emergency has been declared under PL 93-288, the Corps and SCS will also establish liaison with the appropriate FEMA Region.

- d. Basic eligibility requirements for emergency assistance under applicable laws, from either the Corps or SCS, will be standardized in the regulations promulgated by each agency. These regulations will be exchanged between the two agencies, and any changes will be coordinated to maintain uniform application of the provisions of this agreement. The following requirements are basic to Federal disaster assistance for public facilities such as flood or erosion control works:
- (1) Public Sponsorship.
 - (2) Cost Sharing.
 - (3) Acquisition of necessary lands, easements, and rights-of-way by local interests (project sponsor).
 - (4) Minimum engineering and maintenance guidelines.
- e. For any non-Federal flood control project damaged by a natural disaster other than flood (such as fires, tornadoes, and earthquakes), where assistance from the Corps under PL 84-99 is not authorized, the SCS will have primary responsibility for responding to applications for emergency assistance.
- f. The Corps and SCS will establish comparable engineering and maintenance guidelines for use as a basis for determining eligibility for emergency assistance. Projects not meeting these guidelines will not be eligible for emergency assistance unless the project sponsors/applicants agree to meet these criteria. These guidelines, along with other definitive information on project eligibility, will be exchanged between agencies to assure compatible implementation of this agreement.

FURTHER AGREEMENTS

- a. Notwithstanding the above agreements with respect to non-Federal projects, the following statements apply to any project designed and constructed by the Corps or SCS:

(1) The Corps has authority and responsibility under PL 84-99 to repair flood or bank protection works which are designed and constructed by the Corps. SCS shall not provide emergency assistance for any of these projects.

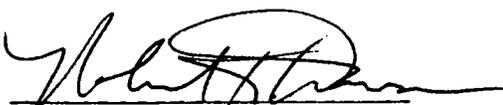
(2) The SCS has authority and responsibility under Section 403 of PL 95-334, subject to limitations promulgated pursuant to that act, to repair flood or erosion prevention works which are designed and constructed by or with the assistance of SCS. The Corps shall not provide emergency assistance for any of these projects.

(3) Paragraphs 1 and 2 above apply to projects which have been transferred to a local sponsor for operation and maintenance. These sponsors are responsible for making those repairs which the responsible Federal agency has determined to be within the requirements of the local cooperation agreement executed for their project.

b. Any assistance furnished under this agreement will be subject to the availability of funds and personnel.

c. This agreement is not intended to conflict with prior memoranda of understanding between the Corps and SCS which govern responsibilities for design and construction of Federal water projects.

d. This Memorandum of Agreement will be effective when signed, and may be terminated at any time by mutual consent of the parties hereto, or by either party after 60 days notice of its desire for termination.

BY: 
ROBERT K. DAWSON
Assistant Secretary of the Army
(Civil Works)

BY: 
WILSON SCALING
Chief, Soil Conservation Service
U.S. Department of Agriculture

DATE: 15 MAY 1986

DATE: 5/20/86

2. Wilbur Boyd Corporation Permit Case

The Civil Works Directorate provided an information paper on the subject case to ASA(CW). ASA(CW) requested this paper based on an inquiry from Mr. Thomas Reese. A description of the project, for which a Corps permit was issued on 21 Mar 86, was provided. However, the issues raised by Mr. Reese are still being investigated by the Jacksonville District and could not, therefore, be reported on to ASA(CW). DAEN-CWO-N (Mr. Foster). Provide copy_____.

3. Oakland Airport Permit Case

The Civil Works Directorate provided ASA(CW) a reply to a letter from the Environmental Defense Fund (EDF) concerning the subject case. The EDF asserted that the proposed project did not comply with the Section 404(b)(1) Guidelines and that an EIS was required. We advised that the San Francisco District had found the project to be in compliance with the Guidelines, following an alternatives analysis and, with the mitigation proposed, below the level of significance requiring the preparation of an EIS. DAEN-CWO-N (Mr. Foster). Provide copy_____.

4. Western States Water Council Opposition to Water Fee Policy

Director, Civil Works provided a draft response for the ASA(CW) to send to the Executive Director of the Western States Water Council. The Council had developed a resolution in opposition to the corps charging a fee for the City of Orofino, Idaho, to withdraw water from Dworshak Dam. The response indicates the Corps is not charging for water but for services provided, the Corps does not become involved in water rights disputes and that the Corps is to. 159

only trying to keep the users of hydroelectric power from subsidizing free water for the city. DAEN-CWP (Mr. Hillyer). Provide copy_____.

5. Memorandum of Agreement (MOA) with Soil Conservation Service (SCS) on Coordination of Emergency Activities

Subject MOA was signed by ASA(CW) on 15 May 1986, and by Wilson Scaling, Chief SCS, on 20 May 1986, which becomes the effective date of the agreement. The agreement provides guidelines for Corps and SCS offices to use in coordinating post-disaster recovery assistance. It also establishes several common eligibility requirements, such as public sponsorship, cost sharing and minimum engineering/maintenance guidelines for repair of non-Federal water control facilities damaged by flood. The MOA will be provided to Corps' FOA concurrently with forthcoming guidance on implementation of revised policy for rehabilitation of flood control projects under PL 84-99. DAEN-CWO-EO (Mr. Hecker). Provide copy_____.

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SECTION IV -- ASSISTANT CHIEF OF ENGINEERS

22 Jan 82

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MEMORANDUM OF UNDERSTANDING between the Department of Defense and the Department of Agriculture for the Conservation of Forests, Vegetative Cover, Soil, and Water on Lands Administered by the Department of Defense ---

WHEREAS, The Department of Agriculture, functioning through the Forest Service, the Soil Conservation Service, and the Agricultural Research Service, has nation-wide responsibilities in relation to the development, protection, and conservation of forest and other vegetative cover resources, for soil and water conservation, and for research relating thereto; and

WHEREAS, The Department of Defense has jurisdiction over military installations and facilities, and therefore has been entrusted with the responsibility to restore, conserve, and improve the natural resources thereon in the public interest; and

WHEREAS, The Department of the Army within the Department of Defense has responsibility for reservoir projects for flood control, navigation, hydroelectric power, and for other related purposes and, by the Act of September 6, 1960 (74 Stat. 817), has been charged with the responsibility for the development and protection of forest and other vegetative cover and to establish and maintain other conservation measures on lands related thereto in coordination with the Department of Agriculture; and

WHEREAS, The conservation of forests, vegetative cover, soil, water, and related natural resources is recognized as vital to meet the needs of our future generations and to the safety and welfare of the Nation, and to that end there have been established within the Department of Defense active, progressive conservation programs for application to lands under the administration of that Department.

22 Jan 82

MEMORANDUM OF UNDERSTANDING BETWEEN CORPS OF ENGINEERS, DEPARTMENT OF THE
ARMY AND SOIL CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF
AGRICULTURE WITH RESPECT TO DRAINAGE ACTIVITIES

The purpose of this Memorandum of Understanding is to outline the basic procedures which the Soil Conservation Service and the Corps of Engineers have found to be in the public interest to effectuate the fullest cooperation in the performance of their respective responsibilities for drainage activities.

AUTHORITIES AND RESPONSIBILITIES

Under authority of the Soil Conservation Act of 1935 (16 U.S.C. 590 a. et. seq.), declaring the Federal policy with respect to soil and moisture conservation; the authority of the Flood Control Act of 1936 (33 U.S.C. 701 a. et seq.), declaring the Federal policy with respect to flood control and major drainage; and other Acts supplementary or amendatory to the foregoing; the Soil Conservation Service is authorized to provide assistance to soil conservation districts and other State and local instrumentalities acceptable to the Secretary of Agriculture on drainage and related problems in connection with the conservation of soil and water resources, and the Corps of Engineers is authorized to provide channel and major drainage improvements on rivers and other waterways.

In general, drainage for a watershed area consists of two complementary parts; one, the system required to utilize, manage, or remove surplus water from farms or groups of farms and two, the necessary channel and major drainage improvements required to control, carry off, and utilize these surplus waters. Therefore, in soil conservation districts or other State or locally organized areas, the activities of the Corps of Engineers and the Soil Conservation Service, in cooperation with the local districts or agencies provides for consideration of both of these complementary parts of drainage.

ESTABLISHED PROCEDURES

The Soil Conservation Service and the Corps of Engineers through their combined activities carry out the responsibilities for drainage, assigned them by the Congress, in cooperation with State and local agencies, by:

1. Formulating integrated programs that will best serve the broad requirements of improved drainage and water controls.
2. Assisting in establishing, operating, and maintaining such programs on agricultural lands.

Incl #1 to Circular Letter No. 4459, (Civil Works No. 74)

22 Jan 82

- (4) Assist local districts and agencies in helping landowners and operators, small informal groups, and organized enterprises with detailed plans for drainage, and furnish technical assistance in constructing, improving, and maintaining local drainage measures.
 - (5) Loan or grant to local districts and agencies needed equipment, when available, and furnish other available services or materials for use in constructing and maintaining local drainage measures.
- B. The Corps of Engineers will participate in channel and major drainage improvements, as authorized by the Congress, in conjunction with local interests responsible for local drainage activities, such as soil conservation districts, levee and drainage districts, flood control and conservancy districts, states, counties, and towns, as follows:
- (1) Acquaint local districts and agencies, upon request, with:
 - (a) Available basic data pertinent to channel and major drainage improvements in connection with their drainage problems.
 - (b) Assistance available from Federal agencies and the procedures for obtaining it.
 - (c) Opportunities for coordination of their activities with the activities of Federal and other agencies in solving problems involved in channel and major drainage improvements.
 - (2) Furnish technical advice and assistance already possible under continuing and other authority established by Congress which do not require additional or special authorization.
 - (3) Upon authorization by the Congress, proceed with preliminary examinations and surveys as follows:
 - (a) Notify local people and groups known to have an interest when examinations or surveys are authorized and hold public hearings at which their views will be obtained.
 - (b) Obtain from such local interests data on their plans for drainage activities including locations and adequacy of capacities of local drainage outlets, to enable correlation of their plans with possible major drainage improvements and determination of common points of contact between the two phases of drainage activity referred to above.

INCLOSURE NO. 2: DIVISION OF COST OF A HYPOTHETICAL PROJECT INVOLVING FLOOD CONTROL-MAJOR DRAINAGE AND OTHER WATER USES

1. COST TO BE DIVIDED:

First Cost: Construction	\$9,000,000
Lands and relocations	<u>1,000,000</u>
Total first cost	10,000,000

Present worth of recurring maintenance and operation costs averaging \$200,000 annually (200,000 x 23.4556). 4,700,000

Present value of initial and recurring project costs . . \$14,700,000

2. DIVISION OF BENEFITS: (Average annual)

a. Flood control and allied benefits:

Prevention of flood damages	\$ 110,000	
Navigation	20,000	
Preservation of fish and wildlife	<u>10,000</u>	140,000 (20%)

b. Increased land use and related benefits:

Due to irrigation	\$ 60,000	
Due to drainage	<u>500,000</u>	560,000 (30%)
Total average annual benefits		\$ 700,000 (100%)

3. DIVISION OF COST:

a. According to types of benefits:

Chargeable to flood control, 20% of \$14,700,000 . . .	\$ 2,940,000
Chargeable to increased land use, 80% of \$14,700,000	<u>11,760,000</u>
	\$14,700,000

b. Between Federal and non-Federal interests:

Federal:

(1) All of part chargeable to flood control and allied benefits	\$ 2,940,000
(2) 40% of part chargeable to increased land use . . .	<u>4,704,000</u>
Total Federal share	\$ 7,644,000

Non-Federal:

(1) 60% of part chargeable to increased land use . . .	\$ 7,056,000
Totals	<u>\$14,700,000</u>

22 Jan 82

AGREEMENT BETWEEN THE
CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY
AND
SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE
ON PARTICIPATION IN URBAN FLOOD PROTECTION
19 March 1959

1. The Corps of Engineers of the Department of the Army and the Soil Conservation Service of the Department of Agriculture, in addition to other normal coordination and cooperation, agree to the following basic position on participation in providing flood protection for urban areas:

Under the flood control laws and the watershed protection and flood prevention acts which govern the activities of the two agencies in this field, both agencies have authority to plan, recommend and carry out, or to provide assistance to local organizations in carrying out, projects for the reduction of flood damages in urban areas.

2. In order to carry out their responsibilities in this area of overlapping authorization, the District Engineers of the Corps of Engineers, the State Conservationists of the Soil Conservation Service, and the local organizations concerned with the development of proposed projects will consult in the following cases with a view to reaching a mutually satisfactory decision as to whether the Corps of Engineers or the Soil Conservation Service should provide the Federal assistance desired by local organizations:

a. When the Soil Conservation Service receives an application for assistance in developing a watershed work plan where the problem appears to require for its solution the installation of local protection within an urban area or the benefits accrue primarily to an urban area.

b. When the Corps of Engineers is confronted with an urban flood problem where it appears that an optimum solution could be obtained as a part of a watershed work plan normally provided under P.L. 566.

3. In such consultations District Engineers and State Conservationists shall be guided by the following:

a. Local protection works such as channel, levee or similar improvements for urban flood protection shall normally be provided by the Corps of Engineers.

b. Reservoirs for urban flood protection may be provided by the Corps of Engineers, or by the Soil Conservation Service under authority of P. L. 566.

22 Jan 82

8/64

MEMORANDUM OF AGREEMENT BY THE SECRETARIES OF THE ARMY
AND AGRICULTURE RELATIVE TO MANAGEMENT OF LAND AND WATER RESOURCES
AT WATER DEVELOPMENT PROJECTS OF THE CORPS OF ENGINEERS LOCATED
WITHIN OR PARTLY WITHIN THEIR NATIONAL FOREST SYSTEM

Purpose of this Memorandum is to establish and record agreed-upon principles and policies to govern the planning, development and management of water and land resources associated with water resource development projects constructed or to be constructed by the Corps of Engineers associated with units of the National Forest System (National Forests and Grasslands) and to establish procedures for the use of National Forest lands required for works of improvements related to these projects. This agreement supersedes that executed by the Secretaries of War and Agriculture as of December 16, 1946.

The Secretary of the Army is authorized by the Congress to provide for public access to and the recreational use of reservoirs and other water controlled projects constructed by the Corps of Engineers and to do this directly or through federal, state or local agencies. The Secretary of Agriculture is authorized to provide for the use and management of the National Forest System under multiple-use principles and practices, including the development and administration of outdoor recreation. The Secretaries of the military departments and the Secretary of Agriculture are authorized to interchange National Forest lands and lands controlled by the military departments within or adjacent to National Forests to facilitate land management and provide maximum use for authorized purposes. This agreement is intended to implement and facilitate achievement of these authorizations and responsibilities.

Accordingly, the use, development, and management of lands under the control of the Department of the Army and Agriculture in and about water resource projects of the Corps of Engineers within or partly within the National Forest System will be subject to the following overall policies:

1. The Corps of Engineers and the Forest Service will cooperatively plan the development, use and management of water resource projects as they relate to land resources. Such cooperative planning will start with the preauthorization plans and continue through the successive planning stages. This planning will be pointed toward achieving the maximum public benefits from each project and will delineate the procurement of necessary lands to assure meeting all foreseeable public needs for recreation, wildlife, and other use compatible with the primary purposes of the water storage facility.

22 Jan 82

and operation of water oriented recreation facilities or other resource management. The Department of the Army will retain in any transfer of land the rights of use necessary for unrestricted operation and maintenance of the water resource project, including the right to construct facilities or structures or to remove any facilities or structures which are inimical to the operation of the project. The Department of Agriculture likewise will retain such rights of use and access as are necessary to provide for required other uses of National Forest lands and access for National Forest lands and access for National Forest purposes. All Memoranda of Understanding and transfer relating to land will be consummated as soon as practicable. At all water resource development projects, necessary lands, as determined by the Chief, Corps of Engineers, in the vicinity of major structures including but not limited to the dam and its approaches upstream and downstream will be under the sole jurisdiction of the Chief of Engineers.

4. **Management of land and the use and development of resources**, including water oriented recreation, will be assigned between the agencies in accordance with the following guidelines:
 - a. Where water storage projects are located within or substantially within the exterior boundaries of units of the National Forest System the management of project associated land and resources will be a function of the Forest Service unless two Departments mutually agree otherwise.
 - b. Where water resource projects involve only minor areas within National Forests the development and administration of project associated lands and resources will be a function of the Corps of Engineers or other agencies as it may determine and provide for unless the two Departments mutually agree otherwise.

22 Jan 82

Both agencies will seek resolution of jurisdiction at District Engineer-Forest Supervisor level during project formulation (Corps Survey Reports) or, for projects already authorized, as early as possible in the project planning will be forwarded to the Chiefs of Services involved for confirmation. If irreconcilable differences develop, basis data will be referred without delay to the Chief of Engineers and Chief of the Forest Service for decision.

5. The Department of the Army will be responsible for the clearing of the reservoir area and for the construction, maintenance and operation of the water resource project except as otherwise provided herein and will have full use and administration of necessary lands for these purposes. Jurisdiction of National Forest Systems lands for other purposes will remain with the Secretary of Agriculture, including the sale of timber therefrom prior to clearing activities by the Department of the Army. Receipts from the sale of timber or use of National Forest System lands withdrawn for or made available to the Department of the Army will be deposited into the Forest Fund.
6. Improvements and structures of the Department of Agriculture which will be destroyed or rendered useless by reason of the water resource development and which are still needed by the Department of Agriculture will be removed or replaced by the Department of the Army at a location to be determined by the Department of Agriculture in such kind and quantity as well as provide levels of service and/or access at least equivalent to those existing prior to the project construction, subject to interagency budgetary procedures.
7. In its construction activities, the Department of the Army will take all responsible precautions to prevent and suppress forest fires on and prevent any unnecessary damage to lands and resources associated with the project construction and to this end will collaborate with the Department of Agriculture in formulation of fire prevention and control plans and programs, location of access roads and relocation of transportation facilities, land clearing standards, and other matters essential to the protection of resources and conservation of the scenic and esthetic aspects of the reservoir environment.