

COOPERATIVE AGREEMENT
between
U.S. FISH AND WILDLIFE SERVICE
and
MEIGS SOIL AND WATER CONSERVATION DISTRICT

I. RECIPIENT

Meigs Soil and Water Conservation District
33101 Hiland Road
Pomeroy, Ohio 45769
(740) 992-4282

TAX IDENTIFICATION NUMBER: [REDACTED]

DUNS NUMBER: [REDACTED]

TYPE OF APPLICANT: Soil and Water Conservation District established
pursuant to Ohio Revised Code Chapter 1515

II. FINANCIAL DATA

BLANKET COOPERATIVE AGREEMENT NO. 301816J072 (hereinafter
"Agreement") [This number is to be reported in all correspondence between the
parties].

AMOUNT FUNDED: No funds have been allocated under this Agreement, but
such funds shall be committed by one or more Task Orders issued by the U.S.
Fish & Wildlife Service under this Agreement. Funding for the Task Orders is
derived solely from the Amended Consent Decree dated November 21, 2003,
captioned *United States v. Southern Ohio Coal Co.*, Case No. C2-96-0097, U.S.
District Court, Southern District of Ohio, Eastern Division.

APPROPRIATION DATA: This information will be provided in detail on each
Task Order that obligates Amended Consent Decree funding under this
Agreement.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NO.: [not
applicable, the Amended Consent Decree funds are not federal funds
appropriated by the U.S. Congress].

III. BACKGROUND

In July 1993, a catastrophic mine flooding event at the Southern Ohio Coal
Company (SOCCO) Meigs Mine No. 31 resulted in the emergency release of a
substantial volume of untreated, and partially treated, mine water into Parker
Run and Leading Creek. The environmental impact on the Leading Creek

Watershed was substantial. Negotiations between SOCCO and the U.S. Department of Justice resulted in the establishment of the Leading Creek Improvement Account and the development of the Leading Creek Improvement Plan (LCIP) for the restoration and enhancement of water quality in the Leading Creek Watershed. The Account was established and the LCIP was developed pursuant to a Federal Court approved Consent Decree and Settlement Agreement filed March 22, 1996 in the U.S. District Court for the Southern District of Ohio. Pursuant to the Consent Decree, the U.S. Fish and Wildlife Service (FWS) is the Responsible Agency for the selection, implementation, and oversight of enhancement projects to be funded in whole or in part with funds from the Leading Creek Improvement Account. An Amended Consent Decree, negotiated in 2003, provided additional funding for the Leading Creek Improvement Account and reestablished the FWS's authority to implement and monitor projects intended to improve the aquatic life uses of the Leading Creek Stream System and/or to acquire resources equivalent to those affected by the 1993 dewatering of the Meigs Mine.

Because certain state agencies have technical expertise with respect to the matters covered by the Amended Consent Decree, and because along with the United States the State of Ohio is a trustee for some or all of the natural resources to be addressed by the Leading Creek Improvement Plan, the United States has determined that implementation of any enhancement projects for the Leading Creek Stream System would best be accomplished through a continued state/federal cooperative effort. Pursuant to the 1996 Consent Decree, the FWS developed a working relationship with several federal and state agencies for the purpose of selecting and/or implementing enhancement projects for the Leading Creek Watershed. These cooperative relationships are expected to be continued under the Amended Consent Decree.

IV. AUTHORITY

This Agreement between the U.S. Department of Interior, Fish and Wildlife Service (FWS), and the Meigs Soil and Water Conservation District (SWCD), is hereby entered into under the authority of the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA), as amended, 42 U.S.C. 9607(f), the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1251 *et seq.*, the Fish & Wildlife Coordination Act of 1934, as amended, 16 U.S.C. 661-666, and the Federal Grant & Cooperative Agreement Act of 1977, 31 U.S.C. 6304 & 6305. These laws authorize the federal government, states, and Indian tribes to recover damages for injuries to natural resources and their supporting ecosystems, belonging to, managed by, appertaining to, or otherwise controlled by them, and to enter into cooperative agreements with non-profit conservation organizations, as necessary, to restore those natural resources. Through Executive Orders and the National Contingency Plan (NCP), the President has designated the Secretary of Interior to act on behalf of the public as trustee for natural resources and their supporting ecosystems, managed or controlled by the Department. The SWCD's authority to enter into

this Agreement is located in Chapter 1515 of the Ohio Revised Code.

V. STATEMENT OF PURPOSE

The purpose of this Agreement is to identify the cooperative efforts of each of the parties in implementing the enhancement projects identified in the Leading Creek Improvement Plan, or any successor Leading Creek Restoration Plan.

VI. SCOPE OF WORK

The FWS and the SWCD agree to provide all necessary personnel, materials, services, facilities and funds for performance of this Agreement, as follows:

The SWCD agrees to:

1. Actively seek landowner participation in enhancement projects identified in the LCIP and successor Leading Creek Restoration Plans.
2. Identify partnership opportunities with Federal and State agencies for implementation and funding of enhancement projects identified in the LCIP and successor Leading Creek Restoration Plans.
3. Prepare and submit a project Pre-Proposal to the FWS Project Officer for each proposed enhancement project. Project Pre-Proposals shall, at a minimum, identify the LCIP site or successor Restoration Plan project type to be addressed by the proposed enhancement project, refer to the specific section of the LCIP or successor Restoration Plan where the site or project type to be addressed by the proposed project is discussed, specify the type of enhancement work to be performed, and present an approximate cost estimate for the work.
4. At the direction of the FWS Project Officer, draft Project Plans explicitly detailing a project's scope of work, the specific costs associated with the work, the portion of the project to be funded from the Leading Creek Improvement Account, the amount of funding from the Leading Creek Improvement Account required to perform the work, and the amounts and sources of other applicable project funding.
5. Following final approval of Project Plans by the FWS, enter into contracts with third parties for the implementation of the approved project. Said contracts shall be based upon the final approved Project Plans.
6. Provide oversight of project construction throughout the course of the project to confirm that the project is proceeding in a timely manner and

according to the terms of the task specifications. Report any deviations from the original scope of work to the FWS Project Officer within 5 working days. The FWS shall, in turn, provide written comments regarding any said deviations to the SWCD within 5 days of the FWS Project Officer becoming aware of said deviations. If excess project costs are anticipated at any time, the SWCD will proceed as specified in Section VIII. of this Agreement.

7. Maintain a project file throughout the course of the project, to include, at a minimum, the following: the Projects Plans submitted to the FWS Project Officer; the Task Order for the project work; the final FWS approved Project Plans; a record of the amount of funding from the Leading Creek Improvement Account required to perform the work, and the amounts and sources of other applicable project funding; a plan view of the project site; photographs of the site, taken before work begins and as work progresses; a record of expenditures throughout the course of the project; modifications to the project scope of work; a record of the work progress on a monthly basis; any and all correspondence with the landowner(s); and any and all correspondence with other governmental agencies regarding the Project.
8. Inspect completed projects annually for the life of each project to insure landowner adherence to project specific agreements and covenants, and report any violations to the FWS Project Officer within 10 working days of discovery of said violation.
9. At the request of the FWS, assist with public meetings by a) publishing notices in local papers, distributing flyers, and providing other appropriate means of notifying the public; b) providing or arranging for meeting space and necessary equipment.
10. Provide written quarterly reports, based upon a calendar year, to the FWS Project Officer specifying:
 - a) identities and addresses of landowners contacted during that quarter and the results of those contacts;
 - b) status of projects under construction, plus photographic documentation for each project;
 - c) for any project completed during the quarter, a summary of the project work, plus photographic documentation; and,
 - d) in the fourth quarter report, a summary of the project work completed during that year.

The FWS agrees to:

1. Provide funding to the SWCD on a yearly basis for a period of up to five years, based upon acceptable performance of items 1-10 described

above. The funding shall be disbursed according to the following schedule, which allows for a 3% adjustment for inflation each year:

2006	\$35,000
2007	\$36,050
2008	\$37,131
2009	\$38,245
2010	\$39,392

The FWS will endeavor to disburse this funding to the SWCD during the first quarter of each calendar year. This funding is separate and distinct from funding for enhancement projects, which will be disbursed pursuant to project specific task orders.

2. Designate a Project Officer to review Project Pre-Proposals and Project Plans.
3. Inform the SWCD in writing, within 30 days of receipt of a Pre-Proposal, whether the proposed project is approved, denied, or undecided due to the FWS' need for more information.
4. Issue a task order to SWCD for each approved project. The task order shall include detailed task specifications adopted from the Project Plans and a detailed budget.
5. Develop separate agreements as appropriate with land owners, and State and other Federal agencies to fund and implement Leading Creek enhancement projects.
6. Maintain the Administrative Record for Leading Creek Restoration.
7. Participate in monthly meetings of the Leading Creek Advisory Committee.
8. Provide a written evaluation of Meigs SWCD's performance in the last quarter of each calendar year.

The FWS and SWCD mutually agree to:

1. Implement enhancement projects in accordance with the priority listing identified in the LCIP or successor Leading Creek Restoration Plans, to the greatest extent possible.

VII. PERIOD OF PERFORMANCE

The period of performance of this Cooperative Agreement is from the effective date of signature by the authorized FWS official and the authorized SWCD official, until terminated by either party as described in Section XI. of this Agreement and/or funds in the Leading Creek Improvement Fund have been depleted. At the end of a five (5) year period after signature, this Agreement will be reviewed by both parties and a determination will be made whether the Agreement will be renewed.

VIII. FINANCIAL ADMINISTRATION

1. The funding to be contributed by the FWS for implementation of restoration projects from the Leading Creek Improvement Fund will be specified on individual project task orders issued under this Agreement. Should excess project costs be anticipated, the SWCD shall contact the FWS for approval of funding for the excess costs. The SWCD shall not incur excess costs without FWS approval. The FWS will not be obligated to reimburse the SWCD for excess costs incurred without FWS approval.
2. Should the SWCD be unable to complete the provisions of this Agreement, all monies provided by the FWS, which prove to be cancelable obligations or unallowable in accordance with OMB Circular A-87 (for state, local, and Indian tribal governments) shall be refunded to the FWS.
3. Upon acceptance of the terms and conditions of this Agreement and modifications as they occur, the SWCD may submit requests for payment, using either Standard Form 270, Request for Advance or Reimbursement, or the SWCD's standard invoice, to the FWS' Project Officer. The SWCD shall submit an original copy of all invoices to the FWS Project Officer for approval and transmittal to the paying office. All invoices shall include a reference to the Cooperative Agreement Number as well as the specific Task Order Number.
4. Any portion of funds not expended at the completion of the period of performance of this Agreement shall be returned to the FWS, and re-credited to the Leading Creek Improvement Account established pursuant to the Consent Decree, along with any interest earned on that amount.
5. The SWCD must furnish the following minimum information in support of all costs invoiced:
 - a. The period of performance for the costs claimed;
 - b. Current and cumulative expenditures by cost categories in the approved budget, and any other supporting data for unusual expenditures; and,
 - c. Legible copies of all applicable receipts and paid invoices.

6. The Debt Collection Improvement Act of 1996 (P.L. 104-134) was signed into law on April 26, 1996. Under this law, Federal agencies issue payments via electronic fund transfers rather than by paper checks. All recipients of Federal payments (except IRS tax refunds and credit card orders) must receive them electronically. This requires all recipients to be enrolled in the Automated Clearing House (ACH) electronic banking database system.

IX. GOVERNMENT FURNISHED PROPERTY

The FWS has not authorized the SWCD to incur expenses for capital equipment, legal fees and/or property to be chargeable to the FWS.

X. MODIFICATIONS AND RENEWALS

The FWS and the SWCD may modify this Agreement by mutual agreement, in writing. Either party may propose modifications or renewals at any time during performance. Such modifications or renewals shall become effective upon written approval of both parties.

XI. TERMINATION

This Agreement may be terminated, by mutual agreement, after sixty (60) days written notification. All or part of this notice requirement may be waived with the mutual written consent of both parties. In either case, the parties shall make good faith efforts to agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

The FWS may unilaterally terminate this Agreement, in whole or in part, after sixty (60) days written notification, if the SWCD fails to comply with the terms and conditions of the Agreement.

XII. GENERAL PROVISIONS

- A. The U.S. Fish and Wildlife Service General Provisions for Financial Assistance shall be applicable to this Agreement. (Attachment A)
- B. The SWCD shall comply with the Code of Federal Regulations, Title 43, Part 12, Administrative and Audit Requirements and Cost Principles for Assistance Programs.
- C. Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. To the extent authorized by applicable law (as specified

below), the FWS and the SWCD will respectively assume all risks and liability to itself, its agents or employees, for any injury to person or property resulting from any operations of its agents or employees under this Agreement, and for any loss, cost, damage, or expense resulting at any time from any and all causes due to any acts, or negligence, or the failure to exercise proper precautions of or by itself or its own agents to this Agreement.

The liability of the Federal Government will be governed by the Federal Tort Claims Act (28 U.S.C. 2671 *et seq.*)

The liability of the SWCD will be governed by applicable Federal and State statutes and common law.

XIII. CERTIFICATIONS

The Certifications applicable to the Federal Domestic Grants and Cooperative Agreements and executed by the SWCD are a part of this Agreement and incorporated as Attachment B.

XIV. ADMINISTRATIVE/CONTRACTING OFFICER

The Administrative/Contracting Officer for the FWS is:

Ken Kaseforth
U.S. Fish and Wildlife Service, Region 3
1 Federal Drive
Fort Snelling, MN 55111
Telephone: 612-713-5219
Fax: 612-713-5151
kenneth_kaseforth@fws.gov

The FWS Project Officer is responsible for administering the performance of work under this Agreement. However, no oral understanding, agreement, modification, change order, or other matter deviating from the terms of this Agreement, or any Task Order(s) issued pursuant to this Agreement, shall be effective or binding upon the Government unless formalized in writing and executed by the FWS Contracting Officer.

On all matters that pertain to the Agreement's contractual terms, the SWCD shall communicate with the Contracting Officer. If, in the opinion of the SWCD, the FWS Project Officer requests efforts outside the scope of this Agreement, the SWCD shall so advise the Project Officer. If after discussion with the Project Officer there remains disagreement on this issue, the SWCD shall notify the Contracting Officer in writing immediately. Proceeding with work outside the terms and conditions of this Agreement could result in nonpayment of invoices.

(301816J072)

In witness whereof, each party has caused this Agreement to be executed by its authorized official on the day and year set forth below.

U.S. FISH AND WILDLIFE SERVICE

**MEIGS SOIL AND WATER
CONSERVATION DISTRICT**

By: Ken Karpf 4/21/06
Signature Date

Administrative/Contracting Officer

By: Joe Bohin 04/13/06
Signature Date

Chairman, Board of Supervisors