

JOINT POWERS AGREEMENT

THIS AGREEMENT is made this 26th day of May, 2010, by and between the Red River Joint Water Resource District, a North Dakota political subdivision and Joint Water Resource District (the “RRJWRD”), and the Red River Watershed Management Board, a Minnesota political subdivision and Joint Watershed Management Board (the “RRWMB”).

RECITALS

A. The Red River Valley is rich in tillable soil, and the Valley supports an agricultural economy and thriving communities.

B. Regular flooding of Red River of the North tributaries and the main stem of the Red River of the North presents serious problems and risks, including widespread consequences in human health, economy, water quality, and ecology throughout the Valley.

C. The Red River of the North watershed has been the subject of extensive technical studies by local, state, and federal agencies, and despite a long history of flood mitigation investments through basin and local watershed management, much greater investment is still required.

D. The Red River of the North watershed has strong state and local capacity for watershed planning and flood mitigation project design and implementation; a history of effective flood damage reduction and conservation; strong local watershed education, civic engagement, and credibility; and interstate and international cooperation provided by the Red River Basin Commission.

E. Notwithstanding this state and local capacity, there is a current lack of interstate coordination to plan, prioritize, and implement necessary storage and retention, and related water projects to enhance the flood resilience of the Red River Valley.

F. Despite the efforts of the RRJWRD and the RRWMB locally to achieve flood control in the Valley, there is a critical lack of federal funding to share in the cost of these important and

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necessary storage and retention projects.

G. The lack of effective attention by federal agencies to the permitting process has also encumbered the efforts of the RRJWRD, the RRWMB, and their member districts to construct storage and retention projects, and thereby contributed to substantial flood damages in the Valley.

H. The RRWMB is authorized by the Minnesota Legislature to “cooperate with water management and flood control authorities in Minnesota, North Dakota, South Dakota, and the province of Manitoba, and may enter into contracts, compacts, and agreements which may be necessary to insure integration of its projects, to control the effects of flooding or to insure the beneficial use of water in the Red River basin,” Laws 1976, Ch. 162, Sec. 3; as amended by Laws 1991, Ch. 167, Sec. 3; and further, Article VII, subdivision 5 of the RRWMB’s joint powers agreement provides that the RRWMB “may cooperate or contract with any state or subdivision thereof, the Province of Manitoba, Canada, the Dominion of Canada, federal agencies of the United States or Canada, private or public corporations or cooperative associations.”

I. The RRJWRD has authority under N.D. Cent. Code §§ 54-40.3-01 and 61-16.1-12 “to enter into contracts or other arrangements for water conservation, water supply, flood control, or other authorized projects with the United States government or any department thereof, with the Canadian government or any department thereof or any of its provinces or municipalities, with persons, railroads, other corporations, or limited liability companies, with public corporations, and state governments of this or other states, with drainage, water resource, conservation, conservancy, or improvement districts, or other such districts in this or other states,” including the authority to enter into this Agreement with the RRWMB.

J. The RRJWRD and the RRWMB enter into this Agreement for purposes of prioritizing and coordinating flood retention efforts in the Valley.

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **Purpose.** The primary purpose of this Agreement is to ensure cooperation and joint coordination of retention projects in the Valley. To achieve that purpose and to ensure cooperation, the RRJWRD and the RRWMB will convene three joint board meetings annually during 2010 and 2011, and at least two meetings annually thereafter for purposes of prioritizing and coordinating the establishment of flood storage goals for each of the major watersheds, and coordinating the implementation of flood storage projects in the Red River of the North watershed. The joint boards may also agree to coordinate on other water-related issues of mutual interest to the two boards.

2. **Executive Committee Organization.** The RRJWRD and the RRWMB will appoint an Executive Committee comprised of three Board members from each joint board. In addition, the Executive Committee will include one non-voting advisory member appointed by the Red River Basin Commission, one non-voting advisory member appointed by the Governor of North Dakota, and one non-voting advisory member appointed by the Governor of Minnesota, if those respective parties choose to appoint advisory members. The Executive Committee will not be a separate legal entity, and will not have any separate legal powers or authorities apart from those of the RRJWRD or the RRWMB in their individual capacities. The Chair of the RRJWRD and the President of the RRWMB will act as co-Chairs of the Executive Committee, alternating as meeting chairs, each with

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full voting authority. The Executive Committee will elect a secretary who will keep accurate minutes of the Executive Committee's meetings to clearly reflect the Executive Committee's operation, management, and business. This Agreement does not diminish or in any way impede the authorities of the RRJWRD or the RRWMB to individually exercise their own powers under their respective state law.

3. **Executive Committee Meetings.** The Executive Committee will convene at least four meetings annually, at times and places as agreed upon by the Executive Committee's co-Chairs. The Executive Committee will comply with the most recent edition of ROBERT'S RULES OF ORDER regarding *Procedure in Small Boards*, except as otherwise provided under this Agreement and as otherwise amended by the Executive Committee. A majority of the members will constitute a quorum for the transaction of the Executive Committee's business. The intent of the Executive Committee is to establish a consensus on issues; however, in the event of a failure to achieve a consensus, the vote of at least two voting members from both the RRJWRD and the RRWMB is necessary for the adoption of a matter or motion before the Executive Committee. The individual Joint Boards are responsible for ensuring their own compliance with applicable open meetings and open records laws, including all requisite meeting notices.

4. **Comprehensive Planning and Prioritization.** Upon the parties' execution of this Agreement, the RRJWRD and the RRWMB will exchange their current plans for flood storage projects in the Red River of the North watershed, and the parties will subsequently submit annual updates regarding plans for any additional flood storage projects to the Executive Committee prior to September 1 each year. At the Executive Committee's first meeting, the Executive Committee will develop a ranked list of priority projects for the next five years in the watershed

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(the “Priority Report”), and the Executive Committee will update the Priority Report annually during the term of this Agreement, but no later than October 1. When preparing the Priority Report, the Executive Committee will include those projects that, based upon the Executive Committee’s coordination and technical review of the projects submitted by the joint boards, will contribute to the parties’ joint objective of achieving at least a 20% reduction in peak flows on the Red River of the North. Prior to October 1 of each year during the term of this Agreement, the Executive Committee will prepare an annual report on the status of implementation of water storage projects, the acre feet of storage provided by each project, the related reduction to peak flow on the Red River of the North, and a summary of the shared costs of each project by each contributing organization or agency (the “Project Report”). Within a reasonable time following the Executive Committee’s approval of the Priority Report and the Project Report, the Executive Committee will distribute the Priority Report and the Project Report to the RRJWRD and the RRWMB, the Governors of North Dakota and Minnesota, the Congressional Delegations from North Dakota and Minnesota, the Red River Basin Commission, and all other parties who request copies of the Reports.

5. **Project Funding.** The RRJWRD and the RRWMB both have legal authority to accept funds, property, or other assistance directly from federal, state, and other sources for purposes of constructing, operating, and maintaining retention projects, and other water management projects. The parties will work with their respective Members of Congress to solicit federal funding for the parties’ priority flood storage projects contained in the Priority Report, and to seek an annual base federal funding commitment and allocation to assist in the implementation of the priority flood storage projects in the Valley. In addition, the parties will work with their respective state legislatures and state agencies, including the Governors of North Dakota and Minnesota, to solicit

state funding for the parties' priority flood storage projects contained in the Priority Report, and to seek an annual base federal funding commitment and allocation to assist in the implementation of the priority flood storage projects in the Valley. Finally, the RRJWRD and the RRWMB will commit funding obtained through their respective property tax levies, as well as state appropriations, to contribute to the priority flood storage projects contained in the Priority Report. Because the objective of the priority flood storage projects contained in the Priority Report will be reduction in peak flows on the Red River of the North, a goal that will benefit the entire basin, the RRJWRD and the RRWMB may, when their respective budgets permit and they deem appropriate, contribute funding for flood storage projects in the other joint board's jurisdiction.

6. **Federal Role.** The Executive Committee will invite federal representatives, including members of the Congressional delegations from each state and their staffs, as well as federal agencies, to cooperate with the two boards regarding project funding, permitting, and related issues; to maximize federal funding for flood storage projects in the Red River of the North watershed; to minimize federal regulatory obstacles, including unreasonable permitting delays and other difficulties; and to generally seek federal cooperation to ensure successful construction and completion of priority flood storage projects for the benefit of the entire basin.

7. **Project Management.** The RRJWRD and its member water resource districts have full legal authority to design, construct, operate, maintain, and own flood storage projects under North Dakota law; similarly, the RRWMB and its member watershed districts have full legal authority to design, construct, operate, maintain, and own flood storage projects under Minnesota law. Therefore, responsibility for project design, right of way acquisition, permitting, construction, operation, ownership, and maintenance regarding any projects contained in the Priority Report will

generally be with the respective local watershed district or water resource district, or with some other local county entity. The RRJWRD will commit to assuring that ordered and funded priority water storage projects within the North Dakota portion of the watershed included on the Priority Report will be completed in accordance with North Dakota law, and the RRWMB will commit to assuring that ordered and funded priority water storage projects within the Minnesota portion of the watershed included on the Priority Report will be completed in accordance with Minnesota law.

8. **Permitting Coordination.** Although local water resource districts or watershed districts will generally be responsible for project administration, construction, and ownership, including permit acquisition, the RRJWRD and the RRWMB recognize that federal permitting delays may be difficult for local districts to overcome, and that coordination and cooperation from the Executive Committee, and the joint boards, may be helpful for local districts as they seek the requisite federal permits or approvals for purposes of constructing priority flood storage projects. Therefore, the Executive Committee will support and assist local districts as they seek federal permits and approvals regarding any priority flood storage projects identified in the Priority Report, including coordination of efforts from the RRJWRD and the RRWMB; application preparation and review; outreach and administrative assistance; and other reasonable measures necessary to ensure diligent issuance of the requisite permits or approvals.

9. **Agents and Employees.** Each individual joint board will appoint employees, engineers, attorneys, or any other appointees to act on its behalf for the benefit of the Executive Committee.

10. **Costs and Expenses.** Each individual joint board is responsible for all per diem, compensation, travel, supplies, salaries, administrative and overhead costs, and any other expenses

of its own members or its own employees, engineers, attorneys, or other appointees. The RRJWRD and the RRWMB will be jointly and equally responsible for any joint administrative costs or expenses incurred in operating the Executive Committee, unless otherwise agreed by the joint boards. Each individual joint board is responsible for its own insurance and liability.

11. **Term.** Withdrawal from this Agreement or from the Executive Committee by one or both of the joint boards must be in writing.

12. **Severability.** If any Court of competent jurisdiction declares any provision or part of this Agreement invalid or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable.

13. **Successors.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors and assigns.

14. **Assignment.** Neither party may transfer or assign this Agreement or any rights or obligations under this Agreement without the express written consent of the other party.

15. **Amendments.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

16. **Interpretation.** This Agreement will be construed as if both parties prepared it.

17. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

18. **Cooperation.** The parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

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IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

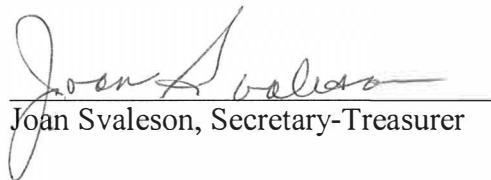
RED RIVER JOINT WATER
RESOURCE DISTRICT

By:


Jim Lyons, Chair

ATTEST:


By:


Joan Svaleson, Secretary-Treasurer

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RED RIVER WATERSHED
MANAGEMENT BOARD

By:



John Finney, President

ATTEST:

By:



Jerome Deal, Secretary