

Orange Water and Sewer Authority
Meeting of the Board of Directors
November 14, 2019

The Board of Directors of the Orange Water and Sewer Authority (OWASA) met in a work session on Thursday, November 14, 2019, at 6:00 p.m. in OWASA's Community Room, 400 Jones Ferry Road, Carrboro.

Board Members present: Raymond (Ray) DuBose (Chair), Ruchir Vora (Vice Chair), Bruce Boehm (Secretary), Yinka Ayankoya, John Cooley, Jody Eimers, Robert Morgan, John N. Morris and Bruce Runberg.

OWASA staff present: Mary Darr, Robert Epting, Esq. (Epting and Hackney), Robin Jacobs (Epting and Hackney), Ed Kerwin, Linda Low, Andrea Orbich, Ruth Rouse, Todd Taylor, Stephen Winters and Richard Wyatt.

Others present: Meg Holton (UNC Water Resources Manager).

Motions

1. BE IT RESOLVED THAT the Board of Directors of the Orange Water and Sewer Authority adopts the resolution for Approval to Execute a Contract between the State of North Carolina and OWASA for Water Supply Storage in B. Everett Jordan Lake. (Motion by John Morris; second by Robert Morgan and unanimously approved.)
2. John Morris made a motion to approve the Minutes of the September 12, 2019 Meeting of the Board of Directors; second by Robert Morgan and unanimously approved.
3. John Morris made a motion to approve the Minutes of the September 26, 2019 Annual Meeting of the Board of Directors; second by Robert Morgan and unanimously approved.
4. Robert Morgan made a motion to approve the Key Focus Areas for OWASA's Executive Director for the Period of October 2019 to June 2020 with the proposed change; second by Ruchir Vora and unanimously approved.

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Announcements

Ray DuBose asked if any Board Member knows of a conflict of interest or potential conflict of interest with respect to any item on the agenda tonight to disclose the same at this time; none were disclosed.

Mr. DuBose announced the passing of Milton Heath, Jr., former Chapel Hill appointee on the OWASA Board, on October 20, 2019.

Mr. DuBose announced a November 21, 2019, Orange County Climate Council meeting at a location to be determined; Jody Eimers and Mary Tiger will attend.

Mr. DuBose said Orange County Board of Commissioners Penny Rich and Mark Marcoplos, Jody Eimers, Ed Kerwin, Mary Tiger and he met today to discuss Orange County Climate Council, OWASA's forest management, OWASA's solar project and OWASA's Care to Share Day on November 21, 2019. Ms. Rich said the Board of County Commissioners would support a proclamation for Care to Share Day at its November 19, 2019 meeting.

Mr. DuBose announced OWASA's first Care to Share Day on November 21, 2019. Care to Share is OWASA's customer assistance program, ensuring local families unable to pay their water bill and is administered through the Inter-Faith Council for Social Service. On Wednesday, November 13th, the Town of Chapel Hill proclaimed November 21st as Care to Share Day and on Tuesday, November 19th, the Town of Carrboro will do the same.

Mr. DuBose announced a Special Meeting of the Board is scheduled for Wednesday, December 11, 2019 at 6:00 p.m. in the OWASA Boardroom with Slavin Management Consultants to discuss matters related to the recruitment, assessment and selection of OWASA's next Executive Director.

Bruce Boehm said the Finance Committee met on November 12, 2019 to discuss the Committee members' evaluation of the social, regulatory and environmental responsibility of the four remaining respondents to OWASA's request for proposals for banking services. Mr. Boehm said staff has reviewed the proposals to determine which respondent best meets OWASA's service needs and offers the most advantageous financial arrangement. Staff has scheduled in-person demonstrations with the four finalist banks. Staff will combine its evaluation with that of the Finance Committee and make a recommendation for the Board to consider at its December 12, 2019 meeting.

Stephen Winters updated the Board on the pricing of OWASA's 2019 and 2020 revenue and refunding bonds. Mr. Winters reported an issuance of \$18 million revenue bonds and \$10 million revenue refunding bonds; the interest rate on the revenue bonds will be 2.7% and the revenue refunding bonds will save just over \$1 million in interest costs over the next six years.

Item One: Approval to Execute a Contract between the State of North Carolina and OWASA for Water Supply Storage in B. Everett Jordan Lake

John Morris made a motion to approve the resolution; second by Robert Morgan and unanimously approved. Please see Motion 1.

Item Two: Minutes

John Morris made a motion to approve the Minutes of the September 12, 2019 Meeting of the Board of Directors; second by Robert Morgan and unanimously approved. Please see Motion 2.

Item Three: Minutes

John Morris made a motion to approve the Minutes of the September 26, 2019 Annual Meeting of the Board of Directors; second by Robert Morgan and unanimously approved. Please see Motion 3.

Item Four: Long-Range Water Supply Plan – Update on Schedule and Process

The Board discussed and agreed to the schedule and process to update to the Long-Range Water Supply Plan which will ensure the community has reliable, high quality supply of water through 2070. The Board agreed to target the last week of January 2020 to schedule a Special Meeting of the Board regarding Long-Range Water Supply Plan – Draft Evaluation of Water Supply and Demand Management Alternatives; and reschedule May and July 2020 agenda items on the 12 Month Board Meeting Schedule following the January 2020 Special Meeting.

Item Five: Discuss Key Focus Areas for OWASA’s Executive Director

Robert Morgan suggested, and the Board approved, that under the Human Resources Objectives, procurement of supplies include the participation of Minority and Women Owned Businesses.

Robert Morgan made a motion to approve the Key Focus Areas for OWASA’s Executive Director for the Period of October 2019 to June 2020 with the proposed change; second by Ruchir Vora and unanimously approved. Please see Motion 4.

Item Six: Review Board Work Schedule

Stephen Winters summarized changes to the 12-Month Board Schedule relating to developing the Fiscal Year 2021 budget.

Robert Epting reviewed and discussed Open Meetings Law with the Board.

Item Seven: Executive Director’s Summary of Key Staff Action Items from the Work Session

No key staff action items were reported.

Item Eight: Closed Session

Without objection, the Board convened in a closed session for purpose of discussing a personnel matter.

The Board meeting reconvened in open session at 7:30 p.m., and the meeting was adjourned.

Respectfully submitted by:



Andrea Orbich
Executive Assistant/Clerk to the Board

**Resolution of the Board of Directors of Orange Water and
Sewer Authority Authorizing Execution of Contract Between the State of North
Carolina and Orange Water and Sewer Authority for Water Supply Storage in B.
Everett Jordan Lake**

Whereas, on March 9, 2017, the North Carolina Environmental Management Commission approved Orange Water and Sewer Authority's request to maintain its allocation of five percent of Jordan Lake's water supply pool which is the equivalent of about 5 million gallons per day; and

Whereas, the allocation became effective on the date it was approved, March 9, 2017, and, by and through its terms and conditions, this Contract implements the allocation:

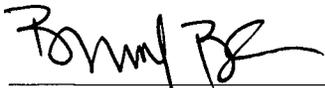
Now, Therefore, Be It Resolved By the Board of Directors of Orange Water and Sewer Authority:

1. That the Executive Director of Orange Water and Sewer Authority is hereby authorized and directed to execute the contract between the State of North Carolina and Orange Water and Sewer Authority for Water Supply Storage in B. Everett Jordan Lake.

Adopted this the 14th day of November 2019.


Raymond E. DuBose, Chair

ATTEST:



Bruce Boehm, Secretary

**CONTRACT BETWEEN THE STATE OF NORTH CAROLINA
AND
ORANGE WATER AND SEWER AUTHORITY
FOR
WATER SUPPLY STORAGE IN B. EVERETT JORDAN LAKE**

This contract (“Contract”), entered into by and between the STATE OF NORTH CAROLINA (“State”) and ORANGE WATER AND SEWER AUTHORITY (“Allocation Holder”);

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1963 (Public Law 88-253, 88th Congress) authorized the construction, operation and maintenance of the B. Everett Jordan Dam and Lake Project on Haw River and New Hope River, North Carolina (“Project”); and

WHEREAS, the State contracted with the United States of America (“Government”) for the use of storage included in the Project for municipal and industrial water supply (“Jordan Water Supply Storage”), and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended; and

WHEREAS, the State through the Environmental Management Commission (“Commission”) is authorized by N.C. Gen. Stat. §143-354(11) to assign to any county or municipality or any other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon assumption of repayment obligation therefore or compensation to the State by such local government; and

WHEREAS, on March 9, 2017, the Commission allocated a total of five (5) percent of the water supply storage held by the State to the Allocation Holder for its use; the allocation consisting of a Level I allocation of five (5) percent; and

WHEREAS, the allocation became effective on the date it was approved (i.e. March 9, 2017) and, by and through its terms and conditions, this Contract implements the allocation.

NOW, THEREFORE, the State and the Allocation Holder (hereinafter jointly referred to as the “Parties”) agree as follows:

ARTICLE I – DEFINITIONS.

- (A) Annual Operation and Maintenance (O&M) Expense – The daily Project O&M costs over the calendar year.
- (B) Calendar Year – A one-year period beginning January 1 and ending December 31.
- (C) Capital Costs – The amount of principal paid by the State to the Government as part of the construction of the Project, i.e. \$4,317,884.28.
- (D) Division – The Division of Water Resources within the North Carolina Department of Environmental Quality.
- (E) Interest Costs – The amount of interest paid by the State to the Government as part of the construction of the Project, i.e. \$ 2,363,375.66.
- (F) Jordan Water Supply Storage – The portion of the water supply included in the Project for municipal and industrial water supply.
- (G) Level I Allocation – An assignment of Jordan Water Supply Storage that is made to an applicant that has an immediate need for water and plans to commence withdrawals within five years.
- (H) Level II Allocation – An assignment of Jordan Water Supply Storage that is made to an applicant that has a long-range need for water five to thirty years into the future.
- (I) Life of the Project – The physical life of the Project.
- (J) Major Replacement Costs – Infrequent costs to replace major structures, facilities and associated equipment at the Project.
- (K) Major Rehabilitation Costs – Infrequent significant costs to rehabilitate structures, facilities and equipment at the Project.
- (L) Net Inflow – The change (positive or negative) in the amount of water stored in Jordan Lake, as measured by the difference in elevation from one day to the next (i.e., a 24-hour period), plus the amount of water withdrawn from Jordan Lake during that same one-day period, plus the amount of water released from the dam or spillway during that same one-day period.
- (M) Project – The B. Everett Jordan Dam and Lake Project on Haw River and New Hope River, North Carolina.
- (N) Total Capital and Interest Cost – the total amount paid by the State to the Government as part of the construction of the Jordan Water Supply Storage, i.e. \$6,681,259.94.

ARTICLE II – RELATIONSHIP TO OTHER AGREEMENTS.

This Contract is predicated on the State’s right to utilize the Jordan Water Supply Storage as provided in the contract between the State and the Government, dated April 10, 1988, which is attached hereto as Attachment A. Upon execution of this Contract any and all previous contracts between the State and the Allocation Holder regarding water supply in Jordan Lake are merged into this Contract and all outstanding rights and duties under previous contracts are continued and governed by this Contract. If there is a conflict between prior contracts and this Contract, the provisions in this Contract shall prevail.

ARTICLE III – JORDAN WATER SUPPLY STORAGE.

- (A) Total Water Supply Storage Available. As provided in Attachment A, the State has the right to utilize an undivided 32.62 percent of the storage space at the Project between elevation 202 feet above mean sea level and 216 feet above mean sea level. The storage space held by the State is estimated to equal 45,800 acre-feet before adjustment for sediment deposits.
- (B) Jordan Water Supply Storage Amounts. The Division will maintain records on the amount of water supply available in the water supply storage pool and will inform each Allocation Holder of the amount of water available in its portion of that pool.
- (C) Sediment Adjustments. From time to time, the Government will survey the amount of sediment accumulated in Jordan Lake. When necessary, the Government will re-allocate the storage remaining in the lake among the Project purposes, maintaining the same proportional storage space for each purpose. This adjustment of storage may reduce the amount of space available to each Allocation Holder. Note, because a sediment storage pool designed to last over 100 years is included in Jordan Lake, such reductions in water supply storage are not expected to occur until after the year 2082.

ARTICLE IV – RIGHTS OF THE ALLOCATION HOLDER.

- (A) Right to Withdraw Level I Allocation: The Allocation Holder has a five (5) percent Level I Allocation. Subject to the limitations set forth in this Contract and any other requirements provided by law, the Allocation Holder has the right to withdraw up to five (5) percent of the Jordan Water Supply Storage. The Allocation Holder’s water withdrawals will be restricted during water shortage conditions according to the Allocation Holder’s approved drought and water shortage response plan under Article V, and in accordance with other laws. If the Allocation Holder’s storage space becomes depleted, the Allocation Holder’s right of withdrawal will be limited to a maximum withdrawal of five (5) percent of the portion of Net Inflow allocated to water supply (five (5) percent of 32.62 percent, which equals 1.6310 percent of the Net Inflow), for as long

as the Allocation Holder's water supply storage space is depleted.

- (B) The Allocation Holder's right to withdraw is contingent upon compliance with this Contract. The Allocation Holder's allocation may be revised or rescinded as set forth in 15A NCAC 02G .0507.
- (C) The Allocation Holder shall have the right to construct all such works, plants, pipelines and appurtenances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Government and of the State as to design and location. Notwithstanding such approval, the Allocation Holder shall comply with all applicable laws, including all permitting requirements. The grant of an easement for right-of-way across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the Allocation Holder under the authority of and in accordance with the provisions of 10 USC 2668 and as may be necessary. Subject to the conditions of such easement, the Allocation Holder shall have the right to use as much of the Project land as may reasonably be required in the exercise of the rights and privileges granted under this Contract.
- (D) During any construction, operation and maintenance by the Allocation Holder of any facilities, the Allocation Holder will take specific actions to control environmental pollution that could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution.
- (E) The Allocation Holder shall be responsible for operation and maintenance of all installations and facilities that it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities. The responsibility for operating and maintaining any facilities constructed under this Article shall be separate from, and in addition to, the Allocation Holder's responsibility to pay Annual O&M Expenses as described in Article VII.

ARTICLE V – DROUGHT AND WATER SHORTAGE RESPONSE PLAN.

The Allocation Holder shall develop a Drought and Water Shortage Response Plan that is acceptable to both the Division and the Government prior to withdrawing any water. The Allocation Holder shall implement this Plan during droughts and other water shortages.

ARTICLE VI – MEASUREMENT OF WITHDRAWALS AND RELEASES.

The Allocation Holder agrees to furnish and install, without cost to the State, suitable meters or measuring devices satisfactory to the Government and to the Division for the measurement of water that is withdrawn by the Allocation Holder from the Project by any

means other than through the Project outlet works. Such devices shall be available for inspection by Government and Division representatives at all reasonable times. The Allocation Holder shall furnish to the Division monthly statements of all such withdrawals, showing the total amount withdrawn each month. The Allocation Holder shall also furnish to the Division monthly statements showing the amount withdrawn through their intake each day. Water supply releases through the Project outlet works shall be made in accordance with written schedules furnished by the Allocation Holder and approved by the Government. The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of Jordan Water Supply Storage.

ARTICLE VII – PAYMENTS.

In consideration of the right to utilize the aforesaid allocation of water supply from the Jordan Water Supply Storage for municipal and industrial water supply purposes, and for other contractual rights specified in this Contract, the Allocation Holder shall pay the following sums to the State.

(A) Construction and Interest Costs:

(1) Level I Allocation Costs Amount: Level I Allocation Holders are responsible for a proportional share of the State's Total Capital and Interest Costs. The Commission allocated to the Allocation Holder a five (5) percent allocation on March 9, 2017, which represents no increase in the Allocation Holder's previous Level I Allocation.

(2) Payment: The Allocation Holder has already paid its proportional share of the State's Total Capital and Interest Costs for its five (5) percent allocation pursuant to the Round 3 Jordan Lake Contract.

(B) Annual Operation and Maintenance (O&M) Expenses: The Allocation Holder is responsible for and shall pay five (5) percent of the State's share of annual O&M expenses for each calendar year the allocation is effective. The amount of each annual payment will be based on the actual O&M expense for the preceding calendar year. Payment of annual O&M costs shall be made within 30 days of invoice from the Division.

(C) Administrative Costs: The Allocation Holder shall pay the State \$500 per year to cover the State's administrative costs. Payment shall be made within 30 days of receipt of invoice from the Division.

- (D) Major Replacement Costs: The Allocation Holder shall pay five (5) percent of the State's share of major replacement costs. Payment of major replacement costs shall be made in a lump sum. The State will send an invoice to the Allocation Holder upon substantial completion of construction. This payment shall be due within 30 days of receipt of invoice from the Division.
- (E) Major Rehabilitation Costs. The Allocation Holder shall pay five (5) percent of the State's share of annual major rehabilitation costs. This rate of payment shall apply to all invoices received from the Government following the effective date of this Contract regardless of the date on which such rehabilitation costs were incurred by the Government or any other entity. The amount of each annual payment will be based on the actual rehabilitation costs for the preceding calendar year. The annual payment of these rehabilitation costs shall be made within 30 days of receipt of invoice from the Division.

ARTICLE VIII – EFFECTIVE DATE OF ALLOCATION AND DURATION OF CONTRACT.

Pursuant to 15A NCAC 02G .0502(5), the effective date of the allocation is the date that the Commission approved the allocation (i.e. March 9, 2017). This Contract is predicated on the Commission's allocation decision and shall remain in full force and effect unless and until the Commission acts to revise or rescind the Allocation Holder's allocation. This Contract may be modified by the parties by mutual agreement.

ARTICLE IX – RELEASE OF CLAIMS AND PRESERVATION OF AUTHORITY.

To the extent permitted by law, the Allocation Holder shall hold and save the Government and the State, including its officers, agents and employees, harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project or withdrawal or release of water from the Project made or requested by the Allocation Holder, or as a result of the construction, operation or maintenance of the water supply facilities and appurtenances thereto owned and operated by the Allocation Holder, except for damages due to the sole fault or negligence of the State of North Carolina, the Government or its contractors. Nothing in this Contract shall restrict the State in the exercise of any right or duty of the State, including rights or duties related to the conduct of investigations, collection of information and issuance of permits.

ARTICLE X – NO TRANSFER OR ASSIGNMENT.

The Allocation Holder shall not transfer or assign this Contract or any rights acquired thereunder, nor suballot Jordan Water Supply Storage or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this Contract. The Allocation

Holder shall not infringe on the authority of the Commission to allocate Jordan Water Supply Storage. This Article shall not be construed so as to limit the Allocation Holder's ability to receive water withdrawn from Jordan Water Supply Storage through an intake operated and/or maintained by another allocation holder.

ARTICLE XI – CONTRACT ADMINISTRATORS.

The contract administrator for the Allocation Holder shall make the payments specified in this Contract to the contract administrator for the State. The administrator for the Allocation Holder shall be the following person:

Ruth Rouse, Planning and Development Manager
OWASA
400 Jones Ferry Road
Carrboro, NC 27510

The Allocation Holder shall be responsible for providing written notification to the State in the event the name and/or address for the Allocation Holder's designated contract administrator changes.

The contract administrator for the State and Department shall be the following person:

Kim Nimmer, Water Supply Planning
Division of Water Resources
Department of Environmental Quality
1611 Mail Service Center
Raleigh, North Carolina 27699-1611

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF:

ORANGE WATER AND SEWER AUTHORITY

BY Ed Kerwin

Ed Kerwin, Executive Director

DATE: 11/14/19

ATTEST:

BY Andrea Dibsch

(SEAL)



STATE OF NORTH CAROLINA

BY _____

DATE: _____

Dr. A. Stanley Meiburg
Chairman, NC Environmental
Management Commission

ATTEST:

BY _____

(SEAL)

CONTRACT BETWEEN THE UNITED STATES OF AMERICA

AND

THE STATE OF NORTH CAROLINA

FOR

WATER STORAGE SPACE IN B. EVERETT JORDAN LAKE

THIS CONTRACT, entered into this tenth day of April, 1988, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Contracting Officer executing this contract, and the State of North Carolina (hereinafter called the "State");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1963 (Public Law 88-253, 88th Congress), authorized the construction, operation, and maintenance of the B. Everett Jordan Dam and Lake project on Haw River, North Carolina, (hereinafter called the "Project"); and

WHEREAS, the State desires to contract with the Government for the use of storage included in the Project for municipal and industrial water supply, and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended; and

WHEREAS, the State is empowered to contract with the Government and is vested with all necessary powers of accomplishment of the purposes of this contract, including those required by Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5d) (as amended);

NOW, THEREFORE, the Government and the State agree as follows:

ARTICLE 1 - Water Storage Space.

(a) Project Construction. The Government, subject to the directions of Federal law and any limitations imposed thereby, has designed and constructed the Project so as to include therein space for the storage of water by the State.

(b) Rights of State.

(1) The State shall have the right to utilize an undivided 32.62 percent (estimated to contain 45,800 acre-feet before adjustment for sediment deposits) of the total storage space in the Project between elevations 202 feet above mean sea level and 216 feet above mean sea level, which total conservation storage space is estimated to contain 140,400 acre-feet before adjustment for sediment deposits. This storage space is to be used to impound water for anticipated future demand or need for municipal and industrial water supply.

(2) Upon initiation of the use of the water in the storage space provided under Article 1(b)(1) and the making of payments under Article 5, the State shall have the right to withdraw water from the lake, or to order releases to be made by the Government through the outlet works in the Dam, subject to the provisions of Article 1(c) and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appurtenances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Contracting Officer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the State, under the authority of and in accordance with the provisions of 10 U.S.C. 2669 and such other authorities as may be necessary. Subject to the conditions of such easement, the State shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges granted under this contract.

(c) Rights Reserved. The Government reserves the right to maintain at all times minimum downstream releases through the gates or spillway of the dam to meet established water requirements provided, however, that water reserved and under payment in accordance with Article 5 for water supply use is not used for minimum releases without the expressed consent of the State. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life and/or property, including the right not to make downstream releases during such periods of time as are deemed necessary, in its sole discretion, to inspect, maintain, or repair the Project.

(d) Quality or Availability of Water. The State recognizes that this contract provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

(e) Sedimentation Surveys.

(1) Sedimentation surveys will be made by the Contracting Officer during the term of this contract at intervals not to exceed fifteen (15) years unless otherwise agreed to in writing by both parties. When, in the opinion of the Contracting Officer, the findings of such survey indicate any project purpose will be affected by unanticipated sedimentation distribution, there shall be an equitable redistribution of the sediment reserve storage space among the purposes served by the Project including municipal and industrial water supply. The total available remaining storage space in the Project will then be divided among the various Project features in the same ratio as was initially utilized. Adjusted pool elevations will be rounded to the nearest one-half foot. Such findings and the storage space allocated to municipal and industrial water supply shall be defined and described as an exhibit which will be made a part of this contract and the reservoir regulation manual will be modified accordingly.

(2) The Government assumes no responsibility for deviations from estimated rates of sedimentation, or the distribution thereof. Such deviations may cause unequal distribution of sediment reserve storage greater than estimated, and/or encroachment on the total storage at the Project.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the State. The State has the full responsibility to acquire in accordance with State laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this contract. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the State except as such controversies may affect the operations of the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the State shall pay to the Government such share of the costs of such operation and maintenance as provided in Article 5. The State shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

ARTICLE 4 - Measurement of Withdrawals and Releases. The State agrees to furnish and install, without cost to the Government, suitable meters or measuring devices satisfactory to the Contracting Officer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The State shall furnish to the Government monthly statements of all such withdrawals. Prior to the construction of any facilities for withdrawal of water from the Project, the State will obtain the Contracting Officer's approval of the design, location and installation of the facilities including the meters or measuring devices. Such devices shall be available for inspection by Government representatives at all reasonable times. Releases from the water supply storage through the Project outlet works shall be made in accordance with written schedules furnished by the State and approved by the Contracting Officer and shall be subject to Article 1(c). The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the State shall pay the following sums to the Government.

(a) Initial Project Investment Costs.

(1) The State shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, the amounts stated below which, as shown in Exhibit "A" attached to and made a part of this contract, constitute the entire estimated amount of the construction costs, including interest during the construction, allocated to the water storage right acquired by the State under this contract. The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance will be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of the Project is initiated, on the

basis set forth in the Water Supply Act of 1958, as amended. For the Project, construction of which was initiated in fiscal year 1967, this interest rate is 3.225 percent. The State shall repay:

3.8 percent of the total Project joint-use construction costs,
estimated at. \$3,608,000

Interest during construction, estimated at. \$ 780,000

Total estimated amount of Project investment costs allocated to
water supply. \$4,388,000

(2) All of the Project investment cost allocated to the storage space indicated in Article 1(b)(1) is being provided for future demand on the basis of the costs presented in Exhibit "A." No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the plant-in-service date or before February 4, 1992, unless all or a portion of such storage is used before that date. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of the Project investment costs allocated to the storage for future water supply which is not being used from February 4, 1992, until the time when such storage is first used. The State will annually pay the interest as it becomes due until the storage is used.

When any portion of the storage for future water supply is used, payment of both principal and interest for the portion used shall be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid balance as provided above, shall be paid within the life of the Project but in no event to exceed 50 consecutive annual installments commencing on the date of this contract. The payment for each portion shall be in equal consecutive annual installments due and payable on January 1 of each year after the date of first use of such portion. For portions used prior to February 4, 1992, the first payment for each portion shall include interest on the investment cost of such portion from the date of first use of such portion to January 1. Subsequent payments will include interest on the remaining investment cost from date of previous payment. The last annual installment for any portion of the storage for future water supply shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to such portion within the repayment period.

(3) An estimated schedule of annual payments for the storage provided for future demand is attached as Exhibit "B" of this contract. The annual payments as provided therein shall be made subject to Article 6. Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when use of such storage is started and if based on estimated costs will be subject to Article 6.

(4) Obligating State legislatures to make future appropriations is inconsistent with state constitutional limitations. In the event that

the North Carolina Legislature shall elect not to appropriate funds in any State fiscal year for payments under this contract, the Government may elect to terminate this contract and all rights of the State to make withdrawals.

(b) Major Replacement Cost.

(1) Future Use Storage. As the storage for future water supply demands is used, the share of the joint-use major replacement items, which the State will be required to pay, will be increased commensurate with the State's percentage of future water supply storage being used, up to a total of 2.8 percent of such costs. After February 4, 1992, the State's share of such costs shall become 2.8 percent.

(2) Payment. Payment of costs, including interest during construction, shall be made either incrementally during construction, or in lump sum upon completion of construction.

(c) Annual Operation and Maintenance (O&M) Expense.

(1) Future Use Storage. If storage for future water supply demands is used before February 4, 1992, the share of the annual experienced joint-use O&M expense which the State will be required to pay will be increased commensurate with the percentage of future water supply storage being used, up to a total of 5.4 percent of such expense. After February 4, 1992, the State's share of such expenses shall immediately become 5.4 percent.

(2) Payment. The amount of each annual payment will be the actual experienced O&M expense for the preceding fiscal year or an estimate thereof when actual expense information is not available. As future usages commence, O&M expense for that portion of a year would be prorated by months in use prior to said anniversary date on the basis of the actual experienced joint-use O&M expense for the preceding Government fiscal year. The first payment, in such a case, shall be due and payable within 30 days from the date of scheduled first use of storage space. Subsequent annual payments shall be made on the date for payment of project investment costs as set forth in Article 5(a)(2).

(d) Major Rehabilitation Program Costs. For costs associated with major rehabilitation programs, the percentages of specific and joint use costs which the State will be required to pay will be in accordance with Article 5(c) for future use storage. Payments for the costs associated with the program shall be in accordance with Article 5(b)(2).

(e) The State shall have the right at any time it so elects to prepay the indebtedness under this Article, subject to redetermination of costs as provided for in Article 6, in whole or in part, with accrued interest thereon to the date of such prepayment.

(f) Delinquent Payments. If the State shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest

compounded annually until paid. The interest rate to be used for overdue payments due under the provisions of Articles 5(a), 5(b), 5(c), and 5(d) above shall be that determined by the Department of Treasury's Treasury Fiscal Requirements Manual (1 TFRM 6-8000, "Cash Management"). The amount charged on payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue after a 15-day grace period from the anniversary date of the date of notification, one month's interest shall be charged. Thereafter, a month's interest will be charged for any portion of each succeeding month that the payment is delinquent. This provision shall not be construed as giving the State a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by the State.

(g) Credit. If storage under future-use contract is used for other beneficial purposes during the interim between the end of the ten-year interest free period and the time water supply use is initiated and the Federal Government receives payments for such interim use, then the State shall be credited with an appropriate share of payments made under Article 5(b) and 5(c).

ARTICLE 6 - Adjustment to Project Investment Cost. The investment cost shown in this contract and the exhibits is based on actual cost through March 1987. After March 1989, the Contracting Officer shall make a revised interim estimated determination of investment costs. Further interim determinations of cost will be made at intervals considered necessary by the Contracting Officer. All interim cost estimates will take into account the actual costs to the extent they are then known. Such further interim determinations will be performed at such periods so as to keep the State reasonably informed as to the required payment. On each occasion of a cost adjustment, the annual payments thereafter due shall be adjusted upward or downward so as to provide for repayment of the balance due in equal installments during the remaining life of the repayment period. The last such investment cost adjustment will be made when the last of the construction general funds have been expended. Such final determination will include the Government's approved estimate of any pending real estate items and any known claims not previously accrued. Any further investment cost accruing to the State's water storage right shall be repaid under major replacement costs if capitalized or under operation and maintenance expense if not capitalized.

ARTICLE 7 - Duration of Contract. This contract shall be effective when approved by the Secretary of the Army or his duly authorized representative and shall continue in full force and effect for the life of the Project; provided that the parties may mutually agree to necessary supplemental agreements to the contract approved by the Assistant Secretary of the Army (Civil Works) or his duly authorized representative and consistent with requirements of State and Federal law.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of the payment by the State, as provided in Article 5(a) herein, the State shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 U.S.C. 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

(a) The State shall continue payment of annual operations and maintenance costs allocated to water supply.

(b) The State shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation, or replacement of Project features which may be required to continue satisfactory operation of the Project. Such costs will be established by the Contracting Officer and repayment arrangements shall be in writing in accordance with the terms and conditions set forth in Article 5(b)(2) for Major Replacement Costs, and be made a part of this contract.

(c) Upon completion of payments by the State as provided in Article 5(a), the Contracting Officer shall redetermine the storage space for municipal and industrial water supply in accordance with the provisions of Article 1(e). Such redetermination of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

(d) The permanent rights of the State under this contract shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the Project, such rights may be continued subject to the execution of a separate contract, or additional supplemental agreement providing for:

(1) Continued operation by the State of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2) Terms which will protect the public interest; and

(3) Effective absolvment of the Government by the State from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The State shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the State or as a result of the construction, operation, or maintenance of the water supply facilities and appurtenances thereto owned and operated by the State except for damages due to the sole fault or negligence of the United States or its contractors.

ARTICLE 10 - Assignment. The State shall not transfer or assign this contract or any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this contract, without the approval of the Secretary of the Army, or his duly authorized representative provided that, unless contrary to the public interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the State and furnished to any third party or parties, nor any method of allocation thereof.

ARTICLE 11 - Officials Not to Benefit. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 12 - Covenant Against Contingent Fees. The State warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the State for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to add to the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by the State of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimizing of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimizing of noise levels; (4) onsite and offsite disposal of waste and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

(a) In acting under its rights and obligations hereunder, the State agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 U.S.C. 276a et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); Title 29, Code of Federal Regulations, Part 3; and Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646).

(b) The State furnishes, as part of this contract, an assurance (Exhibit C) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 U.S.C. 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

(c) Any discharges of water or pollutants into a navigable stream or tributary thereof resulting from the State's facilities and operations undertaken under this contract shall be performed only in accordance with applicable Federal, State, and local laws and regulations.

ARTICLE 15 - Definitions.

(a) Initial Project investment costs - The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.

(b) Interest during construction - An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available to the State for water storage.

(c) Specific costs - The costs of Project features normally serving only one particular project purpose.

(d) Joint-use costs - The costs of features used for any two or more Project purposes.

(e) Plant-in-service date - The date when the Project is operational for water supply purposes. This date is the date that the Project is physically available to initiate deliberate impoundment in a conservation pool. (Feb 4, 1982)

(f) Annual operation and maintenance (O&M) expense - Annual expense funded under the O&M, General account. These expenses include the daily project O&M costs as well as those O&M costs which are capitalized.

(g) Major replacement cost - Costs funded under the Operation and Maintenance, General, or Construction, General accounts but not associated with initial Project investment costs.

(h) Fiscal Year - Refers to the Government's fiscal year. The year begins on 1 October and ends on 30 September. The September calendar year corresponds to the fiscal year.

(i) Life of the Project - This is the physical life of the Project.

(j) Major Rehabilitation - This program is to facilitate accomplishment of significant, costly infrequent rehabilitation work at the Project without unduly distorting the Operation and Maintenance General budget.

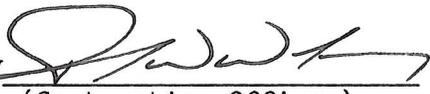
ARTICLE 16 - Approval of Contract. This contract shall be subject to the written approval of the Secretary of the Army or his duly authorized representative and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

APPROVED:

BY 
Assistant Secretary of the Army
(Civil Works)
ROBERT W. PAGE

THE UNITED STATES OF AMERICA

BY 
(Contracting Officer)
PAUL W. WOODBURY, COL

DATE: 4-10-88

DATE: 25 MAR 88

STATE OF NORTH CAROLINA

BY 
(ENVIRONMENTAL MANAGEMENT COMMISSION)
CHARLES L. BAKER, CHAIRMAN

DATE: 25 March 1988

CERTIFICATION

I, Daniel C. Oakley, the Attorney for the Environmental Management Commission, hereby certify that the foregoing agreement executed by Charles L. Baker, of the Commission is within the scope of his authority to act upon behalf of the State of North Carolina, and that in my capacity as Attorney for the State, I have considered the legal effect of Section 221 of the 1970 Flood Control Act (Public Law 91-611) and find that the State is legally capable of entering into the contractual obligations contained in the foregoing agreement and that, upon acceptance, it will be legally enforceable.

Given under my hand, this 24th day of March 1988

Daniel C. Oakley
Attorney for Environmental Management Commission

EXHIBIT A

I - LAKE STORAGE

<u>Feature</u>	<u>Elevation</u> (ft., m.s.l.)	<u>Usable</u> <u>Storage</u> (ac. ft.)	<u>Conservation</u> <u>Storage</u>	<u>Percent of</u> <u>Water</u> <u>Supply</u> <u>Storage</u>
Flood Control	216 - 240	538,400		
Conservation	202 - 216	140,400	100.0	
Water Supply	202 - 216	(45,800)	32.62	100.0
State of N.C.				
Present		(0)		0
Future		(45,800)		100.0
Other Purposes	202 - 216	(94,600)	67.38	
Sediment	150 - 202	<u>74,700</u>		
Total		753,500		

EXHIBIT A (CONT)

II - ALLOCATION OF ESTIMATED CONSTRUCTION COST

<u>Feature</u>	<u>Cost (\$)</u>	<u>Percent of Project Joint- Use Construction Cost</u>
Flood control	\$ 56,934,000	
Specific	(0)	
Joint-use	(56,934,000)	60.2
Recreation	\$ 62,978,000	
Specific	(40,132,000)	
Joint-use	(22,846,000)	24.2
Water supply	\$ 3,608,000	
Specific	(0)	
Joint-use	(3,608,000)	3.8
Water Quality	\$ 11,160,000	
Specific	(0)	
Joint-use	(11,160,000)	11.8
Road Betterments (specific)	0	
Cultural Resources (specific)	\$ 1,320,000	
Total	<u>\$136,000,000</u>	<u>100.0</u>

EXHIBIT A (CONT)

III - INVESTMENT COSTS TO BE REPAYED BY USER FOR WATER
SUPPLY STORAGE

Future Use:

Cost of 45,800 acre-feet of water supply storage	=	\$3,608,000
Interest during construction *	=	\$ 780,000
Total future use investment	=	\$4,388,000

Note:

*Based on an interest rate of 3.225%.

EXHIBIT A (CONT)
IV - TOTAL ESTIMATED ANNUAL COST TO USER FOR USE OF WATER
SUPPLY STORAGE

Interest and amortization: (a)

\$4,388,000 repaid over 50 (b) payments
with interest at 3.225% \$172,340

Operation and Maintenance (c)

Joint-use (estimated)
5.4% (d) X \$399,000 = \$ 21,550

Major Replacement (estimated) (e)

Joint-Use
X 2.8% (f) X \$66,000 = \$ 1,850

TOTAL ESTIMATED ANNUAL COST \$195,740

Notes:

- (a) Payment due and payable on the date specified in Article 5(a)(2).
- (b) Fifty years from date of this contract.
- (c) Payment due and payable on the date specified in Article 5(c)(2).
- (d) Percent of Project joint-use operation and maintenance cost allocated to water supply.
- (e) Major replacement costs are payable only when incurred as specified in Article 5(b)(2). It is suggested that the amount shown be placed in a reserve or sinking fund for future contingency.
- (f) Percent of Project joint-use major replacement cost allocated to water supply.

EXHIBIT B

AMORTIZATION SCHEDULE

TOTAL COST =\$ 4388000.00
NUMBER OF PAYMENTS = 50
INTEREST RATE, PERCENT = 3.225

ANNUAL PAYMENT NUMBER	AMOUNT OF PAYMENT	APPLICATION		BALANCE ALLOCATED COST
		INTEREST	ALLOCATED COST	
1	172340.45	0.00	172340.45	4215659.55
2	172340.45	135955.02	36385.43	4179274.11
3	172340.45	134781.59	37558.86	4141715.25
4	172340.45	133570.32	38770.14	4102945.11
5	172340.45	132319.98	40020.47	4062924.64
6	172340.45	131029.32	41311.13	4021613.51
7	172340.45	129697.04	42643.42	3978970.09
8	172340.45	128321.79	44018.67	3934951.42
9	172340.45	126902.18	45438.27	3889513.15
10	172340.45	125436.80	46903.65	3842609.50
11	172340.45	123924.16	48416.30	3794193.20
12	172340.45	122362.73	49977.72	3744215.48
13	172340.45	120750.95	51589.50	3692625.98
14	172340.45	119087.19	53253.27	3639372.71
15	172340.45	117369.77	54970.68	3584402.03
16	172340.45	115596.97	56743.49	3527658.54
17	172340.45	113766.99	58573.47	3469085.07
18	172340.45	111877.99	60462.46	3408622.61
19	172340.45	109928.08	62412.37	3346210.24
20	172340.45	107915.28	64425.17	3281785.07
21	172340.45	105837.57	66502.88	3215282.18
22	172340.45	103692.85	68647.60	3146634.58
23	172340.45	101478.97	70861.49	3075773.09
24	172340.45	99193.68	73146.77	3002626.32
25	172340.45	96834.70	75505.75	2927120.57
26	172340.45	94399.64	77940.81	2849179.75
27	172340.45	91886.05	80454.41	2768725.35
28	172340.45	89291.39	83049.06	2685676.29
29	172340.45	86613.06	85727.39	2599948.89
30	172340.45	83848.35	88492.10	2511456.79
31	172340.45	80994.48	91345.97	2420110.82
32	172340.45	78048.57	94291.88	2325818.94
33	172340.45	75007.66	97332.79	2228486.15
34	172340.45	71868.68	100471.77	2128014.37
35	172340.45	68628.46	103711.99	2024302.38
36	172340.45	65283.75	107056.70	1917245.68

EXHIBIT B (CONTINUED)

AMORTIZATION SCHEDULE

TOTAL COST =\$ 4388000.00
NUMBER OF PAYMENTS = 50
INTEREST RATE, PERCENT = 3.225

ANNUAL PAYMENT NUMBER	AMOUNT OF PAYMENT	APPLICATION		BALANCE ALLOCATED COST
		INTEREST	ALLOCATED COST	
37	172340.45	61831.17	110509.28	1806736.40
38	172340.45	58267.25	114073.20	1692663.20
39	172340.45	54588.39	117752.07	1574911.13
40	172340.45	50790.88	121549.57	1453361.56
41	172340.45	46870.91	125469.54	1327892.02
42	172340.45	42824.52	129515.94	1198376.09
43	172340.45	38647.63	133692.82	1064683.26
44	172340.45	34336.04	138004.42	926678.84
45	172340.45	29885.39	142455.06	784223.78
46	172340.45	25291.22	147049.24	637174.55
47	172340.45	20548.88	151791.57	485382.97
48	172340.45	15653.60	156686.85	328696.12
49	172340.45	10600.45	161740.00	166956.12
50	172340.45	5384.33	166956.12	0.00

