

MISSOURI RIVER JOINT WATER BOARD JOINT POWERS AGREEMENT

Joint Exercise of Powers Agreement for the management, conservation, protection, development, and control of waters in the Missouri River basin. The Agreement includes the water resource districts of Burleigh, Dunn, Emmons, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Sioux, and Williams counties and the Lower Heart River Water Resource District.

I. INTENT OF AGREEMENT

It is the intent of the water resource districts of Burleigh, Dunn, Emmons, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Sioux, and Williams counties and the Lower Heart River Water Resource District to jointly exercise certain of their powers and provide a cooperative and coordinated effort in addressing the management, conservation, protection, development, and control of water resources in the Missouri River basin.

The water resource districts that are parties to this agreement have the power and authority over water resource matters within their respective boundaries pursuant to Section 61-16.1-09 of the North Dakota Century Code. However, the individual water resource district is limited by its geographic boundaries while water-related problems tend to ignore these boundaries. In order to provide for more effective water management, the Legislative Assembly has authorized water resource districts, by agreement, to jointly and cooperatively exercise certain powers which otherwise could be exercised only by an individual water resource district within its boundaries. The authority for the joint exercise of powers by water resource districts is contained in Section 61-16.1-11 of the North Dakota Century Code.

It is recognized by the parties to this agreement that actions of an individual board (construction works or regulatory actions) which may provide local benefits could have adverse consequences at other locations within the Missouri River basin. Further, it is recognized that one entity representing the Missouri River basin would better represent the area concerning planning and implementation of a complete and coordinated water management plan for the basin. Therefore, the parties agree that a joint water board having the powers delegated herein must be established.

II. PURPOSE

The Missouri River Joint Water Board is hereby established to carry out the intent of this agreement.

III. POWERS OF THE JOINT BOARD

The Missouri River Joint Water Board shall have the authority to address multicounty water resource district issues. In exercising this authority, it shall have the following powers:

1. Sue and be sued in the name of the joint board.
2. This joint board shall not have the power of eminent domain, notwithstanding any references to that power within this agreement, but shall exercise this authority, if

necessary for a project approved by this board, through the member board having jurisdiction over the property involved.

3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the Missouri River basin in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.
4. Procure the services of engineers and other technical experts, employ an attorney or attorneys to assist, advise, and act for it in its proceedings, and employ administrative personnel to carry out the policies, plans and directives of the joint board.
5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices, within the district.
6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.
7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district and construct reservoirs or other structures to impound and regulate such waters.
8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water, within the district.
9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of the state.
10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
11. Have, in addition to any powers provided in Chapter 61-16.1 of the North Dakota Century Code, the authority to construct an assessment drain in accordance with the procedures and provisions of Chapter 61-21 of the North Dakota Century Code.
12. Acquire, by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and

easements and rights of way within or without the limits of the districts for all purposes authorized by law or necessary to the exercise of any other stated power.

13. Convey, sell, dispose of, or lease personal and real property of the joint board as provided by Chapter 61-16.1 of the North Dakota Century Code.
14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
15. Borrow money within the limitations imposed by Chapter 61-16.1 of the North Dakota Century Code for projects herein authorized and pledge security for the repayment of such loans.
16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block which hinders or decreases the flow of water through such bridge or culvert.
17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred (200) feet of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the joint board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the joint board. In the event the native woodland within such area has already been destroyed, the joint board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the joint board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" related to rivers as defined in the United States Geological Survey base map of North Dakota Edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.
18. Petition any zoning authority established pursuant to Chapters 11-33, 11-35, or 40-47 or Section 58-03-13 of the North Dakota Century Code to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the joint board may request the State Water Commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the joint board shall make suitable recommendations for the establishment of a floodplain zone

to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.

19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation or limited liability company, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. The joint board may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The joint board shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.
22. Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.

The above agreed upon powers to be exercised by the joint board are found in Chapter 61-16.1 of the North Dakota Century Code. All actions of the Missouri River Joint Water Board shall be in accordance with the state and federal laws and regulations.

This agreement shall in no way limit or restrict the powers and duties of each water resource district which is a party to this agreement pursuant to Section 61-16.1 of the North Dakota Century Code, except as provided herein. Nor shall this agreement limit or restrict in any way the regulatory authority and responsibility of each water resource district which is a party to this agreement pursuant to Sections 61-16.1-38 and 61-32-03 of the North Dakota Century Code for applications which are not of interdistrict significance, as determined by the State Engineer. The power and authority of member districts shall remain exclusive as to all matters that have no interdistrict significance, as determined by the State Engineer.

If any individual water resource district proposes to construct any water management project or works which is of interdistrict significance, as determined by the State Engineer, or if any application pursuant to Sections 61-16.1-38 or 61-32-03 of the North Dakota Century Code which is determined by the State Engineer to be of interdistrict significance, in accordance with applicable regulations, such matter shall be referred to the Missouri River Joint Water Board for determination thereon.

When a project of interdistrict nature is proposed by the joint board and if the joint board reports that:

1. Such project contemplates substantial construction in any certain water resource district; or
2. A water resource district member shall be required to bear more than fifty percent (50%) of the local costs of said project; or
3. A water resource district member is detrimentally affected by such project as determined by the State Engineer;

then the said joint board shall not proceed with the project until each of the water resource districts so affected by said proposed project shall have consented in writing.

IV. JOINT BOARD OF DIRECTORS

The Missouri River Joint Water Board shall be governed by a joint board of directors. The joint board of directors shall consist of one representative from each water resource district board of managers, which is a party to this agreement. The joint board representative shall be a member of a water resource district board of managers and shall be chosen by a majority of the water resource district board of managers. Each water resource district shall also choose one alternate, who shall exercise the authority of the joint board representative in the event of his or her absence. In order to be more thoroughly informed and more effectively represent their respective boards, the alternate member shall be encouraged to attend all joint board meetings, including those when the primary member is present.

Each representative serving on the Missouri River Joint Water Board shall represent one vote.

The board of directors of the joint board shall adopt such rules and regulations and bylaws for the conduct of the business of the joint board as they may deem necessary, including the time and place of regular meetings of the joint board. They shall elect from their number a chairman and vice chairman. They shall also elect or appoint a secretary and a treasurer, which offices may be held by the same person, and either or both offices may be held by someone not a member of the joint board. The board may also elect or appoint a manager to carry out the plans, policies and directives of the joint board. Special meetings may be called by the secretary on order of the chairman of the joint board or upon the written request of the majority of the qualified members of the joint board. Notice of a special meeting shall be mailed to each member of the joint board at least six (6) days before such meeting, provided, that a special meeting may be held at any time when all members of the joint board are present or consent thereto in writing. Two-thirds of the members of the joint board shall constitute a quorum for the transaction of the regular business and three-fourths of the joint board shall constitute a quorum for the transaction of any business relating to a project the joint board is or will be involved in. Any member may adjourn the meeting for a want of a quorum.

V. BUDGET

The Missouri River Joint Water Board shall, by resolution on or before July 1 of each year, adopt a budget showing estimated expenses for each ensuing fiscal year and the contributions of each member district. Such annual budget of the joint board shall be determined by a vote of two-thirds of all members of the joint board.

In the event that the joint board proposes to construct any water management works or project of any nature, the joint board may utilize the powers and procedures for project construction by individual water management districts pursuant to Sections 61-16.1-15 through 61-16.1-37 of the North Dakota Century Code.

VI. TERMINATION OF AGREEMENT

A. This agreement shall be terminated only upon a vote of approval of a majority of all of the board of directors on the joint board. In the event that this Joint Powers Agreement is terminated, termination shall be carried out according to the following terms:

1. Any property acquired as a result of this Joint Powers Agreement which is not part of an existing water-related project shall be sold and the funds received therefrom together with any surplus moneys held by the joint board shall be returned to each member district in proportion to the contributions of each member district. Any real property sold by the joint board shall be offered for sale, in a manner consistent with law, to the party from whom it was purchased at a reasonable price.
2. A levy sufficient to cover the costs of operation and maintenance of any project, including any water management works, which have been initiated, developed, and constructed by the joint board, shall be continued by each member district to ensure the continued operation and maintenance of such project. The joint board shall make provisions to determine who will be responsible for carrying out operation and maintenance functions. The revenues collected from such continued levy shall then be paid to the entity or individuals responsible for operation and maintenance of said projects or works.
3. If any contract shall have been made by the joint board before the termination of this agreement, provisions shall be made to continue to pay any tax levies required to meet the obligations of any such contract, or to take any action necessary to meet any other obligations which may have been incurred thereunder.

B. Any water resource district may be allowed to withdraw from this agreement, only upon the following terms:

1. A member district that wishes to terminate its membership and withdraw from this Agreement must:
 - a. Give notice of its desire to the joint board at least six (6) months before the end of the joint board's fiscal year;
 - b. Be current on all its obligations to the joint board; and
 - c. Agree to assume and pay that portion of project costs, on project agreements it has signed, which was originally assigned to the withdrawing member in those project agreements.

2. If any contract shall have been made with the United States or any agency thereof, or any state, or person, a member may not withdraw unless consented thereto by the appropriate agency of the United States or the state or person and if such agency, state, or person gives its consent upon condition, such conditions shall be included in the order of exclusion and the water resource district shall continue to pay any tax levies required to meet the obligations of any such contract.

VII. MODIFICATION OF AGREEMENT

To be effective, any modification or amendment to this agreement must be reduced to writing and signed by all the signatory parties to this agreement.

VIII. COUNTERPARTS

This Agreement may be signed in counterparts. When all of the signature pages are collected and attached to this Agreement, the Agreement shall be as binding on the signatories as if they signed a single document.

Dated this 28th day of July, 2005.

BURLEIGH COUNTY WATER RESOURCE DIST.

By: Kenneth W. Potter

DUNN COUNTY
WATER RESOURCE DIST.

By: Myra Bunn

EMMONS COUNTY WATER RESOURCE DIST.

By: Blair McCrory

McKENZIE COUNTY
WATER RESOURCE DIST.

By: _____

McLEAN COUNTY WATER RESOURCE DIST.

By: _____

MERCER COUNTY
WATER RESOURCE DIST.

By: Curt Rankman

MORTON COUNTY WATER RESOURCE DIST.

By: A. C. Mohr

MOUNTRAIL COUNTY
WATER RESOURCE DIST.

By: Robert V. Anderson

OLIVER COUNTY WATER RESOURCE DIST.

By: *Cady K. Helton*

WILLIAMS COUNTY WATER RESOURCE DIST.

By: _____

SIOUX COUNTY
WATER RESOURCE DIST.

By: _____

LOWER HEART RIVER
WATER RESOURCE DIST.

By: _____

GLL/docs/WRB/JPAgmt Final Draft