AGREEMENT

Joint Exercise of Powers Agreement
For Water Resource Districts
Located within the Devils Lake Basin

I. PARTIES

THIS AGREEMENT pursuant to Chapter 61-16.1-11 of the North Dakota Century Code, is between the board of managers of the following water resource districts:

1. Benson County Water Resource District, acting through its chairman, Thor Sollin, or his successors.

2. Cavalier County Water Resource District, acting through its chairman, Williams S. Hardy, or his successors.

3. Nelson County Water Resource District, acting through its chairman, Ben Varnson, or his successors.

4. Pierce County Water Resource District, acting through its chairman, Douglas Guss, or his successors.

5. Ramsey County Water Resource District, acting through its chairman, Richard Regan, or his successors.

6. Rolette County Water Resource District, acting through its chairman, Roger Beaver, or his successors.

7. Towner County Water Resource District, acting through its chairman, Kent Vesterso, or his successors.

8. Walsh County Water Resource District, acting through its chairman, Hilary Feltman, or his successors.

II. INTENT OF AGREEMENT

The water resource districts which are parties to this agreement have extensive jurisdiction over the management of the water resources within their respective boundaries pursuant to Chapter 61-16.1-09 of the North Dakota Century Code. This includes the power to construct works and projects as well as the authority to adopt rules and regulations governing water management. In addition, water resource districts which are parties to this agreement have jurisdiction to regulate, within their boundaries, the construction of dikes and dams, pursuant to Chapter 61-16.1-38 of the North Dakota Century Code, and the construction of drainage ditches pursuant to Chapter 61-32-03 of the North Dakota Century Code.

However, it is recognized by the parties to this agreement that actions of an individual board (construction of works or regulatory actions) which may provide local benefits could have adverse consequences at other locations within the Devils Lake Basin. Further, it is recognized that one entity representing the Devils Lake 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 resource board having the powers delegated herein must be established.

III. PURPOSE

The Devils Lake Basin Joint Water Resource Board is hereby established to carry out the intent of this agreement.

IV. POWERS OF THE JOINT BOARD

The Devils Lake Basin Joint Water Resource Board shall have the power to:

1. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding the construction of maintenance of water conservation and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, and use of water.

2. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.

3. Plan, locate, construct, reconstruct, modify, maintain, and repair dams and water conservation devices of every nature and water channels; to regulate and control flood waters for the prevention of floods, by deepening, widening, straightening, or diking the channels of any stream or watercourse within the joint district, and construct reservoirs or other means to hold and control such waters.

4. Make rules and regulations concerning the management of water resources in the Devils Lake Basin watershed; such rules, however, shall be limited to implementing the powers enumerated herein; any rules and regulations adopted by the joint board shall be binding upon all the parties to this agreement.

5. Exercise the power of eminent domain in the manner provided by Title 32, judicial remedies for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by Chapter 61-16.1 of the North Dakota Century Code, and particularly to acquire the necessary rights in land for the construction of dams and other water conservation works of any nature and to flood lands, and to secure the right of access to such dams and other devices and the right of the public access to the waters impounded hereby.

6. Acquire by lease, purchase, gift, condemnation, or other lawful means for use and control as provided by law both real and personal property and easements and rights of way within or without the limits of the joint district for all purposes authorized by law or necessary to the exercise of any power; to convey, sell, dispose of, or lease personal and real property of the joint district as provided by Chapter 61-16.1 of the North Dakota Century Code.

7. 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 to require appropriations and tax levied to maintain sinking funds for construction warrants on a cash basis at all times.

8. Borrow money within the limitations imposed by Chapter 61-16.1 of the North Dakota Century Code for projects herein authorized and to pledge security for the repayment of such money.

9. The joint board shall also have the right, power, and authority to enter into contracts or other arrangements for water for water conservation or flood control works 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, or other corporations, with public corporations, and state governments of this or other states, with drainage, water management, conservation, conservancy, or improvement districts, in this or other states, for cooperation or assistance in planning, constructing, maintaining, and operating such works and in making investigations and reports thereon; and may purchase, lease, or acquire land or other property in adjoining states or provinces in order to secure outlets, to construct and maintain dikes or dams, or for other purposes authorized by this section, and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. Provided, that this joint board shall not have the right, power, or authority to connect by artificial means boundary waters having different natural outlets so that the waters of one may be discharges into the other.

The above agreed upon powers to be exercised by the joint board are found in Chapters 61-16.1-09 and 61-16.1-14 of the North Dakota Century Code. All actions of the Devils Lake Basin Joint Water Resource Board shall be in accordance with 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 Chapter 61-16.1-09 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 Chapters 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.

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 Chapters 61-16.1-38 and 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 Devils Lake Basin Joint Water Resource 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.

V. JOINT BOARD OF DIRECTORS

The Devils Lake Basin Joint Water Resource 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 two alternates, one of whom 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, alternate members shall be encouraged to attend all joint board meetings, including those when the primary member is present.

Each representative serving on the Devils Lake Basin Joint Water Resource 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 affairs of the joint board as they may deem necessary, including the time and place of regulator 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 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 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. Three-fourths of the members of the joint board of directors shall constitute a quorum for the transaction of business, but any number may adjourn the meeting for want of quorum.

VI. BUDGET

The Devils Lake Basin Joint Water Resource Board shall, by resolution on or before July 1st of each year, adopt a budget showing estimated expenses for eh ensuing fiscal year and the contributions of each member district. Such budget of the joint board and the contributions of each member district, shall be determined each year by the joint board upon a vote of three–fourths of all of the 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 projects construction by individual water management districts pursuant to Chapters 61-16.1-15 through 61-16.1-37 of the North Dakota Century Code.

VII. TERMINTION OF AGREEMENT

This agreement shall be terminated only upon a vote of approval of three-fourths 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.

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

1. Any water resource district in the joint district not benefited or not to be benefited, in whole or in part, by the establishment of the joint board pursuant to this agreement may be excluded from the joint board. The member district may file with the joint board a petition which shall state the specific reasons why such water resource district will not be benefited by the establishment or continued existence of the joint board.

2. Within sixty days form the date of filing a resolution and a petition for exclusion from the joint board, the joint board shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing be set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed in the district. The hearing mentioned in such notice shall be held not less than 10 nor more than 20 days after the last publication of such notice. The notice shall state that any person, corporation, municipality, or county in the district may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.

3. If after the hearing on the petition the joint board of directors shall determine that the water resource district requesting to be excluded from the joint board will not be benefited, the joint board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such water resource district from the joint board. If, however, the joint board shall decide that such water resource district will be benefited, it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such water resource district from the joint board. A water resource district excluded from the joint board shall not be liable for any obligations incurred by the joint board after exclusion but shall be liable for and shall pay to the joint board any obligations incurred before exclusion.

4. If any contract shall have been made with the United States or any agency thereof, or any state, or person, before such petition is filed, such petition shall not be granted 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.

VIII. MODIFICATION OF AGREEMENT

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

This acknowledges receipt and agreement to the change in the By-Laws and Joint Powers Agreement of the Devils Lake Basin Joint Water Resource Board as follows:

Amend Section 3, Article V of the Joint Basin By-Laws: *Quorum, two-thirds majority (66.66%) of the Joint Board shall constitute a quorum for the transaction of the regular business of the Joint Board and a three-fourths majority (75%) 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 want of a quorum.*

Amend Section V of the Joint Powers Agreement: *"Two-thirds of the members of Joint Board shall constitute a quorum for the transaction of the regular business and three-fourths of the Joint Board shall constitute a quorum of 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 want of a quorum.*

Amend Section VI of the Joint Powers Agreement: *"Such annual budget of the Joint Board shall be determined by a vote of two-thirds of all the members of the Joint Board."*

This executed in accordance with Section VIII of the Joint Powers Agreement which state: "In order for any modification or amendment to this agreement to be effective, it must be reduced to writing and signed by the signatory parties to this agreement."