AMENDED
COOPERATIVE AGREEMENT
Between the
Department of the Army, Corps of Engineers
and the
Department of the Interior, U.S. Fish and Wildlife Service

This amendment made and entered into this _____ day of _____, 2001, between the Department of the Army through the Corps of Engineers, hereinafter referred to as the Corps, and the Department of the Interior through the U.S. Fish and Wildlife Service, hereinafter referred to as the Service, amends the Cooperative Agreement between the parties dated February 14, 1963;

WHEREAS the United States through the Corps, has acquired certain lands in fee for the improvement of navigation in the Upper Mississippi River to provide a 9-foot channel from the Missouri River to Minneapolis, and portions of the Illinois River, hereinafter referred to as the Navigation Project, and

WHEREAS, pursuant to Section 3 of the Fish and Wildlife Coordination Act (48 Stat. 401 as amended by 60 Stat. 1080 and 72 Stat. 563; 16 U.S.C. 661 et seq.), lands shall be made available to the Service, consistent with navigation as the primary purpose of the Project, for the conservation, maintenance, and management of fish and wildlife and its habitat. There have been General Plans formulated for the use of lands and waters of the Navigation Project for fish/wildlife conservation and management and the same have been approved by the Secretary of the Army, the Secretary of the Interior, and the heads of the State agencies exercising administration over fish and wildlife resources within the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin. Certain segments of the land subject to this Amended Agreement, as indicated in the General Plan, may be allocated to the States of Illinois, Iowa, Missouri, Minnesota, and Wisconsin for conservation management through subsequent agreements between the Service and those states, and

WHEREAS the Corps cannot abrogate its stewardship role for the conservation, maintenance, and management of fish and wildlife and its associated habitats as required by subsequent legislation such as, but not limited to the National Environmental Policy Act, Comprehensive Environmental Response, Compensation and Liability Act, the Forest Cover Act, the Historic Preservation Act, and as directed by Agency policy, guidance and regulations for the Corps' stewardship role for the conservation, maintenance, and management of these natural resources, and

WHEREAS the Corps and the Service shall continue to foster and maintain partnerships through specific regional working groups for addressing Navigation project issues that impact the conservation, maintenance and management of fish/wildlife resources specific to the lands addressed by the Amended Agreement.

Now therefore, in accordance with the aforesaid Section 3 of the Fish and Wildlife Coordination Act and the aforesaid General Plans, the Corps and Service hereby amend the Cooperative Agreement of February 14, 1963.

The Corps pursuant to the language of the third paragraph of the first page of this amendment hereby makes available to the Service the land and water areas of the Navigation Project substantially as identified on the exhibits attached to the General Plans referred to above, and by reference made a part hereof, for the conservation, maintenance, and management of fish/wildlife resources thereof, and its habitat thereon, in connection with the national migratory bird management and other fish/wildlife species programs in accordance with said General Plans. The Service shall manage these lands consistent with the National Wildlife Refuge System. This Amendment to the Cooperative Agreement of February 14, 1963 shall be subject to the provisions and conditions of the said General Plans and to the following additional conditions:

Paragraph 1 of the Cooperative Agreement is amended to read:

1. The Corps reserves all rights in and to the lands above described, which are not herein specifically granted, including, but not limited to, the operation and maintenance of the Navigation Project for its primary purpose of navigation. The Corps agrees that in fulfilling this primary purpose and other stewardship roles, as required by law and defined within Corps policies and regulations, that operation and maintenance activities will be carried out in accordance with current approved documents such as Master Plans, Operational Management Plans and Channel Maintenance Plans, and any future agency directive or legal requirement specific to the continued operation and maintenance of the Navigation Project.

Paragraph 2 of the Cooperative Agreement is amended to read:

2. The use and occupation of the said premises shall be without cost or expense to the Corps, under the general supervision of the Division Engineer, U.S. Army Division, Mississippi Valley Division, Vicksburg, Mississippi, herein after referred to as the "Division Engineer," and subject also to such rules and regulations in the interest of navigation and flood control as the Corps may from time to time prescribe.

Paragraph 3 of the Cooperative Agreement is amended to read:

3. Any damage to the property above described which results as an incident to the exercise of the privileges herein granted, shall be promptly corrected by the Service to the satisfaction of the Division Engineer. The Service will post appropriate project boundary lines, while the Corps will provide survey data, to the extent that it is available, for this purpose. The Service shall also take appropriate action to prevent and resolve minor trespass or unauthorized use of said property. The Service shall immediately report instances of unauthorized land use or serious trespass to the appropriate Corps Project Office. The Corps and Service shall coordinate enforcement efforts or legal actions taken against those responsible.

Paragraph 4 of the Cooperative Agreement is amended to read:

4. The exercise of the privileges granted shall in no way interfere with navigation and shall be subject at all times, without approval of the Service, to the occupation and use by the public for specific and related Navigation Project purposes and by the Corps for navigation, flood control, and all other Navigation Project related purposes, including, but not limited to, change in water surface elevations, dredging and placement of dredged material there from, and construction of training works, bank protection, and navigation aids.

Paragraph 5 of the Cooperative Agreement is deleted.

Paragraph 6 of the Cooperative Agreement is deleted.

Paragraph 7 of the Cooperative Agreement is amended to read:

7. It is understood that the privileges hereby granted do not preclude the necessity of obtaining from the Corps permits for work and structures in, under or over navigable waters as may be required under the provisions of Section 404 of the Clean Water Act of 1977, or Section 10 of the Rivers and Harbors Act of 1899, as amended,

Paragraph 8 of the Cooperative Agreement is amended to read:

8. No significant additions to or alterations of the premises, such as buildings, bridges, pump stations, roads, etc., shall be made by the Service without prior written consent of the appropriate District Engineer unless included in the Refuge Comprehensive Conservation Plan approved by the agencies.

Paragraph 9 of the Cooperative Agreement is amended to read:

9. In accordance with the aforesaid General Plans, authority to administer the lands and waters covered by this agreement may be delegated to the heads of the State agencies exercising administration over the wildlife resources of the aforesaid

States by cooperative agreements entered into pursuant to the provisions of Sections 1 and 4 of the said Fish and Wildlife Coordination Act. Copies of each such agreement, revisions, or amendments shall be furnished to the Division and District Engineers, respectively, promptly upon execution.

Paragraph 10 of the Cooperative Agreement is amended to read:

10. In development of lands described for public and agency use, as identified on the exhibits attached to the general plans referenced above, the Corps may in accordance with approved management plans and other appropriate agency documents, develop public use facilities or issue leases, licenses, and easements for the same purpose, issue special use licenses authorizing non-exclusive private uses which do not interfere with public use of areas involved, maintain and construct access roads, and issue outgrants. As appropriate, these actions will be coordinated with the Service and appropriate States to insure agency involvement and input into the Corps processes for implementation of these actions. During the development and implementation of these actions, the Service and States will be given the opportunity to provide recommendations regarding perceived impacts of the actions on the lands and waters defined by this amended agreement. The instruments provided for in this condition shall be issued only by the Corps and shall contain appropriate provisions prescribed by the Service regarding fish/wildlife management, including the continuing rights of the Service to post and patrol to enforce hunting regulations; however, the Service shall not have the right to deny access to or use of planned and developed, Corps-managed public use areas. Any planned developments for public and agency use shall address appropriate provisions prescribed by the Service regarding fish/wildlife management

Paragraph 11 of the Cooperative Agreement is deleted.

Paragraph 12 of the Cooperative Agreement is deleted.

Paragraph 13 of the Cooperative Agreement is amended to read:

13. The use of all agricultural treatments on lands covered hereunder shall be in compliance with laws, rules, and regulations administered by the Department of Agriculture and applicable to this type of land; provided that no part of the foregoing shall be construed as prohibiting the use of sharecrop agreements. All agricultural crops accruing to the Service or the pertinent States shall be used exclusively for wildlife, or wildlife habitat management purposes on the described lands, and for no other purpose. In the event that all the yield thus made available for wildlife or habitat management is not used for that purpose, the Service or the States shall, in order to avoid waste, sell for cash the remainder thereof in such a manner as to protect the public interest. Pursuant to Section 4 of the Act of Congress approved 22 December 1944, as amended (76 Stat. 1195; 16 U.S.C. 460d), all proceeds from the disposal of surplus production may be used by the Service or States in the development, conservation, management, and utilization of such lands; provided, that any balance of proceeds, not so utilized shall be paid to the Division Engineer at five-year intervals. In connection therewith, the Service shall establish and maintain adequate accounts and render statement of receipts and expenditures to the Division and District Engineers in an annual report that will be furnished not later than 30 calendar days prior to the scheduled annual meeting.

Paragraph 14 of the Cooperative Agreement is amended to read:

14. The Service shall administer and maintain the premises made available for wildlife conservation and management in accordance with current approved management plans for both agencies. An annual coordination meeting shall be organized by the Service each year on or before April 1 with each of the three Corps Districts (St. Louis, Rock Island, and St. Paul) and the states managing General Plan lands subject to this Agreement (Illinois, Iowa, and Missouri). The contents of the meeting shall include information specific to any changes and activities during the previous calendar year and information concerning proposed future projects. Issues covered shall include, but not be limited to, those management issues listed below:

(a) Boundary Management problems, including actions to address trespass or unauthorized uses;

(b) Report of completed construction and improvements, including project costs;

(c) Report of planned future construction, as approved in existing management plans;

(d) Report of conceived changes in management strategy;

(e) Cropland acreage utilized; amount of crop that was deemed excess to wildlife management needs including amount of receipts for sale of such crops; and amount and nature of expenditures derived from surplus crop funds;

(f) The Service liaison for the Agreement will consolidate a concise written annual report from the material presented at the meeting for submission to the Corps;

Paragraph 15 of the Cooperative Agreement is amended to read:

15. This agreement may be suspended or revoked at the discretion of the Department of the Army in case of national emergency or disaster declared by the President of the United States. In the event that problems are identified in compliance with any of the terms and conditions of this agreement, the following dispute resolution procedures will be followed:

(a) Service Refuge Managers and Corps District Operations Managers will meet to discuss the pertinent issue and seek resolution;

(b) In the event that informal efforts to resolve the issue at the field level are not successful, the appropriate Service Assistant Regional Director will meet with the appropriate District Engineer to seek written resolution; and

(c) Finally, if the matter remains unresolved, it will be referred to the Division Engineer whose decision will be final.

Paragraph 16 of the Cooperative Agreement is amended to read:

16. This agreement may be relinquished by the Service at any time by giving to the Division Engineer at least one-year's notice in writing.

Paragraph 17 of the Cooperative Agreement is amended to read:

17. If this agreement is relinquished or revoked as provided above, the Service shall vacate the premises, remove all property of the Service there from, and subject to the availability of funds, restore the premises to a condition satisfactory to the Division Engineer, ordinary wear and tear and damages beyond the control of the Service excepted, within such time as the Secretary of the Army may designate.

Paragraph 18 of the Cooperative Agreement is deleted.

The following paragraph is added to the Cooperative Agreement :

19. The Corps retains responsibility to provide protection of forest or other vegetative cover on reservoir areas, including navigation projects, in compliance with P.L. 86-717, the Forest Cover Act, and to establish and maintain other conservation measures on these areas. Corps management programs are to promote future resources and to increase the value of such areas for conservation, recreation, and other beneficial uses, provided that management is compatible with other uses of the project. The development of plans or other natural resource management activities will be coordinated with the Service for input and review of impacts of proposed actions on wildlife management use of the project. The Service will identify forest habitat goals and objectives in Refuge Comprehensive Conservation Plans to provide guidance to the Corps in this partnership effort. Revenue from sale of any timber in conjunction with the Forest Cover Act Program shall be credited to the Corps.

The following paragraph is added to the Cooperative Agreement :

20. The Corps retains the right to use and/or improve existing roads as a means of ingress and egress to and from the Mississippi River and to any areas that the Corps administers.

5 Jul 01
(Date)

By EDWIN J. ARNOLD, JR.
Brigadier General, U. S. Army
Division Engineer
Mississippi Valley Division

7/31/01
(Date)

By WILLIAM F. HARTWIG
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Marvin E. Moriarty
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