

MINUTES OF THE MEETING
OF THE BOARD OF DIRECTORS OF
THE FRANKLIN COUNTY WATER DISTRICT
HELD SEPTEMBER 17, 1966

THE STATE OF TEXAS

COUNTY OF FRANKLIN

ON THIS, the 17th day of September, 1966, the Board of Directors of the FRANKLIN COUNTY WATER DISTRICT convened in session at the regular meeting place thereof in the Courthouse at Mount Vernon, Texas, with the following members present:

W. C. NEWSOME	PRESIDENT
LONDON RAMSAY	VICE PRESIDENT
HORRIS MORRIS	SECRETARY

and with the following absent: A. J. Laws, D. O. Aldridge.

The President of the Board called the meeting to order, declared a quorum present and that the meeting was duly convened and ready to transact business.

There came on to be considered the following resolution and order:

A RESOLUTION AND ORDER by the Board of Directors of the FRANKLIN COUNTY WATER DISTRICT setting and establishing the tax rate to be levied on all taxable property located in said District and appearing on the assessment roll for the year 1966.

WHEREAS, the FRANKLIN COUNTY WATER DISTRICT has heretofore issued and now has outstanding bonds payable from ad valorem taxes; and

WHEREAS, the total valuation of all taxable property rendered for the year 1966 is approximately \$23,000,000, it now becomes the duty of this Board to set the tax rate to be levied thereon; now, therefore,

BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF FRANKLIN COUNTY WATER DISTRICT:

SECTION 1: that a total tax rate aggregating Eight Cents (8cents) shall be levied on each One Hundred Dollars' valuation of all taxable property located

in FRANKLIN COUNTY WATER DISTRICT, and appearing on the assessment roll for the year 1966.

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SECTION 2: That all of the above tax rate of 8 cents is hereby specifically levied for the purpose of paying principal and interest on the bond indebtedness of the District, being "Franklin County Water District Bonds, Series 1965", dated October 1, 1965.

The above resolution and order having been read in full, it was moved by Mr. Landon Ramsqy and seconded by Mr. Horris Morris that same be passed. Thereupon, the question being called for and after full discussion and deliberation, the following Directors voted "AYE": Messrs. N4ewsome, Ramsay, Morris, and none voted "NO". The President announced that the motion had carried and that the resolution and order had been duly adopted.

PASSED, ADOPTED AND APPROVED, this the 17th day of September, 1966.

W. C. Newsome
President, Board of Directors
Franklin County Water District

ATTEST:

Horris Morris
Secretary, Board of Directors
Franklin County Water District

There also came on to be considered the following resolution:

"A RESOLUTION by the Board of Directors of FRANKLIN COUNTY WATER DISTRICT authorizing execution of a master agreement with the Texas Water Development Board."

WHEREAS, this Board has received and considered a "Master Agreement" relating to the respective interests of the Texas Water Development Board and Franklin County Water District in the Franklin County Water District Dam and Reservoir in Franklin County, Texas; and

WHEREAS, upon due consideration thereof, it appears to this Board and it now finds that said Master Agreement is in proper form and contains the provisions desired by this Board; that all things being in order with regard to the authorization and execution of said Master Agreement, the Board has determined that same should be executed by the proper officials of the District so

that upon approval and execution by the Texas Water Development Board it shall become a binding and subsisting contract between the District and the Texas Water Development Board; therefore

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BE IT RESOLVED BY THE BOARD OF DIRECTORS OF FRANKLIN COUNTY WATER DISTRICT:

SECTION 1: That the aforementioned Master Agreement be and same is hereby formally approved as to form and substance to be that which should now be entered into between the District and the Texas Water Development Board.

SECTION 2: That on behalf of the District and the Board of Directors and as the act and deed of said Board, the President and Secretary are hereby authorized and directed to execute the aforementioned Master Agreement in such number of counterparts as may be considered necessary.

SECTION 3: That the Secretary of the Board shall transmit to the Executive Director of the Texas Water Development Board six (6) full executed counterparts thereof, together with a certified copy of this resolution requesting said Executive Director to furnish the District with three (3) of such copies showing execution on behalf of the Texas Water Development Board and a certified copy of the resolution of said Board authorizing execution in its behalf.

The above resolution having been read in full, it was moved by Mr. Landon Ramsay and seconded by Mr. Horris Morris that same be passed. Thereupon, the question being called for and after full discussion and deliberation, the following Directors voted "AYE": Messrs. Newsome, Ramsay, Morris; and none voted "NO". The President announced that the motion had carried and that the resolution had been duly adopted.

PASSED, ADOPTED AND APPROVED this the 17th day of September, 1966.

W. C. Newsome
President, Board of Directors
Franklin County Water District

ATTEST:

Horris Morris
Secretary, Board of Directors
Franklin County Water District

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SECRETARY'S CERTIFICATE

THE STATE OF TEXAS

FRANKLIN COUNTY WATER DISTRICT

COUNTY OF FRANKLIN

I, the undersigned, Secretary of the Board of Directors of the Franklin County Water District, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of a resolution authorizing execution of Master Agreement with the Texas Water Development Board (and minutes pertaining to its adoption), passed and adopted by the Board of Directors of said District on the 17th day of September, 1966, and recorded in the Minutes of said Board.

WITNESS MY HAND AND THE SEAL OF SAID DISTRICT this the 17th day of September, 1966.

Secretary, Board of Directors
Franklin County Water District

A motion was made by Landon Ramsay and seconded by Horris Morris to approve the following Master Agreement between the Franklin County Water District and the Texas Water Development Board:

MASTER AGREEMENT

Relating to the respective interests

of

THE TEXAS WATER DEVELOPMENT BOARD

and

FRANKLIN COUNTY WATER DISTRICT

in the Franklin County Water District Dam and Reservoir

in

Franklin County, Texas

THE STATE OF TEXAS
COUNTY OF FRANKLIN

THIS AGREEMENT, made and entered into this the 19th day of September, 1966, between the parties hereto, the FRANKLIN COUNTY WATER DISTRICT and the TEXAS WATER DEVELOPMENT BOARD,

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WITNESSETH:

WHEREAS, said parties have agreed that for brevity and clarity it is appropriate to **supply** definitions for certain terms and titles hereinafter employed, being as follows:

"Board" shall refer to the Texas Water Development Board,

"District" shall refer to the Franklin County Water District.

"Construction project" shall refer to the construction of District's Dam and Reservoir on Cypress Creek, and **all** matters incidental thereto which is to be accomplished with the proceeds of **the** sale of the bonds and the **sums** derived by the District through Board acquisition of storage facilities in said project.

"BONDS" of "District bonds" shall refer to the \$1,700,000 Franklin County Water District Ad Valorem Tax Supported Bonds, of which \$100,000 have heretofore been issued and sold, and the balance of which will be sold in regular commercial channels as a part of the program of financing the construction project.

"Storage facility" of "reservoir" shall refer to the Franklin County Water District Dam and Reservoir Project to be constructed on Cypress Creek in Franklin County, Texas.

"Engineers" shall refer to the District' Consulting Engineers.

"State participation" shall refer to purchase by the Board of an undivided one-half interest in the storage facility of the dam and reservoir at a cost of not to exceed **\$1,700,000**.

"Sediment survey" shall mean a physical survey of the reservoir site with range lines and minumenting procedures, according to generally accepted engineering practices, designed to accurately indicate the accumulation of sediment inflow.

"Construction Fund" shall refer to the Reservoir Construction Fund established by District and into which shall be placed all amounts received by District pursuant to this agreement and proceeds of the District bonds except that part which represents accrued interest, hereinafter received from the sale of District bonds.

"Natural inflow" shall mean the volume of water flowing or draining into the reservoir as diffused surface water, or surfact run-off, from the watershed area naturally draining toward the upstream from the dam, exclusive of direct diversions into the facility from other reservoirs.

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"Firm annual yield" shall mean the amount of water that can be supplied annually from the reservoir each and every year under conditions of the most severe drought period known to have **occurred** at the site.

"Water in excess of the firm annual yield" shall be determined as the volume of water in the conservation storage pool at the beginning of **each** calendar year plus a reasonable estimate of the natural inflow during the next succeeding 12-month period: less the "firm annual yield"; plus reservoir gains or minus reservoir losses from evaporation, seepage, leakage, and precipitation on reservoir surface, estimated for the succeeding 12 month period as calculated according to generally recognized engineering operating principles for water storage reservoirs.

AND WHEREAS, by resolution adopted September 19, 1966, the Board approved the District's application for State participation, conditioned upon a written contract between the Board and District; and

WHEREAS, the Board's rules and regulations, authorized by paragraph 12 of Section 21a, Article 8280-9, V.A.T.C.S., as amended, as well as an orderly implementation of the purposes of the parties hereto, require that their obligations and the conditions and procedures by **which** they shall be governed in effecting their purposes be now established;

NOW, THEREFORE:

IN CONSIDERATION of the mutual covenants, agreements and undertakings hereinafter set forth, the parties signatory, acting by and through their officers duly authorized in each respect by resolutions of their governing bodies, now agree and bind themselves unto each other as follows:

SECTION 1: State Participation.

1.1 - For the sum of not to exceed \$1,700,000 to be paid District in installments, as prescribed in Section 1.3 hereinafter appearing, on behalf of the State of Texas and as its agent, Board agrees to purchase from District and District agrees to sell to Board an undivided one-half interest in the storage facility.

1.2 - District agrees to execute such conveyance and assignment as Board may reasonable request in effecting the aforementioned purchase, and as further consideration District agrees that, under approval of the Texas Water Rights Commission, it will duly assign to Board an undivided one-half interest in any water permit granted by the Commission for the impoundment and storage of water in the storage facility.

1.3 - The amount above specified (not to exceed \$1,700,000) for payment by Board to District for an

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undivided one-half interest in the storage facility **shall** be paid over to District in accordance with the following procedures:

(a) The Engineers shall prepare and submit to District and Board within ninety (90) days *from* the date of this Agreement, and quarterly thereafter, a project construction cost estimate for each month of the succeeding quarter.

(b) Requisitions for State participation funds shall be based on the aforementioned quarterly estimates and filed for 50% of the amount estimated to be required during the

succeeding quarterly period for which the requisition is made, it being understood that at such time as the Board **shall** transmit to the District's depository the first **amount** requisitioned hereunder, it shall add thereto and also transmit the sum of \$24,942.98 which shall be certified by the President of the District as the amount heretofore expended by District in connection with the construction project from **the** proceeds of the sale of **\$100,000** District bonds heretofore **issued**. **Each** requisition shall be approved by the Engineers and by resolution of the District.

(c) Upon receipt of requisitions, the Board shall arrange for transmittal of the sum therein called for on a monthly or quarterly basis at the election of the Board to an official depository of District, which sums shall be deposited to the credit of the Reservoir Construction Fund and disbursed in accordance with the provisions of Section 18 of Article 8280-9, V.A.T.C.S. All **sums** in the Reservoir Construction Fund shall be disbursed by the depository bank for the acquisition and construction of District's construction project and, excepting expenditures relating to preliminary outlays contemplated by the original **\$100,000** district bond issue, which may be made on District Board approval, only upon estimates of work done and materials furnished by the contractor or contractors in compliance with the plans and specifications previously approved and which said estimates shall have first been duly approved by the Consulting Engineer for District and approved and ordered paid by resolution of the District Board of Directors. A certified copy of each **such** resolution shall be tendered the depository bank as its authority to honor the checks, vouchers or warrants by which disbursements for expenditures so approved **shall** be accomplished. Arrangement for escrow of the Reservoir Construction Fund **shall** be made with the foregoing.

1.4 - District agrees to provide Board monthly reports of disbursements from the Construction Fund and an annual audit within ninety (90) days following the close of each fiscal year.

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1.5 - District agrees to apply the unexpended balance of the proceeds of the \$100,000 district bonds heretofore issued and \$1,600,000 of the proceeds of its bonds to be hereafter issued, toward the cost of the construction project, along with amounts to be received from Board as State participation and to manage and invest the resulting Construction Fund so as to effect the most efficient use thereof in minimizing as far as practicable outlays of principal otherwise required to meet construction costs.

SECTION 2: Awarding Contracts - Project Supervision.

2.1 - District shall notify the Board each time bids for construction are to be advertised. Should any bid exceed the amounts estimated by the Engineers but be nevertheless recommended as acceptable by such Engineers, a report thereof shall immediately be made by District to the Board, which shall have the right to require a delay in the award of the contract until such time as it may determine that such award will not jeopardize completion of the construction project by reason of the expenditure of funds in excess of the amounts available and necessary to meet future required construction expenditures.

2.2 - All bids for work to be performed which are within the Engineers' estimates and which are recommended for acceptance by such Engineers may be accepted by District without report to the Board. During the period of construction, District shall provide adequate supervision by its Engineers so as to insure that the work is performed in a satisfactory manner and in compliance with the approved plans and specifications.

2.3 - The Board or its authorized agents shall have the privilege of inspecting the construction work as it progresses at any time to assure that the approved plans and specifications are being followed. Such inspection shall never subject the State of Texas to any action for damages.

Section 3: Operation and Maintenance.

3.1 - Board agrees that District shall be obligated to, and shall at all times retain authority to operate and maintain the reservoir; provided that operation of the reservoir by the District shall always be such as to permit the free and unhindered removal of water to which the Board shall be entitled. District binds itself to take all action as may be necessary to insure that the reservoir is adequately maintained and protected and shall keep in good and operable state of repair all physical properties pertaining to the reservoir under operating procedures approved Board. District will provide the Board with annual

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forecasts of maintenance and operation expenses and no requirement shall be made of the Board for any expense of operation and maintenance. Provided, however, that in the event the Legislature shall in the future appropriate funds to the Board for the future operation and maintenance of Franklin County Water District Reservoir, or should the Board otherwise become possessed of funds lawfully available for the purpose, it shall pay its pro rata part of operation and maintenance expense for the reservoir from such appropriation or other available source. The Board's obligation to provide funds for the operation and maintenance of District facilities under this Section 3.1 shall be limited to such amounts as may not be derived for those purposes under Section 4.3 or 5.2 hereof.

3.2 - If at any time District should fail to operate and maintain the reservoir as hereinabove provided, the Board, in addition to other legal remedies, may take over and operate and maintain the reservoir or cause such to be done for the benefit of the Board. District shall remain liable for any expenditures made by the Board with respect to operation and maintenance of the reservoir or its related facilities.

3.3 - District obligates itself to hold the Board and the State of Texas harmless and free of all costs or liability for any and all injuries to persons or property arising out of or incurred in the course of construction and/or maintenance and operation of the reservoir and its related facilities.

3.4 - As an incident to the District's operation and maintenance of the reservoir facility, the District hereby agrees to make or cause to be made a sediment survey at least once every ten (10) years, in accord with permit requirements established and approved by the Texas Water Rights Commission.

SECTION 4: Recreational Development-

4.1 - District shall institute and administer a comprehensive plan of recreational development and supervision of facilities and potential made available by the construction of the reservoir. In administering the recreational development, District shall consult with interested and affected agencies of the State (at the present time, the Texas Parks and Wildlife Department) in

accordance with State law and established policies and procedures for effecting an active program of recreational developments.

4.2 – Annual budgets for recreational development shall be presented to the Board with appropriate recommendations pertaining thereto, and District agrees to give due regard to such suggestions or recommendations as the Board may make with reference thereto.

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4.3 - **Such** unencumbered net revenues as may be derived from recreational development and not budgeted for further recreational development may be employed by District in meeting the necessary maintenance and operating expenses of its reservoir and related facilities, provided that any amounts so derived in excess of such expenses shall be divided equally between the District and the Board.

SECTION 5: Leasing.

5.1 - District shall be **fully** empowered to lease or rent lands acquired in the course of the reservoir's construction, provided, however, that the terms and provisions of **such** leases or other arrangements as may be made shall be in accordance with the plan for recreational development referred to above. Nothing contained in this agreement **shall** be regarded or construed as creating a lien or encumbrance against the title to lands now or hereafter vested in District or State insofar as the rights of third parties may be concerned. The parties, however, hereby covenant that they will not sell or otherwise relinquish full right to the use of all lands and facilities acquired and necessary for the construction plans and specification, but shall retain rights and interests as are necessary for such purposes.

5.2 - District shall act as agent for the Board in the acquisition of all lands required for the project, and as its agent in the leasing of lands that may be acquired but not required for the operation of the reservoir. Such unencumbered net revenues as may be derived from leasing reservoir lands may be employed by District in meeting the necessary maintenance and operating expenses of its reservoir and related facilities, provided that any amounts so derived in excess of operating and maintenance expenses shall be divided equally between the District and the Board: provided further that the proceeds of all leases of land for recreational purposes shall be applied as set forth in 4.3 herein, and

SECTION 6: Disposition of Water in Excess of the Firm Annual Yield.

6.1 - The undivided interest in the total reservoir facility herein referred to, as that interest relates to title to, and/or control of, the impounded waters of the facility, shall refer **only** to an interest in and right to that volume of water herein defined as the "firm annual yield of the reservoir. As a further consideration for the Board's participation in the facility, the District agrees, and does by these presents agree, hereby binding its successor and assigns, to permit and does hereby authorize:

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- (a) The construction by the Board of facilities for, and the subsequent free removal by the Board of not more than one-fourth in any one month nor more than twelve-twelfths in any one year of "water in excess of the firm annual yield" from the reservoir for use in other areas of the State in the absence of a need for the "water in excess of the firm annual yield" or part thereof by the District for local water supply requirements.
- (b) The construction by the Board of facilities for, and the subsequent, free and unhindered movement of water diverted into the reservoir from other reservoirs when such water is in transit from one area to another, or when such water is to be temporarily stored by the Board pending transport to another area of the State.
- (c) Board agrees that all removals of water in excess of the firm annual yield or movement of water from one area to another under this Section 6.1 shall be accomplished only in such manner as will not at any time impair or affect adversely District' right to receive or its freedom to take all amounts of water to which it shall be entitled.

SECTION 7: Sales of Board's Interest

7.1 - District shall have a preferential but not an exclusive right to purchase water stored in the storage facility acquired by the Board upon a showing of immediate local need for additional water supply, provided however, that beneficial use preferences recognized at the date of the future purchase application, and the declared policies of the State of Texas regarding beneficial use preferences, and appropriate rights and procedures, shall control.

7.2 - The Board agrees that should it sell or lease any storage facilities acquired hereunder, or sell water owned by it in the storage facility to any other party, the contract of sale or lease with such purchaser or lessee shall provide that the purchaser or lessee must pay District its prorata part of operation and maintenance expense from the date of such sale or lease.

7.3 - the Board further agrees that should any other party offer to purchase or lease from the Board all or any portion of its interest in the storage facilities acquired hereunder, and if such party shall demonstrate its ability to consummate such purchase or lease in a manner acceptable to the Board, and upon a finding by the Board that such sale or lease would be in the best interests of the State, the Board shall notify District, which shall have one hundred eighty (180) days from the date of such notification, or such extension as the Board may grant, in which to exercise an option hereby granted the District to purchase or lease the same portion of the Board's storage facilities for the same price as offered by the other party or parties.

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Before being entitled to exercise such option, District **shall** demonstrate to the Board that it has the means and resources to consummate the purchase or lease, and in such event, the Board's interest in the storage facilities or the indicated portion thereof **shall** be sold or leased to District.

SECTION 8: Further Covenants.

8.1 - The Board **shall** not compete with the District, in the sale of water when such competition will jeopardize the District's ability to meet obligations incurred to finance its own water supply projects. (Section 21a (8), Article 8280-9).

8.2 - To the extent required by law, unappropriated public water stored in the storage facilities acquired by the Board may be released without charge to relieve any emergency condition that may arise **due** to drought, severe water shortage or public calamity, provided that the Texas Water Rights Commission shall have first determined the existence of such emergency and requested the Board to make such releases of water.

8.3 - District agrees that it will abide by all State laws pertaining to pollution control and particularly those **rules** and regulations of the State Department of Health and the State Water Pollution Control Board.

8.4 - This agreement may be supplemented or amended by mutual agreement and consent of the parties.

8.5 - This agreement shall be recorded in the deed records of Franklin County, Texas.

EXECUTED as of this, the 19th day of September, 1966.

TEXAS WATER DEVELOPMENT BOARD

By s/ Marrim Shurbet
Vice-Chairman

ATTEST:

s/ Joe G. Moore, Jr.
Executive Director

FRANKLIN COUNTY WATER DISTRICT

By s/ W C. Newsome

ATTEST:

s/ Horris Morris
Secretary

APPROVED AS TO LEGALITY:

Attorney General of the State of Texas

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Thereupon, the question being called for and after full discussion and deliberation, the following Directors voted "AYE": Messrs. Newsome, Ramsay, Morris, and none voted "NO".

There being no further business, the meeting was adjourned at 12:00 *p.m.*

MINUTES APPROVED, this the 17 day of October, 1966.

W. C. Newsome
President, Board of Directors
Franklin County Water District

Landon Ramsay
Vice President

Horris Morris
Secretary

Landon Ramsay
Director

A. J. Laws
Director