

GEORGIA SOIL AND WATER CONSERVATION COMMISSION



4310 Lexington Road
P.O. Box 8024
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Telephone (706) 542-3065
FAX (706) 542-4242

J.M. "Bob" PLEMONS
Ringgold, Georgia

JIMMY S. JOHNSON
Jefferson, Georgia

ROY J. CHAPPELL
Dublin, Georgia

F. GRAHAM LILES, JR.
Executive Director

A.B.C. "Brad" DORMINY, JR.
Fitzgerald, Georgia

GARLAND THOMPSON
Douglas, Georgia

MEMO TO: Mr. Robert E. Fountain
Bibb County Engineer

FROM: F. Graham Liles, Jr.
Executive Director

DATE: April 16, 1998

SUBJECT: DAM NO. 1 TOBESOFKEE CREEK WATERSHED

Enclosed is your copy of the signed Operation Agreement for Dam No. 1 Tobesofkee Creek Watershed. Your efforts in the operation and maintenance of the dam are much appreciated.

FGLJr:wec

Enclosure

cc: Brent Turner, Regional Representative, SSWCC
Earl Cosby, NRCS

*With the Right to Own Goes the Duty to Conserve
With the Privilege of Use Goes the Obligation of Stewardship*

AGREEMENT NUMBER

OCMULGEE RIVER DISTRICT

**STATE OF GEORGIA;
COUNTY OF BIBB**

**FLOOD RETARDING STRUCTURE
OPERATION AGREEMENT
FOR**

Dam No. 1 Tobesofkee Creek Watershed - (Agreement No.2)

THIS OPERATION AGREEMENT ("AGREEMENT"), made this 9th day of April, 1998, by and between the **GEORGIA SOIL AND WATER CONSERVATION COMMISSION** ("GSWCC"), an instrumentality of the State of Georgia, the **OCMULGEE RIVER SOIL AND WATER CONSERVATION DISTRICT** ("District") an instrumentality of the State of Georgia, the **NATURAL RESOURCES CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE** ("Service"), a Department of the United States Government, and the **BIBB COUNTY BOARD OF COMMISSIONERS**, a political subdivision of the State of Georgia ("Operator").

W I T N E S S E T H

WHEREAS, Easements have been granted to the Ocmulgee River Soil and Water Conservation District pursuant to the easement(s) referenced in Exhibit "A attached hereto and incorporated herein ("Easement"); and

WHEREAS, the GSWCC has the duty and power to offer assistance to the District in helping it carry out its programs; and

WHEREAS, the GSWCC desires to expend state funds to have specific maintenance performed on the dam and its appurtenant works, more fully described in Exhibit "A" (Premises"), attached hereto and by this reference incorporated herein; and

WHEREAS, the GSWCC has the power to enter into this Agreement to assist and coordinate programs of the District and to secure the cooperation of the service, O.C.G.A. § 2-6-27; and

WHEREAS, the District has the power to enter into this Agreement and perform its duties under the Agreement, O.C.G.A. § 2-6-33 (4); and

WHEREAS, the Service requires that it be named a party to any agreement affecting the Premises because it provided funds for the original construction of the dam on the Premises; and

WHEREAS, the Operator wishes to enter into this Agreement because of the benefits it will provide to its residents.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1.
PURPOSE

This Agreement shall constitute the preliminary maintenance agreement for the Premises. Its purpose is to bring the Premises up to date in its maintenance needs, after which time the Premises will be maintained under a more permanent Operation and Maintenance Agreement.

2.
MAINTENANCE

The Operator shall bear the sole responsibility for performing maintenance on the Premises. The specific maintenance required for the Premises is set forth in Exhibit "B", attached hereto and by this reference incorporated herein.

3.
REIMBURSEMENT

3.1 Certification of Maintenance. Upon Operator's completion of those certain maintenance duties set forth in Exhibit "B", the District shall inspect the Premises to evaluate the completion of such maintenance duties. If the District deems the maintenance satisfactory, the District shall provide a certificate of approval to GSWCC. If the District deems the maintenance unsatisfactory, it shall prepare and forward to Operator a written explanation of its finding. Operator then has thirty (30) days from its receipt of this written report to correct any deficiencies in the maintenance work as referenced in the written report. The District shall then re-evaluate the Premises, and the above steps shall continue for up to three (3) thirty (30) day periods, until the maintenance work is found to be satisfactory. A satisfactory rating by the District shall not be unreasonably withheld.

3.2 Reimbursement of Funds. Upon receipt of a satisfactory certification from the District, GSWCC shall pay, within thirty (30) days, FIFTEEN THOUSAND (15,000) DOLLARS to Operator as reimbursement for performing maintenance duties set forth in paragraph 3. Such payment shall not be made separately for each specific maintenance duty performed. In addition, no payment shall be made until a satisfactory certification is submitted by the District covering all maintenance duties covered by paragraph 3.

4.

LIABILITY

Operator shall bear the sole risk and responsibility for all liabilities arising from actions of non-parties to this Agreement. Each party to this Agreement, including Operator, shall bear the sole risk and responsibility for all liabilities arising from its negligence or that of its employees.

5.

TERM

All Maintenance duties required to be performed under this Agreement shall be completed no later than May 1, 1999. Operator may continue to perform maintenance duties after this date if an initial satisfactory certification is not obtained. This date may be extended by a writing signed by all parties to this Agreement.

6.

ASSIGNMENT

The Operator may not assign this Agreement without the prior written approval of both the GSWCC and the Service. The Operator may hire third parties to perform any or all of its duties under this Agreement, subject to the written approval of the GSWCC.

7.

MISCELLANEOUS

7.1 Time of Essence. Time is of the essence of this Agreement. Upon its execution, all parties to this Agreement shall promptly commence its undertaking and shall diligently cooperate with each other in the accomplishment thereof.

7.2 Notice. Any notice required or permitted to be given by any party hereto shall be deemed delivered if sent by the U.S. Certified or Registered Mail to each party at the addresses hereinafter shown:

Georgia Soil and Water Conservation Commission
Attn: F. Graham Liles, Jr.
P. O. Box 8024
Athens, Georgia 30603

Ocmulgee River Soil and Water Conservation District
Attn: Donald G. Chase
P. O. Box 596
Oglethrope, Georgia 31069

Natural Resources Conservation Service
United States Department of Agriculture
Attn: Earl Cosby
Federal Building, Box 13
355 East Hancock Avenue
Athens, Georgia 30601-2769

Bibb County Board of Commissioners
Attn: Larry G. Justice, Chairman
601 Mulberry Street
P.O. Box 4708
Macon, Georgia 31298

7.3 Georgia Law. This Agreement shall be governed by Georgia Law.

7.4 Right of Entry. For purposes of this Agreement, the Ocmulgee River Soil and Water Conservation District agree(s) to provide rights of ingress and egress to the Premises, consistent with its/their own rights in the property, to the Operator, Services and GSWCC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals by and through their duly authorized officers all on the day and year first stated above.

GEORGIA SOIL AND WATER
CONSERVATION COMMISSION

By: F. Graham Liles, Jr.

Name: F. Graham Liles, Jr.
Title: Executive Director

Attest: Carolyn H. Bone
Name: Carolyn H. Bone
Title: Administrative Aide

Signed, sealed and delivered as to
the Georgia Soil and Water Conservation
Commission in our presence:

Unofficial Witness

Janice K. Marable
Official Witness

My Commission Expires: _____

Notary Public, Oconee County, Georgia
My Commission Expires March 13, 2001

OCMULGEE RIVER SOIL AND WATER
CONSERVATION DISTRICT

By: Donald G. Chase

Name: Donald G. Chase
Title: District Chairman

Attest: Brent H. Turner
Name: Brent Turner
Title: Regional Rep. - 55+WCC

Signed, sealed and delivered
as to the Ocmulgee River Soil and
Water Conservation District
in our presence:

Bonnie L. Boyle
Unofficial Witness

Official Witness

My Commission expires: _____

NATURAL RESOURCES CONSERVATION
SERVICE, UNITED STATES
DEPARTMENT OF AGRICULTURE

By: Earl Cosby
Name: Earl Cosby
Title: State Conservationist

Attest: James M. Hayes
Name: JAMES M. HAYES
Title: Assist. State Cons.

Signed, sealed and delivered
as to the Natural Resources
Conservation Service, United
States Department of Agriculture
in our presence:

Ann R. Smith
Unofficial Witness

Teresa Sears
Official Witness

Notary Public Franklin County, Georgia
My Commission Expires October 3, 2000

My Commission expires: _____

BIBB COUNTY BOARD OF COMMISSIONERS

By: Larry C. Justice
Name: Larry C. Justice
Title: Chairman

Attest: Barbara Focem
Name: _____
Title: _____

Signed, sealed and delivered
as to the Bibb County Board
of Commissioners in our presence:

Tawana Davis
Unofficial Witness

Official Witness

My Commission expires: _____

EXHIBIT "A"

The Premises is known as Floodwater Retarding Structure No. 1, Tobesofkee Creek Watershed Project.

The Premises is represented by a 54 foot high earthen dam. In addition to the earth embankment the Premises also includes an emergency spillway, principal spillway, and release outlet plunge pool. The Premises is constructed on Tobesofkee Creek (approximate 32 deg. 49 min. 12 sec. latitude and 83 deg. 46 min. 18 sec. longitude). The Premises is displayed on the Attachment 1A a portion of the General Highway Map; Bibb County, Georgia; published by Georgia Department of Transportation.

WARRANTY DEEDS have been granted to Bibb County for the Premises (dam) that is further described as being situated on Land Lot Nos. 244 on lands of Pineworth, Incorporated; more particularly described in that certain deed of conveyance dated June 9, 1964, and recorded on June 13, 1964, in Deed Book 930, Page 215 in the Office of the Clerk of Superior Court, Bibb County, Georgia.

The Premises (dam) is further described as being displayed on Attachment 2A; the Reservoir Area Map for Site Number One; USDA, Soil Conservation Service.

Easements are granted to the District by the above parties for or in connection, operation, maintenance and inspection of the following described works of improvement to be located on the above described land; for the flowage of any waters in, over, upon, or through, such works of improvement; and for the permanent storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such floodwater retarding structure.

The location on the ground of the easement herein granted for or in connection with construction, operation, maintenance and inspection of the above described works of improvement is as follows:

A floodwater retarding structure with a sediment pool up to 360.0 feet elevation, mean sea level, and floodwater flowage up to 369.0 feet elevation, mean sea level, as shown on Attachment 2A, which description by reference is incorporated herein.

EXHIBIT B

MAINTENANCE NEEDS

No. 1 Tobesofkee Creek Watershed

CODE

COMMENT

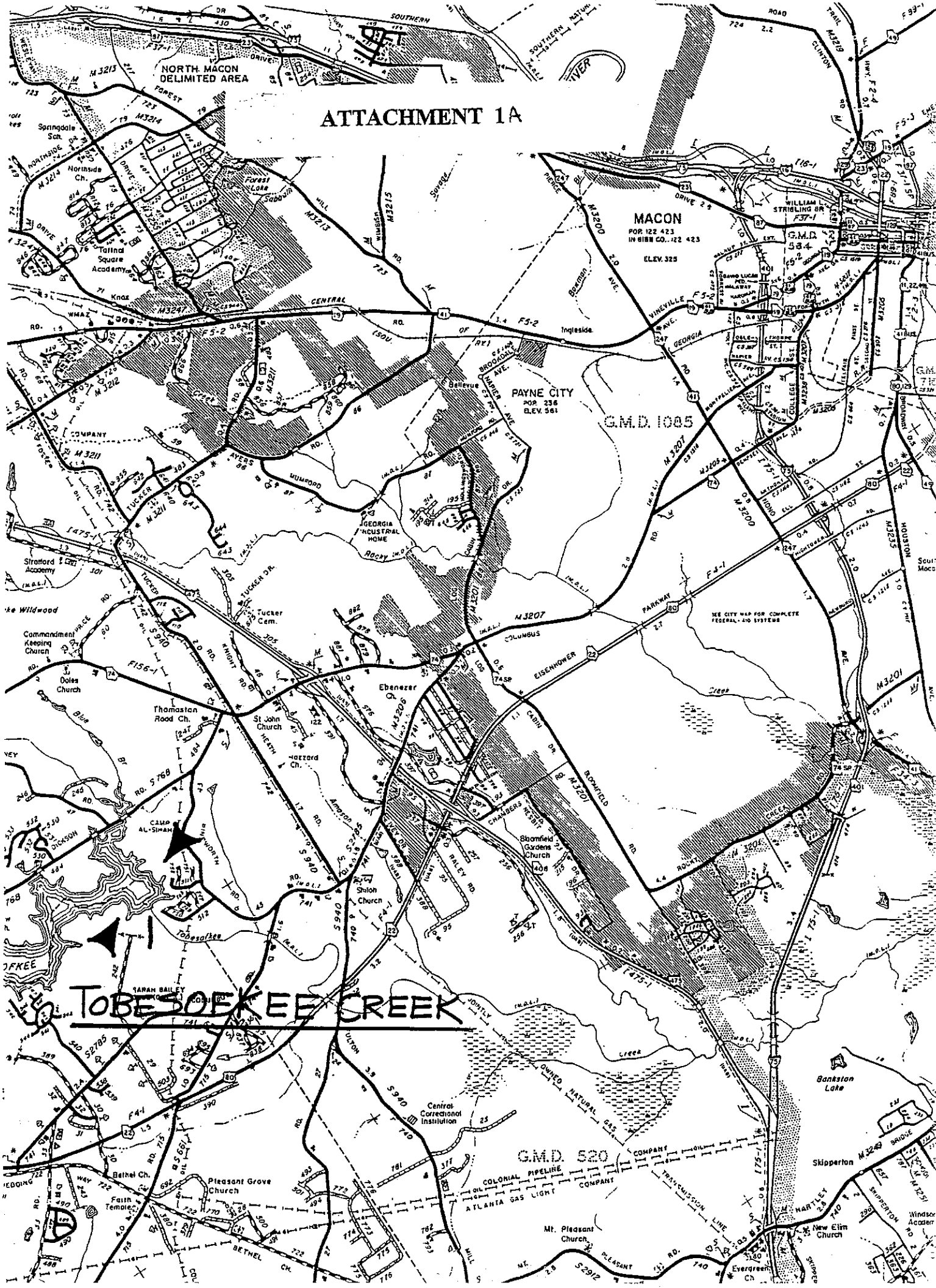
S10

Repair Gate Operating Mechanism

Maintenance completion date 5/1/99

Estimated costs \$15,000

ATTACHMENT 1A



TOBESOEKEE CREEK

MACON
POP. 122 423
IN BIRM. CO., 122 423
ELEV. 325

PAYNE CITY
POP. 236
ELEV. 561

G.M.D. 1085

G.M.D. 520

SARAH BAILEY

Central Correctional Institution

COLONIAL PIPELINE
ATLANTA GAS LIGHT COMPANY

TRANSMISSION LINE

Bankston Lake

Skipperon

New Elm Church

Mt. Pleasant Church

Evergreen Ch.

Windsor Acacia

Bethel Ch.

Pleasant Grove Church

Faith Temple

Shalom Church

Bloomfield Gardens Church

Chambers

Hartley

Windsor Acacia

Commandment Keeping Church

Dales Church

Thomaston Road Ch.

St. John Church

Horzard Ch.

CAMP AL-SIMAN

Shalom Church

Shalom Church

Bethel Ch.

Faith Temple

Pleasant Grove Church

Bethel Ch.

Faith Temple

St. John Church

Horzard Ch.

Thomaston Road Ch.

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