

COUNTERPART OF  
OCMULGEE RIVER SWCD

6500-MA-6-6082-94

STATE OF GEORGIA;  
COUNTY OF BIBB

FLOOD RETARDING STRUCTURE  
OPERATION AND MAINTENANCE AGREEMENT  
FOR

Dam No. 1 Tobesofkee Creek Watershed

THIS OPERATION AND MAINTENANCE AGREEMENT ("Agreement"), made this 1st day of July, 1996, 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 BIBB COUNTY, 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 agreements 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 bring the dam and its appurtenant works, more fully described in Exhibit "A" ("Premises"), attached hereto and by this reference incorporated herein, into compliance with the Georgia Safe Dams Act, O.C.G.A. §12-5-370, et seq.; and

WHEREAS, all permanent improvements constructed by GSWCC or the District pursuant to the Easement remain the property of GSWCC; 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 operation and maintenance agreement for the Premises. Those certain agreements entitled Operation and Maintenance Agreement for Structural Measures, Floodwater Retarding Structures that covers dam site No. 1 Tobesofkee Creek Watershed, by and between Ocmulgee River Soil and Water Conservation District, Bibb County and Soil Conservation Service, United States Department of Agriculture, and dated August 15, 1967 that previously covering the operation and maintenance of the Premises and any other similar agreement, is hereby revoked by this Agreement, except that any existing claims under this Agreement shall survive.

2.  
TERM

This Agreement shall run for the later of a period of ten (10) years from the date entered above or until the year 2046.

3.  
POWERS AND DUTIES

3.1 Operator

3.1.1 The Operator shall bear the responsibility for maintaining the Premises, subject to the input of other parties to this Agreement, as set forth in paragraphs 3.2 and 3.3 of this Agreement. The Operator and the District shall be jointly responsible for the operation of the Premises. However, the Operator shall bear all costs of such operation and maintenance as defined in paragraphs 3.1.2 and 3.1.3.

3.1.2 Operation. Operator, in connection with the District, shall take all necessary steps to assure that the Premises is permitted to function in the manner for which it was designed, and to assure compliance with current applicable federal, state, and local laws.

3.1.3 Maintenance

3.1.3.1 General. Maintenance shall include the following:

- a) Removing and disposal of accumulated debris from the embankment and principal and emergency spillways.
- b) Filling, shaping and vegetating eroded

areas on embankments, spillways and plunge pool.

- c) Repairing damaged rip rap blanket protection.
- d) Repairing fences and gates where needed.
- e) Annual mowing of embankment and emergency spillways.
- f) Removal of woody vegetation.
- g) Periodic fertilization of embankment and emergency spillways to maintain adequate cover.

3.1.3.2 Inspections. The Operator and District shall jointly inspect the Premises at least annually and after every major storm or the occurrence of any other unusual condition that might adversely affect the Premises, to insure proper functioning and to check for possible damage or deterioration. Items to be checked at the time of inspection may include the following:

- a) Principal Spillways.
  - 1) Damage or Obstructions.
  - 2) Condition of Outlet, Riser and Gates for signs or seepage, separation of joints, cracks or breaks, differential settlement, or failure of gates to open and close as designed.
- b) Emergency Spillways or Drainage Ways for erosion, sedimentation, weeds, logs and other obstructions or accumulations reducing channel capacity, or conformity with original design (deposition or sloughing).
- c) Reservoir Area for undesirable vegetative growth, cut or fallen trees, slash and other debris.
- d) Embankments for settlement or cracking, erosion, leakage, rodent, wildlife, tree or woody vegetative growth, or livestock damage, or condition or vegetative cover.
- e) Fences and Gates for repairs of loose or damaged posts, loose or broken wires, accumulated debris, or open gates.

3.1.3.3 Should inspection reveal damages or deteriorations listed in paragraph 3.1.3.2 (a) 2) the Operator shall notify the Service for a deficiency determination.

3.1.3.4 The Operator shall perform all maintenance needs indicated on the joint inspection reports, as required in paragraph 3.1.3.5 below, within the time limits specified, in such a manner as not to damage the Premises in any way, and in accordance with applicable federal, state or local laws.

3.1.3.5 Inspection Reports. The Operator, in connection with the District, shall prepare written inspection reports following any inspections performed

pursuant to paragraph 3.1.3.2. Such reports shall include time limits as to when any maintenance should be performed. In addition, The Operator shall provide the GSWCC and Service with such reports within thirty (30) days from the date of the inspection. The Operator shall also maintain a record of all maintenance work performed on the Premises and make such records available for review by the GSWCC or Service upon request.

- 3.1.4 Approval. Operator will obtain prior Service approval for all plans, designs, and specifications involving structural repairs or modifications to the Premises which may affect the intended function of the Premises.
- 3.1.5 New Legislation or Criteria Changes. Should any new or revision of existing state laws require modification to the Premises the Operator is responsible for the modification only to the extent of the funds provided pursuant to such legislation.
- 3.2 GSWCC. The GSWCC may enter the Premises at any time for inspection purposes.
- 3.3 Service. The Service:
  - 3.3.1 May enter the Premises at any time for inspection purposes.
  - 3.3.2 Shall assist the Operator and District in annual inspections, to the extent permitted by its resources.
  - 3.3.3 To the extent its resources permit and upon the request of the Operator or District, shall provide such technical services as are needed and available for preparing plans, designs and specifications for the Premises.
  - 3.3.4 Shall address deficiencies determined to be design deficiencies as the constructing agency to the extent resources exists.
- 3.4 District. The District shall:
  - 3.4.1 Share joint responsibility with the Operator for the operation of the Premises.
  - 3.4.2 In connection with the Operator, inspect the premises at least annually and after every major storm or the occurrence of any other unusual condition that might adversely affect the Premises, to insure proper functioning and to check for possible damage or deterioration.

- 3.4.3 In connection with the Operator, prepare a report of inspection findings, including recommendations for maintenance work needed and when such work should be completed.

4.  
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.

5.  
MISCELLANEOUS

5.1 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.

5.2 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: Dewey L. Maxwell  
2944 Stuart Drive  
Macon, Georgia 31204

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

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

6.  
SPECIAL CONDITION

Any duties and obligations of the County pursuant to this Operation and Maintenance Agreement shall be contingent upon execution of a transfer of funds agreement ( Flood Retarding Structure Operation Agreement ) between the County and the Georgia Soil and Water Conservation Commission. The purpose of said Agreement is to reimburse the County for all or part of the cost of the upgrading and initial maintenance of the premise described in Exhibit A in accordance with the provisions of this Agreement. If a Flood Retarding Structure Operation Agreement is not so executed, the County shall have no duties and obligations under this Agreement and this Agreement shall be of no force and effect.

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: Janice L. Marable

Name: Janice L. Marable

Title: Administrative Aide

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

Jennifer K. Johnson  
Unofficial Witness

Mary E. Harness  
Official Witness

My Commission expires: \_\_\_\_\_

Notary Public, Oconee County, Georgia  
My Commission Expires June 22, 1997

Ocmulgee River Soil and Water  
Conservation District

By: Dewey L. Maxwell

Name: Dewey L. Maxwell

Title: District Chairman

Attest: Charles A. Harman

Name: Charles A. Harman

Title: Supervisor

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

Arden M. Fultz  
Unofficial Witness

Delora Saylor  
Official Witness

My Commission expires: \_\_\_\_\_

Notary Public, Bibb County, Georgia.  
My Commission Expires April 12, 1997.

Natural Resources Conservation  
Service, United States Department  
of Agriculture

By: Earl Cosby

Name: Earl Cosby

Title: State Conservationist

Attest: Ann Senter

Name: Ann Senter

Title: Secretary

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

Barbara B. Fletcher  
Unofficial Witness

Barbara Eavenron  
Official Witness

My Commission expires: 2-18-98



Bibb County Board of Commissioners

By: Larry G. Justice

Name: Larry G. Justice

Title: Chairman

Attest: Shelia Thurmond

Name: Shelia Thurmond

Title: Deputy Co. Clerk III

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

Ralph  
Unofficial Witness

Nary D. Baul  
Official Witness

My Commission expires: 6-14-96

## 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.

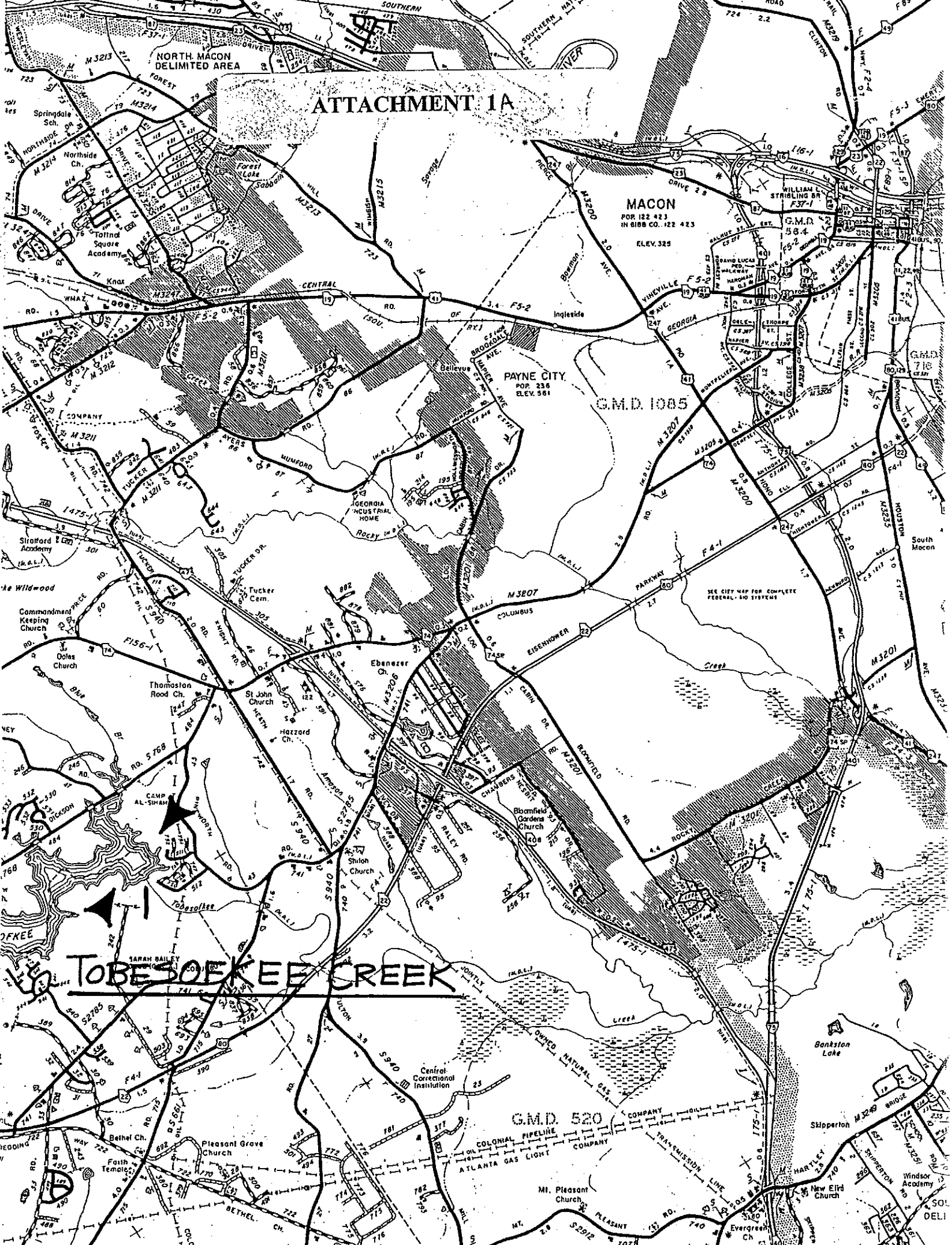
The Premises (dam) is further described as being displayed on Attachment 2A; the Reservoir Area Map for Site Number One; USDA, Soil Conservation Service.

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.

# ATTACHMENT 1A



MACON  
POP. 122 423  
IN BIBB CO. 122 423  
ELEV. 325

PAYNE CITY  
POP. 236  
ELEV. 561

## TOBESOOKKEE CREEK

G.M.D. 520

G.M.D. 1085

Central  
Correctional  
Institution

Commandment  
Keeping Church

Bethel Ch.

Thomasston  
Road Ch.

Pleasant  
Grave Church

St. John  
Church

Windsor  
Academy

Georgia  
Industrial  
Home

Blomfield  
Gardens  
Church

Shiloh  
Church

Hazard  
Ch.

Chambers  
Neighborhood

Boonfield

Evergreen  
Ch.

Windsor  
Academy

St. John  
Church

Commandment  
Keeping Church

Thomasston  
Road Ch.

St. John  
Church

Hazard  
Ch.

Chambers  
Neighborhood

Boonfield

Evergreen  
Ch.

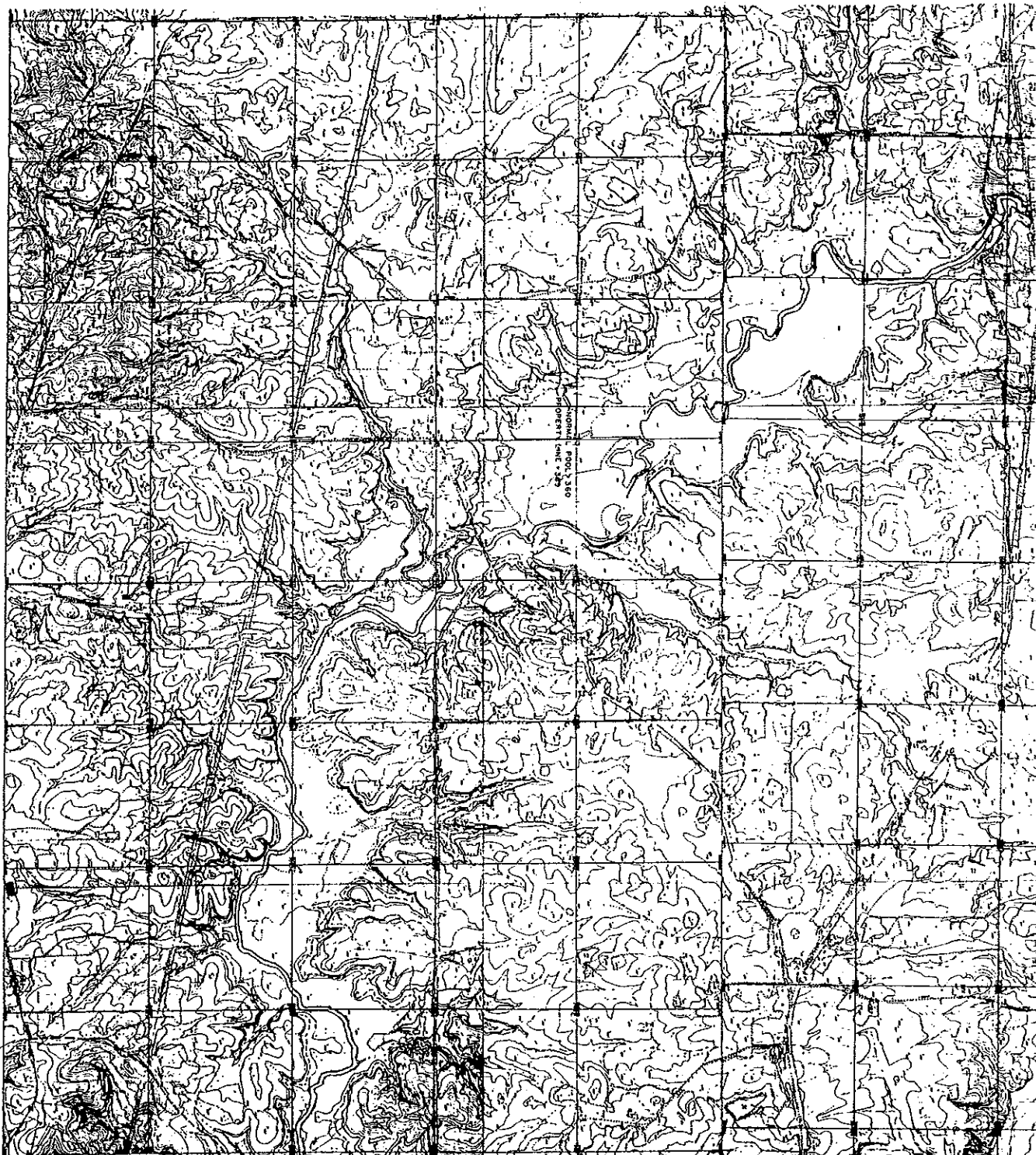
Windsor  
Academy

St. John  
Church

Commandment  
Keeping Church

Thomasston  
Road Ch.

# ATTACHMENT 2A

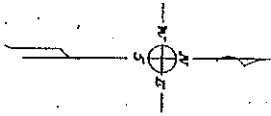


ACQUIRED FROM USFS

TOPOGRAPHIC MAP OF THE RESERVOIR AREA  
 TOBESOFKEE CREEK WATERSHED  
 SITE NUMBER ONE  
 BIBB COUNTY, GEORGIA  
 U. S. DEPARTMENT OF AGRICULTURE  
 SOIL CONSERVATION SERVICE

ENGINEERS & ARCHITECTS  
 EARTH SCIENCES ENGINEERS  
 SHEET 2 OF 56

DESIGNED BY [Signature] APPROVED BY [Signature] DRAWN BY [Signature] CHECKED BY [Signature]



ACES FROM  
 HIGHWAY ROAD  
 DAM