

AGREEMENT

RECEIVED

AUG 09 1996

Department of Water Resources
Eastern Region

WHEREAS, the undersigned, hereinafter designated as the JAMES CREEK GROUP, have made application to the Butte Soil Conservation District, Soil Conservation Service, United States Department of Agriculture, for assistance in design engineering and the construction of a facility to be used to divide the Big Lost River at the location of James Creek, Butte County, State of Idaho, thereby to divide the flood waters flowing in the Big Lost River to assist in the controlling of flooding of farm lands and to reduce stream bank erosion; and

WHEREAS, the undersigned desire to provide for the necessary organization to process said application, to proceed with the pooling agreement for said construction, to provide among themselves for an equitable division of the cost of construction and of future maintenance and an equitable schedule for the division of said flood waters, and

WHEREAS, the undersigned are all of the owners of the lands that will be effected by said division and expressly realize that no land is irrigated from waters to be directly controlled by the proposed structure, and

WHEREAS, the undersigned desire to be bound by contract to provide the necessary funds for the above-described purposes by assessment, or other legal means.

NOW, THEREFORE, the undersigned, for and in consideration of the covenants and agreements herein contained and in further consideration of the agreement of each individual signing this Agreement and the JAMES CREEK GROUP, do hereby covenant and agree:

I.

NAME

That the undersigned, functioning as a group by mutual agreement, shall be known as the JAMES CREEK GROUP.

II.

PURPOSE

That the purpose of the above-named group is to secure and make available the necessary funds for the design engineering and construction of an appropriate facility to divide the flood waters of the Big Lost River at the joining of James Creek, Butte County, Idaho, to assist in controlling flooding of farm lands and to reduce stream bank erosion; and further to secure and make available the necessary funds for the up-keep and maintenance of said facility in the future. Said facility is in no way to be used or considered as an irrigation diversion of irrigation waters, nor to change or alter any irrigation rights.

III. ORGANIZATION

The undersigned hereto shall organize as a group under the name recited above within 30 days after the date hereof and shall elect a board of three individuals, with one as Chairman, to hold office for one year, or until his successor is elected and qualified. At any meeting, including the organization meeting, a majority of those that sign this Agreement shall constitute a quorum and business at any meeting having a quorum present may be conducted by a majority vote of those present.

It shall be the duty of the Board to process and carry forward the application to the Butte Soil Conservation District recited above, for the design engineering and construction of the facility described above, and to determine the necessity and extent of the construction, up-keep and repairs needed in order to maintain said facility; to determine as closely as possible the yearly expenses, one year in advance, and to pro-rate the expenses among the members on the basis set forth in Paragraph IV below; to notify each individual of the group herein of his share and upon refusal to pay, or delinquency, to take appropriate procedure for collection thereof.

The Board shall have power to appoint whatever committees are deemed necessary, to arbitrate disputes, or to accomplish any of the purposes of the group. No board member or individual shall receive compensation for work done herein, other than reimbursement for actual expenses.

The annual meeting for election of the Board and other business shall be held each year on the anniversary date of this contract and each member of the group shall be notified in writing of the date of said meeting at least 10 days prior thereto.

IV. OBLIGATION

Each individual signing this Agreement shall be and does hereby agree to be responsible for his pro-rata share of the expenses and costs of the organization as set forth above. There is attached hereto and made a part of this Agreement, a list of the individuals forming said JAMES CREEK GROUP, together with a designation of the number of acres owned by each which will be effected by and receive an advantage from the construction and maintenance of the JAMES CREEK GROUP; that the number of acres designated for each individual is, by his signature, hereto expressly approved and ratified by each of those signing this Agreement.

The pro-rata share of each individual shall be that amount which bears the same ratio to the total amount of assessment, as the acreage set forth herein of each individual, bears to the total acreage of all individuals.

V.

DIVISION OF WATERS

That the water to be divided, being set forth below, as the water flowing in the Big Lost River during the non-irrigation season and also flood waters shall be divided between James Creek and the Big Lost River on the following ratio designated in second feet:

| <u>JAMES CREEK</u> | <u>BIG LOST RIVER</u> |
|--------------------|-----------------------|
| 0 | 50 |
| 10 | 50 |
| 20 | 50 |
| 40 | 50 |
| 60 | 60 |
| 80 | 80 |
| 100 | 100 |
| 150 | 150 |
| 200 | 200 |
| 250 | 200 |
| 300 | 200 |
| 350 | 200 |
| 400 | 200 |
| 500 | 250 |
| 600 | 300 |
| 650 | 400 |
| 750 | 450 |
| 850 | 500 |
| 900 | 600 |

The Board shall make appropriate agreement and arrangements with the water master of the Idaho Water District, Number 27, to accomplish the above division.

VI.

AMENDMENTS

That any changes or amendments to this Agreement shall be made only upon the signature and approval of all individuals signing this Agreement, or their successors and assigns.

VII.

That it is expressly agreed that this Agreement creates a contract between the parties hereto and a contractual agreement to pay the assessments and charges set forth above.

This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto and shall be, and is hereby expressly agreed to be, an obligation