

MEMORANDUM OF AGREEMENT
BETWEEN
TEXAS WATER DEVELOPMENT BOARD,
TEXAS PARKS AND WILDLIFE DEPARTMENT, AND
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
RELATING TO
INSTREAM FLOW STUDIES

WHEREAS, Senate Bill 2, as enacted by the 77th Legislature, Regular Session, provided important responsibilities to the above-referenced agencies with regard to studies of instream flows through year 2010;

WHEREAS, it is extremely important that the studies authorized by the 77th Legislature be accomplished in an effective and efficient manner that maximizes the utilization of available resources;

WHEREAS, the Texas Water Development Board (Board) is authorized by Section 6.190 of the Texas Water Code to enter into this agreement, the Texas Commission on Environmental Quality (Commission) is authorized by Section 5.229 of the Texas Water Code to enter into this agreement, and the Texas Parks and Wildlife Department (Department) is authorized by Section 11.0171 of the Texas Parks & Wildlife Code to enter into this agreement;

WHEREAS, the results of the instream flow studies, the subject of this Memorandum of Agreement, shall be considered by the respective agencies in performance of their statutory duties and responsibilities. Nothing in this agreement restricts the use of the studies by the agencies in their statutory discretion, duties, and responsibilities;

NOW, THEREFORE BE IT RESOLVED that the Board, Commission and Department do hereby make the following operating agreement regarding studies of instream flows as required by Section 16.059 of the Texas Water Code (Collection of Instream Flow Data; Conduct of Studies).

I. COORDINATING COMMITTEE

An **Instream Flow Studies Coordinating Committee** (Committee) shall be established as a three-member Committee comprised of the Executive Administrator of the Board and the Executive Directors of the Department and the Commission, or their designees.

The representative from the Board shall serve as chairperson of the Committee from the effective date of this agreement until August 31, 2003.

Thereafter, the chairperson shall serve a one-year term and the chair shall be rotated annually, as agreed upon by the Committee, from the Board's representative to the Department's representative, and thence to the Commission's representative.

The Committee shall meet at least annually and may meet more often as necessary and agreed upon by the Committee.

II. DUTIES AND RESPONSIBILITIES

The purpose of the Committee is to provide the overall policy, direction, and guidance for the completion of the instream flow studies authorized by the 77th Legislature.

The Committee shall approve a programmatic Work Plan by December 31, 2002, which shall include the following:

1. a list of the priority segments to be studied and interim deadlines for publications;
2. the scope of the studies;
3. the assignment of agency responsibilities in conducting the studies;
4. the timeframes in which the studies or parts of the studies are to be completed; and
5. the general methods used to conduct the studies.

The Committee shall ensure that resources of the agencies are utilized effectively and efficiently to accomplish the studies. To assist the Committee, each agency shall also designate lead staff to equally share oversight of the program studies, to maximize in-house capabilities of personnel and equipment, and to minimize costs to the state. The Committee shall also consider inviting cities, river authorities, water districts, other political subdivisions of the state, universities, and federal water agencies to cooperate with and participate in the conduct of these studies whenever practicable.

The Committee shall establish an **Interagency Science Team** (Team) composed of staff scientists and engineers assigned to work on the studies by the agencies and their cooperators. The Team shall assist the Committee by drafting study plans and scopes of work, by supervising and facilitating contracts, and by conducting and reporting on the priority studies identified in the Work Plan.

For all contracts by any agency for work to be performed in furtherance of the Work Plan, the Team shall draft the study plans and scopes of work and provide recommendations for contract facilitation prior to the agency's presentation of the contract to its board, commission, or other agency official possessing the authority to approve such contracts.

The Committee shall ensure that a productive data and information exchange is accomplished among the agencies. Also, the parties hereto do each agree to promptly furnish, free of charge, any and all correspondence, memorandums, study reports, contracts, data and any other information relating to instream flow studies that may hereafter be requested by any of the parties hereto and which are not privileged and confidential under law.

The Committee shall attempt to reach unanimous agreement on all decisions made in exercising its duties and responsibilities under this agreement, but in no event shall the failure of the Committee to reach a unanimous agreement on a decision frustrate or deter the intent, direction or purpose of this agreement or the duties and responsibilities of the Committee as defined hereunder.

The Committee shall attempt to resolve technical disputes by seeking consensus from the Interagency Science Team. The Committee may direct Team members to meet specifically for the purpose of resolving professional differences in order to reach a compromise solution, and to report that solution back to the Committee.

To assist the agencies in performing a scientifically sound program, the Committee shall appoint an independent **Scientific Advisory Group** to review and comment on study methods and plans prepared by the Team. The number and composition of the **Scientific Advisory Group** is at the discretion of the Committee and may vary from time to time.

The Committee may also resolve interagency disputes by seeking the advice of their governing bodies.

III. NON-BINDING CLAUSE

Nothing in this agreement shall preclude any of the agencies from executing interagency contracts, operating agreements, establishing other committees, or otherwise utilizing available resources to achieve specific statutorily assigned responsibilities regarding instream flow studies not related to Section 16.059 of the Texas Water Code.

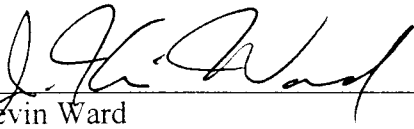
IV. ENTIRE CONTRACT

The agencies agree that this Memorandum of Agreement contains all the agreements with regard to the contents and that no oral agreements shall be recognized or shall in any way modify this Agreement. This Agreement may be modified only by agreement signed by parties to this Agreement.

V. EFFECTIVE DATE

This Memorandum of Agreement shall be effective when signed by all of the agencies and shall terminate 30 days from the date of written notice of intent to cancel this agreement by any of the agencies.

IN WITNESS WHEREOF the agencies have caused this Agreement to be executed in triplicate originals, each of which shall constitute an original document.



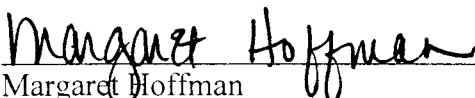
J. Kevin Ward
Executive Administrator
Texas Water Development Board

10/4/02
Date



Robert L. Cook
Executive Director
Texas Parks and Wildlife Department

10/17/02
Date



Margaret Hoffman
Executive Director
Texas Commission on Environmental Quality

17 October 02
Date