

# REVISED AND RESTATED

## JOINT POWERS AGREEMENT ESTABLISHING A WATERSHED MANAGEMENT ORGANIZATION FOR THE LOWER MISSISSIPPI RIVER WATERSHED

**THE PARTIES TO THIS AGREEMENT** ("Agreement") are Members of the Lower Mississippi River Watershed Management Organization and have land that drain surface water into the Mississippi River. This Agreement amends and restates the original Joint Powers Agreement between the Members which became effective in 1985 and includes all prior Amendments to the 1985 Joint Powers Agreement. This Agreement is made pursuant to the authority conferred upon the parties by Minn. Stat. §§ 471.59 and 103B.201 - 103B.252.

**SECTION 1. NAME AND LEGAL BOUNDARY.** The parties hereby establish the Lower Mississippi River Watershed Management Organization, hereinafter referred to as the "WMO." The "Legal Boundary Map of the Lower Mississippi River Watershed Management Organization" is attached hereto as Exhibit A.

**SECTION 2. PURPOSE.** The purpose of this Agreement is to provide an organization to regulate the natural water storage and retention of the Lower Mississippi watershed to:

- A. Protect, preserve, and use natural surface and ground water storage and retention systems;
- B. Minimize public capital expenditures needed to correct flooding and water quality problems;
- C. Identify and plan for means to effectively protect and improve surface and ground water quality;
- D. Establish more uniform local policies and official controls for surface and ground water management;
- E. Prevent erosion of soil into surface water systems;

- F. Promote ground water recharge;
- G. Protect and enhance fish and wildlife habitat and water recreational facilities;
- H. Secure the other benefits associated with the proper management of surface and ground water; and
- I. Carry out all the duties and responsibilities in Minn. Stat. §§ 471.59 and 103B.201 - 103B.252.

### **SECTION 3. DEFINITIONS.**

**Subdivision 1.** "*Allowable Flow*" means the rate and volume of flow, according to the design criteria set forth in the Watershed Management Plan, at which a Member community may discharge into the drainage system without financial obligation and as the rate and volume of surface water runoff from a tributary area under natural conditions, with a drainage system in place which has been designed and constructed according to the criteria stated herein, excluding diverted waters. Current topographic data that exists on the enactment date of this Agreement shall be used for the determination of the natural conditions and calculation of the allowable flow.

**Subdivision 2.** "*Board*" means the board of managers of the WMO.

**Subdivision 3.** "*Council*" means the governing body of a governmental unit which is a Member of this WMO.

**Subdivision 4.** "*Drainage Facilities*" means any improvement constructed for the conveyance or storage of surface water.

**Subdivision 5.** "*Drainage System*" means the combination of drainage facilities required to safely control or convey runoff water from a major tributary drainage area(s) to a point of final discharge into a water body.

**Subdivision 6.** *"Excessive Flow"* means that rate and volume of flow, calculated according to the design criteria in the Watershed Management Plan, from a Member which is in excess of the allowable flow of that Member.

**Subdivision 7.** *"Governmental Unit"* means any city.

**Subdivision 8.** *"Lower Mississippi River Watershed"* or *"Watershed"* means the area contained within the "Legal Boundary Map of the Lower Mississippi River Water Management Organization" attached hereto as Exhibit "A".

**Subdivision 9.** *"Manager"* means the representative appointed to the Board by a Member.

**Subdivision 10.** *"Member"* means a governmental unit which enters into this Agreement.

**Subdivision 11.** *"Natural Conditions"* means the characteristics of the land on the date of enactment without regard to any urban development including structures, parking lots, or other artificial improvements.

**Subdivision 12.** *"Rate of Flow"* means the discharge of surface water runoff as a function of time which has been calculated according to the design criteria identified in the Watershed Management Plan. The rate of flow shall apply to the design and construction of open channels and storm sewer conduits.

**Subdivision 13.** *"Volume of Flow"* means the total discharge of all surface water runoff which has been calculated according to the design criteria identified in the Watershed Management Plan. The volume of runoff flow shall apply to the design and construction of detention facilities.

**Subdivision 14.** "Watershed Management Organization" or "WMO" means the organization created by this Agreement the full name of which is "Lower Mississippi River Watershed Management Organization." It shall be a public agency of its Members.

**SECTION 4. MEMBERSHIP.** The Membership of the WMO shall consist of the following governmental units, each entitled to the following eligible votes:

<u>Member</u>	<u>Votes</u>
City of Inver Grove Heights	3 votes
City of Lilydale	1 vote
City of Mendota Heights	2 votes
City of Saint Paul	2 votes
City of South Saint Paul	2 votes
City of Sunfish Lake	1 vote
City of West Saint Paul	2 votes

No change in governmental boundaries, structure, organizational status, or character shall affect the eligibility of any governmental unit listed above to be represented on the WMO, so long as such governmental unit continues to exist as a separate political subdivision. A majority of all eligible votes shall be sufficient for all matters, unless otherwise provided for in this Agreement. A majority vote of all Members, with each Member having one vote, shall be required for Section 7. A Member may not cast a split vote. Any Member that fails to contribute their share of the WMO annual administration fund or their allocation of a capital improvement cost, shall be declared ineligible for voting on all matters before the Board, until such contribution is made to the WMO.

**SECTION 5. ADVISORY COMMITTEES.**

**Subdivision 1. Technical Advisory Committee.** The following governmental subdivisions or agencies shall be requested to appoint a non-voting advisory Member to the WMO: Dakota County, Ramsey County, Dakota County Soil and Water Conservation District. The advisory Members shall not be required to contribute funds for the operation

of the WMO, except as provided in Minn. Stat. § 103B.251, but may provide technical services.

**Subdivision 2. Citizen Advisory Committee.** The WMO may establish a citizen advisory committee ("CAC") from the public at large to provide input on Watershed Management Plan revisions and other matters as deemed appropriate. The CAC shall be appointed by the WMO considering individuals nominated by each Member. The WMO will notify each Member of its intent to establish a CAC, will specify the purpose and duration of the CAC, and will request each Member to nominate candidates to be considered for appointment by the WMO. At the time of establishment of a CAC, the WMO will appoint a chair of the CAC, a board member liaison to the CAC, establish a time for submittal of any comments, and specify the support the WMO will provide to the CAC.

## **SECTION 6. BOARD OF MANAGERS.**

**Subdivision 1. Appointment.** The governing body of the WMO shall be its Board. Each Member shall be entitled to appoint one Manager and an alternate on the Board. The alternate shall have the right to vote in the absence of their representative. Vacancies in the office of Manager shall be filled for the remainder of the term by the Member which appointed or had the right to appoint the Manager. All vacancies shall be filled within ninety (90) days after they occur.

**Subdivision 2. Eligibility or Qualification.** The Council of each Member shall determine the eligibility or qualification of its representative on the WMO.

**Subdivision 3. Term.** The Managers shall not have a fixed term, but shall serve at the pleasure of the Member appointing such Manager to the Board.

**Subdivision 4. Removal.** A Manager may not be removed from the Board prior to the expiration of his or her term, unless the Manager consents in writing or unless removed in accordance with the procedures provided under Minnesota Rules 8410.0040.

**Subdivision 5. Compensation.** Managers shall serve without compensation from the WMO, but this shall not prevent a Member from providing compensation for its Manager.

**Subdivision 6. Organizational Meeting.** At the first meeting of the Board each year, the Board shall elect from its Managers a chair, a vice chair, a secretary/treasurer, and such other officers as it deems necessary to conduct its meetings and affairs. The Board shall adopt rules of order and procedure governing its meetings and affairs. The rules of order and procedure may be amended from time to time at either a regular or a special meeting of the Board provided that at least ten (10) days' prior notice of the proposed amendment has been furnished to each person to whom notice of the Board meetings is required to be sent. A majority vote of all eligible votes of the Members of the WMO shall be sufficient to adopt any proposed amendment to such rules of order and procedure.

**Subdivision 7. Annual Meeting Requirement.** The Board shall meet at least annually, at times and places selected by the Board. If the Board changes its regularly established meeting place or time, it shall place a notice of the change on a bulletin board at least three (3) days in advance in the building where it was scheduled to meet.

**Subdivision 8. Committees.** The Board may establish committees as it deems appropriate.

**Subdivision 9. Quorum.** The Board shall not take any action without a quorum present. A quorum shall be at least four Members.

**SECTION 7. POWERS AND DUTIES OF THE WMO.** The WMO, acting by its Board:

**Subdivision 1.** Shall prepare, adopt and implement a Watershed Management Plan meeting the requirements of Minn. Stat. § 103B.231;

**Subdivision 2.** Shall review and approve local water management plans as provided in Minn. Stat. § 103B.235;

**Subdivision 3.** Shall exercise the authority of a watershed district under Minn. Stat. Chapter 103D to regulate the use and development of land in the watershed when one or more of the following conditions exist:

A. The local government unit exercising planning and zoning authority over the land under Minn. Stat. §§ 366.10 to 366.19, 394.21 to 394.37, or 462.351 to 462.364 does not have a local water management plan approved and adopted in accordance with requirements of Minn. Stat. § 103B.235 or has not adopted the implementation program described in the plan.

B. An application to the local government unit for a permit for the use and development of land, requires an amendment to, or variance from, the adopted local water management plan or implementation program of the local unit.

C. The local government unit has authorized the WMO to require permits for the use and development of land.

**Subdivision 4.** Shall adopt an annual work plan.

**Subdivision 5.** May employ such persons as it deems necessary to accomplish its duties and powers.

**Subdivision 6.** May contract for space and for material and supplies to carry on its activities either with a Member or elsewhere.

**Subdivision 7.** May acquire necessary personal and real property to carry out its powers and its duties.

**Subdivision 8.** May make necessary surveys or use other reliable surveys and data, and develop projects to accomplish the purposes for which the WMO is organized.

**Subdivision 9.** May cooperate or contract with the State of Minnesota or any subdivision thereof or federal agency or private or public organization to accomplish the purposes for which it is organized.

**Subdivision 10.** May order any governmental unit to carry out the local water management plan which has been approved by the Board. If the local unit of government fails to do so, in addition to other remedies, in its discretion, the Board may implement any required action or improvement in accordance with this Agreement.

**Subdivision 11.** May acquire, operate, construct, and maintain the capital improvements delineated in the Watershed Management Plan adopted by the Board.

**Subdivision 12.** May contract for or purchase such insurance as the Board deems necessary for the protection of the WMO and its Board.

**Subdivision 13.** May establish and maintain devices for acquiring and recording hydrological and water quality data within the watershed area of the WMO.

**Subdivision 14.** May enter upon lands within or without the watershed to make surveys and investigations to accomplish the purposes of the WMO.

**Subdivision 15.** May provide any Member with technical data or any other information of which the WMO has knowledge which will assist the Member in preparing land use classifications or local water management plans within the watershed.

**Subdivision 16.** May provide legal and technical assistance in connection with litigation or other proceedings between one or more of its Members and any other political subdivision, commission, board, corporation, individual, or agency relating to the



planning or construction of facilities to drain or pond storm waters or relating to water quality within the WMO.

**Subdivision 17.** May accumulate reserve funds for the purposes herein mentioned and may invest funds of the WMO not currently needed for its operations.

**Subdivision 18.** May collect money, in accordance with the provisions of this Agreement, from its Members and from any other source approved by the Board.

**Subdivision 19.** May make contracts, incur expenses, and make expenditures necessary and incidental to the effectuation of its purposes and powers.

**Subdivision 20.** Shall cause to be made an annual audit of the books and accounts of the WMO and shall make and file a report to its Members at least once each year including the following information:

- A. The financial condition of the WMO;
- B. The status of all WMO projects and work within the watershed; and
- C. The business transacted by the WMO and other matters which affect the interests of the WMO. Copies of the report shall be transmitted to the clerk of each Member by March 31 of each year.

**Subdivision 21.** Shall make the WMO's books, reports, and records available for and open to inspection by its Members or the public at all reasonable times.

**Subdivision 22.** May recommend changes in this Agreement to its Members. Any amendments shall require ratification by all the parties to this Agreement.

**Subdivision 23.** May exercise all other powers necessary and incidental to the implementation of the purposes and powers set forth herein and as authorized by Minn. Stat. §§ 103B.201 through 103B.252.

**Subdivision 24.** Must solicit proposals for all legal, engineering, auditing, and other technical services in accordance with Minnesota Statutes § 103B.227, subd. 5.

**Subdivision 25.** Shall coordinate its planning activities with contiguous watershed management organizations and counties conducting water planning and implementation under Minn. Stat. Chapter 103B.

**Subdivision 26.** Shall designate one or more legal newspapers of general circulation which are published in the county(ies) in which the watershed is located.

**SECTION 8. POWERS AND DUTIES OF THE OFFICERS OF THE BOARD.**

**Subdivision 1.** It shall be the duty of the Chair of the Board to:

- A. Attend and preside at all meetings of the Board;
- B. Assist in the preparation of meeting agendas and the annual work plan;
- C. See that orders and resolutions of the Board are carried into effect;
- D. Sign and execute documents as may be required for the Board's exercise of its powers, except as otherwise required by law; and
- E. Perform such other duties applicable to the office as are necessary to fulfill the powers and duties of the Board as set forth in this Agreement, and as provided by law.

**Subdivision 2.** It shall be the duty of the Vice Chair of the Board to:

- A. Perform the duties of the Chair in the Chair's absence; and
- B. Perform other duties as assigned from time to time by the Board.

**Subdivision 3.** It shall be the duty of the Secretary/Treasurer of the Board to:

- A. Keep and post a true and accurate record of the proceedings of all meetings of the Board;
- B. Keep a record of all amendments, alterations and additions to this Agreement;
- C. Prepare and process all correspondence;
- D. Prepare and file all reports and statements as required by law and this Agreement;

E. Keep all financial accounts of the WMO, and prepare and present to the Board full and detailed financial statements of the WMO prior to its annual meeting; and

F. Perform other duties as assigned from time to time by the Board.

## **SECTION 9. CONSTRUCTION OF IMPROVEMENTS.**

**Subdivision 1.** All construction, reconstruction, extension or maintenance of WMO improvements, including outlets, lift stations, dams, reservoirs, or appurtenances of a surface water or storm sewer system ordered by the WMO which involve potential construction by or assessment against any Member or against privately or publicly owned land within the watershed shall adhere to the following procedures set forth in this section. The Board shall secure from its engineers or some other competent person a preliminary report advising it whether the proposed improvement is feasible, whether there are feasible alternatives, whether the proposed improvement shall best be made as proposed or in conjunction with some other improvement, a determination of the quantity and/or quality of storm and surface water contributed to the improvement by each Member, the estimated cost of the improvement(s), including maintenance, the estimated cost to each Member, and evaluating the consistency of the improvement with the Watershed Management Plan capital improvement section. The Board shall then hold a public hearing on the proposed improvement. Notice of the hearing shall be mailed to the clerk of each affected Member and shall also be published in the Board's official newspaper(s). The notice shall be mailed not less than forty-five (45) days before the hearing, shall state the time and place of the hearing, the general nature of the improvement, the estimated total cost, and the estimated cost to each Member.

To order the improvement, a resolution setting forth the order shall require a favorable majority vote of all eligible votes of the Members of the WMO. The order shall

describe the improvement, shall allocate in percentages the cost allocation among the Members, shall determine the method of financing, shall designate the engineers to prepare plans and specifications, and shall designate the entity that will contract for the improvement. The Board shall not order and no engineer shall prepare plans and specification before the Board has adopted a resolution ordering the improvement. After the Board has ordered an improvement, it shall forward the preliminary report to all affected Members with an estimated time schedule for the construction of the improvement.

The Board shall allow not less than 90 days, nor more than 270 days, for each Member to conduct hearings as provided by law or applicable charter requirements, to approve the construction and the method of financing of the improvement which the Member will use to pay its proportionate share of the costs of the improvement.

If the WMO proposes to use Dakota County's and/or Ramsey County's bonding authority, or if the WMO proposes to certify all or any part of an improvement to Dakota and/or Ramsey County for payment, then and in that event all proceedings shall be carried out in accordance with Minn. Stat. § 103B.251.

The Board may order advertising for bids upon receipt of notice from each Member which will be assessed that it has completed its hearing or determined its method of payment, or upon expiration of 270 days after the mailing of the preliminary report to the Members, whichever occurs first.

**Subdivision 2.** Any Member aggrieved by the determination of the Board as to the financing of an improvement or allocation of the costs of an improvement shall have thirty (30) days after the WMO resolution ordering the improvement to appeal the determination to arbitration. The appeal shall be in writing requesting the arbitration and

shall be addressed to the Board in c/o City of South St. Paul, 125 3<sup>rd</sup> Ave. N., South St. Paul, MN 55075. The determination of the Member's appeal shall be referred to a Board of Arbitration. The Board of Arbitration shall consist of three (3) persons: one to be appointed by the Board, one to be appointed by the appealing Member, and the third to be appointed by the two so selected. In the event the two persons so selected do not appoint the third person within fifteen (15) days after their appointment, then the chief judge of the District Court of Dakota County shall have jurisdiction to appoint, upon application of either or both of the two earlier selected, the third person to the Board of Arbitration. The third person selected shall not be a resident of any Member and if appointed by the chief judge, shall be a person knowledgeable in the subject matter of the dispute. The arbitrators' expenses and fees, together with the other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be divided equally between the WMO and the appealing Member. Arbitration shall be conducted in accordance with the Uniform Arbitration Act, Minn. Stat. Chapter 572. Arbitration must be completed within the 270 day period provided for in Subdivision 1 of this Section.

**Subdivision 3. Contracts for Improvements.** The bidding and contracting of the work may be let by any Member or by the WMO as determined by the Board, in compliance with state statutes. Contracts and bidding procedures shall comply with all legal requirements.

**Subdivision 4. Supervision.** All improvement contracts shall be supervised by the entity awarding the contract. A WMO representative shall also be authorized to observe and review the work in progress and the Members agree to cooperate with the WMO representative in accomplishing the WMO's purposes. Representatives of the WMO shall have the right to enter upon the place or places where the improvement work is in

progress for the purpose of making reasonable tests and inspections. The WMO representative shall report to the Board on the progress of the work.

**Subdivision 5. Land Acquisition.** The WMO shall not have the power of eminent domain. All easements or interest in land which are necessary for an improvement will be negotiated or condemned in accordance with Minn. Stat. Chapter 117 by the Member where the land is located, and each Member agrees to acquire the necessary easement or right-of-way or partial or complete interest in land upon order of the Board to accomplish the purposes of this Agreement. All reasonable costs of the acquisition, including attorney's and appraiser's fees, shall be a cost of the improvement, and shall be allocated according to the formula for allocating Capital Improvement cost in Section 10, Subdivision 7. If a Member determines it is in its best interests to acquire additional rights in lands for some other purposes, in conjunction with the taking of lands for the improvement, the costs of the acquisition of additional rights in lands will not be included in the improvement costs. The Board, in determining the amount of the improvement costs to be assessed to each Member, may take into consideration the land use for which the additional lands are being acquired and may credit the acquiring Member for the land acquisition to the extent that it benefits the other Members. Any credits may be applied to the cost allocation of the improvement, or the Board, if feasible and necessary, may defer the credits to a future improvement.

Members may not condemn or negotiate for land acquisition to pond or drain storm and surface waters within the corporate boundaries of another Member within the WMO.

## SECTION 10. FINANCES.

**Subdivision 1. Disbursements.** The WMO funds may be expended by the Board in accordance with this Agreement in a manner determined by the Board. The Board shall designate one or more national or state bank or trust companies authorized to receive deposits of public monies to act as depositories for the WMO funds. In no event shall there be a disbursement of WMO funds without approval by the Board and the signature of at least two (2) Board Members, one of whom shall be an officer. The Board may require the secretary/treasurer to file with the Board a bond in the sum of at least \$10,000 or such higher amount as shall be determined by the Board. The WMO shall pay the premium on said bond.

**Subdivision 2. Budget.** On or before July 1 of each year, the Board shall adopt a general fund budget ("Budget") by a majority vote of all Members (with each Member having one vote) for the ensuing year and decide upon the total amount necessary for the general fund. The secretary/treasurer of the Board shall certify the Budget to the clerk of each Member, together with a statement of the proportion of the Budget to be provided by each Member, computed in accordance with Section 10, Subdivision 5. The council of each Member shall review the Budget, and the Board shall upon notice from any Member received prior to August 1, hear objections to the Budget, and may, upon notice to all Members of the time, date, place of and right to participate in the hearing and after a hearing, modify or amend the Budget, and then give notice to the Members of any and all modifications or amendments. Each Member agrees to provide the funds required by the Budget by February 15<sup>th</sup> of each year.

If a Member fails to provide its share of the funds required by the Budget by February 15 of each year, the unpaid balance of the funds shall accrue interest at a rate of

eight percent (8%) per annum commencing the day following February 15<sup>th</sup> of the year in which the funds were due. The WMO may take whatever action, at law or in equity it deems appropriate, to collect any amounts due from a Member under this Agreement. The Member agrees to pay the cost of collection, including reasonable attorneys' fees.

**Subdivision 3. Maintenance.** The Board shall have the option of funding maintenance work through the Budget, or funding as a capital improvement in accordance with Subdivision 6 of this Section. Maintenance costs that are associated with an improvement in the approved Capital Improvement Program, shall be allocated according to the same formula as is applicable for allocating capital improvement costs as identified in Section 10, Subdivision 7. The Members affected by the improvement shall decide on the level of maintenance to be applied to the improvement. If the Members cannot agree, the Board shall make the determination.

**Subdivision 4. Tax Levy.** If authorized by law, the WMO may levy a tax. The proceeds of any tax levied under this subdivision shall be expended only for the purposes authorized by law. The WMO may accumulate the proceeds of levies as an alternative to issuing bonds to finance improvements.

**Subdivision 5. General Fund.** Each Member agrees to contribute each year to a general fund to be used for general administration purposes including, but not limited to: improvement projects, salaries, rent, supplies, development of an overall plan, insurance, bonds, and to purchase and maintain devices to measure hydrological and water quality data. The funds may also be used for any other purpose authorized by this Agreement. The annual contribution by each Member shall be based fifty percent (50%) on taxable market value (for the preceding year) and fifty percent (50%) on area in accordance with the following formula:



Annual Watershed Levy = L

Taxable Market Value of a  
Member's Property in the Watershed = MV

Taxable Market Value of All Property in the Watershed = TV

Acres of Property a Member Has in the Watershed = A

Total Acres in Watershed = TA

Member Required Contribution = C

$$\frac{1}{2} L \times \frac{MV}{TV} + \frac{1}{2} L \times \frac{A}{TA} = C$$

**Subdivision 6. Capital Improvement.**

A. All capital improvements ordered by the Board must be included in the WMO's adopted capital improvement program. An improvement fund shall be established for each improvement ordered by the WMO. If ordered by the Board, each Member agrees to contribute to the funds its proportionate share of the engineering, legal, and administrative costs as determined by the amount to be assessed against each Member as a cost of the improvement. The Board shall submit in writing a statement to each Member, setting forth in detail the expenses incurred by the WMO for each improvement.

Each Member further agrees to pay its proportionate share of the cost of the improvement in accordance with the determination of the Board, under Section 10, Subdivision 7. The Board or the Member awarding the contract shall submit in writing copies of the engineer's certificate authorizing payment during construction and the Member being billed agrees to pay its share of the costs within thirty (30) days after receipt of the statement. The Board may also require payment from Members before awarding a contract based upon an engineer's estimate of cost. Billings will then be adjusted when actual costs are known. The Board or the Member awarding the contract shall advise other contributing Members of the tentative time schedule of the work and the estimated times when the contributions shall be necessary.

B. Notwithstanding the provisions of paragraph (A) of this Subdivision, the WMO may also fund all or any part of the cost of a capital improvement contained in the capital improvement program of the plan in accordance with Minn. Stat. § 103B.251. The WMO and Dakota County and/or Ramsey County may establish a maintenance fund to be used for normal and routine maintenance of an improvement constructed in whole or in part with money provided by Dakota and/or Ramsey County pursuant to Minn. Stat. § 103B.251. The levy and collection of an ad valorem tax levy for maintenance shall be by Dakota and/or Ramsey County based upon a tax levy resolution adopted by the WMO and remitted to the

county(ies) on or before October 1 of each year. If it is determined to levy for maintenance, the WMO shall be required to follow the hearing process established by Minn. Stat. §103D.921. Mailed notice shall also be sent to the clerk of each Member at least thirty (30) days prior to the hearing.

C. The WMO may also fund all or any part of the cost of a capital improvement contained in the capital improvement program of the plan in accordance with Minn. Stat. § 103B.241.

**Subdivision 7. Capital Cost Allocation of Improvements in the Board's**

**Watershed Management Plan.** All capital improvement costs of improvements designated in the WMO's adopted Watershed Management Plan for construction by the WMO pursuant to Section 10, Subdivision 6A of this Agreement shall be apportioned by the following methods or a combination of these methods:

A. For improvements related to water quality:

1. For water quality monitoring, water quality trend analyses, water quality modeling, and water quality studies, the cost sharing will be proportional to the tributary watershed area.

2. For water quality projects and maintenance, the cost sharing will be based on Allowable Flow, tributary area, and/or relative phosphorus loading.

3. The cost sharing for WMO operation of a future Watershed Outlet Monitoring Program station, or other program that monitors the quality of the stormwater runoff that discharges into the Mississippi River from the WMO, will be proportional to the tributary watershed area.

4. Or other cost sharing method approved by the Board.

5. Pursuant to Minn. Stat. § 103B.251.

B. For improvements related to water quantity:

1. A Member shall be responsible for the costs of construction of that portion of a drainage system that is located within its borders and that is necessary to accommodate its Allowable Flow and the Allowable Flow of all other tributary Members.

2. A Member shall also be responsible for its share of construction costs of a drainage system, whether or not that system is located within its borders, that is necessary to convey Excessive Flows originating within the Member's borders.

3. Increased costs of construction incurred for acquisition of lands, easements and rights of way within natural watercourses shall be the obligation of the Member in which the land lies and shall not be apportioned to other Members to the extent that such costs exceed costs which would have been incurred if there had been no improvement on such lands, easements, or rights of way.

4. Costs of construction shall include all costs associated with a WMO approved improvement (whether trunk sewer or natural conveyance) and whether or not actually constructed, including, but not limited to, costs for design, administration, construction supervision, legal fees, acquisition of lands and improvements and actual construction and maintenance costs.

5. The WMO shall consider any grant money received or to be received by a Member for sanitary sewer/storm sewer separation or for the construction, reconstruction or replacement of storm sewer facilities before making cost allocations among Members and may consider the application of any grant proceeds toward the cost of the improvement before allocating costs between or among the Members involved, provided that such allocation would not violate the terms and conditions of the grant.

6. The attached Exhibit B is incorporated by reference and serves as a compilation of general examples of cost allocation under this Agreement for the hypothetical circumstances stated in the examples.

**Subdivision 8. Capital Cost Allocation of Improvements Delineated in Local**

**Watershed Management Plans.** All capital improvement costs incurred by the WMO for improvements delineated in local watershed management plans that benefit only that Member, which the WMO undertakes because the Member fails to do so, shall be apportioned entirely to that Member.

**SECTION 11. SPECIAL ASSESSMENTS.** The WMO shall not have the power to levy special assessments. All such assessments shall be levied by the Member within which the land is located.

**SECTION 12. DURATION.**

**Subdivision 1.** Each Member agrees to be bound by the terms of this Agreement until January 1, 2012. It may be continued thereafter upon the agreement of all the parties.

**Subdivision 2.** This Agreement may be terminated prior to January 1, 2012, by the written agreement of a majority of the Members.

**Subdivision 3.** In addition to the manner provided in Subdivision 2 for termination, any Member may petition the Board to dissolve the WMO. Upon thirty (30) days' notice in writing to the clerk of each Member, the Board shall hold a hearing and upon a favorable majority vote of all eligible votes of the Members, the Board may by resolution recommend that the WMO be dissolved. The resolution shall be submitted to each Member and if ratified by a majority of the governing bodies of all Members within sixty (60) days, the Board shall then give ninety (90) days written notice of its intent to dissolve the WMO to Dakota County, Ramsey County and the Board of Water and Soil Resources. After the expiration of this 90-day notice period, the Board shall dissolve the WMO, allowing a reasonable time to complete work in progress and to dispose of personal property owned by the WMO.

**SECTION 13. DISSOLUTION.** Upon dissolution of the WMO or termination of this Agreement, all property of the WMO shall be sold and the proceeds thereof, together with monies on hand, shall be distributed to the Members. Such distribution of WMO assets shall be made in proportion to the total contribution to the WMO required by the last annual Budget.

**SECTION 14. EFFECTIVE DATE.** This Agreement shall be in full force and effect when all seven (7) Members file a certified copy of a resolution approving this Agreement and have executed this Agreement and filed the executed Agreement with the Board. All Members need not sign the same copy.

**IN WITNESS WHEREOF**, the undersigned governmental units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minn. Stat. § 471.59.

Approved by the City Council  
November 26, 2001.

**CITY OF INVER GROVE HEIGHTS**

BY: [Signature]

Attest: [Signature]

Approved by the City Council  
April 28, 2003.

**CITY OF LILYDALE**

BY: [Signature]

Attest: [Signature]

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF MENDOTA HEIGHTS**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF ST. PAUL**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF SOUTH ST. PAUL**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

**IN WITNESS WHEREOF**, the undersigned governmental units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minn. Stat. § 471.59.

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF INVER GROVE HEIGHTS**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF LILYDALE**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
*November 20*, 20*01*.

**CITY OF MENDOTA HEIGHTS**

BY: *Charles E. Masterson III*

Attest: *Rinda K. Shipton*

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF ST. PAUL**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF SOUTH ST. PAUL**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

**IN WITNESS WHEREOF**, the undersigned governmental units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minn. Stat. § 471.59.

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF INVER GROVE HEIGHTS**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF LILYDALE**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF MENDOTA HEIGHTS**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
JANUARY 16, 2002.  
COUNCIL FILE #02-52

**CITY OF ST. PAUL**

BY:  \_\_\_\_\_

Randy Kelly, Mayor

Approved as to Form:

BY: Alisa A. Keith  
Assistant City Attorney

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF SOUTH ST. PAUL**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

**IN WITNESS WHEREOF**, the undersigned governmental units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minn. Stat. § 471.59.

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF INVER GROVE HEIGHTS**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF LILYDALE**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF MENDOTA HEIGHTS**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF ST. PAUL**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

Approved by the City Council  
November 5, 2001.

**CITY OF SOUTH ST. PAUL**

BY: Kathleen A. Gaylord

Attest: Christy M. Wilson



Approved by the City Council  
1/21/9, 2001.

**CITY OF SUNFISH LAKE**

BY: [Signature]

Attest: [Signature] Clerk

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF WEST ST. PAUL**

BY: \_\_\_\_\_  
Its Mayor

BY: \_\_\_\_\_  
Its City Manager

Approved by the City Council  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF SUNFISH LAKE**

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

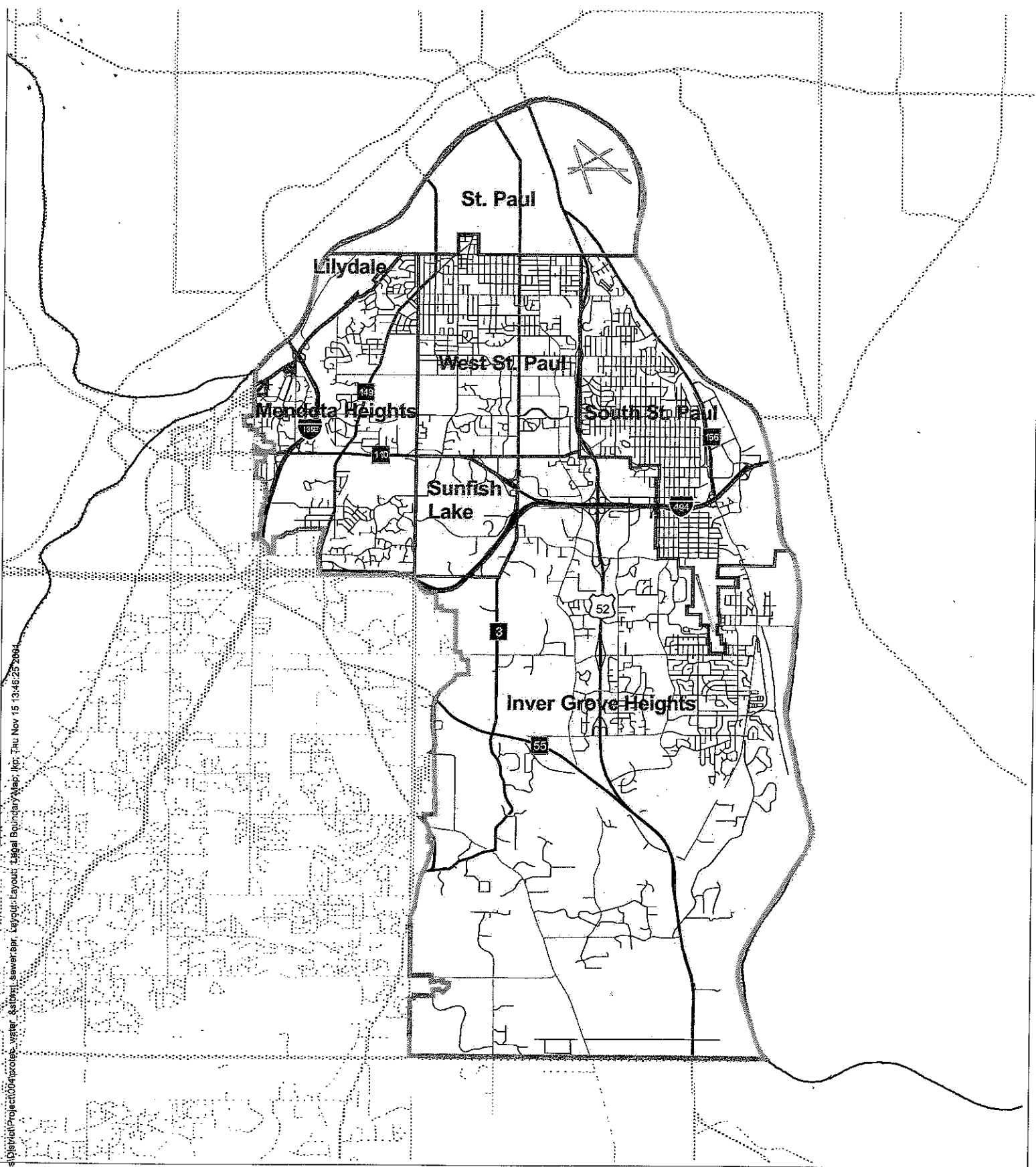
Approved by the City Council  
Nov. 26, 2001.

**CITY OF WEST ST. PAUL**

BY: *David [Signature]*  
Its Mayor

BY: *Robert [Signature]*  
Its City Manager

Barr: Arcview 3.1, P:\IAF, h:\Client\LowerMiss\Digital\Project\04\mapdoc\_water\_and\_spmn\_sewer.pri, Layout: Layout: Legal BoundaryMap.apr, Thu Nov 15 13:46:25 2006

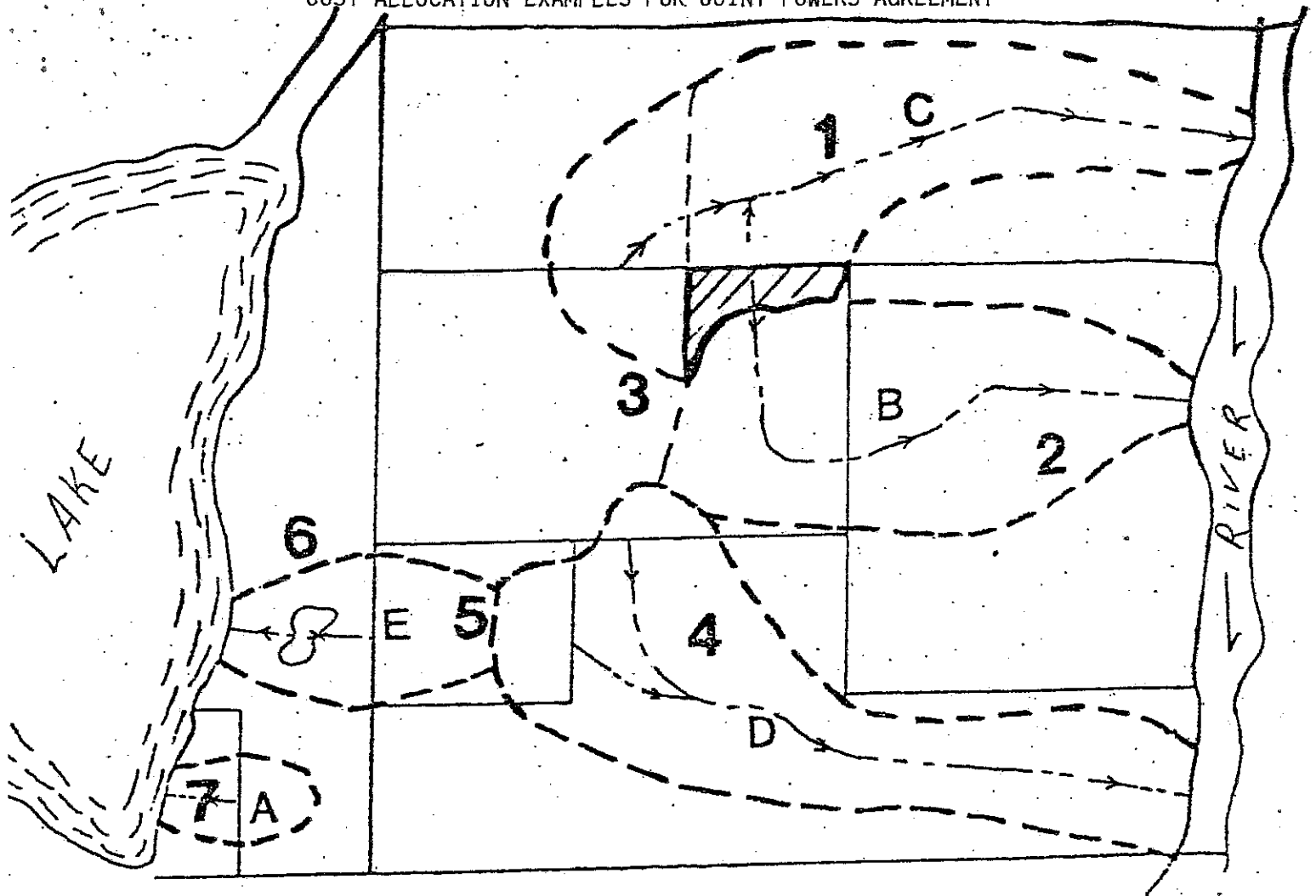


Legal Boundary Map of the  
Lower Mississippi River  
Watershed Management Organization


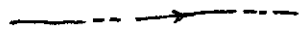
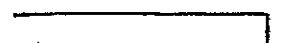


Exhibit A

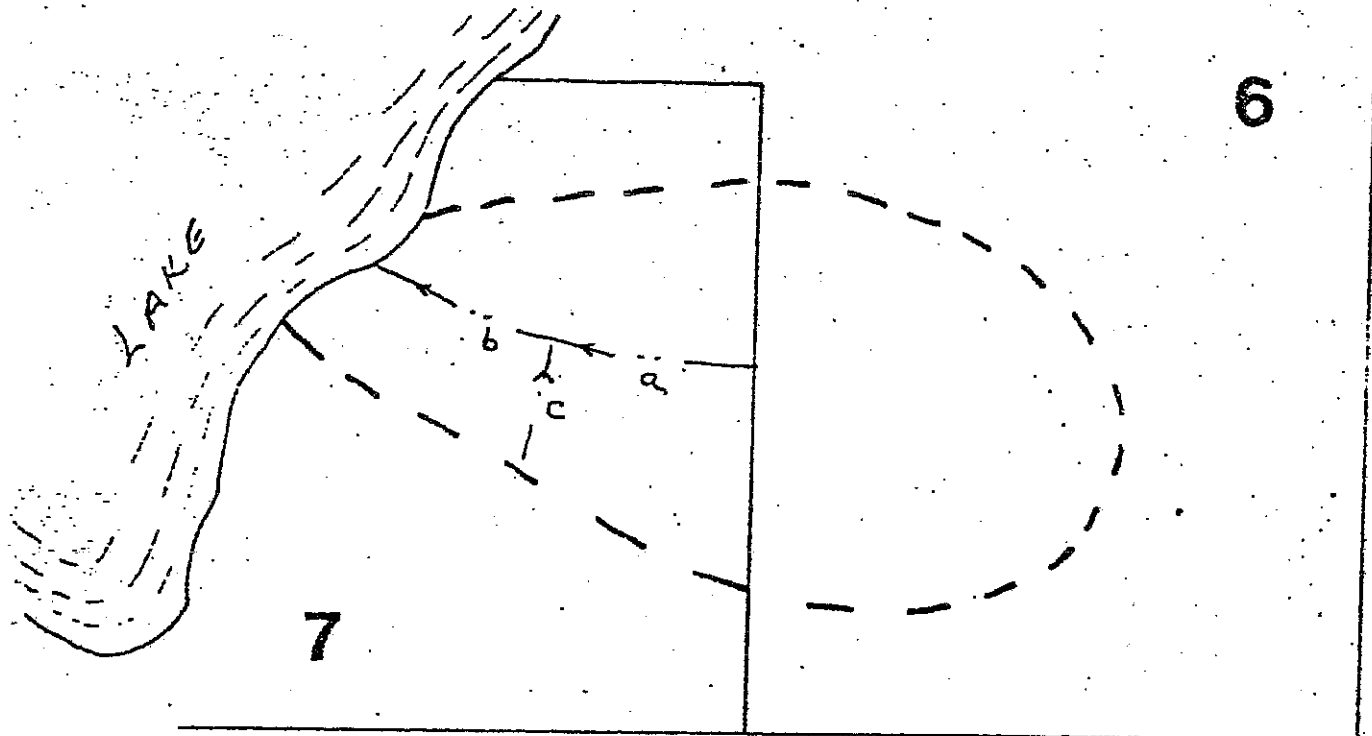


COST ALLOCATION EXAMPLES FOR JOINT POWERS AGREEMENT



<u>EXAMPLE</u>	<u>DESCRIPTION</u>
A.	Two Cities
B.	Two Cities With Diversion In
C.	Two Cities With Diversion Out
D.	Three Cities
E.	Added Ponding

<u>LEGEND</u>	
	Watershed Boundary
	Drainage Facility
	City Boundary
	Detention Pond
	Diverted Area



EXAMPLE "A" - TWO CITIES

Project: Construct project (Segments "a" and "b") in City #7 to provide drainage for Cities #6 and #7 under fully developed conditions.

Cost Allocation:

City #6: Cost share =  $\frac{Q_{E6}}{Q_T}$  x Total project cost for "a".

City #7: Cost share = Total project cost -  $\left( \frac{Q_{E6}}{Q_T} \times \text{Total project cost} \right)$

Where:  $Q_{E6} = Q_{T6} - Q_{A6}$ ;

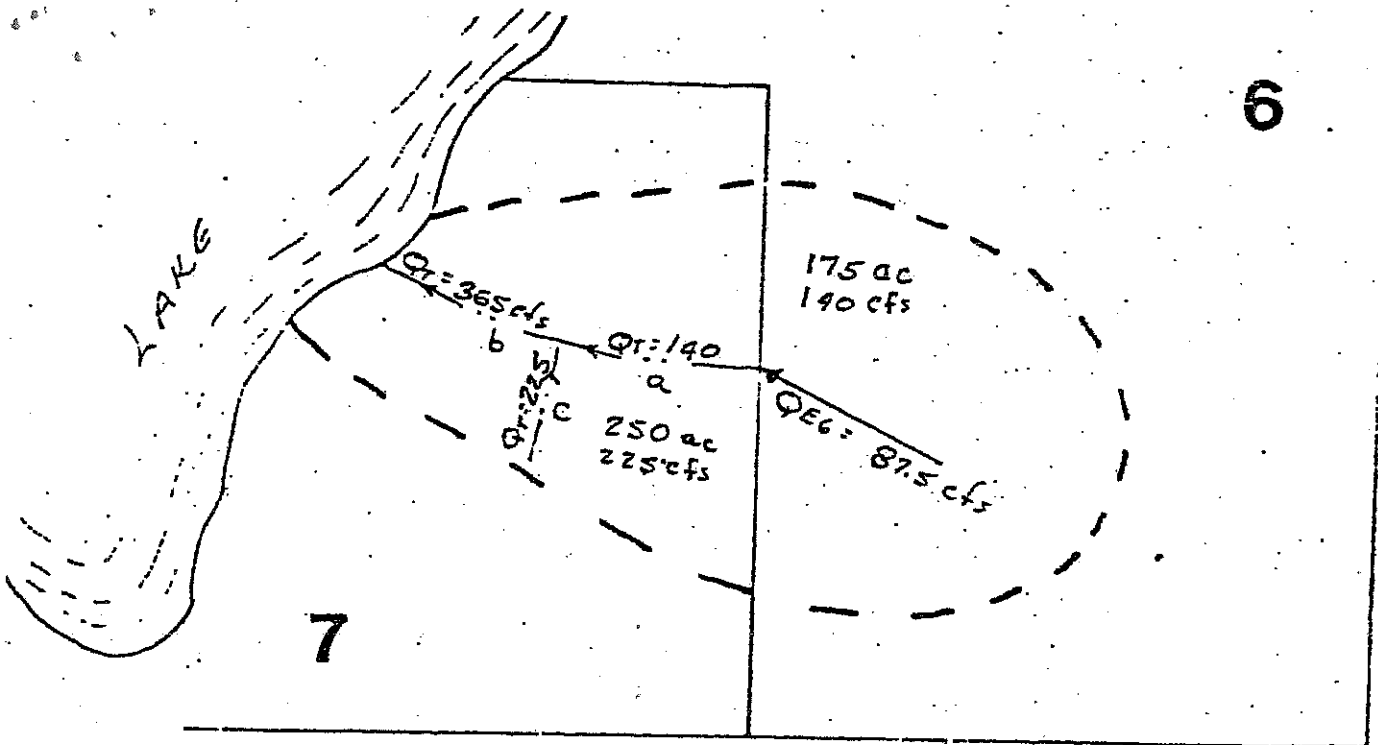
$Q_{E6}$  is the design flow rate from City #6 which is in excess of the allowable flow rate from City #6;

$Q_{A6}$  is the allowable flow rate from City #6;

$Q_{T6}$  is the total design flow rate from City #6;

$Q_T$  is the total flow rate for which the project is designed in each Segment.

City #6: Cost share for Segment "c" = Zero dollar (no tributary flow).



EXAMPLE "A" - TWO CITIES

Sample Calculations

Assume:

City #6 - Area of Watershed within City #6 = 175 acres  
 Full development runoff ( $Q_{T6}$ ) = CIA =  $0.40 \times 2.0"/h \times 175 = 140$  cfs  
 Predevelopment runoff ( $Q_{A6}$ ) = CIA =  $0.15 \times 2.0"/h \times 175 = 52.5$  cfs

Then:

Excess runoff ( $Q_{E6}$ ) (from formulae:  $Q_E = Q_T - Q_A$ ) = 87.5 cfs

1. City #6 cost share for Segment "a" =  $\frac{87.5}{140} \times$  project cost for "a" = .63 x Project cost for "a".

(From formulae: share =  $\frac{Q_E}{Q_T} \times$  Project cost)

Note: Segment "a" ends at first point of entry into the system from City #7.

Assume:

City #7 - Area of Watershed within City #7 = 250 acres and all flows from City #7 enter system by way of Segment "c".

Full development runoff ( $Q_{T7}$ ) = CIA =  $.50 \times 1.8 \times 250 = 225$  cfs

Design flow for Segment "b" =  $Q_{T(SEG. "a")} + Q_{T7} = 140 + 225 = 365$  cfs

2. City #6 has no cost share obligation in Segment "c" when there is no tributary flow from City #6.

(continued)

JOINT POWERS AGREEMENT

Then:

$$3. \text{ City \#6 cost share for Segment "b"} = \frac{87.5}{365} \times \text{Project cost for "b"} = 0.24 \text{ Project cost of "b"}$$

$$\text{(From formulae: Share} = \frac{Q_{E6}}{Q_T} \times \text{Project cost)}$$

Note:

City #6 can reduce the excess flow ( $Q_{E6}$ ) by detention ponding even to the amount that the rate of flow from City #6 ( $Q_{T6}$ ) is no greater than the allowable flow rate ( $Q_{A6}$ ). Any reduction in the total rate from City #6 would be applied to the excess rate and thereby reduce the obligation of City #6 to share in the cost of constructing any conveyance system in City #7.

SUMMARY OF COSTS

Segment "a":

$$\text{City \#6: Cost share} = \frac{87.5}{140} \times \text{Project cost for "a"}$$

$$\text{City \#7: Cost share} = \frac{52.5}{140} \times \text{Project cost for "a"}$$

Segment "b":

$$\text{City \#6: Cost share} = \frac{87.5}{365} \times \text{Project cost for "b"}$$

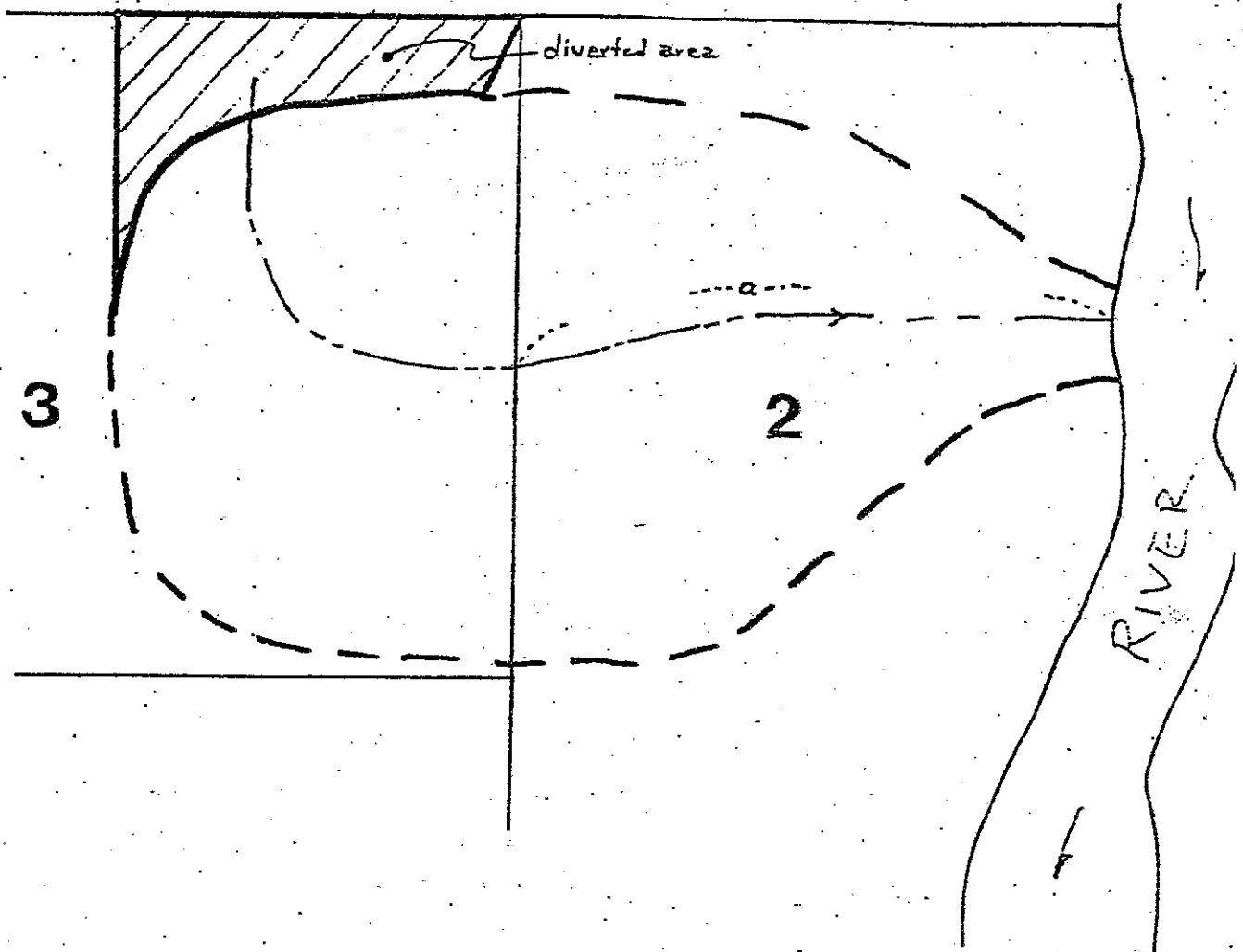
$$\text{City \#7: Cost share} = \frac{277.5}{365} \times \text{Project cost for "b"}$$

Segment "c":

$$\text{City \#6: Cost share} = \text{Zero dollar (no tributary flow)}$$

$$\text{City \#7: Cost share} = \text{All of Project cost for "c"}$$

JOINT POWERS AGREEMENT



EXAMPLE "B" - TWO CITIES WITH DIVERSION IN

Project: Construct Trunk facility "a" in City #2 only for Cities #2 and #3 under fully developed conditions.

Cost Allocation:

City #3: Cost share =  $\frac{Q_{E3}}{Q_T}$  x Total project cost.

Where:  $Q_{E3} = Q_{T3} - Q_{A3}$

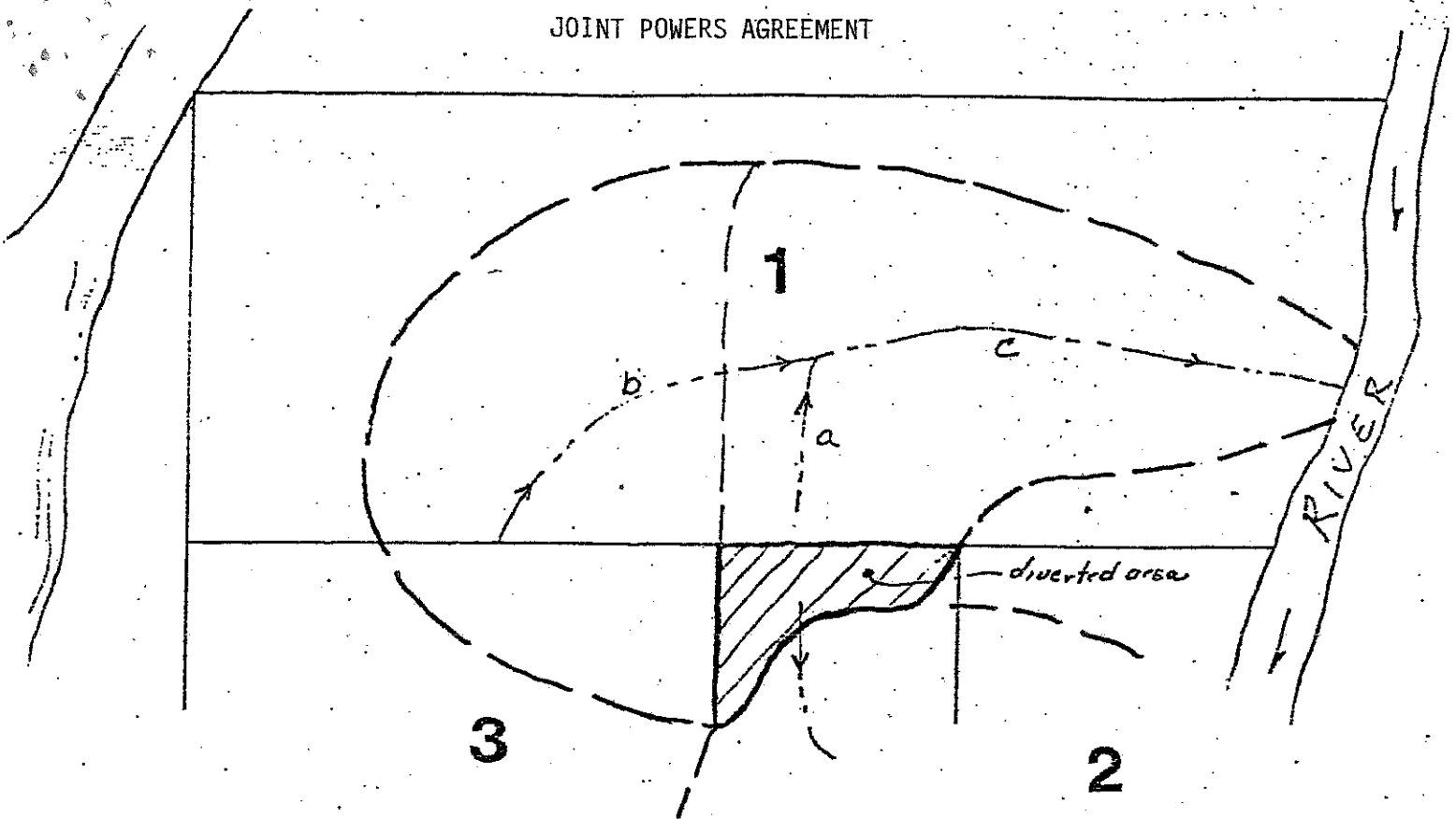
And  $Q_{E3}$  is the design flow from City #3 as described in Example "A" plus all flows coming from the area diverted. All facilities within City #3 are constructed by City #3. Detention in City #3 can reduce  $Q_{E3}$ ;

$Q_T$  and  $Q_A$  are as defined in Example "A".

Note: This case applies only where waters are diverted from one City to another City or from one major drainage district to another.



JOINT POWERS AGREEMENT



EXAMPLE "C" - TWO CITIES WITH DIVERSION OUT

Project: Construct Trunk Segments "a", "b", "c" in City #1 under fully developed conditions.

Cost Allocation:

City #3: Cost share for Segment "a" = Zero dollars  
(all flows have been diverted away)

Cost share for Segment "b" =  $\frac{Q_{E3}}{Q_T}$  x Total project cost for "b".

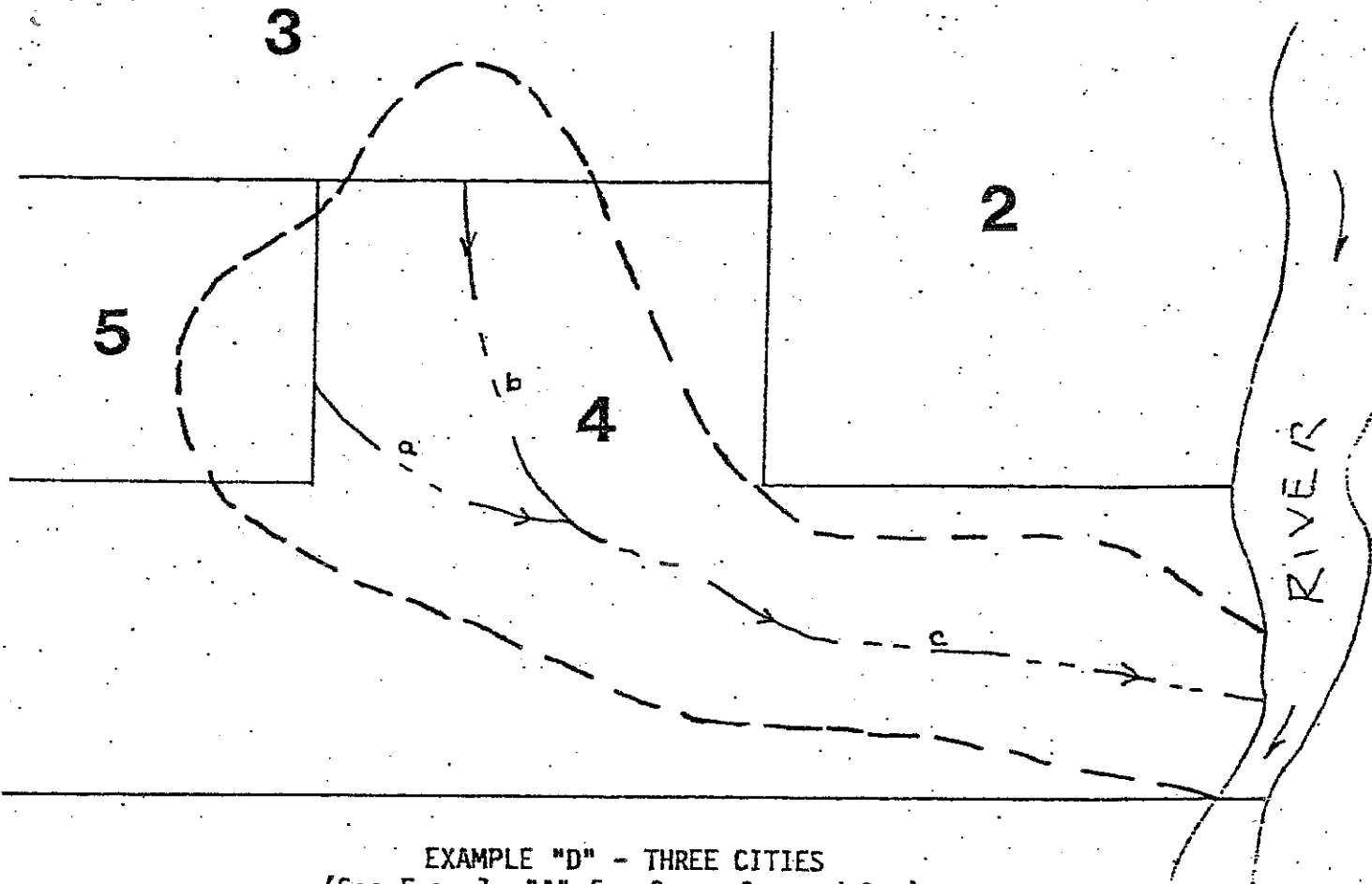
Where:  $Q_{E3}$  is the excess flow from City #3 that is tributary to Segment "b" only.

City #3: Cost share for Segment "c" =  $\frac{Q_{E3}}{Q_T}$  x Total project cost for "c".

Where:  $Q_{E3}$  is the excess flow from City #3 that is tributary to Segment "c" calculated as  $Q_{E3}$  tributary to "b" minus  $Q_{A3}$  that would have been tributary to "a" had there been no diversion out of the drainage district.

$Q_T$  and  $Q_A$  are as defined in Example "A".

Note: This case applies only where waters are diverted from one City to another City, or from one major drainage district to another.



EXAMPLE "D" - THREE CITIES  
 (See Example "A" for  $Q_T$ ,  $Q_A$  and  $Q_E$  )

Project: Construct Project (Segments "a", "b" and "c") in City #4 to provide drainage for Cities #3, #4, and #5 under fully developed conditions.

Cost Allocations:

City #3: Cost share Segment "b" =  $\frac{Q_{E3}}{Q_T}$  x Project cost for "b".

Cost share Segment "a" = Zero dollars (no tributary flow).

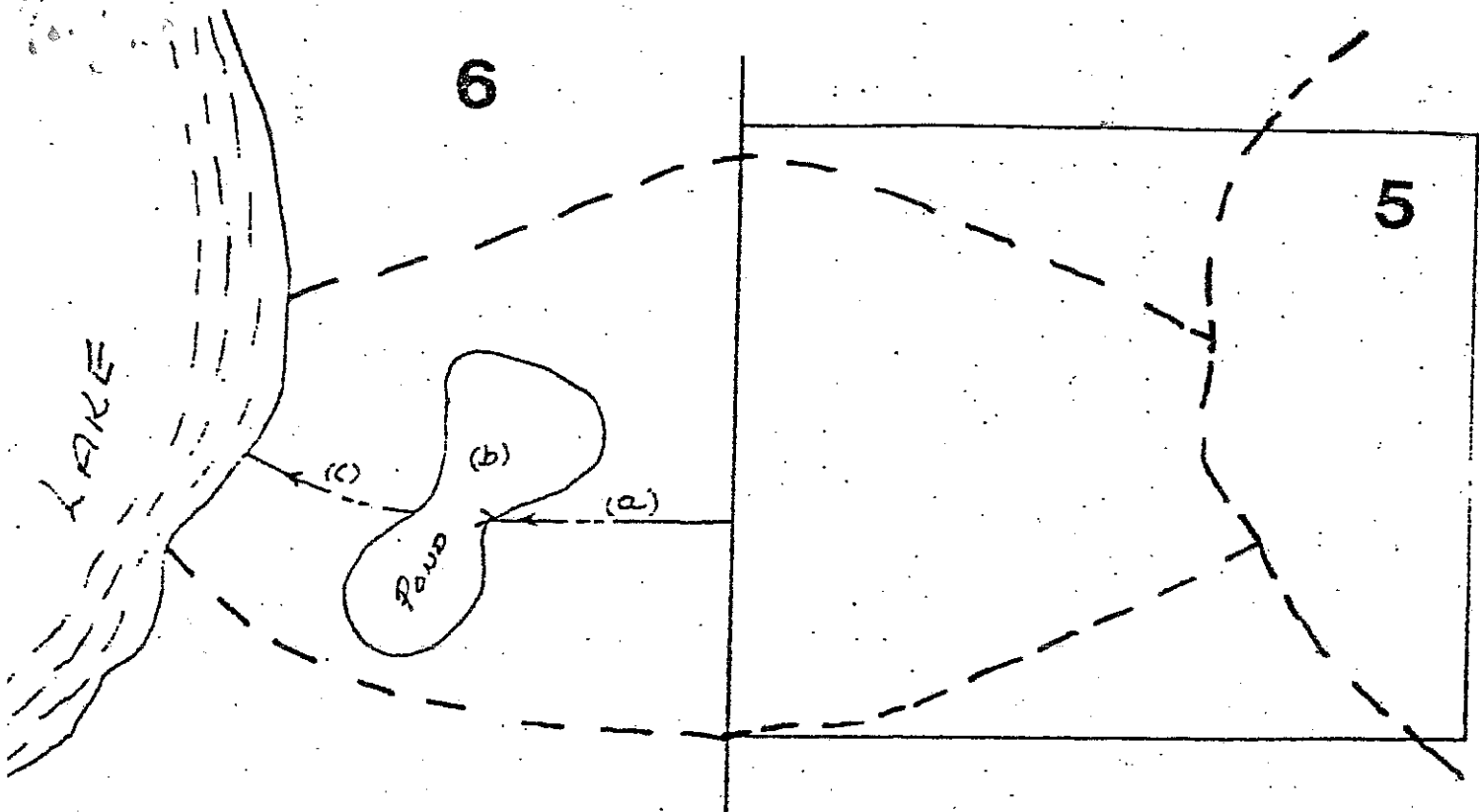
Cost share Segment "c" =  $\frac{Q_{E3}}{Q_T}$  x Project cost for "c".

City #5 Cost share Segment "a" =  $\frac{Q_{E5}}{Q_T}$  x Project cost for "a".

Cost share Segment "b" = Zero Dollars (no tributary flow).

Cost share Segment "c" =  $\frac{Q_{E5}}{Q_T}$  x Project cost for "c".

Where:  $Q_T$  is the total flow rate for which each respective Segment is designed.



EXAMPLE "E" - ADDED PONDING  
 (See Example "A" for definition of  $Q_T$ ,  $Q_A$  and  $Q_E$ )

Project: Construct Trunk "a", Detention Pond "b" and Outlet "c" for cities #5 and #6 under fully developed conditions.

Cost Allocation:

City #5 (Trunk "a"): Cost share =  $\frac{Q_{E5}}{Q_T}$  x Project cost of Trunk "a".

Where:  $Q$  is the total flow rate in Trunk "a".

City #5 (Pond "b"): Cost share =  $\frac{V_{E5}}{V_T}$  x Project cost of Pond "b".

Where:  $V_{E5}$  is the design Volume of runoff from City #5 which is in excess of the allowable Volume from City #5;

$V_T$  is the total Volume used in the design of the detention pond.

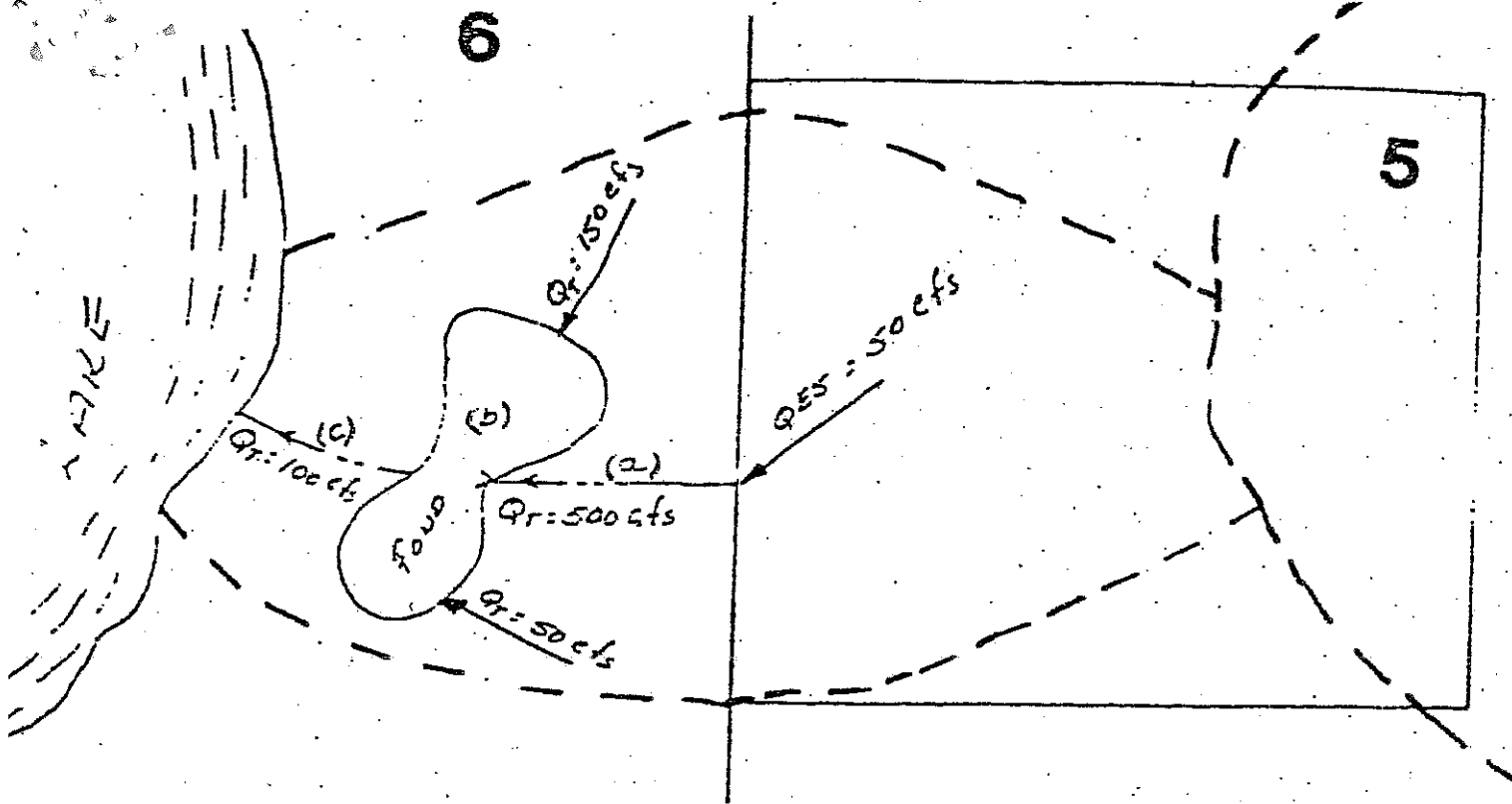
City #5 (Outlet "c"): Cost share =  $\frac{Q_{E5}}{Q_T}$  x Project cost of Outlet "c".

Where:  $Q_{E5}$  is reduced from Trunk "a" Inlet  $Q_{E5}$  by the ratio of  $\frac{\text{Outlet } Q_T}{\text{Inlet } Q_T}$ ;

Inlet  $Q_T$  is the summation of all flows into the pond;

Outlet  $Q_T$  is the total flow rate out of the pond under design conditions.

Note: See Page 9 for sample calculations



EXAMPLE "E" - ADDED PONDING

Sample calculation for City #5 cost share for Outlet "c":

Assume:

- $Q_{E5} = 50 \text{ cfs}$
- $Q_T \text{ Pond inflow in Segment "a"} = 500 \text{ cfs}$
- $Q_T \text{ Pond inflow from other areas} = 200 \text{ cfs}$
- $\Sigma Q_T \text{ Pond inflow} = 700 \text{ cfs}$
- $Q_T \text{ Pond Outlet "c"} = 100 \text{ cfs}$

And:

$$Q_{E5} (\text{OUTLET}) = Q_{E5} (\text{INLET}) \times \frac{Q_T (\text{OUTLET})}{\Sigma Q_T (\text{INLET})}$$

$$\text{City \#5 cost share} = \frac{Q_{E5} (\text{OUTLET})}{Q_T (\text{OUTLET})} \times \text{Project cost of Outlet "c"}$$

Then:

$$Q_{E5} (\text{for Segment "c"}) = \frac{100}{700} \times 50 = 7.14 \text{ cfs}$$

$$\text{City \#5 cost share} = \frac{7.14}{100} \times \text{Project cost of Outlet "c"}$$