

PDCBL460



LIMITED SCOPE GRANT PROJECT AGREEMENT

Between the United States of America, acting through
the Agency for International Development (AID)

AND

THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

(Grantee)

1. Project Title Mahaweli Basin Development III		2. AID Project Number 0111	
The above-named parties hereby mutually agree to carry out the Project described in this Agreement in accordance with (1) the terms of this Agreement, including any annexes attached hereto, and (2) any general agreement between the two governments regarding economic or technical cooperation.			
3. Amount of AID Grant \$ 15,000,000	4. Grantee Contribution to the Project \$ 35,000,000	5. Project Assistance Completion Date December 25, 1991	
6. This Agreement consists of this title page and Annex A -- Project Description (including Special Provisions) Annex B -- Standard Provisions Annex C -- Amplified Project Description			
7. For the Grantee Typed Name R. Paskaralingam		8. For the Agency for International Development Typed Name Richard M. Brown	
Signature 		Signature 	
Title Secretary of Treasury		Title Director, USAID/Sri Lanka	
Date		Date 9/27/91	

GRANT AGREEMENT

Annex A
PROJECT DESCRIPTION

1. Project Title	2. AID Project Number
Mahaweli Basin Development III	383-0117

3. The Project consists of a payment, on behalf of the cooperating country, of \$15 million of the \$50 million settlement of an arbitration award made by the International Court of Arbitration of the International Chamber of Commerce in favour of Zachry Dillingham. The settlement resolves disputes which arose out of AID-financed irrigation construction in System B of the Mahaweli Basin.

The Project will consist of a single payment by AID of \$ 15 million to ZD.

4. Special Provisions

(a) Conditions Precedent to Disbursement. Prior to the disbursement of the Grant, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.

(1) a statement of the name of the person holding or acting in the office of the Grantee specified in subsection (d) below, and of any additional representatives, together with a specimen signature of each person specified in such statement;

(2) the invoice submitted by ZD to the GSL on August 1, 1991, together with a certification of ZD that the request for payment is consistent with the terms of the ZD/GSL contract; and is for goods and services supplied under that contract for which payment has not previously been requested.

(3) evidence that the Grantee has contracted to borrow not less than Thirty Million U.S. Dollars (\$30,000,000), under loans made by, or guaranteed by, the Overseas Private Investment Corporation, and has arranged for an immediate disbursement of the proceeds of such loans (the "OPIC Disbursement") directly to Zachry-Dillingham.

(4) evidence that the Grantee has made satisfactory progress in providing the remaining Five Million U.S. Dollars (\$5,000,000) of its Thirty Five Million U.S. Dollar (\$35,000,000) contribution to the Project by November 1, 1991.

(b) Notification. When A.I.D. has determined that the conditions precedent specified in subsection (a) have been satisfied, it will promptly notify the Grantee.

(c) Disbursement. Upon satisfaction of the conditions precedent, the Grantee hereby requests that A.I.D. disburse the grant funds directly to ZD by wire transfer to the following location:

Citibank, N.A.
399 Park Avenue
New York,
ABA No. 021000089.
For Credit to Zachry/Dillingham, a
Joint Venture
Account No. 38395693

(d) Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of Deputy Secretary of Treasury, and A.I.D. will be represented by the individual holding or acting in the Office of Director, USAID/Sri Lanka, each of whom, by written notice, may designate additional representatives for all purposes. The names of the representatives of the Grantee, with specimen signatures, shall be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

GRANT AGREEMENT

Annex B
STANDARD PROVISIONS

A. Reference to 'this Agreement' means the original Project Agreement as modified by any revisions which have entered into effect. Reference to 'cooperating country' means the country or territory of the Grantee.

B. (1) AID will make available the amount specified in Block 3 of this Agreement, as necessary for the Project, as may be further described in Annex A.

(2) The Grantee will make available the amount specified in Block 4 of this Agreement, as necessary for the Project, as may further be described in Annex A. The Grantee will also make, or arrange to have made, additional contributions of property, services, facilities and funds required for carrying out the Project as specified in Annex A.

C. AID and the Grantee may obtain the assistance of other public and private agencies in carrying out their respective obligations under this Agreement. The two parties may agree to accept contributions of property, services, facilities and funds for purposes of this Agreement from other public and private agencies, and may agree upon the participation of any such third party in carrying out activities under this Agreement.

D. Except as otherwise specified herein or subsequently agreed by the parties, all contributions of the parties pursuant to this Agreement shall be made on or before the Project Assistance Completion Date, or amended date. A contribution of goods or services shall be considered to have been made when the services have been performed and the goods furnished as contemplated in this Agreement. Disbursement of funds may take place after final contributions have been made, but AID shall not be required to disburse funds hereunder after the expiration of nine months following the estimated Project Assistance Completion Date (Block 5 of this Agreement) or any amended Project Assistance Completion Date specified.

E. The procurement of commodities and services to be financed in whole or in part by AID may (where so required by AID procedures) be undertaken only pursuant to Project Implementation Orders (PIOs) issued by AID.

F. Unless otherwise specified in the applicable PIO or Project Implementation Letter (PIL), the procurement of commodities imported specifically for the Project and financed with the AID contribution referred to in Block 3 of this Agreement shall be subject to the provisions of AID Regulations 1.

G. Unless otherwise agreed by the parties or otherwise specified in the applicable PIO, title to all property procured through financing by AID pursuant to Block 3 of this Agreement shall be in the Grantee, or such public or private agency as it may authorize.

H. (1) Any property furnished to either party through financing by the other party pursuant to this Agreement shall, unless otherwise agreed by the party which financed the procurement, be used effectively for the purpose of the Project in accordance with this Agreement, and upon completion of the Project, will be used so as to further the objectives sought in carrying out the Project. Either party shall offer to return to the other, or to reimburse the other for, any property which it obtains through financing by the other party pursuant to this Agreement which is not used in accordance with the preceding sentence.

(2) Any funds provided to either party pursuant to this Agreement which are not used in accordance with this Agreement, shall be refunded to the party providing the funds.

(3) Any interest or other earnings on funds provided by AID to the Grantee under this Agreement will be returned to AID by the Grantee.

I. (1) If AID and any public or private organization furnishing commodities through AID financing for operations hereunder in the cooperating country, is, under the laws, regulations or administrative procedures of the cooperating country, liable for customs, duties and import taxes on commodities imported into the cooperating country for purposes of carrying out this Agreement, the Grantee will pay such duties and taxes unless exemption is otherwise provided by any applicable international agreement.

(2) If any personnel (other than citizens and residents of the cooperating country), whether United States Government employees, or employees of public or private organizations under contract with, or individuals under contract with AID, the Grantee or any agency authorized by the Grantee, who are present in the cooperating country to provide services which AID has agreed to furnish or finance under this Agreement, are under the laws, regulations or administrative procedures of the cooperative country, liable for income and social security taxes with respect to income which they are obligated to pay income or social security taxes to the Government of the United States of America, for property taxes on personal property intended for their own use, or for the payment of any tariff or duty upon personal or household goods brought into the cooperating country for the personal use of them-selves and members of their families (not including such personal or household goods as may be sold by any such personnel in the cooperating country) or if any firm, not normally resident in the cooperating country, is liable for income, receipts, or other taxes on work financed by AID hereunder, the grantee will pay such taxes, tariff, or duty unless exemption is otherwise provided by any applicable international agreement.

- J. If funds provided by AID are introduced into the cooperating country by AID or any public or private agency for purposes of carrying out obligations of AID hereunder, the Grantee will make such arrangements as may be necessary so that such funds shall be convertible into currency of the cooperating country at the highest rate which, at the time the conversion is made, is not unlawful in the cooperating country.
- K. AID shall expend funds and carry on operations pursuant to this Agreement only in accordance with the applicable laws and regulations of the United States Government.
- L. The two parties shall have the right at any time to observe operations carried out under this Agreement. Either party during the term of the Project and for three years after the completion of the Project shall further have the right (1) to examine any property procured through financing by that party under this Agreement, wherever such property is located, and (2) to inspect and audit any records and accounts with respect to funds provided by, or any properties and contract services procured through financing by, that party under this Agreement, wherever such records may be located and maintained. Each party, in arranging for any disposition of any property procured through financing by the other party under this Agreement, shall assure that the rights of examination, inspection and audit described in the preceding sentence are reserved to the party which did the financing.
- M. AID and the Grantee shall each furnish the other with such information as may be needed to determine the nature and scope of operations under this Agreement and to evaluate the effectiveness of such operations.
- N. The present Agreement shall enter into force when signed. Either party may terminate this Agreement by giving the other party thirty (30) days written notice of intention to terminate it. Termination of this Agreement shall terminate any obligations of the two parties to make contributions pursuant to Block 3 and 4 of this Agreement, except for payments which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of the Agreement. It is expressly understood that the obligations under paragraph H relating to the use of property or funds shall remain in force after such termination. In addition, upon such termination AID may, at AID's expense, direct that title to goods financed under the Grant be transferred to AID if the goods are from a source outside the Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of the Grantee's country.
- O. To assist in the implementation of the Project, AID, from time to time, may issue PILs that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon PILs to confirm and record their mutual understanding on aspects of the implementation of this Agreement.
- P. The Grantee agrees, upon request, to execute as assignment to AID of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract with AID financed in whole or in part out of funds granted by AID under this Agreement.

GRANT AGREEMENT

Annex C
AMPLIFIED PROJECT DESCRIPTION

I. The Project

The Mahaweli Basin Development (MBD) III Project will provide funds to the GSL to finance a portion of the costs incurred by Zachry-Dillingham, a U.S. joint venture, to construct main and branch canals under the Mahaweli Basin Development (MBD) II Project. The amount of costs incurred by ZD was established in an arbitration proceeding conducted by the International Court of Arbitration of the International Chamber of Commerce, and was the subject of a Memorandum of Understanding, dated September 8, 1991, among the GSL, ZD, A.I.D. and OPIC, in which the GSL agreed to pay ZD \$50,000,000 of the approximately \$63,000,000 due to ZD under the award.

The MBD III Project will constitute a single payment to the Zachry Dillingham Consortium which will be made in conjunction with other financing made available by the GSL as part of its settlement with ZD. The life of project will be three months from September 25, 1991 until December 25, 1991.

By financing construction costs for a major element of the Accelerated Mahaweli Program the MBD III Project will permit the GSL and USAID to pursue post-construction development which is necessary for the full realization of the benefits of the irrigation and settlement infrastructure.

II. Cost Estimate and Financial Plan

The total cost of the MBD III Project is \$50 million. The AID contribution to the project is \$15 million grant funding. OPIC is providing a guarantee to the GSL for a \$30 million commercial loan. The GSL will also provide the final \$5 million financing from its own budget. The GSL contribution is 70% of total project costs.

MBD III Project Budget
(000's U.S. Dollars)

<u>Description</u>	<u>Amount</u>	<u>Source of Funds</u>
GSL Commercial Loan	\$30,000	OPIC Guarantee
Cash Payment by The GSL	\$ 5,000	GSL Budget
Project Grant to GSL	\$15,000	USAID Sri Lanka
TOTAL	\$50,000	

The AID funding for the MBD III project is available as a result of de-obligations from four other USAID Projects: Mahaweli Basin I (\$507,218) Mahaweli Basin Development II (\$5,871,176), Mahaweli Downstream Support Project (\$4,000,000), and Rehabilitation Assistance Project \$4,621,606). Since the GSL assumed \$30 million in new debt as a result of the settlement, AID agreed that if possible, the AID finance portion of the settlement would be grant rather than loan. Therefore, a conversion of the \$10,312,219 in existing loan funding to grant was required.

Upon receipt of a voucher and payment instructions from the GSL, USAID will make direct payment through telegraphic transfer to Zachry Dillingham's bank account in the United States.

III. Implementation Plan

As described in section II. above, A.I.D.'s contribution to the MBD III Project were negotiated in the Memorandum of Understanding between the GSL, Zachry Dillingham, OPIC and AID on September 8, 1991. The necessary actions required to implement the terms of this agreement are as follows:

<u>Action Required</u>	<u>By Whom</u>	<u>Timing</u>
GSL to obtain Cabinet Approval for Terms of MOU	GSL Ministry of Finance	September 18
AID to de-obligate funds, prepare MBD III, sign Limited Scope Grant Agreement	USAID, AID/W	September 30
GSL to negotiate commercial loan with OPIC guarantee and make \$30 payment to ZD	GSL, Ministry of Finance	September 30
AID to disburse \$15 million payment to ZD	USAID Controller AID/Washington	September 30
GSL to make \$5 million payment to ZD	GSL, Ministry of Finance	November 1
ZD accept above payments as full and final settlement of its contract disputes as per the Section 2 of the MOU.	Zachry-Dillingham	November 1

8

The GSL Ministry of Finance (MOF) has primary responsibility for the implementation of the MBD III Project. The Deputy Secretary of the Treasury is the principal representative for the Government of Sri Lanka. The MOF will be responsible for: 1) directly communicating with ZD to finalize terms of MOU, 2) obtaining Cabinet and Parliamentary approval necessary to execute the terms of the MOU, 3) negotiating a \$30 million loan with OPIC guarantee, 4) approving de-obligations on USAID Projects, 5) paying the final \$5 million installment in November, and (6) providing a voucher and payment instructions to USAID to enable direct payment to Zachry Dillingham.

The USAID Engineering Office will be responsible for implementing AID's actions and monitoring progress of the Project.

As this Project constitutes a single payment for construction costs which have already been completed no long-term monitoring nor evaluation is anticipated. The GSL and USAID, however, continue to monitor the agricultural development of System B, in areas served by the construction financed by MBD III, under other projects.