

**Dave Heineman**  
Governor

# STATE OF NEBRASKA

**DEPARTMENT OF NATURAL RESOURCES**  
Brian P. Dunnigan, P.E. XXXXXXXXXX  
*Acting Director*

April 7, 2008

IN REPLY TO:

Daniel L. Smith, Manager  
Middle Republican NRD  
220 Center Street  
P.O. Box 81  
Curtis, NE 69025-0081

Dear Dan,

RE: LB 1094, Water Contingency Cash Fund Administration

Pursuant to LB 1094, 2008 Legislature Second Session, effective April 2, 2008, this letter is to confirm the timely request by the Board of the Middle Republican NRD for \$2,565,300.00 from the Fund. It also confirms the department's approval of the district's certification of \$2,565,300.00 to meet its obligations for payments on contracts with irrigation districts for waiving rights to surface water use in 2007. The department is currently establishing the fiscal components of the Fund necessary for transferring the requested funds to your district within the fifteen days required by LB 1094. The requested funds will be transferred electronically to the district's account without further announcement.

LB 1094 requires that any of moneys not used by the district for the intended purpose be returned to the department within sixty days after the effective date of the Act. Such moneys will be credited to the Fund, and returned to the Treasury. For fiscal auditing purposes, you are required to submit to the department by June 4, 2008:

- 1) an audit report confirming eligible uses which includes some evidence of payment satisfying the obligations you certified, for the amount you requested, and
- 2) transfer of any moneys not applied to an eligible use back to the department.

Please address these reports and any returned refunds to the attention of Rex Gittins, at the department.

LB 1094 requires repayment to the Fund when revenues collected under the property tax authorized under § 2-3225 (1) (d) and the occupation tax authorized under § 2-3226.05 are available to the district for expenditure, as defined in the Memorandum of Agreement. A copy of the signed Agreement is enclosed for your records. This agreement included a provision for repayment deferral until resolution of the pending lawsuit regarding LB 701 tax authority. In

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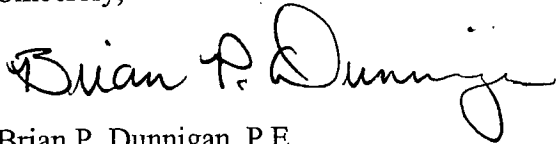
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DNR 007472

Dan Smith, Manager  
April 7, 2008  
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order to facilitate the reimbursement phase of the WCCF and expedite the audit closing out the Fund, it is recommended that the district have an accounting procedure which will readily track the revenues in question beginning from the effective date of LB 701. In any event, all reimbursement must be remitted to the Department by June 30, 2013, pursuant to LB 1094.

Sincerely,

A handwritten signature in cursive script that reads "Brian P. Dunnigan". The signature is written in black ink and is positioned above the typed name.

Brian P. Dunnigan, P.E.  
Acting Director

lg

Attachment

cc: Senator Tom Carlson  
Senator Mark Christensen  
Rex Gittins

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES  
WATER CONTINGENCY CASH FUND

MEMORANDUM OF AGREEMENT 092-08

WITNESSETH:

WHEREAS: The Water Contingency Cash Fund (WCCF) is created by LB 1094, 2008 Second Session, and administered by the Department of Natural Resources (Department);

WHEREAS: The Department and the natural resources districts eligible to receive funds from the WCCF wish to facilitate rapid compensation to surface water rights holders who agreed to forgo the use of water in 2007;

NOW THEREFORE, in consideration of the mutual covenants made in this Agreement and the compensation agreed to in this Agreement and performance agreed to according to the necessary administration of the WCCF, the parties agree as follows:

1. Any natural resources districts receiving funding through this memorandum shall remit to the Nebraska Department of Natural Resources the proceeds of the property tax authorized pursuant to subdivision (1)(d) of section 2-3225, and the proceeds of the occupation tax authorized pursuant the section 2-3226.05, (hereinafter collectively referred to as "the tax proceeds") when such proceeds are available for distribution until the Department has been repaid the entire amount of funding given to the district.
2. The tax proceeds shall be remitted to the Department within fifteen days after receipt of the tax proceeds by the district. However, repayment does not have to begin until resolution of pending litigation regarding the tax proceeds.
3. When the litigation has been resolved, the entire amount of tax proceeds held by each district shall be remitted to the Department within 15 days after resolution of the litigation, unless satisfactory repayment has been made to the Department through other authorized means prior to the pending litigation being resolved.
4. All reimbursement must be remitted to the Department by June 30, 2013.

Department of Natural Resources

Middle Republican NRD

Brian P. Dwyer

04/07/08  
Date

Daniel L. Smith  
Daniel L. Smith, Manager

1 Apr 2008  
Date

**APPROVED**

AS TO FORM & CONTENT  
BY NDNR LEGAL COUNSEL

BT DATE 4-7-08

Minutes of the Middle Republican NRD Executive Committee - April 1, 2008

The committee met using telephonic communication. Smith and Nelsen were at the NRD office.

Board Members involved: Josh Friesen, Chairman; Kevin Fornoff, Vice-Chairman; Dan Nelsen, Treasurer.

Staff Members involved: Smith

Purpose of Meeting: Request for LB 1094 Funds and Certification of Need.

The meeting was called to order by Friesen at 9:10 AM

Article III of the bylaws of the Middle Republican NRD was noted.

In accordance with the provisions of LB 1094, 2008 session, the Middle Republican Natural Resources District hereby acts and requests that the Nebraska Department of Natural Resources expend from the Water Contingency Cash Fund the amount of \$2,565,300 to the natural resources district. The Executive Committee of MRNRD hereby certifies the request for these funds represent the Middle Republican Natural Resources District's 30% share of the \$8,551,000 obligation to compensate water rights holders who have agreed to lease their use of water to the Republican River Basin Coalition. The committee instructs Traci Witthuhn of the Republican River Basin Coalition to provide the Nebraska Department of Natural Resources prior minutes and other supporting actions of the Board and the Coalition identifying this obligation.

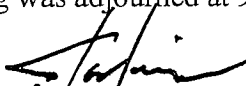
Reimbursement of these funds shall be in accordance with the Memorandum of Agreement 092-08, between the Middle Republican Natural Resources District and the Nebraska Department of Natural Resources and other requirements of LB 1094.

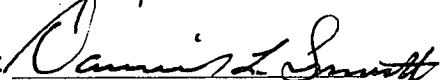
This request is adopted by action this 1<sup>st</sup> day of April, 2008, by the Executive Committee of the Middle Republican Natural Resources District in accordance with bylaws properly adopted by the district.

The Executive Committee further directs the Manager to sign, on behalf of the District, the Memorandum of Agreement, 092-08, with the Nebraska Department of Natural Resources acknowledging the Board's agreement with the Memorandum.

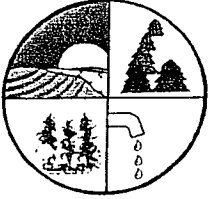
It was moved by Fornoff, second by Nelsen, to affirm the above record of the Executive Committee.                      Ayes: Friesen, Fornoff, Nelson                      Nays: None

The meeting was adjourned at 9:20 AM

Chairman:   
Josh Friesen

Recorder:   
Daniel L. Smith, Manager

Date 1 Apr 2008



COPY

220 Center Ave.  
PO Box 81  
Curtis, NE 69025

Phone: 800-873-5613  
Fax: 308-367-4285  
Email: dsmith@mrrrd.org

## Middle Republican Natural Resources District

April 1, 2008

Brian Dunnigan, P.E., Acting Director  
Nebraska Department of Natural Resources  
301 Centennial Mall South  
Lincoln, NE 68509-4676 *Ron Theis*

Dear Mr. Dunnigan,

The Middle Republican Natural Resources District requests funding from the Water Contingency Cash Fund, as set forth by the Nebraska Legislature in LB 1094.

As a member of the Republican River Basin Coalition, the MRNRD entered into agreements with the Frenchman Valley Irrigation District, Frenchman-Cambridge Irrigation District, and Riverside Irrigation Company in June of 2007, leasing a total of \$8,551,000 in surface water. The NRDs intended to pay these parties in December 2007 using the bonding authority provided by LB 701. This authority has been put on hold due to a lawsuit, leaving the irrigators unpaid at present time.

The MRNRD requests 30% of the contract total, commensurate with the MRNRD's percentage of the obligation due to the irrigation districts under our agreement with the RRB Coalition. The District's total request is \$2,565,300. Attached are executive committee minutes authorizing this request and the signature of the memorandum of agreement between the MRNRD and DNR. This request will also be supplemented by documentation provided to the DNR by the Republican River Basin Coalition.

Please feel free to contact me via email at [dsmith@mrrrd.org](mailto:dsmith@mrrrd.org), or by telephone at 308.367.4281, with any questions.

Sincerely,

Daniel L. Smith,  
*Middle Republican NRD Manager*

Attachments: Executive Committee Minutes April 1, 2008  
Memorandum of Agreement 092-08

CC: Rex Gittins, DNR Management Services  
Ron Theis, DNR Legal Counsel  
Senator Tom Carlson  
Senator Mark Christensen