

Ron Theis

From: Ron Theis [rtheis@dnr.ne.gov]
Sent: Thursday, May 10, 2007 12:31 PM
To: 'lee@h2oboy.net'
Cc: 'justin.lavene@ago.ne.gov'; 'ableed@dnr.ne.gov'
Subject: Bostwick agreement
Attachments: memoBostwick.pdf

Lee, the attached pdf is the revised Memo of Agreement with Bostwick, after your discussions with AGO on preferred language. It is for your review. With your approval, please forward to Boswick for signing (two originals) and return to DNR. Whatever information you have regarding time frames of Bostwick's deliberations/polling/etc prior to signing, and any relevant records of them after they occur, will be appreciated. If you or Mike have questions, just ask. Thanks for your input on the negotiation.
Ron

5/10/2007

DNR 006825

MEMORANDUM OF AGREEMENT

THIS AGREEMENT entered into on this ____ day of _____ in the year 2007 by and between; the **STATE OF NEBRASKA, NEBRASKA DEPARTMENT OF NATURAL RESOURCES** hereinafter referred to as the "**STATE**", and **BOSTWICK IRRIGATION DISTRICT IN NEBRASKA** hereinafter referred to as the "**DISTRICT**."

WITNESSETH:

WHEREAS, the District has the rights to natural flow and storage use rights for an identified Water Supply as hereinafter defined in Paragraph II(A) for the year 2007; and

WHEREAS, the State desires to "purchase" and/or "lease" the use of the District's Water Supply for the calendar year of 2007; and

WHEREAS, the District is willing to "sell" and/or "lease" the use of its identified Water Supply for the year 2007 to the State for the 2007 Irrigation Season.

NOW THEREFORE, in consideration of these facts, the parties agree as follows:

I. DURATION OF AGREEMENT

This agreement is for the period from the execution of the Memorandum of Agreement (hereinafter "Agreement") to the end of the Irrigation Season as hereinafter defined in Paragraph II(B). There will be no extension or renewal of this Agreement unless further agreed to in writing by the parties.

II. DEFINITIONS

For purposes of the Agreement, the following terms are defined as follows:

A. "Water Supply" shall mean 12,500 acre feet of the Water Supply determined by the U.S. Bureau of Reclamation (hereinafter "Bureau") under its water storage permit for Harlan County Lake as calculated and published by the Bureau for March 2007 according to the Harlan County Lake Operation Consensus Plan (hereinafter "Consensus Plan"), and natural flow that may become available for diversion at the Superior-Courtland Diversion Dam during the Irrigation Season.

B. "Irrigation Season" shall mean the date beginning with the commencement of water deliveries for direct irrigation at the Superior-Courtland Diversion Dam and ending on the date of the last water delivery for direct irrigation, which date shall be no later than September 1, 2007.

III. THE DISTRICT AGREES TO PERFORM AS FOLLOWS:

A. The District agrees to sell and/or lease the rights to the use of its Water Supply as herein defined in Paragraph II(A) for the period from the date of the execution of this Agreement to the end of the Irrigation Season as herein defined in Paragraph II(B).

B. The District agrees to consult and collaborate with the State, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman from the Nebraska Association of Resources Districts et al, dated January 9, 2006, and the letter from the Lower Republican Natural Resources District to Governor Dave Heineman dated January 30, 2006.

C. By execution of this Agreement, the District represents and affirms that, in accordance with all relevant state statutes and District procedures, the District has complied with all requirements necessary to allow it to enter into this agreement and perform all actions herein required.

D. The District agrees to defend and uphold the provisions of this Agreement to ensure that purchase and/or lease of the use of the District's 2007 Water Supply to the State.

IV. THE STATE AGREES TO PERFORM AS FOLLOWS:

A. The State of Nebraska will pay the sum of five million five hundred eighty-three thousand five hundred dollars (\$5,583,500.00) to the District, as payment in full to purchase and/or lease the use of the District's Water Supply, within ninety (90) days of the execution of this Agreement. This payment compensates the District for the sale and/or lease of its Water Supply as defined above for the calendar year 2007 to the State for the term of this Agreement. The State will also make a one time payment of sixty-four thousand five hundred dollars (\$64,500.00) to the District to assist the District in its payments of the annual operation and maintenance charges assessed by the U.S. Army Corp of Engineers. The District agrees to accept its computed share of those annual charges for such costs arising from the release of the Districts' share in accordance with a separate agreement between the District and Kansas Bostwick Irrigation District (hereinafter "Kansas Bostwick").

B. The State agrees to consult and collaborate with the District, the Natural Resources Districts and other basin water resource interests during the modification of the Integrated Management Plans and associated Rules and Regulations now in effect with the several Natural Resources Districts for the Republican River Basin. The basis of these efforts shall be consistent with the letter to Governor Dave Heineman dated January 30, 2006.

C. The State agrees to do everything in its power, independently and in conjunction with, the District and its water users to assure the normal continuation of farm commodity assistance, federal crop insurance or other agricultural assistant programs that have been available to District water users in the past; and to take such actions including, but not limited to, amending the terms of this Agreement or providing interpretations hereof, as may be necessary because of this Agreement, to assure all such normal continuation of all such programs. This provision shall not be interpreted as a guaranty of any water user's ability to participate in any farm commodity assistance, federal crop insurance or other agricultural assistance programs that have been available to District water users in the past. Any denial of a water user's ability to participate in such programs shall not affect the validity of this Agreement.

D. The State will continue to work with the Natural Resources Districts and surface water irrigation districts to meet Nebraska's obligations under the Republican River Compact and Settlement Agreements.

E. By execution of this Agreement, the State represents and affirms that it has appropriated and secured the funds necessary to meet its obligations under this Agreement.

F. The State agrees to defend and uphold the provisions of this Agreement to ensure the purchase and/or lease of the use of the District's Water Supply to the State.

V. THE PARTIES MUTUALLY AGREE AS FOLLOWS:

A. The parties agree to work with the Natural Resources Districts in meeting the goals and objectives identified in their Integrated Management Plans and corresponding groundwater management rules and regulation to help protect, to the extent possible, the District's 2007 Water Supply which includes storage water releases from Harlan County Lake and natural flow.

B. The parties agree to rely upon the Bureau for all necessary accounting and administration of the Water Supply during the term of this Agreement as authorized and required under the Consensus Plan and agreements and contracts between the Bureau, District and Kansas Bostwick; and to accept the Water Supply management determinations of the Bureau as authorized and required under the Consensus Plan and agreements and contracts between the Bureau, District and Kansas Bostwick. In the event that Kansas Bostwick does not accept releases from Harlan County Lake, the parties agree to further define and identify, by addendum to this Agreement, the Water Supply sold and/or leased by the District to the State during the 2007 Irrigation Season in Conformance with the Bureau's routine accounting and administration procedures.

C. The parties agree that that District has retained and reserves the rights to any additional water that it would be entitled to receive under the agreements and contracts between the Bureau, District and Kansas Bostwick, outside of the constraints of this Agreement.

BOSTWICK IRRIGATION DISTRICT IN NEBRASKA

Walter Knehans, Board President
Bostwick Irrigation Districts in Nebraska

Date

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Ann Bleed, Director
Nebraska Department of Natural Resources

Date