



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES
Roger K. Patterson
Director

September 1, 2005

IN REPLY TO:

Roger Kolbert
Board President
H&RW Irrigation District
P.O. Box 297
Culbertson, NE 69024

Dear Mr. Kolbert:

Attached are two copies of a new Memorandum of Agreement between the Nebraska Department of Natural Resources and the H&RW Irrigation District for 2005 drought assistance for increased reservoir storage. I believe this is in line with Steve Gaul of our staff's earlier discussion with District Manager, Don Felker. If you find the terms of the agreement acceptable, please sign both copies and return one to this office. We will then make arrangements to provide funding in the amounts noted. If you have comments or suggested changes, please contact Steve Gaul at (402) 471-3955 or at sgaul@dnr.state.ne.us.

Sincerely,

Ann Bleed
Acting Director

Attachments

clrshare/bleed

COPY

Memorandum of Agreement
between the
H&RW Irrigation District
and the
Nebraska Department of Natural Resources
for
Drought Assistance for Increased Reservoir Storage

WHEREAS, drought induced low reservoir levels in Enders Reservoir threaten a variety of uses, including irrigation, fish, wildlife, and recreation; and

WHEREAS, leaving additional storage water in that reservoir during the 2005 irrigation season would help sustain in-reservoir uses as well as provide additional water for the next irrigation season; and

WHEREAS, the Bureau of Reclamation (Reclamation) has approved the State of Nebraska for drought assistance in 2005 by authority of the Reclamation States Emergency Drought Relief Act of 1991;

WHEREAS, Reclamation has approved drought funding assistance to the Nebraska Department of Natural Resources through Cooperative Agreement No. 03FC601826 ("Cooperative Agreement") (a copy of which is attached hereto as Exhibit A) for a project that will result in additional storage water in drought affected reservoirs in the Republican Basin;

NOW THEREFORE, the parties agree as follows:

- 1) The District agrees to:
 - a) not call for 2005 irrigation season storage releases from Enders Reservoir when the lake drops below elevation 3087.90 (12,808 acre feet)
- 2) The Department of Natural Resources agrees to:
 - a) provide financial assistance, which financial assistance shall consist solely of monies received by the Department as 2005 Reclamation Drought Assistance funding ("Federal Funding"), to the District for leaving irrigation supplies in the reservoirs in the amounts specified in Section 1) of this Agreement as follows:
 - For H&RW Irrigation District Operations from Enders Reservoir: that payment for the 2005 irrigation season (leaving the required

amount of storage in the reservoir during the 2005 irrigation season through September 30, 2005) will be \$18,100.

- b) provide payment of the Federal Funding within 60 days of the signature of this Agreement, provided that such Federal Funding has been received by the Department from Reclamation within such time period.
- 3) In the event that inflows exceed estimates, both parties agree that releases of storage water may be made for the benefit of the District, provided, the lake levels remain at or above the levels noted above. Should evaporation or other factors not caused by the District later lower the lake levels noted above, the eligibility of the District for compensation shall not be affected.
- 4) In the event that inflows do not meet estimates and the lake levels do not reach the levels noted above, the level of assistance provided to the District will not be reduced.
- 5) The District and the Department agree as follows:
 - a) to the extent the Department does not receive the Federal Funding, or such funding is disallowed, the Department shall not be obligated to provide the financial assistance referenced in Section 2)a) of this Agreement. The Department's obligation under this agreement is contingent upon the receipt of the Federal Funding from Reclamation from which payment for agreement purposes can be made. No legal liability on the part of the Department for any payment may arise until the Federal Funds are made available to the Department. In the event the Federal Funding is disallowed after the financial assistance referred to in Section 2)a) has been provided to the District, the District agrees to return such funds to the Department.
 - b) the District, on receipt of the financial assistance contemplated by this Agreement, shall be a subrecipient pursuant to the Cooperative Agreement, and agrees to be bound by all of the provisions of the Cooperative Agreement applicable to subrecipients.
- 6) The District shall indemnify and hold the Department harmless from any and all losses, damages, or liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made, arising out of activities of the District, its employees or agents under this Agreement.
- 7) This agreement may be modified at any time by mutual agreement of the parties.

- 8) Prevailing Law. This Agreement is governed by the laws of the State of Nebraska including the State Contract Claims Act. (Neb. Rev. Stat. Sections 81-8,302 through 81-8,306.)
- 9) Drug Free Work Place Policy. The District certifies that it maintains a drug free work place environment to ensure workers safety and workplace integrity. The District agrees to provide a copy of its drug free workplace policy at any time upon request by the Department.
- 10) Technology Access. The District agrees to ensure compliance with Nebraska Technology Access Standards. See website at:
<http://www.nitc.state.ne.us/standards/accessibility/>
- 11) Fair Employment Practices. The District agrees to ensure compliance with the Nebraska Fair Employment Practice Act which prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin. (Neb. Rev. Stat. Sections 48-1101 through 48-1125.)
- 12) Conflict of Interest. The District warrants that its board members, officers, associates and employees presently have no known financial interest and shall not acquire any known financial interest, direct or indirect, which would conflict in any manner or degree with the performance of the services required by this Agreement. The District shall comply with the provisions of the laws of the State of Nebraska which require disclosure for conflict of interest determinations. The existence of any conflict of interest shall render this Agreement voidable by the Department.

H&RW IRRIGATION DISTRICT

 Roger Kolbet, Board President
 H&RW Irrigation District

 Date

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Ann Bleed
 Ann Bleed, Acting Director
 Nebraska Dept. of Natural Resources

9/1/05
 Date

APPROVED

AS TO FORM & CONTENT
 BY NDNR LEGAL COUNSEL

ADD DATE 9/1/05