



United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900

IN REPLY REFER TO:

GP-4500
LAW-5.00

JUN 29 2004

RECEIVED

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DEPARTMENT OF
NATURAL RESOURCES

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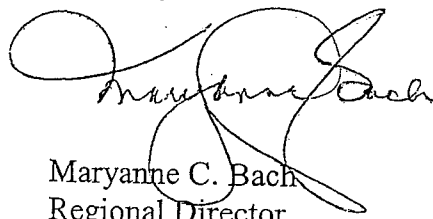
Subject: Memorandum of Understanding (MOU) Implementing the Joint Study Proposal on the Impacts of Non-Federal Reservoirs and Land Terracing on Republican River Basin Water Supplies

Dear Sirs:

Enclosed for your approval and signature is one original and four duplicate originals of the subject MOU between the Bureau of Reclamation, Great Plains Region; Department of Agriculture, Natural Resources Conservation Service; and the States of Colorado, Kansas, and Nebraska. Please sign and date each MOU and mail this entire package to the next signatory on the enclosed instruction sheet. Mailing labels are provided. After the signatory process is completed, please return the package to Gordon Aycock of our staff. He will provide each of you with a duplicate original executed MOU.

Thank you for your time and assistance with implementing the MOU and study proposal. If you have any questions or concerns, please call Gordon at 406-247-7756.

Sincerely,



Maryanne C. Bach
Regional Director

Enclosures - 3

cc: Marv Swanda
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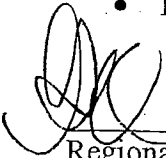
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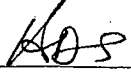
Megan Sullivan
Department of Natural Resources
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Denver, CO 80203
(w/o encls to ea)

INSTRUCTIONS FOR EXECUTING MOU

- Sign and date each MOU (1 original and 4 duplicate originals).
- Initial next to your name below, verifying completion of the signatory process.
- Mail complete package, including the cover letter to the next signatory – label provided.
- Last signatory returns package to Gordon Aycock, Reclamation – label provided.



Maryanne C. Bach
Regional Director
Great Plains Regional Office
P.O. Box 3690
Billings, MT 59107-6900



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State Engineer
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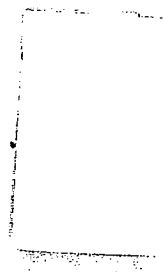
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Rick Van Klaveren

Regional Conservationist
Natural Resources Conservation Service
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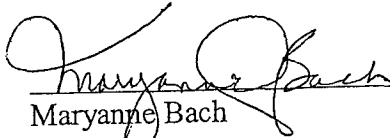
ORIGINAL

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
GREAT PLAINS REGION

MEMORANDUM OF UNDERSTANDING
MOU NO. 04AG601929
FOR
Republican Basin Water Study
Impacts from Non-Federal Reservoirs and Land Terracing

This Memorandum of Understanding (MOU) between the United States Department of the Interior, Bureau of Reclamation Great Plains Region (Reclamation); the United States Department of Agriculture, Natural Resources Conservation Service (NRCS); and the States of Colorado, Kansas, and Nebraska (States), identifies the roles, work, and funding responsibilities for completing a proposed study to determine the quantitative effects of Non-Federal Reservoirs and land terracing practices on water supplies, including the effects for each Designated Drainage Basin. The parties will abide by the terms and provisions expressed or referenced herein.

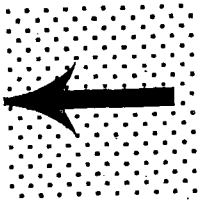
Bureau of Reclamation



Maryanne Bach
Regional Director
Great Plains Region

Date: _____

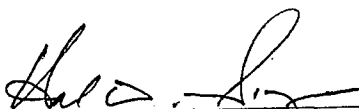
Natural Resources Conservation Service



Richard Van Klaveren
Regional Conservationist
Northern Plains Region

Date: _____

State of Colorado



Hal Simpson
State Engineer
Colorado Division of Water Resources


Date: 7/7/04

State of Kansas

Adrian J. Polansky
Secretary
Kansas Department of Agriculture

Date: _____

State of Nebraska



Roger Patterson
Director
Nebraska Department of Natural Resources

Date: 7/12/04

I. BACKGROUND, INTRODUCTION, PURPOSE, AND OBJECTIVE

A. Background

1. Republican River Basin

The Republican River Basin begins in Eastern Colorado, flows through Northwest Kansas into Southwest Nebraska, flows back into Northcentral Kansas near the town of Hardy, Nebraska, and eventually flows into Milford Reservoir. The study area is limited to that portion of the Republican River Basin located above Hardy, Nebraska.

2. Republican River Compact

The States of Colorado, Kansas, and Nebraska and a representative of the United States negotiated the Republican River Compact during the early 1940s. The major purposes of the Compact are to provide for the most efficient use of the waters of the Republican River Basin for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the Basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of water and the control of destructive floods.

The Republican River Compact, signed in 1943 by the states of Colorado, Kansas, and Nebraska, and ratified by Congress and approved by the President, allocates the average annual virgin water supply of the Republican River, between the states of Colorado, Nebraska, and Kansas. Under the Compact, the total allocation given to each State is to be derived from the listed tributaries, and for Nebraska and Kansas, from the mainstem of the Republican River.

The Compact makes specific allocations to each of the three states in 14 different subbasins and includes provisions for adjustment to the virgin water supply and allocations based on future records and/or changing conditions. The virgin water supply is defined as the water supply within the Basin undepleted by the activities of man.

3. Republican River Compact Administration

The Republican River Compact Administration (RRCA) serves as the administrative body of the Compact and is composed of State Officials responsible for administering the public water supplies in each state. Currently these include the State Engineer of the Division of Water Resources of the Colorado Department of Natural Resources, the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture, and the Director of the Department of Natural Resources for the State of Nebraska. The RRCA was created in 1959 in order to develop and refine methods to annually estimate the virgin water supply and consumptive uses within the basin and to administer the Compact. The RRCA meets at least annually to report on events pertaining to the Compact and to take any necessary action regarding the administration of the Compact.

4. Settlement Stipulation

In May of 1998, the State of Kansas filed a motion with the U. S. Supreme Court alleging that Nebraska violated the Compact by allowing the proliferation and use of groundwater wells hydraulically connected to the Republican River and its tributaries, and by failing to protect the surface flows from other unauthorized appropriations.

In December, 2001 the Special Master assigned to the case agreed to postpone the progression of the case in order to allow the three Compact States, Colorado, Kansas, and Nebraska, to engage in settlement negotiations. These negotiations culminated in a settlement package that was approved by the Governors and Attorneys General of all three states in December, 2002.

The States agreed to resolve the pending litigation regarding the Republican River Compact by means of a Final Settlement Stipulation and a Proposed Consent Judgment. The Special Master approved the Stipulation in February 2003 and the United States Supreme Court, by decree dated May 19, 2003, approved the Final Settlement Stipulation.

B. Introduction

1. Final Settlement Stipulation

As directed in the Final Settlement Stipulation, dated December 15, 2002, the States, in cooperation with the United States, formed a Conservation Committee to evaluate the available methods and data relevant to studying the impacts of Non-Federal Reservoirs and land terracing practices on water supplies, including a review of any existing studies, the availability of data, level of accuracy of data, and identify additional data necessary. The Conservation Committee is also required to submit to the RRCA a proposed study plan to determine the quantitative effects of Non-Federal Reservoirs and land terracing practices on water supplies, including whether such effects can be determined for each Designated Drainage Basin

Following the RRCA's acceptance of the proposed study plan, the States and the United States will undertake the study at a cost not to exceed one million dollars, of which the United States will be responsible for 75% of the cost and each State will be responsible for one third of the remaining 25%. The States' portion may be provided entirely through in-kind contributions. If the study exceeds one million dollars, the United States will be responsible for the entire additional amount. The States, in cooperation with the United States, shall agree upon the timetable for the completion of such study, which shall be completed within five years of the date the proposed study plan is accepted by the RRCA.

Participation in the joint study does not commit any State or the RRCA to take any action or to include soil and water conservation measures in Compact accounting. Each State specifically reserves its position that it need not account for conservation measures as a Beneficial Consumptive Use under the Compact.

2. Conservation Committee

As outlined in the Final Settlement Stipulation, the States, in cooperation with the United States, formed a Conservation Committee in order to develop information that may allow the States to assess the impacts of Non-Federal Reservoirs and land terracing on the water supply and water uses within the Basin.

The Conservation Committee is comprised of representatives from the Bureau of Reclamation, the Natural Resources Conservation Service, and the States of Colorado, Kansas, and Nebraska.

C. Objective and Purpose

The objective of this MOU is to provide a guide to complete the proposed study that will determine the quantitative effects of Non-Federal Reservoirs and land terracing practices on water supplies, including whether such effects can be determined for each Designated Drainage Basin.

The purpose of this MOU is to generally describe the following:

1. The scope of work, including the roles and responsibilities for Reclamation, the NRCS, and the States
2. Roles and responsibilities of the RRCA and the Conservation Committee
3. The funding arrangement between the United States and the States to complete the study
4. The term of the MOU and required clauses
5. Assign representatives from Reclamation, NRCS, and the States that are responsible for monitoring activities of this MOU.

II. SCOPE OF WORK

A. Roles and Responsibilities

1. Roles and Responsibilities common to Reclamation, NRCS, and States

- a. Conservation Committee – Reclamation, NRCS, and the States agree to serve on and support the Conservation Committee, which will serve as the managing body for the study. The Conservation Committee will:
 - (1) coordinate, select, and assign specific study tasks to appropriate entities, including keeping focus of separate tasks and combining all tasks into the final report.
 - (2) coordinate activities of selected entities to ensure study timelines remain obtainable. Meet with selected entities on a minimum of semiannual basis in order to monitor study activities.

- (3) provide an annual update of study activities to the RRCA at the RRCA's annual meeting, which will include status report, updated timeline, financial report, and future funding estimates.
 - (4) prepare a final report on the study after the study results have been accepted by the RRCA.
- b. Serve as a source of specific expertise in the proposed study, including compliance with State laws and regulations, hydrology, and water rights. Activities include providing analysis related to specific expertise, providing writing and editing services for relevant documentation, and participating in public meetings as needed.
 - c. Provide staff support and equipment required to complete specific study tasks, including information and assistance to entities selected to complete the study.
 - d. Participate in technical reviews of study and assist with preparation of update reports that will be presented to the RRCA.
 - e. Participation in the joint study by all parties is contingent upon the appropriation of funds by their respective State Legislatures and Congress. Participation by the States in this study is contingent upon participation and funding by the United States.
 - f. Attend meetings as necessary with the public, federal, state, regional and local agencies for the purposes of facilitating communication and receiving comments, as may be necessary, desirable, or required by law, and insofar as such meetings are relevant to the study.
 - g. All parties acknowledge and understand that the Study Timeline is a target or goal and that there are many influences outside the control of the signatories to this agreement that could affect progress. Reclamation, the NRCS, and the States will work to resolve any issues which could delay the process and will meet periodically to update and revise the schedule.
 - h. All agencies will provide records of study expenditures including in-kind services to the Conservation Committee prior to the annual study status report to the RRCA.

- i. All agencies will be notified in writing of any changes to personnel assigned to the Conservation Committee.

2. Reclamation

- a. Appoint appropriate staff to serve on the Conservation Committee.
- b. Budget and program Federal funding required to complete the United States' share of the study.
- c. Enter into a cooperative agreement with the University of Nebraska at Lincoln and a cooperative agreement with Kansas State University to fund the Universities' Joint Research Project titled Modeling and Field Experimentation to Determine the Effects of Terracing and Nonfederal Reservoirs on Water Supplies in the Republican River Basin above Hardy, Nebraska. See Appendix C of the Conservation Committee's proposed study plan.
- d. As required to carry out a program from monitoring reservoir surface area as described in Appendix D of the Conservation Committee's proposed study plan, Reclamation will be responsible for the following: (1) the purchase of equipment for monitoring reservoir surface elevation and area data at the sample reservoir sites, and (2) providing an employee to assist the states with installation of the reservoir monitoring equipment and the initial collection of reservoir characteristics at these sample sites. At the end of the five year study period the field installed monitoring equipment will become the property of the state within which the equipment was installed.
- e. Assist the NRCS and the States in the development of an inventory of terraces in the Republican River basin above Hardy, Nebraska. Reclamation will seek funding through its Science and Technology Program for assisting with the terraced land inventory and characterization.

3. NRCS

- a. Appoint appropriate staff to serve on the Conservation Committee.
- b. Utilize existing staff, funding, and expertise in order to contribute to the completion of the study.

- c. Assist the States and Reclamation in the development of an inventory of terraces in the Republican River basin above Hardy, Nebraska as defined in Appendix F of the Conservation Committee's proposed study plan.

4. States

- a. Republican River Compact Administration - States will continue to serve on and support the Republican River Compact Administration (RRCA), which has the following responsibilities related to the study.
 - (1) Each States Compact Commissioner of the RRCA shall be responsible for appointing state representatives to serve on the Conservation Committee.
 - (2) The RRCA is responsible for approval of the proposed study plan prepared by the Conservation Committee
 - (3) The RRCA will provide guidance to the Conservation Committee and associated agencies involved in completing the study.
 - (4) The RRCA will review the annual study updates provided by the Conservation Committee and/or agencies assigned to complete the study at the RRCA annual meetings or as requested. Based on this review the RRCA will provide comments and direction to the Conservation Committee indicating the need for adjustments to the study to ensure that the desired study goals are met
 - (5) The RRCA is responsible for the final acceptance of the completed study.
- b. Through their respective Conservation Committee and RRCA members, the States will review all grant, cooperative, and/or interagency agreements drafted to complete specific study tasks to ensure that these agreements are in line with the objective of the study
- c. Each State will be responsible for one third of the 25% cost share required by the States for the Study, as outlined in the Final Settlement Stipulation. The States' portion may be provided entirely through in-kind contributions. OMB Circular A-87 provides broad principles and guidelines for determining allowable, proper costs and services incurred by states under federal agreements. The web address for this circular is:

<http://www.whitehouse.gov/omb/circulars/a087/a087-all.html>

- d. As required to carry out a program for monitoring reservoir surface area as described in Appendix D of the Conservation Committee's proposed study plan, each State will be responsible for the following: (1) obtaining permission from landowners to allow for the installation of monitoring equipment at the selected sample reservoir sites in their respective State, (2) providing an employee to assist Reclamation with the installation of the reservoir monitoring equipment and the initial collection of reservoir characteristics at these sites, and (3) maintaining the installed monitoring equipment and collecting reservoir surface elevation and area data from the respective reservoir sites. Each State will maintain and collect data from the monitoring equipment located at these sites on a semi-annual basis. This data will be provided to the universities to assist with their modeling effort.
- e. Each State will assist the NRCS and Reclamation in the development of an inventory of terraces in the Republican River basin above Hardy, Nebraska as described in Appendix F of the Conservation Committee's proposed study plan.
- f. Each State will provide annual in-kind service records to the Conservation Committee in order to verify each State's share of the 25% funding requirement as outlined in the Final Settlement Stipulation. The States will provide these records for the period of April 1st through March 31st to the Conservation Committee by May 1st of each year.

III. FUNDING

It is mutually agreed upon by all parties that this MOU is neither a fiscal nor funds obligation document. Any endeavor by any party that involves the reimbursement, contribution of funds, transfer of anything of value between the parties will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors shall be outlined in separate agreements; shall be made in writing by representatives of involved parties; and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority.

Nothing in this MOU will require changes in any funding obligations, nor require any party to assume new funding obligations.

A. FEDERAL FUNDING

The United States will be responsible for 75% of the costs of the study, which is not planned to exceed one million dollars. If the cost of the study exceeds one million dollars, the United States will be responsible for the entire additional amount.

B. NON-FEDERAL FUNDING

Each State will be responsible for one third of 25% of the cost of the study, up to a limit of \$83,333 each.

The States' portion may be provided entirely through in-kind contributions.

IV. PAYMENT FOR SERVICES

Payment for services will be accomplished through separate grant agreements, cooperative agreements, and/or interagency agreements between Reclamation and the agencies selected to complete specific aspects of the study.

Federal funding estimates for the study period is included in the proposed study plan. The Conservation Committee will update costs and funding estimates as the study proceeds.

It is understood that the costs estimated in the proposed study plan are preliminary and difficult to estimate, and that actual costs may be lesser or greater than estimated in the proposed study plan. When specific study tasks are assigned, the Conservation Committee will make appropriate adjustments to the timetable and funding estimates.

V. TERM OF THE MOU

This MOU and the official acceptance of the study by the RRCA, shall become effective once it has been signed by all five individuals on page 2.

This MOU will remain in effect until December 31, 2009, or an earlier date if the study and final report are completed and accepted by the RRCA prior to December 31, 2009.

This MOU may be terminated upon any of the following conditions:

1. Mutual agreement
2. Insufficient appropriation of funds, by a respective state legislature, for completion of study.
3. Insufficient appropriation of funds by Congress to the Bureau of Reclamation for completion of study.
4. Completion and RRCA acceptance of the study.

If the MOU is terminated, any unexpended funds previously advanced to the States (or entities contributing to the study) by Reclamation will be accounted for and returned to Reclamation within sixty (60) days of the termination of this MOU.

This MOU may be extended or amended at any time by written consent by the designated representatives of the parties hereto.

This MOU is renegotiable upon agreement by all parties.

VI. REQUIRED CLAUSES

During the performance of this MOU, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this MOU or to any benefit arising from it. However, this clause does not apply to this MOU to the extent that this MOU is made with a corporation for the corporation's general benefit.

VII. KEY OR RESPONSIBLE PERSONNEL

All agencies will be notified in writing upon any changes in personnel to the Conservation Committee, the RRCA, or the agency representatives of this MOU.

The following people will serve as representatives for this MOU:

A. Reclamation representative:

Gordon Aycock, Technical Specialist
Bureau of Reclamation, Great Plains Region
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Billings, MT 59107-6900
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gaycock@gp.usbr.gov

B. NRCS representative:

Steve Garner, Northern Plains Engineering Team
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C. Colorado representative:

Megan Sullivan
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Division of Water Resources
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303-866-3581
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D. Kansas representative:

George Austin, Interstate Water Issues Team
Kansas Department of Agriculture
Division of Water Resources
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gaustin@kda.state.ks.us

E. Nebraska representative:

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