

Memorandum of Agreement  
between the  
Frenchman Valley 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 2004 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 2004 by authority of the Reclamation States Emergency Drought Relieve 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 2004 irrigation season storage releases from Enders Reservoir when the lake drops below elevation 3087.17 (12,248 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 2004 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 Frenchman Valley Irrigation District Operations from Enders Reservoir: that payment for the 2004 irrigation season (leaving the

required amount of storage in the reservoir from the signature date of this contract through September 30, 2004) will be \$10,000.

- 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.

**FRENCHMAN VALLEY IRRIGATION DISTRICT**

Kenneth Albert  
Kenneth Albert, Board President  
Frenchman Valley Irrigation District

8-3-04  
Date

**NEBRASKA DEPARTMENT OF NATURAL RESOURCES**

Roger K. Patterson  
Roger K. Patterson, Director  
Nebraska Dept. of Natural Resources

7/19/04  
Date

**APPROVED**

AS TO FORM & CONTENT  
BY NDNR LEGAL COUNSEL

DAV DATE 7/19/04