

December 6, 2005

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**U.S. BUREAU OF RECLAMATION**

**AND THE**

**FRENCHMAN VALLEY IRRIGATION DISTRICT  
H&RW IRRIGATION DISTRICT  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
UPPER REPUBLICAN NATURAL RESOURCE DISTRICT  
MIDDLE REPUBLICAN NATURAL RESOURCE DISTRICT  
NEBRASKA GAME AND PARKS COMMISSION**

**For the**

**FRENCHMAN VALLEY APPRAISAL STUDY, NEBRASKA**

**I. PURPOSE**

The purpose of the Memorandum of Agreement (MOA) is to define the relationship and duties of the lead agency (Reclamation) and study participants for the Frenchman Valley Appraisal Study (appraisal study). The scope of the appraisal study is to evaluate: (1) alternative program activities; (2) structural measures or incentives that can assist in optimizing existing facilities; (3) lake level benefits by providing stable water levels; and (4) recharge facilities for Enders Reservoir and the irrigated area it serves.

The appraisal study will review the existing data and information, qualitatively identify some improvement needs of the area, identify possible constraints and opportunities to more efficiently manage water supplies in the Frenchman River Valley including Enders Reservoir, and determine the advisability of proceeding to a feasibility study.

The appraisal study will focus on problems and opportunities for the area that has experienced dramatically reduced ground and surface water supplies, including reduced inflows at Enders Reservoir.

The appraisal study will identify whether there is a Federal interest in intensive management of interrelated groundwater and surface water supplies to meet Compact requirements as well as for meeting other economic and environmental needs. The appraisal study will be coordinated with state, irrigation districts, and natural resources districts.

## II. AUTHORITY AND BACKGROUND

### A. Authority

The Frenchman Valley Appraisal Study is authorized under Federal Reclamation Laws (Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto). This appraisal study is programmed and funded from the Nebraska Investigations Program.

### B. Background

The appraisal study area has been defined as the entire drainage basin of the Frenchman Valley and extending east to the project area of the H & R W Irrigation Districts, which ends just east of McCook, Nebraska. (See Appendix XX)

The Frenchman-Cambridge Division, a project of the Bureau of Reclamation's Pick Sloan Missouri Basin Project, encompasses the Frenchman-Cambridge, Frenchman Valley, and H&R W Irrigation Districts. Facilities to serve these three irrigation districts include four storage dams and reservoirs, four diversion dams, and the distribution systems to deliver project water to 54,680 acres of irrigable land in Chase, Hitchcock, Hayes, and Red Willow Counties as shown on Exhibit \_\_\_\_\_.

The conservation pool in Enders Reservoir begins at elevation 3082.4 and extends to elevation 3112.3 and totals 34,512 acre-feet (Figure \_\_\_\_). The last time Enders Reservoir reached the top of conservation level (elevation 3112.30 feet) was in 1968. Since the 1950's, the streamflow into Enders has been showing a progressive decline, and there is no indication that the decline is leveling off. The cause of the decline appears to be mainly the result of a high degree of well development above Enders Reservoir.

Irrigation wells are the primary groundwater users, with relatively smaller amounts used for municipal, industrial, domestic, and stock watering purposes. In 1996, a total of 12,246 wells were registered with some of the heaviest concentrations of wells near (within 12 miles of Frenchman Creek above Enders Reservoir, near Beaver and Sappa Creeks (above Harlan County Lake and near the Republican River below Harlan County Lake to Guide Rock.

The appraisal study will evaluate the water supply problems facing the Frenchman Unit. The Frenchman Valley and H&R W Irrigation Districts are dependent on Enders Reservoir for storing surface water supplies. The primary problem facing the Frenchman Unit is the continuing decline of the water supply from Enders Reservoir. Existing data indicate that the installation of conservation measures and the intensive private irrigation well development upstream has caused depletion of the base flow of the Frenchman River.

### III. PUBLIC BENEFIT

The benefits to be derived from the MOU are to fulfill Congressional expectations under the Nebraska Investigations Planning Program wherein the funds were appropriated. This study will assist Reclamation, the State of Nebraska, the Frenchman Valley Irrigation District, the H & RW Irrigation District, the Upper and Middle Republican Natural Resource Districts, the Nebraska Game and Parks Commission, and local inhabitants of the study area in making decisions concerning future water supply and distribution options available.

### IV. STUDY PARTICIPANTS

Appraisal study participants include representatives from the following agencies: Reclamation, Frenchman Valley Irrigation District, H&RW Irrigation Districts, Nebraska Department of Natural Resources, Middle Republican Natural Resource District, Upper Republican Natural Resource District, and the Nebraska Game and Parks Commission. Each agency will designate a liaison to act as point of contact for the study process. An entity may change its point of contact at any time by providing written notice to Reclamation.

### V. LEAD AGENCY RESPONSIBILITIES

Reclamation and the Nebraska Department of Natural Resources will serve as the lead agencies for the study.

#### A. As the lead agency Reclamation shall:

1. Provide funding support through the Nebraska Investigation Program (as approved by Congress each fiscal year) to conduct the study.
2. Be responsible for the overall preparation, quality, and content of the Frenchman Valley Appraisal Study and the National Environmental Policy Act (NEPA) compliance document.
3. Identify and summarize the study participants' roles and responsibilities.
4. Provide and request comments from the study participants on several items including, but not limited to: (1) a description of alternatives and those considered or rejected, (2) draft appraisal study, (3) draft NEPA compliance document, and (4)

5. Be available to discuss any questions or issues related to the study process and related documents produced as a result of the appraisal study.
6. Incorporate as deemed useful and appropriate the information provided by the appraisal study participants into the draft appraisal report and draft NEPA compliance document.
7. Ensure compliance with Federal environmental and other statutes including, but not limited to, NEPA, National Historic Preservation Act, and the Endangered Species Act.
8. Make the final decision on the content of the NEPA compliance document.

B. The Nebraska Department of Natural Resources shall:

1. Provide funding support through the Nebraska Department of Natural Resources (as approved by the Nebraska Legislature each fiscal year) to conduct the study.
2. Assist Reclamation in the overall preparation, quality, and content of the Frenchman Valley Appraisal Study and the National Environmental Policy Act (NEPA) compliance document.
3. Assist Reclamation to identify and summarize the study participants' roles and responsibilities.
4. Keep other appropriate State agencies informed of study activities as needed.
5. Be available to discuss any questions or issues related to the study process and related documents produced as a result of the appraisal study.

## **VI. STUDY PARTICIPANTS RESPONSIBILITIES**

Any input and analysis that the appraisal study participants provide during the process will be technically sound with documentation and supporting data. The study participants acknowledge that they may be provided technical information or data about possible alternatives that are not generally available to the public at that time. Such information will be clearly marked as "Not for Public Release". The study participants will take the necessary measures to ensure that such information is not released to the public until it is released by Reclamation.

Appraisal study participants:

1. Agree to attend scheduled meetings and conference calls.
2. Provide some in-kind-services that are mutually acceptable by Reclamation and the appraisal study participants.
3. Will provide Reclamation with written comments and suggestions within 21 days of receipt of information, documents, and reports.
4. Will provide Reclamation with written comments and/or recommendations on the draft NEPA compliance document within 30 days of receipt of the draft NEPA compliance document.
5. Fund its own expenses associated with its participation as a participant in the appraisal study process.
6. As needed, will provide information/reports relative to the appraisal study participants' special expertise and/or jurisdiction.

## VII. RESOLUTION OF DISPUTES

For disputes involving different interpretations of information, Reclamation agrees to consider different interpretations if such interpretations are supported by sufficient credible data. For other disputes, the study participants will use their best efforts to resolve issues in a manner agreeable to all parties. If a disputed issue cannot be resolved in a collaborative and timely manner, Reclamation will make a final decision.

## VIII. IMPLEMENTATION, ADMENDMENT, AND TERMINATION

### A. Term of the Agreement

This agreement will become effective on the date of the last signature and may be subsequently amended through written agreement of all signatories.

This agreement will terminate upon completion of the study.

Reclamation may terminate this agreement by providing written notice of termination to the study participants.

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This MOA may be terminated upon mutual agreement or upon a 30-day written notice from any party to the MOA.

B. Required Clauses

Nothing in this agreement will abridge or amend the authorities and responsibilities of State agencies on any matter under their respective jurisdictions.

Nothing in this agreement may be construed to require either the lead agency or the appraisal study participant to obligate or pay funds or in any other way take action in violation of the Anti-Deficiency Act (31 USC 1341) or any State or County law or ordinance.

The appraisal study participants do not intend to create in any other individual or entity the status of third-party beneficiary, and this agreement shall not be construed so as to create such status. The rights, duties, and obligations documented in this agreement shall operate only between the parties to this agreement, and shall ensure solely to the benefit of the parties to this agreement. The provisions of this agreement are intended only to assist the parties in determining and performing their obligations under this agreement. The parties to this agreement intend and expressly agree that only parties signatory to this agreement shall have any legal or equitable right to seek to enforce this agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this agreement, or to bring an action for the breach of this agreement.

Parties hereto will be in compliance with the nondiscrimination provisions contained in Title VI and Title VIII of the Civil Rights Act of 1964, as amended. The Civil Rights Restoration Act of 1987 (P.L. 100-259) and other nondiscrimination statutes, namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, and in accordance with Executive Order 11246 which provides that no person in the United States shall, on grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from program or activities receiving federal financial assistance.

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

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**IX. DESIGNATED COOPERATING AGENCY POINTS OF CONTACT**

Bureau of Reclamation:  
Jack Wergin and Jill Manring  
P.O. Box 1607  
Grand Island, NE 68802-1607  
308-389-5322 and 308-389-5328, respectively

Frenchman Valley and H&RW Irrigation Districts  
Don Felker, Manager  
Box 297  
Culbertson, NE 69024  
308-278-2125

Nebraska Game and Parks Commission:

P.O. Box 30370  
Lincoln, NE 68503  
402-471-0641

Nebraska Department of Natural Resources:  
Steve Gaul  
301 Centennial Mall South  
Lincoln, NE 68509-4676  
402-471-2363

Middle Republican Natural Resource District:  
Dan Smith, Manager  
P.O. Box 81  
220 Center Ave.  
Curtis, NE 69025  
308-367-4281 or  
1-800-873-5613

Upper Republican Natural Resource District:  
Jasper Fanning, Manager  
P.O. Box 1140  
Imperial, NE 69033  
308-882-5173

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**X. APPROVAL**

The parties hereto have executed this memorandum of agreement as of the dates shown below:

\_\_\_\_\_  
Alice Johns, Area Manager  
Bureau of Reclamation

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Anne Bleed, Acting Director  
Nebraska Department of Natural Resources

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Kenneth Albert, President  
Frenchman Valley Irrigation District

\_\_\_\_\_  
Roger Kolbet, President  
H&R.W. Irrigation District

\_\_\_\_\_  
Dan Smith, Manager  
Middle Republican Natural Resource District

\_\_\_\_\_  
Jasper Fanning, Manager  
Upper Republican Natural Resource District

\_\_\_\_\_  
X,  
Nebraska Game and Parks Commission