

Memo

To: Ann Bleed, Director, Department of Natural Resources
From: Lee Orton, Attorney for Bostwick Irrigation District in Nebraska
Date: 1/19/2006
Re: Proposed Terms and Conditions for Relinquishing Identified 2006 Water Supply

In accordance with the agreement of the Bostwick Irrigation District in Nebraska [hereinafter the "District"] to provide you with the general terms and conditions for agreeing to relinquish its interests in a defined 2006 project water supply to the State of Nebraska I submit this memorandum, which will be forwarded as an attachment to an e mail on this date. We expect that further discussion will be necessary to confirm the details needed to complete an agreement between the parties; and that further discussion between the representatives of all involved parties will provide details which will need to be considered and approved by the signatory parties and the District's water users before any action can be confirmed. We also expect that the State will need to have a certain appropriation of funds in place before it can take any final action accepting any agreement.

The terms and conditions suggested by the District at this time, include the following items:

1. The District will agree to relinquish the right to the present water supply [as determined and described by the U.S. Bureau of Reclamation as its January identification of deliverable water supply from storage at Harlan County Reservoir, the estimated natural flow of the Republican River below Harlan County and any creditable evaporation amounts resulting from those supplies.] The District expects that amount to be specifically identified and made a part of the agreement with some parameters to account for nominal increases or decreases in that specific total.
2. The State of Nebraska will pay the sum of \$2,500,000.00 to the District as payment for that "relinquishment", or as commonly referred to as the "sale." The agreement should identify that sum as being paid to the District to compensate the present district lands of 22,935 acres for forgoing their rights to an irrigation water supply for the year 2006. The payment of the said sum equates to approximately \$110.00 per acre.
3. The District would agree to allocate and forward the payment to water users based upon the full 22,935 acres of project lands on record; making a full transfer to all current District toll and assessment paid in full acres. Payments to any owners of project lands which are not paid in full tracts will have any outstanding water tolls and assessments owed to the District deducted and the balance paid. It should be understood by all parties and by water users that the District's operating costs and Operation and Maintenance reserved funds along with all repayment obligations of the District to the United States will be supported by the annual 2006 water tolls and assessments paid to the District by the water users or credited against payments under this agreement.
4. The District will reserve its rights to any additional water which may come available in the Harlan County Reservoir after the date identified in the agreement as the date on which Reclamation determines the available supply subject to the agreement and the District shall be allowed there under

full rights to bank or hold over for future years any such additional available water supply or to negotiate further relinquishments for this year or future years by further agreement between the District and the State. The District will also be entitled to reversion of any relinquished water supply under the agreement which for any reason beyond the District's control fails to be released or otherwise used as intended by the agreement for 2006.

5. The parties will agree that this relinquishment is a one time arrangement; but that if a supply is available in the out years, 2007 and beyond, and the Republican River Basin is still not in compliance with obligations under the compact and settlement agreements the State would be free to negotiate a similar relinquishment with the District based upon the rate of "acre inches" made available in this agreement for the water available in the future years. Neither party is obligated to an automatic extension or renewal of this agreement.

6. Any relinquishment under this agreement would be fully contingent upon the affirmative majority vote of the water users of the District taken at a meeting called by the District for that purpose. It would be expected that the State, the District and other parties, including, but not limited to the U.S. Bureau of Reclamation, would attend and participate in any such meeting for information purposes and that a majority vote of the water users attending any such meeting would be required before the District would move to complete the execution of the proffered agreement.

7. It is expected that the State would likewise be precluded from executing any agreement unless and until the necessary appropriation of the agreed payment from the State has been secured and funding for the Department of Natural Resources to carry out its responsibilities under the agreement and the laws governing its actions have been finalized.

8. The State will agree that it will do everything in its powers to assure that it and the respective Republican River Basin natural resources districts will do all things in their power under current laws to reduce impacts of ground water use on the basin water supply in accordance with the obligations of the compact and settlement agreements. The District will also agree to cooperate fully with all other basin water resources interests to assist in ground water use reductions identified by the State and the natural resources districts and to develop and implement an integrated resources management plan including, but not limited to, changes in the current use of ground water and surface water, including District water supplies.

9. The State will agree to hold the District harmless [standard acts clauses] and will further defend and indemnify the District for any challenges or determinations that the District is held responsible for under theories of "failure to deliver" requirements.

10. The State will agree to actively assist the District and its water users in obtaining all rightful payments and support from federal/state/local programs for farm commodity assistance, federal crop insurance or other agricultural assistance programs based upon the acres being deemed to be "irrigable" or "irrigated;" and would provide support programs and water use waivers for all acres participating in this one time water supply relinquishment.

The District looks forward to working with the State representatives to refine and further describe the details of an agreement to fulfill the intentions of the parties to this water supply relinquishment plan. We know that time is of the essence to both sides of this matter and pledge our willingness to meet and discuss specifics to quickly be able to describe the parties' plans to the water users and to the public.