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Mike T.

BOSTWICK IRRIGATION DISTRICT IN NEBRASKA

P.O. Box 446 • Red Cloud, Nebraska 68970-0446 • Ph./Fax (402) 746-3424

January 6, 2006

To: Senator Ed Shrock
DNR – Ann Bleed
BOR – Alice Johns
Lee Orton

Subject: Draft Agreement for the use of District Water Supply

Honorable Senator Shrock,

Attached to this note should be the draft agreement to use as a foundation for the States use of the District water supply in 2006. In our conference call this morning Ann indicated she would like to have a "hand shake" agreement in 10 days. If you would like more information please let me know. Lee, I will call you and if you would like to discuss the intent of the agreement I will come to Lincoln and try to clarify it to any and all interested parties.

Respectfully,

Mike Delka, Manager
Bostwick Irrigation District in Nebraska

Confidential

Privileged Information

Received Time Jan. 9. 10:47AM

BOSTWICK IRRIGATION DISTRICT IN NEBRASKA

P.O. Box 446 • Red Cloud, Nebraska 68970-0446 • Ph./Fax (402) 746-3424

January 9, 2006

URGENT RESPONSE REQUESTED!

Dear Patron,

We would like to know what you think of the State's proposal to use our water for the 2006 year. The concept as it stands would be the State would pay between \$40 per acre to \$100 per acre (any level above \$40 per acre will require legislative action) for the use of the water. The current water delivery estimate for 2006 is about 2 acre-inches per acre. Before anyone is interested in working on the details of such an agreement they want to know the potential support for it. The State indicated they would like to have a "hand shake" agreement within a week. This does not allow much time for input or working on details. You may express your position by calling the following numbers:

Bostwick Irrigation District	(402) 746-3424
Mike Delka (home)	(402) 746-3362
Walt Knehans (home)	(402) 746-2554
Jim Miller (home)	(402) 279-2925
Rod Ely (elevator)	(402) 257-2125

Thank you for your input and help.

Respectfully,
Mike Delka, Manager
Bostwick Irrigation District in Nebraska

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**Memorandum of Agreement
between the
Bostwick Irrigation District in Nebraska
and the
Nebraska Department of Natural Resources
for
Use of the District Water Supply**

WHEREAS, water usage by irrigators in the Republican River Basin threatens the State of Nebraska's compliance to the obligations of the Republican River Compact; and

WHEREAS, the use of the water supply of the Bostwick Irrigation District in Nebraska during 2006 would assist the State of Nebraska to be in compliance with the Republican River Compact; and

WHEREAS, the use of this water supply would be a benefit to the Republican River Basin and the entire State of Nebraska;

NOW THEREFORE, the parties agree as follows:

1) The District agrees to:

- a) not release or use the District water supply in the Harlan County Reservoir as defined in paragraph 3.
- b) not divert or use the natural flows of the Republican River
- c) not use or deliver the spring water that accumulates in the Superior Canal unless surplus storage would occur that would allow the operation of the canal.
- d) allow the Kansas Bostwick Irrigation District #2 to call for and release the specified amount of the Bostwick Irrigation District in Nebraska's share of the storage water in the Harlan County Reservoir per the Memorandum of Agreement between the two irrigation districts and with the concurrence of the Bureau of Reclamation.

2) The Department of Natural Resources agrees to:

- a) pay the Bostwick Irrigation District in Nebraska a sum of 2.5 million dollars per year for 3 years for the use of the District's water supply (dam storage as defined in paragraph 3, natural flows in the Republican River and spring water in the Superior Canal as defined in paragraph 4) during 2006.
- b) take the actions necessary to achieve the storage target of 130,000 acre-feet of storage available in the Harlan County Reservoir on an annual basis as referred to in the compact settlement within 3 years and if the target of 130,000 acre-feet of available storage is not attained in any year in the following 10 (ten) years the State of Nebraska will pay the Bostwick Irrigation District in Nebraska 2.5

million dollars. (For purposes of this agreement the storage will be as of June 1 and payment will be due June 15 of the same year.)

- c) restrict releases from the Harlan County Reservoir that are intended for use in Kansas to the minimum amounts necessary for compliance to the Republican River Compact and to assure the total flows at the state line on the Courtland Canal and at the river gauge at Hardy when added together do not exceed the minimum amount of water allocated to the State of Kansas for the beneficial consumptive use of eastern Kansas on an annual basis.
 - d) allow all District acres full participation in all state and federal farm programs.
 - e) encourage all Republican River Basin Natural Resource Districts to take the actions necessary to increase river flows and reservoir storage.
 - f) keep a separate consumptive use allocation of 50% of the state consumptive use allocation for surface water and not allow any unused consumptive use to be utilized by ground water pumping without an agreement and reimbursement to the surface water users.
 - g) pay any money agreed to with this document within 60 days of signing.
 - h) allow the Bostwick Irrigation District in Nebraska to have full water rights (storage and natural flow) coverage for 22,935 acres at the legal limit of 70 acres to 1 cubic foot per second as appropriation A-2691A (using only one appropriation for the entire District) with a priority date of 4/3/46.
 - i) pay any charges from the Corps of Engineers and the Bureau of Reclamation that are chargeable to the District for the year this agreement is in effect.
3. The amount of storage water for purposes of this agreement will be the October estimate, the January announcement, the actual June 1 storage (less evaporation) or any adjustment of the Bureau of Reclamation which ever is the least amount. Any amount of water surplus to the least amount will be available for use by the District.
4. The natural flows and spring water referred to in this agreement will be that water available in the Republican River at the time designated and the spring water in the Superior Canal in the amount and volume it may occur provided the canal is not being operated.
5. The State shall indemnify and hold the District 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 State its employees or agents under this Agreement.

- 6. This Agreement shall have a term of one year starting January 1 and ending December 31 in the year designated except for the commitments specified such as the 3 years of payments, future administration of consumptive use allocations, water rights, etc...
- 7. Any water designated in this Agreement that is not released from storage in the year this agreement is to take effect will not be carried over but will revert back to the project water supply for use by the District as apportioned by the Bureau of Reclamation.
- 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. 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).
- 11. 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.

BOSTWICK IRRIGATION DISTRICT IN NEBRASKA

Walter Knehans, Board President
Bostwick Irrigation District in Nebraska

Date

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Ann Bleed, Acting Director
Nebraska Dept. of Natural Resources

Date

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