

# DUPLICATE ORIGINAL

Contract No. 009D6B0121

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Franklin, Superior-Courtland and Courtland Units,  
Bostwick Division, Nebraska  
Pick-Sloan Missouri River Basin Program

CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE BOSTWICK IRRIGATION DISTRICT IN NEBRASKA

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Contract No. 009D6B0121

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Bostwick Division  
Pick-Sloan Missouri Basin Program, Nebraska

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND  
THE BOSTWICK IRRIGATION DISTRICT IN NEBRASKA PROVIDING FOR  
A DISTRICT WATER SUPPLY AND FOR REPAYMENT AND OPERATION AND  
MAINTENANCE OF THE DISTRICT WATER SUPPLY AND DISTRIBUTION SYSTEM

THIS CONTRACT, made this 25<sup>th</sup> day of July, 2000,  
between the UNITED STATES OF AMERICA, hereinafter called the "United States,"  
acting through the Secretary of the Interior, pursuant generally to the Act of June 17,  
1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly,  
but not limited to, Sec. 9(d) of the Act of August 4, 1939 (53 Stat. 1187), as amended  
and supplemented, the Act of December 22, 1944 (58 Stat. 887), and the Act of July 2,  
1956 (70 Stat. 483), all collectively known as the Federal Reclamation laws, and the  
BOSTWICK IRRIGATION DISTRICT IN NEBRASKA, an irrigation district organized and  
existing pursuant to the laws of the State of Nebraska, with its principal place of  
business in Red Cloud, Nebraska, hereafter called the "District."

WITNESSETH, THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

a. WHEREAS, the United States has constructed the Bostwick Division of the  
Pick-Sloan Missouri Basin Program, Nebraska, pursuant to the Act of December 22,  
1944 (58 Stat. 887), as set forth in House Document 475 and Senate Document 191, as  
revised and coordinated by Senate Document 247, 78th Congress, Second Session, to  
provide benefits for irrigation, flood control, sediment control, fish and wildlife

enhancement, and recreation; and

b. WHEREAS, the parties hereto have entered into Contract No. 9-07-70-W0025 (formerly I81r-1079), dated February 21, 1949, as amended and supplemented, hereinafter called the "1949 contract," for the furnishing of a project water supply and for construction, operation and maintenance, and repayment of the District's water supply, distribution and drainage facilities; and

c. WHEREAS, Part A of the 1949 contract, which otherwise would have terminated on December 31, 1996, was extended through December 31, 2000, pursuant to P.L. 104-326, dated October 19, 1996 (110 Stat. 4000); and

d. WHEREAS, the District has requested conversion of Part A of the 1949 contract to a repayment contract pursuant to the Federal Reclamation laws and the laws of the State of Nebraska, and has fulfilled its obligations to date under the 1949 contract; and

e. WHEREAS, the United States agrees to conversion of Part A of the 1949 contract to a repayment contract pursuant to applicable Federal and state laws, rules and regulations, particularly Subsection 9 of the Reclamation Project Act of 1939 (53 Stat. 1187) and the Administration of Contracts under Subsection 9, Reclamation Project Act of 1939, Act of July 2, 1956 (70 Stat. 483); and

f. WHEREAS, Part B of the 1949 contract would not otherwise expire, but the United States and the District desire to supersede and replace its provisions by this contract for ease of contract administration; and

g. WHEREAS, the 1949 contract provided, among other things, for the United States to construct water supply and distribution facilities, and provided for the District to repay portions of the costs of constructing, operating and maintaining these facilities, and the United States and the District desire to continue this relationship and provide for a finality of the capital payments toward these facilities.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

## GENERAL DEFINITIONS

1. Where used in this contract, the terms:

- a. "1949 contract" shall mean the specific contract the parties hereto entered into February 21, 1949, which is numbered contract no. 9-07-70-W0025 (formerly I81r-1079), as amended and supplemented.
- b. "Contract" shall mean and include articles 1 through 35 hereof.
- c. "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.
- d. "Distribution works" shall mean all of the works beyond the canal turnouts in the Franklin North Side Canal (Franklin Canal), the Franklin South Side Canal (Franklin Pump Canal), the Naponee Canal, the Superior Canal, and the Courtland Canal in Nebraska; and works appurtenant thereto, which have been constructed by the United States for the distribution of water to such tracts of irrigable acreages within the District as the Contracting Officer and the District may determine; together with all drains and drainage works constructed for the drainage of District lands including any and all facilities appurtenant to such works; also, any machinery, equipment and headquarters and other buildings for the operation and maintenance of such distribution and drainage works, as determined by the Contracting Officer and the District.
- e. "District lands" shall mean the irrigable lands of the District upon which the District water supply may be put to beneficial use, as contained in the official records of the Contracting Officer and the District, which lands may be modified through inclusions and exclusions as provided herein.
- f. "District water supply" shall mean that portion of the project division water supply allocable to the State of Nebraska within the provisions of the Republican River Compact and any order issued by the United States Supreme Court in Kansas v. Nebraska, No. 126 Original, as may be beneficially used on District lands, or such portion thereof on which the District water supply may be beneficially applied in any irrigation season.

g. "District's remaining distribution works construction charge obligation" shall mean the remaining unpaid reimbursable distribution works costs of the District after taking into account payments which were made and/or scheduled through December 31, 2000 under the 1949 contract.

h. "District's water supply repayment obligation" shall mean the portion of the remaining unpaid water supply costs of the Bostwick Division (which Division includes both the District and the Kansas-Bostwick Irrigation District No. 2) allocated to irrigation (\$47,117,921 as of September 30, 1999) which the District shall repay under the terms of Article 5 of this Contract.

i. "Federal Reclamation laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof and supplementary thereto.

j. "Irrigation season" shall mean the period within any year May 1 through September 30, or such additional period from April 1 through November 15 of each year as may be agreed upon in writing between the United States and the District.

k. "Operation, maintenance, and replacement costs" shall mean those expenses incurred in connection with the water control, operation, maintenance and replacement of the project works, including appropriate charges for associated indirect costs and administration as determined by the Contracting Officer, and shall include such additional costs as hereinafter provided. Such expenses shall include those required to remedy conditions brought about by ordinary use of the project works or to restore or replace components of the existing project water facilities and shall not include expenses to increase or enlarge such works beyond the purposes for which they were originally authorized and constructed.

l. "Project" shall mean the Bostwick Division of the Pick-Sloan Missouri Basin Program.

m. "Project division water supply" shall mean the total supply of water made available in any irrigation season for the Bostwick Division of the Pick-Sloan Missouri Basin Program by or through the United States under the Federal Reclamation laws and under the applicable state laws of Nebraska and Kansas and water rights issued thereunder for irrigation uses pursuant to appropriations for storage in Harlan County

Lake, storage in Lovewell Reservoir, natural flow in the Republican River, natural flow in White Rock Creek, and any other appropriations issued under the respective state laws, including seepage and return flows recaptured within the Bostwick Division, as conclusively determined by the Contracting Officer.

n. "Project works" shall mean all of the works defined as water supply works and distribution works.

o. "Reserved water supply works" shall mean Lovewell Dam and Reservoir, Harlan County Dam and Lake, and all works appurtenant thereto.

p. "Transferred water supply works" shall mean the Superior-Courtland Diversion Dam, the Franklin North Side Canal (Franklin Canal), Franklin South Side Canal (Franklin Pump Canal), Naponee Canal, Superior Canal, and the Courtland Canal in Nebraska, together with any pump diversion works and all works appurtenant to such canals.

q. "Water supply repayment period" shall mean the 40 year period beginning with the year in which the first water supply capital payment is made pursuant to Article 5 hereof.

r. "Water Supply Works" shall mean all of the works defined as reserved water supply works and transferred water supply works.

s. "Year" shall mean the period January 1 through the following December 31.

#### EFFECTIVE DATE AND TERMINATION OF 1949 CONTRACT

2. This Contract shall become effective January 1, 2001, and on that date shall supersede and replace the 1949 contract in its entirety.

#### WATER SUPPLY WORKS - WATER TO BE FURNISHED TO THE DISTRICT - DISTRICT OPERATING PLAN

3. a. The United States has constructed the water supply works to supply the

District with the District water supply. For each irrigation season, the United States shall deliver to the District the District water supply and the District shall pay for such water supply pursuant to the provisions of Article 5 herein. Water deliveries shall be made at such times during the irrigation season and in such quantities, within the capacity of the system works, as provided herein.

b. The District does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water, except as may be necessary to meet the terms of Article 28 of this Contract.

c. The Contracting Officer shall determine the extent to which the available water supply shall be delivered to the District based on the following:

(1) For each irrigation season, the amount of irrigation water released shall be restricted to waters available above an annually established reservoir shutoff elevation at Harlan County Lake.

(2) The amount of irrigation water for release, shutoff elevation, and other reservoir operating provisions for the Water Supply Works shall be established by the parties annually in accordance with a document developed in a manner and form as the initial "District Operating Plan" which is attached hereto as Attachment B and by this reference made a part hereof. The parties shall annually, or as otherwise agreed, review the "District Operating Plan" and may, by mutual agreement of the parties, modify and amend the operating criteria of the initial plan necessary to achieve the District's commitments; Provided, That the District's commitments shall not be diminished or eliminated.

(3) The project division water supply shall be apportioned between the beneficiaries in accordance with a separate agreement between the District and the Kansas-Bostwick Irrigation District No. 2, subject to approval of the Contracting Officer. The Contracting Officer shall determine any dispute as to apportionment of the project division water supply.



d. As part of the consideration for a 40 year water supply repayment period, the District hereby agrees to continue its ongoing water conservation program and to establish and fund a water conservation fund to finance ongoing and planned water conservation related activities. Water conservation and environmental related commitments by the District, including the establishment and funding of the water conservation fund, are further described in the "District Operating Plan." The District agrees to honor these commitments, as further described in the "District Operating Plan."

#### DISTRIBUTION WORKS

4. a. The United States has constructed distribution works to distribute water to, and drain water from, district lands. The district shall repay the unpaid costs of these distribution works in accordance with the provisions of Article 6 herein.

b. The United States and the District recognize that drainage works in addition to those that have been constructed pursuant to (a) above, may be required from time to time for the preservation of the District lands. The District, without further cost to the United States, shall undertake such additional drainage works as the Contracting Officer, after consultation with the District, determines to be necessary. Such drainage works, when constructed, shall be considered to be a part of the distribution works. Any funds which may be available in accordance with Articles 7 and 8 may be used for construction of such drainage works, subject to Contracting Officer approval as required by those Articles.

c. Any future drains to be constructed for the purpose of correcting Courtland Canal seepage shall not be considered a cost under Subarticle 4(b), but shall instead be considered a water supply works cost. The cost of such drainage, without further cost to the United States, shall be apportioned between the District and the Kansas-Bostwick Irrigation District No. 2, as may be agreed upon by said districts, or in the absence of such agreement, as determined by the Contracting Officer.

#### DISTRICT'S WATER SUPPLY REPAYMENT OBLIGATIONS

5. a. The District shall repay the District's water supply repayment obligation through payment of the charges in (b) and (c) below.

b. The District shall make a base payment annually of \$11,468 from the effective date of this Contract through the year 2009. Beginning in the year 2010 through the year 2040, this annual base payment shall be \$45,870. It is the intention of the parties that the increase in the annual base payment shall occur in the year following the final repayment of the capital costs of the distribution works under Article 6 of this Contract; and that if for any reason that final payment is delayed, the change in the base payment shall be likewise delayed to coincide with the year following the delayed final capital payment for the distribution works. The parties agree that any base payments that are in excess of the calculated ability to pay of the District are made in part in consideration of the conversion of Part A of the 1949 contract to a repayment contract pursuant to Subsection 9(d) of the Reclamation Project Act of 1939. The parties further agree that notwithstanding the future determinations regarding ability to pay, the annual base payments set forth herein shall not be reduced.

c. The District shall also repay such additional sums against the water supply works costs as may be within the District's ability to pay as determined by the Contracting Officer in accordance with Reclamation policy; Provided, that such additional payment shall not be assessed unless and until the District's ability to pay exceeds the base payment called for in (b) above, at which time the District's annual water supply payment shall be the sum of the base payment called for in (b) above plus an ability to pay payment which shall be the net amount by which the District's determined ability to pay exceeds the District's base payment in (b) above. The parties agree that the District does not have any ability to pay at the time of the execution of this Contract.

d. Each annual installment of the District's water supply repayment obligation as provided in (b) and (c) above shall be paid one-half on or before July 1 and one-half on or before November 1 of the year in which it is due.

e. The parties agree that the District's water supply repayment obligation for the existing water supply works shall be fully satisfied upon fulfillment of the payments provided in (b) and (c), and that these payments shall constitute full and complete payment of all sums required by law of the District for the capital repayment of the existing water supply works, and that no capital payments beyond the water supply repayment period shall be due from the District for repayment of the existing water supply works.

### DISTRICT'S DISTRIBUTION WORKS REPAYMENT OBLIGATION

6. a. The United States has made reimbursable expenditures of \$5,440,241 for construction of distribution works. The District, under the 1949 contract, has already repaid or is scheduled to repay \$4,156,146.38 of this amount by January 1, 2001, and shall repay to the United States, as scheduled, the then remaining unpaid balance of \$1,284,094.62. This unpaid balance is hereinafter called the "District's remaining distribution works construction charge obligation." The District shall repay the District's remaining distribution works construction charge obligation through annual installments in accordance with the payment schedule in Attachment A, which is attached hereto and made a part hereof.

b. Each annual installment of the District's remaining distribution works construction charge obligation shall be paid one-half on or before July 1 and one-half on or before November 1 of the year in which it is due.

c. The parties agree that the District's repayment obligation for the existing distribution works shall be fully satisfied upon fulfillment of the payments provided in (a), and that these payments shall constitute full and complete payment of all sums required of the District by law for the capital repayment of the existing distribution works, and that no other capital payments shall be due from the District for repayment of the existing distribution works.

### DISTRICT'S WATER SUPPLY RESERVE FUND OBLIGATIONS

7. a. Commencing with the effective date of this Contract, the District shall establish and maintain a water supply reserve fund, which the District shall keep available to meet costs incurred on the water supply works as identified in (e) below.

b. The District shall annually deposit into the water supply reserve fund the sum of \$4,587 from the effective date of this Contract through the year 2009. Beginning in the year 2010, annual deposits to the fund shall be \$38,990. It is the intention of the parties that the increase in the reserve fund annual deposits shall occur in the year following the final repayment of the capital costs of the distribution works under Article 6 of this Contract; and that if for any reason that final payment is delayed, the change in reserve fund deposits shall be likewise delayed to coincide with the year following the

delayed final capital payment for the distribution works.

c. The water supply reserve fund shall be deposited in accordance with the State laws governing the District and in a federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the fund shall be available within a reasonable time to meet expenses for such purposes as those identified in (e) below.

d. Such annual deposits into the water supply reserve fund and the accumulation of interest to the fund shall continue unless and until the funds which have been accumulated reach the ceiling amount of \$1,249,973. At such time the annual deposits may be discontinued upon mutual agreement of the Contracting Officer and the District; however, the interest earnings shall continue to accrue to the fund. Following any expenditure or transfer from the fund, the District shall resume annual deposits into the fund in the amount in (b) above from the year following the expenditure or transfer, unless and until the greater of the largest previous balance or the ceiling amount is accumulated, at which time the annual deposits may be discontinued upon mutual agreement of the Contracting Officer and the District; however, the interest earnings shall continue to accrue to the fund.

e. The water supply reserve fund shall be available for the purposes of meeting the District's share of costs incurred on the water supply works for: 1) extraordinary operation, maintenance and replacement; 2) ordinary operation, maintenance and replacement incurred during periods of special stress caused by damaging droughts, storms, earthquakes, flood, or other emergencies threatening or causing interruption of water supply to the District; and 3) additions and/or modernization, including, but not limited to, activities which improve the operation, reduce the need for future maintenance, and modify and improve the operating efficiencies of the water supply works. Water supply reserve funds may be used for previously planned activities involving these types of costs, or for these types of costs incurred during emergency actions necessitated by periods of special stress as described in (2) above. The parties agree that the fund shall be used to make extraordinary repairs, replace, and renew project facilities to assure that the project works remain in a state which will allow the Project as a whole to operate efficiently, appropriately, and in accordance with advancements in irrigation program technologies.

f. Expenditures of less than \$10,000 per emergency event from the fund for emergency actions on transferred water supply works may be made by the District without prior consent of the Contracting Officer. This initial \$10,000 amount shall increase \$1,000 for each year this Contract has been in effect after the initial effective year. The Contracting Officer shall be given written notice within 48 hours of any emergency expenditure not initially authorized in writing. All other proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Except for emergencies, all expenditures shall be in accordance with: a plan of action developed by the District in cooperation with the Contracting Officer, State law, and sound and accepted accounting practice and procedure.

g. Any expenditures from the water supply reserve fund shall be limited to work associated with the existing water supply works, or components thereof, associated with the irrigation purpose of the Project and shall not result in expenditures to increase or enlarge such water supply works beyond the purposes for which they were originally authorized and constructed.

h. During any period in which any of the transferred water supply works are operated and maintained by the United States, the water supply reserve fund shall be available for like uses by the United States, as defined in (e) above.

i. Upon written mutual agreement between the District and the Contracting Officer, all or any portion of the water supply reserve fund balance may be transferred to the distribution works reserve fund, as established in Article 8 of this Contract, to supplement those funds for the uses provided for in that reserve fund.

j. Upon written mutual agreement between the District and the Contracting Officer, the water supply reserve fund ceiling amount may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project, the size of the annual operation and maintenance budget, additions to, deletions from, or changes in water supply works, and addition and modernization costs not contemplated when this Contract was executed.

k. By July 1 of each year, the District shall provide an annual statement of the balance and composition (principal and accumulated interest) of the water supply

reserve fund account to the Contracting Officer.

DISTRICT'S DISTRIBUTION WORKS RESERVE FUND OBLIGATIONS

8. a. Commencing with the effective date of this Contract, the District shall establish and maintain a distribution works reserve fund, which the District shall keep available to meet costs incurred on the distribution works as identified in (e) below.

b. On the effective date of this Contract the District shall deposit the sum of \$50,000 into the distribution works reserve fund, and shall annually deposit into the fund the sum of \$2,294 from the effective date of this Contract through the year 2009. Beginning in the year 2010, annual deposits to the fund shall be \$36,696. It is the intention of the parties that the increase in reserve fund annual deposits shall occur in the year following the final repayment of the capital costs of the distribution works under Article 6 of this Contract; and that if for any reason the final payment is delayed, the change in reserve fund deposits shall be likewise delayed to coincide with the year following the delayed final capital payment for the distribution works.

c. The distribution works reserve fund shall be deposited in accordance with the State laws governing the District and in a federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the fund shall be available within a reasonable time to meet expenses for such purposes as those identified in (e) below.

d. Such annual deposits into the distribution works reserve fund and the accumulation of interest to the fund shall continue unless and until the funds which have been accumulated reach the ceiling amount of \$1,208,222. At such time the annual deposits may be discontinued by mutual agreement of the Contracting Officer and the District; however, the interest earnings shall continue to accrue to the fund. Following any expenditure or transfer from the fund, the District shall resume annual deposits into the fund in the amount in (b) above from the year following the expenditure or transfer, unless and until the greater of the largest previous balance or the ceiling amount is accumulated, at which time the annual deposits may be discontinued upon mutual agreement of the Contracting Officer and the District; however the interest earnings shall continue to accrue to the fund.

e. The distribution works reserve fund shall be available for the purposes of meeting the District's share of costs incurred on the distribution works for: 1) extraordinary operation, maintenance and replacement; 2) ordinary operation, maintenance and replacement incurred during periods of special stress caused by damaging droughts, storms, earthquakes, flood, or other emergencies threatening or causing interruption of the distribution of the District's water supply; and 3) additions and/or modernization, including, but not limited to, activities which improve the operation, reduce the need for future maintenance, and modify and improve the operating efficiencies of the distribution works. Distribution works reserve funds may be used for previously planned activities involving these types of costs, or for these types of costs incurred during emergency actions necessitated by periods of special stress as described in (2) above. The parties agree that the fund shall be used to make extraordinary repairs, replace, and renew project facilities to assure that the project works remain in a state which will allow the Project as a whole to operate efficiently, appropriately, and in accordance with advancements in irrigation program technologies.

f. Expenditures of less than \$10,000 per emergency event from the fund for emergency actions on distribution works transferred to the District may be made by the District without prior consent of the Contracting Officer. This initial \$10,000 amount shall increase \$1,000 for each year this Contract has been in effect after the initial effective year. The Contracting Officer shall be given written notice within 48 hours of any emergency expenditure not initially authorized in writing. All other proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Except for emergencies, all expenditures shall be in accordance with: a plan of action developed by the District in cooperation with the Contracting Officer, State law, and sound and accepted accounting practice and procedure.

g. Any expenditures from the distribution works reserve fund shall be limited to work associated with the existing distribution works, or components thereof, associated with the irrigation purpose of the Project and shall not result in expenditures to increase or enlarge the use of the available water supply beyond the level and purposes for which it was originally authorized and developed.

h. During any period in which any of the distribution works which have been transferred to the District are operated and maintained by the United States, the

distribution works reserve fund shall be available for like uses by the United States, as defined in (e) above.

i. Upon written mutual agreement between the District and the Contracting Officer, all or any portion of the distribution works reserve fund balance may be transferred to the water supply reserve fund, as established by Article 7 of this Contract, to supplement those funds for the uses provided for in that reserve fund.

j. Upon written mutual agreement between the District and the Contracting Officer, the distribution works reserve fund ceiling amount may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project, the size of the annual operation and maintenance budget, additions to, deletions from, or changes in the distribution works, and addition and modernization costs not contemplated when this Contract was executed.

k. By July 1 of each year, the District shall provide an annual statement of the balance and composition (principal and accumulated interest) of the distribution works reserve fund account to the Contracting Officer.

DISTRICT'S OBLIGATIONS FOR OPERATION, MAINTENANCE AND  
REPLACEMENT COSTS, ADMINISTRATIVE COSTS, AND  
RELATED FEDERAL COSTS

9. a. In addition to the charges and deposits set forth in Articles 5 through 8 of this Contract, the District shall also pay the costs outlined in (1) through (3) below. All such costs shall be paid annually, one-half due on or before January 1 and the remaining one-half due on or before July 1 of each year. Payment shall be based on an estimate of such costs with adjustments made on the July 1 bill to reflect the actual costs of the previous year; Provided, That in order to avoid incurring a deficit in the funding of such costs, the Contracting Officer may bill the District for any projected deficit and the District shall pay such amount within 30 days after receipt of such notice thereof.

(1) The District's share, as determined by the Contracting Officer, of the annual operation, maintenance and replacement (OM&R) costs incurred by the United States on the Project works. For the first year of this



Contract, this charge shall also include the District's share of any OM&R costs incurred under the 1949 contract which remain unpaid.

(2) Such costs which are not included under (1) above that the United States incurs for administration of this Contract which are properly chargeable to the District plus an appropriate share of the costs for administration, supervision, general expense and indirect costs as are properly chargeable to the District as determined by the Contracting Officer.

(3) Such costs for inspections, investigations, reviews and repairs of transferred works, as provided for in Subarticles 14(c) and 17(e), as determined by the Contracting Officer to be reimbursable by the District.

b. The Contracting Officer shall, to the extent practicable and foreseeable, inform the District of the estimate of the costs to be paid by the District in accordance with this Article in advance for the District's use in its budgeting process.

c. The Superior-Courtland Diversion Dam, any drains or portions of drains constructed in Nebraska as part of the Courtland Canal water supply works, and that part of the Courtland Canal in Nebraska were constructed to serve lands in the District and lands in Kansas-Bostwick Irrigation District No. 2. It is the intention of the United States that the District or the Kansas-Bostwick Irrigation District No. 2, or their assigns, shall operate and maintain these works. The cost of the operation, maintenance and replacement of such works shall be apportioned between the District and the Kansas-Bostwick Irrigation District No. 2, as may be agreed upon by said districts or, in the absence of such agreement, as determined by the Contracting Officer. By mutual agreement, one of the districts shall divert and carry the water of both of the districts through such works, and the other (nonoperating) district shall pay to the district which operates and maintains the facilities the proportion of the costs of such operation and maintenance assignable to the nonoperating district. Payment of such apportioned actual costs shall be made to the operating district each year. The operating district shall be secured in its collection of such costs by the same rights the United States would have were it operating and maintaining the Superior-Courtland Diversion Dam, any drains or portions of drains constructed in Nebraska as part of the Courtland Canal water supply works, and the Courtland Canal in Nebraska. If the United States

reassumes the operation and maintenance of the Superior-Courtland Diversion Dam, any drains or portions of drains constructed in Nebraska as part of the Courtland Canal water supply works, or the Courtland Canal in Nebraska, such payments shall be made by the District and the Kansas-Bostwick Irrigation District No. 2 to the United States in advance of the irrigation season based on an estimate of such costs and such costs shall be adjusted at the close of each year on the basis of actual costs. In the carriage of water through the Courtland Canal in Nebraska, transportation losses assignable to the Districts shall be fairly adjusted as between those Districts.

d. The Contracting Officer shall determine any dispute as to costs of operation, maintenance, and replacement of the works referred to in (c) above, the proration of such costs, the operating district, and the distribution of any water transportation losses.

POINTS OF DELIVERY, MEASUREMENT, AND  
RESPONSIBILITY FOR DELIVERY OF WATER

10. a. Water to be delivered to the District pursuant to this Contract shall be delivered at the canal headgates of each of the main canals. For the purpose of computing the amount of water furnished to the District, such water shall be measured by the United States at such points with equipment owned, installed, operated and maintained by the United States. The Contracting Officer's determination as to such measurements shall be final.

b. The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water furnished to the District hereunder beyond the points of furnishing as provided in (a) of this article, and the District shall hold the United States harmless on account of damage or claim of any nature whatsoever, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond said points of furnishing.

c. It is understood that the Superior-Courtland Diversion Dam and the Courtland Canal system may be used for the diversion and carriage of water during the non-irrigation season.

d. The United States reserves the right to claim all of the waste, seepage, or return flow derived from the water furnished pursuant to this Contract, and the same is hereby reserved and retained by the United States for use in a manner consistent with the provisions of State law and the Republican River Compact.

#### RIGHTS TO BENEFICIAL USE OF WATER

11. a. Rights to the beneficial use of the District water supply shall be governed by the Federal Reclamation laws, other applicable Federal laws, and the laws of the State of Nebraska, as the same may at any time apply to this Contract; but any such rights to beneficial use shall in no way extend or enlarge the rights of the District to the delivery of water through the water supply works involved herein other than as provided in this Contract; Provided, That the right to delivery of water under this Contract shall not be abrogated so long as the District is not in violation of any of the provisions of this Contract, or in violation of applicable Federal or state laws, rules, or regulations.

b. Rights to the beneficial use of the water provided hereunder shall be subject to the provisions and requirements of the Republican River Compact, including any changes, revisions or additions thereto, as well as any order issued by the United States Supreme Court in Kansas v. Nebraska, No. 126, Original.

c. No rights or interests in or to the District water supply other than to receive water annually pursuant to the terms and limitations of this Contract shall accrue to the District or to anyone claiming by, through, or under the District, by reason of any provision(s) of this Contract.

d. Rights to the beneficial use of the water provided hereunder shall not be diminished because of conservation activities, reductions in annual deliveries, or other water management practices to provide for carryover storage in accordance with Attachment B of this Contract.

#### UNITED STATES NOT LIABLE FOR WATER SHORTAGE

12. On account of drought, hostile diversion, or any other causes beyond the control of the parties hereto, there may occur at times during any year a shortage in the quantity of water available for delivery to the District by the United States pursuant to

this Contract. In no event shall any liability accrue against the United States or against any of its officers, agents, or employees, acting within the scope of their employment, for any damage, direct or indirect, arising out of such shortage. In any year in which there may occur a shortage, as described herein, the United States reserves the right to apportion the project division water supply among those entitled to receive water from that water supply. In making such apportionment, the shortages shall be equalized among all such beneficiaries of the water supply. The apportionment as herein provided shall be made only after consultation with the District.

#### TRANSFER OF TITLE TO PROJECT WORKS

13. The Contracting Officer shall cooperate with the District and shall support the District's efforts in pursuing transfer of title to the Project works; Provided, That such title transfer effort be in accordance with Federal law and Reclamation policy; Provided further, That title to the Project works shall remain in the United States until otherwise provided by Congress, notwithstanding that some of the Project works may be transferred to the District for care, operation and maintenance.

#### OPERATION AND MAINTENANCE TRANSFER OF CERTAIN WORKS

14. a. The United States has transferred to the District and the District has assumed and undertaken the care, operation and maintenance of certain of the Project works to be utilized in the carriage and distribution of water to lands within the District's boundaries and for the drainage of District lands together with facilities appurtenant to such works. At the time of execution of this Contract, these transferred works include all of the Project distribution works and the transferred water supply works as defined herein. Following written notification, the Contracting Officer may transfer other reserved water supply works to the District, with the understanding that arrangements to compensate the District for any operation and maintenance expenses allocated to purposes of any such transferred water supply works that were not payable by the District previously shall be made for any such transfers. Except as otherwise provided herein, the District shall care for, operate and maintain all transferred works at its own expense, and without expense to the United States, in full compliance with the Federal Reclamation laws, applicable rules and regulations, and the terms of this Contract, and in such a manner that the transferred works shall remain in as good and efficient condition and of at least equal capacity for the carriage and distribution of irrigation

water as at the date such works were turned over to the District. No substantial physical or operational changes shall be made by the District in any of such transferred works without first obtaining written consent of the Contracting Officer.

b. Moveable operation and maintenance equipment transferred to the District as part of the distribution works has become the property of the District; Provided, That in the event the United States should at any time resume the operation and maintenance of any part of the transferred Project works, the District's operation and maintenance equipment shall be made available for use by the United States.

c. The District shall make promptly any and all repairs to the transferred works which the Contracting Officer may determine to be reasonable and necessary. If the Contracting Officer determines that any part of such transferred works is for any cause unfit for service, he may order the water shut off and turned out of such transferred works until he determines that such transferred works are put in proper condition for service. In case of neglect or failure of the District to make such repairs the Contracting Officer may cause the repairs to be made and the cost thereof, as determined by the Contracting Officer, shall be paid by the District to the United States as provided in Article 9 hereof.

d. In the event the District is at any time in default of any of its obligations to the United States under this Contract, or is found by the Contracting Officer to be operating the transferred works or any part thereof in violation of the provisions of this Contract, then at the election of the Contracting Officer, the United States shall take over from the District the care, operation and maintenance of the transferred works by giving written notice to the District of such election and of the effective date thereof. Thereafter, during the period of government operation, the District shall pay to the United States annually in advance of the use of such transferred works the cost of the operation and maintenance of said works as fixed in notices from the Contracting Officer to the District.

e. Any excess of payments by the District to the United States over the actual cost of such operation and maintenance as determined by the Contracting Officer shall be applied to advances next required of the District or shall be refunded to the District upon retransfer of such works to the District. Such works may be retransferred to the District at the election of the Contracting Officer in the manner as originally

transferred to the District. The District shall surrender possession and accept the retransfer on being given the notice provided for herein.

f. The District agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the District or the United States required under this Contract on any of the transferred water supply works or distribution works, regardless of who performs those duties.

#### STANDARD CONTRACT ARTICLES

#### CHARGES FOR DELINQUENT PAYMENTS

15. a. The District shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the District shall pay an interest charge for each day the payment is delinquent beyond the due date; Provided, that no interest shall be charged the District unless such delinquency continues for more than 30 days, in which event interest shall accrue from the initial due date. When a payment becomes 60 days delinquent, the District shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the District shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the District shall pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

c. When a partial payment on a delinquent account is received, the amount

received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

16. a. The obligation of the District to pay the United States as provided in this Contract is a general obligation of the District notwithstanding the manner in which the obligation may be distributed among the District's water users and notwithstanding the default of individual water users in their obligation to the District.

b. The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the District through project facilities during any period in which the District may be in arrears in the advance payment of water rates and/or operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The District shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates and/or operation and maintenance charges or in arrears more than 12 months in the payment of construction charges levied or established by the District.

EXAMINATION AND INSPECTION OF PROJECT WORKS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

17. a. The Contracting Officer may, from time to time, examine the District's books, records, and reports; the project works being operated by the District to assist the District in determining the condition of the project works; and the adequacy of the operation and maintenance program, the reserve fund, and the water conservation program. The Contracting Officer may examine any or all of the project works which were constructed by the United States and transferred to the District, or project works which were constructed by the District with funds advanced or reimbursed by the United States.

b. The Contracting Officer may, or the District may request the Contracting Officer to, conduct special inspections of any project works being operated by the District and special audits of the District's books and records to ascertain the extent of

any operation and maintenance deficiencies, to determine the remedial measures required for their correction, and to assist the District in solving specific problems. Except in an emergency, any special inspection or audit shall be made only after written notice thereof has been delivered to the District by the Contracting Officer.

c. The District shall provide access to the project works, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection, or audit.

d. The Contracting Officer shall prepare reports based on the examinations, inspections, or audits and furnish copies of such reports and any recommendations to the District.

e. The District shall reimburse the actual cost incurred by the United States in making operation and maintenance examinations, inspections, audits, and preparing associated reports and recommendations.

f. The Contracting Officer may provide the State an opportunity to observe and participate in, at its own expense, the examinations and inspections. The State may be provided copies of reports and any recommendations relating to such examinations and inspections.

#### CONFIRMATION OF CONTRACT

18. The District, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Nebraska confirming the execution of this Contract. The District shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the District. This Contract shall not be binding on the United States until such final decree has been secured.

#### NOTICES

19. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the District, when mailed, postage prepaid,



or delivered to the Regional Director, Great Plains Region, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107-6900, and on behalf of the United States, when mailed, postage prepaid, or delivered to the President, Bostwick Irrigation District in Nebraska, West Highway 136, P.O. Box 446, Red Cloud, NE 68970-0446. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

#### CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

20. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the District from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

#### OFFICIALS NOT TO BENEFIT

21. No Member of or Delegate to Congress, Resident Commissioner, or official of the District shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

#### CHANGES IN DISTRICT'S ORGANIZATION

22. While this Contract is in effect, no change may be made in the District's organization, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

#### ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

23. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

#### BOOKS, RECORDS, AND REPORTS

24. The District shall establish and maintain accounts and other books and

records pertaining to administration of the terms and conditions of this Contract, including: the District's financial transactions, water supply data, project operation, maintenance and replacement logs, and project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing and water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

#### COMPLIANCE WITH RECLAMATION LAWS

25. The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, including, but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

#### ADMINISTRATION OF PROJECT LANDS

26. The lands and rights-of-way acquired and needed by the United States for the purposes of care, operation, and maintenance of project works may be used by the District for such purposes. The District shall ensure that no unauthorized encroachment occurs on project lands and rights-of-way. The District shall not issue rights-of-way across project land, issue land rights to project lands, or issue leases, licenses, permits, or special use agreements involving project land, rights-of-way, or transferred works. All such land-use instruments shall only be issued by the Contracting Officer.

#### QUALITY OF WATER

27. The operation and maintenance of project facilities shall be performed in such a manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better

the quality of water.

### WATER AND AIR POLLUTION CONTROL

28. The District, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Nebraska, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

### WATER CONSERVATION

29. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the District shall develop an effective water conservation program consistent with the current "Guidelines for the Development of Irrigation Water Conservation Plans" and acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 3-year intervals, the District shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the District shall consult and agree to continue or to revise the existing water conservation program.

### EQUAL OPPORTUNITY

30. During the performance of this Contract, the District agrees as follows:

a. The District will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The District will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The District agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting

Officer setting forth the provisions of this nondiscrimination clause.

b. The District will, in all solicitations or advertisements for employees placed by or on behalf of the District, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

c. The District will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or worker's representative of the District's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The District will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The District will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the District's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the District may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The District will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or

vendor. The District will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the District becomes involved in, or is threatened with, litigation with a subdistrict or vendor as a result of such direction, the District may request the United States to enter into such litigation to protect the interests of the United States.

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

31. a. The District shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the District agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The District makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the District by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The District recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

#### MEDIUM FOR TRANSMITTING PAYMENTS

32. All payments from the District to the United States under this Contract shall

be made by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

### PRIVACY ACT COMPLIANCE

33. a. The District shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining landholder acreage certification and reporting records, required to be submitted to the District for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

b. With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the District and the District's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

c. The Contracting Officer or a designated representative shall provide the District with current copies of the Interior Department Privacy Act regulations and the Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

d. The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64, and amendment requests pursuant to 43 CFR 2.72. The District is authorized to grant requests by individuals for access to their own records.

e. The District shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64, and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the District

pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as authority for the request.

#### CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

34. a. The District may not allow contamination or pollution of Federal project lands, waters or project works of the United States administered by the Contracting Officer for which the District has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination by third parties.

b. The District shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions, existing or hereinafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities of the project.

c. "Hazardous Material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 1901, *et seq.*, and the regulations promulgated pursuant to that Act. In addition it shall include thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers or any other pollutants.

d. Upon discovery of any event which may or does result in pollution or contamination of Federal project lands, water or project works the District shall initiate emergency measures to protect health and safety and the environment if necessary and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time of discovery if it is an emergency and the first working day thereafter if it is a nonemergency.

e. Violation of any provisions of this Article, upon which the District does not take immediate corrective action, may, as determined by the Contracting Officer, constitute grounds for termination of this contract and shall make the District liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

f. The District agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third party contract it may enter into pursuant to this Contract.

g. The Contracting Officer agrees to provide information necessary for the District, using reasonable diligence, to comply with the provisions of this Article.

ENTIRE AGREEMENT

35. This Contract, including the Preamble, the Explanatory Recitals, and the Attachments thereto, constitute the entire agreement between the parties concerning the delivery of water to the District and the repayment the District shall make for the distribution and water supply works of the Project, and on January 1, 2001, supersedes all prior agreements, whether written or verbal, between the parties regarding this subject.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By Maryanne C. Jack  
Regional Director

BOSTWICK IRRIGATION DISTRICT IN NEBRASKA

By W. E. Bean  
President

ATTEST:

Paula Olson  
Secretary



**ATTACHMENT A**

**ANNUAL DISTRIBUTION WORKS CONSTRUCTION CHARGE  
OBLIGATION PAYMENTS**

<u>YEAR</u>	<u>AMOUNT</u>
2001	\$147,231
2002	\$147,231
2003	\$147,231
2004	\$147,231
2005	\$147,231
2006	\$147,231
2007	\$147,231
2008	\$147,231
2009	\$106,246.62 (final payment)

**ATTACHMENT B**

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Bostwick Irrigation District in Nebraska  
Franklin, Superior-Courtland and Courtland Units  
Bostwick Division  
Pick-Sloan Missouri Basin Program, Nebraska**

**“DISTRICT OPERATING PLAN”**

This “District Operating Plan” hereinafter referred to as “Plan” is made for the purpose of providing a means to implement the contractual commitment made by the District to the United States concerning the operation of the District and the performance of certain water conservation and environmental activities which are part of the consideration for a 40 year repayment term. The District hereby agrees to honor the commitments in this Plan. The parties shall annually, or as otherwise agreed, review the Plan and may, by mutual agreement of the parties, modify and amend the operating criteria of the initial Plan necessary to achieve the District’s commitments, Provided, That the District’s commitments shall not be diminished or eliminated.

**BACKGROUND:**

The Bostwick Division is located in south-central Nebraska and north-central Kansas along the Republican River and the White Rock Creek. The Bostwick Division consists of the Franklin, Superior-Courtland, and Courtland Units. The Franklin and Superior-Courtland Units consists of Harlan County Dam and Lake, Superior-Courtland Diversion Dam, and a system of canals, laterals, and drains that currently serves 36,313 acres of project lands. The Courtland Unit consists of Lovewell Dam and Reservoir, and a system of canals, laterals, and drains that currently serves 29,122 acres of project lands. In addition to storing water for irrigation the three units protect the downstream areas from floods, and offer opportunities for recreation and for conservation and development of fish and wildlife.

Due to a depleting water supply, the District, in cooperation with Kansas-Bostwick Irrigation District No. 2, is willing to limit its irrigation deliveries in order to maintain higher reservoir levels and undertake water conservation measures to improve the efficiency of the project delivery system and encourage on-farm efficiency improvement.

#### **IRRIGATION DELIVERIES:**

It is understood that from time to time the United States shall accomplish sediment re-surveys of the reservoirs which shall change the area-capacity data and the elevation-capacity relationship. It is further understood that when the data is officially revised and placed into use it shall be used in the calculation for the shutoff elevations. In the event the re-survey necessitates changes in reservoir elevations for flood control and irrigation this Plan shall be revised to incorporate those changes.

The available water supply to the District shall be flows of the Republican River and the District's apportionment of the storage waters available for release above the annually established reservoir shutoff elevation for Harlan County Lake as computed by the Contracting Officer.

The amount of irrigation water released during any one irrigation season from Harlan County Lake and Lovewell Reservoir shall be determined by the Contracting Officer in consultation with the District, based on the following:

1. By January 15 of each year, the United States shall provide the District and the Kansas-Bostwick Irrigation District No. 2 an estimate of the reservoir shutoff elevation and the water supply available for the irrigation season. By June 15 of each year, the actual reservoir shutoff elevations shall be established. The following process shall be used:
  - A. The space available for irrigation use in Harlan County Lake has been established as 150,000 acre-feet between elevations 1945.7 and 1931.75. The current contents are 311,104 acre-feet (El. 1945.7) and 159,674 acre-feet (El. 1931.75) which establishes the current irrigation space as 150,000 acre-feet after a sediment adjustment of 1,430 acre-feet in this pool. In addition irrigation is allowed to use up to 20,000 acre-feet from the sediment pool to adjust for annual evaporation loss that is allocated to

sediment storage provided irrigation releases are less than 119,000 acre-feet. The space available for irrigation use in Lovewell Reservoir is established as the space available between elevations 1582.6 and 1571.7. The current contents are 35,666 acre-feet (El. 1582.6) and 11,644 acre-feet (El. 1571.7) which establishes the current irrigation space as 24,022 acre-feet.

- B. The annual shutoff elevation for Harlan County Lake shall be estimated by January 15 of each year. By June 15 of each year the actual shutoff elevation shall be established using May 31 data as follows:

For January estimate:

1. Estimate the May 31 content by taking the December 31 total reservoir storage plus the January-May inflow estimate (57,600 acre-feet or the running average inflow for the last 5-year period, whichever is less) minus the January-May evaporation estimate (8,800 acre-feet). The value determined is the estimated reservoir content projected for May 31.
2. Establish the percentage of estimated water yield available in the irrigation pool using the 20,000 acre-feet adjustment for evaporation and this equation:

$$\frac{(\text{Total Estimated Content(End of May) minus Inactive Pool} + 20,000) \times 100}{\text{Total Irrigation Space Yield}}$$

(This result is used in steps 5 or 6 below)

3. Compute first shutoff line slope constant (equal to or greater than 60% irrigation space yield):

Use 130,000 release rate at 100% Irrigation Space Yield  
Use 90,000 release rate at 60% Irrigation Space Yield

$$\frac{(\text{Irrigation Space Yield}) \times .40 - (130,000 - 90,000)}{40}$$

Current Constant:

$$\frac{((311,104 - 159,674 + 20,000) \times .40) - (40,000)}{40} = 714.3$$

4. Compute second shutoff line slope constant (less than 60% irrigation space yield):

$$\frac{((\text{Irrigation Space Yield}) \times .60) - 90,000}{60}$$

Current Constant:

$$\frac{((311,104 - 159,674 + 20,000) \times .60) - (90,000)}{60} = 214.3$$

5. If Step 2 result is equal to or greater than 60.0:

Shutoff Content equals ((Step 2 result - 60.0) x Step 3 constant) + inactive pool content - 20,000 + (Step 4 constant X 60).

6. If Step 2 result is less than 60.0:

Shutoff Content = ((Step 2 result - 0.0) x Step 4 constant) + inactive pool content - 20,000.

7. Convert computed shutoff content to shutoff elevation. This Plan does not provide for any shutoff elevation lower than El. 1927.0.

For Adjustment using actual May 31 data:

1. Compare the estimated May 31 content with the actual May 31 content.
2. If the actual end of May content is less than the estimated end of May content lower the shutoff content by using this equation:

Shutoff content = Estimated shutoff content - (Estimated May 31 content - Actual May 31 content).

3. If the actual end of May content is equal to or greater than the estimated end of May content, the estimated shutoff content is established as the annual shutoff content.
  4. Convert computed shutoff content to shutoff elevation. This Plan does not provide for any shutoff elevation lower than El. 1927.0.
  5. If the shutoff content is below the bottom of the irrigation pool, releases shall be discontinued at the shutoff elevation or whenever 119,000 acre-feet has been released and the reservoir is below the bottom of the irrigation pool, whichever occurs first.
- C. The annual shutoff elevation for Lovewell Reservoir is established as El. 1571.7 which is a current content of 24,022 acre-feet.
- D. The water supply shall be apportioned between the beneficiaries according to a separate agreement between the District and the Kansas-Bostwick Irrigation District No. 2, subject to approval of the Contracting Officer.
2. The United States reserves the right to make any releases necessary to protect the project facilities and the public in accordance with appropriate safety procedures.

## **WATER CONSERVATION MEASURES:**

The District agrees to:

1. Establish a revolving water conservation fund to be utilized for annual costs associated with the water conservation program activities. The funding shall be provided by an annual assessment on all project lands collected by the District as part of their annual operation and maintenance charge. It is provided that these funds may be fully utilized on an annual basis or accumulated to allow the District to perform water conservation projects that would not otherwise be within the District's financial capability should such projects have to be funded through collections or charges during any one year period. It is specifically provided that these funds may be utilized as matching funds for Reclamation or other cost-share assistance that may be available to the District for water conservation activities.
2. Continue, when permitted, the practice of seasoning canals with stream flows or flood waters to reduce canal losses and control the growth of vegetation. Diversion of natural flows or flood waters to season canals shall not be initiated without concurrence of the Contracting Officer, and may not be permitted during those times that the resulting flow reduction would negatively impact the storage of water in Lovewell Reservoir.
3. Continue the established practice of providing assistance to irrigators who upgrade on-farm irrigation facilities by improving turnout locations, installing meters, assisting with buried pipe projects to allow the use of gated pipe or center pivots, and implementation of other new technology.
4. Continue to work with Reclamation on evaluating computer software and other new technology that shall improve water scheduling and accounting.

The District also agrees to: continue and/or improve its existing policies and practices that further the goals of water conservation; provide educational opportunities for District employees, such as canal operations training, water scheduling, water use seminars,

etc.; and provide information to educate irrigators on District operations, irrigation practices, and new technologies and available assistance programs.

The District further agrees to provide for proper accounting for all water deliveries and operational waste within five years of the date of this Plan. Water delivery and operational waste accounting records shall be provided to the United States on or before November 1 of each year. Prior to March 1 of each year, the District and the Contracting Officer's representative shall meet to assess the past year's water supply and delivery records and accounting, and to evaluate the upcoming irrigation season. Through the use of these records and other available data, the Contracting Officer shall assess the delivery efficiency and on-farm efficiency improvements resulting from the District's implementation of water conservation commitments. The improvements shall be measured against pre-Plan water use data. On that basis, it is the general goal of the District to increase the delivery efficiency of the District by a total of 8 percent and on-farm efficiencies by a total of 5 percent. If the "improvements" are not expected to result in the individual or cumulative increase in efficiencies during the first ten year period of this Plan as determined by the Contracting Officer, additional water conservation measures shall be identified, by mutual agreement of the parties, to be undertaken to ensure the increased efficiency is realized during the succeeding five year period.

Prior to July 1 of each year, the District shall provide the Contracting Officer an annual report of water conservation activities/accomplishments for the prior year, and a statement of water conservation funds collected, expended, and water conservation fund balance as of the end of the prior calendar year.

#### **ENVIRONMENTAL MEASURES:**

The District agrees to:

1. Install or create better screening devices to prevent the passage of fish, crayfish, etc., into turnouts and lateral systems.
2. Establish policies to preserve lake levels.

In addition to accepting the changes in operation, the District is willing to cooperate with Reclamation, the Kansas-Bostwick Irrigation District No. 2, and others in improving fish



and wildlife habitat and recreation. If requested, the District shall annually furnish 10 man-days of labor at project related fish and wildlife and recreational areas provided the work is coordinated through Reclamation and scheduled during the non-irrigation season at least one month in advance. In lieu of the man-days of labor, the district shall furnish a district-owned machine and operator for 2 days. It is further provided that the District, if requested, may agree to perform more man-days and/or more machine and operator days during one calendar year than the annual commitment, and that any man-days and/or machine and operator days furnished in excess of the annual commitment shall apply as a credit to the succeeding years' commitment(s).

Reclamation is committed to determine the significance of selenium concentration levels for fish and wildlife resources in the Republican River Basin. This commitment by Reclamation shall be implemented through an adaptive management process as outlined in the Record of Decision for the Final Environmental Impact Statement, Long-Term Water Supply Contract Renewals, Republican River Basin, Kansas and Nebraska dated July 22, 2000. The adaptive management process includes, but is not limited to: identification and selection of objectives, implementation and monitoring of response, and assessment of accomplishment that can conclude or refine management actions. The District agrees to cooperate with the United States in implementation of the adaptive management plan which could include, but is not limited to, maintenance of the outfall drains to allow free flow/discharge of drainage water to the river/stream so as to prevent ponding of drainage effluent, and monitoring the quality of the project drains water quality.

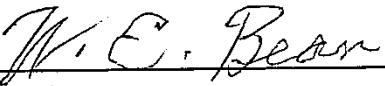
Prior to July 1 of each year, the District shall provide the United States an annual report of environmental activities/accomplishments for the prior year.

THE UNITED STATES OF AMERICA

By   
Area Manager


Date July 25-2000

BOSTWICK IRRIGATION DISTRICT IN NEBRASKA

By   
President

Date July 25-2000

ATTEST:

  
Secretary