

From: [Thompson, Aaron M](#)
To: [Espino, Brent](#)
Subject: FW: Petition for Hearing
Date: Thursday, October 14, 2010 9:55:08 AM
Attachments: [image002.jpg](#)
[Irrigation District Petition Oct 2010.docx](#)
[Aaron Thompson Letter Oct 14, 2010.pdf](#)

From: Thompson, Aaron M
Sent: Thursday, October 14, 2010 10:54 AM
To: BOR NKA CFiles
Cc: Scott, Craig D
Subject: FW: Petition for Hearing

From: Brad Edgerton [<mailto:Brad.Edgerton@fcidwater.com>]
Sent: Thursday, October 14, 2010 9:52 AM
To: Thompson, Aaron M
Cc: Swanda, Marvin R; bostwick@gpcom.net; dfelker@gpcom.net; Aycock, Gordon L; Dale Cramer; Jay Schilling; Steve Henry
Subject: Petition for Hearing

Aaron
I apologize for getting this to you on such short notice.
If you could look this over and provide comments ASAP we would appreciate this very much.
I will also send you a hard copy of the same.
We're still researching the dates each district was officially organized under Nebraska law; at this point the Petition is still in draft form.
Thank you.
Brad

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www.fcidwater.com

Brad Edgerton, Manager
Frenchman Cambridge Irrigation District
P.O. Box 116
Cambridge NE 69022
[[cid:image002.jpg@01CB6B85.74DA0A20](#)]

Phone 308-697-4535
Fax 308-697-3218
Cell 308-737-6221
Email: Brad.Edgerton@fcidwater.com NEW

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Frenchman Cambridge Irrigation District

Dale Cramer, President
Jay Schilling, Vice Pres.
Steve Henry, Sec. / Treas.
Brad Edgerton, Manager



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"Water is Life"

October 14, 2010

Aaron Thompson, Area Manager
Bureau of Reclamation
Great Plains Region
Nebraska – Kansas Area Office
P.O. Box 1607
Grand Island, NE 68802-1607

Dear Mr. Thompson

The Irrigation Districts in Nebraska's portion of the Republican River Basin that also have contracts with the Bureau of Reclamation for supplemental water supply from Swanson, Enders, Hugh Butler, Harry Strunk and Harlan County Reservoirs along with Pioneer Irrigation District have serious concerns with the newly adopted surface water controls outlined in the September 20th 2010 order signed by Brian Dunnigan, director of Nebraska Department of Natural Resources implementing the Upper Republican Natural Resources District and Middle Republican Natural Resources District Integrated Management Plans.

The surface water controls that affect the Districts' "Natural Flow" permits also seriously jeopardize the Federal Government's storage permits for the Reservoirs listed above and more specifically will require the Federal Government to by-pass water which it is legally contracted to deliver to the Irrigation Districts.

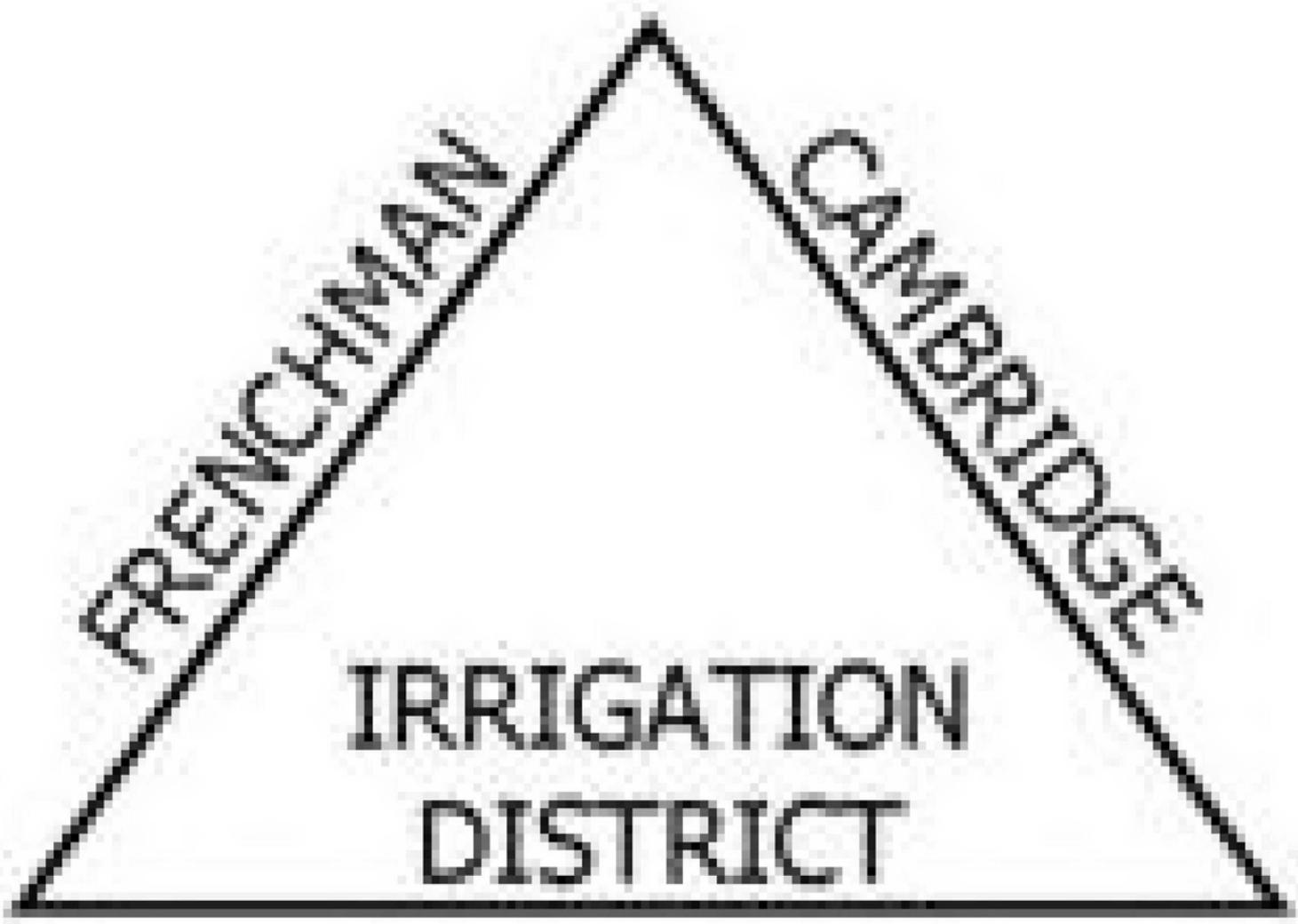
The Irrigation Districts are petitioning the Department of Natural Resources for a hearing at which we will challenge the Department's authority to administer the Republican River in the manner outlined in the Integrated Management Plans recently adopted and scheduled to go into effect on November 1st, 2010.

Please review the enclosed petition and consider joining the Irrigation Districts in this matter so that you can insure delivery of contracted water. The deadline for filing the petition is October 20, 2010. If you decide not to join with the Irrigation Districts in defending our priority dates and water rights, comments and recommendations on this petition would be appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Brad Edgerton".

Brad Edgerton, Manager
Frenchman Cambridge Irrigation District



BEFORE THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Frenchman Cambridge Irrigation District,)	
Bostwick Irrigation District,)	Petition and
Frenchman Valley Irrigation District,)	Request for Hearing
H&RW Irrigation District,)	
Pioneer Irrigation District,)	
)	
Petitioners.)	

COMES NOW Petitioners, Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District, and allege and state as follows:

1. Frenchman Cambridge Irrigation District is an irrigation district organized on April 18, 1946, and existing pursuant to Nebraska’s irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business at 1310 West Highway 6 and 34, Cambridge, Nebraska.
2. Frenchman Cambridge Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owed by the Bureau of Reclamations.
3. Bostwick Irrigation District is an irrigation district organized on April 12, 1948, and existing pursuant to Nebraska’s irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business at 1147 Highway 136, Red Cloud, Nebraska.
4. Bostwick Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owed by the Bureau of Reclamations.

5. Frenchman Valley Irrigation District is an irrigation district organized on ____ 1912, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business at , Nebraska.
6. Frenchman Valley Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owed by the Bureau of Reclamations.
7. H&RW Irrigation District is an irrigation district organized on _____ 1955, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business at, Nebraska.
8. H&RW Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owed by the Bureau of Reclamations.
9. Pioneer Irrigation District is an irrigation district organized on _____, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business at, Nebraska.
10. Pioneer Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owed by the Bureau of Reclamations.

11. The Department of Natural Resources (DNR) is the official state agency in connection with water resources regulation and development, with general authority over all matters pertaining to water rights.
12. On or about September 20, 2010, the Nebraska Department of Natural Resources issued orders adopting the Upper Republican Natural Resources District Integrated Management Plan (“Upper Republican IMP”) and Associated Surface Water Controls, and the Middle Republican Natural Resources District Integrated Management Plan (“Middle Republican IMP”) and Associated Surface Water Controls.
13. The Upper Republican IMP and the Middle Republican IMP contain identical surface water controls that will be administered by the DNR.
14. The surface water controls provide that Nebraska will recognize a priority date of February 26, 1948, for Kansas Bostwick Irrigation District for the regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam.
15. The Republican River Compact divides the “virgin water supply” between Nebraska, Kansas and Colorado and is based on each state consuming their share and only their share of the Basin’s water supply.
16. The surface water controls create a “Compact Call.” In “Compact Call” years, the DNR will regulate and administer surface water in the basin as necessary to ensure Nebraska’s compliance with the Republican River Compact. The “Compact Call” will result in DNR issuing closing notices on all natural flow and storage permits in the basin until such time as DNR . . . determines that yearly administration is no longer needed to ensure Compact compliance.”

17. The surface water controls require that the DNR “forecast” whether there will be sufficient surface water to meet Nebraska’s obligations under the Republican River Compact. If it is determined that there is insufficient water, the DNR will issue closing notices on all natural flow and storage permits.
18. The DNR’s authority to regulate surface water appropriation rights is based upon the doctrine of prior appropriations under which the surface water appropriation rights are regulated according to priority and the type of use. If water is insufficient for all uses, junior appropriation rights are shut down for the benefit of senior appropriation rights. However, just compensation is due for such shut downs. The DNR’s surface water controls which relate to forecasting and the “Compact Call” are inconsistent with and contrary to Nebraska law, the doctrine of prior appropriations and the DNR’s procedure for regulating and monitoring surface water appropriation rights. See, specifically, Neb. Rev. Stat. §§ 46-231, 46-233.307, and Neb. Const. art. XV, § 6.
19. The surface water controls and integrated management plans do not reach or meet long term sustainability goals as required in Neb. Rev. Stat. § 46-715(2).
20. A “Compact Call” is not authorized by Nebraska law. Neb. Rev. Stat. §§ 46-715 and 46-716.
21. A “Compact Call” is not authorized in the Republican River Compact or the 2002 Final Settlement Stipulation.
22. The total shut down of surface water direct irrigation uses in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.
23. The total shut down of storage appropriations in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.

WHEREFORE the _____ respectfully request a hearing for determination on the statutory authority of the DNR to administer the surface water controls adopted in its September 20, 2010 Orders.

Dated this _____ day of October, 2010.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,
Bostwick Irrigation District,

By: _____

Jeanelle R. Lust - #20556
Katherine S. Vogel - #23982
KNUDSEN, BERKHEIMER,
RICHARDSON & ENDACOTT, LLP
3800 VerMaas Place, Suite 200
Lincoln, Nebraska 68502
(402) 475-7011