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Bureau of Reclamation

United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Region
Nebraska-Kansas Area Office
P.O. Box 1607
Grand Island, Nebraska 68802-1607

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MAY 07 2008

Mr. Justin D. Lavene
Assistant Attorney General
Office of the Attorney General
2115 State Capitol
Lincoln, NE 68509

Subject: Republican River Surface Water Purchases

Dear Mr. Lavene:

During our conversation at the last Republican River Compact Administration meeting, you asked for a copy of the contracting process for a long-term water agreement between Reclamation, Irrigation Districts, Republican River Natural Resources Districts (NRD's), and Nebraska Department of Natural Resources (DNR). Our January 10, 2008, letter to you concerning Republican River surface water purchases provided information relating to this process and authorities that may be available to allow the DNR and the NRD's to purchase Reclamation project water to aid in Compact compliance by the State of Nebraska. This information is intended to supplement the information previously provided.

It is difficult to provide a definitive answer to your request concerning what is the process for a long-term water agreement as we do not know any details of the proposed purchase or lease. Our Regional Office has developed a "Summary of Reclamation Process for General Contracting Actions" which is enclosed for your information and use. The process outlined in the Summary is general in nature and as such may include procedures and requirements that may not be required for a long-term agreement depending on specific provisions, such as term, amount of annual water purchase or lease, source, and proposed use of the water. Following is a discussion of some of the potential terms and conditions of a proposed purchase or lease that influence the processing requirements.

1. Any long-term agreement for Reclamation project water must begin with approval of the irrigation districts selling and impacted by the sale or lease of the project water. The specific provisions for the accounting and protection of the purchased or leased water are central to the approval requirements of the districts and Reclamation. The delivery, protection, and accounting of the purchased or leased water will not reduce or diminish the water supply or water use benefits of any downstream irrigation district that is not a party to this agreement and has not agreed to a reduction in water supply as a result of the agreement. It is Reclamation's understanding that the DNR will administer surface water under the prior appropriation system and the NRD's will regulate groundwater under a modified correlative right system.

2. If the long-term agreement is intended to be a contractual agreement that provides for DNR/NRD's to exercise annual option provisions for the purchase or lease of surface water, the

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long-term agreement would need to identify the sources and uses planned for the purchased or leased water. This is needed for Reclamation to determine a basis and authority for the agreement, to allow for inclusion of irrigation districts associated with the contracting action, and to allow for the development of an appropriate environmental document. For instance, agreements limiting the use of purchased or leased water to that of irrigation of Reclamation project lands in Kansas has been previously accomplished with minimal time and costs involved in environmental clearance. Other planned uses, such as in-stream flow below Guide Rock, will require a more involved environmental evaluation. Please note it is a Reclamation requirement that the use planned for the purchased or leased water be a beneficial use under existing State statutes.

3. Any long-term agreement that involves the purchase of surface water for use in supplying additional water to Kansas will involve Harlan County Lake. The accounting, storage, and releases of water at Harlan County Lake require close coordination, consultation, and approval by the Corps of Engineers.

4. At this time, we believe that the term of a long-term agreement should not exceed five years. This would be consistent with a number of water management concepts in the Republican River basin that are also based on a five-year term. This is the base term established for Final Settlement Stipulation water use accounting in the basin, and it is also the term of the current revisions to the Integrated Management Plans recently adopted in the basin.

Reclamation believes the most likely available sources of supply of Reclamation project water to be purchased or leased on an annual basis under a long-term agreement are Harry Strunk Lake and Harlan County Lake. The upstream reservoirs simply do not currently have sufficient inflow to be a reliable source for planned, annual purchases under a long-term purchase agreement. Reclamation believes purchase or lease of Harlan County Lake storage water for release downstream will result in the need for additional reservoir inflow, prior to the next irrigation season, to avoid a subsequent "Water Short Year Administration" designation.

If you have any questions, or need additional information, please contact me at telephone 308-389-5300.

Sincerely,

AARON M. THOMPSON
Aaron M. Thompson
Area Manager

Enclosure

cc: Dick Wolfe, PE, State Engineer, State of Colorado, Division of Water Resources, 1313 Sherman Street, Suite 818, Denver, CO 80203
David Barfield, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, 109 SW 9th Street, 2nd Floor, Topeka, KS 66612-1280
Brian P. Dunnigan, P.E., Acting Director, Nebraska Department of Natural Resources, PO Box 94676, Lincoln, NE 68509-4676
Colonel Roger Wilson, Jr., Corps of Engineers, Kansas City District, 700 Federal Building, Room 844, 601 East 12th Street, Kansas City, MO 64106
(Each with enclosure)

bc: GP-1000 (Mike Ryan)
GP-4500 (Gordon Aycock)
GP-3100 (Lynnette Smith)
Solicitor's Office (John Chaffin)
NK-400 (Mary Swanda)
(Each with enclosure)

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Summary of Reclamation Process for General Contracting Actions
Prepared by Great Plains Region

1. Initiate Action
    A. Contractor's Request – should identify issues
    B. Review issues internally
        (1) Water Rights
        (2) Environmental Studies
        (3) Field Office
        (4) Solicitor
        (5) Meet with Contractor – clarify issues
        (6) Provide for notice in Federal register

2. Reclamation prepare internal documents
    A. Review Authority
    B. Review Delegations of Authority
    C. Prepare request delegation of authority
    D. Initiate National Environmental Policy Act, Endangered Species Act, Fish & Wildlife Coordination Act and National Historic Preservations Act

3. Preliminary Studies
    A. Vary greatly depending on action.
    B. New or renewal contracts may require
        (1) Needs analysis
        (2) Groundwater Studies
        (3) Land Classification

4. Contract Negotiations
    A. Following approval by Commissioner of Reclamation
    B. Draft contract
    C. Review internally including Field Solicitor
    D. Submit draft contract to contractor before negotiation
    E. Public Participation
        (1) Federal Register Notice or include in the listing entitled "Quarterly Tabulation of Pending Contract Actions"
        (2) Announce meeting in local press release at least a week in advance of Negotiations
        (3) Provide copy of draft contract to interested parties requesting a copy
    F. Prepare Meeting reports
    G. Finalize draft contract

5. Complete Environmental Review and Documentation
    A. NEPA, ESA, FWCA and NHPA
    B. Initiate environmental documentation as soon as possible
    C. Determine what actions are needed and prepare analysis
    D. If required, coordinate with Fish and Wildlife Service
    E. Consult with State Historic Preservation Officer on NHPA
    F. Complete environmental documentation

6. Contract Approval
    A. Submit contract to contractor for approval
    B. Announce availability of contract for public review and comment for a period of 60 days