

MEMORANDUM OF AGREEMENT

THIS AGREEMENT entered into on this 2nd day of April in the year 2008 by and between; the STATE OF NEBRASKA, NEBRASKA DEPARTMENT OF NATURAL RESOURCES hereinafter referred to as the "STATE", and FRENCHMAN CAMBRIDGE IRRIGATION DISTRICT hereinafter referred to as the "DISTRICT."

WITNESSETH:

WHEREAS, the District has surface water appropriations for natural flow; and

WHEREAS, the State has requested the District to delay the exercise of its right to divert natural stream flows or begin delivering irrigation water to the Cambridge Canal at least until the end of the day of June 16, 2008, or later if requested by the State, but no later than the end of the day of June 22, 2008 in order assist the State of Nebraska in its efforts to comply with the Republican River Compact and Final Settlement Stipulation; and

WHEREAS, the District is willing to assist the State of Nebraska and delay the exercise of its right to divert natural stream flows or begin delivering irrigation water to the Cambridge Canal until June 16, 2008 or later if requested by the state but no later than June 22, 2008 in return for compensation.

NOW THEREFORE, in consideration of the mutual covenants made and the compensation agreed to, the parties agree as follows:

I. DURATION OF AGREEMENT

This Agreement is for 120 days beginning on the date signed by the last party. There will be no extension or renewal of this Agreement unless further agreed to in writing by the parties.

II. THE DISTRICT AGREES TO PERFORM AS FOLLOWS:

A. The District agrees to delay the exercise of its right to divert natural stream flows or begin delivering irrigation water available at Cambridge Diversion dam to the Cambridge Canal until the end of the day June 16, 2008.

B. The District further agrees, if requested in writing by the State, to delay further the exercise of its right to divert natural stream flows or begin delivering irrigation water available at Cambridge Diversion dam to the Cambridge Canal until the end of the day June 22, 2008 or until the State has notified the District that it may begin diverting natural flow, whichever comes first. The State will notify the District that it may begin diverting natural flow when the State has determined that Nebraska has achieved avoidance of water short year status under the accounting rules of the Final Stipulation Summary of the Republican River Compact.

C. The District agrees, as planned prior to this Agreement, not to divert water into Bartley Canal before the end of the day, June 22, 2008.

D. By execution of this Agreement, the District represents and affirms that, in accordance with all relevant regulations, statutes, District procedures, and U.S. Bureau of Reclamation ("Bureau") procedures and oversight, the District has complied with all requirements necessary to allow it to enter into this agreement and perform all actions herein required.

E. The District agrees to allocate and distribute funds received under this Agreement among its users or members in a reasonable manner, giving consideration to benefits received and the value of the rights surrendered.

F. The District agrees to defend and uphold the provisions of this Agreement to ensure that limitations on the use of the District's surface water appropriations are in accordance with this Agreement.

III. THE STATE AGREES TO PERFORM AS FOLLOWS:

A. The State will pay the sum of two hundred ninety four thousand dollars (\$294,000.00) to the District, as payment in full for forgoing the use of the District's natural flow surface water appropriations until June 16, 2008. Payment shall be made on or before July 7, 2008 in accordance with Part C, below.

B. If the State exercises its option and requests the District to delay diverting natural flow or to delay delivering irrigation water to the Cambridge Canal until June 22, 2008 or earlier if notified, the State will pay an additional sum of one hundred seventy-six thousand six hundred and forty dollars (\$176,640.00) to the District, as payment in full for forgoing the use of the District's natural flow surface water appropriations from June 16, 2008 until end of day June 22, 2008 or until the State has notified the District that it may begin diverting natural flow, whichever comes first. The State will notify the District in writing if the State chooses to exercise this option. If the State has not given Notice on or before April 17, 2008 the option will not be exercised.

C. Payment will be made in two portions; an initial payment of \$52,000.00 will be made within three weeks of final execution of this Agreement. The second payment shall be made on or before July 7, 2008. If the State does not exercise its option to have the District delay diverting its water until June 22, 2008, the second payment will be \$242,000.00. If the State exercises its option and requests the District to delay diverting natural flow or delay delivering irrigation water to the Cambridge Canal until end of day June 22, 2008 or earlier if notified, then the second payment will be \$418,640.00.

D. The State will continue to work with the Republican Basin Natural Resources Districts and surface water irrigation districts to meet Nebraska's obligations under the Republican River Compact and Final Settlement Stipulation and will inform the District immediately upon determination of the State avoiding water short year status under the accounting rules of the Final Settlement and Stipulation of the Republican River Compact.

E. By execution of this Agreement, the State represents and affirms that it has requested an appropriation and will make every effort to secure the funds.

F. The State agrees that the District's surface water appropriations will not be impacted other than as set forth in this Agreement and that it will work with the Republican Basin Natural Resources Districts to ensure that the ground water allocations held by the individual surface water appropriators within the District are not negatively impacted because the District has entered into this Agreement.

IV. THE PARTIES MUTUALLY AGREE AS FOLLOWS:

A. The parties agree to work with the Natural Resources Districts in meeting the goals and objectives identified in the Republican River Basin Integrated Management Plans and corresponding groundwater management rules and regulations.

B. The parties agree that all operations by the Bureau will continue as normal, unaffected by this agreement and in particular that:

1) The pool level of Harry Strunk Lake will be maintained near 2365.5 feet elevation (.5 feet below full) by making releases through the river outlet works until approximately April 21, 2008 in order to prevent walleye from passing through the uncontrolled spillway notch during the spawn.

2) Releases will be discontinued around April 21, 2008 to allow the reservoir pool to fill to elevation 2366.1 feet. The United States Bureau of Reclamation will exercise its right to continue storage in Harry Strunk Lake.

3) The reservoir level in Harry Strunk Lake will be allowed to continue to rise even though water begins to spill through the spillway notch into the river. The reservoir level will typically increase throughout the month of May before leveling off. Uncontrolled reservoir releases from the spillway will gradually increase through the end of May. These releases and storage are natural flow and subject to DNR administration. The releases described in this paragraph shall not be considered a breach of this Agreement by the Frenchman-Cambridge Irrigation District.

C. The parties agree that that District has retained and reserved the rights to any additional water that it would be entitled to receive under agreements and contracts between the Bureau and District that are outside of the constraints of this Agreement.

D. In executing this agreement the parties shall be in compliance with all other applicable state and federal laws, including but not limited to, the National Environmental Policy Act and the Endangered Species Act and must not impair the United States Secretary of Interior's trust obligation to Native Americans.

E. This Agreement shall be executed by authorized persons of both parties on or before April 1, 2008. This date may be extended at the discretion of the Board of Directors of Frenchman-Cambridge Irrigation District at a regular or special meeting called for that purpose.

FRENCHMAN-CAMBRIDGE IRRIGATION DISTRICT

Dale A. Gomer
president

4-1-08
Date

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Brian P. Dunnigan
Brian Dunnigan, Acting Director
Nebraska Department of Natural Resources

4/02/08
Date

Approved for form and legal sufficiency this 2nd day of April, 2008 by RT.

APPROVED
AS TO FORM & CONTENT
BY NDNR LEGAL COUNSEL

RT DATE 4.2.08