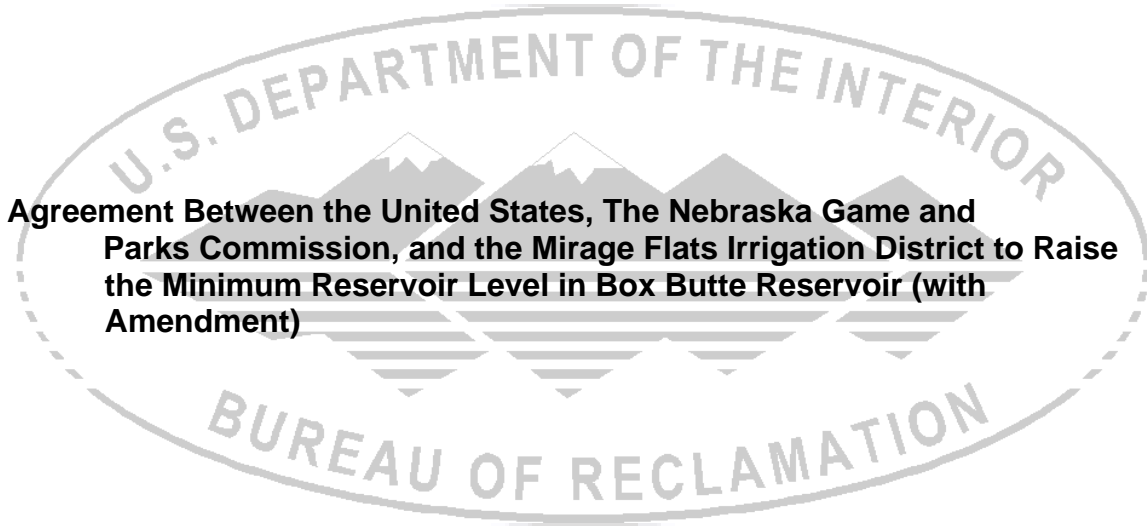


# Appendix A5



**Agreement Between the United States, The Nebraska Game and Parks Commission, and the Mirage Flats Irrigation District to Raise the Minimum Reservoir Level in Box Butte Reservoir (with Amendment)**

AGREEMENT BETWEEN THE UNITED STATES,  
THE NEBRASKA GAME AND PARKS COMMISSION, AND  
THE MIRAGE FLATS IRRIGATION DISTRICT  
TO RAISE THE MINIMUM RESERVOIR LEVEL  
IN BOX BUTTE RESERVOIR

THIS AGREEMENT, entered into this 23 day of March, 1990 ~~1989~~, is among the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, hereinafter referred to as the "United States," acting through the Secretary of the Interior and pursuant to the Water Conservation and Utilization Act of August 11, 1939 (53 Stat. 1418), as amended; the STATE OF NEBRASKA, acting through the Nebraska Game and Parks Commission, pursuant to Sections 81-805 of Revised Statutes of Nebraska, 1943, hereinafter referred to as the "Commission;" and, THE MIRAGE FLATS IRRIGATION DISTRICT, hereinafter referred to as the "District," an irrigation district organized and existing pursuant to the laws of the State of Nebraska, with its principal place of business at Hay Springs, Nebraska.

WHEREAS, the following preliminary statements are made in explanation:

1. The United States, under authority of the Water Conservation and Utilization Act of 1939, has constructed Box Butte Reservoir (Reservoir) on the Niobrara River in northwestern Nebraska as the main storage facility for the Mirage Flats Project (Project). The Project provides irrigation water to approximately 11,662 acres of District lands in Dawes and Sheridan Counties, Nebraska, and also provides fish, wildlife, and recreation benefits to the area.
2. The District receives an irrigation water supply from the United States under Contract No. 1-07-70-W0031 dated December 28, 1950, as amended. The District also operates and maintains Box Butte Dam and all canals, laterals, and related facilities.
3. Pursuant to an agreement dated April 20, 1964, the Commission operates the Reservoir and the surrounding Project lands for fish, wildlife, and recreation purposes.
4. Due to persistent water supply shortages, the District frequently reduces the water in the Reservoir to extremely low levels which often results in significant losses to the Reservoir fishery.
5. The Commission is willing to compensate the District for maintaining a higher minimum Reservoir level in order to support and maintain a viable Reservoir fishery.
6. The District is willing to reduce its irrigation deliveries in order to maintain a higher minimum Reservoir level and further desires to utilize the funds received from the Commission to install buried pipe and undertake other conservation measures to improve the efficiency of the Project delivery system. The improved efficiency will compensate for the water left in the Reservoir and the water lost to evaporation and seepage due to the increased Reservoir surface.

7. The change in use of water from irrigation use to fish, wildlife, and recreation use is consistent with Department of the Interior's water transfer policy and policy for improving fisheries and fish habitat within the framework of existing contractual commitments.

8. The parties hereto agree that it will be mutually beneficial to maintain an increased minimum water level in the Reservoir in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the covenants contained herein, the parties hereto agree as follows:

1. This Agreement will remain in effect for a period of 30 years unless terminated sooner by mutual agreement of the parties hereto.

2. During the term of this Agreement, the District will not make irrigation releases below Reservoir elevation 3978.0 m.s.l., at which level the minimum Reservoir content is 2,829 acre-feet.

3. As consideration for the water retained in the Reservoir to maintain the minimum Reservoir level specified in Article 2. above and the loss of water due to evaporation and seepage, the Commission will make a one time lump sum payment of \$294,530.10 to the District on or before 90 days following execution of this Agreement.

4. The District will utilize the funds received pursuant to this Agreement only for water conservation measures on District facilities including, but not limited to, installation of buried lining or replacement of laterals with buried pipe. These funds will be set aside in a special interest bearing account. All moneys from this account, including interest, must be utilized within 10 years of the contract date. The District will provide evidence annually to the United States of the use of these funds. Any money remaining in the fund after 10 years will be forwarded to the United States. The United States also reserves the right to cause an audit of the District's books in relationship to this fund.

Prior to construction of any water conservation measures, the plans shall be approved by the United States. The District will also coordinate with the United States in the preparation and completion of the necessary National Environmental Policy Act (NEPA) compliance document(s).

5. The District and the Commission will make all reasonable efforts in the future to increase the minimum reservoir level by one (1) additional foot, to elevation 3979.0 m.s.l. This will be accomplished by mutual written agreement by the District and the Commission. In consideration for such increased minimum Reservoir level, the Commission will pay the District the sum of \$1,883.70 times the number of full years remaining in the term of this Agreement. The District agrees to use such revenues for water conservation measures in accordance with Article 4 above.

6. The United States reserves the right under an emergency condition to make any releases necessary to protect Project facilities and the public in accordance with appropriate safety procedures.

7. The Commission and the District agree to hold the United States harmless in the event the water level in the Reservoir drops below the minimum elevation set forth in Article 2 above due to drought conditions, emergency reservoir operations, or any other conditions beyond its control.

8. No provision of this Agreement, nor any renewal thereof, nor the maintenance of a minimum Reservoir level hereunder will constitute a water right beyond the term of this Agreement.

9. The Commission assumes no liability for the maintenance or operation of the dam or reservoir.

10. This Agreement may be modified by mutual agreement, in writing, of the parties hereto.

11. During the performance of this agreement, the parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or natural origin.

12. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

13. The terms of this Agreement shall be binding upon and shall inure to the parties hereto, their administrators and successors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

THE UNITED STATES OF AMERICA

By Lewis H. Woodward  
Commissioner  
Bureau of Reclamation

MIRAGE FLATS IRRIGATION DISTRICT

By Leon Glenn  
President

STATE OF NEBRASKA

By William Bailey, Jr.  
Director  
Nebraska Game and Parks Commission

ORIGINAL

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Pick-Sloan Missouri Basin Program

AMENDMENT TO AGREEMENT BETWEEN THE UNITED STATES,  
THE NEBRASKA GAME AND PARKS COMMISSION, AND  
THE MIRAGE FLATS IRRIGATION DISTRICT TO RAISE  
THE MINIMUM RESERVOIR LEVEL IN BOX BUTTE RESERVOIR

THIS AMENDMENT, made this 17 day of March, 2000 is among the United States Department of the Interior, Bureau of Reclamation, hereinafter referred to as the "United States," acting through the Secretary of the Interior and pursuant to the Water Conservation and Utilization Act of August 11, 1939 (53 Stat. 1418), as amended; the STATE OF NEBRASKA, acting through the Nebraska Game and Parks Commission, pursuant to Sections 81-805 of Revised Statutes of Nebraska, 1943, hereinafter referred to as the "Commission;" and, THE MIRAGE FLATS IRRIGATION DISTRICT, hereinafter referred to as the "District," an irrigation district organized and existing pursuant to the laws of the State of Nebraska, with its principal place of business at Hay Springs, Nebraska.

WITNESSETH, THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

WHEREAS, the parties hereto have entered into an Agreement dated March 23, 1990, hereinafter referred to as the "existing agreement," which provides for: the Commission to compensate the District for maintaining a higher minimum Reservoir level in order to support and maintain a viable Reservoir fishery; the District to reduce its irrigation deliveries in order to maintain a higher minimum Reservoir level and to utilized the funds received from the Commission to install buried pipe and undertake other conservation measures to improve the efficiency of the Project delivery system; and

WHEREAS, Article 4 of the existing agreement provided that the District would utilize the funds received from the Commission only for water conservation measures on District facilities, that these funds would be set aside in a special interest bearing account, and all moneys from this account, including interest, must be utilized within 10 years from the date of the existing agreement; and

WHEREAS, during the term of the existing agreement, the District has utilized available principal and interest earned to accomplish water conservation measures on District facilities, with a remaining balance of \$51,741.98; and

WHEREAS, Article 4 of the existing agreement provided that any money remaining in the fund after 10 years will be forwarded to the United States; and

WHEREAS, Article 5 of the existing agreement provides that the Commission will pay the District the sum of \$1,883.70 times the number of years remaining in the term of the agreement in exchange for the District increasing the minimum reservoir level by one (1) additional foot. The District has agreed to the increase in reservoir elevation and the Commission has agreed to the additional payment of \$37,674.00 (\$1,883.70 times 20 years); and

WHEREAS, the District has requested that the existing agreement be extended for an additional 5 years to allow them to use the remaining funds and the additional funds to be paid by the Commission for additional water conservation measures on District facilities as identified in their water conservation plan; and

WHEREAS, the District has developed a "Long Range Plan" for water conservation activities for their project will substantially improve their delivery and on-farm efficiencies, and ensure District viability into the future. Accomplishment of the "Long Range Plan" goals and system improvements will be greatly enhanced by making these remaining funds and additional funds available for their use; and

WHEREAS, in order to allow the District additional time to continue the implementation of the identified "Long Range Plan" water conservation measures on District facilities, it is necessary to amend the existing agreement to extend the time allowed for the District to complete the implementation of additional water conservation measures as provided in Article 4 for an additional five years through March 23, 2005.

NOW THEREFORE, Reclamation agrees that it is in the best interest of the United States to allow the District to utilize the remaining balance and the additional funds provided by the State to implement the "Long Range Plan" for water conservation activities rather than return the balance to the Treasury.

In consideration of the premises and the mutual independent covenants contained herein, the parties hereto agree as follows:

1. The third sentence of Article 4 on page 2 of the existing agreement is hereby revised to read: "All moneys from this account, including interest, must be utilized within 15 years of the contract date."

2. Except as herein provided, the existing agreement shall remain in full force and effect.

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

THE UNITED STATES OF AMERICA

MIRAGE FLATS IRRIGATION DISTRICT

By: *Marjorie C. Zach*  
Regional Director  
Great Plains Region  
Bureau of Reclamation

By *Thomas Stowell*  
President

ATTEST:

*Nancy Rasmussen*  
Secretary

STATE OF NEBRASKA

By *Rex Amack*  
Director  
Nebraska Game and Parks Commission