

Approved: 1-24-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 16, 1996 in Room 254-E- of the Capitol.

All members were present except:
Senator Phil Martin, excused

Committee staff present: Raney Gilliland, Legislative Research Department
Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
Ron Hammerschmidt, Director of Environment, KDHE
Terry Duvall, Public Service Executive II, Kansas Water Office

Others attending: See attached list

Chairperson Sallee called on Ron Hammerschmidt, Director of Environment, KDHE, appeared on behalf of Secretary James J. O'Connell, who requested introduction of two bills. The first request concerned a proposal to repeal the Petroleum Tax Trust Fund law. Mr. Hammerschmidt stated the advisory board for the Petroleum Tax Trust Fund has not met nor functioned for a number of years, therefore he requested legislation to repeal the board.

Mr. Hammerschmidt stated the second request was related to the Petroleum Storage Tank Trust Fund. The statutes state the board is to report on March 1 concerning the preceding calendar year which is cumbersome since all reporting is done on a fiscal year basis. Mr. Hammerschmidt told the committee the Secretary requested the March 1 date be changed so that the report was due the first day of the legislative session covering the preceding fiscal year.

Senator Emert made a motion to introduce the bills as requested. Senator Hardenburger seconded the motion and the motion carried.

Terry Duvall, Public Service Executive, Kansas Water Office, appeared before the committee concerning three water supply contracts which had been approved by the Kansas Water Office during the past year and were presented to the Senate Energy & Natural Resources Committee for approval. (Attachment #1)

Ms. Duvall stated Douglas County Rural Water District Number 4 and District Number 5 already have contracts but have requested additional water supply from Clinton Lake. The contracts would run for 40 years.

The third contract is with Rural Water District No. 2, Miami County, and is a surplus contract to cover their needs until such a time as a long term contract can be completed providing additional water supply from Hillsdale.

Ms. Duvall noted that according to law these contracts must be submitted to the Legislature. If no action is taken the contracts will stand.

Discussion revealed these are additional water supplies for the water districts over and above what they already have under contract.

Senator Vancrum made a motion to approve the minutes of January 10 and January 11. Senator Emert seconded the motion and the motion carried.

The meeting adjourned at 8:20 a.m.

The next meeting is scheduled for January 17, 1996.

STATE OF KANSAS
KANSAS WATER OFFICE



CONTRACT
Between the State of Kansas
and

Miami County

Rural Water District No. 2

For a Public

Water Supply

Surplus Water Purchase Contract No. 95-1

*Senate Energy & Nat'l Resc.
January 16, 1996
Attachment 1*

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KANSAS WATER OFFICE

SURPLUS WATER PURCHASE CONTRACT NO. 95-1

1 THIS CONTRACT is executed and entered into this _____ day of
2 _____, 19__, by and between THE STATE OF KANSAS (hereinafter referred
3 to as the "state") as represented by the Kansas Water Office, and Miami County Rural Water District
4 Number 2 (hereinafter referred to as the "Purchaser").

5 WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a public water
6 supply; and

7 WHEREAS, the State has signed an Agreement with the United States of America under the
8 provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), also amended, for water supply
9 storage space in the Reservoir; and

10 WHEREAS, the State has filed an appropriate water reservation right to divert and store water
11 in the Reservoir; and

12 WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 1982 Supp. 74-
13 2615, as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale of water;
14 and

15 WHEREAS, the Purchaser filed an appropriate application with the State to negotiate the
16 purchase of raw water from the Reservoir, in compliance with the State Water Plan Storage Act,
17 K.S.A. 82a-1301 et seq., 21 as amended; and

18 WHEREAS, the Purchaser's immediate needs can be provided from the Reservoir; and

19 WHEREAS, the withdrawal and use of 30 million gallons of water within the term of this
20 contract from the Reservoir by the Purchaser is in the interest of the people of the State of Kansas and

21 will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

22 WHEREAS, Purchaser's application to purchase raw water from the Reservoir is approved for
23 the amount of 365 million gallons per year in accordance with Articles 9 and 13 of Chapter 82a of
24 Kansas Statutes Annotated.

25 NOW, THEREFORE, in consideration of the foregoing, the parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

1 As used in this contract, unless the context otherwise requires:

2 (a) "Authority" means the Kansas Water Authority, or its successor.

3 (b) "Director" means the Director of the Kansas Water Office, his or her successor, or
4 designated representative.

5 (c) "Point of withdrawal from the reservoir" means the point at which water is taken from
6 the reservoir by pump, siphon, canal, or any other device; or released through the dam by gates,
7 conduits, or any other means.

8 (d) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.

9 (e) "Reservoir" means Hillsdale Lake.

10 (f) "Surplus water" means the portion of the conservation water supply capacity in the
11 "Reservoir" which is committed to the State, and is not required to meet current contract requirements.

ARTICLE 2. TERM OF THE CONTRACT

1 The term of this contract shall be for a period of one year beginning on the date of execution
2 of this contract. The Purchaser may commence using water at any time after the execution of this
3 contract by request as required in Article 11.

ARTICLE 3. UNITED STATES APPROVAL

1 The Purchaser shall secure the right from the federal government to construct, modify, alter,
2 or maintain installations and facilities when such installations and facilities are on federal lands. The
3 Purchaser shall bear the cost of construction, modification, operation, and maintenance of Purchaser-
4 owned installations and facilities.

5 The Purchaser shall provide the Director with proof of any easement granted by the federal
6 government for rights of way across, in, and upon federal government land required for intake,
7 transmission of water, and necessary appurtenances.

ARTICLE 4. COMPLIANCE WITH KANSAS STATUTES

1 This contract is subject to such statutes as may be applicable, including specifically, but not by
2 way of limitation, the State Water Planning Act, K.S.A. 82a-901 et seq., and amendments thereto; the
3 State Water Plan, K.S.A. 82a-927 et seq., and amendments thereto; and the State Water Plan Storage
4 Act, K.S.A. 82a-1301 et seq., and amendments thereto; and the Purchaser agrees to comply with such
5 statutes and any amendments to said statutes which may be enacted subsequent to the execution of
6 this contract.

ARTICLE 5. QUANTITY OF WATER

1 a. Initial Quantity. During the term of this contract, defined in Article 2, subject to the
2 conditions herein stated, the State will permit the Purchaser to withdraw not more than 30 million
3 gallons of raw water from the surplus water supply storage in the Reservoir. If the Purchaser, during
4 the term of this contract does not withdraw the entire amount obligated under terms of this contract,
5 the unused amount of water shall revert to the State and Purchaser shall forfeit any and all rights to
6 said water which Purchaser may have acquired pursuant to this contract.

7 b. Review and Adjustment. The Director may review the quantity and purposes for which
8 water is used at any time during the term of this contract and for the remaining portion of this
9 contract, the Director may adjust the total amount of water contracted for if the Purchaser does not
10 begin payment for the surplus water under contract and another water user is ready, willing, and able
11 to contract for such water.

12 c. Water Appropriation Rights.

13 The Purchaser may use water withdrawn in accordance with the terms of this contract without
14 obtaining a permit or water right under the Kansas Water Appropriation Act. Rights of the Purchaser
15 under this contract shall be entitled to the same protection as any other vested property interest,
16 including vested water rights, water appropriation rights, and approved applications for permit to
17 appropriate water.

ARTICLE 6. PRICE OF WATER

1 a. Price. The Purchaser agrees to pay the State at the rate fixed in accordance with K.S.A. 82a-
2 1305, and amendments thereto, for each one thousand (1,000) gallons of raw water used or raw water
3 which must be paid for under the terms of this contract. Provided, however, that the Purchaser is
4 obligated and agrees to pay the minimum charges in accordance with this Article, regardless of the
5 quantity of raw water actually used, except as provided in Article 12. The rate for raw water which
6 must be paid for under terms of this contract shall be \$.13612 for each one thousand (1,000) gallons
7 during the term of this contract.

8 b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether or
9 not water is withdrawn during the term of this contract. The minimum charge shall be determined as
10 provided in K.S.A. 82a-1305 and this contract. The minimum charge shall be subject to change as

11 may be provided by subsequent amendments to State statutes or regulations which affect the terms
12 of this contract. The minimum charge, unless changed by amendment of State statutes or regulations
13 shall be:

14 (1) 80 percent of the total amount of water contracted for during the term of this contract,
15 multiplied by the rate established in accordance with paragraph (a) of this Article.

ARTICLE 7. PURPOSE AND PLACE OF USE

1 a. Purpose. Water purchased under this contract shall be used for purposes which are stated
2 in the preamble of this contract.

3 b. Place of Use. The place of use for water purchased under this contract shall be within the
4 boundaries of Miami County Rural Water District No. 2.

5 c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any
6 intention to sell any water under this contract to any person or entity located outside the geographical
7 limits described above. Whenever the Purchaser shall propose to enter into a contact to sell water
8 purchased under this contract to any such person or entity outside the described geographical limits,
9 the Purchaser shall, before execution thereof, submit a copy of such contract to the Authority for
10 review. The Purchaser agrees not to execute and enter into any such contracts unless approved by the
11 Authority.

ARTICLE 8. BILLING AND PAYMENT SCHEDULE

1 a. Payments. The Purchaser shall transit all payments due hereunder to the Director.
2 Remittance for minimum payments shall be paid to the Director in one payment within thirty (30)
3 days after date of billing by the State. Remittance for payments due for water used in excess of the
4 quantity obligated by the minimum payment shall be paid to the Director in full within thirty (30)

5 days after date of billing by the State.

6 b. Determination of Charges. Charges for water for which payment is required shall be
7 determined by the State. The formulas by which charges are computed shall be prepared by the
8 Director with the approval of the Authority. The Purchaser acknowledges and agrees that said
9 formulas and computations are subject to change, based on subsequent amendments to State statutes
10 which may affect the terms of this contract.

11 c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all water
12 received under terms of this contract up to the maximum quantity obligated by this contract.

13 d. Initial Minimum Payment. Except as provided in Article 8a, the initial minimum payment
14 shall become due on the day of execution of this contract. Remittance of the initial minimum
15 payment shall be in accordance with Article 8b.

16 e. Water in Excess of Minimum. At the end of the term of this contract, as defined in Article
17 2, the State shall bill the Purchaser for any water used during the term of this contract, as defined in
18 Article 2, in excess of eighty percent (80%) of the total annual quantity of water purchased under
19 contracts.

20 f. Overpayment or Underpayment. If for reason or error in computation, measuring device
21 malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser
22 of the charges prescribed herein, such overpayment or underpayment shall be credited or debited, as
23 the case may be, to the Purchaser's account. The State shall notify the Purchaser thereof in writing.
24 However, all charges made shall be conclusively presumed to be correct six (6) months after the end
25 of the term of this contract, as defined in Article 2.

26 g. Adjustment for Apportionment. In the event the Purchaser is unable, due to apportionment

27 under Article 12 herein, to withdraw the amount which the Purchaser is entitled to receive after
28 payment of the minimum payment, the amount of such minimum payment in excess of the amount
29 of water actually received by Purchaser shall be credited to the Purchaser.

30 h. Overdue Payments. If the Purchaser shall fail to make any of the payments when due, then
31 the overdue payments shall bear interest, compounded annually at the rate prescribed in K.S.A. 82a-
32 1317, and amendments thereto, during the term of this contract. This shall not be construed as giving
33 the Purchaser the option of either making payments when due or paying interest, nor shall it be
34 construed as waiving any of the rights of the State that might result from such default by the
35 Purchaser.

ARTICLE 9. POINT OF WITHDRAWAL

1 The point of withdrawal from the Reservoir shall be in the Southwest Quarter of the Southeast
2 Quarter of the Northeast Quarter (SW 1/4 of the SE 1/4 of the NE 1/4) of Section 7, Township 16
3 South, Range 23 East, Miami County, Kansas. The withdrawal works consist of a pumphouse and
4 intake structure made up of three (3) parallel 16-inch or 20-inch diameter steel casings buried below
5 original ground on 2:1 slope. Screens on each casing consist of cantilevered 12-inch diameter casings
6 and 8 foot long, 24-inch diameter slotted screens which extend into the reservoir at approximate
7 elevations 900 feet, 894 feet, and 884 feet MSL.

ARTICLE 10. METERING OF WATER

1 The Purchaser shall, at its own expense, furnish, install, operate, and maintain at the place of
2 diversion, a commercial measuring device as ordered by the Director.

3 The Purchaser shall test and calibrate as accurately as possible such measuring device or
4 devices whenever requested by the Director. A measuring device shall be deemed to be accurate if

5 test results fall within a tolerance of plus or minus two (2) percent throughout the full range of the
6 diversion. Certification of measuring devices shall be obtained from a commercial testing company
7 approved by the Director.

8 The previous readings of any measuring device disclosed by test to be inaccurate shall be
9 corrected for the three (3) months previous to such test or one-half (½) the period since the last test,
10 whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

11 If any measuring device fails to register for any period, the amount of water furnished during
12 such period shall be determined by the Director, after consultation with the Purchaser.

13 The Purchaser shall read the measuring device when requested to do so by the Director and
14 shall send such reading to the Director within five (5) days after it has been taken.

15 Representatives of the State shall, at all reasonable times, have access to the measuring device
16 for the purpose of verifying all readings.

17 The State may measure withdrawals at the point of withdrawal by any suitable means, as an
18 auxiliary measuring device to verify the accuracy of the Purchaser's measuring device or to measure
19 the amount of water furnished when the Purchaser's measuring device fails to register.

ARTICLE 11. WATER WITHDRAWAL REQUESTS

1 The Director shall not unreasonably disapprove or withhold his or her approval of the water
2 withdrawal requests; however, the Director shall have the final authority to approve or deny said
3 request.

4 In no event shall the Purchaser withdraw water in excess of the maximum daily rate of
5 1,312,000 gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under
6 terms of this contract, the Purchaser shall advise the Director and obtain his approval for said

7 withdrawal. Such request may be transmitted to the Director by oral communication, but the notice
8 shall be confirmed in writing within fifteen (15) days after the oral communication.

ARTICLE 12. CONTINUITY OF WATER SERVICE

1 a. The Director shall make all reasonable efforts to perfect and protect the water reservation
2 right necessary for the satisfaction of the water supply commitment. In the event it becomes
3 necessary for any reason to apportion the water among the persons having contracts for surplus water,
4 or to temporarily discontinue the furnishing of water to such persons, the Director will give each
5 person an oral notice, followed by a written notice, of such action as far in advance as is reasonably
6 practicable.

7 b. Neither the Director nor the Authority shall be responsible or have any legal liability for any
8 insufficiency of water, or the apportionment thereof, and the duty of the Director and the Authority
9 to furnish water is specifically subject to the following conditions.

10 (1) If the total amount of water contracted for withdrawal by all purchasers from the
11 Reservoir in the year is greater than the supply available from the conservation water supply storage
12 in the Reservoir, the Director, with the approval of the Authority, will apportion the available water
13 among all the purchasers having contracts therefor, as may best provide for the health, safety, and
14 general welfare of the people of this State as determined by the Authority.

15 (2) Purchasers of water by multi-year contracts take priority over those persons purchasing
16 surplus water.

17 (3) If the United States temporarily discontinues or reduces water storage available to the
18 State under its agreement with the United States for the purpose of inspection, investigation,
19 maintenance, repair, or rehabilitation of the Reservoir, or for other reasons deemed necessary by the

20 United States, the Director will apportion the available water among the persons having contracts as
21 determined by the State.

22 (4) If, because of an emergency, the Director deems it necessary for the health, safety, and
23 general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the
24 Reservoir, the Director, with the approval of the Authority, will apportion any available water among
25 the persons having contracts therefor as may best provide for the health, safety, and general welfare
26 of the people of Kansas.

27 c. In the event the Director finds it necessary to apportion the available water from the
28 Reservoir among the persons having contracts therefor, and such apportionment results in the
29 Purchaser being unable, during the term of this contract as defined in Article 2, to receive the water
30 that has been purchased by payment of the minimum charge, the Purchaser shall be liable to the State
31 only for the amount of water actually made available to the Purchaser during the term of the contract.

ARTICLE 13. LIABILITY

1 Neither the Director nor the Authority shall be liable for any claim arising out of the control,
2 carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the point
3 of withdrawal, as described in this contract, except as provided in the Kansas Tort Claims Act,
4 K.S.A. 1982 Supp. 75-6101, et seq., and amendments thereto; and the Purchaser shall hold the State
5 harmless on account of damage or claim or damage of any nature whatsoever arising out of or
6 connected with the control, carriage, handling, use, disposal, or distribution of water beyond the point
7 of withdrawal. Nothing in this Article shall be construed to impair any protection of the rights of the
8 Purchaser as set forth in Article 5.

ARTICLE 14. AMENDMENT OR NULLIFICATION

1 The contract may be amended or nullified by written agreement of the parties, as provided in
2 K.S.A. 82a-1315, and amendments thereto. The fixed rate as stated in this contract may be
3 subsequently adjusted after the execution of the contract, pursuant to the terms and conditions of this
4 contract.

ARTICLE 15. ASSIGNMENT OF CONTRACT

1 No assignment, sale, conveyance, or transfer of all or any part of this contract, or of interest
2 therein, shall be valid unless and until the same is approved by the Authority under such reasonable
3 terms and conditions as the Authority may impose.

4 Whenever the assignment, sale, conveyance, or transfer of all or any part of this water purchase
5 contract involves a change in either the place of use or the purpose of use, the Authority shall have
6 the option to cancel the water purchase contract, or portion thereof, and make the water available for
7 purchase by persons who have filed applications in accordance with rules and regulations for
8 administration of the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., and amendments thereto.

ARTICLE 16. RENEWALS

1 When this contract expires, the Purchaser shall not be entitled to any new offering of the water
2 before the Director may offer the same to any other applicant.


ARTICLE 17. SEVERABILITY

1 In the event any provisions of this agreement, or any part of any provision of this agreement,
2 are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms
3 hereof which can be given effect without the invalid provision or portion of such provision, and to
4 that end the terms of this agreement are intended to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE STATE OF KANSAS, BY:

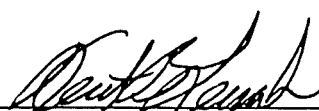

Chris H. Bell

By: 
Director, Kansas Water Office

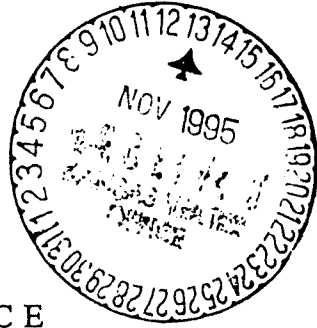
ATTEST:

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY,



By: 
Chairman
Kansas Water Authority

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STATE OF KANSAS
KANSAS WATER OFFICE

CONTRACT
Between the State of Kansas
and

Douglas County Rural Water District Number 4

Douglas County, Kansas

For a Public
Water Supply
From Clinton Lake

Water Purchase Contract No. 95-2

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KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 95-2

1 This contract is executed and entered into this 26th day of October, 1995,
2 by and between the State of Kansas (hereinafter referred to as the "State") as represented by the
3 Kansas Water Office, and Douglas County Rural Water District Number 4 (hereinafter referred
4 to as the "Purchaser").

5 WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a municipal and
6 industrial water supply; and

7 WHEREAS, the state has signed an Agreement (Contract No. DACW 41-77-C-0149) with
8 the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L.
9 85-500), as amended, for water supply storage space in the Reservoir; and

10 WHEREAS, the State has filed an appropriate water reservation right on May 13, 1974,
11 to divert and store water in the Reservoir; and

12 WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615,
13 as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale of water;
14 and

15 WHEREAS, the Purchaser filed an appropriate application with the State to negotiate the
16 purchase of raw water from the Reservoir, in compliance with the State Water Plan Storage Act,
17 K.S.A. 82a-1301 et seq., as amended; and

18 WHEREAS, the Purchaser's immediate and projected water supply needs can be provided
19 from the Reservoir; and

20 WHEREAS, the withdrawal and use of 111 million gallons of water annually from the
21 Reservoir by the Purchaser is in the interest of the people of the State of Kansas and will advance
22 the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

23 WHEREAS, Purchaser's applications number 118 and 137 to purchase raw water from the
24 Reservoir were accepted for a combined maximum total amount of 153 million gallons per year
25 in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

26 NOW, THEREFORE, in consideration of the foregoing, the parties mutually agree as
27 follows:

ARTICLE 1. DEFINITIONS

1 As used in this contract, unless the context otherwise requires:

2 (a) "Authority" means the Kansas Water Authority, or its successor.

3 (b) "Director" means the Director of the Kansas Water Office, his or her successor, or
4 designated representative.

5 (c) "Point of withdrawal from the reservoir" means the point at which water is taken from
6 the reservoir by pump, siphon, canal, or any other device; or released through the dam by gates,
7 conduits, or any other means.

8 (d) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.

9 (e) "Reservoir" mean Clinton Lake.

10 (f) "Secondary user" means an entity who is provided water, via a contractual agreement,
11 with the Purchaser.

12 (g) "Tertiary user" means an entity who is provided water, via a contractual agreement,
13 with the secondary user.

ARTICLE 2. TERM OF THE CONTRACT

1 The term of this contract shall be for a period of forty years beginning on the date of
2 execution of this contract. The Purchaser may commence using water at any time after the
3 execution of this contract by providing notice as provided in Article 12.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

1 This contract, any amendment hereto, or renewal thereof is subject to disapproval and
2 revocation by the Kansas Legislature as provided in K.S.A. 82a-1307, and amendments thereto.

ARTICLE 4. UNITED STATES APPROVAL

1 The Purchaser shall secure the right from the federal government to construct, modify,
2 alter, or maintain installations and facilities when such installations and facilities are on federal
3 lands. The Purchaser shall bear the cost of construction, modification, operation, and
4 maintenance of Purchaser-owned installations and facilities.

5 The Purchaser shall provide the Director with proof of any easement granted by the federal
6 government for rights-of-way across, in, and upon federal government land required for intake,
7 transmission of water, and necessary appurtenances.

ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES

1 This contract is subject to such statutes as may be applicable, including specifically, but
2 not by way of limitation, the State Water Planning Act, K.S.A. 82a-901 et seq., and amendments
3 thereto; the State Water Plan, K.S.A. 82a-927 et seq., and amendments thereto; and the State
4 Water Plan Storage Act, K.S.A. 82a-1301 et seq., and amendments thereto; and the Purchaser
5 agrees to comply with such statutes and any amendments to said statutes which may be enacted
6 subsequent to the execution of this contract.

ARTICLE 6. QUANTITY OF WATER

1 a. Initial Quantity. During the term of this contract, defined in Article 2, subject to the
2 conditions herein stated, the State will permit the Purchaser to withdraw not more than
3 4,440,000,000 gallons of raw water from the water supply storage in the Reservoir; provided,
4 however, that the State shall not be obligated to furnish more than the maximum annual quantity
5 shown on the attached graduated use schedule in any one (1) calendar year. If the Purchaser in
6 any calendar year does not withdraw the entire annual amount obligated under terms of this
7 contract, the unused amount of water shall not add to the Purchaser's entitlement in any
8 subsequent year.

9 The Purchaser is obligated to utilize 100 percent of the water supply under its contract
10 number 77-5 before any use can be made of water under this contract. The Purchaser shall not
11 be permitted to utilize up to the minimum annual quantity under contract 77-5, then utilize the
12 minimum annual quantity under this contract.

13 b. Graduated Use Schedule. An agreed upon graduated use schedule is attached as
14 "Exhibit A" of this contract. Minimum annual payments shall be based upon this schedule and
15 calculated as provided in Article 7 of this contract.

16 The maximum annual quantity the Purchaser is entitled to for each calendar year shall be
17 determined by the graduated use schedule. The minimum annual payment shall be calculated in
18 accordance with Article 7 based upon 50 percent or one-half of the maximum quantity in the
19 graduated use schedule for the calendar year.

20 c. Review and Adjustment. The Director shall review the quantity and purposes for
21 which water is used on the sixth anniversary of the execution of this contract and on each annual
22 anniversary for the remaining portion of the term of this contract. The Director may adjust the

23 total annual amount of water contracted as shown on the attached graduated use schedule on the
24 sixth anniversary of the execution of the contract and on each annual anniversary thereafter, if the
25 Purchaser does not begin full payment for the water under contract and another water user is
26 ready, willing, and able to contract for such water.

27 If the Purchaser's actual use in any year exceeds the maximum quantity set forth in the
28 graduated use schedule, the Director may increase the maximum quantity set for each following
29 year at or above the Purchaser's maximum actual use, but not to exceed 111 million gallons per
30 year.

31 d. Water Appropriation Rights. The Purchaser may use water withdrawn in accordance
32 with the terms of this contract without obtaining a permit or water right under the Kansas Water
33 Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same
34 protection as any other vested property interest including vested water rights, water appropriation
35 rights, and approved applications for permit to appropriate water.

ARTICLE 7. PRICE OF WATER

1 a. Price. The Purchaser agrees to pay the State at the rate fixed in accordance with K.S.A.
2 82a-1306, and amendments thereto, for each one thousand (1,000) gallons of raw water used or
3 raw water which must be paid for under terms of this contract throughout the term of this
4 contract; provided, however, that the Purchaser is obligated and agrees to pay the minimum
5 charges in accordance with this Article regardless of the quantity of raw water actually used,
6 except as provided in Article 13. The rate for raw water which must be paid for under terms of
7 this contract shall be \$.13369 for each one thousand (1,000) gallons during calendar year 1996.

8 b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether
9 or not water is withdrawn during the calendar year. The minimum charge for each calendar year

10 shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum
11 charge for calendar year 1996 and each succeeding calendar year, unless changed by amendment
12 of State statutes, shall be the sum of the following two components:

13 (1) 50 percent of the total annual amount of water contracted for during the term of this
14 contract (as shown on the attached graduated use schedule) multiplied by the rate established in
15 accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph [©] of this
16 Article; and (2) a charge on the remaining 50 percent of water contracted for during the year (as
17 shown on the attached graduated use schedule) computed by multiplying the net amount of moneys
18 advanced from state funds for costs incurred and associated conservation storage water supply
19 under the State Water Marketing Program by the average rate of interest earned during the past
20 calendar year by the Pooled Money Investment Board on 30 day repurchase agreements and by
21 the portion of the remaining 50 percent under contract to the total conservation water supply
22 capacity available under the State Water Marketing Program.

23 c. Review and Adjustment of Rates. The Director shall review the fixed rate stated in this
24 article on July 15 of each year during the term of this contract and may adjust the rate effective
25 January 1 of the following year to reflect any change in experience by substituting the adjusted
26 rate for the fixed rate then applicable to the contract. Such adjusted rate shall be charged for all
27 water used or water which must be paid for under terms of this contract as provided in Article 9.
28 The Director shall notify the Purchaser by restricted mail by July 31 of each year of the adjusted
29 rate which will become effective on January 1 of the ensuing year and shall notify the Purchaser
30 of the adjusted minimum payment which will be required under the terms and conditions of this
31 contract. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the
32 obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE

1 a. Purpose. Water purchased under this contract shall be used for purposes which are in
2 the interest of the people of the State of Kansas and which will advance the purposes set forth in
3 Article 9 of Chapter 82a of Kansas Statutes Annotated, and amendments thereto.

4 b. Place of Use. The place of use for water purchased under this contract shall be within
5 the boundaries of Douglas County Rural Water District Number 4.

6 c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any
7 intention to sell any water under this contract to any person or entity located outside the
8 geographical limits described above. Whenever the Purchaser shall propose to enter into a
9 contract to sell water purchased under this contract to any such person or entity outside the
10 described geographical limits, the Purchaser shall, before execution thereof, submit a copy of such
11 contract to the Authority for review. The Purchaser agrees not to execute and enter into any such
12 contracts unless approved by the Authority.

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

1 a. Payments. The Purchaser shall transmit all payments due hereunder to the Director.
2 Remittance for minimum payments shall be paid to the Director in either one annual payment
3 within thirty (30) days after date of billing by the State or in equal monthly installments during
4 the calendar year in which the minimum payment is due, whether or not water is withdrawn
5 during the calendar year. Remittance for payments due for water used in excess of the quantity
6 obligated by the minimum payment shall be paid to the Director in full within thirty (30) days
7 after date of billing by the State.

8 b. Determination of Charges. Charges for water for which payment is required shall be
9 determined by the State. The formulas by which charges are computed shall be prepared by the

10 Director with the approval of the Authority. The Purchaser acknowledges and agrees that said
11 formulas and computations are subject to change, based on subsequent amendments to State
12 statutes which may affect the terms of this contract.

13 c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all
14 water received under terms of this contract up to the maximum quantity obligated by this contract
15 as described on the attached graduated use schedule. Any annual water use under this contract
16 above the maximum annual quantity shown on the attached graduated use schedule shall be
17 charged for at the current rate and the graduated schedule may be adjusted as provided in Article
18 6. In no event will use in any year exceed 183 million gallons obligated from the combined totals
19 of this contract and contract 77-5.

20 d. Initial Minimum Payment. The initial minimum payment shall become due on
21 January 1, 1996. Remittance for the initial minimum payment shall be in accordance with Article
22 9a. Payment of the initial minimum charge shall entitle the Purchaser to receive during the
23 calendar year one-half ($\frac{1}{2}$) of the maximum annual quantity of water as set forth in Article 6,
24 without additional charge.

25 e. Subsequent Minimum Payments. On each succeeding January 1 following the due date
26 of the initial minimum payment, subsequent minimum payments shall become due. Remittance
27 for minimum payments shall be in accordance with Article 9a. Payment of the minimum payment
28 shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half
29 ($\frac{1}{2}$) of the maximum annual quantity obligated under terms of this contract as shown on the
30 attached graduated use schedule.

31 f. Water in Excess of Minimum. At the end of each calendar year throughout the term
32 of this contract or within thirty (30) days after the end of each calendar year, the State shall bill

33 the Purchaser for any water used during the calendar year in excess of one-half ($\frac{1}{2}$) of the total
34 annual quantity of water in excess of the amount of water used to compute the minimum charge.
35 The Purchaser shall be given credit for the proportionate share of the payment which was made
36 as an interest charge on the net amount of monies advanced from the State funds for the costs
37 incurred and associated with providing 50 percent of the total annual amount of water shown on
38 the attached graduated use schedule.

39 g. Overpayment or Underpayment. If for reason of error in computation, measuring
40 device malfunction, or other causes, there is an overpayment or underpayment to the State by the
41 Purchaser of the charges provided herein, such overpayment or underpayment shall be credited
42 or debited, as the case may be, to the Purchaser's account for the next succeeding payment and
43 the State shall notify the Purchaser thereof in writing. However, all charges made in any year
44 shall be conclusively presumed to be correct six (6) months after the end of such year.

45 h. Adjustment for Apportionment. In the event the Purchaser is unable in any year due
46 to apportionment under Article 13 herein to withdraw the amount which the Purchaser is entitled
47 to receive after payment of the minimum payment, the amount of such minimum payment in
48 excess of the amount of water actually received by Purchaser shall be credited to reduce the
49 obligation of the Purchaser during the next succeeding calendar year.

50 i. Overdue Payments. If the Purchaser shall fail to make any of the payments when due,
51 then the overdue payments shall bear interest, compounded annually at the rate prescribed in
52 K.S.A. 82a-1317, and amendments thereto, during the term of this contract. This shall not be
53 construed as giving the Purchaser the option of either making payments when due or paying
54 interest, nor shall it be construed as waiving any of the rights of the State that might result from
55 such default by the Purchaser.

ARTICLE 10. POINT OF WITHDRAWAL

1 The point of withdrawal from the Reservoir shall be in the SW 1/4 of the NE 1/4 of the
2 SW 1/4 of Section 8, Township 13S, Range 19E, Douglas County, Kansas, until construction of
3 a new treatment plant is completed. Then the point of withdrawal from the reservoir shall be the
4 NE 1/4 of the NW 1/4 of Section 30, Township 13S, Range 19E of Douglas County, Kansas.

ARTICLE 11. METERING OF WATER

1 The Purchaser shall, at its own expense, furnish, install, operate, and maintain at the place
2 of diversion, a commercial measuring device as ordered by the Director.

3 The Purchaser shall test and calibrate as accurately as possible such measuring device or
4 devices whenever requested by the Director, but not more frequently than once every twelve (12)
5 months. A measuring device shall be deemed to be accurate if test results fall within a tolerance
6 of plus or minus two (2) percent throughout the full range of diversion. Certification of
7 measuring devices shall be obtained from a commercial testing company approved by the
8 Director.

9 The previous readings of any measuring device disclosed by test to be inaccurate shall be
10 corrected for the three (3) months previous to such test or one-half ($\frac{1}{2}$) the period since the last
11 test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

12 If any measuring device fails to register for any period, the amount of water furnished
13 during such period shall be determined by the Director, after consultation with the Purchaser.

14 The Purchaser shall read the measuring device on or before the last calendar day of each
15 month, and shall send such reading to the Director within ten (10) days after it has been taken.

16 Representatives of the State shall, at all reasonable times, have access to the measuring
17 device for the purpose of verifying all readings.

18 The State may measure withdrawals by any other suitable means, as an auxiliary measuring
19 device to verify the accuracy of the Purchaser's measuring device or to measure the amount of
20 water furnished when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL SCHEDULE

1 The Purchaser agrees to submit a water withdrawal schedule for each calendar year to the
2 Director on or before March 30 of each year.

3 Such proposed water withdrawal schedule shall be approved or disapproved by the
4 Director within thirty (30) days of the filing of such schedule and, subject to his or her approval,
5 such schedule may be amended upon written request from the Purchaser. The Director shall not
6 unreasonably disapprove or withhold his or her approval of the water withdrawal schedule.

7 The Purchaser's approved water withdrawal schedule shall govern the rate of withdrawal,
8 but in no event shall the Purchaser withdraw water in excess of the maximum daily rate of 1
9 million gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under
10 terms of this contract from the reservoir other than as approved in the annual withdrawal
11 schedule, the Purchaser shall advise the Director at least two (2) working days prior to the time
12 such water is to be withdrawn from the Reservoir. Such notice may be transmitted to the Director
13 by oral communication, but the notice must be confirmed in writing within fifteen (15) days after
14 the oral communication.

ARTICLE 13. CONTINUITY OF WATER SERVICE

1 (a) The Director shall make all reasonable efforts to perfect and protect the water
2 reservation right necessary for the satisfaction of the water supply commitment. In the event it
3 becomes necessary for any reason to apportion the water among the persons having contracts
4 therefor, or to temporarily discontinue the furnishing of water to such persons, the Director will

5 give each person an oral notice, followed by a written notice, of such action as far in advance as
6 is reasonably practicable.

7 (b) Neither the Director nor the Authority shall be responsible or have any legal liability
8 for any insufficiency of water or the apportionment thereof, and the duty of the Director and the
9 Authority to furnish water is specifically subject to the following conditions:

10 (1) If the total amount of water contracted for withdrawal by all purchasers from the
11 Reservoir in the year is greater than the supply available from the conservation water supply
12 storage in the Reservoir, the Director, with the approval of the Authority, will apportion the
13 available water among all the purchasers having contracts therefor, as may best provide for the
14 health, safety, and general welfare of the people of this State as determined by the Authority.

15 (2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such
16 evaluation indicates that the sediment deposits have reduced the yield from the State's conservation
17 water supply storage space, the Director will apportion available water among the persons having
18 contracts in relation to the annual volume of water contracted.

19 (3) If the United States temporarily discontinues or reduces water storage available to the
20 State under its agreement with the United States from the purpose of inspection, investigation,
21 maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by
22 the United States, the Director will apportion the available water among the persons having
23 contracts as determined by the State.

24 (4) If, because of an emergency, the Director deems it necessary for the health, safety,
25 and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from
26 the Reservoir, the Director, with the approval of the Authority, will apportion any available water

27 among the persons having contracts therefor as may best provide for the health, safety, and
28 general welfare of the people of Kansas.

29 (c) In the event the Director finds it necessary to apportion the available water from the
30 Reservoir among the persons having contracts therefor, and such apportionment results in the
31 Purchaser being unable during the year to receive the amount of water that has been purchased
32 by payment of the minimum charge, the Purchaser shall pay the State only for the amount of water
33 actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

1 Neither the Director nor the Authority shall be liable for any claim arising out of the
2 control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser
3 beyond the point of withdrawal as described in this contract except as provided in the Kansas Tort
4 Claims Act, K.S.A. 75-6101 et seq., and amendments thereto; and the Purchaser shall hold the
5 State harmless on account of damage or claim or damage of any nature whatsoever arising out of
6 or connected with the control, carriage, handling, use, disposal, or distribution of water beyond
7 the point of withdrawal. Nothing in this Article shall be construed to impair any protection of the
8 rights of the Purchaser as set forth in Article 6.

ARTICLE 15. AMENDMENT OR NULLIFICATION

1 The contract may be amended or nullified by written agreement of the parties, as provided
2 in K.S.A. 82a-1316, and amendments thereto. The fixed rate as stated in this contract may be
3 subsequently adjusted on January 1 after the execution of the contract and on each January 1
4 thereafter, pursuant to the terms and conditions of this contract.

ARTICLE 16. ASSIGNMENT OF CONTRACT

1 No assignment, sale, conveyance, or transfer of all or any part of this contract, or of
2 interest therein, shall be valid unless and until same is approved by the Authority under such
3 reasonable terms and conditions as the Authority may impose.

4 Whenever the assignment, sale, conveyance, or transfer of all or any part of this water
5 purchase contract involves a change in either the place of use or the purpose of use, the Authority
6 shall have the option to cancel the water purchase contract or portion thereof and make the water
7 available for purchase by persons who have filed applications in accordance with rules and
8 regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., and
9 amendments thereto.

ARTICLE 17. RENEWALS

1 When this contract expires, the Director shall give the Purchaser the opportunity to refuse
2 any new offering of the water before offering the same to any other applicant.

ARTICLE 18. TERMINATION

1 In the event the Purchaser is unable to obtain, construct, maintain, or operate the necessary
2 water treatment and distribution facilities, the Purchaser may terminate this contract upon giving
3 the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the
4 Purchaser hereunder shall cease. Provided, however, that nothing in this Article shall be
5 construed to affect the duty of the Purchaser to pay the prorated share of the minimum charge for
6 the year in which the contract is terminated or the actual charge for the quantity of water
7 withdrawn, whichever is greater, before notice of termination is given.

ARTICLE 19. SEVERABILITY

1 In the event any provision of this agreement or any part of any provision of this agreement
2 are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms
3 hereof which can be given effect without the invalid provision or portion of such provision, and
4 to that end the terms of this agreement are intended to be severable.

ARTICLE 20. WATER CONSERVATION PLAN

1 The Purchaser shall adopt and implement a water conservation plan that is consistent with
2 the current guidelines for conservation plans and practices, developed and maintained by the
3 Kansas Water Office. Whenever lack of inflow causes the reservoir elevation to fall below 872.5
4 feet msl, a drought condition shall be considered to exist and the Purchaser agrees to implement
5 the drought contingency plan contained in their water conservation plan before any withdrawal
6 in addition to the scheduled water withdrawals described in Article 12 will be allowed by the
7 State. The Drought/Emergency Contingency portion of this plan shall include a description of
8 how the Purchaser plans to allocate water to secondary users, if any, during a drought or
9 emergency contingency.

10 For the proceeding five calendar years before execution of this contract and for each
11 successive year thereafter, the Purchaser shall provide a complete and accurate water use report
12 for itself and for each current or proposed secondary or tertiary user of water under this contract.

13 The annual water use report filed with the Division of Water Resources will meet this
14 requirement or the Purchaser may use forms provided by the Director.

15 Each proposed or current secondary or tertiary user of contracted water, whose five year
16 average gpcd exceeds its respective regional five year average gallons per capita per day (gpcd)

17 by 10 percent or more at the time of contracting, or at any time during the contract period as set
18 forth in Article 2, shall prepare and implement a water conservation plan that is consistent with
19 the current guidelines for conservation plans and practices, developed and maintained by the
20 Kansas Water Office.

21 Three years after execution of this contract, the Director shall begin an annual monitoring
22 of the effectiveness of water conservation plans prepared and implemented pursuant to this
23 contract. If the Purchaser or any secondary or tertiary user of contractual water has a five year
24 average gpcd that exceeds its respective five year regional average gpcd by 25 percent or more,
25 then that user shall revise its water conservation plan in a manner consistent with the guidelines
26 for conservation plans and practices that are maintained by the Kansas Water Office at that time.
27 The revised water conservation plan shall include additional water conservation measures that are
28 designed to reduce the user's gpcd.

29 Each proposed or current secondary or tertiary user of water under this contract shall
30 provide the Director with a letter prior to execution of this contract indicating their support of the
31 water conservation requirements contained in Article 20 of this contract in order to be eligible to
32 receive any water provided under this contract.

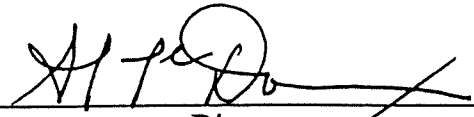
IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

PURCHASER, BY:

THE STATE OF KANSAS, BY:

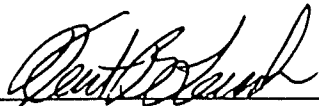


Douglas County Rural Water District No. 4



Director
Kansas Water Office

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY, BY:



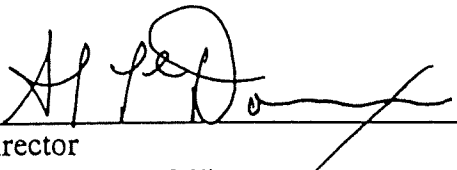
Chairman
Kansas Water Authority

GRADUATED USE SCHEDULE
Contract 95-2, Douglas County Rural Water Dist. #4
In Million Gallons per Year

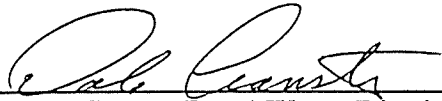
	Calendar Year	Minimum Quantity	Maximum Quantity	
1.	1996	9	18	
2	1997	9	18	
3	1998	9	18	
4	1999	9	18	
5	2000	20.5	41	
6	2001	20.5	41	
7	2002	20.5	41	
8	2003	20.5	41	
9	2004	20.5	41	
10	2005	32	64	
11	2006	32	64	
12	2007	32	64	
13	2008	32	64	
14	2009	32	64	
15	2010	43.5	87	
16	2011	43.5	87	
17	2012	43.5	87	
18	2013	43.5	87	
19	2014	43.5	87	
20	2015	55.5	111	Total Max. Qty. Avail. This Contract
21	2016	55.5	111	
22	2017	55.5	111	
23	2018	55.5	111	
24	2019	55.5	111	
25	2020	55.5	111	
26	2021	55.5	111	
27	2022	55.5	111	
28	2023	55.5	111	
29	2024	55.5	111	
30	2025	55.5	111	
31	2026	55.5	111	
32	2027	55.5	111	
33	2028	55.5	111	
34	2029	55.5	111	
35	2030	55.5	111	
36	2031	55.5	111	
37	2032	55.5	111	
38	2033	55.5	111	
39	2034	55.5	111	
40	2035	55.5	111	

MEMORANDUM OF AGREEMENT

We, the undersigned, hereby agree that the provisions of contract 95-2 supersede and replace the provisions of contract 90-4 between the State of Kansas and Douglas County Rural Water District Number 4 for water supply from Clinton Reservoir, except in the event the 1996 session of the Kansas Legislature revokes contract 95-2 within the first 90 days of the session. Should such revocation occur, the parties agree to reinstate provisions of contract 90-4 and any minimum annual payment made shall be adjusted to reflect the requirements of contract 90-4.



Director
Kansas Water Office




Douglas County Rural Water District No. 4

October 26, 1995
Date

11-7-95
Date

With the express approval of the Kansas Water Authority



Chairman
Kansas Water Authority

DGCORWD4.CON

STATE OF KANSAS
KANSAS WATER OFFICE



CONTRACT
Between the State of Kansas
and

Douglas County Rural Water District Number 5

Douglas County, Kansas

For a Public
Water Supply
From Clinton Lake

Water Purchase Contract No. 95-3

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KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 95-3

1 This contract is executed and entered into this 26th day of October, 19 95,
2 by and between the State of Kansas (hereinafter referred to as the "State") as represented by the
3 Kansas Water Office, and Douglas County Rural Water District Number 5 (hereinafter referred
4 to as the "Purchaser").

5 WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a municipal and
6 industrial water supply; and

7 WHEREAS, the state has signed an Agreement (Contract No. DACW 41-77-C-0149) with
8 the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L.
9 85-500), as amended, for water supply storage space in the Reservoir; and

10 WHEREAS, the State has filed an appropriate water reservation right on May 13, 1974,
11 to divert and store water in the Reservoir; and

12 WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615,
13 as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale of water;
14 and

15 WHEREAS, the Purchaser filed an appropriate application with the State to negotiate the
16 purchase of raw water from the Reservoir, in compliance with the State Water Plan Storage Act,
17 K.S.A. 82a-1301 et seq., as amended; and

18 WHEREAS, the Purchaser's immediate and projected water supply needs can be provided
19 from the Reservoir; and

20 WHEREAS, the withdrawal and use of 135 million gallons of water annually from the
21 Reservoir by the Purchaser is in the interest of the people of the State of Kansas and will advance
22 the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

23 WHEREAS, Purchaser's applications number 104, 116 and 136 to purchase raw water
24 from the Reservoir were accepted for a combined maximum total amount of 135 million gallons
25 per year in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

26 NOW, THEREFORE, in consideration of the foregoing, the parties mutually agree as
27 follows:

ARTICLE 1. DEFINITIONS

1 As used in this contract, unless the context otherwise requires:

2 (a) "Authority" means the Kansas Water Authority, or its successor.

3 (b) "Director" means the Director of the Kansas Water Office, his or her successor, or
4 designated representative.

5 (c) "Point of withdrawal from the reservoir" means the point at which water is taken from
6 the reservoir by pump, siphon, canal, or any other device; or released through the dam by gates,
7 conduits, or any other means.

8 (d) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.

9 (e) "Reservoir" mean Clinton Lake.

10 (f) "Secondary user" means an entity who is provided water, via a contractual agreement,
11 with the Purchaser.

12 (g) "Tertiary user" means an entity who is provided water, via a contractual agreement,
13 with the secondary user.

ARTICLE 2. TERM OF THE CONTRACT

1 The term of this contract shall be for a period of forty years beginning on the date of
2 execution of this contract. The Purchaser may commence using water at any time after the
3 execution of this contract by providing notice as provided in Article 12.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

1 This contract, any amendment hereto, or renewal thereof is subject to disapproval and
2 revocation by the Kansas Legislature as provided in K.S.A. 82a-1307, and amendments thereto.

ARTICLE 4. UNITED STATES APPROVAL

1 The Purchaser shall secure the right from the federal government to construct, modify,
2 alter, or maintain installations and facilities when such installations and facilities are on federal
3 lands. The Purchaser shall bear the cost of construction, modification, operation, and
4 maintenance of Purchaser-owned installations and facilities.

5 The Purchaser shall provide the Director with proof of any easement granted by the federal
6 government for rights-of-way across, in, and upon federal government land required for intake,
7 transmission of water, and necessary appurtenances.

ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES

1 This contract is subject to such statutes as may be applicable, including specifically, but
2 not by way of limitation, the State Water Planning Act, K.S.A. 82a-901 et seq., and amendments
3 thereto; the State Water Plan, K.S.A. 82a-927 et seq., and amendments thereto; and the State
4 Water Plan Storage Act, K.S.A. 82a-1301 et seq., and amendments thereto; and the Purchaser
5 agrees to comply with such statutes and any amendments to said statutes which may be enacted
6 subsequent to the execution of this contract.

ARTICLE 6. QUANTITY OF WATER

1 a. Initial Quantity. During the term of this contract, defined in Article 2, subject to the
2 conditions herein stated, the State will permit the Purchaser to withdraw not more than
3 5,400,000,000 gallons of raw water from the water supply storage in the Reservoir; provided,
4 however, that the State shall not be obligated to furnish more than the maximum annual quantity
5 shown on the attached graduated use schedule in any one (1) calendar year. If the Purchaser in
6 any calendar year does not withdraw the entire annual amount obligated under terms of this
7 contract, the unused amount of water shall not add to the Purchaser's entitlement in any
8 subsequent year.

9 The Purchaser is obligated to utilize 100 percent of the water supply under its contract
10 number 77-2 before any use can be made of water under this contract. The Purchaser shall not
11 be permitted to utilize up to the minimum annual quantity under contract 77-2, then utilize the
12 minimum annual quantity under this contract.

13 b. Graduated Use Schedule. An agreed upon graduated use schedule is attached as
14 "Exhibit A" of this contract. Minimum annual payments shall be based upon this schedule and
15 calculated as provided in Article 7 of this contract.

16 The maximum annual quantity the Purchaser is entitled to for each calendar year shall be
17 determined by the graduated use schedule. The minimum annual payment shall be calculated in
18 accordance with Article 7 based upon 50 percent or one-half of the maximum quantity in the
19 graduated use schedule for the calendar year.

20 c. Review and Adjustment. The Director shall review the quantity and purposes for
21 which water is used on the sixth anniversary of the execution of this contract and on each annual
22 anniversary for the remaining portion of the term of this contract. The Director may adjust the

23 total annual amount of water contracted as shown on the attached graduated use schedule on the
24 sixth anniversary of the execution of the contract and on each annual anniversary thereafter, if the
25 Purchaser does not begin full payment for the water under contract and another water user is
26 ready, willing, and able to contract for such water.

27 If the Purchaser's actual use in any year exceeds the maximum quantity set forth in the
28 graduated use schedule, the Director may increase the maximum quantity set for each following
29 year at or above the Purchaser's maximum actual use, but not to exceed 135 million gallons per
30 year.

31 d. Water Appropriation Rights. The Purchaser may use water withdrawn in accordance
32 with the terms of this contract without obtaining a permit or water right under the Kansas Water
33 Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same
34 protection as any other vested property interest including vested water rights, water appropriation
35 rights, and approved applications for permit to appropriate water.

ARTICLE 7. PRICE OF WATER

1 a. Price. The Purchaser agrees to pay the State at the rate fixed in accordance with K.S.A.
2 82a-1306, and amendments thereto, for each one thousand (1,000) gallons of raw water used or
3 raw water which must be paid for under terms of this contract throughout the term of this
4 contract; provided, however, that the Purchaser is obligated and agrees to pay the minimum
5 charges in accordance with this Article regardless of the quantity of raw water actually used,
6 except as provided in Article 13. The rate for raw water which must be paid for under terms of
7 this contract shall be \$.13369 for each one thousand (1,000) gallons during calendar year 1996.

8 b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether
9 or not water is withdrawn during the calendar year. The minimum charge for each calendar year

42
1-43

10 shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum
11 charge for calendar year 1996 and each succeeding calendar year, unless changed by amendment
12 of State statutes, shall be the sum of the following two components:

13 (1) 50 percent of the total annual amount of water contracted for during the term of this
14 contract (as shown on the attached graduated use schedule) multiplied by the rate established in
15 accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph © of this
16 Article; and (2) a charge on the remaining 50 percent of water contracted for during the year (as
17 shown on the attached graduated use schedule) computed by multiplying the net amount of moneys
18 advanced from state funds for costs incurred and associated conservation storage water supply
19 under the State Water Marketing Program by the average rate of interest earned during the past
20 calendar year by the Pooled Money Investment Board on 30 day repurchase agreements and by
21 the portion of the remaining 50 percent under contract to the total conservation water supply
22 capacity available under the State Water Marketing Program.

23 c. Review and Adjustment of Rates. The Director shall review the fixed rate stated in this
24 article on July 15 of each year during the term of this contract and may adjust the rate effective
25 January 1 of the following year to reflect any change in experience by substituting the adjusted
26 rate for the fixed rate then applicable to the contract. Such adjusted rate shall be charged for all
27 water used or water which must be paid for under terms of this contract as provided in Article 9.
28 The Director shall notify the Purchaser by restricted mail by July 31 of each year of the adjusted
29 rate which will become effective on January 1 of the ensuing year and shall notify the Purchaser
30 of the adjusted minimum payment which will be required under the terms and conditions of this
31 contract. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the
32 obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE

1 a. Purpose. Water purchased under this contract shall be used for purposes which are in
2 the interest of the people of the State of Kansas and which will advance the purposes set forth in
3 Article 9 of Chapter 82a of Kansas Statutes Annotated, and amendments thereto.

4 b. Place of Use. The place of use for water purchased under this contract shall be within
5 the boundaries of Douglas County Rural Water District Number 5.

6 c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any
7 intention to sell any water under this contract to any person or entity located outside the
8 geographical limits described above. Whenever the Purchaser shall propose to enter into a
9 contract to sell water purchased under this contract to any such person or entity outside the
10 described geographical limits, the Purchaser shall, before execution thereof, submit a copy of such
11 contract to the Authority for review. The Purchaser agrees not to execute and enter into any such
12 contracts unless approved by the Authority.

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

1 a. Payments. The Purchaser shall transmit all payments due hereunder to the Director.
2 Remittance for minimum payments shall be paid to the Director in either one annual payment
3 within thirty (30) days after date of billing by the State or in equal monthly installments during
4 the calendar year in which the minimum payment is due, whether or not water is withdrawn
5 during the calendar year. Remittance for payments due for water used in excess of the quantity
6 obligated by the minimum payment shall be paid to the Director in full within thirty (30) days
7 after date of billing by the State.

8 b. Determination of Charges. Charges for water for which payment is required shall be
9 determined by the State. The formulas by which charges are computed shall be prepared by the

10 Director with the approval of the Authority. The Purchaser acknowledges and agrees that said
11 formulas and computations are subject to change, based on subsequent amendments to State
12 statutes which may affect the terms of this contract.

13 c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all
14 water received under terms of this contract up to the maximum quantity obligated by this contract
15 as described on the attached graduated use schedule. Any annual water use under this contract
16 above the maximum annual quantity shown on the attached graduated use schedule shall be
17 charged for at the current rate and the graduated schedule may be adjusted as provided in Article
18 6. In no event will use in any year exceed 183 million gallons obligated from the combined totals
19 of this contract and contract 77-2.

20 d. Initial Minimum Payment. The initial minimum payment shall become due on
21 January 1, 1996. Remittance for the initial minimum payment shall be in accordance with Article
22 9a. Payment of the initial minimum charge shall entitle the Purchaser to receive during the
23 calendar year one-half (1/2) of the maximum annual quantity of water as set forth in Article 6,
24 without additional charge.

25 e. Subsequent Minimum Payments. On each succeeding January 1 following the due date
26 of the initial minimum payment, subsequent minimum payments shall become due. Remittance
27 for minimum payments shall be in accordance with Article 9a. Payment of the minimum payment
28 shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half
29 (1/2) of the maximum annual quantity obligated under terms of this contract as shown on the
30 attached graduated use schedule.

31 f. Water in Excess of Minimum. At the end of each calendar year throughout the term
32 of this contract or within thirty (30) days after the end of each calendar year, the State shall bill

33 the Purchaser for any water used during the calendar year in excess of one-half ($\frac{1}{2}$) of the total
34 annual quantity of water in excess of the amount of water used to compute the minimum charge.
35 The Purchaser shall be given credit for the proportionate share of the payment which was made
36 as an interest charge on the net amount of monies advanced from the State funds for the costs
37 incurred and associated with providing 50 percent of the total annual amount of water shown on
38 the attached graduated use schedule.

39 g. Overpayment or Underpayment. If for reason of error in computation, measuring
40 device malfunction, or other causes, there is an overpayment or underpayment to the State by the
41 Purchaser of the charges provided herein, such overpayment or underpayment shall be credited
42 or debited, as the case may be, to the Purchaser's account for the next succeeding payment and
43 the State shall notify the Purchaser thereof in writing. However, all charges made in any year
44 shall be conclusively presumed to be correct six (6) months after the end of such year.

45 h. Adjustment for Apportionment. In the event the Purchaser is unable in any year due
46 to apportionment under Article 13 herein to withdraw the amount which the Purchaser is entitled
47 to receive after payment of the minimum payment, the amount of such minimum payment in
48 excess of the amount of water actually received by Purchaser shall be credited to reduce the
49 obligation of the Purchaser during the next succeeding calendar year.

50 I. Overdue Payments. If the Purchaser shall fail to make any of the payments when due,
51 then the overdue payments shall bear interest, compounded annually at the rate prescribed in
52 K.S.A. 82a-1317, and amendments thereto, during the term of this contract. This shall not be
53 construed as giving the Purchaser the option of either making payments when due or paying
54 interest, nor shall it be construed as waiving any of the rights of the State that might result from
55 such default by the Purchaser.

ARTICLE 10. POINT OF WITHDRAWAL

1 The point of withdrawal from the Reservoir shall be in the SW 1/4 of the NE 1/4 of the
2 SW 1/4 of Section 8, Township 13S, Range 19E, Douglas County, Kansas, until construction of
3 a new treatment plant is completed. Then the point of withdrawal from the reservoir shall be the
4 NE 1/4 of the NW 1/4 of Section 30, Township 13S, Range 19E of Douglas County, Kansas.

ARTICLE 11. METERING OF WATER

1 The Purchaser shall, at its own expense, furnish, install, operate, and maintain at the place
2 of diversion, a commercial measuring device as ordered by the Director.

3 The Purchaser shall test and calibrate as accurately as possible such measuring device or
4 devices whenever requested by the Director, but not more frequently than once every twelve (12)
5 months. A measuring device shall be deemed to be accurate if test results fall within a tolerance
6 of plus or minus two (2) percent throughout the full range of diversion. Certification of
7 measuring devices shall be obtained from a commercial testing company approved by the
8 Director.

9 The previous readings of any measuring device disclosed by test to be inaccurate shall be
10 corrected for the three (3) months previous to such test or one-half (1/2) the period since the last
11 test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

12 If any measuring device fails to register for any period, the amount of water furnished
13 during such period shall be determined by the Director, after consultation with the Purchaser.

14 The Purchaser shall read the measuring device on or before the last calendar day of each
15 month, and shall send such reading to the Director within ten (10) days after it has been taken.

16 Representatives of the State shall, at all reasonable times, have access to the measuring
17 device for the purpose of verifying all readings.

18 The State may measure withdrawals by any other suitable means, as an auxiliary measuring
19 device to verify the accuracy of the Purchaser's measuring device or to measure the amount of
20 water furnished when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL SCHEDULE

1 The Purchaser agrees to submit a water withdrawal schedule for each calendar year to the
2 Director on or before March 30 of each year.

3 Such proposed water withdrawal schedule shall be approved or disapproved by the
4 Director within thirty (30) days of the filing of such schedule and, subject to his or her approval,
5 such schedule may be amended upon written request from the Purchaser. The Director shall not
6 unreasonably disapprove or withhold his or her approval of the water withdrawal schedule.

7 The Purchaser's approved water withdrawal schedule shall govern the rate of withdrawal,
8 but in no event shall the Purchaser withdraw water in excess of the maximum daily rate of 1
9 million gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under
10 terms of this contract from the reservoir other than as approved in the annual withdrawal
11 schedule, the Purchaser shall advise the Director at least two (2) working days prior to the time
12 such water is to be withdrawn from the Reservoir. Such notice may be transmitted to the Director
13 by oral communication, but the notice must be confirmed in writing within fifteen (15) days after
14 the oral communication.

ARTICLE 13. CONTINUITY OF WATER SERVICE

1 (a) The Director shall make all reasonable efforts to perfect and protect the water
2 reservation right necessary for the satisfaction of the water supply commitment. In the event it
3 becomes necessary for any reason to apportion the water among the persons having contracts
4 therefor, or to temporarily discontinue the furnishing of water to such persons, the Director will

5 give each person an oral notice, followed by a written notice, of such action as far in advance as
6 is reasonably practicable.

7 (b) Neither the Director nor the Authority shall be responsible or have any legal liability
8 for any insufficiency of water or the apportionment thereof, and the duty of the Director and the
9 Authority to furnish water is specifically subject to the following conditions:

10 (1) If the total amount of water contracted for withdrawal by all purchasers from the
11 Reservoir in the year is greater than the supply available from the conservation water supply
12 storage in the Reservoir, the Director, with the approval of the Authority, will apportion the
13 available water among all the purchasers having contracts therefor, as may best provide for the
14 health, safety, and general welfare of the people of this State as determined by the Authority.

15 (2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such
16 evaluation indicates that the sediment deposits have reduced the yield from the State's conservation
17 water supply storage space, the Director will apportion available water among the persons having
18 contracts in relation to the annual volume of water contracted.

19 (3) If the United States temporarily discontinues or reduces water storage available to the
20 State under its agreement with the United States from the purpose of inspection, investigation,
21 maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by
22 the United States, the Director will apportion the available water among the persons having
23 contracts as determined by the State.

24 (4) If, because of an emergency, the Director deems it necessary for the health, safety,
25 and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from
26 the Reservoir, the Director, with the approval of the Authority, will apportion any available water

27 among the persons having contracts therefor as may best provide for the health, safety, and
28 general welfare of the people of Kansas.

29 (c) In the event the Director finds it necessary to apportion the available water from the
30 Reservoir among the persons having contracts therefor, and such apportionment results in the
31 Purchaser being unable during the year to receive the amount of water that has been purchased
32 by payment of the minimum charge, the Purchaser shall pay the State only for the amount of water
33 actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

1 Neither the Director nor the Authority shall be liable for any claim arising out of the
2 control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser
3 beyond the point of withdrawal as described in this contract except as provided in the Kansas Tort
4 Claims Act, K.S.A. 75-6101 et seq., and amendments thereto; and the Purchaser shall hold the
5 State harmless on account of damage or claim or damage of any nature whatsoever arising out of
6 or connected with the control, carriage, handling, use, disposal, or distribution of water beyond
7 the point of withdrawal. Nothing in this Article shall be construed to impair any protection of the
8 rights of the Purchaser as set forth in Article 6.

ARTICLE 15. AMENDMENT OR NULLIFICATION

1 The contract may be amended or nullified by written agreement of the parties, as provided
2 in K.S.A. 82a-1316, and amendments thereto. The fixed rate as stated in this contract may be
3 subsequently adjusted on January 1 after the execution of the contract and on each January 1
4 thereafter, pursuant to the terms and conditions of this contract.

ARTICLE 16. ASSIGNMENT OF CONTRACT

1 No assignment, sale, conveyance, or transfer of all or any part of this contract, or of
2 interest therein, shall be valid unless and until same is approved by the Authority under such
3 reasonable terms and conditions as the Authority may impose.

4 Whenever the assignment, sale, conveyance, or transfer of all or any part of this water
5 purchase contract involves a change in either the place of use or the purpose of use, the Authority
6 shall have the option to cancel the water purchase contract or portion thereof and make the water
7 available for purchase by persons who have filed applications in accordance with rules and
8 regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., and
9 amendments thereto.

ARTICLE 17. RENEWALS

1 When this contract expires, the Director shall give the Purchaser the opportunity to refuse
2 any new offering of the water before offering the same to any other applicant.

ARTICLE 18. TERMINATION

1 In the event the Purchaser is unable to obtain, construct, maintain, or operate the necessary
2 water treatment and distribution facilities, the Purchaser may terminate this contract upon giving
3 the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the
4 Purchaser hereunder shall cease. Provided, however, that nothing in this Article shall be
5 construed to affect the duty of the Purchaser to pay the prorated share of the minimum charge for
6 the year in which the contract is terminated or the actual charge for the quantity of water
7 withdrawn, whichever is greater, before notice of termination is given.

ARTICLE 19. SEVERABILITY

1 In the event any provision of this agreement or any part of any provision of this agreement
2 are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms
3 hereof which can be given effect without the invalid provision or portion of such provision, and
4 to that end the terms of this agreement are intended to be severable.

ARTICLE 20. WATER CONSERVATION PLAN

1 The Purchaser shall adopt and implement a water conservation plan that is consistent with
2 the current guidelines for conservation plans and practices, developed and maintained by the
3 Kansas Water Office. Whenever lack of inflow causes the reservoir elevation to fall below 872.5
4 feet msl, a drought condition shall be considered to exist and the Purchaser agrees to implement
5 the drought contingency plan contained in their water conservation plan before any withdrawal
6 in addition to the scheduled water withdrawals described in Article 12 will be allowed by the
7 State. The Drought/Emergency Contingency portion of this plan shall include a description of
8 how the Purchaser plans to allocate water to secondary users, if any, during a drought or
9 emergency contingency.

10 For the proceeding five calendar years before execution of this contract and for each
11 successive year thereafter, the Purchaser shall provide a complete and accurate water use report
12 for itself and for each current or proposed secondary or tertiary user of water under this contract.

13 The annual water use report filed with the Division of Water Resources will meet this
14 requirement or the Purchaser may use forms provided by the Director.

15 Each proposed or current secondary or tertiary user of contracted water, whose five year
16 average gpcd exceeds its respective regional five year average gallons per capita per day (gpcd)

17 by 10 percent or more at the time of contracting, or at any time during the contract period as set
18 forth in Article 2, shall prepare and implement a water conservation plan that is consistent with
19 the current guidelines for conservation plans and practices, developed and maintained by the
20 Kansas Water Office.


21 Three years after execution of this contract, the Director shall begin an annual monitoring
22 of the effectiveness of water conservation plans prepared and implemented pursuant to this
23 contract. If the Purchaser or any secondary or tertiary user of contractual water has a five year
24 average gpcd that exceeds its respective five year regional average gpcd by 25 percent or more,
25 then that user shall revise its water conservation plan in a manner consistent with the guidelines
26 for conservation plans and practices that are maintained by the Kansas Water Office at that time.
27 The revised water conservation plan shall include additional water conservation measures that are
28 designed to reduce the user's gpcd.

29 Each proposed or current secondary or tertiary user of water under this contract shall
30 provide the Director with a letter prior to execution of this contract indicating their support of the
31 water conservation requirements contained in Article 20 of this contract in order to be eligible to
32 receive any water provided under this contract.

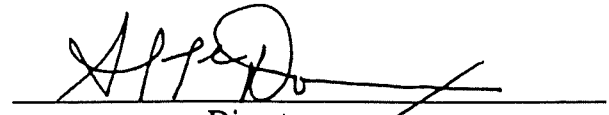
IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

PURCHASER, BY:

THE STATE OF KANSAS, BY:

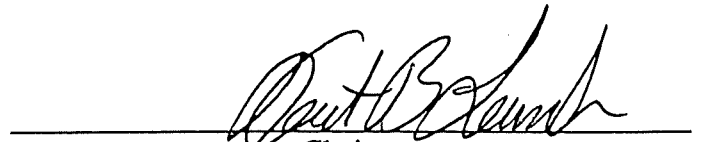


Douglas County Rural Water District No. 5



Director
Kansas Water Office

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY, BY:



Chairman
Kansas Water Authority


GRADUATED USE SCHEDULE
Contract 95-3, Douglas County Rural Water Dist. #5
In Million Gallons per Year

	Calendar Year	Minimum Quatity	Maximum Quantity
1	1996	13	26
2	1997	13	26
3	1998	13	26
4	1999	13	26
5	2000	26.5	53
6	2001	26.5	53
7	2002	26.5	53
8	2003	26.5	53
9	2004	26.5	53
10	2005	41.5	83
11	2006	41.5	83
12	2007	41.5	83
13	2008	41.5	83
14	2009	41.5	83
15	2010	53.5	107
16	2011	53.5	107
17	2012	53.5	107
18	2013	53.5	107
19	2014	53.5	107
20	2015	67.5	135
21	2016	67.5	135
22	2017	67.5	135
23	2018	67.5	135
24	2019	67.5	135
25	2020	67.5	135
26	2021	67.5	135
27	2022	67.5	135
28	2023	67.5	135
29	2024	67.5	135
30	2025	67.5	135
31	2026	67.5	135
32	2027	67.5	135
33	2028	67.5	135
34	2029	67.5	135
35	2030	67.5	135
36	2031	67.5	135
37	2032	67.5	135
38	2033	67.5	135
39	2034	67.5	135
40	2035	67.5	135

Total Max. Qty. Avail. This Contract

MEMORANDUM OF AGREEMENT

We, the undersigned, hereby agree that the provisions of contract 95-3 supersede and replace the provisions of contract 90-6 between the State of Kansas and Douglas County Rural Water District Number 5 for water supply from Clinton Reservoir, except in the event the 1996 session of the Kansas Legislature revokes contract 95-3 within the first 90 days of the session. Should such revocation occur, the parties agree to reinstate provisions of contract 90-6 and any minimum annual payment made shall be adjusted to reflect the requirements of contract 90-6.



Director
Kansas Water Office



Douglas County Rural Water District No. 5

October 26, 1995

Date

11/8/95

Date

With the express approval of the Kansas Water Authority



Chairman
Kansas Water Authority

DGCORWD5.CON