

## SUMMARY<sup>\*</sup> COOPERATIVE AGREEMENT

### Basinwide Recovery Program for Endangered Species in the Central Platte River Basin

Nebraska, Colorado, Wyoming and the United States Department of the Interior have developed a proposed basinwide recovery program for endangered species in the Central Platte River Basin. The program's primary purpose would be to provide and protect water and land for the habitat of whooping cranes, piping plovers, and least terns. The program would also serve as a reasonable and prudent alternative for water related activities requiring Section 7 consultations under the Endangered Species Act. Such consultations are required by that Act to ensure that federal actions, such as the relicensing of water projects, are not likely to have an adverse impact on endangered species or their habitat.

A cooperative agreement outlining the proposed basinwide program was signed on July 1, 1997 by Nebraska Governor Ben Nelson, Colorado Governor Roy Romer, Wyoming Governor Jim Geringer, and Secretary of Interior Bruce Babbitt. The cooperative agreement specifies the activities to be undertaken in the next three to four years while the proposed program is being reviewed under the National Environmental Policy Act (NEPA). Funding will begin this fiscal year and a governing body has been established so that the states, the federal government and the other parties involved can work together on the activities planned during that time. The cooperative agreement also describes what the parties intend to accomplish during the proposed program's first increment, which is expected to begin after the NEPA review and last for ten to thirteen years thereafter.

## TERMS OF THE AGREEMENT

**Governing Body.** A ten-member governing body will be responsible for the activities undertaken both in the initial three to four years and in the long-term program if it is initiated. That governing body will include representatives from the U.S. Fish and Wildlife Service (USFWS), the U.S. Bureau of Reclamation, each of the three states, water users from three geographic areas in the Platte River Basin, and environmental organizations. As of this writing, the appointees for the term of the cooperative agreement and their alternates are:

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<sup>\*</sup> This summary was prepared by Jim Cook, Natural Resources Commission staff member.

	Member	Alternate
State of Nebraska	Dayle E. Williamson Director of Natural Resources	David Vogler, Governor's Policy Research Office
State of Colorado	Jim Lochhead, Dir., Colorado DNR	Doug Robotham, Asst. Dir., Colorado DNR
State of Wyoming	Mike Besson, Dir., Wyoming Water Development Commission	Jeff Fassett, Wyoming State Engineer
U.S. Fish and Wildlife Service	Ralph Morgenweck Regional Director, USFWS	Joe Webster, Assistant Regional Director, USFWS
U.S. Bureau of Reclamation	Patty Beneke Asst. Secretary of Interior	Neil Stessman Regional Director, BuRec
North Platte Water Users <sup>1</sup>	Norm DeMott Goshen Irrigation District (Wyoming)	Dennis Strauch Pathfinder Irrigation District (Nebraska)
South Platte Water Users <sup>2</sup>	Alan Berryman, Northern Colorado Water Cons. Dist.	Dave Little Denver Water Board or Eric Wilkinson, Northern CO Water Cons. District
Downstream Water Users <sup>3</sup>	Brian Barels, Nebraska Public Power District	Don Kraus, Central Nebraska Public Power & Irrigation District
Environmental Organizations	Dave Sands <sup>4</sup> Nebraska Audubon Society	Paul Currier <sup>4</sup> Whooping Crane Trust
	Dan Luecke, Natural Resources Defense Council <sup>4</sup>	

The governing body will be assisted by adjunct committees on land and water. Technical groups may also be created to support and advise the governing body.

**Program Goals - Water.** The USFWS has identified target flows for endangered species in the Central Platte, i.e. flow levels the USFWS believes are needed to provide adequate habitat for those species. Actual flows currently fall short of those target flows by about 400,000 acre-feet per year, on average. However, the USFWS is willing to review and possibly revise its target flows as better science becomes available through the proposed program and otherwise.

<sup>1</sup> North Platte water users in Wyoming and Nebraska water users upstream of Lake McConaughy with storage contracts in Wyoming reservoirs.

<sup>2</sup> South Platte water users upstream of the Western Canal in Nebraska (near the Colorado/Nebraska state line).

<sup>3</sup> North Platte, South Platte and Platte water users in Nebraska other than those included in the North Platte or South Platte groups.

<sup>4</sup> As of this writing, the environmental organizations had named these three individuals, but had not yet decided which two would serve as the members and who would serve as the alternate(s).

The long-term goal of the program would be to eliminate shortages in the target flows as those flows are later refined.

In the meantime, incremental improvements in flows would be sought. The goal during the first increment of the proposed program would be to reduce shortages to the current target flows at Grand Island by at least 130,000 acre-feet on average. The first three projects planned would be to: (1) operate Kingsley Dam and related facilities in Nebraska to store a portion of the inflows to Lake McConaughy as well as environmental water made available from upstream projects in an environmental account that would be managed by the USFWS; (2) modify Pathfinder Reservoir in Wyoming to store water in another environmental account to be similarly managed; and (3) construct and operate the Tamarack Project in Colorado. The Tamarack project would take water out of the river during times of excess flows (most often during winter months) and temporarily store it underground in locations where it would naturally return to the river at times when flow shortages are more likely (in the summer months).

The states and the Department of Interior agree that these three water projects combined would reduce the shortages to current target flows by an average of 70,000 acre-feet per year. The additional 60,000 acre-feet necessary annually to realize the 130,000 acre-feet goal for the first program increment would have to be obtained through water conservation and water supply projects. A study will be conducted during the term of the cooperative agreement to determine if that goal is feasible, and if so, what types of conservation/supply projects would be the most promising.

**Program Goals - Land.** Land habitat is also necessary to meet the needs of the species. The proposed program would over time result in the development and protection of 29,000 acres of habitat. This land would be in ten habitat complexes between Lexington and Chapman. The goal for the first increment of the proposed program would be to develop and/or protect at least 10,000 acres. If dedicated to the program as currently expected, the Nebraska Public Power District's (NPPDs) Cottonwood Ranch between Overton and Elm Creek (2,650 acres) would contribute substantially to that goal.

Also, the Platte River Whooping Crane Maintenance Trust, the Nebraska Game and Parks Commission, the Nature Conservancy, and the Audubon Society already own about 9,000 acres of potentially eligible land in the area involved in the proposed program. Eventually, those habitat holdings are expected to contribute to meeting the 29,000 acre goal, but they will not count towards the initial 10,000 acre goal.

**Costs of the Program.** The total cost for the proposed program during the combined times of the cooperative agreement (three to four years) and the first program increment (an additional ten to thirteen years) has been negotiated at \$75,000,000. Half of that cost would be paid by the federal government; the other half would be shared by the states. During those first two periods, Nebraska and Colorado would each contribute 40% of the states' share (\$15 million) and Wyoming would contribute 20% (\$7.5 million). The 40/40/20 split is also the result of negotiations. It reflects the high use of water in Colorado and the fact that Nebraska is where

the endangered species critical habitat is located. A summary of the contributions proposed is found on the attached Table 1.

Nebraska's cash contribution of \$700,000 during the initial two periods is relatively small compared to that of the other states. That is because Nebraska would be credited with \$14.3 million in cash equivalents for the value of water made available through the operation of the Environmental Account in Kingsley Dam (\$9.0M) and for the contribution of NPPD's Cottonwood Ranch (\$5.3M). Of the \$700,000 to be provided in cash (all during the time of the cooperative agreement) \$300,000 will fund part of the water conservation study and the other \$400,000 will be for other initial activities undertaken by the governance committee.

**Additional Program Responsibilities.** Effective on the date the cooperative agreement was signed (July 1, 1997), each state assumed responsibility to mitigate, offset, or prevent any new depletions to the river's target flows as part of the proposed program. For a program to be initiated, each state must develop a mitigation plan that offsets or mitigates, within its own boundaries, any depletions resulting from new water related activities in that state. Those include new uses of hydrologically connected ground water as well as new uses of surface water.

Colorado has developed and proposed a method for monitoring and mitigating for its future depletions to target flows. That proposal will be evaluated by other cooperative agreement participants within the next three years. Wyoming and Nebraska have not yet decided how they would propose to mitigate, offset, or prevent depletions resulting from new water related activities in their states, but will need to do so in the next three years. Those proposals will also be submitted to the other participants for review. To prepare for this responsibility, each state will begin monitoring new water related activities in order to distinguish between those in existence before the cooperative agreement was signed and those initiated or expanded thereafter. The knowledge gained from this monitoring process will enable each state to quantify depletions, if any, that must be mitigated or offset. Institutional changes may be needed in Nebraska to accommodate these provisions and also to guarantee that water made available upstream will actually reach the critical habitat area.

## **FUTURE OF THE AGREEMENT AND THE PROPOSED PROGRAM**

Signing the cooperative agreement represented only a first step in a long-term program. As mentioned earlier, the federal government will conduct an environmental impact analysis and will determine whether the proposed program can serve as a reasonable and prudent alternative for Section 7 consultations. During the NEPA review, public and private interests may propose their own alternatives to the proposed program. A full range of alternatives will be analyzed in the environmental impact statement. That process may result in substantial changes to the proposed program by the end of the first three years. The program may also be modified to take into consideration the results of the water conservation study and other lessons learned in the meantime.

The states are not legally bound to participate in the program even if it remains unchanged after the NEPA review. In fact, the states can pull out of the current cooperative agreement at any time. However, the consequences for doing so could be very significant to individual Nebraska projects and activities that require federal action in the future. The states recognize that dealing with these issues without a basinwide program could be much more painful than working together in the future.

If the basinwide program is implemented, the first program increment will be evaluated as it draws to a close and plans for a second increment will be prepared, if necessary. The same process could continue indefinitely in order to maintain the integrity of the ecosystem and the commitment of the parties to habitat recovery and ecosystem maintenance and development.

## **RELATIONSHIP TO RELICENSING**

Relicensing by the Federal Energy Regulatory Commission (FERC) for Central Nebraska Public Power and Irrigation District's Kingsley Dam and related facilities, and for Nebraska Public Power District's North Platte Keystone Diversion Dam and related facilities is proceeding. The USFWS and those districts are encouraging FERC to base its license terms on the proposed program. For example, FERC is being urged to endorse the proposed environmental account for storing water in Lake McConaughy and the proposed contribution of Cottonwood Ranch by NPPD. The new licensees will have reopeners which will allow FERC to reconsider license terms if the basinwide program fails.

**Table 1**

**Program Contributions, Cooperative Agreement Through First Program Increment**  
 (values in millions of 1997 dollars)

**CASH AND CASH EQUIVALENTS<sup>1</sup>**

	CO	WY	NE	States <sup>1</sup> Total	Federal	TOTAL
<u>Term of Cooperative Agreement<sup>2</sup></u> (3 years anticipated)						
Conservation Study	0.3	0.3	0.3	0.9	0.0	0.9
Habitat (Cash Equiv.)	0.0	0.0	5.3	5.3	0.0	5.3
Other Cash	0.6	0.3	0.4	1.3	7.5	8.8
Total	0.9	0.6	6.0	7.5	7.5	15.0

First Program Increment/Years 1-3

Cash and Cash Equiv.	2.475	0.85	0.0	3.325	7.5	10.825
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First Program Increment/Years 4 to End

Cash and Cash Equiv.	7.425	2.55	0.0	9.975	22.5	32.475
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**TOTALS OF CASH AND CASH EQUIVALENTS DURING THE COOPERATIVE AGREEMENT AND THE FIRST PROGRAM INCREMENT**

10.8	4.0	6.0	20.8	37.5	58.3
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**CONTRIBUTED VALUE OF WATER PROJECTS DURING THE COOPERATIVE AGREEMENT AND THE FIRST PROGRAM INCREMENT**

4.2 (Tam.)	3.5 (Path.)	9.0 (King.)	16.7	0.0	16.7
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**PROGRAM TOTALS THROUGH THE FIRST INCREMENT**

15.0	7.5	15.0	37.5	37.5	75.0
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<sup>1</sup> Individual signatories may propose to the Governance Committee that certain interim measures undertaken prior to the execution of the Cooperative Agreement may be credited to their cash or cash equivalent contributions.

<sup>2</sup> Contributions made during the term of the Cooperative Agreement will be credited to the appropriate parties at the inception of the first Program increment.