

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Attachment 5
Section 9

COLORADO'S PLAN FOR FUTURE DEPLETIONS¹

October 24, 2006
Text Last Updated December 1, 2015

Exhibit B & C Updated December 3, 2019

Colorado will be responsible for mitigating the impacts of new water related activities in Colorado on the associated habitats, in the manner described below.² As part of the proposed Program, the mitigation described below shall constitute the means for mitigating new water related activities in Colorado, except for water related activities pursued by entities electing not to participate in the Program. Subject to the planned NEPA and ESA reviews, the Department of the Interior ("DOI") agrees that Colorado's Future Depletions Proposal is a sufficient contribution by Colorado to offset the impacts of new water related activities in the South Platte River Basin in Colorado. If Colorado implements the mitigation program described below, new water related activities in Colorado will not adversely affect the "Current Regime of the River," as that term is used in the document entitled "An Environmental Account for Storage Reservoirs in the Platte River System in Nebraska," (Program Attachment 5, Section 5). For purposes of this document, "new water related activities" shall be used as that term is defined in the Platte River Recovery Implementation Program (Program Document), footnote 3. New water related activities shall not include augmentation for wells existing pre-June 30 1997, provided the augmented wells do not increase irrigated acreage beyond that irrigated on June 30, 1997.³

¹ In the Cooperative Agreement and the Program Draft EIS, the Colorado Plan for Future Depletions was referred to as Tamarack II.

² Colorado offers this agreement as part of its efforts to resolve endangered species conflicts through a negotiated and mutually agreed upon basin-wide cooperative agreement and recovery program. Nothing in this agreement constitutes an admission by Colorado that any depletion to the North or South Platte Rivers or their tributaries in Colorado that have occurred or may in the future occur adversely affect or reduce state line flows. Similarly, Colorado does not admit that any changes in the amount or timing of flows at the Colorado-Nebraska or Colorado-Wyoming state lines that have occurred or may in the future occur reach or adversely affect endangered species habitat in Nebraska. This agreement is not intended, and should not be construed, to amend or modify the South Platte River Compact or any interstate decree, or to waive any rights thereunder.

³ Prior to 2003, ground water users in the South Platte River Basin augmented their out-of-priority depletions with administratively approved annual substitute water supply plans. In 2003, the Colorado General Assembly required these ground water users to transition to a system of court-approved plans for augmentation. The applications for approval of the court-approved plans for augmentation must be filed with the water court no later than December 31, 2005. The courts may need a number of years to approve the proposed plans, during the interim the ground water users will continue to operate pursuant to administratively approved substitute water supply plans. Because the court-approved plans are permanent, the replacement obligations contained in those plans may be more stringent than those included in the administratively approved plans. In order to resolve a potential controversy concerning whether the use of ground water under more stringent terms constitutes an expansion of an existing project, the parties to the Cooperative Agreement, based on the assumption that the court approved augmentation plans will not result in increased consumptive use in Colorado, have agreed that wells in existence prior to June 30, 1997 and the augmentation sources for those wells included in any court-approved plans for augmentation will be deemed

I. SOUTH PLATTE RIVER BASIN

A. Population Estimates.

The 1997 "Population Baseline" for Colorado's Future Depletions Plan is:

1. Northern Region -- Boulder, Weld, Larimer, Washington, Morgan, Sedgewick, Logan, Phillips (701,470)
2. Central Region -- Denver, Jefferson, Adams, Clear Creek, Gilpin, Park (1,766,207)
3. Southern Region -- Arapahoe, Douglas, Elbert (194,602)

Within 90 days after the inception of the Program, the Colorado State Demographer shall report the amount by which the population of each region is expected to increase over the Population Baseline by the end of the initial reporting period ("projected Population Increase"). At the end of each reporting period, Colorado will provide the Governance Committee an estimate by the Colorado State Demographer of the actual population in each region (which shall be the Population Baseline for the next succeeding reporting period), and an estimate of the projected Population Increase for the next succeeding reporting period.

As of 2001, 55% of the new Broomfield County will be in the Northern Region and 45% will be in the Southern Region.

B. Water Use and Effect Assumptions.

Assumptions concerning per capita water use, supply source mix by region, and accretive/depletive effects of each supply source (including monthly distributions of said effects), set forth in this paragraph and the table below, represent reasonable estimates at the outset of the program, and may be modified by the Governance Committee based on information made available to that Committee by Colorado or others. The gross per capita water requirement in the South Platte River Basin in Colorado will be assumed to be 0.27⁴ af/yr, with 35% consumptive use assumed for all municipal purposes, and 45% consumptive use assumed for agricultural irrigation purposes. It is anticipated that new water related activities within the three regions will be from six sources of supply to serve the Population Increase, each with a different depletive or accretive effect on flows in the South Platte River. The three regions will develop the six sources of supply in different combinations. It will be initially assumed that the sources of supply for new water related activities will be developed in the combinations and will have the accretive or depletive effect shown below⁵:

existing uses of water and not new water-related activities as long as the augmented wells do not increase irrigated acreage beyond that irrigated on June 30, 1997.

⁴ A value of 0.2504 af/yr gross per capita will be used for the first 2-year reporting period of 2007-2008 and for the 5-year reporting period of 2009-2013 for the South Platte Basin.

⁵ Colorado will use a revised % mix of water sources, as indicated in the August 6, 2009 memo to the Water Advisory Committee for the initial reporting period of 2007-2008 and for the 5-year reporting period of 2009-2013.

Source	Northern Region	Central Region	Southern Region	Accretive (or Depletive) Effect
New Transbasin Imports	40%	30%	20%	64%
Nontributary Groundwater	0%	10%	50%	68%
Ag. to Urban Conversion	35%	5%	0%	10%
Conservation	5%	15%	10%	0%
Wastewater	10%	25%	10%	(41%)
Exchange/Reuse				
Native South Platte Flows	10%	15%	10%	(27%)

The Governance Committee has adopted assumptions concerning the monthly distribution of the accretive/depletive effect of the development of each source of supply, taking into consideration the accretive/depletive effect shown above, the weighted contribution to meeting total water demand, and the anticipated monthly return flow pattern based on municipal water use patterns. The assumptions shown herein or as may be modified by the Governance Committee shall be as measured at or near the point of use.

C. Transit Loss Assumptions.

Colorado's commitment to offset the cumulative accretive/depletive effect of new water related activities in the three regions (hereinafter referred to as "Cumulative Effect") will be as measured at or reasonably near the Colorado-Nebraska state line. The Cumulative Effect will be influenced by natural river gains and losses, and water uses and return flows downstream from the points of use. The three states have studied transit losses in a study entitled "Tracking/Accounting Procedure for Determining Depletion/Accretion Impacts for the Three Program Water Projects and New Water Related Activities, Including Water Conservation/Supply Projects." This study considered the routing of both accretions and depletions from the Kersey gauge to a point at or reasonably near the Colorado-Nebraska state line. This study indicated much higher transit losses than those set forth in the table below, but until the three states are able to more fully study transit loss issues as they exist in all states for both protected and unprotected flows, Colorado will temporarily use the monthly transit loss per-mile factors set forth in the table below. The transit loss assumptions will be updated when the final study and negotiations are concluded.

Jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec
.02%	.02%	.05%	.1%	.3%	.45%	.5%	.5%	.5%	.4%	.1%	.02%

D. Reporting Periods.

The Initial Reporting Period will be two years from the initiation of a Program. Subsequent Reporting Periods will be each five years thereafter, for so long as the Program is in effect. At the close of each reporting period, Colorado will report:

1. an estimate of the actual population in each region (which shall be the Population Baseline for the next succeeding reporting period);

2. any new information relevant to the continued use or modification of assumptions set forth herein for:

a) gross per capita water requirements, including assumptions regarding the relationship among municipal, industrial and agricultural use of water,

b) the accretive/depletive effect of each source of supply, and

c) the cumulative effect at the state line;

3. the operations and effects of projects to mitigate new depletive effects;

4. an estimate of the projected Population Increase for the next succeeding reporting period;

5. estimates of the net accretive/depletive effects and Cumulative Effect for the next reporting period; and

6. net changes in irrigated agricultural acreage, using readily available data.

Colorado will also submit annual information reports to the Governance Committee estimating population increase in each of the three regions, and describing water sources used to supply new water related activities including type of water source, works used and water quantities supplied. Colorado will promptly report to the Governance Committee any new information that significantly affects assumptions relied upon in this Program.

E. Determination of Cumulative Effect -- Initial Reporting Period.

Within 90 days after the inception of the Program, Colorado will provide to the Governance Committee a calculation of the average monthly distribution of the Cumulative Effect for anticipated water related activities in the South Platte River Basin in Colorado for the Initial Reporting Period. The calculation will be based on the projected Population Increase for that period, and the water use and transit loss assumptions described above or as may be modified by the Governance Committee. The Cumulative Effect as approved by the Governance Committee will determine the mitigation measures that will be undertaken by Colorado during the Initial Reporting Period.

F. Determination of Cumulative Effect -- Subsequent Reporting Periods.

Colorado will monitor actual water use and development in the South Platte River Basin in Colorado beginning July 1, 1997. At the end of the Initial Reporting Period, and at the end of each Subsequent Reporting Period, Colorado will report to the Governance Committee for its review and approval any adjustments in the Population Increase and in the Cumulative Effect for that period. Such adjustments will serve as the basis for calculations for the next succeeding Reporting Period. Any resulting increase or decrease in Cumulative Effect will be added to or subtracted from the Cumulative Effect to be mitigated in the next succeeding Reporting Period.

G. Mitigation of Cumulative Effect.

The signatories assume that the Cumulative Effect for any annual period is expected to be a mix of net accretions during the fall, winter and spring period, and net depletions in the late-spring to mid-summer period, resulting in an estimated total seasonal net depletive effect on an order of magnitude of less than 1,800 af/yr for each 100,000 additional people in the South Platte River Basin in Colorado. Based on these assumptions, Colorado will, in each Reporting Period, undertake such re-regulation projects within Colorado as are necessary to shift water flows at a point upstream from the Colorado-Nebraska state line and downstream from the last diversion in Colorado, from periods of net accretion to periods of net depletion. The re-regulation projects divert water in priority through existing ditch head gates or wells downstream of Colorado's Washington County line. After diversion, this water recharges the alluvial aquifer of the South Platte River. Colorado will locate the recharge areas the distance necessary from the South Platte or its tributaries to result in accretions at locations downstream of the last river diversion in Colorado in periods of net depletion. Colorado's commitment to re-regulate flows in any Reporting Period shall equal the total depletive effect by month for those months in which a net depletive effect will occur. To the extent that Colorado constructs projects or obtains the ability to re-regulate water in excess of the total depletive effect for those months in which a net depletive effect will occur, such capacity will be available for use in the next succeeding Reporting Period. Should total annual net depletive effects exceed the assumptions set forth above, Colorado reserves the option of reconsidering different measures to mitigate those effects under the Program.

H. ESA Compliance.

ESA compliance for South Platte Basin future depletions in Colorado will conform to the Program document. Except as described below, qualifying new water related activities that are in the South Platte Basin and are operated on behalf of Colorado water users are covered by the Colorado plan for future depletions. Exhibit A to this plan for future depletions is a draft schematic and explanation of how Colorado water users may qualify to use this plan in any ESA Section 7 consultation process for water projects in Colorado. Exhibit B is the template Biological Assessment and request for formal section 7 consultation that program participants may use to address potential impacts from operation of their new water activity on federally-listed species in Nebraska. Exhibit C is the template biological opinion the United States Fish and Wildlife Service will issue in response to the template Biological Assessment and request for formal section 7 consultation.

1. New water related activities would not be covered by this plan after the average annual water supply to serve Colorado's population increase from "Wastewater Exchange/Reuse" and "Native South Platte Flows" exceeds 98,010 acre feet during the February-July period described below. The 98,010 acre-foot figure represents gross water deliveries (supplies) to meet new demands for an average hydrologic year, and is not a consumptive use or diversion limitation. In analyzing proposed new water related activities that have supplies derived from the storage of native South Platte flows, only those supplies resulting from diversions to storage or wastewater exchange and reuse during the period from February through July will be counted toward the 98,010 acre-feet. In the event that a new water related activity is not covered by Colorado's plan pursuant to this Section I.H.1, Colorado and the activity's proponent can propose, as

provided in Section E of the Program document, amendments that will allow Colorado's Plan to provide ESA compliance for that new water related activity.

2. The Colorado plan for future depletions does not cover the construction of a major on-stream reservoir located on the main stem of the South Platte River anywhere downstream of Denver, Colorado. In addition, the Colorado plan for future depletions does not cover hydropower diversion/return projects that divert water including sediments from the main stem of the South Platte River anywhere downstream of Denver, Colorado and return clear water to the South Platte River.

3. Colorado's plan for future depletions will provide ESA coverage for new water related activities related to existing U.S. Bureau of Reclamation water supply projects that currently provide water for Colorado water users. At Colorado's discretion, new federal water related activities in Colorado that provide water to Colorado water users may be provided ESA coverage by the Colorado plan for future depletions. Nothing in the Colorado plan for future depletions shall be construed as changing the water rights, or ownership, of any federal water project.

The ESA compliance covered by this plan only concerns consultation on the target species. To the extent that a federal nexus activity has potential impact on "non-target" listed species, then impacts to those species must be addressed in that federal project's Biological Opinion (BO) required by ESA.

For the purposes of this section H. the following definitions apply:

Covered means in compliance with the Endangered Species Act with regard to potential impacts to the least tern, piping plover, whooping crane and pallid sturgeon in and along the central and lower Platte River in Nebraska, for the duration of the First Increment.

Average means the average estimated or modeled effect over a multi-decadal period of time including a mix of wet, normal and dry hydrologic conditions. Initially, this will be the 1947-1994 period used in the current version of the Central Platte Op Study Model and the Platte Programmatic EIS. However, this time period may be adjusted if the Governance Committee concurs.

Major On-Stream Reservoir means a reservoir of more than 2,000 acre-feet. It does not include new diversion facilities that may impound a small amount of water. Reservoirs, including gravel pit reservoirs, adjacent to the main stem of the South Platte River and reservoirs on tributaries to the South Platte River are not considered to be located on the "mainstem" for purposes of this paragraph.

I. No Power to Limit Colorado Water Rights.

Prior to the inception of this Program there was not legal authority to deny the appropriation of un-appropriated water of the State or prevent the diversion and re-diversion of legally re-usable water. Nothing in this Plan for Future Depletions shall be construed to authorize the Program to deny the appropriation of unappropriated water or prevent the diversion and re-diversion of legally re-usable water to achieve Program goals, objectives or Milestones.

J. Commitment to Revise.

This Plan for Future Depletions is premised on the assumptions contained herein. In the event that the assumptions underlying this plan are not realized, the State of Colorado commits to revise its Plan for Future Depletions accordingly.

II. NORTH PLATTE RIVER BASIN

A. Background Information.

This document sets forth Colorado's Plan to address new water related activities in the North Platte River Basin, Jackson County, Colorado. Subject to ongoing NEPA and ESA reviews, and verification of certain assumptions, the parties to the Program Cooperative Agreement have agreed that Colorado's Depletions Plan is a sufficient contribution to offset alleged effects on endangered species habitats in Nebraska of new water related activities in the North and South Platte River Basin in Colorado. Colorado's Depletions Plan for the South Platte is also summarized in this subsection of the Program Water Plan.

Colorado proposes to include new water related activities in the North Platte River Basin in the Platte River Recovery Implementation Program (Program) and to offset alleged effects on endangered species habitats in Nebraska in accordance with this agreement. The following summary provides an outline of the procedures and methods Colorado will use to monitor existing and new water related activities for the North Platte Basin and how mitigation measures for endangered species issues might be implemented.

B. North Platte Decree.

The decree in *Nebraska v. Wyoming*, 325 U.S. 589 (1945), *modified*, 345 U.S. 981 (1953) (the Decree), and modified by the Final Settlement Stipulation, March 13, 2001 enjoins Colorado from diverting water from the North Platte River and its tributaries for the irrigation of more than a total of 145,000 acres in Jackson county during any one irrigation season. The Decree also enjoins Colorado from storing more than 17,000 acre-feet of water for irrigation purposes from the North Platte River and its tributaries in Jackson County between October 1 of any year and September 30 of the following year. Finally, the Decree enjoins Colorado from exporting out of the basin of the North Platte River and its tributaries in Jackson County more than 60,000 acre-feet of water in any period of ten consecutive years. The Decree requires Colorado to prepare and maintain complete and accurate records of the total area of land irrigated and the storage and exportation of water and to make such records available for inspection.

C. Existing Water Related Activities.

In its 1945 opinion, the U.S. Supreme Court found that 131,800 acres were presently under irrigation in Jackson County in Colorado. Since then the number of acres being irrigated in any one

year has been as high as 134,467. The Decree allows Colorado to irrigate up to 145,000 acres. For purposes of this Program, the parties to the Cooperative Agreement agree that depletion associated with the irrigation of up to 134,467 acres constitute existing uses and that depletions associated with the irrigation of between 134,468 and 145,000 acres in Jackson County constitute new water related activities. The irrigation storage and export limits in the Decree also represent existing uses as of 1945, and reflect the Supreme Court's recognition that transbasin diversions in some years exceeded 6,000 acre-feet. Since the limitations in the Decree represent historical uses in Jackson County, any depletions within those limits constitute existing water uses. Storing more than 17,000 acre-feet of water for irrigation purposes between October 1 of any year and September 30 of the following year and exporting more than 60,000 acre-feet of water in any period of ten consecutive years are not permitted under the Decree, and, therefore, no new water related activities of these types are contemplated.

In addition to existing uses in accordance with the Decree, Jackson County's small population and limited industry consume a small quantity of water under prior existing rights. Colorado does not anticipate significant population growth in Jackson County during the term of the Cooperative Agreement or the First Increment of the program. The population baseline for Jackson County is 2022 people. Colorado estimates that the 2004 population for Jackson County is 1,554 people. The State demographer does not predict the Jackson County population to exceed 2022 people by the end of the First Increment.

Piscatorial, wildlife, and other environmental uses implemented on or before July 1, 1997 will constitute existing uses. Any water diverted for new uses for these purposes implemented after July 1, 1997 will constitute new water related activities.

D. New Water Related Activities.

For purposes of the Program Cooperative Agreement, the parties agree to the following:

1. *Agricultural Water Use:* Irrigation of more than 134,467 acres in any year will constitute new water related activities. The parties agree that net depletions (diversions less return flows) associated with irrigating additional acres as measured at the Colorado - Wyoming state line equal .83 acre-feet per acre during the irrigation season.
2. *Municipal and industrial use (M&I):* Colorado does not expect the Jackson County population to exceed 2022 in the First Increment. Similar to the methodology adopted for the South Platte new depletion plan, new municipal and industrial water uses are assumed to be .27⁶ acre- feet per capita per year. Consumptive use is 35% of gross water use, unless otherwise reported to the Governance Committee by the State of Colorado. The parties agree that the monthly distribution of the depletive effect of this municipal and industrial water use is the same as that defined for the South Platte Basin, unless otherwise reported to the Governance Committee by the State of Colorado.
3. *Piscatorial, wildlife, and other environmental uses:* To the extent that these uses are not incidental to agricultural use, such uses implemented after July 1, 1997 will constitute new water related activities. Net depletions associated with such uses will be determined from

⁶ A value of 0.2504 af/yr gross per capita will be used for the first increment based on South Platte Basin M&I assumptions for July 2007.

Colorado Division of Water Resources information on actual annual net depletions. It is expected that all piscatorial, wildlife, and other environmental uses will have a federal nexus, but Colorado will monitor these uses through the Division of Water Resources and the water court resumes for Water Division No. 6. If there are significant piscatorial, wildlife, and other environmental (PWE) uses implemented after July 1, 1997, are not incidental to agricultural uses, and that do or do not have a federal nexus, then the depletions associated with these new PWE's will have to be approved for coverage under the North Platte Baseline described in Section E. below.

E. North Platte Baseline.

The overall consumptive use associated with the total covered levels of existing water related activities in the North Platte River Basin, identified above in Section D, is an appropriate overall baseline measure. The North Platte Baseline is the total depletion amount associated with the irrigation of up to 134,467 acres and a county population of 2,022, and the implemented uses, as of July 1, 1997 for industrial uses, and piscatorial, wildlife, and environmental uses that are not incidental to agricultural uses. Consumptive depletions associated with the difference between total measured irrigated acreage and the current Jackson County population in any one year, and the upper level of depletions associated with irrigation of 134,467 acres and the population of 2,022, may provide a positive balance of available consumptive depletion that can be allocated to other new water related activities. The available consumptive depletion that could potentially be available will be calculated using the agreed upon values of 0.83 acre-feet per acre during the irrigation season and 35% of 0.27⁷ acre-feet per capita per year. For example, if there were 100 acre-feet of consumptive depletions associated with proposed new piscatorial, wildlife, and other environmental uses that were not incidental to agricultural use, with approval, this amount of consumptive depletion could be covered by reducing the baseline allowance of 134,467 acres of irrigated acreage by 120 acres to a new allowance of 134,347 acres. This method of dealing with consumptive depletions associated with new water related activities in the North Platte Basin will allow Colorado to vary between the types of uses as long as the overall consumptive depletions do not exceed the North Platte Baseline, as described above. Data and information related to changes in the type of use, without exceeding the overall depletions associated with the North Platte Baseline will be provided through the attached accounting form that is also approved and agreed to by the Governance Committee. Colorado's annual reports will advise the Governance Committee of any changes in the different types of uses, as provided on the accounting form.

If a non-federal water user is going to exceed the baseline for a particular type of use but the North Platte Baseline for the entire North Platte River Basin within Colorado will not be exceeded, that water user shall file a request to the Jackson County Water Conservancy District for approval of this exceedence. The Jackson County Water Conservancy District will review the request in order to assure that the total North Platte Baseline will not be exceeded and will make an official determination of whether to approve or not approve the request to be covered under the North Platte Baseline. The Jackson County Water Conservancy District will report to the State of Colorado and SPWRAP all approved requests for depletion coverage from the North Platte Baseline, as well as denied requests and the basis for each denial, and the state will keep

⁷ A value of 0.2504 af/yr gross per capita will be used for the first increment based on South Platte Basin M&I assumptions for July 2007.

an accounting of all approved decreed water rights that vary from the original uses under the North Platte Baseline and Colorado will report these to the Governance Committee in the annual reporting. In addition, membership in SPWRAP must be demonstrated.

New water related activities are defined as: 1) industrial uses that occur beyond the 1997 level; 2) population increases that exceed the population baseline of 2022 people; 3) post-1997 piscatorial, wildlife, or environmental uses that are not incidental to agricultural uses; or, 4) irrigation of acres greater than 134,467 acres. All consumptive depletions associated with these new water related activities must be replaced on a one-to-one basis in the North Platte Basin unless those consumptive depletions are approved for coverage under the North Platte Baseline and said baseline of the entire North Platte Basin within Colorado has not been exceeded. New water related activities that exceed the entire North Platte Baseline (over-runs) will be mitigated in a manner described in the accounting form, attached.

The State of Colorado, as a signatory to the Program Agreement, will provide its independent authority regarding administration of water-related activities in Jackson County for consistency with Colorado water law, and the objectives of the Program.

F. Monitoring and Reporting.

During the first increment, Colorado does not foresee any: projected increases in: 1) irrigated acreage in Jackson County over 134,467 acres; 2) population over the 2022 person "population baseline"; or 3) significant non-nexus piscatorial, wildlife, or other environmental uses (which are not incidental to agricultural uses). Similar projections will be made at the beginning of each subsequent reporting period. At the end of the first reporting period, and at the end of each subsequent reporting period, Colorado will report to the Governance Committee: the irrigated acreage, irrigation storage, transbasin diversions, and population in Jackson County. Colorado will also report on any non-nexus piscatorial, wildlife, and other environmental uses (which are not incidental to irrigation uses) and any new industrial uses occurring since 1997.

These South Platte River Basin derived assumptions probably significantly overstate actual M&I water use in Jackson County. The gross per capita M&I water requirement of 0.27⁸ acre-feet per year is probably high because lawn irrigation is less prevalent in Jackson County than in the South Platte River Basin. The actual monthly distribution of the depletive effects associated with M&I use in Jackson County is probably different than that of the South Platte Basin, since Jackson County's higher elevation and shorter, cooler summers limit lawn irrigation to a shorter time period than occurs in the South Platte Basin. Thus, M&I uses in Jackson County are likely to produce fewer depletions during the months of shortage to target flows at Grand Island in comparison with M&I uses in the South Platte Basin. However, in the absence of specific data, Colorado agrees to apply South Platte Basin assumptions⁹ to M&I use in Jackson County as of July of the year that begins the increment (e.g., July 2003, July 2008 etc.).

⁸ A value of 0.2504 af/yr gross per capita will be used for the first increment based on South Platte Basin M&I assumptions for July 2007.

⁹ A value of 0.2504 af/yr gross per capita will be used for the first increment based on South Platte Basin M&I assumptions for July 2007.

F. ESA Compliance.

Colorado commits to offset the net cumulative effects of depletions associated with new water related activities in the manner described within this depletion plan. It is the intent of Colorado that new depletions will be offset in accordance with Section I.A.4 and Section III.E.3 of the Program Document and this depletion plan. ESA compliance for North Platte Basin future depletions in Colorado will conform to the Program Document.

Platte River Recovery Implementation Program

Schematic and Explanation of Endangered Species Act Section 7 Consultation Process in Colorado

This document illustrates how, with a Program in place, water related activities subject to Section 7(a)(2) consultation of the Endangered Species Act (ESA) will proceed through the consultation process and how Colorado's Future Depletions Plan relates to that process. Projects involving both "new" and "existing" water related activities will proceed on dual procedural pathways during the streamlined consultation process.

The bold text for each box as explained below corresponds to the wording in the schematic for that box. If nothing other than the wording in the schematic appears in this document, the wording in the schematic is considered to be self-explanatory. The various steps, or boxes, have been numbered to aid the discussion. However, the numeric order does not imply any sequence of steps. The steps in the schematic are:

Box 1) **Platte River Basin Water-Related Activity**. A Platte River basin water-related activity upstream of Chapman, NE.

Box 2) **Is there a federal-nexus?** If so, Section 7 consultation is required.

Box 3) **Activity is covered by the Program**.

Box 4) **Colorado and FWS notify each other of Federal Action subject to Section 7 consultation**. Colorado is under no affirmative duty to search for projects in the state that may be subject to Section 7 consultation, but if it becomes aware of one, this box highlights Colorado's agreement that it will pass the information along to the FWS. FWS agrees to notify Colorado after FWS is notified by a project proponent or a federal agency of an action subject to Section 7 consultation within the State.

Box 5) **Is it a New or Existing water related activity?** Colorado's Plan for Future Depletions specifies the means by which new water related activities, both those subject to and those not subject to Section 7(a)(2) of the ESA, will be addressed under the plan.

Box 6) **Existing water related activity covered by Program**. Federal action agency consults with FWS. Federal Action Agency to use Template Biological Assessment.

Box 7) **Federal Agency, applicant & State notified that Program covers the project. Platte River Section 7 obligations are known. If Colorado requirements for Program participation are met and confirmed by the South Platte Water Related Activities**

Program, Inc. (SPWRAP), streamlined consultation completed pursuant to Template Biological Opinion.

Box 8) **Is it a "Federal" New water related activity?** Is the new water related activity addressed by the federal depletions plan (and not covered by the State plan)? Most of the time the answer to this question would be obvious, but if there were any question as to its status, Colorado and the FWS would decide on a case-by-case basis before proceeding. If it were a “federal” depletion then the Federal Depletions Plan would be used to address the depletion (Box 9). If that were not possible, the activity would be subject to a separate consultation “outside” of the Program (Box 11).

Box 9) **Use Federal Depletions Plan if possible.** (e.g., the federal agency is the “applicant”).

Box 10) **Do Applicant & Colorado desire the Project to be covered by the State's Depletions Plan?** Because the Program is voluntary, the applicant and Colorado must elect for the project depletion to be addressed by the State’s depletions plan. If the applicant or Colorado elects for the project not to participate in the Program then the project would be subject to a separate consultation “outside” of the Program (Box 11).

Box 11) **Section 7 Consultation conducted “outside of the Program”.**

Box 12) **Federal Agency provides depletion analysis to FWS and Colorado.** The federal agency consulting with the Service is responsible for providing a project description of the proposed federal action, including information describing the proposed depletions. The necessary information is identified in the Template Biological Assessment. Meetings and discussions to define the project depletions will generally include the federal agency, applicant, Service, and the State. For new water related activities, the Service will consider the latest updates provided by the state pursuant to the terms of its depletions plan.

Box 13) **Colorado reviews the depletion analysis and makes a determination: Is the Project addressed by the State Depletions Plan?** Upon request of the FWS, Colorado will certify whether a federal nexus project has met State requirements for Program participation and is covered by the State’s depletions plan.

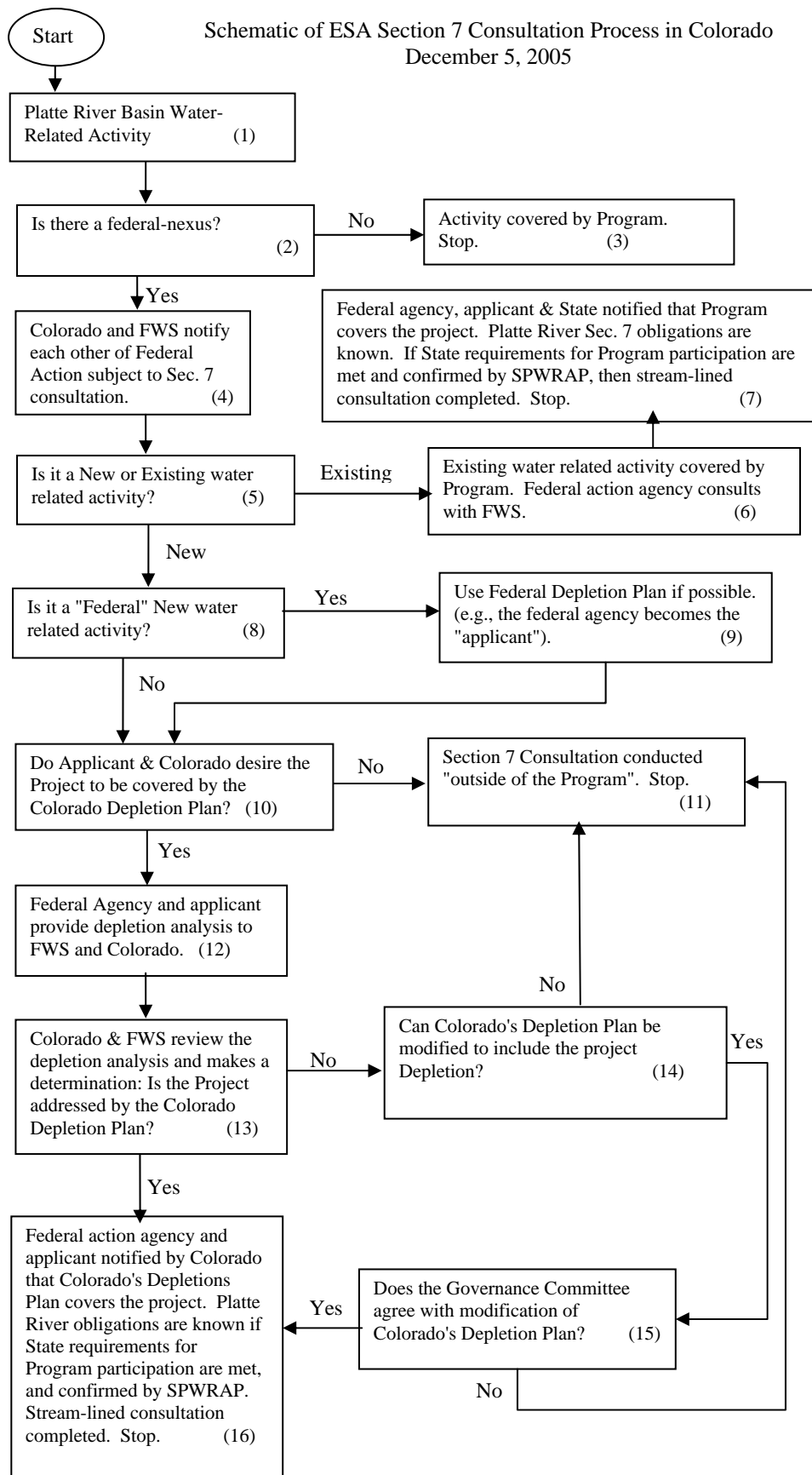
Box 14) **Can State Depletions Plan be modified to include project depletion?** If the State does not certify a project as being within its plan, the State, subject to the amendment process set forth in the Program Document, Section E, may amend its plan.

Box 15) **Does the Governance Committee agree with modification of State Depletions Plan?** If amendment of the State depletions plan is proposed, the State will follow the amendment process set forth in the Water Section (Program Document, Section E).

Box 16) **Federal Action Agency and applicant are notified by Colorado that Program / State Depletions Plan covers the project.** Platte River obligations are known. If State requirements for Program participation are met and confirmed by the South Platte Water Related Activities Program, Inc. (SPWRAP), streamlined consultation completed pursuant to Template

Biological Opinion. If the proposed project depletions are covered by a State's depletions plan and if State requirements for Program participation are met, then the consulting federal agency, the applicant and the State would be notified by the FWS that the proposed project's effects to the target species are "covered" by the State's depletions plan. Annual reporting of all section 7 formal consultations will be provided to the Governance Committee.

Attachments: Template Biological Assessment
Template Biological Opinion



**TEMPLATE BIOLOGICAL ASSESSMENT &
REQUEST FOR FORMAL SECTION 7 CONSULTATION**

[DATE]

[FROM FEDERAL ACTION AGENCY
TO U.S. FISH & WILDLIFE SERVICE]

This letter comprises the Biological Assessment addressing potential impacts from operation of the [Project] on federally-listed species in Nebraska. With this submission, we are requesting initiation of Formal Consultation under Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (ESA), concerning the whooping crane (*Grus americana*), interior least tern (*Sternula antillarum*), northern Great Plains population of the piping plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*) (collectively referred to as the “target species”), and designated critical habitat of the whooping crane. We further request initiation of Formal Consultation for the western prairie fringed orchid (*Platanthera praeclara*) [include other non-target listed species or critical habitats, as needed]. We have determined that the Project is not likely to adversely affect the American burying beetle (*Nicrophorus americanus*) and will have no effect on the Eskimo curlew (*Numenius borealis*).

[Using the “**Supplemental Worksheet for PRRIP BA Template**” (Worksheet) ([link to Worksheet](#)), insert the information from items 1. (Applicant Name), 2. (Federal Agency Involved), 3. (Project Name/Description of Project or Proposed Action), and 4. (Project Location)]

[**Note:** the completed Supplemental Worksheet should be attached to this Biological Assessment when submitting to the Service.]

Operation of this Project will result in some amount of continuing historic and/or new depletions to the South Platte River associated with the [from the **Worksheet**, insert information from items 5. (General Description of Water Source) and 7. (Annual Volumetric Water Use)].

The Platte River Recovery Implementation Program (PRRIP or Program), established in 2006, is implementing actions designed to assist in the conservation and recovery of the target species and their associated habitats along the central and lower Platte River in Nebraska through a basin-wide cooperative approach agreed to by the States of Colorado, Nebraska, and Wyoming and the U.S. Department of the Interior [Program, 2006; Section I.A.1.]. The Program addresses the adverse impacts of existing and certain new water related activities on the Platte target species and associated habitats, and provides ESA compliance¹ for effects to the target species and whooping crane critical habitat from such activities including avoidance of any prohibited

¹ “ESA Compliance” means: (1) serving as the reasonable and prudent alternative to offset the effects of water-related activities that FWS found were likely to cause jeopardy to one or more of the target species or to adversely modify critical habitat before the Program was in place; (2) providing offsetting measures to avoid the likelihood of jeopardy to one or more of the target species or adverse modification of critical habitat in the Platte River basin for new or existing water-related activities evaluated under the ESA after the Program was in place; and (3) avoiding any prohibited take of target species in the Platte River basin.

take of such species. [Program, 2006; Section I.A.2 & footnote 2.]. The State of Colorado is in compliance with its obligations under the Program.

For Federal actions and projects participating in the Program, the Platte River Recovery Implementation Program Final Environmental Impact Statement (U.S. Department of Interior, 2006) and supplemental Environmental Assessment and Finding of No Significant Impact (2018), as well as the June 16, 2006 programmatic biological opinion (PBO) and the August 27, 2018 Supplemental biological opinion (collectively referred to as the PBOs) serve as the description of the environmental baseline and environmental consequences for the effects of the Federal actions on the listed target species, whooping crane critical habitat, and other listed species in the central and lower Platte River addressed in the PBOs. These documents are hereby incorporated into this Biological Assessment by this reference.

Table II-1 of the Supplemental biological opinion (pages 6-8) contains a list of species and critical habitat in the action area, their status, and the Service's determination of the effects of the Federal action analyzed in the PBOs, including the continued operation of existing and certain new water-related activities. The Service determined in the PBOs that the continued operation of existing and certain new water-related activities may adversely affect but would not likely jeopardize the continued existence of the endangered whooping crane, interior least tern, and pallid sturgeon, or the threatened northern Great Plains population of the piping plover. Further, the Service found that the continued operation of existing and certain new water-related activities may adversely affect but would not likely jeopardize the threatened bald eagle and western prairie fringed orchid associated with the central and lower reaches of the Platte River in Nebraska, and was not likely to destroy or adversely modify designated critical habitat for the whooping crane. The bald eagle was subsequently removed from the federal endangered species list on August 8, 2007.

The Service also determined that the PBOs Federal Action, including the continued operation of existing and certain new water-related activities, would have no effect to the endangered Eskimo curlew. There has not been a confirmed sighting since 1926 and this species is believed to be extirpated in Nebraska. Lastly, the Service determined that the PBOs Federal Action, including the continued operation of existing and certain new water-related activities, was not likely to adversely affect the endangered American burying beetle.

CHOOSE APPLICABLE LANGUAGE BELOW:

[Based on the **Worksheet information from item 6. (Water Use Classification)]**

The above-described Project operations qualify as an "existing water related activity" because they reflect the effects of a surface water or hydrologically connected groundwater activity implemented on or before July 1, 1997, within the intent and coverage of the Program. [Program, 2006; Section I.A. footnote 3].

-OR-

The above-described Project operations qualify as a "new water related activity" because such operations constitute a new surface water or hydrologically connected groundwater activity which may affect the quantity or timing of water reaching the associated habitats of the target species implemented after July 1, 1997. [Program, 2006; Section I.A. footnote 3]. The Project

conforms to the following criteria in Section H of Colorado's Plan for Future Depletions [Program, Attachment 5, Section 9]:

1. The Project is operated on behalf of Colorado water users;
2. The Project does not involve construction of a major on-stream reservoir located on the mainstem of the South Platte River anywhere downstream of Denver, Colorado;
3. The Project is not a hydropower diversion/return project diverting water including sediments from the mainstem of the South Platte River anywhere downstream of Denver and returning clear water to the South Platte River.
4. The Project does not cause the average annual water supply to serve Colorado's population increase from "Wastewater Exchange/Reuse" and "Native South Platte Flows" to exceed 98,010 acre feet during the February-July period.

Accordingly, the impacts of this activity to the target species, whooping crane critical habitat, and other listed species in the central and lower Platte River addressed in the PBO are covered and offset by operation of Colorado's Future Depletions Plan as part of the PRRIP.

The Applicant intends to rely on the provisions of the Program to provide ESA compliance for potential impacts to the target species, whooping crane critical habitat, and other listed species in the central and lower Platte River addressed in the PBOs. The [Federal Agency] intends to require, as a condition of any approval, that the Applicant fulfill the responsibilities required of Program participants in Colorado, which includes participation in the South Platte Water Related Activities Program, Inc. (SPWRAP). The [Federal Agency] also intends to retain discretionary Federal authority for the Project, consistent with applicable regulations and Program provisions, in case reinitiation of Section 7 consultation is required.

This letter addresses consultation on all listed species and designated critical habitat in Nebraska, including the referenced Platte River target species and whooping crane critical habitat. Potential impacts from construction and operation of the Project to any other federally-listed threatened or endangered species and designated critical habitats will be addressed within the applicable biological opinion prepared by the Service, in accordance with the ESA.

References:

Platte River Recovery Implementation Program Document. 2006.

U.S. Department of the Interior. 2006. Platte River Recovery Implementation Program Final Environmental Impact Statement.

U.S. Fish and Wildlife Service. 2006. Biological Opinion on the Platte River Recovery Implementation Program.

U.S. Department of the Interior. 2018. Platte River Recovery Implementation Program First Increment Extension Final Environmental Assessment.

U.S. Fish and Wildlife Service. 2018. Supplemental Biological Opinion on the Platte River Recovery Implementation Program First Increment Extension.

/FROM FEDERAL ACTION AGENCY/

Supplemental Worksheet for PRRIP BA Template

The information below is needed for the U.S. Fish & Wildlife Service (Service) to complete a formal ESA Section 7 consultation in a streamlined manner under the Platte River Recovery Implementation Program (PRRIP), the June 16, 2006 programmatic biological opinion and the August 27, 2018 supplemental biologic opinion. The worksheet can also help the Service determine if consultation is required (see [link](#) for exceptions to the consultation requirements).

1. **Applicant Name:** _____

2. **Federal Agency Involved (if applicable):** _____

3. **Project Name/Description of Project or Proposed Action:**

4. **Project Location (include street address, or comparable, specific location information and County):**

5. **General Description of Water Source(s) (no need to identify specific/associated water rights):**

- a. % Transbasin Imports _____%
- b. % Native South Platte Water _____%
- c. % Nontributary Groundwater _____%
- d. % Other (please specify; e.g., in-basin agricultural conversion, reuse, etc.) _____%

6. **Water Use Classification (check one or both boxes, as applicable):**

a. **Water use qualifies as an “existing water related activity”** ☐

(Water use is surface water or hydrologically connected groundwater that has historically been used prior to July 1, 1997)

b. **Water use qualifies as a “new water related activity”** ☐
(includes new and expanded existing projects)

(Water use constitutes a new surface water or hydrologically connected groundwater that will occur after July 1, 1997)

7. **Annual Volumetric (acre-feet) water use (existing; new; and future buildout, if applicable) associated with the Project:**

Exhibit C

Platte River Tier 2 Biological Opinion Template
For
Water-Related Activities and Central/Lower Platte Species Addressed by the Platte
River Recovery Implementation Program's Programmatic Biological Opinion

December 3, 2019



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services

[State] Field Office

[Address]

[City, State, Zip Code]

[Date]

[FWS tracking number]

[Name]

[Agency]

[Address]

[City, State Zip]

RE: [Project Name] Project, [County Location] County, [State]

Dear [Mr./Mrs.] :

This biological opinion is provided in response to your [Date] request to initiate formal consultation pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (ESA). Your biological assessment describes the potential effects of the [Project Name] on federally listed species and designated critical habitat.

The Federal Action reviewed in this biological opinion is the [Project Name] Project, located at [location description], [county name] County, [state]. The Project is [project description and purpose].

I. Background

On June 16, 2006, the U.S. Fish and Wildlife Service (Service) issued a programmatic biological opinion (PBO) for the 13-year first increment of the Platte River Recovery Implementation Program (PRRIP) and water-related activities¹ affecting flow volume and timing in the central and lower reaches of the Platte River in Nebraska. On August 27, 2018, the Service issued a supplemental programmatic biological opinion (Supplement) for an extension of the PRRIP through 2032. These two biological opinions are hereinafter referred to collectively as the PBOs. The action area for the PBOs includes the Platte River basin upstream of the confluence with the Loup River in Nebraska, and the mainstem of the

¹ The term "water-related activities" means activities and aspects of activities which (1) occur in the Platte River basin upstream of the confluence of the Loup River with the Platte River; and (2) may affect Platte River flow quantity or timing, including, but not limited to, water diversion, storage and use activities, and land use activities. Changes in temperature and sediment transport will be considered impacts of a "water related activity" to the extent that such changes are caused by activities affecting flow quantity or timing. Impacts of "water related activities" do not include those components of land use activities or discharges of pollutants that do not affect flow quantity or timing.

Platte River downstream of the Loup River confluence.

The Federal Action addressed by the PBOs includes the following:

- 1) funding and implementation of the PRRIP through 2032, the anticipated first increment of the PRRIP, as extended; and
- 2) continued operation of existing and certain new water-related activities² including, but not limited to, Reclamation and Service projects that are (or may become) dependent on the PRRIP for ESA compliance during the first increment of the PRRIP, as extended, for their effects on the target species³, whooping crane critical habitat, and other federally listed species⁴ that rely on central and lower Platte River habitats.

The PBOs establish a two-tiered consultation process for future federal actions on existing and new water-related activities subject to section 7(a)(2) of the ESA, with issuance of the PBOs being Tier 1 and all subsequent site-specific project analyses constituting Tier 2 consultations covered by the PBOs. Under this tiered consultation process, the Service will produce tiered biological opinions when it is determined that future federal actions are “likely to adversely affect” federally listed species and/or designated critical habitat in the PRRIP action area and the project is covered by the PBOs.

Although the water depletive effects of this Federal Action to central and lower Platte River species have been addressed in the PBOs, when “no effect” or may affect but not likely to adversely affect determinations are made on a site-specific basis, the Service will review these determinations and provide written concurrence where appropriate. Upon receipt of written concurrence, section 7(a)(2) consultation will be considered completed for those federal actions.

Water-related activities requiring federal approval will be reviewed by the Service to determine if: (1) those activities comply with the definition of existing water-related activities; and/or (2) proposed new water-related activities are covered by the applicable states or the federal depletions plan. The Service has determined that the [Project Name] Project meets the above criteria; therefore, this Tier 2 biological opinion regarding the effects of the [Project Name] Project on the target species, whooping crane critical habitat, and western prairie fringed orchid in the central and lower Platte River can tier from the PBOs. This Tier 2 biological opinion does not address potential effects from construction and operation of the Project on any other federally-listed threatened or endangered species and designated critical habitats outside of the PRRIP action area. Those effects will be addressed by the appropriate Field Office of the Service, in accordance with the ESA.

² “Existing water related activities” include surface water or hydrologically connected groundwater activities implemented on or before July 1, 1997. “New water-related activities” include new surface water or hydrologically connected groundwater activities including both new projects and expansion of existing projects, both those subject to and not subject to section 7(a)(2) of the ESA, which may affect the quantity or timing of water reaching the associated habitats and which are implemented after July 1, 1997.

³ The “target species” are the endangered whooping crane (*Grus americana*), the interior least tern (*Sternula antillarum*), the pallid sturgeon (*Scaphirynchus albus*), and the threatened northern Great Plains population of the piping plover (*Charadrius melodus*).

⁴ Other listed species present in the central and lower Platte River include western prairie fringed orchid (*Platanthera praeclara*), American burying beetle (*Nicrophorus americanus*) and Eskimo curlew (*Numenius borealis*).

II. Consultation History

Table II-1 of the Supplement (pages 6-8) contains a list of species and critical habitat in the action area, their status, and the Service's determination of the effects of the Federal Action analyzed in the PBOs.

The Service determined in the Tier 1 PBOs that the Federal Action, including the continued operation of existing and certain new water-related activities, may adversely affect but would not likely jeopardize the continued existence of the federally endangered whooping crane, interior least tern, and pallid sturgeon, or the federally threatened piping plover (herein after referred to as piping plover), and western prairie fringed orchid in the central and lower Platte River. Further, the Service determined that the Federal Action, including the continued operation of existing and certain new water-related activities, was not likely to destroy or adversely modify designated critical habitat for the whooping crane. The bald eagle was subsequently removed from the Federal endangered species list on August 8, 2007. Bald eagles continue to be protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. For more information on bald eagles, see the Service's webpage at: <http://www.fws.gov/migratorybirds/BaldEagle.htm>

The Service also determined in the Tier 1 PBOs that the Federal Action would have no effect to the endangered Eskimo curlew. There has not been a confirmed sighting since 1926 and this species is believed to be extirpated in Nebraska. Lastly, the Service determined that the Federal Action, including the continued operation of existing and certain new water-related activities, was not likely to adversely affect the endangered American burying beetle.

The effects of the continued operation of existing and certain new water-related activities on the remaining species and critical habitats listed in Table II-1 of the Supplement were beyond the scope of the PBOs and were not considered.

The Service has reviewed the information contained in the biological assessment submitted by your office on [Date]. We concur with your determinations of “may affect, and likely to adversely affect” for the endangered whooping crane, interior least tern, pallid sturgeon, and the threatened piping plover, and the western prairie fringed orchid in the central and lower Platte River. We also concur with your determination of may affect, and likely to adversely affect, for designated whooping crane critical habitat.

We also concur with your determinations of “may affect, but not likely to adversely affect” for [species, and “no adverse modification of critical habitat” for species]. You have also made the determination of no effect for the [species]. We acknowledge those no effect determinations.

III. Scope of the Tier 2 Biological Opinion

The [Project Name] Project is a component of “the continued operation of existing and certain new water-related activities” requiring a federal action to be evaluated in the Tier 1 PBOs, and flow-related effects of the Federal Action are consistent with the scope and the determination of effects in the PBOs. Because [Project Proponent] has elected to participate in the PRRIP, ESA compliance for flow-related effects to federally listed endangered and threatened species and designated critical habitat from [Project Name] Project is provided to the extent described in the Tier 1 PBOs.

This biological opinion applies to the [Project Name] Project effects to listed endangered and threatened species and designated critical habitat as described in the PBOs for the period of the first 26 years of the PRRIP (i.e., the anticipated duration of the PRRIP first increment and extension).

IV. Description of the Federal Action

[Describe the Federal Action and any Interdependent and Interrelated Actions – use text from the Biological Assessment]

V. Status of the Species/Critical Habitat

Species descriptions, life histories, population dynamics, status and distributions are fully described in the PBO on pages 76-156 and on pages 17-53 in the Supplement for the whooping crane, interior least tern, piping plover, pallid sturgeon, and western prairie fringed orchid, and whooping crane critical habitat, and are hereby incorporated by reference.

Climate change was evaluated as a potential threat to the species and whooping crane critical habitat in the Supplement. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). "Climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8-14, 18-19).

Changes in temperature and/or precipitation patterns will influence the status of the Platte River system. These changes may contribute to threats that have already been identified and discussed for interior least tern, piping plover, pallid sturgeon and western prairie fringed

orchid in the Tier 1 PBOs.

[Discuss changes in status of target species/critical habitat since the Tier 1 PBOs were issued, or include a statement saying “Since issuance of the Service’s PBO and the Supplement, there have been no substantial changes in status.”]

VI. Environmental Baseline

The Environmental Baseline sections for the Platte River and for the whooping crane, interior least tern, piping plover, pallid sturgeon, and western prairie fringed orchid, and whooping crane critical habitat are described on pages 157 to 219 of the Tier 1 PBO and pages 54 to 81 of the Supplement, and are hereby incorporated by reference.

[Discuss changes in status of target species/critical habitat in the action area since the Tier 1 PBOs were issued, or include a statement saying “Since issuance of the Service’s PBO and the Supplement, there have been no substantial changes in status of target species/critical habitat in the action area.”]

VII. Effects of the Action

Since issuance of the Tier 1 PBO, our analyses under the ESA include consideration of ongoing and projected changes in climate. The Supplement considered these impacts. In our analyses, we used our best professional judgement to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change. Actions that are undertaken to improve the river ecology and habitats for listed species not only address human activities, but also contribute to listed species and whooping crane critical habitat resiliency to climate change.

Based on our analysis of the information provided in your biological assessment for the [Project Name], the Service concludes that the proposed Federal Action will result in a [a/an existing depletion, new depletion, or a combination of existing and new depletions]. These depletions are associated with [briefly describe here, or by reference, the specific water supply sources, water uses, amount information, etc. (e.g. in Colorado, use the *Supplemental Worksheet for PRRIP BA*)].

[Include as needed:] As an existing water-related activity, we have determined that the flow-related adverse effects of the [Project Name] are consistent with those evaluated in the Tier 1 PBOs for the whooping crane, interior least tern, piping plover, pallid sturgeon, western prairie fringed orchid, and whooping crane critical habitat.

[Include as needed:] As a new water-related activity, we have determined that the flow-related adverse effects of the [Project Name] are consistent with those evaluated in the Tier 1 PBOs for the whooping crane, interior least tern, piping plover, pallid sturgeon, western prairie fringed orchid, and whooping crane critical habitat, and these effects on flows are being addressed in conformance with the [Select the applicable depletion plan: Wyoming

Depletion Plan, Nebraska New Depletion Plan, Colorado Plan for Future Depletions, Federal Depletions Plan] of the PRRIP.

[If the site-specific project/activity may affect listed species/critical habitat addressed in the PBOs, include those site-specific effects here. In that instance, the Incidental Take Statement section below may need additional text.]

VIII. Cumulative Effects

Cumulative effects include the effects of future State, local, or private (non-federal) actions that are reasonably certain to occur in the action area considered in this biological opinion. A non-federal action is “reasonably certain” to occur if the action requires the approval of a State or local resource or land-control agency, such agencies have approved the action, and the project is ready to proceed. Other indicators which may also support such a “reasonably certain to occur” determination include whether: a) the project sponsors provide assurance that the action will proceed; b) contracting has been initiated; c) State or local planning agencies indicate that grant of authority for the action is imminent; or d) where historic data have demonstrated an established trend, that trend may be forecast into the future as reasonably certain to occur. These indicators must show more than the possibility that the non-federal project will occur; they must demonstrate with reasonable certainty that it will occur. Future federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act and would be consulted on at a later time.

Cumulative effects are described on pages 194 to 300 of the Tier 1 PBO and pages 102 to 104 of the Supplement, and are hereby incorporated by reference. [Discuss any changes in cumulative effects, if any, since the Tier 1 PBOs was issued, or include a statement saying “Since issuance of the Service’s PBO and the Supplement, there have been no substantial changes in cumulative effects to the species.”]

IX. Conclusions

The Service concludes that the proposed [Project Name] Project is consistent with the Tier 1 PBOs for effects to listed species and critical habitat addressed in the Tier 1 PBOs. After reviewing site specific information, including: 1) the scope of the Federal Action; 2) the environmental baseline; 3) the status of the whooping crane, interior least tern, piping plover, pallid sturgeon, and western prairie fringed orchid in the central and lower Platte River and their potential occurrence within the project area, as well as whooping crane critical habitat; 4) the effects of the [Project Name] Project; and 5) any cumulative effects, it is the Service’s biological opinion that the [Project Name] Project, as described, is not likely to jeopardize the continued existence of the federally endangered whooping crane, interior least tern, and pallid sturgeon, or the federally threatened piping plover, or western prairie fringed orchid in the central and lower Platte River. The [Project Name] Project is also not likely to destroy or adversely modify designated critical habitat for the whooping crane.

This Tier 2 biological opinion does not address potential effects from construction and operation of

the Project on any other federally-listed threatened or endangered species and designated critical habitats outside of the PRRIP action area. Those effects will be addressed by the appropriate Field Office of the Service, in accordance with the ESA.

X. Incidental Take Statement

Section 9 of ESA and federal regulations pursuant to section 4(d) of ESA prohibit the take of endangered and threatened species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct, and applies to individual members of a listed species. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

Sections 7(b)(4) and 7(o)(2) of ESA do not apply to the incidental take of federally listed plant species (e.g., Ute ladies' tresses orchid, and western prairie fringed orchid). However, limited protection of listed plants from take is provided to the extent that ESA prohibits the removal and reduction to possession of federally listed endangered plants or the malicious damage of such plants on non-federal areas in violation of state law or regulation or in the course of any violation of a state criminal trespass law. Such laws vary from state to state.

The Department of the Interior, acting through the Service and Bureau of Reclamation, is implementing all pertinent Reasonable and Prudent Measures and implementing Terms and Conditions stipulated in the Tier 1 PBOs' Incidental Take Statements (pages 309-326 of the PBO and 111-115 of the Supplement) which will minimize the anticipated incidental take of federally listed species. In instances where the amount or extent of incidental take outlined in the Tier 1 PBOs is exceeded, or the amount or extent of incidental take for other listed species is exceeded, the specific PRRIP action(s) causing such take shall be subject to reinitiation expeditiously.

[If the site-specific project/activity may affect listed species/critical habitat addressed in the PBOs, include any site-specific Reasonable and Prudent Measures and Terms and Conditions here. See the format in the PBOs Incidental Take sections]

XI. Closing Statement

Any person or entity undertaking a water-related activity that receives federal funding or a

federal authorization and which relies on the PRRIP as a component of its ESA compliance in section 7 consultation must agree: (1) to the inclusion in its federal funding or authorization documents of reopening authority, including reopening authority to accommodate reinitiation upon the circumstances described in Section IV.E. of the Program document; and (2) to request appropriate amendments from the federal action agency as needed to conform its funding or authorization to any PRRIP adjustments negotiated among the three states and the Department of the Interior, including specifically new requirements, if any, at the end of the first PRRIP increment and any subsequent PRRIP increments. The Service believes that the PRRIP should not provide ESA compliance for any water-related activity for which the funding or authorization document does not conform to any PRRIP adjustments (Program Document, section VI). Reinitiation of consultation over [Project Name] Project will not be required at the end of the first increment including the extension (a period covering the first 26 years of the PRRIP) provided a subsequent Program increment or additional first increment Program extension is adopted pursuant to appropriate ESA and NEPA compliance procedures, and, for a subsequent increment, the effects of the [Project Name] Project are covered under a Tier 1 PBO for that increment addressing continued operation of previously consulted-on water-related activities.

This concludes formal consultation on the actions outlined in the [Date] request from [federal action agency]. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; 3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or 4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, the specific action(s) causing such take shall be subject to reinitiation expeditiously.

Requests for reinitiation, or questions regarding reinitiation should be directed to the appropriate Field Office at the address below.

[For Colorado and Nebraska Projects, select the Nebraska field office; for Wyoming, select Wyoming field office below and delete the other one]

Field Supervisor
Nebraska Ecological Services Field Office
U.S. Fish and Wildlife Service
9325 S Alda Road
Wood River, NE 68883

Field Supervisor
Wyoming Ecological Services Field Office
U.S. Fish and Wildlife Service

XII. Conservation Recommendations

Section 7(a)(1) of ESA directs Federal agencies to utilize their authorities to further the purposes of ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of an action on listed species or critical habitat, to help implement recovery plans, or to develop information. Conservation recommendations are provided in the PBO (pages 328-329) and Supplement (page 117) and are hereby incorporated by reference.

XIII. Literature Cited

Platte River Recovery Implementation Program Document. 2006.

U.S. Department of the Interior. 2006. Platte River Recovery Implementation Program Final Environmental Impact Statement.

U.S. Fish and Wildlife Service. 2006. Biological Opinion on the Platte River Recovery Implementation Program.

U.S. Department of the Interior. 2018. Platte River Recovery Implementation Program First Increment Extension Final Environmental Assessment.

U.S. Fish and Wildlife Service. 2018. Supplemental Biological Opinion on the Platte River Recovery Implementation Program First Increment Extension.

We appreciate the opportunity to review and comment on this proposed project. Should you have questions, please contact [\[FWS lead biologist\]](#) within our office at [\[email address\]](#) or [\[phone number\]](#).