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August 16, 2018

Via Hand Delivery

Mr. Jeff Fassett, Director
Nebraska Department of Natural Resources
301 Centennial Mall South, Fourth Floor
Lincoln, Nebraska 68509-4676

Re: Application A-19594; Option 1 Comments

Dear Director Fassett:

On behalf of the Governance Committee ("GC") of the Platte River Recovery Implementation Program ("Program"), I submit the following comments to Application A-19594 ("Application"), which the Central Nebraska Public Power and Irrigation District ("Central") and the Platte Republican Diversion Interlocal Agreement Partners (the "PRD") jointly filed (collectively, Central and the PRD are the "Applicants"). I submit these comments in accordance with Option 1 of the Nebraska Department of Natural Resources' ("Department") Guidance Document, titled "Opportunities for Participation in the Permitting Process."

The Program currently operates and is working to develop a number of projects to re-time flows in the Platte River for the benefit of Program's target species and to achieve the Program's First Increment water objective.¹ The Program is a party to agreements with Central, Central Platte Natural Resources District ("CPNRD") and the Nebraska Public Power District ("NPPD") to divert, store, recharge, and convey water for the Program's projects, which are located and planned in the Platte basin downstream from the Applications' proposed point of diversion. Central, CPNRD, and NPPD obtain access to water for the Program's projects through permits approved by the Department.² In some cases, the Department approves permits for Central,

¹ The First Increment water objective is to reduce deficits to United States Fish and Wildlife Service target flows by 130,000 to 150,000 acre-feet for the benefit of the piping plover, least tern, whooping crane, and pallid sturgeon. As for projects, see Broad Scale Recharge Project; Slurry Wall Project; Temporary Transfers for Instream Flow; Surface Water Rights A-16853, A-16854, and A-16832 and footnote 2 below.

² See, e.g., A-19560; Water Service Agreement ("WSA") between the Program and NPPD, dated January 1, 2017; WSA between the Program and Central regarding the Phelps Canal, dated September 26, 2016; WSA between the Program and Central regarding the Elmwood Reservoir and the E65 Canal dated September 26, 2016 as amended on January 8, 2018; and a proposed WSA between Central and the Program regarding the Cottonwood Pipeline from the Phelps Canal; Water Leasing Agreement ("WLA") between the Program and Central dated September 6, 2016;

CPNRD, and NPPD only on a temporary basis, and determines on a case-by-case basis which permits may be used to access flows during high flow events, or flows in excess of United States Fish and Wildlife Service target flows under certain conditions.³

The Program and Platte River stakeholders rely on continued access to surface water and storage for existing and planned projects, some of which are still in the development stages, and all of which are constructed and operated with the goal of meeting the First Increment water objective and the requirements of the Nebraska Groundwater Management and Protection Act.⁴ And, under the Program's Nebraska New Depletions Plan, the Department cannot allow a new surface water use "unless any adverse effects on state-protected flows and target flows are either prevented or offset."⁵

The Applicants have informed the Program's GC that their intent is to only divert water that will not otherwise be utilized in the Platte now and into the future, and that diverted water will only be used for Republican River Compact compliance. To that end, the Application includes some voluntary conditions. However, to fully implement the Applicants' stated intent and to protect the Program, the Department should impose the following conditions, in addition to those that are imposed on existing excess flow diversion appropriations, if it chooses to grant the Application.⁶

1. The Department will not count the Application in its determination of the availability of water for any existing, pending, or future surface water right applications, including but not limited to temporary or permanent diversions of excess flows or natural flows, recharge, storage, instream flows, or temporary transfers for instream flows, for beneficial uses of water in the Platte basin.
2. The Department will not administer any junior surface water right in the Platte for the benefit of the Application.
3. The Department will not count the Application in its ongoing evaluation of Central Platte NRD's existing instream flow right, or any new application by Central Platte NRD for an instream flow right. The Department will not modify, reduce, cancel or deny current or future instream flow applications or appropriations in the Platte or Lower Platte basin to facilitate or accommodate diversions under the Application.
4. The Department will not authorize the Applicants to divert water, convey water in Central's system, recharge, regulate, or store water in Elwood Reservoir unless and until Central has fulfilled all discretionary and required obligations under

and Water Use Lease Agreement between CPNRD and the Nebraska Community Foundation dated December 4, 2013, as amended January 1, 2017. Copies of these WSAs and WLAs will be provided upon request.

³ The Application uses the terms "unappropriated water", "high flows" and "excess flows" interchangeably. As set forth the Program's proposed conditions, the Program recommends that the Department define "excess flows" in the same manner it has for Central's and NPPD's temporary permits for diversion of excess flows.

⁴ See Nebraska Revised Statutes section 46-701 *et seq.*

⁵ See Cooperative Agreement (2006), Attachment 5, Section 8, page 2.

⁶ See section 46-235(1), which authorizes the Department, at its discretion, to impose conditions and alter the amount requested in the Application and to protect the public interest.

existing and future water delivery, recharge, and storage contracts with entities operating projects in the Platte basin. In the event Tri-Basin NRD ("TBNRD") or the State of Nebraska declines to utilize their share of water for storage, recharge, or regulating in Elwood Reservoir, such share shall be offered to the Program prior to any diversion under A-19594 to Elwood Reservoir. This condition shall apply regardless of the terms of Central's agreements with the Program, the State of Nebraska, and TBNRD.

These additional conditions are necessary to ensure the Program is protected and to support the Program's three primary purposes to increase stream flows in the central Platte River during relevant time periods, enhance, restore and protect habitat for target species, and accommodate certain new water-related activities. These conditions also support ongoing efforts by water managers and users who rely on Platte River flows to implement Basin-Wide Plans, Integrated Management Plans, and rules regulations that are driven by statutory requirements to achieve Program objectives and the Nebraska Groundwater Management and Protection Act. Most importantly, these conditions fully account for the range of current and future uses and water management efforts in the Platte and accomplish the Applicants' stated commitments to Program stakeholders that water will not be diverted if it would otherwise be beneficially used in the Platte basin or by the Program.

I appreciate your engagement on this matter welcome any questions you may have.

Sincerely,

Jason Farnsworth, BCES
Executive Director