

**Platte River Recovery Implementation Program  
Governance Committee Meeting Minutes  
Country Inn & Suites – Denver (CO) International Airport  
August 20 & 21, 2007**

**August 20, 2007**

**Agenda Modifications**

Jerry Kenny requested the addition of an update from Mark Czaplewski about Central Platte NRD's Elm Creek Project and an update from Water Advisory Committee Chair Frank Kwapnioski about the WAC conference call on August 8, 2007.

**Minutes**

Ann Bleed moved to approve the June minutes; Don Ament seconded. Minutes approved.

**Updates**

***Program Legislation***

Ted Kowalski reported that for reasons outside of our control there was no mark-up of the Program legislation in early August as expected. A full committee mark-up in the House is anticipated sometime in September with a Senate mark-up to follow (no firm dates). Ted said if the mark-ups occur in September and the legislation moves in one chamber or another there is a chance there will be a vote on the legislation in October or November. That would get the authorizing legislation in place by the end of 2007. Brian Barels asked if there are any outstanding issues. John Lawson reported that the lack of movement on the bill was not due to the legislation itself but to Congress dealing with more pressing issues prior to recess. Lawson made an inquiry about the technical change being discussed for the legislation and found it was related to budgetary matters and was not a major issue. Kowalski said there may be language in committee report to deal with that budget issue, but that there are no outstanding problems. Mike Purcell reported that he would be meeting with new Wyoming Senator Barasso during the next week. Lawson and Kowalski discussed whether there needed to be any changes made to the legislation to address the fact that the legislation was written with 2005 dollars, but now it will likely not be effective until 2008. Lawson said the legislation may need to be changed to reflect 2007 so that there is not a funding shortfall as of January 2008. Kowalski said we need to keep the numbers to what was agreed upon.

***Legal Subgroup***

Ted Kowalski reported on the ad hoc legal sub group's teleconference in July. The group made two recommendations:

- 1) The group wants to ensure that the Program has enough but not too much insurance. Don Kraus, Brian Barels, and Mary Jane Graham followed up on the existing insurance quote to make sure the insurance company understood the details of PRRIP insurance needs. Don is still waiting to hear back from the ad hoc committee and others to get more thoughts about that insurance proposal. The Legal Subgroup is hoping to set a date to meet with the individual that provided the initial insurance quote to see if the PRRIP should move ahead with that person, pick another representative, or consider being self-

insured. The Legal Subgroup will come to the GC in October for approval of a preferred option.

- 2) The Legal Subgroup believes the Program needs to get an attorney on retainer to provide advice to the GC on insurance issues like those related to the choke point issues. Jerry Kenny said that David Smith is already employed to help with this and that the Finance Committee will be recommending that the GC agree to expand his contract to deal with this. Kowalski stated that other issues will come along that are not covered by that contract. The Legal Subgroup recommends that if those arise, the ED should go first to the ad hoc committee to see if they can provide advice and help. If they cannot, the recommendation is that the Program seek out an attorney to get additional advice and help for issues that come up in context of the Program that the ad hoc committee cannot solve.

### ***Water Action Committee***

Chair Frank Kwapnioski provided an update on the June 7 and August 8 Water Advisory Conference Calls. The WAC discussed the annual new depletions reports and received an update from Clayton Derby and Jerry Kenny on the Boyle water management study. The WAC recommends accepting the Colorado method for calculating and assessing new depletions. The WAC also discussed the Nebraska report and questions raised about the discrepancy in the number of wells listed and also the definition of new and expanded water uses. The WAC felt the Nebraska report was extensive but not complete and could therefore not recommend that GC accept the report. Nebraska said it will have a completed report by the first of the year (2008).

Mike Purcell asked the GC to approve the Colorado plan for its annual depletion report and accept the Nebraska annual report as incomplete and anticipate revised report by end of year. The GC approved.

Mark Czaplewski provided an update on a CPNRD project that should help with new depletions but that are not part of the Water Action Plan. The first is a re-regulation reservoir project NW of Elm Creek. It originated when locals complained of flooding. The NRD has been working on this for a couple of years and details are now worked out with a preliminary design. The project will be brought before the CPNRD Board this Thursday (August 23). Mark stated he believes it has the potential to work hand-in-hand with the Program and could provide offsets through a 3-way split on return flows to the Platte River from the Elm Creek project; CPNRD take 1/3, State of NE take 1/3, Program take 1/3. The project is expected to provide on an average annual basis 7,500 acre-feet of river return water. With NRD Board approval, the project will be constructed for \$18 million over the next five years. Mark will work with Jerry Kenny and Frank Kwapnioski to get the project in front of the WAC. He also stated that the initial thought was for the Program to be a full-fledged partner and have a financial commitment in the project. Mike Purcell urged Mark to explore the option of the Program leasing water, and to keep the GC updated on progress.

Don Kraus mentioned the possibility of Elwood Reservoir and a new project at the end of the Phelps County Canal contributing water to the Program. The group discussed the flexibility of

the Program to consider projects not specifically listed in the Water Action Plan and generally agreed the Program can be flexible with the projects it considers.

### ***Water Management Study Project Phase I***

Blaine Dwyer and Jeff Bandy from Boyle Engineering gave an update on the Water Management Study. Dry years and more competition for water have made it tougher to find water in the system. The focus now in this first phase is the pulse flow and determining how best to get water down through the river system and the irrigation systems. Boyle is under contract for Phase I and has begun doing interviews of key players and working on historic flow records. A draft report is expected in November and Boyle will present it to the GC at the December meeting in Denver; a final report is anticipated in February 2008.

### **North Platte Channel Capacity Project**

Rocky Keehn from Short Elliott Hendrickson (SEH) gave a Power Point presentation about the status of the project. The group discussed the need to determine if state funds are available to fund the project (about \$90,000) if federal funds are not available. Mike Purcell stated that Wyoming and Colorado can handle front-end costs so the project can proceed. Rocky said SEH will shortly have a specification sheet ready and will soon be seeking bids and insurance so work can begin this fall.

Jerry Kenny reported that a permit application for the project was signed and submitted on July 5<sup>th</sup> and he is still waiting to hear back from the Corps of Engineers. Attorney David Smith is investigating boundary issues to ensure the Program secures proper easements if necessary. "Thread of the river" boundary concerns have diminished due to the new approach focused on vegetation removal. Rocky reported there are just 3 or 4 affected landowners who want to make sure vegetation removal does not lead to trespassing. Mike Purcell reported that David Smith will make a presentation to the GC at the October meeting in Nebraska about boundary issues. The GC approved making ED Jerry Kenny the formal permit holder.

### **Environmental Account (EA) Bypass/Insurance/2008 Pulse Flow**

Chad Smith provided an update on the monitoring/research protocol workshop to be held in Denver following the GC meeting. The group will discuss monitoring and research protocols as they relate to the 2008 pulse flow. That discussion will continue at the September AMWG/TAC meeting in Nebraska and Chad will provide a further update at the GC meeting in October.

Mark Butler reported that the FWS has been hoping to do a pulse flow for some time and that items such as monitoring, insurance, bypass agreements, borrow/payback, public outreach, and Program coordination need to be finalized so a pulse flow can happen in 2008. The FWS is close to hiring an EA manager that will stay in close coordination with the Program ED Office to ensure all issues are addressed cooperatively and in concert with the Program. Brian Barels stated that there is a bypass agreement ready that is just waiting on a few other details, and that both insurance and borrow/payback need to be addressed quickly. Ann Bleed stated that the FWS needs to determine how important it is to protect pulse flow water down to Grand Island because it may be necessary to secure the appropriate permit from Nebraska.

Butler suggested pulling together a small group to develop a matrix for laying out all these issues in time to ensure all the pieces fit together. The 2008 pulse flow is expected to be no larger than 2,000 cfs total at North Platte (base flow plus pulse flow water). It would be good to have the insurance issues figured out by the October GC meeting, as well as a plan for vegetation monitoring.

Butler commented that the Program document lays out the links between the Program ED office and FWS EA manager. The FWS will work closely with the ED Office to avoid the appearance of doing something different outside of the Adaptive Management Program or similar aspects. Mike Purcell stated that the FWS is the EA manager and not the EA advocate. The FWS should coordinate closely with the ED Office, follow all procedures, and ensure all agreements are in place. The GC will not be upset if the FWS then releases water, assuming all agreements and legal issues are ironed out properly – we will be ready to watch it and see what we can learn from it.

Don Kraus emphasized the need to begin monitoring baseline information so we have something to compare with. Since this is a Program event, we need to have monitoring in place before and after to make it worthwhile. Jerry Kenny reported that he will be bringing a public information and outreach staff member on board in September to begin working in earnest on public outreach and coordination with all parties in respect to the pulse flow.

Mark Butler finalized the discussion by reporting that the FWS will be preparing an EA AOP with all relevant connections and issues addressed. The FWS anticipates that the first pulse release would be within 1,980 cfs at North Platte unless there is a revised flood level established by the National Weather Service.

### **Additional Items**

Mike Purcell reported that the Wyoming land near Kearney is now the Program's to manage and maintain. The land needs maintenance and a proper agreement for overall management. The agreement will likely have to be between the State of Wyoming and the FWS. Mark Butler stated that the FWS may be willing to provide funding for land management/maintenance through its Private Lands Program. Chad Smith will work with Mike Purcell and Mark Butler to ensure development of a new agreement for the Wyoming property. Mike Purcell noted that the agreement will have to be through the Program's LIHE in accordance with the process laid out in the Program and in the agreement with the LIHE.

Mike Purcell awarded plaques to Dale Strickland and Clayton Derby for their many years of loyal service during the Cooperative Agreement negotiations and development of the Program. He thanked them for their excellent work and the group offered a round of applause.

### **August 21, 2007**

Jerry Kenny formally introduced new ED Office staff members: Chad Smith (Adaptive Management Program), Becky Mitchell (hydrology/geomorphology), and Bridget Barron (public outreach/facilitation).

### **Nebraska Community Foundation**

### **FME Contract Negotiations**

John Lawson and Ted Kowalski led an extended discussion about the agreement between the Nebraska Community Foundation and the Cooperative Agreement/Program. Several amendments had been made over the years to the existing contract/agreement, and Lawson and Kowalski have worked to compile all of those changes into one document that will be used as the agreement between the NCF and the Program. Ted Kowalski and Becky Fulkerson will work through the document to make it clear, coordinate amendments, and make sure everything works together. One important change is that the new document will streamline the process of making changes/amendments by allowing identified representatives to sign future modifications.

Mike Purcell noted that the existing NCF agreement expires on September 30 before the next GC meeting. He stated the signatories will execute a modified version of the documents being discussed prior to the next GC meeting so that the NCF contract does not run out. GC members with questions were directed to touch base quickly with Lawson or Kowalski.

Dale Strickland suggested that the existing version be sent to the NCF for their review to give them a few days to read through it and make any suggestions for edits before the signatories begin the formal signing process. Dale agreed to send an electronic version to NCF for their review while Becky Fulkerson agreed to make copies and send them around to the signatories to begin the signature process.

### **Land Interest Holding Entity (LIHE) Contract Negotiations**

Dale Strickland reported that David Smith had a meeting with the NCF counsel to discuss the LIHE contract. David Smith edited the agreement and sent it to Dale, and Dale is working to clarify those changes. The Land Advisory Committee has not yet met so it is premature to send this agreement to them for review. The NCF is unsure what to charge as the LIHE so Dale suggested that the NCF and David Smith work together to develop an outline of what responsibilities they have as LIHE (scope), associated time requirements, and determine a rate based on a time basis to get a cost estimate.

### **Cooperative Agreement (CA) Funds Remaining in NCF Account – Options**

Dale Strickland reported that there is \$52988.52 remaining in the NCF for CA Funds. There is a \$10,000 obligation to David Smith for work on the LIHE, leaving \$42,573.88 in the NCF account (or slightly more if David Smith does not bill for the full amount of his obligation).

Mike Purcell reported that the David Smith contract is the last CA obligation and he has asked Dale not to spend any more. Each signatory needs to decide how to deal with its share.

### **Discussion and Clarification on Unsolicited Presentations by Federal Agencies and Others Sole Source Issues**

Mike Purcell suggested the GC needs to develop a policy on when and how we justify sole source contracts. The GC then requested that Jerry Kenny draft a policy on sole source and “uniquely qualified” issues. Brian Barels said this should be extended to an overarching procurement policy that would include sole source issues as a title. Mike Purcell, Don Kraus, and John Heaston said the policy should address issues like thresholds for review, a bidding policy, and conflicts of interest.

Mike Ryan will visit with the contracting officer at Bureau of Reclamation (BOR) to get an idea of federal agency options, experiences, and suggestions, for such a policy. Mike Purcell urged all the states to do the same. Jerry Kenny stated it is important to deal with this early in the Program because so many contracts will be involved in Program work.

### **Budget Related Items**

#### **Process for handling contracts and payment of invoices**

Jerry Kenny provided an update on using basically the same invoice process for the Program as used during the Cooperative Agreement. Don Kraus said the policy should be updated and linked to the new procurement policy being developed. Discussion followed about how to streamline the process but ensure that RFPs are prepared and reviewed and contracts developed properly. Mike Purcell suggested the concept that the Executive Director's Office would prepare a pre-proposal document with the project scope, budget need, budget line item, budget adjustments, and any other important information included. That pre-proposal would be presented to the Finance Committee for approval before moving into development of a full RFP or contract. If approved by the FC, the ED could move ahead with developing a full proposal. Don Kraus stated this policy would have to be linked to the new procurement policy, and should include thresholds for when budget changes or expenditures need to be reviewed by both the FC and the GC. Brian Barels and Ann Bleed suggested that FC meetings include appropriate tech representatives to help review pre-proposals and provide guidance to the ED. Dale Strickland said this should be included in the policy, and Ann Bleed suggested the Web site could be a helpful way to track information. Jerry Kenny will elaborate on the pre-proposal process, links to the FC and GC, thresholds, and other matters. The GC approved.

#### ***Task PD-8 – Database Management System***

Mike Purcell reported that the FC recommends moving ahead with contracting with the FWS team in Ft. Collins to provide the Database Management System for the Program. Jerry Kenny is prepared to move ahead with negotiations, but John Lawson stated he needs to see more detail about this process because it is a sole source issue. Jerry Kenny noted that there has been a written justification developed for going with the FWS team, but that he will add to it and strengthen it to address concerns. Ann Bleed noted that a key for using the FWS is that they are a member organization of the GC and will be around for at least as long as the Program. Mike Purcell stated that if the Program collapses, the data will still be with a public entity that is responsible for ESA compliance and determining if the Program is living up to its obligations. John Lawson said the FC will have to review this again after Jerry updates the written justification. Mike Ryan said the written justification needs to capture the process and the thinking that went into it.

Mike Purcell suggested that Jerry Kenny move ahead both with developing a more extensive written justification for sole sourcing the DBMS with the FWS, and also beginning negotiations with the FWS with the caveat that this process will require additional FC and GC review. Jerry will report on the status of this at the October GC meeting. Dan Luecke stated that the meeting summary should indicate that there is not a fatal flaw in this process and that things will move ahead with the FWS in an orderly fashion according to Program document and GC guidance. The GC approved.

***Task WP-1 – Modification of Contract with David Smith***

Dale Strickland reported that the FC recommended that the contract with David Smith be modified to reflect an additional \$10,000 in Program funds; that the contract be with Jerry Kenny instead of Dale Strickland; and that the contract be modified to secure David's services on choke point issues such as Nebraska boundary law and easements. Mike Purcell stated that David Smith would also provide a presentation at the October GC meeting about boundary issues. The GC approved.

***Task WC-3 – Water Surface Elevation Pilot Study***

Jerry Kenny reported that the Program needs information about water surface elevation where whooping cranes are sighted using the river. The TAC and FC recommend the BOR do a pilot analysis of 10 sites using three different methods. Jerry Kenny reported that expediency and the need to have this data quickly led to sole source on this issue. Clayton Derby reported that the \$18,313 for this pilot study would be moved from Task S-3 (Recruit/Hire ED) in the 2007 budget because the ED is in place and those funds are no longer needed for that line item. The GC approved.

***Task S-1 – Extension of Agreement with WEST, Inc.***

Jerry Kenny reported that the existing agreement with WEST, Inc. ends on September 30. Jerry Kenny and Dale Strickland are working on a contract for access to Dale and staff and for providing a mechanism for completion of the whooping crane analysis. Dale Strickland said there are adequate funds available in the existing budget to provide for a transition contract. Mike Purcell said that there is no change in the budget and WEST, Inc. will essentially be a sub-contractor of Jerry Kenny and the ED Office. The GC approved.

***Task LP-2 – Cottonwood Ranch Agreement***

Jerry Kenny reported on the agreement prepared by NPPD prepared in response to direction from the April 2007 GC meeting. The agreement with NPPD includes \$75,000 for habitat maintenance activities at Cottonwood Ranch in 2007 and \$200,000 for habitat enhancement at Cottonwood Ranch in 2007. Actual costs would be paid within one year of federal authorization of the Program. Brian Barel will provide the GC with an invoice for all pre-2007 Cottonwood Ranch costs at the October GC meeting. The GC approved a 2007 budget of \$275,000.

***Tasks PS-1 and PS-2 – Pallid Sturgeon Information Review and Stage Change Study***

Chad Smith reported on a proposal to modify Program document language relative to timing of the lower Platte stage change study and secondly, his intention to complete the pallid sturgeon information review/summary (Task PS-1) as ED Office staff. Ann Bleed said she was concerned about the language change being a major change and that it seemed the Program was moving away from the stage change study as a hydrology study and into broader work on the pallid sturgeon. Mark Butler provided a brief summary of the FWS position on pallid sturgeon and read from the Program document and study description in the Adaptive Management Plan which states that the study is to "Identify the physical effects of subtly different rates of flow (stage and associated elements) over time on connection, construction, maintenance, and evolution of pallid sturgeon habitat components". Don Kraus and Mike Purcell said they were also concerned about the proposed change. Mike Purcell recommended tabling the issue until the October GC meeting

and having Jerry Kenny set up a conference call to discuss the matter in more detail. Mark Butler agreed to provide a written description of how we got to this point and the FWS thoughts on pallid sturgeon. The GC approved that recommendation.

Those indicating an interest in the conference call were Mike Purcell, Ann Bleed, Ted Kowalski, Dan Luecke, Mark Butler, Don Kraus, Mark Czaplewski, Felipe Chavez-Ramirez, and Brian Barels.

Mike Purcell recommended that Chad Smith provide the AMWG and TAC with an outlined scope of work for the pallid sturgeon information review and summary and after receiving that input proceed with the review. The GC approved that recommendation.

### **Future Meeting Dates and Locations**

October 9/10 – Kearney

December 11/12 – Denver

February 12/13 – Kearney

### **Public Comment Period**

During the Database Management System discussion, Tim Martin from Riverside Technology in Ft. Collins raised questions about the DBMS discussion and if the FC and GC considered new or different database technology in the process of deciding to move ahead with the FWS team.

Dale Strickland responded to Tim and discussed his contact with Tim via phone over time. Mike Purcell said that the GC is moving in another direction and that the Program is going with the security of having a GC member organization manage the DBMS. Tim stated he would always be happy to provide additional input at any time.