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**Platte River Recovery Implementation Program
Land Advisory Committee Meeting Minutes
Holiday Inn Express – Kearney, NE
November 14, 2007**

Welcome and Administrative

Scott Woodman called the meeting to order and the group proceeded with introductions. Jerry Kenny reported that Bruce Sackett would not arrive until after noon to complete a quorum, so the agenda item of approving minutes from the previous Land Advisory Committee (LAC) would have to wait until later in the afternoon.

Overall Platte River Program Update

Kenny provided an update on the current status of the Platte River Recovery Implementation Program (Program). Kenny said that he had submitted an estimated 2008 budget for land activities of \$2 million at the October Governance Committee (GC) meeting. That increased budget line item is for land-related activities, anticipating that the Program will be active in the land arena in 2008. The Program is still waiting for authorization from Congress (approved in House; still in committee in Senate). Becky Fulkerson reported there is no set schedule for finalizing the legislation and that the Senate will get to it when it can. Kenny said the group should talk today about what the budget number should be in 2008 for land-related activities; estimated at \$2M at present. Fulkerson said we should move forward as if we have legislation in place and have unlimited funds. Kenny said that \$2 million is just a trial number to start with and that the budget number topic will be a thread throughout the meeting today.

Kenny said the Program also needs to establish an entity to hold title to land. He reported we are close to having the Land Interest Holding Entity (LIHE) established with the Nebraska Community Foundation (NCF). The LIHE would be a separate 501(c)(3) spun off from the NCF and would be called the Platte River Recovery Implementation Foundation. The final language is being worked out between legal counsels. The NCF has also proposed a fee structure for how the Program will get charged for operations of the LIHE. The GC reviewed that fee structure and made suggestions for changes; the NCF has now produced an alternative fee structure. The major modification at this point is a different fee structure for land owned versus land in held in easement or lease. The proposed fee structure now includes lower fees for land owned as compared to leases/easements, the theory being that there are fewer interactions required for owned land. Kenny said he would like any input from those with experience in ownership and leases/easements about that rationale. Kenny said he expects to have the fee structure nailed down by the February GC meeting.

Kenny discussed the need to establish a liaison for the LAC from the GC. The GC will identify liaisons for all advisory committees at next the GC meeting in December. Mark Czaplewski reported that John Heaston's name was brought up at the October GC meeting as a possibility for the LAC. Greg Wingfield asked for clarification on the GC liaison as to whether that liaison had to be a GC member. Kenny said that the GC appoints the liaison and that overlapping membership between the GC and the relevant advisory committee was likely but not necessarily required.

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Kenny also said that the reimbursement policy for LAC members was under discussion. The Program document says that committee members who are not employees of an agency are eligible for reimbursement. The current policy is that you can ask for reimbursement for mileage for attending meetings (government rate of 0.485 per mile), lodging, and per diem (government rate of \$30/day outside of Omaha). Committee members would submit expenses to Kenny and he would process a check.

Land Plan Walk-Through

Czaplewski provided a walk-through of the Program's Land Plan via a Power Point presentation. A group discussion of several topics followed.

Following the presentation, the group discussed possibilities for public access and managing that access. John Heaston mentioned the need to think about the role of environmental group lands in reaching the Program's 10,000-acre goal. Heaston said the idea was to not bring that land into the Program until other lands are used to reach that 10,000-acre goal. But, The Nature Conservancy (TNC) would offer its land as part of the Program if it fits and everyone felt it would make a good addition. Czaplewski said the ultimate goal is 29,000 acres in the long-term of the Program, with 10 habitat complexes at about 2,900 acres each as an ideal. Heaston said three bridge segments at this point do not have significant conservation action ongoing and that the Odessa-to-Kearney reach is probably a good focus for activities.

The group discussed the Land Evaluation Worksheet. Czaplewski said the Program should consider establishing a Site Evaluation Team. Kenny said the worksheet would be completed by ED staff and/or in coordination with Program partners then would be brought back to the LAC as part of a package for review and evaluation. Kenny said it is important for everyone to be familiar with the worksheet so that if you are approached by landowners or others you are familiar with what the Program is looking for and what information we need. Heaston asked if the Program should only hire appraisers certified to use federal appraisal standards. **Fulkerson said she would talk to John Lawson about the Bureau of Reclamation's thoughts on this.** Kenny said it is probably something the Program will have to do because of the involvement of federal dollars. He asked how much a typical appraisal costs using federal standards. Heaston said an appraisal usually runs from \$5,000-\$10,000, and that cost is roughly the same for a federal-standards appraisal.

Kenny discussed the general process if the Program is approached by a landowner or if the Program approaches a landowner – title search; legal review; finding the survey of record; Phase I environmental audit; evaluation worksheet; and site visit. Then, all of this information forms a packet for LAC review and ultimately GC approval. Heaston asked if the Program pays for the costs of the Phase I environmental audit. He said the Program needs to consider if we pay, if we share costs with the potential seller, or if we come up with another structure.

Heaston said TNC typically complete internal reviews unless there are red flags for a clean-up, at which point TNC then hires a contractor to complete the audit. TNC does the survey work after there is a signed intent to sell. Wingfield asked if this process is dictated in the Program document. Kenny said a title search must be first, but the environmental review and survey can

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be done after completing the evaluation worksheet. Heaston said the Program should consider waiting to do the survey and appraisal work once there is a signed intent to sell.

John Shadle asked how the Program will approach the process if we get a phone call from someone with available property. Kenny said Executive Director's (ED) staff will determine if the land is an area of compatible use. If so, the Program will initiate a title search and the necessary legal review. The ED will bring the opportunity to the LAC. If the LAC approves, ED staff will fill out the evaluation worksheet and complete the environmental audit or hire a contractor to do so. ED Office staff and interested LAC members will do a site visit, and then ED Office staff will compile a package of information together for LAC. If approved, then Kenny will take it to the GC for approval of LAC recommendation to proceed or not to proceed. At that point, ED Office staff will move to complete a survey, appraisal, and formal negotiations. Kenny said the Program will want to be able to act quickly, but this process will make that difficult. Heaston said if we can obtain a signed option to sell with some up-front money, we should be able to make this work fairly quickly. Kenny said he has already talked to some landowners that are very interested in getting their land in the Program no matter what the process is like. Fulkerson asked what we would expect to find during a title search. Kenny said it is like buying house, trying to determine ownership and the presence of any liens. Heaston said it is import to do this up front to see who all the listed owners are, find any encumbrances, and see if other rights in the land are sold off (like sand/gravel mining rights). Kenny said all of this will be posted on the Web site, including a flow chart on the process.

Cottonwood Ranch Overview

Jim Jenniges presented a Power Point presentation on developments at Cottonwood Ranch since 1999. Czaplewski asked if NPPD will come before the LAC with a new management proposal for future work. Jenniges said yes, that NPPD has to develop a new land sponsorship agreement and a new management plan now that Cottonwood Ranch is becoming Program land. Shadle said NPPD has an oversight committee with the U.S. Fish and Wildlife Service (FWS), the Nebraska Game and Parks Commission (NPGC), and others to help with management plan input. Shadle said that based on NPPD's experience with Cottonwood Ranch the LAC will have to grapple with public access issues and uses, probably on a case-by-case basis. Heaston said TNC makes a differentiation on their Hall County properties between public access and public benefit. For example, TNC hosts some youth mentor hunts on property that is not otherwise open to full public use. He reported this has been received well and provide good balance between public benefit and protection of the land. Brad Mellema said Audubon has done similar things at Rowe Sanctuary and it has been successful, especially at building good will with the public.

Approval of Minutes

Bruce Sackett arrived at the meeting. Sackett moved to approve the minutes of the previous LAC conference call and Heaston seconded. Minutes approved.

General Afternoon Discussion

The group discussed how easements work generally and how they might come into play through the Program. Sackett said easements are ultimately a limitation on what you can do on the

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property in question. Easements are an agreement on what will or will not happen on a piece of property. Woodman hypothetically asked if an easement could be written to have TNC or another group clear islands on property and what would happen if he wanted to sell that ground in the future. Sackett said that is an encumbrance. That may be transferred, renegotiated, or the easement agreement may say it cannot be transferred. Easements can grant permission to access property, but that is revocable. Easements can include positive or negative restrictions and can be structured flexibly. Heaston said to view easements as a cherry on top of the ice cream, not the bowl of ice cream itself. Easements are only as good as the person donating it and the person buying it. TNC typically sets aside 20% of the value of the easement to anticipate costs associated with legal instruments, taxes, and monitoring. Easements require management and enforcement, and the easements usually about 30 pages long. Sackett said the best way to go is buy property, put easements on it, and then sell it with those restrictions in place to avoid any question about what you are buying/selling.

Heaston said the Marketable Title Act in Nebraska means there are no perpetual easements and you have to re-record them every 23 years. Fee simple purchase is cleanest option but the most expensive route. You need to build relationships to do easements and cannot just do them cold off the street. Harry LaBonde said if the Program is going to do mechanical work, it might be best to focus on fee simple purchase to avoid the complexities of easements. Sackett said he has long tried to dissuade easements and encourage fee simple purchase. Wingfield said there are times you can keep an easement as simple as possible with some basic restrictions like no subdivision or development (coarse scale). He said that sometimes this is the only option for a key piece of property, and we may run into this for the Program. Heaston said for a cropland example, it made sense to put some restrictions on land in easement, sell it as cropland, and help a young farmer get his start. This kind of approach will probably work best for buffer lands, but the Program may want to buy land outright in the channel where work will be done and consider selling it later. Dave Raffety said he had concerns about how to manage this land and make sure any lessees are living up to the agreements.

Kenny asked if easements are a one-time payment or if they are paid over time. Sackett said they tend to be a one-time payment while a lease is an annual fee. Kenny asked if tax breaks are factored into setting the value of an easement. Sackett said not in Nebraska. Assessors will tell you it is based on land use – if land is still cropland, even with an easement it will remain assessed as cropland. Kenny asked if an assessor could say that the value of land is increased due to Program work and the tax value has thus gone up. Sackett said it is possible and you could end up with farm ground getting valued higher as recreational ground. Heaston said local zoning boards have 60 days to respond to easements only if there is a conflict with the local comprehensive use plan. For example, it is easier to get an easement in Hall County than Buffalo County or Dawson County because conservation is a part of the comprehensive plan along the river in Hall County. There may be problems if the land in question straddles more than one county.

Woodman said he does not want to see the Program bid higher for ground and end up skewing the tax base. Heaston said by policy, TNC cannot vary from fair market value by more or less than 10% for the current use. He said the Program should not “blue-sky” real estate. Sackett said since the LIHE will be a 501(c)(3) the Program will have to pay fair market value (unlike a

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government entity). Wingfield said a nonprofit has to stick closely to fair market value or it could lose its tax exempt status. Czaplewski said the LIHE will only hold the title. Heaston said they will write the checks, so that's what is important in terms of comparable sales. Sackett said we need to make sure the LIHE or the Program has the ability to sue or be sued to go into court and defend easements.

Heaston asked if the Program wants to engage in land exchange as opposed to an outright sale. Sackett said if you can defer capital gains, you get a tax advantage when you use the old value number; the new value basis becomes the present fair market value for heirs. This 1031 tax-free exchange is an important tool to have in the Program's land tool box. Kenny said the Program will definitely entertain that option.

Kenny said the Program needs to consider establishing a network of resources, such as legal counsel, appraisers and real estate brokers. Sackett said brokers can be helpful or detrimental and we need to be careful about their role since the Program has deep pockets. Kenny asked for the advice and counsel for how to spread the work about the Program's interest in land when the authorization is in place. Sackett said we do not need to do anything because generally everyone is aware of the Program. Heaston said the first thing we need to make clear is the sideboards for acquisition. The LAC should set a policy to give guidance about how we will do deals. The GC should decide how strictly or loosely that guidance should be worded. If land is acquired by the Program, we need to define an exit strategy for land especially if the Program goes longer than 13 years. Sackett said we need to be conscious of fair market value and factor that into how we buy and sell land. Kenny said there is still some latitude in the Program document, but the general principles provide strong guidance (like Good Neighbor Policy).

Heaston said we need to address land valuation based on changed land uses and the potential that we could lower taxable value and how that relates to what taxes we pay. Raffety said if we develop an area that does not support deer and they move onto neighboring property and cause problems, we will have to find ways to deal with it.

LaBonde asked if there are any maps that show the reach and all current land activities (NPPD, TNC, etc.). Heaston said TNC has fairly up-to-date info showing conservation and landowner work. Kenny mentioned there is a good map in the Final Environmental Impact Statement (EIS). Czaplewski said that map is good but it is a little out of date. Sackett said he is concerned about maps and a land prioritization system leading to tougher negotiations. The Program should have the right to hold back information about real estate and personnel matters. Jenniges said the EIS already identified five sites where work will be done, so that information is already out there.

Kenny said he will work with TNC to develop some good map layers for use among the Program and the LAC.

Heaston said we need to understand from a financial standpoint that it will take deals more than 12 months to get done in many cases. Money may be obligated in one fiscal year and not spent until later years, or we may end up spending more because of unforeseen circumstances. The Program should consider something like a land fund with the NCF to ensure money is available as it needs to be spent. We should also explore the idea of having landowners bid into the Program and encourage competition to help keep people from "blue-sky" offers.

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Larry Reynolds discussed the Central Platte Natural Resources District's (CPNRD) water banking effort and how it will include a starting place for values on water and land in the area. The Program should be aware of this. Woodman said the CPNRD will have to pay for water rights as a part of that effort. Czaplewski said it is a little different than the Program because CPNRD pays by acre-foot, not acre. The NRD is just getting started with effort and is going through the process on the first one with TNC – that may be instructive for the Program. Reynolds said maybe the LAC should have a presentation at the next meeting about this, especially in terms of the valuation question. **Woodman said he would work with Czaplewski to come up with presentation for the next meeting.**

Public Forum/Closing Business

Heaston said we should think about how frequently to meet to ensure we are addressing issues in a timely manner. The LAC should take up the issue of when conservation group lands come on board as part of the Program and what to expect for committee member compensation at the next meeting.

There were no comments offered during the Public Forum.

The next meeting of the LAC will be January 29th from 9 a.m.-4 p.m. Central time in Grand Island, Nebraska at the CPNRD office.

Meeting adjourned.