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**Platte River Recovery Implementation Program
Governance Committee Meeting Minutes
Holiday Inn Express – Kearney, NE
October 9 & 10, 2007**

October 9, 2007

Welcome & Administrative

Mike Purcell called the meeting to order and the group proceeded with introductions. Jerry Kenny said the presentation from David Smith would occur before the break and that the Governance Committee (GC) Action Items from the previous meeting would be discussed after break. Kenny also noted Blaine Dwyer might present before Rocky Keehn. Don Ament moved to approve the August 2007 minutes; Ann Bleed seconded. Minutes approved.

Program Committee Updates

Adaptive Management Working Group (AMWG)

Chad Smith gave an update on the AMWG meeting at the Trust on September 10-11. Smith said the AMWG wants to hold an Adaptive Management Plan update session at the December GC meeting in Denver to inform the group about adaptive management actions during Year 1 of the Platte River Recovery Implementation Program (Program).

Technical Advisory Committee (TAC)

Chair Mark Peyton gave a TAC update. Peyton discussed the Committee's work over the course of the year. Peyton discussed the five charges of the TAC from the Program document. He noted the TAC had:

- Discussed, reviewed, and provided comments on the forage fish protocol; geomorphology protocol; vegetation protocol; and development of a pulse flow monitoring protocol.
- Provided advice and recommendations to the GC on the whooping crane monitoring data analysis being conducted by WEST, Inc.; the comparative study to determine most accurate method of assigning water elevations at whooping crane roost locations; and the aerial vegetation mapping proposal.
- Discussed, reviewed, and provided comments on the tern and plover forage study RFP; the Pulse Flow Monitoring RFP; and the 2007 spring whooping crane monitoring report.

Land Advisory Committee (LAC)

Jerry Kenny gave a LAC update. The Program is limited in its ability to buy land until the authorizing legislation passes, but we are optimistic that will move forward so we want to be in a position to act on the Land Plan. That requires getting the Land Interest Holding Entity (LIHE) in place and the LAC up and running. The LAC held its first conference call on October 4. There are now official representatives filling all slots on the Committee. The Committee selected officers. The Chair is Scott Woodman, a local landowner from Wood River, Nebraska and the Vice Chair is Mark Czaplewski representing the Central Platte Natural Resources District. The Program Executive Director's (ED) office will be the Recording Secretary.

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Kenny said one action item is that the LAC needs a GC liaison to facilitate and coordinate communication between the two bodies. John Heaston and Mark Butler are two GC members that are on the LAC. Mike Purcell asked if anyone was willing to take on the position. He said Butler would work admirably unless there are other volunteers. Butler said he was willing to do it if the group would like, though it might make sense to have someone from Nebraska. Ann Bleed asked if the GC could talk about the liaison position and get back to the Committee. Brian Barels asked if the GC could request that the ED fill the liaison role. Don Kraus said it was not clear in advance that this was an agenda item so the group needed more time to consider it. Purcell noted the Final Program Document (“white book”) says there is to be a GC liaison for all standing advisory committees. Barels asked to table the issue until the next GC meeting so the group could address liaisons for all committees. **Purcell said the issue was tabled and the GC would officially designate liaisons for all standing advisory committee at the next GC meeting.**

Kenny said the LAC would hold a meeting in November in Kearney to discuss the duties and procedures outlined in the Land Plan. Czaplewski said there are provisions in the LAC charter to provide stipends for non-agency representatives on the Committee. He said the Finance Committee (FC) needs to establish a policy for payment of per diem and expenses, so he asked the GC to direct the FC to start on that process. Purcell asked if anyone recalled how it was done previously. Dale Strickland said the policy during the Cooperative Agreement was to reimburse non-agency participants. LAC members would submit informal requests for reimbursements, and the Program still has money in the budget to handle that through the ED office. **Purcell said that the FC will take up Mark’s suggestion and discuss this at the next FC meeting.**

General Program Updates

Legislation

Ted Kowalski said there was good news on the House side as the full committee mark-up is scheduled for tomorrow morning at 10:00 a.m. He expects that to pass out of committee with no problems or delays. On the Senate side, things are slower. The new Senator from Wyoming is feeling his way on his position on this legislation and any support the State of Wyoming or Wyoming water users could offer to pass the legislation without amendment would be helpful. Purcell asked if Sen. Barrasso is causing the postponement. Kowalski responded that he is on the committee, that he has some concerns, and that he has talked about it with Sen. Nelson’s staff. Norm DeMott said Sen. Barrasso is still receptive to an amendment related to about 60 people from around Saratoga that are opposed to the Program. Purcell requested a report back from Kowalski about Sen. Barrasso’s concerns because he has not heard of any and he wants to know if any potential Wyoming concerns are delaying mark-up of the bill. Kowalski agreed to will follow up. **Later during the GC meeting, Kowalski reported that he learned the Senate will mark up the legislation later in October.**

Program Insurance

Don Kraus discussed the conference call the sub-group had about the insurance issue. The group met with the individual that provided the Program with an insurance quote so they could

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understand where he was coming from. After he signed off the call the rest of the group had a discussion about where we were going. Kowalski put out a good first draft of an insurance RFP. Some of the more substantial changes in the RFP from the initial quote include an increase in the insurance limit from \$1M to \$10M per occurrence, and the RFP also points to a more comprehensive set of coverages so it covers anyone involved in working for the Program. Kowalski reported he has not received a whole lot of comments yet, but that the sub-group does want to move forward with the RFP to make sure we can do pulse flow next spring.

Purcell asked for clarification as to what \$10 million per occurrence means. Kowalski said if the GC is sued and other Program individuals are sued, the insurance would cover 10 people up to \$1 million per person; that's an increase over the original proposal. Dan Luecke asked if it was typical to secure insurance for GC individuals as opposed to insurance to pay for damages caused by a Program event like a pulse flow. Kowalski noted this is just the initial approach, and the group then discussed examples of potential litigation and how insurance would work in those cases. Purcell asked if the GC could agree to appoint the sub-group to polish the RFP, submit comments to Kowalski, and then have the sub-group review proposals from the RFP and make recommendations to the GC on how to proceed. Purcell asked for a report at the December GC meeting regarding proposals. Don Ament asked how the Program ED and Headwaters Corporation are covered. Kenny said Headwaters is separately insured as part of the ED contract. **The GC agreed to let the sub-group polish the RFP and get it on the street no later than October 31 with responses by November 30 in time for a report at the December GC meeting. Kowalski asked for all comments by October 15, so Purcell requested that everyone review the RFP and submit comments to Kowalski accordingly.**

Water Management Study

Blaine Dwyer from Boyle Engineering gave a presentation on the status of Phase I of the Water Management Study. He reported that he had good meetings and interviews with several throughout the basin and was able to secure very helpful information in determining how to get pulse flows. Dwyer said he needed to work with Kenny to develop a workshop for the GC and other interested parties to provide a formal update on the status of Phase I. He said that during the Cooperative Agreement, Boyle held updates with the Water Management Committee that were helpful to keeping things on track. The Program workshop is not defined in terms of specifics, but Dwyer thought it would be best to present something similar to their presentations for Mark Butler and Don Anderson that focused on issues constraining the ability to release EA water. Dwyer suggested it would require a half-day session. Purcell said this would be a very important workshop because the topic is critical and it will be the first time we will all see the bottlenecks. Barels asked if we want the WAC involved; Purcell responded yes, the workshop would be for all interested parties but the WAC in particular. **Purcell asked the GC to talk about it overnight and decide tomorrow when we will have a workshop in December.**

North Platte Channel Capacity Project

Rocky Keehn of SHE reported on the North Platte Choke Point Study. Kenny said there was no action needed, but that Rocky would report to the GC about new ground we are covering. The Program is moving away from hard engineering at the choke point to eradication of phragmites,

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since it appears we can convey 3,000 cfs through the area with a pretty simple solution. Kenny reported that through discussions with Lincoln County Weed Control Authority (LCWCA), if we can make an arrangement with them and provide them with some money, they will arrange to have the spraying done. Central Nebraska Public Power and Irrigation District is having a helicopter spray phragmites at the North Platte Diversion Dam. The LCWCA is already contracted with them to do additional work, so they could include aerial spraying of the choke point area in the same project. We would get 28 acres sprayed for \$6,000, which is significantly less than the hard engineering solution. This has several beneficial aspects: 1) an opportunity to get spraying accomplished this fall before frost is important; 2) keeps us out of soliciting spraying contractors directly; 3) the LCWCA has its own insurance coverage and will indemnify us; and 4) landowner access agreements are already in place. Kenny said he has coordinated with the LCWCA and the NCF and both are amendable to a simple-form contract and have copies. If there are no objections, we can get the spraying done this week at a low price and have tangible results.

Mark Butler asked if it would require just one spray, and if we would have to physically remove the dead material. Kenny said the agreement would accomplish spraying, and that should have a kill time of 3-5 years. Removal is not part of provision, but once dead its ability to impede flow is significantly reduced. Bill Taddicken said eventually, it will be best to find a way to remove it next year because it will stick around. Rowe Sanctuary has worked on spraying this year and it has worked well, so this is a great way to get it done at the choke point. But, in the future, the Program will need to remove the dead phragmites. Keehn said if we can kill the phragmites with spraying, we can then monitor during the pulse flow to see if removal is necessary or if the water passes through well enough. Bleed said it is important to specify in the contract that the contractor will go back and re-spray if it doesn't work right. Kenny said he will talk to the LCWCA to check on this guarantee. Bleed asked if the spraying was just focusing on phragmites, and Kenny said the spraying will be area-based. Kraus asked if the spraying was being done in lieu of channel cleaning, and Keehn responded that aside from island removal, this is in lieu of channel cleaning. He reported that local residents are not in favor of channel cleaning, so we have gone back to phragmites spraying and island removal. Kenny said it seems we can accomplish flow goals using a much less intrusive approach.

Purcell asked if the states need to fund this or if we can also use federal dollars. John Lawson said the legislation seems to be moving along, and this is a small amount of money involved, but the Bureau of Reclamation prefers using state funds until legislation is finalized. Purcell said the project would be done with just state dollars, and Bleed said this is not a problem as long as all the details are worked out. Jeff Runge said the window for spraying is closing fast and the first killing frost will end the spraying time period. Kenny said the helicopter would be departing soon. Bleed asked for details on the window for spraying. Jason Alexander indicated that spraying has to be completed when phragmites "shooters" are growing in July or spraying doesn't work well. Taddicken said Jeffrey Island plots were sprayed in September and phragmites has not grown back. Bleed said we need to address the concern about October spraying and if that doesn't work the contractor must come back to finish the job.

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Mark Butler asked about the details of the monitoring system. Keehn said it is a visual system at key property locations and that he has cross-sections in the HEC-RAS model that can be used for transects. Rocky reported that he has not yet worked out how we are going to actually record monitoring data. **Purcell said that the ED is authorized to proceed if he believes it is worth the investment.**

Platte River Boundary Issues

Kenny introduced Dave Smith and said he asked him to give the GC a presentation on “Boundary Issues 101”. Smith said he practiced in Dawson County his entire career and there has always been a debate as to whether anyone could even buy/sell accretion ground. This is important now because of the value of land along the Platte, so it is important to have good boundary determinations. Smith went through some key legal definitions and an evaluation of key legal cases important to boundary determinations. Smith said it is important that when the Program considers land, you do a lot of looking, talking, and investigating to know the facts of the specific area. Hopefully, management actions will be considered avulsion so that boundary lines do not change.

Purcell asked about the statement that if north side and south side landowners agree, that land has more value because everyone knows what they have. Smith said the current price-setter in Dawson County is \$3,000/acre, but that realtors he knows say if everything is known, it may jump to \$10,000/acre; Kowalski asked if there was any discussion in the Nebraska legislature about dealing with this issue. Smith said yes, but that nobody wants to touch it because no matter how many acres are involved it will always be a source of conflict. Smith said the best way to resolve these conflicts is by agreement between the landowners.

Previous GC Action Items

Kenny discussed the Continuing Services Agreement with WEST, Inc. He said it did not require further action on the part of the GC, but disclosure to the GC. Kenny reported that an agreement to provide continuing services from WEST for ongoing administrative, procedural, and other items has been executed. Kenny and Dale Strickland established a \$75,000 budget. A portion (\$25,000) is for whooping crane monitoring data analysis. \$50,000 was moved from other budget areas where funds are available and unlikely to be expended in FY 2007. **Purcell said this still seems to be an action item because it is a budget item. The GC gave approval to move ahead.**

Chad Smith reported on the status of the stage change study, providing an update as to the discussion at the AMWG and TAC meeting and the status of the RFP. **Bleed said she wants to review the RFP, so she suggested that after Smith incorporates comments from the stage change study sub-group he should send it to the TAC, WAC, and interested GC members for final review. Purcell said when the small GC group interested in the stage change study is ready, then the RFP can be put out on street.**

Purcell said he has an opportunity to lease grazing on the Wyoming property to pay the taxes. He said he needs to get an agreement to LIHE that the Program will become the management

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entity. **Purcell said he wants a report at the December GC meeting from Smith with confirmation of plans for adaptive management work on the Wyoming property and how that might be impacted by one-year grazing lease. Purcell said he would provide Smith with a copy of the previous grazing lease.**

ISAC Selection Panel

Smith offered a recommendation for the GC to seat a Selection Panel for the Independent Scientific Advisory Panel (ISAC). Strickland said ISAC will react to GC and their requests for review. He said one example might be to have the ISAC peer review the IMRP to see if it meets the Adaptive Management Plan (AMP) objectives, which was delayed at the start of the Program. He agreed that we need a general scope of work before moving ahead that would provide the ISAC a general framework for what its actions will be. The group discussed the suggested procedure from Smith and agreed to table further discussion until the following day.

Procurement Policy

Kenny said this is a draft policy and is not meant to be the full procedures manual. The policy is brief and general. The intention of the “Authority” section is to draw a distinction between disbursement of funds and procurements. The policy references the spirit and intent of federal regulations but doesn’t incorporate the full text of those regulations. This draft policy does not cover: 1) land acquisition or 2) water. The “Competition” paragraph says only with exceptions will a non-competitive process be used, and if it is used a written justification will be required. The policy needs to better explain what “local” means. Ideally, it means that local contractors would be encouraged to participate in the Program; contractors in the three states/basin would be encouraged to participate in the search for providers. The “Thresholds” section is an attempt to establish thresholds for various levels of procurement intensity.

Bleed said in addition to money amounts, there may be some situations where there is something under \$100,000 but that is controversial and the ED needs to let GC know what is coming up for bid in case the GC wants to have greater role in thinking that item through. Purcell said we should have a consultant selection process and then separate out a bid process. If we are doing a bid, we will end up taking the low bid. Consultant selection is a different issue because it is a value-based decision, so those need to be separate policies. We need to establish a threshold where we are comfortable with the ED handling a certain dollar amount or less; a second category of the GC being notified; and the third is the GC wants involvement and approval. Luecke noted that we are talking about both budget levels and policy issues so it’s not just amounts of money but also policy. Kenny said that makes sense but that we need to figure out how to describe and specify that. Bleed said it might be important to just notify the GC that things are going out to bid and see if anyone wants to have more input. Purcell clarified that the group was really talking about the level of GC involvement in the consultant selection process. Bleed said it might be a low budget number where the ED just moves forward, but that over a certain amount the GC may want to be involved.

Barels said he had not seen the Finance Committee (FC) in this document. The FC has a charter and expectations and maybe the GC should have Kenny work with the FC to put together a more

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complete document and then come back to the GC. In some cases, we might want other committees involved and every month there should be a reporting requirement at GC meetings. Kraus asked how sub-group and committee review of RFPs fits into this policy. Purcell said that advisory committees are not involved in money and that only the FC deals with money. Depending on what a consultant is doing, advisory committees help with selecting consultants and we should let committees appoint people to work with ED in this regard. We need to try to find a way to pull the GC out of day-to-day operations to make this work, but also ensure that the GC has adequate opportunity to provide the input you want. Purcell said Barels might have hit on something with suggesting FC involvement in polishing the “straw man” policy. DeMott said that the FC represents those that are putting up the money for the Program. Luecke said one of the things that concerns him is that history suggests the GC just can’t help itself, so we must give some authority and discretion to the ED to do necessary work.

Kowalski said he agreed with many of the previous comments. His concern is about thresholds. By signing the Program, everyone signed a contract that we will all pay attention to everyone’s laws. Kowalski said Colorado’s thresholds are much different than this proposal, so he was trying to grapple what it means for acknowledging each other’s state and federal laws. Purcell said to a certain extent, as long as it is part of the deal we signed on to, Wyoming’s procurement laws are somewhat second fiddle to the Program. Kowalski said it is part of the Program Document to acknowledge everyone’s laws. He said he appreciated the definition of local sources and as long as it’s defined as within the basin that will be appropriate. He said we need to provide justification for deviation from this process in writing, provide more details on the difference between bids and proposals, and more details on how panels for review will be assembled and how proposal rankings will be done. Mike Ryan said he visited with the Bureau’s contracting officer. He said he shared the draft policy with him and he noted it was a good start. He commented that some of the thresholds are too restrictive and some areas like full and open competition are not restrictive enough. He also raised the issue that “costs plus” contracts are risky to get into, and that we need to address the topic of construction. Ryan said the Bureau’s contracting officer offered to sit down with Kenny and John Lawson and walk through the draft policy. **Purcell said Kenny would re-draft policy based on the comments today, submit the policy to the FC, and work with them to finalize the policy.**

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Purcell called the meeting to order.

ISAC Selection Panel

Kowalski said Colorado would be more comfortable if the GC would name the Selection Panel today so we know who will be bringing us names for the ISAC. **Colorado recommends Felipe Chavez-Ramirez, Jim Jenniges, Mark Czaplewski, Kevin Urie, Don Anderson, and Mike Drain.** Dan Luecke asked about the issue of appointing a senior scientist from outside the group. Kowalski said Scott McBain is a good idea for that spot. Luecke said we need someone that knows something about the Platte River and/or cranes but that is outside of the group. Barels wondered if the scope of work gets to the relationship of ISAC with the Program. Kowalski said Felipe is on the GC and would be able to provide that link. He hopes that the ISAC will review

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the AMP. Purcell said it is hard to develop a scope of work for 13 years and that he thought ISAC involvement is going to be on a case-by-case basis. He said he hopes that the Selection Panel would pick the ISAC with a broad base that will address each aspect of the Program that we are going to face.

Bleed said she is not sure where this is headed and that the GC needs to know what they will do in order to decide who to seat on the ISAC. Strickland said the way ISAC was conceived was a 2-part review process: 1) specific peer review on protocols, and 2) an overall review of the way the Program is operating from a scientific perspective. The GC may have a question about the overall process that ISAC needs to address and that the ISAC will meet at the pleasure of the GC. Strickland said it is a good idea to have the ISAC review the Integrated Monitoring and Research Plan (IMRP). The AMP has been peer reviewed, but the IMRP has not been peer reviewed. Bleed asked if Strickland sees the ISAC as having a broad base and then having other experts pulled in to answer specific questions. Strickland said we won't be able to seat an ISAC with all areas of expertise that you will ever need, so the ISAC can do more general peer review. Kowalski said he recommends seating the Selection Panel, having the ED's Office develop the scope of work, and then distribute that draft to the Selection Panel and possibly more widely for comment. Strickland said you have 13 years to do work, and only 12 years are left. He said it is a good idea to get the ISAC up and running early to not end up having too much information collected before all appropriate peer review is completed. **Purcell said the GC should agree to the proposed schedule so that the GC can approve the scope of work at the December GC meeting. Ryan suggested that the Selection Panel look at other efforts like this around the country to help us go down the right road and have good technical support.**

Luecke said the Selection Panel needs somebody outside process and that the International Crane Foundation (ICF) might have some good suggestions. Ryan said it seems we are looking for someone on the Selection Panel that has some technical background in the issues. Mike Drain said we are just setting up a panel to speed up the process. The GC will eventually approve the ISAC members and we can still get outside input without having an official seat on the selection panel. **Purcell said to let process proceed and that the Selection Panel can help get senior scientist input on their own.**

DBMS

Kenny walked through the justification he developed in support of selecting the FWS team to manage the Database Management System (DBMS). Purcell said the justification document looks like it adequately addresses the issue. Ryan said it looks like the document does a good job of addressing concerns and that it looks like the decision to go with the FWS team is appropriate.

Don Hunter from the FWS team gave a presentation about their approach to the database work. The team is thinking about how to get their arms around data which is a big project in terms of scale. We feel it is our job to work with you to make this work since the database and the Web site will be your portal to the world and also your data input and management system. We can't think of this as a static program because you are just in year 1 of 13. Our job has been to stay on

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top of our game and integrate the best things available for every project. The FWS team has evolved as a product and a service shop. For the service part, we do what we can to help instead of just taking information and going away. We try to help develop prototypes and straw man systems that help things get discussed. We are always staffed with professionals (GS-12, 13, 14). One of our successes is that if we see IT innovations, we go out and look at it to see if it works for a particular project (R&D). Once we set up a project, we work to set up tasks and schedules so we can tell what has been done and what has yet to be completed. In addition, we spend a lot of time constantly improving security because our system is constantly spammed. Your project will have sensitive information so security is important and we maintain systems as secure as the budget will allow.

Kraus asked about the plan for moving forward. **Kenny said he needs to define the scope of work, budget, and a schedule and also develop a contract for the NCF. He thought the contract is likely to be a reimbursable agreement. Kraus asked if the contract will come back to the GC for review, and Purcell said it can, but this will be within the existing budget.**

2007 & 2008 Budget Items

The group discussed upcoming items in remaining calendar 2007 and had no major questions or concerns about those items.

Purcell said a FC meeting will be arranged prior to the December GC meeting to have the final version of the budget and get a recommendation ready for the December meeting. John Heaston asked if Budget Task LP-3 include appraisal, legal work, and other administrative items associated with land acquisition. Kenny said those pieces are included in the ED office budget. Kowalski said that we still have to get federal authorization to move ahead, but when we do that land acquisition number could end up needing to be bigger. Land is supposed to be purchased largely within the first 5 years, so we probably need to bump it up to be ready to take advantage of land opportunities. Kenny asked if the Program can buy land if we use only state money. Kowalski said he believes we can do that but there is always some hesitation because of the risk associated with doing that without federal authorization. He said the Program needs to be careful not to get crosswise with OMB or other entities. Purcell said the FC will talk about how to pass things along until the legislation is authorized. **The charge for the GC is to look this over and provide Kenny with comments, questions, and changes so the FC can make a recommendation in December.**

Public Comment

Purcell asked for public comment and no comments from the public were recorded. Kent Miller reported that Jerry spoke to a recent NRD meeting and that he did a very good job representing the Program.

Future Meetings

GC meeting on April 8-9, 2008 in Cheyenne or Scottsbluff; FC meeting at 2:30 p.m. Central time on Tuesday, November 27.

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Barels requested that the GC get all documents for upcoming meetings at least one week before the meeting. Purcell agreed and said to at least get us first cut and feel free to change documents if necessary. He also requested adding a version date in upper right corner of all documents. Kenny said we will do better in the future.

Meeting adjourned, and the GC entered Executive Session to discuss issues related to establishment of the Land Interest Holding Entity, procedures for taking advantage of land acquisition/lease/easement opportunities, and other administrative items.