



1 **PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

2 **Governance Committee Meeting Minutes**

3 **Wyoming Water Development Commission – Cheyenne, WY**

4 **April 8-9, 2008**

5
6 **Tuesday, April 8, 2008**

7
8 **Welcome & Administrative**

9 Mike Purcell called the meeting to order and the group proceeded with introductions. **The**
10 **Governance Committee (GC) approved the February 2008 minutes.**

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12 **Program Committee Updates**

13 **Technical Advisory Committee (TAC)**

14 Chad Smith gave an update on the last TAC meeting. The TAC reviewed and approved the
15 pallid sturgeon information review RFP, provided detailed comments on the Scope of Work for
16 the Independent Scientific Advisory Committee, and appointed Felipe Chavez to serve as the
17 TAC and Adaptive Management Working Group (AMWG) representative on the Peer Review
18 Working Group. The TAC also recommended that the ED Office seek approval from the
19 Finance Committee to move ahead with a WEST, Inc. proposal to analyze tern and plover
20 monitoring data from the Cooperative Agreement time period.

21
22 **Water Advisory Committee (WAC)**

23 Beorn Courtney discussed negotiations over Phase II of the Water Management Study with
24 Boyle. There will be a system water tour with Boyle on Wednesday, May 14th. The WAC will
25 meet on the morning of Thursday, May 15th in Kearney to discuss alternatives for Boyle to
26 consider in Phase II. The ED Office is reviewing depletions reports from Wyoming and
27 Colorado and is seeking advice from the GC about seeking WAC review of the depletions plan
28 reports from the states. Purcell said he thought that was the procedure. Ted Kowalski said it
29 may be appropriate to seek WAC review, but that Colorado is asking for an amendment to the
30 state plan that needs approval from the GC. Purcell agreed and said annual reports should be
31 reviewed by the WAC. For Colorado's changes, the GC can discuss on Wednesday whether the
32 GC is comfortable making the proposed changes to Colorado's plans without WAC review.
33 John Lawson said the advisory committees take direction from the GC and nothing is sent to
34 committees like the WAC without GC direction. **Purcell asked if the GC wants to direct the**
35 **standard annual depletions plans reports to the WAC for review. Brian Barels asked that**
36 **the WAC report be provided to the GC.**

37
38 Amendments to the depletions plans would be first brought to the GC and only referred to the
39 WAC if necessary.

40
41 **Land Advisory Committee (LAC) Update**

42 Bruce Sackett provided an update on the latest LAC meeting. Sackett discussed the Land Plan
43 Flow Chart, the associated detailed supplement, and the MOU to be used with landowners. Deb
44 Freeman asked about the purpose of the title search during the preliminary screening. Sackett



45 said it is only preliminary to try and find some basics about the size of the property in question
46 and other details that are necessary – it is not a formal title search. Purcell asked about the logic
47 of the independent appraisal review. Sackett said it ensures nothing was missed in the original
48 appraisal, and to ensure everyone is on the same page. Purcell asked if the appraisals remain
49 internal. Sackett said it will be determined on a case-by-case basis. Tom Dougherty asked if
50 there is a priority system for evaluating whether lands should be purchased by the Program.
51 Sackett said the LAC is working closely with the TAC and AMWG to determine important
52 Program locations, and also using guidance in the Land Plan to help develop priorities. Lawson
53 asked how leases would be handled. Sackett said a similar process would be followed, and that
54 offers related to the potential lease would be brought back to the GC just like an acquisition.
55 Barels said the Program document lumps all of these options into “acquisition”, so the LAC
56 documents reflect that term. Dougherty asked if conservation easements are an option under
57 consideration. Sackett said they are. Dougherty asked who would hold the easements, and
58 Sackett discussed the Land Interest Holding Entity. **Purcell said the only edit needed is to
59 bring forth the Program document language that specifies all of the options that are
60 considered “acquisition” so that it is clear the process will be used for purchase, easements,
61 and all other options.**

62
63 Christine Quinlan from The Conservation Fund discussed how the Fund might be able to assist
64 the Program in being flexible and acquiring land interest when action is needed quickly. Quinlan
65 discussed the history of the Fund and how it could help acquire land interests that could be later
66 transferred to the Program. Dennis Strauch asked about the source of the Fund’s revolving
67 funds. Quinlan said it is donations/contributions from corporations and other sources. Quinlan
68 said the Fund would want to recover a small amount to cover some of their operating costs and
69 interest if they were to provide a bridge loan for the Program to acquire important lands.

70
71 Kent Aden provided a Power Point presentation discussing several invasive species on the Platte
72 River and joint efforts to address invasive species on the Platte that the Program is participating
73 in, including control efforts for phragmites and saltcedar. Purcell asked about federal funding
74 assistance. Aden discussed potential legislation and funding, but that the main source of funding
75 being sought now are state grants. Freeman asked about the impact of the herbicides on the
76 environment. Aden said data so far suggest the chemicals are not harmful on the environment,
77 but additional research is underway (such as effects on tadpoles) to make sure herbicide
78 application does not have deleterious effects. Kowalski asked if any work was being done to
79 determine if any insects could be released to impact phragmites. Aden said there are no insects
80 that could be used in the United States; the only biological control at this point is livestock.
81 Lawson said tamarisk has to be sprayed the second year to help control it. Aden said generally
82 tamarisk and phragmites are left to stand at least a year after spraying to let the herbicide
83 translocate. Work at Lake McConaughy may show that another spraying application is
84 necessary to be effective. Heaston asked about the breakdown for the LB 701 grants. Aden said
85 the \$1.9 million is for use from the Wyoming state line to Lake McConaughy. The \$1.8 million
86 from the Nebraska Environmental Trust is being used beyond the banks of the North Platte River
87 to deal with Russian olives and other activities. Aden said the LB 701 funds are for “in-channel
88 vegetation” which primarily means phragmites and saltcedar.



89
90 Purcell asked about the status of the sponsorship agreement for the Wyoming property. Sackett
91 said that is being worked on, along with the agreement for Cottonwood Ranch. Specifics related
92 to FERC licenses are being worked out, as well as other details. Jerry Kenny said there are
93 elements of commonality between the two properties, so that is why they are being worked on
94 jointly at this point. **Purcell requested that the sponsorship agreement for the Wyoming
95 property be completed as soon as possible.**

96
97 **The GC approved the Memorandum of Understanding (MOU) to be used with landowners.**

98
99 **Adaptive Management Plan Update**

100 Smith provided an update on the recent AMWG meeting and a status report on AMP
101 implementation. He discussed the draft work plan for the five-year pilot study of
102 implementation of the AMP, which will include work at Cottonwood Ranch. The AMWG wants
103 to consider including the Wyoming property as an additional site for the pilot study, so Smith is
104 evaluating that potential and is building a more detailed work plan for the overall pilot study.
105 Smith said he will be working with a small group of people to complete a Rapid Prototyping
106 workshop in July, led by Dr. Drew Tyre of the University of Nebraska-Lincoln, to help develop
107 some simple models that can be used for data analysis and interpretation.

108
109 The group discussed the Scope of Work for the Independent Scientific Advisory Committee
110 (ISAC). Deb Freeman and Brian Barels asked for clarification in the language to ensure the
111 ISAC would only be engaged to evaluate scientific issues and not broader Program goals and
112 objectives that relate more to policy issues. **Smith agreed to edit the Scope of Work overnight
113 and the group will discuss it again at the beginning of the meeting on Wednesday morning.**

114
115 **General Program Updates**

116 **Program Legislation**

117 Ted Kowalski gave an update on the status of the Program legislation. The legislation is tied up
118 with a larger suite of bills, and it appears that the votes are there to move the package (including
119 the Platte legislation) out of the Senate (S. 2739). Action is expected in days. Since the bill was
120 amended in the Senate, the bill will have to go back to the House for final approval. A
121 contingent from the basin will be traveling to Washington, DC soon to support moving the
122 legislation ahead. The FY 2009 appropriations bill includes appropriate levels of funding for the
123 Program for the next fiscal year.

124
125 **Program Insurance**

126 Jerry Kenny said the Program is now covered by general liability insurance as of April 1 at a cost
127 of around \$41,000. The resolution of coverage for the Districts as “named insured” and damages
128 to District’s facilities is that the Program will have to self-insure. Kenny is working with the
129 Finance Committee (FC) to investigate options as to how to self-insure. A related issue is how
130 much of the cost premium for the insurance related to implementation of pulse flows should be
131 charged to the \$3.081 million tied to the pulse flow. Kenny is working with Carl Bibb to
132 determine how much of the premium is related to pulse flows and will report back to the GC



133 with that figure. The early estimate is that about 20% of the insurance premium is related to the
134 pulse flow. Purcell asked what that coverage is for (third party impacts or damage to District's
135 facilities). Kenny said the insurance is for impacts to third parties. Dougherty asked if the size
136 of pulse flows is factored into the premium cost. Kenny said pulse flow magnitude is factored
137 in. As we get more land and propose larger pulse flows, the Program's insurance premiums will
138 increase every year.

139

140 **Colorado Depletions Plan**

141 Kowalski discussed the memo and map from Colorado that discusses an amendment to
142 Colorado's new depletions plan. Colorado proposes that the new Broomfield County be broken
143 into 55% in the northern portion of the depletions accounting and 45% in the southern portion,
144 which would require an amendment to the depletions plan. **The GC approved the change.**
145 Colorado also proposes the GC authorize Colorado to submit the initial report to the GC by
146 March 31, 2009, in order to allow Colorado to have enough time to assemble the information
147 from the initial reporting period into a report. **The GC authorized the March 31, 2009**
148 **deadline.**

149

150 **Procurement Policy**

151 Kenny discussed the final changes to the Program's procurement policy. A Conflict of Interest
152 Statement was incorporated on Page 2; clarifying language was added on Page 3 to say that the
153 ED can solicit proposals for goods, services, or construction less than \$25,000 without FC
154 approval provided the GC-approved budget includes the items; and other minor edits. Barels
155 said the policy is not clear in terms of procurement actions and the relationship to FC and GC
156 oversight and decision-making. He said it seems like the decision-making on behalf of the GC
157 will now come only during the annual budget discussion, and that much of the remaining
158 decision-making will be relegated to the FC after the GC approves the annual budget. Purcell
159 said he thought that was spelled out clearly in the procurement policy, but Barels did not think it
160 was clear enough. Purcell said that if a recommended item is projected to go over budget, the
161 GC would have to approve such a change. Other items within the approved budget would go
162 forward and would be reported to the GC through budget updates. Barels said the procurement
163 policy document should clearly reflect how the process will work, and what the roles are for the
164 GC and the FC. The group discussed examples of how the policy would work, and at what point
165 budget alterations or potentially higher costs will be brought back to the GC for approval. Don
166 Kraus said the policy should include language for exceptions for contracts on maintenance of
167 sponsor lands.

168

169 **The GC approved use of the Procurement Policy until changes are necessary.**

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173 **Database Management System (DBMS) Update**

174 Kenny provided an update on the status of the development of the DBMS and the official
175 Program Web site.

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Wednesday, April 9, 2008

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Welcome and Administrative

Mike Purcell called the meeting to order and new attendees introduced themselves. Kowalski said he wanted to discuss some additional items related to the Colorado depletions plan. He discussed the two-tiered Colorado plan (South Platte Plan and North Platte Plan) and how that plan relates to the federal depletions plan. Butler discussed the extent of potential federal depletions that are included in the federal plan. The Service has asked the BLM and U.S. Forest Service to identify expected federal depletions so that federal depletions can be integrated into the depletions evaluation for Colorado in the North Platte basin. The Service wants to discuss with the GC at a future time the option of offsetting federal North Platte basin depletions in the South Platte basin. Purcell suggested the best approach might be to deal with these depletions on a case-by-case basis, evaluating whether retirement of an existing supply could be the right approach to staying within the baseline.

ISAC Scope of Work

Smith presented the GC with a revised version of the ISAC Scope of Work. Kevin Urie asked about the break-out of costs for the ISAC Chair, Vice-Chair, and members. Smith discussed the concepts behind the various stipend levels. **The GC approved the modified ISAC Scope of Work; Smith will distribute the revised version to the full GC.**

Program Outreach Update

Bridget Barron updated the GC on several recent Program-related presentations by Kenny and Smith. Barron discussed the press release on the non-release of the pulse flow and Kenny's subsequent interview with KRVN. Barron discussed Smith's upcoming poster presentation at the Resilience Alliance in Sweden and his presentation in May at the UNL/USGS climate change conference in North Platte. Barron showed the group the two versions of the Headwaters hats and asked the GC to consider whether we should develop a hat with the Program logo to help brand the Program.

FY 2008 Budget Items

Kenny circulated budget summary sheets from the Nebraska Community Foundation (NCF) and from the Program accounting system. He mentioned there is roughly \$600,000 in the bank, and discussions continue with Colorado, Wyoming, and the Bureau of Reclamation to establish the next request for funds. Barels asked if the money in the NCF account are new or are carryover. Kenny said that is money from contributions made in 2007.

Smith discussed the idea of seeking contract help to seat the ISAC and peer review panels, and the increased budget required to engage this help. **The GC approved the new approach to securing additional help for Program-related independent science review and the addition of \$90,000 to the FY 2008 budget to secure contract assistance in seating the ISAC and necessary peer review panels.**



220 Smith discussed the WEST proposal for analyzing tern and plover monitoring data collected
221 during the Cooperative Agreement. He noted funding for the analysis would be existing funds
222 moved from TP-4, the tern/plover foraging habits study. **Lawson asked Smith to update the**
223 **work plan discussion of TP-4 to reflect the work tied to the tern/plover foraging habits**
224 **study, the timing, and the new WEST analysis that will be paid for using TP-4 funds.**
225

226 Smith asked the GC to approve the Proposal Selection Team for the pallid sturgeon information
227 review. Suggested panel members are John Shadle (NPPD), Mark Czaplewski (CPNRD), Mark
228 Butler (Service), Jason Farnsworth (ED Office), and Smith. Kowalski recommended Kevin Urie
229 represent Colorado on the panel. **The GC approved the Proposal Selection Team for the**
230 **pallid sturgeon information review RFP.**
231

232 Kowalski asked about the status of LiDAR. Kenny said the intent was to work with partners to
233 acquire LiDAR through flights this fall. Kowalski asked if it was possible for Colorado to be
234 represented on the selection panel for LiDAR work and to ensure the GC approves expenditures
235 related to LiDAR acquisition. Kenny said he believed the GC had approved moving ahead with
236 LiDAR acquisition through a partnership with several entities in the fall of 2007. Kowalski said
237 he would like to revisit that process to ensure appropriate GC involvement for approval of
238 spending \$250,000 on LiDAR. **Kenny said he will provide the GC with a complete report in**
239 **June about who the partners are, what the process will be, and what funding will be tied up**
240 **in the project.**
241

242 **Purcell recommended that budget issues be broken out by budget item on the agenda so**
243 **that items can be tracked based on the approved budget to keep the GC informed as to**
244 **budget changes and expenditures. Kenny agreed that would be the approach in the future.**
245

246 Kenny discussed the status of negotiations with Boyle Engineering for Phase II of the Water
247 Management Study (WMS). ED Office staff will be working with Boyle to iron out the details.
248 The approved budget for Phase II is \$150,000. Boyle has been asked to consider some new work
249 items. If the scope fits within the approved budget, Kenny will bring it to the FC for review and
250 approval at the April 22nd FC meeting. If it does not fit into the budget, the issue will be brought
251 to the FC at the April 22nd meeting and then to the GC at the June meeting. Ron Bishop asked if
252 the Phase II scope would include any potential projects or alternatives to what was originally
253 envisioned. Kenny said yes, and that the WAC is meeting in Kearney on May 15th to discuss
254 potential new alternatives with Boyle. Kraus asked if it is the right process for the FC to review
255 this scope/budget before the WAC meeting. Kenny said yes because we need to get the FC to
256 approve the scope of work in order to secure Boyle's participation in the May 14th water tour and
257 the May 15th WAC meeting. Butler asked if all parties could see the various comments made on
258 the draft report for Phase I of the WMS. **Kenny said the ED Office has compiled those**
259 **comments and included what was changed in the final report as the result of each**
260 **comment. That document will be circulated back through the WAC to ensure everyone**
261 **knows that all comments were received and addressed.**
262



263 Kenny discussed the status of WP-1, the Choke Point Project. The approved budget is
264 approximately \$152,000, which includes both the engineering and the field construction
265 activities. At the April 22nd FC meeting, Kenny will bring a final scope for SEH to complete the
266 project engineering including monitoring and completion of a hydraulic model for the reach.
267

268 **EA Bypass Update**

269 Kowalski reported on recent discussions with the Ad-Hoc Legal Subgroup about EA bypass and
270 the status of the bypass agreement. He noted there is a question related to the \$3.081 million
271 limit on payment for damages and lost power revenue and what that means for pulse flow
272 implementation and ensuring appropriate liability coverages. The group ended up
273 recommending that each year the EA manager provides the GC with a detailed report on EA
274 plans for the year and expected costs. If the GC approves, the pulse flow effort can move
275 forward. Kowalski said the problem is if costs end up exceeding the expected amount and/or
276 exceeds what is remaining in the \$3.081 million pot. The Program needs to determine how it is
277 going to handle these potential cost overruns. Butler said the Service is comfortable with how
278 the EA manager will determine cost estimates for foregone and replacement power and
279 insurance. The biggest unknown costs are damages to the Districts, which is why the Program is
280 seeking self-insurance. There is some time to be able to assess risk associated with “associated
281 costs”. Butler believes the GC should ultimately be comfortable with estimates generated by the
282 EA manager that address potential costs, and this will allow the GC to evaluate and approve the
283 budget associated with particular pulse flows. Butler said recent e-mail discussions indicate
284 there is general agreement on the concept that if the GC approves a pulse flow but unanticipated
285 costs occur that exceed the \$3.081 million, the Program should adjust its budget to cover the
286 extra costs.
287

288 Kraus said the GC had approved concepts several years ago, and now it seems that liability costs
289 are being shifted to the Districts. Butler said it is not fair to shift costs to the Districts or one
290 entity alone. He said the GC should have approval authority on how to address these costs and
291 what happens if there is a cost overrun. Purcell said he does not think what is being discussed
292 puts the Districts at any additional risk. Kraus said the existing bypass agreement draft in the
293 white book gives the Districts terms they can live with. Purcell asked who the agreement should
294 be between. Kowalski said the question is who signs, since the Program itself is not an entity.
295 Barels said the group that drafted the original agreement discussed who signs for the Program.
296 He said the GC needs to keep in mind that the \$3.081 million estimate was tied only to power
297 interference, but not insurance or damages. He said damage is likely to be minimal for NPPD,
298 but NPPD’s concerns about damages are related to irrigation canals and the diversion structure
299 below the J-2 return. Kraus said CNPPID has no specific areas where they anticipate damage,
300 but pulse flows are not normal areas of operation so there is some uncertainty as to potential
301 damages as a result.
302

303 Kraus said it seems like what is happening is a concept of taking away money from the power
304 interference fund \$3.081 million to pay for damages. Purcell said that is the debate, and the
305 question is how to fulfill commitments made to the Districts so that pulse flow operations can
306 move forward. He asked how we self-insure: does the Program add a budget item, or take it out



307 of the \$3.081 million? Butler said it should come out of the \$3.081 million as referenced in the
308 existing EA bypass agreement and Program document. Purcell asked if the Service is
309 comfortable setting aside some portion (\$1 million) of the \$3.081 million for self-insurance.
310 Butler said that is a workable option. Kenny said in discussions with the insurance agent, that
311 option is the one that seems to work best to secure self-insurance and the amount set aside
312 depends on the risk-management comfort level of the group. Purcell said since the Service is
313 comfortable with that approach, it should be integrated into the bypass agreement. **Kowalski**
314 **said the bottom line is that the ad-hoc legal group will continue discussions based on**
315 **comments from the GC and try to have an EA bypass agreement ready for the August GC**
316 **meeting.**

317
318 **Public Comment**

319 Purcell asked for public comment; none offered.

320
321 **Future Meeting Dates and Locations**

322 The next GC meeting will be June 10-11 in Denver, CO at the Country Inn & Suites. Kenny
323 asked if anyone would be interested in attending the Colorado Rockies baseball game on the
324 evening of June 10 so that arrangements could be made in advance.

325
326 The August 12-13 meeting will be at the Hampton Inn Convention Center in Scottsbluff, NE.
327 The GC agreed to move the October 7-8 meeting from Lincoln, NE to Kearney, NE. The
328 December 2-3 meeting will be in Denver, CO.

329
330 Meeting adjourned.