

Appendix B

**Letter of Initiation
July 6, 2004
without attachments**



United States Department of the Interior

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BUREAU OF RECLAMATION

Great Plains Region
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Billings, Montana 59107-6900

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FISH AND WILDLIFE
ECOLOGICAL SERVICES

MEMORANDUM

To: Regional Director, Fish and Wildlife Service, Mountain-Prairie Region

From: Regional Director, Bureau of Reclamation, Great Plains Region
Ecological Services Program Supervisor (S), Fish and Wildlife Service,
Mountain-Prairie Region

Subject: Request to Initiate Formal Consultation for the Proposed Platte River Recovery Implementation Program and Bureau of Reclamation and Fish and Wildlife Service Water-Related Activities

Jeremy D. ...
RT Mc ...

The Bureau of Reclamation and Fish and Wildlife Service request formal consultation under section 7(a)(2) of the Endangered Species Act (ESA) for the following proposed Federal action:

- The proposed participation of the Department of the Interior, through Reclamation and the Service, in funding and implementing a Recovery Implementation Program to improve and maintain habitat for the whooping crane, interior least tern, piping plover, and pallid sturgeon (the target species). The first increment spans a period of 13 years beginning with the completion of a final biological opinion (BO), a record of decision, and a signed Program Agreement between Interior and the States of Colorado, Nebraska, and Wyoming.
- The continuing operation of existing and certain new Federal water-related activities¹ including, but not limited to, Reclamation and Service projects that are (or may become)

¹ The term "water-related activities" means activities and aspects of activities which (1) occur in the Platte River Basin upstream of the confluence of the Loup River with the Platte River; and (2) may affect Platte River flow quantity or timing, including, but not limited to, water diversion, storage and use activities, and land use activities. Changes in temperature and sediment transport will be considered impacts of a "water-related activity" to the extent that such changes are caused by activities affecting flow quantity or timing. Impacts of "water-related activities" do not include those components of land use activities or discharges of pollutants that do not affect flow quantity or timing. "Existing water-related activities" include surface water or hydrologically connected groundwater activities implemented on or before July 1, 1997. "New water-related activities" include new surface water or hydrologically connected groundwater activities including both new projects and

dependent on the proposed Program for ESA compliance during the first increment for the target species and other listed species inhabiting the Central and Lower Platte River. (Descriptions of the covered Reclamation projects are attached).

We believe that the non-Federal components of the proposed Program, such as certain existing and new non-Federal water-related activities (i.e., those with no Federal nexus) and the States' new depletion plans, should be included in this consultation as interrelated with the proposed Federal action.

This joint request is intended to satisfy Reclamation and Service ESA consultation requirements for the proposed Program and for Reclamation and Service water-related activities as defined in the proposed Federal action that may affect the target species and other listed species inhabiting the Central and Lower Platte River.

This memorandum confirms that Reclamation and the Service have agreed that a draft programmatic BO will be issued as soon as possible after incorporating results of the recent negotiations between Interior and the States on portions of the Program document and prior to closure of the DEIS public comment period (August 20, 2004). We also have agreed that the timeline for completing this consultation will be extended pursuant to 50 CFR §402.14(e). We intend that a final programmatic BO will be issued within 45 days following publication of the Final Environmental Impact Statement (FEIS) for the proposed Program.

June 14-15 Negotiations and Supporting Documents

Also attached are recent Program document changes agreed to by the Governance Committee (GC) during the June 14-15, 2004 negotiating meeting between the parties. These versions of the Program documents supercede earlier versions. The attachments include: (1) Changes made and agreed upon during GC Negotiating Team Meeting, June 14-15, 2004, (2) draft Platte River Recovery Implementation Program, December 22, 2003, and (3) Draft Land Plan, December 9, 2003. Please note that although attachments 2 and 3 above have dates of December 9 and

expansion of existing projects, both those subject to and not subject to section 7(a)(2) of the ESA, which may affect the quantity or timing of water reaching the associated habitats and which are implemented after July 1, 1997.

Existing water-related activities for Reclamation refer to water projects in the Platte River basin upstream of the confluence with the Loup River near Columbus, Nebraska including the Colorado-Big Thompson, North Platte, and Kendrick Projects and the Kortess and Glendo Units of the Pick-Sloan Missouri Basin Program. Existing Service water-related activities or projects include various Federal Aid Projects, Partners for Wildlife Program Projects, and water-related activities at Arapaho National Wildlife Refuge.

December 22, 2003, the June 14-15, 2004 agreed upon changes are shown in redline-strikeout format. The fourth attachment includes minutes of the June 14-15 negotiating meeting and documents the GC's agreement to (a) fund a series of workshops to address adaptive management concerns identified by the Service in the current version of the the Integrated Monitoring and Research Plan (IMRP), and (b) revise the IMRP to include studies relating to Program and Depletion Plan impacts to the pallid sturgeon, its habitat components, and floodplain connectivity. Results of the study will be used to develop any needed measures to offset impacts to the pallid during the first Program increment.

Additional Information for Final EIS/BO

As described below, we note that some aspects of the proposed Program have not yet been fully defined and are currently being negotiated between Interior and the States. We understand that the Program proposal will be fully defined prior to issuance of the final BO based, in part, on information contained in the National Research Council of the National Academies pre-publication copy of "Endangered and Threatened Species of the Platte River" dated April 2004, information obtained during public review of the draft environmental impact statement (DEIS), and during subsequent deliberations by Program participants. The final Program proposal, including the analysis of Depletion Plans, will be addressed in the FEIS and final BO.

Depletion Plans and Program Documents

The draft EIS analysis was based on the assumption that Program Depletion Plans would be implemented and would prevent or offset all future depletions to target flows. During preparation of the DEIS the parties began development of additional information concerning the likely water-related effects of the Depletion Plans during the first increment of a Program. This information is not yet ripe for analysis in the draft BO but will be available for the FEIS and final BO. Because the language in the Program documents has kept pace with the negotiations and anticipated future analysis, current versions of the Program documents (e.g., the Colorado and Nebraska Depletion Plans) contain references to future depletions that are not analyzed in the DEIS. Specifically, the Program document (III.E.1.d, pg 14) states that reductions in lower Platte River flows will be

addressed as described in the Colorado Depletion Plan. That plan (attachment 5, Section 9.I.H.3) cites depletions associated with 121,000 acre-feet of water supply from new sources of storage development and water re-use. Such impacts to the target species and their habitats have not yet been analyzed. The parties have agreed that offsetting measures needed to address adverse effects to the pallid sturgeon will be implemented during the first increment. The EIS team will provide this information to the Service after it has been developed for analysis in the FEIS and final BO. Therefore, we request that effects associated with the Depletion Plans, that are currently not analyzed in the DEIS and not addressed in the draft BO, be included in the final BO following the parties' deliberations.

Background

In 1997, Interior and the States signed a *Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska* (Cooperative Agreement). The Cooperative Agreement established a GC composed of the States, water users, environmental organizations, and Federal agencies to develop a Program and the means for its implementation. In accordance with this Cooperative Agreement, the participants have pursued a basin-wide, cooperative effort to improve and maintain habitat for the target species.

The Cooperative Agreement provided that the Service "will evaluate whether the activities under the Proposed Alternative and, if different, under the preferred alternative, can serve as a reasonable and prudent alternative under section 7(b)(3) of the ESA for water-related activities in the Platte River Basin." (See page 8)

The purpose of the proposed Program is to improve land and water habitat for the target species; offset the effects of existing water development; ensure that the effects of future water development activities are offset so that they are not likely to jeopardize the continued existence of the target species or adversely modify designated critical habitats; provide greater regulatory certainty for water users by providing ESA compliance for existing and certain new water development projects that are covered by a state's new depletion plan; and reduce the need to list more species. As defined for the Program, "ESA compliance" means: (1) Serving as the reasonable and prudent alternative to offset the effects of water-related activities that FWS found were likely to cause jeopardy to one or more of the target species or to adversely modify critical habitat before the Program was in place; (2) providing offsetting measures to avoid the likelihood of jeopardy to one or more of the target species or adverse modification of the critical habitat for new or existing water-related activities evaluated under the ESA after the Program was in place; and (3) avoiding any prohibited take of target species.

The proposed Program contains three elements: (1) Increasing stream flows (reducing shortages to Service target flows) in the central Platte River during relevant time periods through re-regulation and water conservation/supply projects; (2) enhancing, restoring, and protecting habitat lands for the target species; and (3) accommodating new water-related activities in a manner consistent with long-term Program goals.

The Program will be implemented in phases, or increments, with only the initial 13-year increment under review at this time. The results of Program implementation will be tracked and evaluated so the Program can be adjusted over time. The adaptive management process will include documenting baseline data for the target species' habitat, monitoring target species and their habitats, setting objectives and timetables for review, developing specific milestones and research activities, evaluating species' and habitat responses to Program activities, incorporating

peer review, evaluating Program effectiveness, and reviewing and adjusting Program goals and objectives.

The attached DEIS describes the proposed Program and assesses the benefits and impacts of proposed GC Alternative scenarios and other alternatives. Scenarios have been developed for the GC Alternative because a number of important management decisions may not be made until the Program is implemented. Two scenarios were developed to bound the range of reasonably-likely outcomes that could result from implementing this alternative. The two scenarios presented likely bound the scope and scale of actions that would be undertaken for this alternative and also likely indicate the range of environmental effects that would result as determined by such factors as the location of Program lands, the extent of habitat restoration, and the ability of the Program to deliver water to the habitat.

The DEIS devotes considerable attention to the effects of the alternatives on target species, designated critical habitats, and other essential habitat for target species in and along the Central and Lower Platte River. The DEIS provides analyses of the proposed GC Alternative scenarios to assist the Service in developing a draft BO. The DEIS has been provided to the Service and serves as the biological assessment (BA) for the proposed Federal action.

Reclamation and the Service recognize that additional site-specific consultations will be required as the proposed Program is implemented. Assuming that an ESA-sufficient Program is adopted, it is our intent that the following process will apply to future consultations on Reclamation and Service water-related and other activities in the Platte River basin.

1. Reclamation and the Service will each review their activities in the Platte River basin not covered by this consultation and consult on those that may affect listed or proposed species or adversely modify designated or proposed critical habitat.
2. In future consultations for water-related activities where target species and/or their designated critical habitats in the Central and Lower Platte River may be affected or adversely modified, so long as those activities are conducted consistent with the Program, Reclamation and the Service intend to rely upon the Program to provide needed ESA compliance during the first increment (as defined earlier in this memorandum). In other words, it is expected that the Program will provide offsetting or conservation measures to avoid the likelihood of jeopardy findings for the target species in the Central and Lower Platte River during future consultations.

Information Requested Through This Consultation

Reclamation and the Service recognize that any consultation under section 7(a)(2) must address the direct, indirect, and cumulative effects of the proposed Federal action and the effects of other activities that are interrelated or interdependent with that action. In this particular case, the proposed Federal action is Interior's participation in funding and implementing the first

increment of the Program that also contains the interrelated and interdependent activities as described in the Program documents and attached DEIS.

Reclamation and the Service request initiation of consultation on the impacts on the target species and on other listed species and designated critical habitat found in the Central and Lower Platte River for water-related effects associated with the Program.

Given the programmatic nature of this consultation and the long-term importance of the Program to federally-listed species and designated critical habitats and existing and future water development within the Platte River basin, Reclamation and the Service request that this consultation and the resulting BO address the following issues:

Will implementation of either of the proposed GC Alternative scenarios for the first increment of the Program likely jeopardize the continued existence of any listed species or adversely modify designated critical habitats in the Platte River Basin?

Can implementation of either of the proposed GC Alternative scenarios reasonably be expected, for the first increment of the Program, to provide ESA compliance for existing water-related activities and for water-related activities covered by depletion plans for the target species and for other listed species and critical habitat found in the Central and Lower Platte River?

Description of the Action Area

The action area is defined as all areas to be affected directly or indirectly by the proposed Federal action as defined on the first page of this letter and not merely the immediate area involved in the action (50 CFR 402.02). For purposes of this consultation, the action area is defined as the main stem, tributaries, and associated water projects of the Platte River in Nebraska; the main stem South Platte River, tributaries, and associated water projects in Nebraska, Wyoming, and Colorado; and the main stem North Platte River, tributaries, and associated water projects in Nebraska, Wyoming, and Colorado. Some effects may occur in the Missouri River near its confluence with the Platte River. This reach of the Missouri River is a component of Recovery-Priority Management Area 4 of the *Pallid Sturgeon Recovery Plan*. The action area also includes irrigated lands in the Platte River basin where water may be leased or sold to the Program. These lands generally lie within a few miles of the North Platte River from Seminoe Reservoir in Wyoming downstream to Lake McConaughy in Nebraska; the South Platte River from Greeley, Colorado downstream to its confluence with the North Platte River in Nebraska; and the Platte River downstream to Grand Island, Nebraska.

The DEIS will serve as the BA for the proposed Federal action and evaluates the effects of the proposed Federal action on the following listed and candidate species and designated critical habitats that may be present in the action area.

Threatened Species

Piping plover (*Charadrius melodus*)
 Bald eagle (*Haliaeetus leucocephalus*)
 Preble's meadow jumping mouse
 (*Zapus hudsonius preblei*)
 Western prairie fringed orchid
 (*Platanthera praeclara*)
 Ute ladies'-tresses orchid (*Spiranthes diluvialis*)
 Colorado butterfly plant
 (*Gaura neomexicana coloradensis*)

Endangered Species

Whooping crane (*Grus americana*)
 Interior least tern (*Sterna antillarum*)
 Pallid sturgeon (*Scaphirhynchus albus*)
 Eskimo curlew (*Numenius borealis*)
 Wyoming toad (*Bufo baxteri*)
 Black-footed ferret (*Mustela nigripes*)
 American burying beetle (*Nicrophorus americanus*)

Candidate Species

Black-tailed prairie dog (*Cynomys ludovicianus*)

Whooping Crane Critical Habitat

Critical habitat was designated for the whooping crane in 1978. Critical habitat on the Platte River is defined as an area of land, water, and air-space in Dawson, Buffalo, Hall, Phelps, Kearny, and Adams counties consisting of a strip of river bottom with a north-south width of three miles, a south boundary paralleling Interstate 80 beginning at the junction of U.S. Highway 283 and Interstate 80 near Lexington and extending eastward along Interstate 80 to the interchange for Shelton and Denman, Nebraska near the Buffalo-Hall county line. Nutritional requirements, cover or shelter, and space for normal behavior were considered as primary constituent elements in designating critical habitat on the Platte River for the whooping crane.

Piping Plover Critical Habitat

Critical habitat was designated for the northern Great Plains breeding population of piping plover in 2002. Critical habitat for the piping plover on the Platte River begins at the Lexington bridge and extends downstream to the confluence with the Missouri River. Critical habitat was also designated for all 68 miles of the Loup River – a principle tributary to the Lower Platte River. The primary constituent elements associated with piping plover critical habitat on the Platte and Loup rivers include sparsely vegetated channel sandbars, sand and gravel beaches on islands, temporary pools on sandbars and islands, and the interface with the river.

Preble's Meadow Jumping Mouse Critical Habitat

Critical habitat for the Preble's meadow jumping mouse was designated in 2003. Critical habitat designation includes eight habitat units totaling approximately 31,000 acres along approximately 360 miles of streams in Colorado and Wyoming. This designation includes river and stream reaches and adjacent areas in the North Platte and South Platte river basins. The primary

constituent elements for the mouse include a pattern of dense riparian vegetation consisting of grasses forbs, and shrubs in areas along rivers and streams that provide open water through the mouse's active season; adjacent floodplains and vegetated uplands with limited human disturbance; areas providing connectivity between and within populations; and dynamic geomorphological and hydrological processes typical of the systems within the mouse's range.

Determinations of Effect

Reclamation and the Service have been working together since 1997 to develop and analyze the proposed Program. As joint leads for National Environmental Policy Act compliance, Reclamation and the Service have devoted considerable time and expertise in determining how the proposed Program and other alternatives would affect listed and candidate species, designated critical habitat, habitat elements, and other important environmental parameters. Based on the analysis contained in the DEIS and consistent with guidance provided at 50 CFR 402.12, Reclamation and Service staff assigned to the DEIS interdisciplinary team have determined Program effects on all listed species potentially affected by water-related activities associated with the Program as documented on pages 5-157 and 5-158 of the DEIS.

Potential effects for some listed species found outside the Central and Lower Platte River are undetermined at this time because all alternatives, through land management and water leasing activities, have potential to affect lands or stream flows in areas occupied by one or more listed species. Such activities include land habitat restoration in Nebraska and/or water leasing in the States. Because of the wide distribution of these species and the uncertainty regarding the specific location of habitat restoration and water action plan projects (including water leasing), the potential for site-specific impacts to listed species other than target species, their habitats, and designated critical habitat within the action area will not be known until a Program is adopted and specific land and water actions are proposed.

The DEIS (Environmental Commitments section) notes that these potential effects that are associated with water leasing or habitat management could be addressed and potentially eliminated through site-specific, pre-leasing and planning reviews if such reviews were incorporated into these scenarios and made a standard implementation practice. In all cases, the Program can choose where to locate such actions. Because of the substantial involvement of Interior in funding and implementing the Program, Program-related activities will be treated as having a Federal "nexus." That is, the Program will evaluate the potential impact of specific Program activities on other listed species when Program activities are proposed and prior to implementation. The Program will take appropriate actions if, and when, adverse effects to other listed species and/or designated critical habitats are identified. Any adverse effects will be avoided or offset based on consultation with the Service. Upon discussion with the Service's Wyoming Field Office, we realize that the DEIS does not contain language that ensures protection of the Wyoming toad, a species with a severely restricted range in danger of extinction. Therefore, we propose to include a measure in the FEIS that stipulates we would not

purchase any water leases that would result in a reduction of water to occupied habitat for the Wyoming toad. We request your concurrence with our conclusion that, with the implementation of this measure, the proposed Federal action is not likely to adversely affect the Wyoming toad.

If you have questions concerning this request for consultation, please contact Gary Davis of Reclamation at 406-247-7717 or Mark Butler of the Service at 303-445-2103.

Attachments: Draft Platte River Recovery Implementation Program, June 17, 2004
 Platte River Endangered Species Recovery Implementation Program, Draft Environmental Impact Statement, December 2003
 Changes made and agreed upon during GC Negotiating Team Meeting, June 14-15, 2004
 Draft Platte River Recovery Implementation Program, December 22, 2003
 Draft Land Plan, December 9, 2003.
 Governance Committee Negotiating Meeting Minutes, June 14-15, 2004
 Project Description: Bureau of Reclamation Colorado-Big Thompson Project
 Project Description: Bureau of Reclamation North Platte Project
 Project Description: Bureau of Reclamation Glendo Project
 Project Description: Bureau of Reclamation Kendrick Project
 Project Description: Bureau of Reclamation Kortess Project

cc: Bill Owens, Governor of Colorado, 136 State Capitol Building, Denver, CO 80203
 Mike Johanns, Governor of Nebraska, State Capitol, P.O. Box 94848, Lincoln, NE 68509
 David Freudenthal, Governor of Wyoming, State Capitol, Cheyenne, WY 82002
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(w/o atts. to ea)