



PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Discussion Paper – Status of Management Agreements

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Introduction

The purpose of this paper is to discuss the status of management agreements between the Program and other land owners with respect to the ability of these agreements to be counted toward the Land Plan milestone (Milestones Document, Milestone #5), "... to protect and, where appropriate, restore 10,000 acres of habitat by no later than the end of the First Increment."

Management agreements negotiated by the Executive Director's Office (EDO) have been entered into between the Platte River Recovery Implementation Foundation and land owners to allow habitat rehabilitation work to proceed on non-Program lands. The agreements provide assurance that the lands covered will remain accessible to the Program for the duration of the First Increment to allow habitat rehabilitation and maintenance activities to occur in accordance with the appropriate Complex Management Plan. To date, the lands subject to management agreements are all associated with the Elm Creek Complex, adjacent to or in close proximity to Program lands. Management agreements have been crafted in the Elm Creek Complex with the Nebraska Public Power District (NPPD), the Whooping Crane Trust (WCT), the Nebraska Game and Parks Commission (NGPC), and three private land owners.

The management agreements crafted to date differ from a lease, primarily in that the land owner does not receive a cash payment for extending the opportunity for habitat rehabilitation and maintenance activities to occur, and consequently the land owner retains more rights than might be the case under a lease arrangement. Benefits to the land owner consist primarily of the improvements to their property associated with the habitat work performed by the Program, but may also include fence replacement and improved access. In the case of NPPD it also includes provision for extensive monitoring of sediment transport parameters and sediment deposition in the Kearney Canal.

The basic question that has been posed and that needs to be addressed is: "Can lands covered by a management agreement count toward the 10,000 acre milestone?"

Program Document

In all cases, when a question such as, "Can lands covered by a management agreement count toward the 10,000 acre milestone?" is posed, the EDO turns to the Program Document for guidance.

Attachment 4, Land Plan of the Program Document states in the first paragraph that:

The "initial focus" of the Program is to acquire interests in lands¹ between Lexington and Chapman, Nebraska, to restore them where appropriate, to maintain them, and otherwise to manage them so that they provide benefits to the target species based on the individual features of the land while using some or all of the characteristics of "habitat complexes"

¹ "Acquire" includes purchase, lease, easement or other arrangements (Appendix E).



The footnote is of particular significance in that it provides for “other arrangements” to be included as part of the concept of acquisition. The reference to Appendix E in the footnote, where Appendix E is the Land Plan Glossary, provides the source of the definition of the term **Acquire**, and the glossary also provides further definition of the terms **Easements** and **Lease**. The glossary provides no further definition of other agreements.

Guidance on what is required in agreements that are less than a fee simple interest in land is found in the Land Plan in Section II. Land Acquisition, C. Process for Acquiring, Holding and Disposing of Interests in Program Lands, 2. Controlling Program Lands:

If the Program acquires less than a fee simple interest in a parcel of property, other individuals or entities will hold property interests in that parcel. For each such parcel, the Governance Committee must have assurances at the time of acquisition that the Program will have adequate control of activities on the land to implement a management plan. These assurances may be provided through terms of leases, easement agreements or other written agreements with such individuals or entities.

The specifics requirements of the information to be contained in the agreements or plans less than a fee simple interest are provided subsequently in Section 2. The following information, as a minimum, must be provided, as paraphrased below:

- A description of access for Program participants,
- A description of land uses and management to assure non-Program and Program uses are compatible,
- The right to carry out agreed upon management plans for the property,
- A requirement for sufficient notice of expiration/termination, if applicable,
- A description of how the property will be dealt with if the Program ends,
- A description of any conditions that limit Program activities on the property,
- A description of the rights retained by the landowner,
- A description of the conditions of public access, if any,
- A description of the required communications between the Program and the landowner.

Finding

Based on a review of the Program Document, there are adequate provisions within the Program Document to allow lands under a management agreement to count toward the Land milestone 10,000 acres, provided the Governance Committee (GC) approves.

Considerations

The management agreements were not developed by the EDO with the intent of their counting toward the Land milestone. While the EDO believes they meet the minimum requirements prescribed above, either explicitly or implicitly, they would need to advance through the Land Advisory Committee (LAC) formal vetting and recommendation process before coming before the GC.

Factors to be considered as part of the deliberation process include:

- Existing management agreements with NPPD, NGPC, and the WCT may require the further development of a more rigorous Sponsorship Agreement to allow them to count toward the Land Plan milestone. Criteria and requirements for Sponsors of Program lands are described in Section II. Land Acquisition, C. Process for Acquiring, Holding and Disposing of Interests in Program Lands, 1. Holding Interests in Program Lands, b. Sponsors of Program Lands.



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- Existing management agreements with private landowners cover their entire property, with limited areas actually part of defined management action plans. Better definition of the area that should be considered toward the milestone is required.
 - A policy determination by the GC as to whether the Land Plan 10,000 acre milestone is a floor or a ceiling.
 - The term of all of the management agreements and the one existing lease expires at the end of the First Increment. The impact on long term land goals resulting from acres that at present only count until the end of the first increment should be considered.