PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Finance Committee Meeting Minutes
March 9, 2010

Attendees

Mike Purcell, Chair – State of Wyoming
Jerry Kenny – ED
Bruce Sackett – ED Office
Jason Farnsworth – ED Office
Jim Schneider – State of Nebraska
Greg Wingfield – U.S. Fish and Wildlife Service
Brian Barels – Nebraska Public Power District
John Lawson – Bureau of Reclamation
Ted Kowalski – State of Colorado
Don Kraus – Central Nebraska Public Power and Irrigation District
John Heaston – The Nature Conservancy
Larry Schulz – ED Office Consultant
Dennis Strauch – Upper North Platte Water Users
Brock Merrill – Bureau of Reclamation

Welcome and Administrative

Purcell called the meeting to order and the group proceeded with a roll call. Wingfield moved to approve the February10, 2010 FC meeting minutes; Kraus seconded. **Minutes approved.**

Indexing of Program Funds

Lawson presented on the results of the ongoing efforts to establish a methodology to index Program funds for inflation. Consultation and coordination with the Department of the Interior (DOI) Office of the Solicitor and states of Colorado and Wyoming has resulted in the development of a methodology that has been approved by the DOI and is acceptable to the two states. Indexing will be based on the Bureau of Reclamation's Construction Cost Trends (CCT). All land acquisition costs will be indexed using CCT Nebraska Land Index, water conservation/supply projects will be based on the CCT General Property Index, and all other Program costs will be based on the Federal Salary Index, since they are primarily staff driven.

Of the cash contributions, funding which remains to be expended each October 1st will be indexed and NOT the remaining balance of Program funding to be appropriated. The first index will be applied on October 1, 2009 per guidance from the DOI Office of the Solicitor. In order to maintain the established cost share equality between Federal and State contributions, an index adjustment will also be applied to the cash equivalent water and land contributions provided by the States. The cash contribution index ratios will also be applied to the cash equivalent contributions in order to maintain the cost share equality.

At the conclusion of the presentation, Purcell opened the floor for discussion. Schneider asked if there was a way to adjust the Program budget to account for changes in total budget category index ceilings due to disparities in index ratios. Lawson and Purcell indicated that the Governance Committee (GC) has the discretion to change cash allocations between budget categories as necessary. However, we should not worry about reallocating at this time because much of the funding has not been spent and indexing ratios may vary widely in the future. The appropriate time for evaluation and reallocation of budgets will likely be near the end of the First Increment of the Program.

Wingfield asked if indexing increases the ceiling for Federal funding that could be contributed to the Program. Lawson replied that it does. Because of the way the legislation was written, indexing automatically increases the Federal Government's ability to appropriate monies above the original cash contribution and up to the indexed ceiling. Barels asked why the first indexed year is October 2008 - September 2009 instead of October 2007 – September 2008. Lawson indicated that the legislation dictated that indexing begins the first October following authorization of the legislation. Since the legislation was authorized in May of 2008, indexing begins in October of 2008.

Sackett asked if this indexing method could be changed. Lawson indicated that the process would be for the FC to approve and recommend for GC approval. Once the GC approves the indexing method, it would not change unless agreed upon by the Governance Committee. This since representatives of the three primary parties contributing cash (DOI, Colorado and Wyoming) are represented on the GC.

Heaston moved to approve the methodology and forward to the GC with a recommendation for GC approval; Kraus seconded the motion. Kowalski stated for the record that the State of Colorado has continued reservations with the indexing approach due to their interpretation of the authorizing legislation. However, they are willing to proceed given the fact that the monies that they have already contributed are accruing interest to help offset cash contribution increases due to indexing. **Indexing methodology approved (approved methodology attached).**

<u>Cottonwood Ranch OCSW and Flow Consolidation RFP</u>

Farnsworth provided background on the RFP, which combines design, bidding and construction administration for the Cottonwood Ranch OCSW complex with conceptual design for flow consolidation on the same property in order to ensure that the two projects are complementary. Purcell asked for budget line item details and reminded the ED Office that the FC wants to see budget implications for all RFPs at the beginning of presentation to the FC. The RFP budget is $200,000 and comes from line item PD-19. Heaston asked the ED Office to make sure that the OCSW project does not result in the transfer of property mineral rights to a contractor. Farnsworth indicated that the RFP solely includes design work and not construction but the ED Office will make sure that the construction contract addresses mineral rights. Kowalski asked about construction costs and Farnsworth indicated that this project would result in the development of a construction cost estimate. That estimate along with a Request for Bids will be

brought forward to the FC for approval prior to bid letting. Farnsworth requested additions to the selection panel. Kowalski requested addition of a Colorado representative. Schneider requested addition of Pat Goltl with Nebraska DNR. Kowalski moved to approve the RFP; Schneider seconded. **RFP approved.**

Closing Business

Purcell reminded the FC of the contract discussion that occurred at the February FC meeting and requested that the ED Office develop a standard contract for consulting services. The State of Wyoming has provided a standard contract used by the Wyoming Water Development Commission and Purcell indicated that other FC members could also provide examples. He also requested that the contract NOT use standard engineer's terms and conditions and that the ED Office provide the draft to the FC for review. Once the FC has reviewed the contract, the ED Office will retain a Nebraska attorney to review and provide comment on the contract. **The ED Office will develop a draft contract to bring before the FC at their next meeting.**

Meeting adjourned at 11:40 a.m. Central time.

Summary of Action Items/Decisions from November 2009 FC meeting

1) FC approved indexing methodology for Program funds.
2) FC approved Cottonwood Ranch OCSW and Flow Consolidation RFP
3) ED Office will develop standard Program contract for consulting services.

Platte River Recovery Implementation Program Indexing Overview

1. All land acquisition costs will be indexed using the CCT Nebraska Land Index (Attachment 1).

2. The Program's Water Conservation/Supply projects will be indexed using the CCT General Property Index (Attachment 1).

3. All other Program costs will be indexed using the CCT Federal Salary Index (Attachment 1).

4. The first index to the Program will be applied on October 1, 2009 relative to a baseline starting on October 1, 2008 (Solicitor's Opinion – Attachment 2).

5. For each year thereafter, the index will be applied on October 1st to the funding which remains to be expended by the Program (the remaining amount of funding to be disbursed by the Nebraska Community Foundation).

Attached is the supporting material (Attachment 3) that reflects the balance of funds to be expended as of October 1, 2009, and the application of an index to the Program from October 1, 2008 to October 1, 2009. The application of the index results in a total Program ceiling increase from $187,140,000.00 ($157,140,000.00 Federal, $24,000,000.00 Colorado, $6,000,000.00 Wyoming) to $189,913,617.70 ($159,470,464.78 Federal, $24,346,925.79 Colorado, $6,096,227.13 Wyoming).

In order to maintain the established cost share equality between Federal and State contributions, an index adjustment will also need to be applied to the cash equivalent water and land contributions provided by the States. Section 515(b)(3)(B)(ii) of the Consolidated Natural Resources Act of 2008 (Public Law 110-229) (Attachment 4) establishes credits for contributions of land or water (credits established in the Program Finance Document - Attachment 5) for the purposes of implementing the Program, as determined to be appropriate by the Secretary of the Interior. Attachment 3 illustrates how the State cash equivalents can be indexed at the same rate as the cash contributions in order to maintain the cost share equality.

Bureau of Reclamation Construction Cost Trends

(Base: 1977 = 100 for Indexing Field Costs Only)

Item	2008 Jan	2008 Apr	2008 Jul	2008 Oct	2009 Jan	2009 Apr	2009 Jul	2009 Oct	2010 Jan	2010 Apr	2010 Jul	2010 Oct	2011 Jan	2011 Apr	2011 Jul	2011 Oct
Construction Indexes																
Earth dams	291	296	309	312	298	289	291	294								
Dam structure	257	262	271	274	266	260	265	268								
Spillway	323	329	347	349	326	311	312	315								
Outlet works	334	338	354	359	343	332	332	332								
Concrete dams	320	323	332	334	326	319	321	321								
Diversion dams	307	311	322	326	320	316	317	318								
Pumping plants	305	308	321	326	322	318	319	320								
Structures and improvements	308	312	326	330	320	315	316	318								
Equipment	307	309	321	329	329	326	328	328								
Pumps and prime movers	314	317	332	341	341	337	339	339								
Accessory elect. & misc. equip.	296	298	303	311	311	310	311	312								
Powerplants	302	306	317	322	318	319	321	323								
Structures and improvements	307	312	326	330	320	315	316	318								
Equipment	302	305	316	321	320	324	326	328								
Turbines and accessories	307	310	320	326	324	329	332	333								
Accessory elect. & misc. equip.	294	296	304	312	310	309	311	312								
Steel pipelines	326	328	347	361	362	352	350	350								
Concrete pipelines	296	305	314	318	317	316	317	317								
Canals	312	317	329	333	324	317	320	324								
Canal earthwork	295	300	311	315	305	298	304	308								
Canal structures	318	322	334	338	331	326	327	329								
Tunnels	332	337	347	353	348	345	346	346								
Laterals and drains	360	372	400	404	390	371	366	373								
Lateral earthwork	285	289	298	302	295	289	294	298								
Lateral structures	403	419	459	463	446	418	408	416								
Distribution pipelines	296	304	313	318	316	316	317	317								
Switchyards and substations	303	311	321	327	319	314	313	314								
Wood pole transmission lines	244	252	257	260	244	228	223	224								
Poles and fixtures	209	203	210	214	202	193	198	198								
Overhead conductors and devices	291	317	317	320	299	275	258	261								
Steel tower transmission lines	302	317	327	330	317	304	295	294								
Primary roads	320	323	339	340	327	316	316	316								
Secondary roads	394	399	416	418	409	393	397	396								
Bridges	342	346	354	360	358	354	356	357								
General property	294	295	308	317	307	304	304	305								
Composite trend	318	325	340	345	337	328	327	329								
Land Indexes																
Arizona	926	986	1046	1096	1146	1196	1246	1226								
California	720	750	780	815	850	885	920	890								
Colorado	420	445	470	490	510	530	550	525								
Idaho	506	546	586	616	646	676	706	656								
Kansas	245	257	269	284	299	314	329	314								
Montana	484	534	584	634	684	734	784	714								
Nebraska	260	272	284	309	334	359	384	369								
Nevada	784	849	914	969	1024	1079	1134	1079								
New Mexico	639	699	759	814	869	924	979	909								
North Dakota	215	225	235	255	275	295	315	310								
Oklahoma	250	260	270	282	294	306	318	313								
Oregon	440	455	470	495	520	545	570	560								
South Dakota	372	392	412	447	482	517	552	532								
Texas	418	448	478	513	548	583	618	593								
Utah	700	770	840	910	980	1050	1120	1020								
Washington	339	347	355	370	385	400	415	405								
Wyoming	421	456	491	526	561	596	631	596								
Other Indicators																
Machinery and equipment (BLS)	291	293	298	300	305	307	309	307								
Federal salary	316	316	316	316	328	328	328	328								

Inquiries to: 86-68170, Fax: (303) 445-6475

United States Department of the Interior
BUREAU OF RECLAMATION
OFFICE OF THE SOLICITOR
P.O. Box 31394
Billings, Montana 59107-1394

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May 11, 2009

MEMORANDUM

TO: Regional Director, Bureau of Reclamation
Great Plains Region (GP-3400)

FROM: Karan L. Dunnigan, Field Solicitor
Rocky Mountain Region (Billings)

SUBJECT: Legal Opinion – Whether the Indexing Provision in P.L. 110-229 can be interpreted to begin on January 1, 2005, or must begin on October 1, 2008, the first October after the date of enactment.

You have requested an opinion as to whether the authorization by Congress of the Platte River Recovery Implementation Program and the indexing of appropriations for the Program can be calculated from the date when the authorization was introduced in Congress, January 1, 2005, or whether it may not begin until October 1, 2008, the first October after the Act was enacted.

Section 515 (b) (6) (C) of P.L. 110-229 reads as follows:

> Adjustment – The balance of funds remaining to be appropriated shall be adjusted for inflation on October 1 of the year after the date of enactment of this Act and each October 1 thereafter.

Paragraph (6) is a title reading "AUTHORIZATION OF APPROPRIATION." Subparagraph (A) reads "IN GENERAL – There is authorized to be appropriated to carry out projects and activities under this subsection $157,140,000, as adjusted under subparagraph (C)."

You have provided information to this office indicating that the amount of monies needed and intended for this program was determined when the bill containing the authorization was introduced into Congress and that initial legislation contained language that the costs were based on January 2005 levels. You provide further information that it was the intent that the amount of appropriations authorized by what is now subparagraph (A), be adjusted for inflation and that such an indexing provision is now in subparagraph (C). Your materials explain that when the Platte River Recovery Implementation Program legislation was eventually passed as part of the Consolidated Natural Resources Act of 2008, it did not contain the language concerning the 2005 cost levels. You provide as support for the above explanation, parts of the Program Document and the

Finance Document that we understand were generated by the Governance Committee for the Program. We do not have any information showing that these documents were submitted to Congress or that they reflect the intent of Congress.

When reviewing a statute, the reviewer examines the pertinent language in context. *Sutherland Statutory Construction, Statutes and Statutory Construction*, vol. 2A, § 46.06, 181-194, Norman J. Singer, ed. 6th ed. (Thomson – West 2005) states that within a statute each sentence, phrase and word must be given meaning. As we have reviewed Section 515 of the Consolidated Natural Resources Act of 2008, we have determined that the meaning of subparagraph (C) is clear on its face. Indexing for inflation is to begin on October 1 of the year after enactment of the Act. We understand that the intent of the sponsors of the legislation was to be able to index the subparagraph (A) costs from January of 2005. However, we do not find among the documents provided by your staff anything that would indicate that Congress intended such indexing to be begin earlier than expressed in the legislation.

You explain that the bill was introduced in 2005, but Congress did not finally pass the authorization until 2008. We find it credible that Congress may merely have forgotten to relate the indexing back to 2005 so that the costs of the program could account for inflation. However, we have not found any case law that would support an interpretation of relating back because of a mere oversight and no other expression of intent by Congress. We believe that such an interpretation would set a bad precedent for future legislative interpretation.

If you have further questions, please contact John Chaffin of this office at 406-247-7058.

Indexing the PRRIP

Index Calculation[1]

	October 2008		October 2009		Index Factor to Apply on 10/1/09
Land Index (Nebraska Land Index)	309	÷	369	=	1.19
Water Index (General Property Index)	317	÷	305	=	0.96
Other Cost Index (Federal Salary Index)	316	÷	328	=	1.04

Index Application

	A Original Program Budget[2]	B Expenditures Through 9/30/2009	C Budget Remaining As of 10/1/09 (A minus B)	D Index Applied on 10/1/2009 (C times Index)	E Total Budget Change (D minus C)	F New Program Ceiling (E plus A)
Land (Index 1.19)	$22,900,000.00	$3,516,024.28	$19,383,975.72	$23,066,931.11	$3,682,955.39	$26,582,955.39
Water (Index 0.96)	$90,140,000.00	$383,963.63	$89,756,036.37	$86,165,794.92	-$3,590,241.45	$86,549,758.55
Other (Index 1.04)	$74,100,000.00	$7,077,405.95	$67,022,594.05	$69,703,497.81	$2,680,903.76	$76,780,903.76
Total	$187,140,000.00	$10,977,393.86	$176,162,606.14	$178,936,223.84	$2,773,617.70	$189,913,617.70

State & Federal Shares - Original Total Program Cash Budget of $187,140,000[2] - New Ceiling of $189,913,617.70

Colorado	$24,000,000.00 / $187,140,000.00	÷	0.1282
Wyoming	$6,000,000.00 / $187,140,000.00	÷	0.0321
Federal	$157,140,000.00 / $187,140,000.00	÷	0.8397

	New Ceiling		Parties Share		Parties Share of New Ceiling
Colorado	$189,913,617.70	X	0.1282	=	$24,346,925.79
Wyoming	$189,913,617.70	X	0.0321	=	$6,096,227.13
Federal	$189,913,617.70	X	0.8397	=	$159,470,464.78

Maintaining the Original Cost Share - Original Program Budget of $317,330,000 ($187,140,000 Cash; $130,190,000 Cash Equivalents)[2]

State Contributions / Total Program	$160,190,000.00 / $317,330,000.00	=	0.5048	=	States Cost Share Ratio
Federal Contributions / Total Program	$157,140,000.00 / $317,330,000.00	=	0.4952	=	Federal Cost Share Ratio
New Federal Program Ceiling (Cash) / Original Federal Program Ceiling (Cash)	$159,470,464.78 / $157,140,000.00	=	1.015	=	Index Factor for State Cash & Equivalents

	Cash & Equivalents		Index Factor		New Value State Cash & Equivalents
Original Value State Cash & Equivalents	$ 160,190,000.00	X	1.015	=	$162,592,850.00

New Value State Cash & Equivalents	$162,592,850.00
New Federal Ceiling	$159,470,464.78
New Total Program	$322,063,314.78

New Federal Ceiling / New Total Program	$159,470,464.78 / $322,063,314.78	=	0.4952	=	Federal Cost Share Ratio
New Value State Cash & Equivalents / New Total Program	$162,592,850.00 / $322,063,314.78	=	0.5048	=	State Cost Share Ratio

1) Index calculated using the Bureau of Reclamation's Construction Cost Trends

2) Original Program Budget from the Program Finance Document

SEC. 515. PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM AND PATHFINDER MODIFICATION PROJECT AUTHORIZATION.

State listing.

(a) PURPOSES.—The purposes of this section are to authorize—

(1) the Secretary of the Interior, acting through the Commissioner of Reclamation and in partnership with the States, other Federal agencies, and other non-Federal entities, to continue the cooperative effort among the Federal and non-Federal entities through the implementation of the Platte River Recovery Implementation Program for threatened and endangered species in the Central and Lower Platte River Basin without creating Federal water rights or requiring the grant of water rights to Federal entities; and

(2) the modification of the Pathfinder Dam and Reservoir, in accordance with the requirements described in subsection (c).

(b) PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) AGREEMENT.—The term "Agreement" means the Platte River Recovery Implementation Program Cooperative Agreement entered into by the Governors of the States and the Secretary.

(B) FIRST INCREMENT.—The term "First Increment" means the first 13 years of the Program.

(C) GOVERNANCE COMMITTEE.—The term "Governance Committee" means the governance committee established under the Agreement and composed of members from the States, the Federal Government, environmental interests, and water users.

(D) INTEREST IN LAND OR WATER.—The term "interest in land or water" includes a fee title, short- or long-term easement, lease, or other contractual arrangement that is determined to be necessary by the Secretary to implement the land and water components of the Program.

(E) PROGRAM.—The term "Program" means the Platte River Recovery Implementation Program established under the Agreement.

(F) PROJECT OR ACTIVITY.—The term "project or activity" means—

(i) the planning, design, permitting or other compliance activity, preconstruction activity, construction, construction management, operation, maintenance, and replacement of a facility;

(ii) the acquisition of an interest in land or water;

(iii) habitat restoration;

(iv) research and monitoring;

(v) program administration; and

(vi) any other activity that is determined to be necessary by the Secretary to carry out the Program.

(G) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(H) STATES.—The term "States" means the States of Nebraska, Wyoming, and Colorado.

(2) IMPLEMENTATION OF PROGRAM.—

(A) IN GENERAL.—The Secretary, in cooperation with the Governance Committee, may—

(i) participate in the Program; and

(ii) carry out any projects and activities that are designated for implementation during the First Increment.

(B) AUTHORITY OF SECRETARY.—For purposes of carrying out this section, the Secretary, in cooperation with the Governance Committee, may—

(i) enter into agreements and contracts with Federal and non-Federal entities;

(ii) acquire interests in land, water, and facilities from willing sellers without the use of eminent domain;

(iii) subsequently transfer any interests acquired under clause (ii); and

(iv) accept or provide grants.

(3) COST-SHARING CONTRIBUTIONS.—

(A) IN GENERAL.—As provided in the Agreement, the States shall contribute not less than 50 percent of the total contributions necessary to carry out the Program.

(B) NON-FEDERAL CONTRIBUTIONS.—The following contributions shall constitute the States' share of the Program:

(i) $30,000,000 in non-Federal funds, with the balance of funds remaining to be contributed to be adjusted for inflation on October 1 of the year after the date of enactment of this Act and each October 1 thereafter.

(ii) Credit for contributions of water or land for the purposes of implementing the Program, as determined to be appropriate by the Secretary.

(C) IN-KIND CONTRIBUTIONS.—The Secretary or the States may elect to provide a portion of the Federal share or non-Federal share, respectively, in the form of in-kind goods or services, if the contribution of goods or services is approved by the Governance Committee, as provided in Attachment 1 of the Agreement.

(4) AUTHORITY TO MODIFY PROGRAM.—The Program may be modified or amended before the completion of the First Increment if the Secretary and the States determine that the modifications are consistent with the purposes of the Program.

(5) EFFECT.—

(A) EFFECT ON RECLAMATION LAWS.—No action carried out under this subsection shall, with respect to the acreage limitation provisions of the reclamation laws—

(i) be considered in determining whether a district (as the term is defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb)) has discharged the obligation of the district to repay the construction cost of project facilities used to make irrigation water available for delivery to land in the district;

(ii) serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of the construction obligations of the district; or

(iii) serve as the basis for increasing the construction repayment obligation of the district, which would extend the period during which the acreage limitation provisions would apply.

(B) EFFECT ON WATER RIGHTS.—Nothing in this section—

(i) creates Federal water rights; or

(ii) requires the grant of water rights to Federal entities.

(6) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There is authorized to be appropriated to carry out projects and activities under this subsection $157,140,000, as adjusted under subparagraph (C).

(B) NONREIMBURSABLE FEDERAL EXPENDITURES.—Any amounts expended under subparagraph (A) shall be considered to be nonreimbursable Federal expenditures.

(C) ADJUSTMENT.—The balance of funds remaining to be appropriated shall be adjusted for inflation on October 1 of the year after the date of enactment of this Act and each October 1 thereafter.

(D) AVAILABILITY OF FUNDS.—At the end of each fiscal year, any unexpended funds for projects and activities made available under subparagraph (A) shall be retained for use in future fiscal years to implement projects and activities under the Program.

(7) TERMINATION OF AUTHORITY.—The authority for the Secretary to implement the First Increment shall terminate on September 30, 2020.

(c) PATHFINDER MODIFICATION PROJECT.—

(1) AUTHORIZATION OF PROJECT.—

(A) IN GENERAL.—The Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this subsection as the "Secretary"), may—

(i) modify the Pathfinder Dam and Reservoir; and

(ii) enter into 1 or more agreements with the State of Wyoming to implement the Pathfinder Modification Project (referred to in this subsection as the "Project"), as described in Appendix F to the Final Settlement Stipulation in Nebraska v. Wyoming, 534 U.S. 40 (2001).

(B) FEDERAL APPROPRIATIONS.—No Federal appropriations are required to modify the Pathfinder Dam under this paragraph.

(2) AUTHORIZED USES OF PATHFINDER RESERVOIR.—Provided that all of the conditions described in paragraph (3) are first met, the approximately 54,000 acre-feet capacity of Pathfinder Reservoir, which has been lost to sediment but will be recaptured by the Project, may be used for municipal, environmental, and other purposes, as described in Appendix F to the Final Settlement Stipulation in Nebraska v. Wyoming, 534 U.S. 40 (2001).

(3) CONDITIONS PRECEDENT.—The actions and water uses authorized in paragraphs (1)(A)(i) and (2) shall not occur until each of the following actions have been completed:

(A) Final approval from the Wyoming legislature for the export of Project water to the State of Nebraska under the laws (including regulations) of the State of Wyoming.

(B) Final approval in a change of water use proceeding under the laws (including regulations) of the State of Wyoming for all new uses planned for Project water. Final

approval, as used in this subparagraph, includes exhaustion of any available review under State law of any administrative action authorizing the change of the Pathfinder Reservoir water right.

SEC. 516. CENTRAL OKLAHOMA MASTER CONSERVATORY DISTRICT FEASIBILITY STUDY.

(a) STUDY.—

Deadline.

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this section as the "Secretary"), shall—

(A) conduct a feasibility study of alternatives to augment the water supplies of—

(i) the Central Oklahoma Master Conservatory District (referred to in this section as the "District)"; and

(ii) cities served by the District;

(2) INCLUSIONS.—The study under paragraph (1) shall include recommendations of the Secretary, if any, relating to the alternatives studied.

(b) COST-SHARING REQUIREMENT.—

(1) IN GENERAL.—The Federal share of the total costs of the study under subsection (a) shall not exceed 50 percent.

(2) FORM OF NON-FEDERAL SHARE.—The non-Federal share required under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the study.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to conduct the study under subsection (a) $900,000.

TITLE VI—DEPARTMENT OF ENERGY AUTHORIZATIONS

SEC. 601. ENERGY TECHNOLOGY TRANSFER.

Section 917 of the Energy Policy Act of 2005 (42 U.S.C. 16197) is amended to read as follows:

Grants.

"SEC. 917. ADVANCED ENERGY TECHNOLOGY TRANSFER CENTERS.

Deadline.

"(a) GRANTS.—Not later than 18 months after the date of enactment of the National Forests, Parks, Public Land, and Reclamation Projects Authorization Act of 2008, the Secretary shall make grants to nonprofit institutions, State and local governments, cooperative extension services, or institutions of higher education (or consortia thereof), to establish a geographically dispersed network of Advanced Energy Technology Transfer Centers, to be located in areas the Secretary determines have the greatest need of the services of such Centers. In making awards under this section, the Secretary shall—

"(1) give priority to applicants already operating or partnered with an outreach program capable of transferring knowledge and information about advanced energy efficiency methods and technologies;

"(2) ensure that, to the extent practicable, the program enables the transfer of knowledge and information—

PLATTE RIVER RECOVERY IMPLEMENATION PROGRAM

ATTACHMENT 1

FINANCE DOCUMENT
CREDITING AND EXIT PRINCIPLES
AND
PROGRAM BUDGET

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Attachment 1

Finance Document
Crediting and Exit Principles
And
Program Budget

December 7, 2005

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I. INTRODUCTION

A. Purposes

The purposes of this document are (1) to establish credits for certain cash, cash equivalent, water, and land contributions made by or on behalf of the parties to the Platte River Recovery Implementation Program Cooperative Agreement (the Program); (2) to provide guidance for use in determining other credits earned by or on behalf of the parties during the First Increment of the Program; (3) to establish principles for disposition, should the Program terminate, of assets acquired or contributed to accomplish the objectives of the Program; (4) to provide guidance on the ESA credits that might be available for use in consultation with the Fish and Wildlife Service should the Program terminate; and (5) detail the Program budget and the cash flow requirements for the First Increment of the Program.

B. Definitions of Terms

1. Cash Contributions - The respective amount of money that each signatory will contribute to the Program Budget during the First Increment. The records of the Financial Management Entity (FME) will be used to determine the amount and date of each signatory's actual cash contributions.

2. In-kind Contributions - During the First Increment of the Program, signatories may elect to be "Water Project Sponsors" or "Sponsors of Program Lands," as defined in Sections VIII.C and VIII.D of Attachment 6, respectively, in lieu of making their required Cash Contributions. In addition, a signatory may propose and the Governance Committee may approve agreements whereby signatories elect to provide technical or other services as in-kind contributions in lieu of making its Cash Contribution. The agreements between the signatory and the Governance Committee documenting these transactions will include the credit the signatory will receive toward its respective Cash Contribution. In addition, the agreements will address the disposition of the Program Assets provided by the in-kind contribution in the event of Program dissolution. (In-kind contributions do not include the costs associated with providing representatives on the Governance Committee, Oversight Committee or other committees established by the Governance Committee.)

3. Cash Equivalents - The states of Colorado, Nebraska, and Wyoming (the states) will be contributing water from the three initial Program water projects and the use of lands for Program purposes, herein defined as Cash Equivalents, in order to match, in part, the Cash Contributions of the Department of the Interior (DOI). During the Program, additional Cash Equivalent Contributions to the Program may be proposed. Such contributions will need to be approved by the Governance Committee before any crediting is authorized. The review and ultimate approval will have two elements: (1) whether the activity merits Cash Equivalent credit, and (2) if so, in what amount (potentially measured by value to the Program in meeting its First Increment objectives rather than by the level of expenditure).

4. Program Assets - Subject to the provisions in Section III, those assets acquired through the Cash Contributions of the signatories are considered Program Assets for purposes of this Attachment 1. Program Assets include, but are not limited to, land interests acquired through fee title, easements, or leases to the extent such easements and leases survive Program termination. Program Assets also include water interests and projects acquired through project construction or leases to the extent such leases survive Program termination. While the water from the three initial Program water projects and the use of Cottonwood Ranch and Deer Creek lands are considered Cash Equivalents for purposes noted in Section I.B.3 above, the projects and lands are not Cash Equivalents or Program Assets for purposes of determining a Signatory's Share of Program Assets as provided in Section I.B.5 below and those projects and lands are not subject to disposition by the Governance Committee. Neither Program dissolution nor withdrawal of a signatory party will have any impact on the ownership of any such projects or lands nor will it have any effect on the rights of the state where the project or land is located, or of entities within that state, to administer the project or land in accordance with applicable law.

5. Signatory's Share of Program Assets - Each signatory's respective share of the Program Assets will be equal to that signatory's total cash contributions at the time of Program dissolution compared against the total Cash Contributions made by all of the signatories at the time of Program dissolution For example, if Signatory A has made Cash Contributions totaling $3M to the Program and all of the signatories, including Signatory A, have made cash contributions totaling $100M to the Program at the time of dissolution, Signatory A would have an interest in 3% of the Program Assets.

II. CREDITING UNDER THE PROGRAM

The following table depicts the Cash Contributions and Cash Equivalent Contributions that will be provided by the DOI and the states during the First Increment of the Program:

Program Contributions
(values in millions of dollars)

Contributions	Total	DOI	States	Description
Cash	187.14	157.14	30.0	Colorado – 24.0; Wyoming 6.0
Cash Equivalents				
Land	10.0		10.0	Cottonwood Ranch/Deer Creek Lands
Water	120.19		120.19	Water from three initial projects
Total	**317.33**	**157.14**	**160.19**	

III. DISTRIBUTION OF PROGRAM ASSETS AND ESA CREDITS FOLLOWING PROGRAM TERMINATION OR SIGNATORY WITHDRAWAL

A. Principles Governing Dissolution of the Program

Consistent with section II.E. of the Program Agreement, if the Secretary of the Interior and the Governors of Colorado, Nebraska and Wyoming decide to dissolve the Program before the end of the First Increment or to not pursue a second increment of the Program, or if the Program is dissolved as the result of a signatory's withdrawal, the Program Governance Committee is dissolved and the signatories agree to form a signatory committee to satisfy the signatories' existing legal obligations under contracts and arrange for disposition of Program Assets. Other members of the Program Governance Committee may be invited to advise signatories in that regard. In the event that any signatory is unable or unwilling, following a decision to dissolve the Program, to continue to participate on such signatory committee, the remaining signatories shall be fully empowered to make such decisions and take such actions as are necessary to meet the signatories' legal obligations under the contracts with the Financial Management Entity (FME) and the Land Holding Entity (LHE) and properly dispose of Program Assets.

1. The signatory committee will remain functional until such time as the signatories' legal obligations under existing contracts and agreements are met and the disposition of Program Assets is resolved, including any outstanding payments due and payable to a "Water Project Sponsor" or "Sponsors of Program Lands." Until an asset is no longer the responsibility of the signatories, the signatories agree to ensure that FME will continue to pay property taxes and retain liability insurance. The signatories agree to manage the property in compliance with the "good neighbor" policy.

2. A signatory or a partnership of signatories may wish to purchase the shares in the Program Assets of any signatory or signatories wishing to sell, under the condition that the Program Assets will continue to be managed to provide habitat for the target species. If this occurs, the signatory committee will have the FME acquire the services of an independent appraiser to complete an appraisal of the Program Assets. The appraisal will be based on the continued use of the Program Asset to provide habitat to the target species. If the Program Governance Committee had previously established the appraised value or a method for determining the appraised value of a particular Program Asset in the event of Program dissolution, that value or method shall be used. The signatory or partnership of signatories may purchase the shares of the selling signatories at a price equal to the respective selling signatories' share of the Program Assets times the appraised value of the Program Assets. If the purchased Program Assets are land, those lands will be held by the Land Holding Entity or a successor selected by the purchaser and approved by the signatory committee as a condition of the sale. (A signatory state may offer to donate its interest in a Program Asset to another signatory or partnership of signatories and seek ESA credit from FWS in future reinitiated consultations in that state for the continuing benefits provided to the target species as a result of the donation.)

3. If none of the signatories are interested in acquiring Program Assets as described in Section III.A.2 above, the signatory committee will entertain offers from water user

and environmental entities to purchase the Program Assets under the condition that the Program Assets will continue to be managed to provide habitat for the target species. If the purchased Program Asset is land, that land will be held by the Land Holding Entity or a successor selected by the purchaser and approved by the signatory committee as a condition of the sale. The proceeds of the sale, after expenses, will be distributed to the signatories in accordance with their respective Signatory's Share of the Program Assets.

4. If the Program Assets are not purchased in accordance with Sections III.A.2 or 3 above, the signatory committee shall oversee the sale of such assets. Such sale may be made without the condition that the Program Asset must be managed to provide habitat for the target species. The proceeds of the sale, after expenses, will be distributed to the signatories in accordance with their respective Signatory's Share of the Program Assets.

B. ESA Credits

In the event of Program dissolution, if a state agrees to and continues to carry out the responsibilities it had under the Program, there is a presumption that such actions are sufficient to provide ESA compliance with respect to all water related activities in that state until any reinitiated consultations have been completed. When a state agrees to and continues to carry out the responsibilities it had under the Program, that state and any water related activities covered also retain the right to argue that the responsibilities undertaken are sufficient to constitute long term ESA compliance for the reinitiated consultations. FWS agrees to consider these undertakings in any reinitiated Section 7 consultations, including in the development of new reasonable and prudent alternatives or other measures.

In addition, to the extent the states respective contributions of cash, water (through the initial Program water projects), and land (Cottonwood Ranch and Deer Creek lands) will continue to benefit the target species beyond the dissolution of the Program, the states retain the right to argue that such future benefits resulting from their contributions should be considered in any reinitiated consultations. The FWS will give due consideration to these contributions and their resulting subsequent benefits to the target species and habitat in any reinitiated consultations.

IV. PROGRAM BUDGET AND CASH FLOW REQUIREMENTS

Activity	Estimated Cash Needs in 2005 Dollars (Millions)	Cash Equivalent Credit (Millions)
Water (130-150KAF)		
Three State Water Projects (80KAF)[1,] *		$120.19
Water Conservation/Supply (60KAF)[2]	$90.14	
Project Permitting[3]	$1.35	
Bypass	$3.08	
Channel Capacity Issues	$1.00	
Subtotal Water	$95.57	$120.19
Land (10K Acres)		
Cottonwood Ranch Acquisition (2,650 A, cash equivalent)[4,] *		$8.50
Wyoming's Deer Creek Property		$1.50
Acquisition (7,350A)[4]	$22.90	
0&M (Includes clearing)	$10.00	
Investigation/Leveling Act.[5]	$3.35	
Taxes	$1.53	
Project Perm. & LAC[3]	$1.35	
Subtotal Land	$39.13	$10.00
Program & Project Monitoring and Research[6]	$30.00	
Program & Project Administration (@ 1.49M/Yr)[7]	$19.37	
Third Party Direct Impact Mitigation Contingency and Liability	$0.67	
Peer Review and Independent Science Advice[8]	$2.35	
Program Legal Fees[9]	$0.05	
Totals	**$187.14**	**$130.19**
Estimated Total First Increment Cash and Cash Equivalent Costs		**$317.33**

* Indicates items for cash equivalent or in-kind contribution credit

[1]Three State Water Projects (80AF) from the Reconnaissance - Level Water Action Plan, Page 105, September 14, 2000 Reconnaissance - Level Water Action Plan, Page 108-109, September 14, 2000

[2]Estimate based on review of Reconnaissance-Level Water Action Plan.

[3]Project specific compliance with state and federal laws and regulations including NEPA requirement, and ESA requirements for protected species not covered by the Program.

[4]Cost for Cottonwood Ranch negotiated for in the Cooperative Agreement. Other purchase costs assume approximately $3,100/ac.

[5]Preliminary cost associated with moving 40 acres of land, 4 feet deep (per analysis in EIS) at cost of $1/yard.

[6]Monitoring and Research costs estimated by the Technical Committee, including Parsons/EIS Team estimate for Sediment/Vegetation and additional tasks identified by Governance Committee (e.g. water quality)

[7]Executive Director, staff, office space, travel, etc.

[8]Includes assistance for implementing the AMP and peer review of individual documents.

[9]Estimate includes assistance in developing Program, land, water entities, contracts, taxes, etc.