PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM
Governance Committee Meeting Minutes
Ramada Inn – Kearney, NE
March 9-10, 2010

Tuesday, March 9, 2010

Executive Director's Office (ED Office)
Jerry Kenny – Executive Director
Chad Smith
Beorn Courtney
Jason Farnsworth
Bruce Sackett
Justin Brei
Tim Tunnell

Governance Committee (GC)
Brian Barels – Nebraska Public Power District
Alan Berryman – Northern Colorado Water Conservancy District
Mike Besson – State of Wyoming
Kevin Urie – Denver Water
Ted Kowalski – Colorado Water Conservation Board
Mark Czaplewski – Central Platte Natural Resources District
Don Kraus – Central Nebraska Public Power and Irrigation District
Mike Purcell – State of Wyoming
Harry LaBonde – State of Wyoming
John Lawson – Bureau of Reclamation, Chair
Jim Schneider – Nebraska DNR
Norm DeMott – Upper Platte River Water Users
Dennis Strauch – Pathfinder Irrigation District
Michael Thabault – U.S. Fish and Wildlife Service
Greg Wingfield – U.S. Fish and Wildlife Service
Bill Taddicken – Audubon Rowe Sanctuary
John Heaston – The Nature Conservancy
George Williams – Upper Platte River Water Users

Participants
Pat Engelbert – HDR
Mike Drain – Central Nebraska Public Power and District
Brock Merrill – Bureau of Reclamation
Cory Steinke – Central Nebraska Public Power and Irrigation District
Matt Lindburg – Brown & Caldwell
Dan Bigbee – EA

Jim Jenniges – Nebraska Public Power District
Rich Walters – The Nature Conservancy
Doug Hallum – Nebraska DNR
Kevin Prior – Olsson Associates
Matt Rabbe – U.S. Fish and Wildlife Service
Larry Schulz – ED Office contractor
Mark Pegg – University of Nebraska - Lincoln

Welcome & Administrative

Lawson called the meeting to order and the group proceeded with introductions. Lawson asked for agenda modifications; none offered. Berryman moved to approve the December 2009 GC minutes; DeMott seconded. **Minutes approved.** Kenny said Wingfield would be stricken from the attendance list at the February 2010 GC Special Session. Purcell moved to approve the February 2010 GC Special Session minutes; Kowalski seconded, adding that Wingfield's name needs to be removed from several places in the minutes. **Minutes approved.**

Kenny circulated a membership list for the GC to review and make modifications if necessary by the end of the meeting on Wednesday, March 10.

Program Committee Updates

Land Advisory Committee (LAC)

Czaplewski provided an update on the latest LAC activities. The LAC last met on January 29 in Kearney. Most of the discussion was related to Program land management activities and the LAC took action several Program land management plans. The next LAC meeting is April 9 in Kearney.

Water Advisory Committee (WAC)

Steinke provided an update on the latest WAC activities. Courtney provided an update to the Water Action Plan and the WAC approved. The ED Office is moving forward on permitting that includes potential Water Action Plan projects. The WAC approved the J-2 Re-Regulating Reservoir Prefeasibility Study. Steve Smith from the ED Office provided an update on potential groundwater recharge projects. Kenny provided an update on water management incentives scoping underway by the Flatwater Group and University of Nebraska experts. The next WAC meeting is in May in Ogallala and that agenda will include depletions plans updates.

Technical Advisory Committee (TAC)

Besson provided an update on the latest TAC activities. The TAC had two meetings since the last GC meeting in December 2009. Discussion at the January 2010 meeting included Program monitoring protocols, tern and plover annual reporting, initial report from the tern and plover foraging habits study, whooping crane monitoring report, forage fish monitoring report, geomorphology/in-channel vegetation monitoring report, water quality monitoring report, PRRIP Responses to 2009 ISAC Findings, and Program land management plans.

At the March 3 meeting, the TAC approved revisions to the tern and plover and water quality monitoring protocols. The TAC discussed and recommended the FC approve the Cottonwood Ranch OCSW & Flow Consolidation Conceptual Design RFP. Chad Smith provided a presentation on AMP implementation activities and next steps on prioritizing and sequencing hypotheses. The TAC then held a long conversation on wet meadows and agreed to do an information review on wet meadows without refinement of the wet meadows Conceptual Ecological Model (CEM). The RFP focuses on gathering wet meadows information and the TAC will work on taking that information and using it to help establish next steps on wet meadows.

Kraus asked if wet meadows would be discussed during the GC meeting. Kenny said the only item on the agenda relates to approval of the RFP Proposal Selection Panel. Kraus asked about the discussion at the TAC regarding the Program's McCormick Tract. Besson said the focus was on whether to clear trees on the parcel, if that land could be restored to wet meadows, and how it relates to other surrounding properties.

Finance Committee (FC)
Purcell provided an update on the latest FC activities. The FC met on February 10 and approved the next phase of the J-2 reservoir geotechnical contract and the Sediment Augmentation Feasibility Analysis contract amendment. The FC recommended spending Program funds on the geomorphology/in-channel vegetation monitoring atlas if the funds could be moved from another existing Program budget line item. The FC approved the Directed Vegetation Research RFP.

The FC met again the morning of March 9 to discuss the indexing of Program funds. The FC approved the recommendations from Lawson and seeks support of the GC at the meeting today. The FC also approved the Cottonwood Ranch OCSW RFP. The ED Office will work with the FC to develop standard consultant contract language.

<u>Program Outreach Update</u>
Presentations

- Bruce Sackett and Tim Tunnell hosted an appreciation with the landowners that were kind enough to help us this year at river Anchor Points on December 10, 2009 at the Kearney office. The Program's geomorphology and vegetation contractors gave a presentation to the landowners on the years activities.
- Justin Brei presented on GIS and the Program to the Holdrege Rotary Club on January 28, 2010.
- Jerry Kenny and Beorn Courtney presented on the Program's Water Plan at Colorado Water Congress on January 29, 2010.
- Bruce Sackett and Jason Farnsworth presented on the Program's Land Plan at the Holdrege Water Conference on February 4, 2010.
- Chad Smith and David Baasch presented on the Adaptive Management Plan at the Tern & Plover Annual Meeting in Lincoln, Nebraska on February 23, 2010.

- Jerry Kenny presented on the Program to the Central Plains Irrigation Conference in Kearney, Nebraska on February 23, 2010. The conference rotates among the states of Colorado, Kansas, and Nebraska and has an audience of producers and agricultural industry personnel.
- Jerry Kenny presented on the Program to the Nebraska Legal Professionals Association Spring Seminar in Grand Island, Nebraska on March 6, 2010.

Future Presentations

- Chad Smith will be presenting on the Program at the annual Rivers & Wildlife conference in Kearney, Nebraska on March 20, 2010.
- Chad Smith will be presenting on the Program to the UNL Lifetime Learning course on April 27, 2010.
- Jerry Kenny will be presenting on the Program to the North Platte NRD board on March 18, 2010 in Oshkosh, NE.

Exhibits/Sponsorships

- The Program had a poster exhibited at the Colorado Water Congress on January 28 & 29, 2010. We made 163 direct contacts with attendees over the course of those two days. The estimated overall attendance was 500 people.
- The Program had a poster exhibited at the Tern & Plover Annual Meeting in Lincoln, Nebraska on February 23, 2010.
- The Program had a poster exhibited at the annual CAMNet rendezvous in Tucson, Arizona on March 7, 2010.
- The Program will have an exhibit at Rivers & Wildlife on March 20, 2010 in Kearney, Nebraska.
- The Program will have exhibits and materials at both the Nebraska Nature and Visitors Center and Rowe Sanctuary during migration season.

Press Coverage

- David Freeman's book, tentatively titled *Negotiating New Environmental Governance on the Platte River Basin Water Commons: Mobilizing Water Users to Implement the Endangered Species Act*, has been accepted for publication and is scheduled to be published in October 2010.

AMP Implementation Update

Smith provided a presentation on the results of the February 2010 AMP Reporting Session in Denver, PRRIP responses to the 2009 ISAC Findings, and next steps on AMP implementation. Thabault asked about the context for some of the tern and plover numbers and how the Program is going to consider looking at Platte River birds in the context of the larger population. Smith said that is a challenge that the ED Office and technical representatives of the Program continue to assess. Smith noted one example of how to address context is to collect tern and plover data and analyze it by plugging that data into a population model that can reflect how the Platte River

population is faring, but that can also reflect what is happening with the larger population (Missouri River, Niobrara River, etc.). Kowalski said he thought the meeting went very well, provided a great opportunity for horizontal communication, and is a session that should continue in the future.

AMP Monitoring Protocols

Smith provided a brief summary of how changes were made to the tern and plover and water quality monitoring protocols. **Czaplewski moved to approve the tern and plover monitoring protocol; Urie seconded. Approved.**

Purcell moved to approve the water quality monitoring protocol; Heaston seconded. Approved.

FY 2010 Program Budget and Contract

Kenny provided an update on the Program budget, with graphics showing Program budgets and expenditures over time, as well as breakdowns of annual expenditures by administration, land, water, and adaptive management. Kenny discussed the Program's current financial status report, which included a final tally for FY 2009 expenditures. Purcell asked what qualifies for Unliquidated Obligations (UO). Kenny said those are contract commitments. Lawson asked if UO becomes a liability for the following year. Kenny said that is correct. Barels asked why $2.1 million was budgeted for IMRP activities in 2009, but only $1.9 million was spent. Kenny said it was the result of several items: No money was spent on monitoring a Short-Duration High Flow (SDHF); reduced spending from IMRP-2 on research activities; no money was spent on tern and plover monitoring; the wet meadows information review stalled until 2010; etc. Monitoring was accomplished, but there was a budget savings as Program staff and Program cooperators performed some of the work. Kraus asked about the status of the Database Management System. Farnsworth said the contractor is completing the content management portion, which will mean that for the next GC meeting, GC members will be able to access meeting documents through the web site. The scientific data repository piece is still in development.

Sediment Augmentation Feasibility Analysis contract amendment

Kenny discussed the need for amending the Sediment Augmentation contract to allow for an extension of the model being developed under that contract. The amount of $10,000 would be shifted from PD-12 to PD-13. Purcell moved approval; Thabault seconded. **Budget shift approved.**

Purcell asked about the status of shifting funds in the budget for the purposes of developing the geomorphology/in-channel vegetation monitoring atlas. Kenny said the ED Office is not yet comfortable moving money in the budget for this project and will continue to assess the possibility throughout the year.

Program RFPs

The GC discussed the recommended Proposal Selection Panels for three Program RFPs:

Directed Vegetation Research

Recommended panel: C. Smith, Farnsworth, Jenniges, Drain, Czaplewski, Fritz, Harner

Cottonwood Ranch OCSW & Flow Consolidation Conceptual Design

Recommended panel: Farnsworth, Jenniges, C. Smith, Rabbe, Besson, Urie, Goltl, Heaston

Wet Meadows Information Review:

Recommended panel: C. Smith, Baasch, Czaplewski, Heaston, Rabbe, Jenniges, Hallum, Fritz, Urie

Taddicken moved to approve the Proposal Selection Panels; Kowalski seconded. **Panels approved.**

Indexing of Program Funds

Lawson discussed the proposal for indexing 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 cast 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.

Kowalski asked why Lawson did not take the state contributions out. Lawson said page 2 of Program Document Attachment #1 says includes the state contributions as well so they need to stay in the calculation. Reclamation approves of and supports this indexing process. **Kowalski moved to support the indexing process; Purcell seconded.** Kowalski said Colorado has a little bit of heartburn because of what is specified in the legislation when it was passed, especially in light of Colorado sending its contributions into the Nebraska Community Foundation (NCF) for the Program. Nevertheless, Lawson has provided a clear and understandable template for talking to the Colorado General Assembly about the state's contributions to the Program. Colorado believes there is a risk in terms of whether interest will cover the contributions. It seems odd to apply an inflationary index to contributions of land and water. Purcell said the reason is the

50/50 cost-share and the need to stick with that 50/50 split as outlined in the federal statute. In addition, water contributions are annual contributions and as such are annual payments just like money.

Besson asked how the Program is going to deal with the interest in the NCF. Lawson said the federal government cannot use interest on those dollars and the federal share is based on annual appropriations. Besson said there will still be interest earned by Wyoming with their quarterly payments to the Program. Lawson agreed and said Wyoming receives that interest. Czaplewski said there does not seem to be a lot of room for play in the "other" category, which contains administration and monitoring/research. Lawson said we are using indices to retain the 2005 buying power. Kraus said the Program still has to live within a budget.

Motion approved (approved methodology attached).

Water Action Plan Scoring Status Update

Lawson discussed the recent work of the sub-group working on issues related to Water Action Plan scoring. Work has continued with the ED Office and Don Anderson (formerly of the U.S. Fish and Wildlife Service) to develop a scoring proposal that can be brought back to the GC for approval. The sub-group asked the ED Office and Anderson to use the J-2 reservoir project as an example to show how it would score. The sub-group held a conference call to discuss this example and work continues on refining the process. Once that is complete, the sub-group will report to the GC on alternatives for consideration. Lawson expects to report to the GC during the June meeting. The expectation is that the GC will be presented with a scoring plan for the J-2 project, but each project will likely require its own specific scoring process.

Miscellaneous Program Business

Kenny said every year in Nebraska in June there is a Cattlemen's Ball that is a fundraiser for cancer research. The event in 2009 was held on property owned by the Platte River Whooping Crane Maintenance Trust. The 2010 event will be near Kearney on property owned by Norris Marshall. One of the planned events is airboat rides. Kenny asked if there is any objection to use of the Program airboat, piloted by Headwaters staff as volunteers, to assist with providing airboat rides at the Ball. The Program will not be charged for gas, and current insurance will cover use of the boat. Heaston asked what happens if the airboat is broken. Kenny said insurance will cover it, as well as any potential injuries. Heaston asked what the problem would be with having staff serve on billable time to the Program to ensure they are fully covered by proper insurance. Kenny said he would not be opposed to that.

Heaston moved to have Program staff serve on billable time to the Program during this event and to authorize use the Program airboat. Berryman seconded. **Motion approved.**

Meeting adjourned at 4:57 p.m. Central time.

Wednesday, March 10, 2010

Welcome and Introduction

Lawson called the meeting to order and the group proceeded with a roll call.

Re-regulating Reservoir Agreement

Kenny presented an agreement between CNPPID and PRRIP concerning feasibility analysis of CNPPID reregulating reservoirs. The agreement provides a framework for advancing the J-2 Return/Elwood regulating reservoir(s) through full feasibility. The agreement outlines responsibilities, future steps, and commits CNPPID to contributing $30,000 toward the analysis. The agreement will terminate on June 30, 2011 or completion of the feasibility studies, whichever occurs sooner. Purcell moved to approve the agreement and Kowalski seconded. **The motion was approved with Kraus abstaining.**

2009 Tiered Platte River Biological Opinions

Rabbe provided a summary of 2009 tiered United States Fish and Wildlife Service (Service) Section 7 consultations for projects seeking ESA coverage for water-related activities through the PRRIP. 24 consultations were completed in 2009. Eighteen were in Colorado, two in Nebraska and four in Wyoming. The Service also worked with the State of Colorado to develop a memorandum of understanding (MOA) outlining how federal depletions will be handled consistently with Colorado's depletions plan. The Service is also working with other federal agencies and the State of Wyoming to develop similar MOAs.

Lower Platte River Stage Change Study

Engelbert and Pegg gave a presentation on the results of the Lower Platte Stage Change Study performed for the Program by HDR in association with TetraTech and the University of Nebraska at Lincoln (UNL). In general, the hydrologic analysis, hydraulic modeling, and habitat classification work conducted for the study indicated that Program diversions or retiming of flows in the central Platte would likely not have a negative impact on pallid sturgeon in the lower Platte River. Relative change in lower Platte habitat for pallid sturgeon would be very small to undetectable and thus these changes should not provide additional stress to the population. . Impacts could occur if Program diversions occur during times of extremely low flow in the lower Platte and the impacts would likely be in the form of reduced lateral channel connectivity, although Pegg noted that longitudinal connectivity was maintained even at these low flows. Those impacts could be avoided by monitoring flows in the lower Platte and not diverting or retiming flows when lower Platte flows fall below approximately 4,000 cfs.

Purcell asked if pallid sturgeon use the lower Platte. Pegg indicated that approximately 70 pallid sturgeon were caught on the lower Platte last year during an ongoing shovelnose sturgeon research project. Three of the pallid sturgeon were caught above the mouth of the Elkhorn River. Czaplewski asked what the Program's next step will be regarding the pallid sturgeon. Kenny explained that the Program committed to performing a literature review, stage-change study, and conducting water quality monitoring in the lower Platte. Those items have been completed and

the Program is now at a decision-point, and consensus needs to be reached on what, if anything, needs to be done next. Lawson indicated that next steps should be discussed at the June GC meeting. Thabault requested that Program staff prepare a summary memorandum that provides information regarding the results of the work done to-date and outlines the limitations and information gaps associated with that work; further, the document should provide guidance with respect to risk management regarding potential GC decisions related to the pallid sturgeon. In general, the GC should be able to use the memorandum to determine if the Program has adequately tested the hypothesis of whether or not Program actions in the central Platte would negatively impact the pallid sturgeon in the lower Platte. Barrels requested that the memorandum be completed in time for discussion at the June GC meeting. **The ED office will prepare a pallid sturgeon summary memorandum for the GC.**

Land Management Plans

Sackett introduced the 5-year Land Management Plans and gave a brief overview of the structure of the Complex plans, which include individual tract operations and maintenance plans, as well as 1-year work plans contained in the appendices of each Complex plan. Farnsworth described AMP activities that will occur in the Elm Creek Complex under the proposed plan. A Flow-Sediment-Mechanical experiment will take place from the Elm Creek bridge to the Kearney Canal Diversion. This includes clearing and leveling islands to an elevation that can be overtopped at flows around 3,000 cfs. The Program intends to test the theory that it can maintain target species habitat with the use of sediment augmentation and control of river flows. Barels said NPPD would like a better understanding of the effects on NPPD assets. Farnsworth said that NPPD has been involved in TAC discussions to this point, and the ED Office will be working with NPPD to insure understanding before any action takes place. In the Elm Creek Complex downstream of the Kearney Canal Diversion, a bird response experiment will be constructed. The goal of this experiment is to assess species response to a variety of available habitat characteristics such as island sizes, heights above water, and distance to disturbance. Lawson asked about expected future operations and maintenance costs within the complex. Farnsworth said barring any major flood events causing problems with in-channel experiments, operations and maintenance would likely be limited to maintenance of islands, invasive species control off-channel, other land maintenance activities, and would likely be in the $20,000-$30,000 per year range.

Sackett then gave an overview of the Fort Kearny Complex plan. Farnsworth discussed management and restoration activities planned for this Complex, including: a second bird response experiment, possible relocation of a power distribution line near the river channel on 2009004, the potential involvement of 2008001 in the upcoming directed vegetation research, and the preparation of the sandpit peninsula on 2009008 for the upcoming nesting season.

Farnsworth then discussed activities to take place under the proposed 2009003 Operations and Maintenance Plan. Since at the time of acquisition, 2009003 was not associated with any other Program or partner lands, a complex plan was not yet developed. Activities on 2009003 include conversion of poor cropland areas (old food plots) back to grass, some in-channel vegetation

clearing, clean-up of cedars, logged cottonwood stumps, and other woody vegetation in riparian area, and the potential clearing of invasive woody vegetation in the area north of the channel. In addition, the mobile home that was located on the property as been sold and will be moved off the property. The hunting lodge is being maintained and will house the USGS team performing the Program's Tern and Plover Foraging Habits study this summer.

Heaston asked why we planned to keep the grain bins on 2009003, indicating they are a tax and insurance liability and of limited use to the Program. Heaston would like the Program to consider their removal. Sackett said they provide some use to the Program, which has entered into crop share agreements with some tenants of Program cropland, as well as potential for some rent income and good neighbor benefits.

Thabault asked why rehabilitation of the old slough on 2009003 (the track faintly visible on aerial photography) was not considered. Farnsworth said it is an issue of water level and channel degradation. Just upstream of the slough there is a large Tri-basin NRD groundwater drain that is 10-15 feet below ground level which controls the groundwater level in the area. In addition, output of the water would be an issue, as the historic slough track continues south to the cropland off Program lands.

Barels requested some synthesis to how Program FSM and MCM activities are being tackled across the associated habitats. Farnsworth said that is already under way in the form of experimental design documents for those activities.

Strauch asked if any invasive removal activities have cost shares available. Czaplewski said CPNRD has cost sharing for prescribed burns. Tunnell said the Program is working with CPNRD to perform prescribed burns on Program lands where needed.

Sackett then discussed the 2008002 1-year work plan. The 5-year plan for 2008002 (Cottonwood Ranch) was approved in 2009.

Heaston moved to approve the 5-year and 1-year plans as presented, including the Elm Creek Complex plan (with associated tract plans for 2009002 and 2009005), the Elm Creek Complex 2010 work plan, the Fort Kearny Complex plan (with associated tract plans for 2009001 and 2009004), The Fort Kearny 2010 work plan, the 2009003 Operations and Maintenance plan, the 2009003 2010 work plan, and the 2008002 2010 work plan. Thabault seconded. **Land plans approved.**

Public Comment

Lawson asked for public comment. None was offered.

Executive Session

Berryman moved to enter Executive Session to discuss land issues; Czaplewski seconded. **GC entered Executive Session at 10:40 a.m. Central time.**

Purcell moved to end Executive Session; Berryman seconded. **GC ended Executive Session at 11:40 a.m. Central time.**

Future Meetings & Closing Business

Upcoming GC meetings are scheduled for:

June 8-9, 2010 @ Cheyenne, WY
September 14-15, 2010 @ Kearney, NE
December 7-8, 2010 @ Denver, CO

Meeting adjourned at 11:45 a.m. Central time.

Summary of Action Items/Decisions from March 2010GC meeting

1) Approved December 2009 GC minutes
2) Approved February 2010 GC Special Session minutes.
3) Approved Tern and Plover Monitoring Protocol
4) Approved Water Quality Monitoring Protocol
5) Approved shifting $10,000 from budget item PD-12 to budget item PD-13.
6) Approved selection panels for three RFPs: directed vegetation research, Cottonwood Ranch OCSW & flow consolidation conceptual design, and wet meadows information review.
7) Approved proposed process for indexing Program funds.
8) Approved use of Program Staff and Program airboat at Cattleman's Ball fundraiser in June.
9) ED office will prepare a pallid sturgeon summary memorandum for the June 2010 GC meeting.
10) Approved land plans for Elm Creek Complex, Fort Kearny Complex, and 2009003.

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.