

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Central Nebraska Public Power  
and Irrigation District

Project No. 1417-105

ORDER APPROVING LONG-TERM ENHANCEMENT AND MAINTENANCE  
PLAN FOR THE JEFFREY ISLAND HABITAT AREA<sup>1</sup>

(Issued August 21, 2001)

On July 17, 2001, the Central Nebraska Public Power and Irrigation District (licensee) filed a long-term enhancement and maintenance plan for the Jeffrey Island Habitat Area. The plan was filed pursuant to articles 417 and 418 of the Order Issuing New License, issued July 29, 1998, for the Kingsley Dam Project<sup>2</sup>. The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper Counties, Nebraska.

Articles 417 and 418 require, in part, the licensee to file for Commission approval a plan to enhance and maintain the parcel of land acquired for wildlife habitat. The plan shall be prepared in coordination with the U.S. Fish and Wildlife Service (FWS) and the Nebraska Game and Parks Commission (NGPC) and working through the Governance Committee of the Cooperative Agreement or its designees. The licensee shall be required to spend no more than \$400/acre (1997 dollars) for the initial development or rehabilitation of the land. Maintenance under the plan shall be performed only when and if required, and the licensee shall not be required to spend more than \$10/acre/year in cash or in-kind contribution for maintenance measured on a three-year rolling average basis, or more than \$15/acre in any one year to implement the plan.

BACKGROUND

The Jeffrey Island Habitat Area consists of approximately 4,200 acres of which 3,900 acres were acquired by the licensee in early 1999 under a long-term lease with an option for purchase in 2015, with the balance of about 300 acres already owned by the licensee. Articles 417 and 418 required the licensee to acquire lands up to a capped

<sup>1</sup>Articles 417 and 418

<sup>2</sup>84 FERC 61,079.

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amount over the first 13 years of the license term. The cost of acquiring this property was well in excess of the acquisition cost cap. Because this property had the greatest potential benefits for wildlife and the Basin-Wide Platte River Recovery Implementation Program, the FWS, NGPC, and the Governance Committee agreed to use funds in the acquisition phase that might be needed for enhancement of a less suitable property.

Funds were reallocated from the enhancement requirements of articles 417 and 418 for the acquisition of the property. The agencies agreed to the one-time, "bare bones" enhancements costing up to \$500,000 (in 1997 dollars), provided that the licensee's expenditures are efficient and cost-effective and that the plan accommodates later additional enhancements using funding from the basin-wide program or from other sources. As a result, the filed plan identifies tasks to be carried out by the licensee, plus other areas where supplemental enhancement is consistent with the plan but not required.

THE PLAN

The Habitat Area will be managed for least terns, piping plovers, whooping cranes, sandhill cranes, and other migratory waterfowl. The following management activities will be conducted by the licensee:

- Removal of woody vegetation from designated areas to protect, maintain, and manage those areas as lowland grassland, wetland and open channel habitat, including enhancement and maintenance of existing sloughs, backwaters, and other wetlands;
- Protection, enhancement, maintenance, and management of existing native upland grasslands;
- Protection, enhancement, maintenance, and management of a designated area of sandbars and adjacent bench habitats along the south channel suitable for tern and plover nesting and for roosting and loafing habitat for migrating water birds;
- Where consistent with the management activities in the above items, protection and maintenance of the designated remaining riparian woodlands and wetlands to provide habitat for native species and neo-tropical migrant birds; and
- Where consistent with the management activities listed above, provide opportunities for public education and recreation.

The plan describes enhancement strategies and methodologies for the different habitat types and for different management areas throughout the habitat management area. The plan also describes methodologies, schedules, and cost estimates for some of the expected maintenance activities that are anticipated. These measures include:

prescribed burning, planned grazing, haying, mowing, disking, noxious weed management, inter-seeding, and other techniques that may be used to prevent the regrowth of woody and/or other undesirable vegetation. The maintenance activities will change as the desired habitats mature.

Plan activities will be carried out under the direction of a Habitat Area Manager designated and employed by the licensee. The Habitat Area Manager will serve as the primary contact with the resource agencies and members of the public. All activities included in the plan will be in compliance with all local, state, and federal laws and regulations. Nothing in this plan precludes the licensee, with the concurrence of the FWS and the NGPC, from carrying out additional, supplemental enhancement or maintenance activities that are consistent with the plan. Such activities may be funded from grants or other sources.

In accounting for enhancement costs, the licensee includes: contract costs; direct administrative and legal costs associated with bidding and negotiating contracts for enhancement work; direct labor and equipment costs; direct labor costs of overseeing enhancement activities carried out on its property by contractors or the licensee's personnel; mileage; administration and general charges on contracted services; and direct costs associated with obtaining any permits and/or mitigation for permit activities needed to carry out the plan. If actual costs and revised cost projections for the identified enhancement tasks will be greater than \$535,000 (2001 dollars), the licensee will consult with the resource agencies to assign priorities to remaining enhancement activities so that lower priority work can be deferred as necessary to assure funding for higher priority activities. Any activities that cannot be completed with the available funds will not be required. These activities may be completed later with funding from other sources. If actual costs are lower than estimated costs, then the additional monies will be used to fund supplemental projects that are consistent with the plan, but not required.

Each year the licensee will identify and carry out maintenance activities that cost projections suggest can be completed within a budget not expected to exceed \$15/acre in any one year (1997 dollars) or \$10/acre/year on a three-year rolling average basis. In accounting for maintenance costs, the licensee will include: property taxes; contract costs; direct administrative and legal costs associated with bidding and negotiating contracts for maintenance work; direct labor and equipment costs; direct labor costs of overseeing maintenance activities carried out by contractors or the licensee's personnel; mileage; administration and general charges; and costs associated with obtaining any permits and/or mitigation activities need to carry out this plan.

Periodic monitoring of vegetation and tern and plover nesting within the Habitat Area is required under Article 423 of the license, and will be carried out pursuant to the monitoring plan approved by the Commission on May 21, 1999<sup>3</sup>. Five years after the initial enhancement of the areas, the licensee will evaluate the monitoring data and other information regarding the condition of the plant communities in the emerging lowland grasslands, including wetlands and sloughs. Similar assessments of these communities will be made every seven years. After each assessment, and after consultation with the resource agencies, the licensee will determine whether to continue the maintenance regime used during the previous years, adaptively modify the then-current practices, or substantially modify management techniques if plant communities are not developing in the cleared areas consistent with the goal of the plan. Should monitoring data suggest a radically different approach to the protection and enhancement of the lowland grasslands, the licensee will request an amendment to the plan after consultation with the agencies.

The licensee will file an Enhancement Progress Report with the Commission by May 31 in each year of the first eight years of implementation beginning in 2002. The plan details those items that will be covered by the report. A draft of the report will be sent to the resource agencies at least 45 days before it is filed with the Commission for review and comment. Every seventh year beginning in 2016, the licensee will file a status report with the Commission by May 31. These reports will include assessments of the grassland habitat plant communities and wetlands. These reports will be sent to the resource agencies at least 45 days prior to filing with the Commission for review and comment.

If all parties are agreeable, the licensee will hold annual meetings with the resource agencies to discuss draft enhancement progress reports or status reports, if any are in progress. In addition, they will discuss planned and completed enhancement, maintenance, and monitoring activities. This meeting may also be used for considering adjustments to the plan due to updated cost information. If the agencies request, the licensee will arrange for agency representatives to have a comprehensive site visit to the Habitat Area on an annual basis. If the agencies wish to visit the site outside of this prearranged trip, they may contact the Habitat Area Manager and schedule a visit.

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<sup>3</sup>Order Approving Joint Wildlife Monitoring Plan, 87 FERC ¶ 62,204.

## AGENCY COMMENTS

In a letter dated July 11, 2001, the FWS stated that the only part of the plan that they object to is the inclusion of yearly property taxes on the project lands as an annual maintenance expense. They do not believe that property taxes were intended to be included in the maintenance activities by articles 417 and 418, and that maintenance costs should only be limited to those costs associated with the actual physical maintenance of habitat. However, the FWS does not object to any of the other items identified and assessed as maintenance under this plan.

In a letter dated July 12, 2001, the NGPC expressed concern that although there was language in the plan relating to coordination between the licensee, FWS, and NGPC, the final determination rests with the licensee. If the agencies disagree with the licensee then the issue is brought to the Commission for resolution. This process, although acceptable to the NGPC at the current time, could become cumbersome and contentious and delay management activities that provide for the restoration and enhancement of habitat. NGPC was also concerned with the issue of utilizing methods that provide for the effective restoration and enhancement of habitat in a timely manner and that are cost effective. The licensee is currently using a method of restoration that has not been previously proven to be efficient in the restoration and enhancement of habitat on the Platte River. Although the NGPC agreed to this method, it wants to be sure the new method is closely evaluated for its potential as an efficient and cost effective restoration method.

The NGPC also reiterated the concerns of the FWS regarding the inclusion of property taxes as part of the annual maintenance costs. The NGPC states that it believes that maintenance costs are those costs incurred by actual on ground management activities. Although the inclusion of property taxes may not impact the price caps, if property taxes continue to rise, the inclusion of property taxes may have the potential to limit the funds available for on-ground maintenance and therefore lead to the degradation of habitat.

## LICENSEE'S RESPONSE TO COMMENTS

Because Central is a subdivision of the state government of Nebraska, it does not have a legal obligation to pay property taxes on lands it owns. The commitment to pay taxes on the Jeffrey Island habitat lands arose from discussions in the Governance Committee of the Cooperative Agreement among the Department of the Interior and the three Platte River Basin states, which is developing a basin-wide program to address

endangered species habitat issues. As a matter of policy, to avoid adverse financial consequences to local governments, the Governance Committee has committed to pay property taxes on all lands acquired for the proposed basin-wide program. The Jeffrey Island habitat is expected to become qualifying habitat as part of this program. This is why the licensee has assumed the responsibility for paying property taxes on this land.

Both agencies state in their letters that paying property taxes is appropriate and neither agency objected to the inclusion of overhead, planning expenses, meeting expenses, contract administration expenses, and other costs associated with managing the Jeffrey Island property. The licensee states that they acquired the Jeffrey Island habitat lands for the sole purpose of providing habitat. As such, property taxes are no different than other costs associated with this property including overhead, planning expenses, and other agency-accepted items on its list of maintenance expenses. Payment of these taxes is necessary to keep these lands as available habitat for the species.

The licensee further states that articles 417 and 418 were designed to give the licensee regulatory certainty about ultimate costs of providing habitat. These caps were fixed, subject to adjustments for inflation and were to apply irrespective of the condition of the land or the scope of the agencies' desires for managing the land. It was understood that funds set aside might not be adequate to accomplish all the desired activities; that is why language was included in the plan to allow for outside funding to accomplish some of these goals. The licensee states that excluding tax expenses from the annual maintenance and management cap would shift the risks of higher than expected costs to the licensee despite the relicensing settlement agreement to address such costs elsewhere.

As far as the agencies' concerns regarding the selection of cost-effective methods for carrying out restoration work in light of the limits on restoration funds, the licensee states that throughout the plan it has reiterated its commitment to work to identify cost-effective methodologies for restoration and maintenance activities. To ensure this the licensee is accepting bids for enhancement and maintenance activities using both proven and alternative methods. The agencies are also given the opportunity to review these bids and methodologies prior to contracting. The licensee will meet with the agencies annually to discuss changes suggested by experiences during the past year and methodologies to be used in the upcoming year. The plan's provision for long-term monitoring will be used to understand the impacts of the activities on the habitat and on maintenance expenses.

In response to the NGPC's concern that the coordination process has the potential for becoming cumbersome and contentious and could delay habitat enhancement and

*How much coordination  
w/ GC has really  
occurred (see P.1)  
and are we happy  
that the rehabilitation  
is the "best"  
value?*

restoration, the licensee states that the agencies will be involved in the management decisions, but minor management decisions that are required on a day-to-day basis are best handled by the licensee. Assuming that all parties participate as expected, ideally, the three parties will not have disagreements, or the potential for delay to resolve them will help induce compromise. It is understood that the parties will not always be able to reach agreement, and because the Commission is the regulatory agency, it seems appropriate that they alone be responsible for making a final decision when compromise between the parties cannot be achieved.

#### CONCLUSIONS

We agree with the licensee's statement that property taxes should be included as part of the maintenance expenses. Although this expense was not considered during the time of relicensing, it is consistent with the other overhead expenses allowed under the plan. Because the intent of paying the property taxes is to assist in the development of a basin-wide recovery program, these taxes are costs necessary to provide habitat.

The plan provides for several opportunities for the agencies to provide input on both enhancement and maintenance activities prior to anything being filed with the Commission. The results of the monitoring should also assist in providing information to all parties on the effectiveness of mitigation measures.

We encourage all affected parties to reach a consensus prior to filing any plans or reports with the Commission. However, we recognize that this may not always be possible. Since the Commission has the regulatory authority to make all final determinations regarding license article requirements, it is the appropriate place for a final decision when conflicts arise between the licensee and consulting agencies.

The a long-term enhancement and maintenance plan for the Jeffrey Island Habitat Area, filed on July 17, 2001, should enhance habitat available to least terns, piping plovers, whooping cranes, sandhill cranes, and other migratory waterfowl. This plan should be approved.

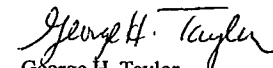
#### The Director orders:

(A) The long-term enhancement and maintenance plan for the Jeffrey Island Habitat Area, filed on July 17, 2001, pursuant to articles 417 and 418 of the Order Issuing New License, issued July 29, 1998, is approved.

(B) The licensee shall file Enhancement Progress Reports with the Commission by May 31 in each year of the first eight years of implementation beginning in 2002. A draft of the report should be sent to the U.S. Fish and Wildlife Service and the Nebraska Games and Park Commission at least 45 days before it is filed with the Commission for review and comment. If the licensee does not adopt an agency's recommendation, the filing shall include the licensee's reasons, based on site-specific information.

(C) Every seventh year beginning in 2016, the licensee shall file a status report, as described in the approved plan, with the Commission by May 31. A draft of the report should be sent to the U.S. Fish and Wildlife Service and the Nebraska Games and Park Commission at least 45 days before it is filed with the Commission for review and comment. If the licensee does not adopt an agency's recommendation, the filing shall include the licensee's reasons, based on site-specific information.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.



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