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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Colorado Water Conservation Board

Project No. 1417-109

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Central Nebraska Public Power
and Irrigation District

Project No. 1417-109

ORDER APPROVING RESTORATION AND MANAGEMENT PLAN FOR THE
NORTH PLATTE RIVER/KELLY TRACT PURSUANT TO ARTICLE 419

(Issued March 13, 2002)

On December 17, 2001, the Central Nebraska Public Power and Irrigation District (licensee) filed a restoration and management plan for 507 acres of meadow on the Nature Conservancy's North Platte River/Kelly tract. The plan was filed pursuant to article 419 of the Order Issuing New License, issued July 29, 1998, for the Kingsley Dam Project¹. The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper Counties, Nebraska.

Article 419 requires, in part, the licensee to file for Commission approval a plan to enhance and maintain parcels of land acquired for the protection and management of sandhill cranes and other migratory waterfowl. The plan shall be prepared in coordination with the U.S. Fish and Wildlife Service (FWS) and the Nebraska Game and Parks Commission (NGPC). The licensee shall be required to spend no more than \$50,000 or \$100/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

In November 2000, the licensee entered into a Conservation Easement and a Management Agreement with The Nature Conservancy (TNC) for approximately 507 acres of meadow lands to be protected and managed as habitat for sandhill cranes and other migratory waterfowl as prescribed by article 419 of the project license. The two agreements were filed with the Commission on November 28, 2000, and approved in a letter dated December 19, 2000.

¹84 FERC 61,079.

THE PLAN

The habitat area will be managed for sandhill cranes and other migratory waterfowl. To achieve this objective the licensee will identify the current ecological condition of the native plant communities, enhance and restore wet-meadow and slough habitat, evaluate restoration management tools, and provide public education and outreach.

To restore wet-meadow and slough habitat, the licensee will construct water control structures at the head end and the tail end of drainage ditches to redirect water into and through the original wet meadow contours. Heavy equipment may be used to reconnect the slough system and restore some areas to their original contour and shape. Disturbed areas will be reseeded with a native mix. Weed control and routine maintenance is all that is anticipated to maintain these habitats. Maintenance activities will be coordinated with the FWS and NGPC.

Several unaltered sloughs may be enhanced through large tree removal, mowing, and a grazing, burning, and haying regime. Periodic maintenance of these areas will be conducted to control the regrowth of trees or undesirable plant species. Maintenance activities include: prescribed burning, grazing, mowing, shredding, and/or spraying.

Prior to restoring the meadow communities, an ecological inventory will be conducted by a qualified ecologist to determine plant community makeup. The ecologist will recommend future conditions for each unit. These target conditions will be established in consultation with TNC, FWS, and NGPC. The meadow restoration will primarily include altering the haying/grazing regime and introducing a prescribed burn rotation.

Some of the pasture units have large populations of undesirable species such as reed canarygrass (*Phalaris arundinacea*). These sites will be specifically managed to control the undesirable species, rather than using the rotation schedule anticipated for the other sites. TNC has contracted with the University of Nebraska to design a research project to control reed canarygrass in heavily infested areas. The plan outlines this proposed project.

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

construction, installation of waterers and pads, prescribed burning, planned grazing rotations, haying, 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 may change as the desired habitats mature.

Restoration and management strategies, adaptive management plans, monitoring data, and other information gathered as a result of this plan will be made available to the public. The property will also be available for tours, field trips, workshops, and other ecological, educational, or scientific purposes.

BUDGET

The filed plan has a budget for restoration which includes the initial planning and inventory to establish restoration requirements, adaptive management of techniques and strategies, and implementation of major restorative activities. The budget also includes maintenance activities such as the reasonably anticipated annual costs associated with managing the property and maintaining improvements. The maintenance activities also include property taxes, oversight and management, mileage and non-mileage expenses, and road maintenance.

MONITORING

Two full years after implementing the initial grassland strategies, those strategies will be evaluated. A five-year plan will be prepared by TNC with input from the licensee, FWS, and NGPC. This plan will be in conjunction with TNC's management plan for the entire 1,600 acres of habitat (of which the 507 acres in the licensee's conservation easement is a part).

Initial plant community inventories will be completed in 2001 as part of the licensee's approved monitoring program under license article 423.² An annual implementation schedule, including monitoring measures, will be developed by the licensee, FWS, and the NGPC. If the monitoring suggests scheduling, grazing density, and other minor adjustments in the restoration and maintenance activities, the licensee will make changes under the flexibility of the plan. If substantial changes need to be made to the plan the licensee will consult with TNC, FWS, and NGPC regarding these

²Order Approving Joint Wildlife Monitoring Plan, issued May 21, 1999. (87 FERC ¶ 62,204)

changes. Any amendment to the plan will be provided to the agencies for at least 45 days prior to filing the amendment with the Commission.

By May 31 of each year, beginning the first full year after approval of this Plan, the licensee will provide reports to FWS and NGPC describing both the monitoring data and any changes in enhancement or maintenance plans. This report will also include an annual report of actual expenditures for restoration and enhancement activities and expected restoration and enhancement costs for future years. After preparing the third such report, the licensee will provide a report, by September 30 of that year, to the FWS, NGPC, and the Commission. This report will include any recommended changes to the plan. Recommendations made by the resource agencies based on the monitoring results will be implemented based on the availability of funds as described in article 419 and approval by the Commission. Every five years thereafter, by September 30, a similar report will be provided to the Commission, FWS, and NGPC for that 5-year period. The three and five-year reports will be provided to the agencies for review and comment at least 45-days prior to filing with the Commission.

AGENCY COMMENTS

In a letter dated December 12, 2001, the NGPC concurred with the plan and supported the adaptive management practices outlined in the plan. The FWS commented on the plan in a letter dated December 4, 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 article 419, and that property taxes should not be associated with physically maintaining habitats on such lands. The FWS considers property taxes a separate cost item which should not be assessed against the accomplishment of habitat enhancement and maintenance in fulfillment of the license requirements.

LICENSEE'S RESPONSE TO COMMENTS

The licensee states that taxes are a cost arising solely from acquiring this land and managing it for habitat. Although tax waivers are available to non-profit organizations, as a matter of policy, TNC, the Audubon Society, and the Platte River Whooping Crane Critical Habitat Maintenance Trust pay local property taxes on all their habitat lands to promote public acceptance. Because the licensee 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 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 FWS states in its letter that paying property taxes is appropriate (just not including it as a maintenance cost) and they did not object to the inclusion of overhead, planning expenses, meeting expenses, contract administration expenses, and other costs associated with managing the lands. The licensee states that property taxes are no different than other costs associated with this property.

The licensee further states that article 419 was designed to give the licensee regulatory certainty about ultimate costs of providing habitat. 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 supplemental activities using funding beyond the cap from other sources. 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.

CONCLUSIONS

The property tax issue was addressed in the Order Approving Long-Term Enhancement and Maintenance Plan for the Jeffrey Island Habitat Area, issued August 21, 2001.³ In summary, staff agreed 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 restoration and management plan for 507 acres of meadow on the Nature Conservancy's North Platte River/Kelly Tract, filed on December 17, 2001, should enhance habitat for sandhill cranes and other migratory waterfowl. This plan should be approved.

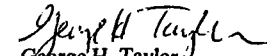
³96 FERC ¶ 62,175.

The Director orders:

(A) The restoration and management plan for 507 acres of meadow on the Nature Conservancy's North Platte River/Kelly Tract, filed on December 17, 2001, pursuant to article 419 of the Order Issuing New License, issued July 29, 1998, is approved.

(B) The licensee shall file a report summarizing habitat monitoring and adaptive management to date and an expenditure summary, for Commission approval. The first report should be filed by September 30, 2005; additional reports should be filed every 5 years thereafter. A draft of the report should be sent to the U.S. Fish and Wildlife Service and the Nebraska Game and Park Commission for review and comment at least 45 days before it is filed with the Commission. If the licensee does not adopt an agency's recommendation, the filing shall include the licensee's reasons, based on site-specific information.

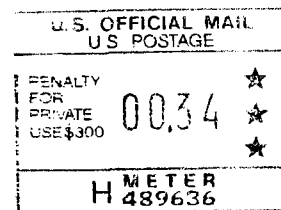
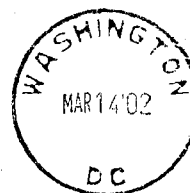
(C) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.


George H. Taylor
Chief, Biological Resources Branch
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and Compliance

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