



# United States Department of the Interior

BUREAU OF RECLAMATION  
Great Plains Region  
Wyoming Area Office  
P.O. Box 1630  
Mills, Wyoming 82644-1630

IN REPLY REFER TO:

WY-1005  
ADM-13.00

SEP 24 2012

**RECEIVED**  
SEP 26 2012  
Colorado Water  
Conservation Board

Ms. Suzanne Sellers  
State of Colorado  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, CO 80203

Subject: Memorandum of Agreement No. R12AG60019

Dear Ms. Sellers:

Enclosed, for your records, is a fully executed duplicate original copy of Memorandum of Agreement No. R12AG60019 between the States of Colorado, Nebraska, and Wyoming, the Nebraska Community Foundation, and the Bureau of Reclamation for Administrative and Financial Management Support to the Governance Committee and Executive Director established pursuant to the Platte River Recovery Implementation Program Cooperative Agreement.

Sincerely,

Coleman W. Smith, Jr.  
Area Manager

Enclosure – Duplicate Original

**DUPLICATE  
ORIGINAL**

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
GREAT PLAINS REGION  
WYOMING AREA OFFICE**

**MEMORANDUM OF AGREEMENT NO. R12AG60019  
AMONG  
THE STATES OF COLORADO, NEBRASKA, AND WYOMING  
AND  
THE NEBRASKA COMMUNITY FOUNDATION, A NONPROFIT FOUNDATION  
AND  
THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR  
FOR  
ADMINISTRATIVE & FINANCIAL MANAGEMENT SUPPORT TO THE  
GOVERNANCE COMMITTEE AND EXECUTIVE DIRECTOR ESTABLISHED  
PURSUANT TO THE PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM  
COOPERATIVE AGREEMENT**

**I. PARTIES**

This Memorandum of Agreement (Agreement) is for establishing administrative and financial management support to the Governance Committee and Executive Director established pursuant to the Platte River Recovery Implementation Program Cooperative Agreement (Cooperative Agreement); and is entered into by the States of Colorado, Nebraska, and Wyoming (hereinafter referred to as the "States"), the Nebraska Community Foundation, a nonprofit foundation (hereinafter referred to as the "Foundation"), and the United States Department of the Interior, Bureau of Reclamation (hereinafter referred to as "Reclamation"), each sometimes hereinafter individually called "Party", and sometimes hereinafter collectively called "Parties".

**II. BACKGROUND**

A. Pursuant to the Cooperative Agreement, the States of Colorado, Nebraska, and Wyoming, and the Department of the Interior, agreed to participate in and implement the Platte River Recovery Implementation Program (Program). The Cooperative Agreement succeeded and replaced the July 1, 1997 Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska ("July 1997 Cooperative Agreement") under which the Program was developed. The States and the Department of the Interior also agreed to participate in the Governance Committee, which was established pursuant to Section 4 of the Endangered Species Act ("ESA") (16 U.S.C. 1531 et seq.) to oversee implementation of the Program. The Program implements certain aspects of the U.S. Fish and Wildlife Service's recovery plans for four target species (interior least tern, whooping crane, piping plover and pallid sturgeon) listed as threatened or endangered pursuant to the ESA. The Program provides for a range of measures relating to the four target species and their associated habitats as defined in the Program.

**B.** The Governance Committee was established through the Cooperative Agreement pursuant to Section 4 of the ESA. The membership of the Governance Committee is as follows:

1. One representative from the State of Wyoming.
2. One representative from the State of Colorado.
3. One representative from the State of Nebraska.
4. One representative from the United States Fish & Wildlife Service.
5. One representative from the United States Bureau of Reclamation.
6. Environmental entities in the three states shall have three representatives (2 votes).
7. One representative from the Upper Platte Water Users.
8. One representative from the Colorado Water Users.
9. One representative from the Downstream Water Users.

The Governance Committee's general purpose is to implement the Program. The Governance Committee's responsibilities include, but are not necessarily limited to, the following: select an Executive Director, a land interest holding entity, a financial management entity, and other contractors as it deems appropriate; establish committees as needed; approve budgets and request funds or financing from the Parties for Program purposes; approve Program activities and criteria; review accomplishments annually; evaluate Program management activities and take action as appropriate as described in the Adaptive Management Plan; annually compare accomplishments with the Milestones, and implement measures to correct shortfalls, if needed; review implementation of the States' and Federal government's Depletions Plans.

**C.** The Executive Director is required under an existing agreement with the Governance Committee through the Foundation to report to and carry out the direction of the Governance Committee and to assist other committees.

**D.** The Platte River Recovery Implementation Program Governance Committee, the Executive Director, and other committees require administrative support in order to accomplish the purposes of the Cooperative Agreement, which began on January 1, 2007.

### **III. PURPOSE & OBJECTIVE**

**A.** The purpose of the Agreement is to establish a finance management and administrative support process to aid the Governance Committee, Executive Director, and other committees established in accordance with the Cooperative Agreement, in executing their responsibilities. The purposes of this Agreement are as follows:

- i. To establish the procedure for the transfer of funds to the Foundation to pay financial obligations of the Governance Committee under contracts authorized by the Governance Committee according to the terms of those contracts.

- ii. To establish the procedure for disbursement of funds from the Foundation in payment of the financial obligations of the Governance Committee according to the terms of third-Party contracts between the Governance Committee through the Foundation as the Governance Committee's contracting agent, and consultants, vendors, and contractors in an efficient and timely manner.
- iii. To establish and disclose the terms by which the Foundation serves as the Governance Committee's contracting agent through this Agreement.
- iv. This Agreement does not bind the Parties to provide funding to the Foundation; this Agreement establishes a financial management and administrative support process to be provided to the Program by the Foundation, and the Parties shall provide funding to the Foundation for Program implementation through separate financial assistance agreements. The provisions of each separate financial assistance agreement between the Parties and the Foundation shall govern if there is a discrepancy between those agreements and this Agreement.

#### **IV. AUTHORITY**

This Agreement is entered into pursuant to Section 515 (b) of the Consolidated Natural Resources Act of 2008, Public Law 110-229 (122 Stat 847), and applicable laws of the States of Colorado, Nebraska, and Wyoming.

#### **V. STATEMENT OF WORK AND RESPONSIBILITIES OF THE PARTIES**

##### **A. SERVICES TO BE PROVIDED AS A CONTRACTING AGENT**

- i. The Foundation will become the Governance Committee's contracting agent for the Executive Director's contract, and other contracts in support of Program tasks. These services include, but are not necessarily limited to, the following tasks:
  - 1. Set up all new vendors for the Governance Committee in the Foundation's accounting system and ensure that all necessary information is obtained for each vendor.
  - 2. Process all disbursements, including ensuring that all paperwork is complete and the required signatures are in place; allocating each payment among the Parties based on percentages provided in V.B.v below; and issuing checks.
  - 3. Issues Forms 1099 to vendors in accordance with Internal Revenue Service requirements.
  - 4. Handle all cash receipts (including invoicing Parties for contributions as required by separate financial assistance agreements between the Foundation and the individual Parties), including monitoring bank accounts daily for electronic transfers and posting cash receipts to the separate account of the appropriate Party.

5. Maintain separate financial books and records for each project of the Program, broken out into separate accounts for each Party.
  6. Invest cash balances in accordance with the separate financial assistance agreements between the Foundation and the other Parties.
  7. Provide monthly and annual financial reports of the activity of the Program.
  8. Communicate with the Executive Director's office to address issues and provide any information needed.
  9. Obtain an annual audit of the Foundation's financial statements and an annual audit of its compliance with the requirements of applicable federal laws, including 43 CFR 12, for the Program.
  10. Maintain liability insurance.
  11. Provide all equipment, materials and personnel necessary to perform these administrative functions.
- ii. The Foundation shall be responsible only for the financial aspects of the Executive Director's relationship with the Governance Committee; all supervisory and related responsibilities shall be retained by the Governance Committee.
  - iii. The Foundation and the Governance Committee may identify additional support services to be performed by the Foundation for the Governance Committee, such as fund raising.
  - iv. The Foundation shall not enter into any contract without Governance Committee authorization or any contract that commits the States or Reclamation to expenditure of funds that exceed the amount authorized by the Governance Committee. All such contracts shall include language which is acceptable to each Party to this Agreement and which conditions the contract on the continuing availability of funds from the Parties.
  - v. The Governance Committee, or the Executive Director, to the extent authorized by the Governance Committee, will review and approve all proposed contracts. The States and Reclamation may provide technical assistance to the Foundation on an as needed basis to assist in development of contracts.
  - vi. The funds budgeted to implement the Program shall be as provided for in the Program's Finance Document (Attachment I).

## **B. ADMINISTRATION OF CONTRIBUTIONS**

- i. Except as otherwise directed by the Reclamation and the States, the Foundation will collect all cash contributions to implement the Program, and to perform the work required under this Agreement, through separate financial assistance agreements that

provide for the transfer of funding to the Foundation from each Party.

- ii. Funds collected by the Foundation from Reclamation and the States for the Program will be held in a separate fund titled "Platte River Recovery Implementation Program." Contributions to this fund will be provided by Reclamation and the States of Colorado and Wyoming as provided for in V.B.i above. Except as otherwise directed by Reclamation and the States, disbursements requested will reflect each Party's share of total costs as shown in V.B.v below.
- iii. Contributions and/or donations, other than those addressed above, shall go into accounts held by the Foundation and kept separate from the accounts described in V.B.ii above.
- iv. Disbursements from contribution accounts held by the Foundation shall be made for bills deemed payable in accordance with the Foundation's bookkeeping and accounting practices and approved by the Parties to this agreement.
- v. Disbursements from the Platte River Recovery Implementation Program Fund shall be made from the Parties' accounts in the following proportions:

Reclamation:	83.97%
Colorado:	12.82%
Nebraska:	0.00%
Wyoming:	3.21%

Exceptions to these allocations will only occur when Reclamation and the States all agree and direct the Foundation otherwise through Governance Committee action.

- vi. If at any time Reclamation or any State does not have sufficient funds in its account to cover its portion of a planned disbursement, the Foundation shall not disburse funds for that purpose from the account of any other Party without prior written approval from that Party. When federal funds are to be disbursed, approval will be required by Reclamation. Disbursements shall be made by check or electronic funds transfer upon receipt by the Foundation of a Request for Disbursement of Contributions (Attachment II).
- vii. The Foundation shall maintain a record keeping system acceptable to the Parties to this agreement to track and reconcile disbursements. The Foundation will establish a fund, which will be held in bank account(s) separate from the general assets of the Foundation. The fund will be broken into accounts maintained as required by this Agreement.
- viii. Interest earned will be at the same rate for all monies in the fund. Interest income will be prorated to the Parties' accounts as income, based on balances when interest is credited. Any interest earned on federal funds shall be reported to Reclamation not less than quarterly. The Foundation must return any interest earned on Federal funds to Reclamation in accordance with the instructions to be provided by Reclamation.

- ix. The Foundation shall provide the monthly reports listed below by no later than the 20th of each succeeding month to the Governance Committee and Executive Director in a format acceptable to the Governance Committee and Executive Director. The Foundation shall also provide an annual report that summarizes the contributions (including in-kind), outstanding obligations, non-Party contributions, and disbursements made during the year. The annual report shall be due 60 days after the close of the program's fiscal year.
  1. A report of cash contributions provided by each Party to the Agreement since the last such report.
  2. A report of in-kind services contributions by each Party to the Agreement since the last such report. The eligibility and value of in-kind services as offsets to cash contributions as required by the milestones to the Cooperative Agreement shall be preauthorized by the Governance Committee prior to their inclusion in such report. Detailed statements of these in-kind services will be provided by the contributing Party.
  3. A report of the current total outstanding obligations under contracts held by the Foundation on behalf of each Party to the Agreement.
  4. A report of cash contributions and/or donations provided by any entity other than the Parties to the Agreement since the last such report.
  5. A report indicating each request for disbursement received since the last such report and each disbursement made since the last such report, including the amount and the entity receiving the disbursement and the amount withdrawn from each contribution account for that disbursement.
  6. A report of the total amount disbursed by the Foundation from each contribution account.

#### **C. OTHER RESPONSIBILITIES**

- i. The Foundation shall provide accounting, bookkeeping, and auditing services; provide supplies and services necessary for its office operations; and provide other administrative services necessary to properly administer contributions and contracts in accordance with this Agreement.
- ii. The Foundation shall maintain liability insurance with coverage of no less than \$2 million aggregate and \$1 million per occurrence covering the work being performed by the Foundation under this Agreement. The costs and fees associated with this coverage shall be provided in sufficient detail to comply with federal law and applicable laws of the States of Colorado, Nebraska, and Wyoming.

#### **D. FOUNDATION COST REIMBURSEMENT**

- i. The Foundation will be reimbursed for its direct and indirect costs pursuant to the

Department of the Interior's acquisition services requirements. The Department of the Interior's Acquisition Services Directorate defines an indirect cost rate as "*a tool for determining the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.*" An indirect cost rate shall be the mechanism through which the Foundation is reimbursed for providing financial and administrative management services to the Program. The Foundation shall negotiate an indirect cost rate with the Department of the Interior's National Business Center, and the indirect cost rate shall be applied to Program disbursements in accordance with federal law and policy to provide reimbursement to the Foundation. Each State's and Reclamation's share of the negotiated indirect cost rate shall be in the same proportion as stated in V.B.v above.

- ii. Reimbursement of Reclamation's share of direct and indirect costs will be made by Reclamation pursuant to the separate financial assistance agreement between Reclamation and the Foundation. Reclamation's funding provided to the Foundation pursuant to V.B.i above will include funds to reimburse the Foundation for Reclamation's share of direct and indirect costs.
- iii. Payments by each State to the Foundation shall be in accordance with the separate financial assistance agreements between each State and the Foundation. Each State's periodic advance of funds to the Foundation pursuant to V.B.i above will include funds to reimburse the Foundation for each State's share of direct and indirect costs. Each State's separate financial assistance agreement with the Foundation shall constitute that State's commitment to reimburse the Foundation for that State's share of direct and indirect costs.
- iv. Indirect costs will be assessed and paid at times of disbursement by fund transfer from funds held under the Agreement to the Foundation.
- v. In addition to the direct and indirect costs prescribed by this Agreement, the Foundation will be reimbursed at actual cost of extraordinary expenses incurred at the request of Parties to the Agreement, such as overnight express mail services, and/or reasonable travel expenses for travel at the request of the Governance Committee, Finance Committee, or a Party to the Agreement.

## **VI. EQUIPMENT ACQUIRED UNDER THE AGREEMENT**

The Foundation shall request disposition instructions from Reclamation and the States for any and all real and personal property with a residual value exceeding \$5,000 per unit which are purchased with funds provided pursuant to the provisions of this Agreement. Said disposition request shall be in accordance with 43 CFR 12 and forwarded no later than 30 days after completion of the period of performance of the Agreement.

## **VII. AMENDMENT**

This Agreement may be amended at any time by mutual written agreement of all the Parties. Changes dealing with administrative matters (such as change in Party representative, changes of address, etc. which have no substantive effect on the Parties' rights or obligations) shall be made



by Reclamation and/or the States upon the authorization of the Party or Parties involved. No other written statement by any person and no oral statement of any person shall be allowed in any manner or degree to modify or otherwise affect the terms of this Agreement as they apply to the services provided by the Foundation.

## **VIII. TERMINATION**

### **A. TERMINATION FOR CAUSE**

Reclamation and the States may terminate this Agreement, in whole or in part at any time before the date of completion, whenever Reclamation and the States determine that the Foundation has failed to comply with the terms or conditions of this Agreement. Reclamation and the States will promptly notify the Foundation in writing of the determination and the reasons for the termination, together with the effective date. Any funds remaining in contribution accounts at the time of such termination, except to the extent necessary to cover costs properly incurred prior to such termination, shall be returned to the applicable Parties.

### **B. TERMINATION FOR CONVENIENCE**

The States and Reclamation may terminate this Agreement in whole or in part for convenience, when they agree that the continuation of this Agreement would not produce beneficial results. The Foundation may terminate this Agreement for convenience if it determines that the continuation of the Agreement would not produce beneficial results. In the event of termination for convenience, the Parties shall negotiate the termination conditions, including the effective date and, in the case of partial termination, the portions to be terminated. Any funds remaining in contribution accounts at the time of such termination, except to the extent necessary to cover costs properly incurred prior to such termination, shall be returned to the applicable Parties.

## **IX. RIGHTS IN TECHNICAL DATA**

There shall be no restrictions on use of technical data developed under this Agreement. Rights to all technical data belong to all Parties to this Agreement, and all Parties to this Agreement may use any technical data developed under this Agreement for any purpose they deem appropriate, including publication, without fee or royalty payment.

## **X. ASSURANCES INCORPORATED BY REFERENCE**

The provisions of the assurances executed by the Foundation in connection with this Agreement shall apply with full force and effect to this Agreement as if fully set forth in this Agreement. Such assurances include, but are not limited to, the promise to comply with all applicable federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; federal wage and hour laws and regulations and work place safety standards; federal environmental laws and regulations and the Endangered Species Act; and federal protection of rivers and waterways and historic and archeological preservation.

## **XI. RESOLVING DISAGREEMENTS**

A. In entering into this Agreement with the Foundation, the other Parties to the Agreement are committed to working with the Foundation and each other in a harmonious manner to achieve the objectives of the Program successfully. When disagreements arise among the Parties, they must be resolved according to the procedures discussed below:

- i. Reclamation and the States shall attempt first to resolve disagreements with the Foundation through informal discussion with the Foundation's Representative.
- ii. If the disagreement cannot be resolved through informal discussion among these Parties, the Executive Director will arrange a formal meeting between the Foundation's Representative and Reclamation and the States. If agreement still cannot be reached, the Parties will collectively decide on any varied approaches which might be used to resolve the disagreement. The Parties shall be responsible for their individual expenses related to any approach utilized to resolve the disagreement. If attempts at resolving the disagreement fail, Reclamation and the States shall meet and make a decision. The Foundation may pursue the appropriate appeals process if there is a disagreement with the decision.
- iii. Any issue will be open for resolution in accordance with the above procedures, with the exception of disagreements regarding continuation of the Agreement (since any Party may terminate the Agreement with the specified notice), or other matters specifically addressed by the Agreement itself.

## **XII. TERM OF AGREEMENT**

Subject to the termination provisions above, this Agreement will remain in effect until September 30, 2020. This Agreement may be extended by mutual written agreement of the Parties.

## **XIII. OTHER**

During the performance of this Agreement, the Parties agree not to discriminate against any person because of race, color, sex, or national origin as provided by the terms of Executive Order 11246.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit arising from it. However, this clause does not apply to the Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

#### **XIV. KEY OR RESPONSIBLE PERSONNEL**

The Bureau of Reclamation's Representative:

Coleman W. Smith, Jr.  
Wyoming Area Manager  
P.O. Box 1630  
Mills, WY 82644

Phone: 307-261-5671  
Fax: 307-261-5683  
Email: [cwsmith@usbr.gov](mailto:cwsmith@usbr.gov)

The State of Colorado's Representative:

Suzanne Sellers  
State of Colorado  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, CO 80203

Phone: 303-866-3441 ext. 3233  
Fax: 303-866-4474  
Email: [suzanne.sellers@state.co.us](mailto:suzanne.sellers@state.co.us)

The State of Nebraska's Representative:

Dr. Jim Schneider  
Nebraska Department of Natural Resources  
P.O. Box 94676  
Lincoln, NE 68509-4676

Phone: 402-471-3141  
Fax: 402-471-2900  
Email: [jim.schneider@nebraska.gov](mailto:jim.schneider@nebraska.gov)

The State of Wyoming's Representative:

Harry LaBonde  
Wyoming Water Development Office  
6920 Yellowtail Road  
Cheyenne, WY 82002

Phone: 307-777-7626  
Fax: 307-777-6819  
Email: [harry.labonde@wyo.gov](mailto:harry.labonde@wyo.gov)

The Nebraska Community Foundation's Representative:

Diane M. Wilson, COO/CFO  
Nebraska Community Foundation  
P.O. Box 83107  
Lincoln, NE 68501

Phone: 402-323-7333  
Fax: 402-323-7349  
Email: [dwilson@nebcommfound.org](mailto:dwilson@nebcommfound.org)

The Governance Committee's Representative:

Dr. Jerry Kenny  
Headwaters Corporation  
4111 4th Avenue, Suite 6  
Kearney, Nebraska 68845

Phone: 308-237-5728  
Fax: 308-237-4651  
Email: [kennyj@headwaterscorp.com](mailto:kennyj@headwaterscorp.com)

#### **XV. INDEMNITY & SOVEREIGN IMMUNITY**

Reclamation and the States do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to state and federal law. None of the Parties agree to insure, defend, or indemnify the other. The Foundation agrees to indemnify and hold harmless the Governance Committee, the Parties, and their officers, agents, and employees from any and all claims, lawsuits, losses and liabilities arising out of the Foundation's failure to perform any of the Foundation's duties and obligations hereunder or in connection with the negligent performance of the Foundation's duties or obligations.

Furthermore, the Foundation remains an independent non-profit entity and does not waive any rights or claims of immunity through entering into this Agreement or participation in Governance Committee and Program matters, and specifically retains all defenses available to it pursuant to state and federal law.

#### **XVI. THIRD PARTY BENEFICIARIES**

The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall insure solely to the benefit of the Parties to this Agreement. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement.

#### **XVII. ENTIRETY OF AGREEMENT**

This Agreement, consisting of twenty (20) pages (including Attachments I and II), represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

#### **XVIII. INDEPENDENT CONTRACTOR**

The Foundation is an independent contractor at all times, and is not an employee of the Governance Committee, Reclamation, or the States for any purpose. The Foundation assumes sole responsibility for any debts or liabilities that it may incur in fulfilling the terms of this Agreement, and is solely responsible for the payment of all taxes which may accrue to the Foundation on account of this Agreement.

#### **XIX. TITLES NOT CONTROLLING**

Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

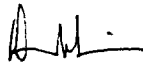
#### **XX. SEVERABILITY**

Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect.

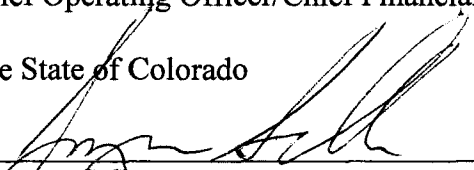
## XXI. SIGNATURE OF PARTIES

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement and agree to the terms and conditions on the date and the year written below.

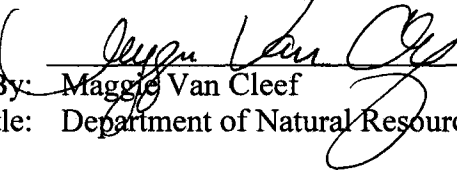
The Nebraska Community Foundation

By:  9/03/2012  
 Title: Chief Operating Officer/Chief Financial Officer  
 Date

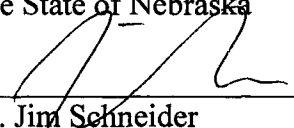
The State of Colorado

By:  8-29-2012  
 Title: Program Manager, Colorado Water Conservation Board  
 Date

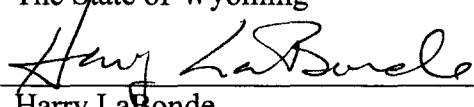
The State of Colorado

By:  8/29/2012  
 Title: Department of Natural Resources Purchasing Director  
 Date

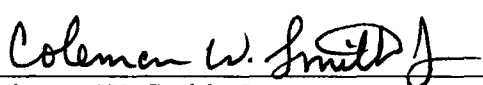
The State of Nebraska

By:  9-5-12  
 Title: Deputy Director, Nebraska Department of Natural Resources  
 Date

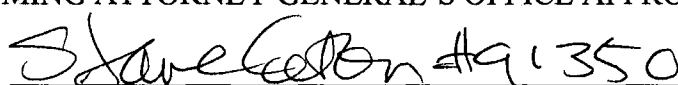
The State of Wyoming

By:  8-28-12  
 Title: Director, Wyoming Water Development Office  
 Date

The Bureau of Reclamation

By:  24 SEP 2012  
 Title: Wyoming Area Manager, Bureau of Reclamation  
 Date

WYOMING ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

By:  8-27-12  
 Title: Senior Assistant Attorney General  
 Date

**PLATTE RIVER RECOVERY IMPLEMENTATION 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:

<b>Program Contributions</b> (values in millions of dollars)				
<b>Contributions</b>	<b>Total</b>	<b>DOI</b>	<b>States</b>	<b>Description</b>
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
<b>Total</b>	<b>317.33</b>	<b>157.14</b>	<b>160.19</b>	

### **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) <sup>1, *</sup>		\$120.19
Water Conservation/Supply (60KAF) <sup>2</sup>	\$90.14	
Project Permitting <sup>3</sup>	\$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) <sup>4, *</sup>		\$8.50
Wyoming's Deer Creek Property Acquisition (7,350A) <sup>4</sup>	\$22.90	\$1.50
O&M (Includes clearing)	\$10.00	
Investigation/Leveling Act. <sup>5</sup>	\$3.35	
Taxes	\$1.53	
Project Perm. & LAC <sup>3</sup>	\$1.35	
Subtotal Land	\$39.13	\$10.00
Program & Project Monitoring and Research <sup>6</sup>	\$30.00	
Program & Project Administration (@ 1.49M/Yr) <sup>7</sup>	\$19.37	
Third Party Direct Impact Mitigation Contingency and Liability	\$0.67	
Peer Review and Independent Science Advice <sup>8</sup>	\$2.35	
Program Legal Fees <sup>9</sup>	\$0.05	
<b>Totals</b>	<b>\$187.14</b>	<b>\$130.19</b>

**Estimated Total First Increment Cash and Cash Equivalent Costs** **\$317.33**

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

<sup>1</sup>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

<sup>2</sup>Estimate based on review of Reconnaissance-Level Water Action Plan.

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

<sup>4</sup>Cost for Cottonwood Ranch negotiated for in the Cooperative Agreement. Other purchase costs assume approximately \$3,100/ac.

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

<sup>6</sup>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)

<sup>7</sup>Executive Director, staff, office space, travel, etc.

<sup>8</sup>Includes assistance for implementing the AMP and peer review of individual documents.

<sup>9</sup>Estimate includes assistance in developing Program, land, water entities, contracts, taxes, etc.

## EXAMPLE DISBURSEMENT

**Request for Disbursement of Contributions**  
**Platte River Recovery Implementation Program**  
**General Fund**

To: Nebraska Community Foundation

From: The Governance Committee through the Executive Director

Subject: Disbursement of Contributions, Memorandum of Agreement No. R12AG60019,  
 Administrative & Financial Management Support to the Governance Committee and  
 Executive Director for the Platte River Recovery Implementation Program

Request No. \_\_\_\_\_ Date: \_\_\_\_\_

Please disburse contributions held for the Platte River Recovery Implementation Program, **Platte River General Fund** in the amount(s) shown below to the indicated parties:

	<u>Payee</u>	<u>Amount</u>
1.		
2.		
3.		
	Total	_____

For the following purpose(s)/reason(s):

- 1.
- 2.
- 3.

Approval(s):

\_\_\_\_\_

Executive Director

Date

\_\_\_\_\_  
 Grant & Cooperative Agreement Officer's  
 Technical Representative, Cooperative  
 Agreement No. R12AC60020

Date