

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Jeffrey Lake Development,
Incorporated, A Nebraska
Non-Profit Corporation,**

Complainant,

v.

Docket No. P-1417-_____

**Central Nebraska Public Power
& Irrigation District,**

Respondent.

**Complaint of Jeffrey Lake Development, Incorporated, Alleging Violations by
Central Nebraska Public Power & Irrigation District, Of Its License From The
Commission To Operate The Kingsley Dam Project No. 1417**

THIS COMPLAINT SEEKS FAST TRACK PROCESSING

Pursuant to Sections 206 and 306 of the Federal Power Act ("FPA"), 16 U.S.C. §§ 824e, 825e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC", or, the "Commission"), 18 C.F.R. § 385.206, Jeffrey Lake Development, Incorporated, a Nebraska non-profit corporation, ("Jeffrey" or "JLDI") hereby files this Complaint against the Central Nebraska Public Power & Irrigation District ("Central"). Jeffrey, pursuant to 18 C.F.R. § 385.206(h), seeks **FAST TRACK PROCESSING**, and respectfully asks the Commission to issue an Order, i) directing Central to stop its interference with Jeffrey's residential and recreational use and enjoyment of Jeffrey Lake, and, (ii) directing Central to stop violating its own land and shoreline management plan by requiring Central to both participate in, and allow adequate measures to prevent what has become continuing and significant erosion to

the shorelines surrounding Jeffrey Lake, and, in particular, and to reasonably regulate the water level maintained in Jeffrey Lake, so as to not encourage erosion.

Central has provided no explanation for its continuing actions in maintaining excessive water levels in Jeffrey Lake, nor has it provided an explanation for allowing the shoreline of the lake to erode and to cause excessive silting-in of the lake.

The Complainant.

JLDI is a Nebraska non-profit corporation. It leases a tract of land from Central, generally comprising the easterly side of Jeffrey Lake, in Lincoln County, Nebraska. The membership of JLDI consists of the owners of cabins and residences which are situated on the tract leased from Central. Each of the cabin or residence owners subleases their particular land lot from JLDI. The members/owners/sublessees at Jeffrey Lake make up the primary stakeholders with respect to the recreational use of the lake waters. The lease agreement between Central and JLDI was made May 1, 1980. The term of the lease agreement is best described as a "rolling", 31-year term, as toward the end of each year, an additional year is automatically added to the term. JLDI, under the lease, and as consideration, has the obligation to manage recreational activity on the lake and to maintain its shoreline.

Central's Project.

Central operates the Kingsley Dam Project No. 1417, under the terms of the Commission's 1998 Relicense Order. *Central Nebraska Public Power & Irrigation District*, 84 FERC ¶ 61,079 (1998) The Project is situated on the North Platte and the Platte Rivers, in Garden, Keith, Lincoln, Gosper, and Dawson Counties, all in Nebraska. The Project has two (2) segments, generally regarded as, (1) Lakes McConaughy and

Ogallala; and (2) the Tri-County Supply Canal. The Tri-County Supply Canal begins downstream from McConaughy and Ogallala, at the confluence of the contributing rivers, and extends 75 miles before the water is returned to the Platte River. The Canal flows through 27 canyon lakes of various sizes, and three hydroelectric plants. Jeffrey Lake is the second largest of the canyon lakes, consisting of about 575 acres. Central is likely better known for transporting and delivering irrigation water than it is for power generation.

Background To The Complaint.

The relationship between Central and JLDI is not particularly warm. During Central's relicensing years, the 1990's, Central decided to create profits for its project by implementing new lease agreements with the cabin owners, residence owners, marina enterprises, and the like, who had developed their holdings on or adjacent to Central's lands. These new lease agreements began creating profits for Central through lease fees. To its chagrin, Central was, and remains unable to unilaterally cancel, terminate or otherwise alter its lease with JLDI, and neither JLDI nor its sublessees contribute lease fees to Central's profits. Similarly, if, as, and when Central has attempted to extend its authority at Jeffrey Lake, JLDI has not been particularly docile, nor has it hesitated to question Central's decision-making. The subject matter of this Complaint is a case in point.

On December 7, 2009, Central filed an application with the Commission, seeking approval of a revised land and shoreline management plan, under Article 421 of its license. JLDI was the only lake association in the Project to intervene in that proceeding. In January, 2010, JLDI filed its "Motion to Intervene – Recommendations

for Terms and Conditions – Land and Shoreline Management Plan”, in proceeding P-1417-246. In its Motion, JLDI's second point spoke to the erosion and sedimentation difficulties with the west shoreline of Jeffrey Lake, which are precisely the subject matter of this Complaint. The Commission, on April 11, 2014, modified and approved Central's amendment application, and, at page 15 of its Order discussed the concerns expressed by JLDI regarding shoreline integrity at Jeffrey Lake. Essentially, the Commission determined that Central's proposals were adequate, those proposals made by JLDI were unnecessarily detailed and specific, and that Central could be trusted to act responsibly, using the plan terminologies it was proposing at that time.

Now, almost seven (7) years later, the same problems persist at Jeffrey, and Central's sole response to the issues has been the commencement of relatively undersized dredging operations at Jeffrey Lake. JLDI believes Central's strategy is reminiscent of the marketing line from a muffler and brake shop – pay me some now, or pay me more later. Rather than act to control the erosion, that being a major source of sediment in Jeffrey Lake, simply let it go, and periodically dig the silt off the bottom of the lake and pump it to the backside of the dam. At this juncture, the problem has been exacerbated by the addition of Central's decision to increase the water elevation in the same reservoir. Perhaps one can dredge less frequently if one raises the water level to offset the silt.

As will be described below, it has now been more than ten (10) years since Central last allowed JLDI to do volunteer work to control the erosion and silting from the westerly shoreline of Jeffrey Lake.

FERC Rule 206 Statements.

1. 18 C.F.R. § 385.206(b)(1). A complaint must clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements.

a. Failure to Provide or Allow Bank Stabilization. Many years ago JLDI volunteered to provide shoreline stabilization for the westerly shoreline of Jeffrey Lake. Early in the stabilization efforts, Central participated in the cost of stabilization materials for these efforts. Later in the history of those efforts, Central withdrew its cost participation. These stabilization efforts were referred to as the "bagging project" for the west shoreline. Annually, JLDI volunteer participants would identify a length of the west shoreline – typically on the order of 150 linear feet – which appeared to be the most vulnerable to erosion. Using their personal boats, the volunteers typically would transport 80-pound cement bags across the lake to the vulnerable areas, where the bags would be strategically placed and secured, forming a "seawall" for the west shoreline. JLDI's volunteer project had very good results for the shoreline area being protected.

Over the years, Central has become increasingly recalcitrant toward the "bagging project". Initially, it insisted that JLDI apply for permits for the work (even though, in many ways, the work was simply maintenance). If that were not enough, Central eventually categorically refused to allow JLDI even to apply for such permits. The last permit for the "bagging project" was issued in June, 2006, which allowed placement of the last 1,200 bags which have been placed. Since the summer of 2006, Central has refused to allow JLDI to either maintain or enhance its seawall structure along the west

shoreline, which has allowed the shoreline protection to fall into a serious state of disrepair.

b. Arbitrary Increase in the Lake Water Level. As the annual boating season for 2016 approached, and not later than Memorial Day, Central raised the water level in Jeffrey Lake on the order of 15" to 18" higher than its historic high levels. The east shoreline of the Jeffrey is home to over a hundred cabins and houses. The elevation increase this past summer was such that water washed over residents' seawalls, into their yards, into boathouses, and so forth. Central has indicated its plan is to maintain the new elevation, more or less indefinitely. The east shoreline residents have a relatively immediate ability to protect their own sections of the east shoreline; however, that is not so with regard to the west shoreline.

The high water level has effectively eliminated all shoreline protection on the west side of Jeffrey. The conditions are such that the higher water is exacerbating the erosion of steep banks and cliffs on the west shore, is causing tree lines and bushes to fall into the water, and has caused virtually constant plumes of muddy water that are so substantial as to be visible without the aid of an aerial view. The silting-in of the lake is burgeoning.

In sum, Central's failure to allow stakeholders to continue and/or increase their bank stabilization efforts, and its wholly arbitrary increase in lake water level, clearly violate its obligations as a FERC licensee.

2. 18 C.F.R. § 385.206(b)(2). A complaint must explain how the action or inaction violates applicable statutory standards or regulatory requirements.

The Complaint criticizes Central both for failing to protect a shoreline at Jeffrey Lake from avoidable erosion, and for raising the water level at Jeffrey Lake without regard for the shoreline damage which inevitably is resulting from the elevated water level. Both result in a level of sedimentation at the lake which is unreasonable and avoidable. At a minimum, the acts and omissions by Central implicate the provisions of Articles 421 and 422 of its license, as well as certain provisions of the land and shoreline management plan proposed by Central and approved by FERC pursuant to Article 421 of Central's license.

The Complainant contends that each of Articles 421 and 422, and the provisions of Central's Land and Shoreline Management Plan, either specifically or by necessary implication, require Central to exercise either sound or best management practices with regard to the maintenance of the integrity of the shorelines of waters within Central's project, and to avoid excessive silting.

We suggest that, at a minimum, the acts and omissions of Central implicate Articles 421 and 422 of its 1998 license, and the principles and requirements which have been established by Central through its Land and Shoreline Management Plan, through its various writings and revisions. Articles 421 and 422, and the LSMP for the Kingsley Dam Project obligate Central to take the initiative to protect and maintain shorelines within the project, and to refrain from taking actions which compromise shoreline integrity against water-caused erosion, and its resulting sedimentation.

Central, on the one hand, understands its shoreline obligations. Article 421 of Central's license recites that, "[Central's] LSMP shall include a plan addressing use of project lands and shorelines designated for public recreational use . . . and the

recreational use of project waters. * * * The plan shall be consistent with wildlife protection measures required by this license. * * * The plan shall also include, at a minimum, and evaluation of the need for, and measures as appropriate to address: * * *

(c) measures for controlling aquatic vegetation and sedimentation in project reservoirs, as appropriate.”

Article 422 of its license provides: “In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters . . . [and] shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission * * * The type of use and occupancy of project lands and water for which the Licensee may grant permission without prior Commission approval are: . . . 3. Embankments, bulkhead, retaining walls, or similar structures for erosion control to protect the existing shoreline * * * Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: 1. Inspect the site of the proposed construction, 2. Consider whether the planting of vegetation or the use of rip rap would be adequate to control erosion at the site, and 3. Determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.”

Finally, Central’s LSMP, in its section 2.2.5 addresses “Shoreline Integrity”, and the need to “preserve the physical integrity of the shoreline, preventing excessive erosion that can lower water quality and degrade aquatic habitat.”

Clearly, the shorelines matter. Just as clearly, the *laissez faire* approach which Central has insisted upon taking toward the shorelines of Jeffrey Lake, is contrary to the principle that shorelines matter.

3. 18 C.F.R. § 385.206(b)(3). A complaint must set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant.

The issues surrounding Central's behavior in this matter include, a) diminution of water quality in Jeffrey Lake; b) excessive sedimentation in the reservoir proper; c) probable reduced efficiency and/or increased maintenance to the turbine(s) in the Jeffrey Lake power plant; d) needless expense to conduct dredging operations in the reservoir; e) degradation of scenic views and wildlife habitat; and, f) degradation of recreational use of the reservoir. Complainant's membership consists of the cabin and homeowners at Jeffrey Lake, each of whom is also a sub-lessee of JLDI. JLDI is directly affected, as are each of its individual members.

4. 18 C.F.R. § 385.206(b)(4). A complaint must make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction.

Again, Complainant's membership consists of the cabin and homeowners at Jeffrey Lake, each of whom is also a sub-lessee of JLDI. JLDI is directly affected, as are each of its individual members. The ongoing erosion to the Jeffrey Lake shoreline(s) degrades the memberships' recreational use of the reservoir, and has raised havoc with the memberships' shorelines, docks, boathouses and the like. While

it may be difficult to quantify the financial impact of having their quiet enjoyment of the properties, that is not to say there is no impact.

5. 18 C.F.R. § 385.206(b)(5). A complaint must indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction.

Central's behavior in this matter impacts the Complainant, the members/sublessees of JLDI, and the general public in that, the water quality of Jeffrey Lake is diminished through excessive sedimentation, the excessively high water level impedes the ordinary use of the stakeholders homes and cabins and further contributes to erosion around the lake. In turn, as a practical matter, the action and inaction of Central negatively impacts boating, fishing, and the general aesthetics associated with lake living at Jeffrey Lake.

6. 18 C.F.R. § 385.206(b)(6). A complaint must state whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum.

To the best knowledge of the principals of JLDI, the issue or issues presented by its Complaint herein are not currently pending as the subject matter of any other proceeding, either before the Commission, or any other forum having jurisdiction.

7. 18 C.F.R. § 385.206(b)(7). A complaint must state the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief.

Jeffrey respectfully asks the Commission to issue an Order, i) directing Central to stop its interference with Jeffrey's residential and recreational use and enjoyment of Jeffrey Lake, and, (ii) directing Central to stop violating its own land and shoreline management plan by requiring Central to both participate in, and allow adequate measures to prevent what has become continuing and significant erosion to the shorelines surrounding Jeffrey Lake, and, in particular, and to reasonably regulate the water level maintained in Jeffrey Lake, so as to not encourage erosion, meaning a direction to Central to lower the water level in Jeffrey to its former level.

8. 18 C.F.R. § 385.206(b)(8). A complaint must include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits.

Below is a chronological listing of the documents upon which the Complainant relies. In each instance, following the identification of the document is a "thumbnail" description regarding the document's relevance.

A. Agreement, dated July 26, 2002 (a settlement agreement between JLDI and Central, requiring Central to conduct certain periodic dredging operations at Jeffrey Lake, indicating, in Complainant's opinion, the need to impose strict requirements upon Central, in order to provide it with motivation to act responsibly)

B. Letter, D. Vetter to Tillotson (with the Army Corps), dated March 13, 2006 (correspondence from a former officer of JLDI, providing a history of the "bagging" project which has been conducted on the westerly shoreline of Jeffrey Lake)

C. Letter, D. Vetter to Grant (with FERC), dated April 17, 2006 (a similar history and "plea" for assistance to FERC, regional)

D. Letter, F. Vetter to D. Vetter, dated May 3, 2006 (informational letter provided to JLDI by Central, regarding a permit application for the "bagging" project)

E. Permit Application, Jeffrey to Central, dated May 11, 2006 (requesting a permit for maintenance of the west shoreline at Jeffrey, in the "good old days", so to speak)

F. Letter, F. Vetter to D. Vetter, dated June 7, 2006 (communication from Central to JLDI, in response to the application, and enclosing permit/agreements for signature)

G. Permit, dated June 13, 2006 (for the last "bagging" work, expiring by its terms, on July 31, 2006)

H. Letter, F. Vetter to D. Vetter, dated June 14, 2006 (regarding permit issuance)

I. Letter, D. Vetter to F. Vetter, dated August 6, 2008 (a request by JLDI to Central, for a permit application – a request which was not answered)

J. Letter, D. Vetter to F. Vetter, dated May 15, 2009 (again, JLDI requested an application form, attempting to apply for a permit for maintenance of the "bagging" project)

K. JLDI's Motion to Intervene – Recommendations for Terms and Conditions – Land and Shoreline Management Plan, in proceeding P-1417-246, dated January, 2010. (20100115-0016 FERC PDF (unofficial) 01/15/2010) (In its Motion, JLDI's second point spoke to the erosion and sedimentation difficulties with the west shoreline of Jeffrey Lake, which are precisely the subject matter of this Complaint.

L. Letter, F. Vetter to Jochum, dated June 16, 2011 (Central advising JLDI that trespassing at the west shoreline is prohibited; in other words, no further shoreline maintenance will be allowed)

M. Letter, Windrum to Klein, dated June 21, 2011 (conveying JLDI's belief that the "bagging" project requests is comprised of maintenance)

N. Email and letter, Klein to Windrum, dated June 24, 2011 (responding for Central that no further "bagging" work will be allowed)

O. Letter, F. Vetter to Jochum, dated June 24, 2011 (indicating, for Central, and directed to JLDI, that any and all prior "bagging" project permissions stand revoked)

P. Letter, Windrum to Klein, dated June 27, 2011 (JLDI counsel to Central counsel, requesting clarification of a claim that the "bagging" project runs afoul of Central's license terms)

Q. Letter, Moeschen (Corps) to Windrum, dated December 6, 2011 (providing more history of JLDI's efforts to improve Jeffrey Lake)

R. Emails, Cromer-F. Vetter-Windrum, dated April 3-4, 2013 (discussing the use of concrete bags for shoreline stabilization)

S. Order of The Commission, dated April 11, 2014 (20140411-3026 FERC PDF (unofficial) 04/11/2014) (which Order modified and approved Central's amendment application, and which, as discussed above, at page 15 discusses the concerns expressed by JLDI regarding shoreline integrity at Jeffrey Lake)

T.. Letter, Cromer to Kraus, dated July 30, 2016 (representing the most recent effort by JLDI to address the shoreline and sedimentation issues at Jeffrey Lake)

U. Email, Kraus to Cromer, dated August 10, 2016 (Central's response to Mr. Cromer)

9. 18 C.F.R. § 385.206(b)(9). A complaint must state (i) whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution

mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used; (ii) whether the complainant believes that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the complaint; (iii) what types of ADR procedures could be used; and (iv) any process that has been agreed on for resolving the complaint.

The master Lease Agreement which is now in force between Central and JLDI, dated May 1, 1980, contains no provisions for alternative means of dispute resolution. That Lease Agreement is the sole document defining the relationship of Central and JLDI. In addition, the historic relationship between the parties has been somewhat "rocky", and has somewhat frequently involved or required litigation. Representatives of the Complainant have attempted to appeal to Central's reason, but those efforts have fallen on deaf ears. In a phrase, it appears futile to make further direct attempts to resolve the issue of shoreline erosion at Jeffrey Lake.

10. 18 C.F.R. § 385.206(b)(10). A complaint must include a form of notice suitable for publication in the Federal Register and submit a copy of the notice on a separate 3 1/2 inch diskette in ASCII format.

Complainant is submitting herewith such a form, in "word" format.

11. 18 C.F.R. § 385.206(b)(11). A complaint must explain with respect to requests for Fast Track processing, why the standard processes will not be adequate for expeditiously resolving the complaint.

Jeffrey, pursuant to 18 C.F.R. § 385.206(h), seeks **FAST TRACK PROCESSING**, and respectfully asks the Commission to issue an Order, i) directing Central to stop its interference with Jeffrey's residential and recreational use and

enjoyment of Jeffrey Lake, and, (ii) directing Central to stop violating its own land and shoreline management plan by requiring Central to both participate in, and allow adequate measures to prevent what has become continuing and significant erosion to the shorelines surrounding Jeffrey Lake, and, in particular, and to reasonably regulate the water level maintained in Jeffrey Lake, so as to not encourage erosion. Since Central's inappropriate actions and omissions are causing needless and excessive impacts to Jeffrey Lake, and since the issues and their resolution are relatively simple, JLDI requests that the Commission undertake fast track processing, and proceed to an expedited resolution of the Complaint, according to Rule 206(h).

Dated: December 22, 2016.

JEFFREY LAKE DEVELOPMENT,
INCORPORATED, Complainant,

By: /s/ Terry K. Barber
Its Attorney

Terry K. Barber Nebr. Bar. No. 10188
Barber & Barber, P.C., L.L.O.
300 North 44th Street, Suite 205
P.O. Box 4555
Lincoln, Nebraska 68504-0555
(402) 434-5427
terrybarber49@yahoo.com

Certificate of Service

I hereby certify that I have this day served the foregoing document on the individuals listed on the annexed service list.

Dated: December 22, 2016.

/s/ Terry K. Barber

APPENDIX OF DOCUMENTS

INDEX OF DOCUMENTS

- A. Agreement, dated July 26, 2002 (settlement, for dredging)
- B. Letter, D. Vetter to Tillotson (Corps), dated March 13, 2006 (history of "bagging")
- C. Letter, D. Vetter to Grant (FERC), dated April 17, 2006 (history and "plea")
- D. Letter, F. Vetter to D. Vetter, dated May 3, 2006 (informational, about permit apps)
- E. Permit Application, Jeffrey to Central, dated May 11, 2006 (for bagging the shoreline)
- F. Letter, F. Vetter to D. Vetter, dated June 7, 2006 (encloses permit/agreements for signature)(permit has a 2001 Corps letter attached – again)
- G. Permit, dated June 13, 2006 (for bagging, expires July 31, 2006)
- H. Letter, F. Vetter to D. Vetter, dated June 14, 2006 (regarding permit issuance)
- I. Letter, D. Vetter to F. Vetter, dated August 6, 2008 (requesting permit application)
- J. Letter, D. Vetter to F. Vetter, dated May 15, 2009 (request for "bagging" permit app)
- K. JLDI's Motion to Intervene – Recommendations for Terms and Conditions – Land and Shoreline Management Plan, in proceeding P-1417-246, dated January, 2010. (20100115-0016 FERC PDF (unofficial) 01/15/2010) (JLDI intervention in LSMP amendment proceeding)
- L. Letter, F. Vetter to Jochum, dated June 16, 2011 (trespassing prohibited)
- M. Letter, Windrum to Klein, dated June 21, 2011 (claiming work is maintenance)
- N. Email and letter, Klein to Windrum, dated June 24, 2011 (no further work)
- O. Letter, F. Vetter to Jochum, dated June 24, 2011 (all prior permission revoked)
- P. Letter, Windrum to Klein, dated June 27, 2011 (requesting clarification)
- Q. Letter, Moeschen (Corps) to Windrum, dated December 6, 2011 (providing history)

R. Emails, Cromer-F. Vetter-Windrum, dated April 3-4, 2013 (use of concrete bags with allowed items and those prohibited)

S. Order of The Commission, dated April 11, 2014 (20140411-3026 FERC PDF (unofficial) 04/11/2014) (modified and approved Central's 2009 amendment application, in which proceeding JLDI intervened)

T. Letter, Cromer to Kraus, dated July 30, 2016

U. Email, Kraus to Cromer, dated August 10, 2016

Photo 647 – west shoreline, Jeffrey Lake

Photo 655 – west shoreline, Jeffrey Lake

Photo D41 – Jeffrey Lake dredging

AGREEMENT

Agreement made on 7-26, 2002 between Jeffrey Lake Development, Inc., a Nebraska non-profit corporation, referred to as Jeffrey, and The Central Nebraska Public Power and Irrigation District, a public corporation and political subdivision of the State of Nebraska, referred to as Central.

SECTION ONE PURPOSE

This agreement is made as a compromise between the parties for the complete and final settlement of any claims, differences, and causes of action with respect to the dispute described below.

SECTION TWO STATEMENT OF DISPUTE

On July 28, 2000, Central submitted a draft Land and Shoreline Management Plan (Plan) to the Federal Energy Regulatory Commission (FERC) for approval pursuant to Article 421 of Central's FERC license. On October 27, 2000, Jeffrey filed a Motion to Intervene and Recommendations for Terms and Conditions to the Plan. Specifically, Jeffrey recommended to FERC that Central be required to include in the Plan a dredging project at Central's expense in the north end of Jeffrey Lake to allow for reasonable means of water passage between the northern and southern ends of such lake, to reduce or minimize the aquatic and vegetative accumulation in the northern end of said lake, all for the enhancement of the recreational, wildlife, and environmental aspects of said lake. Central opposed Jeffrey's recommendations to FERC.

The parties desire to reach a full and final compromise and settlement of all matters arising out of the facts and recommendations as set forth herein.

SECTION THREE TERMS OF SETTLEMENT

In consideration of the mutual covenants set forth, the parties agree as follows:

A. Central agrees to amend the draft Plan submitted to FERC by inserting in the Plan the following paragraphs to replace the second paragraph of Section 6 "Recreation Plan", Part 2 "Jeffrey Reservoir"

"As described in Section 4.E.5, one of the developmental constraints at Jeffrey Reservoir is the sedimentation that has occurred at the mouth of the supply canal at the northern end of the reservoir. As part of its ongoing programs to promote public use of its waters, Central will, as part of this plan, dredge portions of the sediment deposits to open a more easily traversable waterway between the north and south portions of the reservoir. Specifically, subject to regulatory approval by the United States Army Corps of Engineers, the Nebraska Department of Environmental Quality, and any other jurisdictional agencies, Central will dredge a channel to permit recreational boating access between the north and south parts of Jeffrey Reservoir. The channel shall be

approximately as shown on Figure 1-3 that is approximately 1800 feet in length and approximately 70 feet wide at the top with an approximately 40 foot bottom. Assuming timely regulatory approval of this Plan and of the necessary regulatory requirements, Central will complete the dredging no later than June 1, 2004.

Central shall deposit the dredged material into one or both of the nearby bays as shown on Figure 1-3. The bay or bays will be blocked by an earthen dike or dikes constructed by Central to prevent the removed material from returning to the lake. Central shall place broken concrete on the lake side of the dike(s) to protect against erosion.

Central shall maintain the dredged channel during the term of its license by, if necessary, dredging the channel to the length, width and depth described above every ten years from the date of completion of the initial dredging project."

B. If the draft Plan and the proposed modifications are approved by FERC, Central agrees to the following:

1. Before June 1, 2004, Central shall complete dredging the existing channel connecting the north and south portion of Jeffrey Lake located as shown on the attached aerial photograph marked Exhibit A and incorporated herein by this reference. The dredged channel shall be approximately 1800 feet in length as depicted on Exhibit A with an approximate depth of 5' and a bottom width of approximately 40' as shown on the cross section drawing of the dredged channel on Exhibit A.

2. Central shall deposit the dredged material into one or both of the nearby bays as shown on Exhibit A. The bay or bays will be blocked by an earthen dike or dikes constructed by Central to prevent the removed material from returning to the lake. Central shall place broken concrete on the lake side of the dike(s) to protect against erosion.

3 Central shall maintain the dredged channel during the term of its license by, if necessary, dredging the channel to the length, width and depth described above every ten years from the date of completion of the initial dredging project,

4. In addition to dredging the channel as hereinabove described, Central agrees to dredge an area approximately 9 acres in size, constituting the "hook" on the approximate 37 acre mud flat, in the north end of Jeffrey Lake, in the area designated on Exhibit A, and to deposit the dredged material in the bay or bays designated on Exhibit A. For purpose of clarification, the obligation of Central to undertake this particular dredging shall, for purposes of this Agreement, be a "one time" obligation, that is, Central's obligation with respect to this specific dredging shall not be a continuing obligation, nor construed to be a burden or obligation on Central to maintain a certain depth of Jeffrey Lake in the area being dredged, nor does this obligation of dredging in this particular paragraph impose upon Central any obligation with respect to the content or the implementation of Central's Shoreline Management Plan.

5. Upon completion of the initial dredging project, Central shall provide Jeffrey with 10 channel marking buoys and buoy anchoring systems or devices.

C. Jeffrey agrees to the following:

1. Simultaneously with Central's submission of the above language amending the draft Plan, Jeffrey shall file a motion with FERC to urge approval of the Plan as amended by Central. Such motion shall state that the modifications to the draft Plan settle any differences between Central and Jeffrey identified in Jeffrey's Motion to Intervene and Recommendations for Terms and Conditions to the Plan and that if FERC approves the modified language, Jeffrey no longer seeks inclusion of the recommended Terms and Conditions.

2. Jeffrey agrees that all existing claims, demands, rights, and causes of action, regulatory or otherwise that Jeffrey has or may have against Central with respect to the above-described dispute are satisfied, discharged, and settled.

3. Jeffrey shall be responsible for identifying desired buoy locations, and for the installation, maintenance, repair and replacement of buoys marking the dredged channel.

SECTION FOUR EXTENSION OF TIME

If Central is delayed in the completion of the dredging project or maintenance thereof described in Section 3 above by weather conditions, strikes or any other causes beyond Central's control, then the time of completion shall be extended for the period of any or all of the above stated causes.

SECTION FIVE AGREEMENT CONTINGENT UPON CENTRAL OBTAINING LICENSES AND PERMITS

This agreement is made subject to Central being able to obtain approval of the Plan from FERC, the required 404 dredge and fill permit from the U.S. Army Corps of Engineers, and all other required licenses and permits for the project described in Section 3 above. For this purpose, Central agrees to make immediate application for those licenses and permits. If the required licenses and permits are not obtained by October 1, 2002, this agreement may be cancelled at the option of either party.

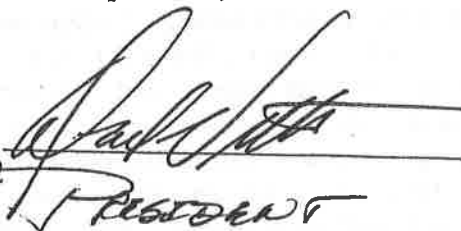
SECTION SIX EFFECT OF AGREEMENT

This agreement shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


JEFFREY LAKE DEVELOPMENT, INC.
a Nebraska corporation,

By:
7/18/02


President

THE CENTRAL NEBRASKA PUBLIC
POWER AND IRRIGATION DISTRICT,
a public corporation and political
subdivision of the State of Nebraska

By:


Don Kraus, General Manager

Steve Windrum

From: "Dail Vetter" <dvetter@cozadstatebank.com>
To: "Bob Mann" <bmmann@nebnet.net>; "Jim O'Hare" <johare@alltel.net>; "Joe Coyle" <joseph.f.coyle@aphis.usda.gov>; <jkfrance@cozadtel.net>; "Stenehjem, Ken" <kenstenehjem@nebraska-machinery.com>; "Lila Beenblossom" <beenblossom@nebnet.net>; "Gallentine, Norm" <njgallentine@classicnet.net>; "Kots, Pete" <kots@citlink.net>; "Sneller, Scott" <scott@jtbuilders.net>; <swindrum@cozadtel.net>
Sent: Tuesday, March 14, 2006 11:18 AM
Subject: Corp of Engineers ltr..doc

March 13, 2006

US Army Corps of Engineers
 Attn: Keith Tillotson
 Kearney Regulatory Office
 1430 Central Avenue
 Kearney, Ne 68847

Re: Public Notice -- App.# 199922004

Dear Mr. Tillotson,

I am in receipt of your recent publication on information to reissue the "Programmatic General Permit (PGP) to CNPPID and NPPD. Thank you for including me in your mailing. As I read through the general provisions I can understand the reasoning behind the PGP which allows the governing agencies being CNPPID and NPPD to expedite the permitting process without also obtaining a 404 permit from the Corp of Engineers. Of particular interest to me is the type of material described for revetments or erosion control that is allowed on the project locations more specifically Jeffrey Lake Reservoir and Midway Lake Reservoir. The publication goes a step further with a sample drawing on how to install concrete bag riprap with rebar reinforcement for erosion control.

You may or may not be aware that the residents and part-time cabin owners on Jeffrey Reservoir began a "bagging project" erosion control program 13 years ago to stabilize erosion on the west side of the Jeffrey Lake (aka) Upper 84 Ranch and also the stabilization of shore-line towards the north end of the lake that we considered at risk of erosion due to wave action from wind and boating. To date we estimate that we have placed approximately 24,000 bags at various locations on the lake to control erosion. When we first began the project, CNPPID endorsed the "bagging project" and was even willing to cost share the project if we provided all the labor and erected the bags in compliance with the Corp of Engineers specifications. We are confident that our program is working as areas where sea walls have been constructed, we have stopped further erosion and we now see vegetative growth behind these areas of stabilization which enhances water quality from reduced silt in the lake and improved

wildlife habitat.

On June 16, 2005, CNPPID Division Office at Gothenburg notified Jeffrey Lake Development organization that we were to cease repair of existing sea walls, and no new "bagging projects" would be approved. CNPPID stated the construction of vertical concrete riprap sea walls are now unacceptable and not allowed. It was further stated the erosion control project provides "no operational need" to CNPPID or FERC. It's ironic the Corp of Engineers allows the stabilization of shore-lines with vertical concrete riprap as an acceptable method of erosion control as long as the work is performed in accordance with the Nationwide Permit 3, however the same method is considered unacceptable by CNPPID. There appears to be conflict of statement between the two agencies.

I would certainly appreciate a response to this correspondence and clarification on this subject would be welcome. I can be reached by phone at 308-784-2000 during the day or 308-784-2554 in the evening. A written reply may be sent to my home address.

Thank you for your time.

Sincerely,

Dail Vetter
President of Jeffrey Lake Development, Inc.
42361 Road 761
Cozad, Ne 69130

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.1.375 / Virus Database: 268.2.2/280 - Release Date: 3/13/06

3/13/06

April 17, 2006

Ms. Patricia Grant
Federal Energy & Regulatory Commission
230 South Dearborn Street, Room 3130
Chicago, IL 60604

RE: Jeffrey Lake
Central Nebraska Public Power & Irrigation District
Project No. 1417

Dear Ms. Grant:

I am the President of Jeffrey Lake Development, Incorporated, which entity has a lease of substantially the eastern side of Jeffrey Lake in Lincoln County, Nebraska, from Central, regarding their project above identified. This corporation subleases individual lots on the east shoreline of Jeffrey Lake to approximately 122 leaseholders.

Our Association has for many years undertaken and implemented a bagging project, once a year, for various areas around the lake shore, not part of our lease with Central, principally on the west side, but not necessarily, where shear cliffs have existed and have eroded into the lake. For many years Central participated in that project by providing funding for half the cost of the cement bags. The work has been done entirely on a volunteer basis by the leaseholders at Jeffrey, and other persons interested in reducing the silting in of the lake.

We were advised by Central personnel after your tour of the lake last summer that you, or at least someone on behalf of FERC, made the verbal statement that there will be no more bagging in regard to these seawalls, either in new areas where erosion is observed to be growing or critical, and not even any bagging to repair or maintain existing areas (in several places, an additional layer of two or three bags needs to be placed at the top of the existing wall by reason of average water levels rising and/or general maintenance of the top layer).

Several weeks ago we received from the Corp of Engineers a notice of the intention to extend the programmatic permit that the Corp has with Central for an additional three years. We were invited to make comments as were other interested parties in this process.

Part of the "packet" we received in addition to the notice itself was several drawings of how the Corp of Engineers directs and designates shoreline protection to be constructed using a variety of materials. One such specific drawing or diagram included bagged seawalls in exactly the way we have implemented our bagging project over the last many years. You probably are familiar with this literature but in case not, I enclose a copy of the Corp's notice, together with the diagram in particular that I am talking about.

C

Incidentally, I have written the Corp on behalf of Jeffrey Lake and pointed out to them how there is an apparent inconsistency between what they provide and designate as shoreline protection as described, and what Central is now telling us is prohibited at Jeffrey Lake.

In any event, we are advised by Central personnel, as mentioned, that you have said there will be no more bagging of these critical erosion sensitive areas around Jeffrey.

I have been provided with a copy of your report of your tour of the canal system and various lakes on the project in the summer of 2005. I take note that nothing is provided in that report regarding this apparent new prohibition. In addition, I have searched the Internet in regard to any and all filings that are available regarding FERC, Central Nebraska Public Power, and this project, which might impact upon the issue and I find nothing in this search where anything in writing appears regarding the matter. We have asked Central for something in writing regarding this matter and as of this letter we have not received it. One of our leaseholders who heads the project for the bagging for the last several years was in a conversation with Kevin Boyd of Central last summer regarding this matter and Mr. Boyd emphasized to this person that this prohibition was definitely coming from FERC, and not from Central.

Our corporation has its annual meeting of the leaseholders on May 7th of this year. I ask that you provide me with a clarification of what this policy is and, equally important, why. The walls that we constructed 8 or 10 years ago, when we first started the project, have shown demonstrated and observable success in bank stabilization and eliminating erosion and sediment into the lake at these areas. I note from the various objectives that are in Central's license regarding activities and operations on Central's systems, and its lakes, that one of these objectives is to enhance recreational use, together with preserving habitat for wildlife. Both of these objectives are enhanced by this bagging and shoreline protection. If we cannot continue this project these two factors would be negatively impacted. Incidentally, this bagging in terms of shoreline protection is the only practical way to do any kind of shoreline protection and stabilization at these areas. We transport the bags by boat, often as far as a mile if not longer, depending upon the location. There is no access by either us, or Central, to provide any other material as a practical matter to many areas affected.

Will look forward to your prompt reply.

Cordially yours,

Dail Vetter
President, Jeffrey Lake Development, Inc.

Enclosure: Corp of Engineers



CENTRAL
Nebraska Public Power
and Irrigation District

May 3, 2006

Dail Vetter, President
Jeffrey Lake Development, Inc.
42361 Rd. 761
Cozad NE 69130

Subject: Jeffrey Lake Development, Inc. "Bagging Project"

Mr. Vetter:

This letter is in response to your April 10, 2006 letter regarding Jeffrey Lake Development, Inc.'s ("JLDT") "bagging project." This response letter is not intended to be interpreted as either an approval or denial of the referenced project. Approval or denial determinations are made on a case-by-case basis regarding permit applications submitted in accordance with The Central Nebraska Public Power and Irrigation District's ("Central") March 7, 2005 *Construction and Special Water Access Permitting Procedures for Tenants, Subtenants, and Adjacent Landowners* ("Permitting Procedures").

For your information, should you seek an application for such a project, some items that would need to be considered when Central evaluates a permit application include:

- (1) The requirements of Central's Federal Energy Regulatory Commission ("FERC") License, including specifically FERC License Article 422 (please note that there are specific requirements before Central may permit bulkheads or retaining walls).
- (2) Central's December 2002 Land and Shoreline Management Plan ("LSMP"), developed by Central in accordance with FERC License Article 421 and approved by FERC.
- (3) Central's Permitting Procedures developed in accordance with the LSMP (please note that there are specifications relative to the construction of seawalls).
- (4) Information from FERC's 2005 Environmental Inspection Report (please note Photo 28 which is specific to existing cement bag seawall work at Jeffrey Lake)
- (5) The 404 permitting requirements of the Army Corps of Engineers.

Home Office • 415 Lincoln St. • P.O. Box 740 • Holdrege, NE 68949-0740 • (308) 995-8601 • Fax (308) 995-6935

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D

Dail Vetter
 Jeffrey Lake Development, Inc. "Bagging Project"
 May 3, 2006
 Page 2 of 2

If you have any questions or comments, please contact Central's Real Estate Department:

Frank Vetter (Holdrege Office)
 Phone: 308-995-8601
 Toll Free: 888-580-5299

Kent Aden (Gothenburg Office)
 Phone: 308-537-3582

Sincerely,

FRANK C. VETTER

Frank C. Vetter
 Real Estate Administrator

rdw

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT PERMIT APPLICATION

Application for a: ☐ Special Water Access Facility (dock, watercraft lift, path, steps, etc.)
☒ Erosion Control Structure (vegetation, riprap, rock, seawall, etc.)
☐ Dredging, Excavating and Filling Activities
☐ Vegetative Cover Modification or Removal Activities
☐ Dwelling, addition to a dwelling, shed, garage or other improvements
☐ Nonconforming Facilities

*This Application will expire if not completed and returned to Central by June 15, 2006

Applicant: Jeffrey Lake Development, Inc. - Dail Vetter, Pres. Phone: 308-784-2554 / 784-2000

Address: 42361 Road 761, Cozad, NE 69130

Lake Name: Jeffrey Lake

Lake Phone: N/A

Lake Address (if different from above): N/A

Provide A General Description Of Proposed Construction Or Use: PLACE CONCRETE
RIP-RAP BAGS TO FORM SLOPED SEA WALL TO
CONTROL SHORELAND EROSION IN HIGH RISK
AREAS. (SEE PROPOSED BAGGING DIAGRAM)

You must complete, sign and return this Permit Application Form along with the following "X" items to Central before a decision will be made. Central reserves the right to require additional permits, approvals, information, etc. as deemed necessary by Central.

- ☐ Application Fee of \$ _____ (Tenant/Subtenant - SWAF \$50.00, Dredge/Excavate/Fill \$50.00, Modification or Removal of Vegetation \$50.00, ECS and Dwellings/Additions/Other Improvements \$0.00; Adjacent Landowner - SWAF \$200.00, Dredge/Excavate/Fill \$200.00, Modification or Removal of Vegetation \$200.00, ECS \$0.00, Dwellings/Additions/Other Improvements N/A)
- ☐ Lake area association permit signed by authorized members and adjoining neighbors, or a written statement from association that no permit and/or signatures are needed (Central, for good cause shown, may issue a permit without the lake association requirements being met)
- ☐ Homeowners association permit signed by authorized members or a written statement from homeowners association that no permit is needed.
- ☐ Approved County building permit, or written statement from County that no permit is needed
- ☐ Approved Programmatic General Permit (issued by Central - may be required)
- ☐ Approved U.S. Army Corps of Engineers 404 Permit (issued by Corps - may be required)

Tract No. JF

E

- ☐ Building Plan drawings (length, width, height and front and side elevation views)
- ☐ Plot Plan drawing (distance to lot lines, septic system, lake, road, etc – example attached)
- ☐ Plot Plan of the dock, dock anchoring device and/or shore station (distance to extended side lot lines, length, width and height of each structure – example attached)
- ☒ Material Specification List (list all construction materials proposed for all structures/facilities)
- ☐ Signature of neighbor consenting to "shift" the extended side lot line (attached)
- ☐ Signature of neighbors for a Single Use SWAF (vs) Common Use SWAF (attached)
- ☐ Site Evaluation information per NDEQ Title 124, Chapter 4 (completed by NDEQ certified Professional – Chapter 4 attached)
- ☐ Septic System Setback Form (completed by NDEQ certified professional - attached)
- ☐ Soil Percolation Form B (completed by NDEQ certified professional – attached)
- ☐ Consultation with U.S. Fish & Wildlife Service (by Central)
- ☐ Consultation with Nebraska Game and Parks Commission (by Central)
- ☐ Consultation with Nebraska State Historic Preservation Officer (by Central)
- ☐ Consultation with Federal Energy Regulatory Commission (by Central)
- ☐ Notice regarding the Migratory Bird Treaty Act (attached)
- ☐ Vegetative Cover Modification or Removal Plan (permit & photo attached)
- ☐ Legal survey of your leased or deeded lot/parcel
- ☐ Proof of construction date (approved County building permit, construction contract, etc.)
- ☐ Brochure, Photo, or other information and materials to assist permit application, if available
- ☐ Letter from a licensed electrician stating compliance with local, state and NEC, if there will be electricity to an electrical boat lift, lights, etc., on the dock.
- ☐ **Central will provide and install** four two-inch minimum diameter or width white reflectors at each of the two end corners of the SWAF farthest from the shoreline, and a reflector shall be placed along each side of the SWAF within one foot of each end corner.
- ☒ Other Show on the enclosed aerial photo where the proposed project(s) are to be located. Also, provide the length, width and height for each proposed project area and front and side elevation views for each proposed project area. These may be provided on a separate sheet of paper.

Date: 5/11, 2006

Application is hereby made for approval of the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete and accurate. **I agree to submit to Central, for written approval, any and all changes from the original application.** I agree that, if this application is approved by Central, I will comply with the terms and conditions of the permit issued by Central and any additional conditions or restrictions that may be imposed by Central at the time of approval. Applicant consents to Central installing four reflectors on the SWAF.


Applicant


Title

(Permitting Procedures – Permit Application – March 7, 2005)

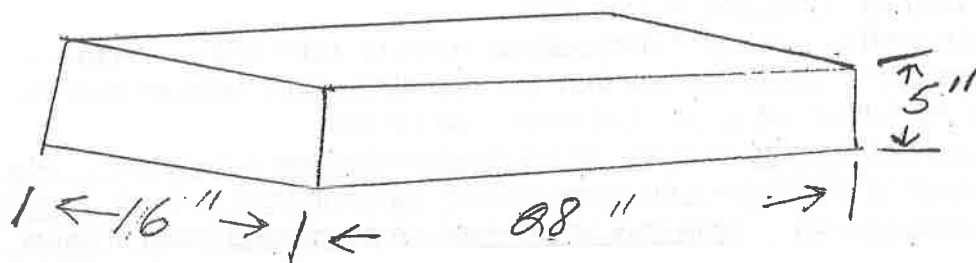
JEFFREY LAKE DEVELOPMENT, INC.

MATERIAL DESCRIPTION

PLACING APPROX 1200 BAGS.

APPROX 80# FIBER BAG
W/ CONCRETE MIX

APPROX BAG SIZE



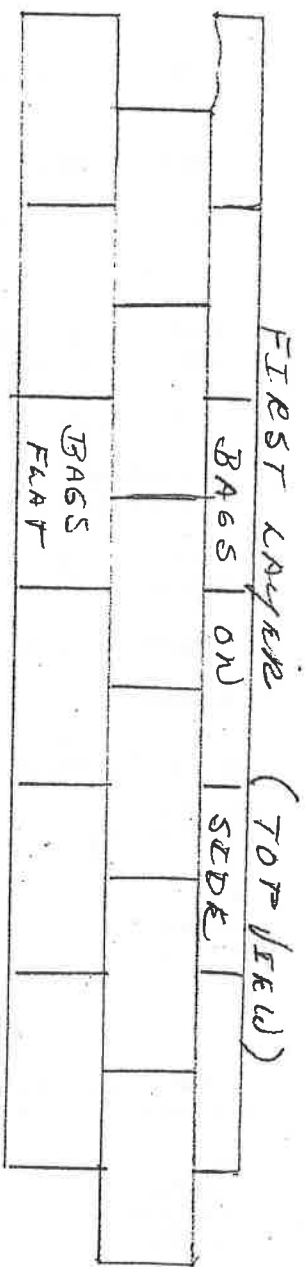
BAGS WILL BE SECURED
W/ $\frac{1}{2}$ " REBAR DRIVEN
INTO BAG & NOT EXPOSED

BAG ELEVATION APPROX 20" HIGH
FROM LAKE BED

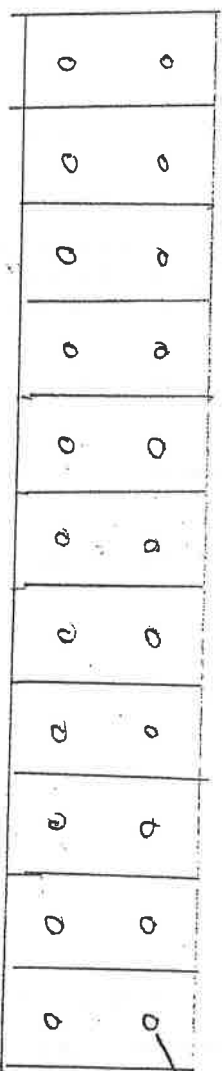
WIDTH AT BASE 37"
WIDTH AT TOP 16"

VEFFREY LAKE DEVELOPMENT, INC., PROPOSED BAGGING / SEAWALL DIAGRAM

APPROX 80 #
 FIBER BAG W/
 CONCRETE MIX

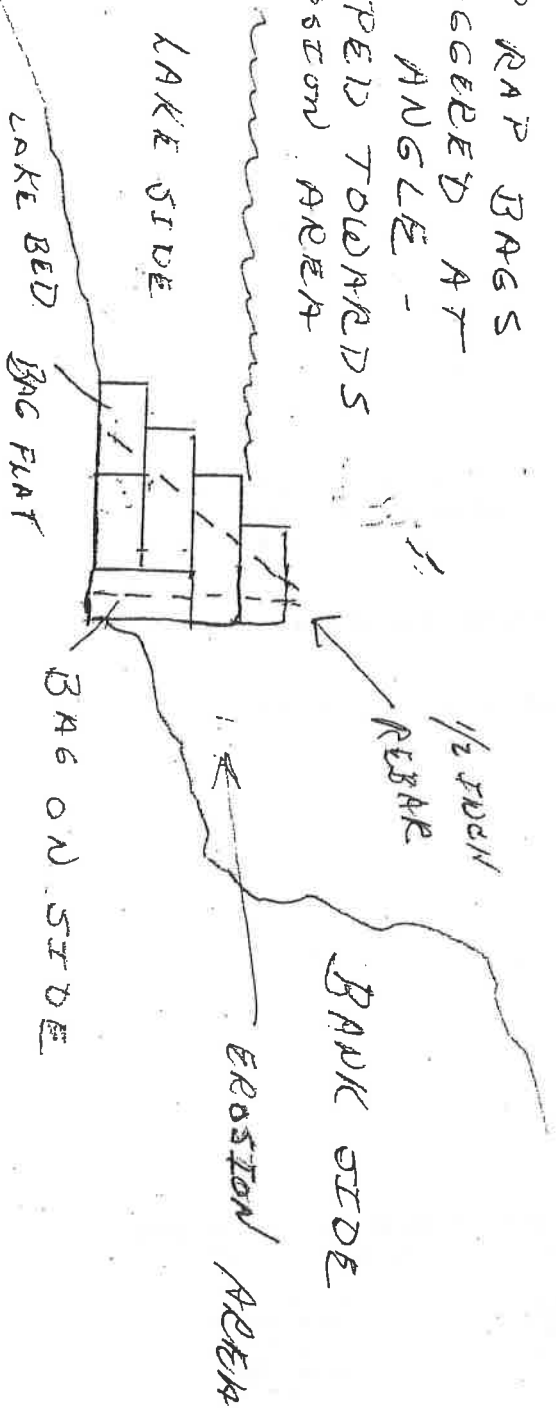


SECOND LAYER (TOP VIEW)



1/2 INCH
 REBAR

RIP RAP BAGS
 STAGGERED AT
 AN ANGLE -
 SLOPED TOWARDS
 EROSION AREA





June 7, 2006

Jeffrey Lake Development, Inc.
c/o Dail Vetter, President
42361 Road 761
Cozad, NE 69130

Re: Application for Permit to Construct Structure on District Property

Dear Dail:

Enclosed are two originals of a Permit to Construct Structure on District Property that was requested for placement of concrete bags along shoreline at Jeffrey Lake. Please sign both originals and have your signatures acknowledged by a general notary public on page 4 of the permit and return in the self-addressed envelope included.

Also enclosed is a Programmatic General Permit for you to complete, sign where indicated and return along with the Permits to Construct.

A copy of the fully executed and approved permits will be returned to you for your records and will allow work to begin.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'FRANK VETTER'.

Frank Vetter
Real Estate Administrator

db
Enclosures

Home Office • 415 Lincoln St. • P.O. Box 740 • Holdrege, NE 68949-0740 • (308) 995-8601 • Fax (308) 995-6935

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F

**U.S. ARMY CORPS OF ENGINEERS PROGRAMMATIC GENERAL PERMIT
NO. 99-04 ISSUED BY THE CENTRAL NEBRASKA PUBLIC POWER AND
IRRIGATION DISTRICT ON BEHALF OF THE U.S. ARMY CORPS OF ENGINEERS**

Applicant Name: Jeffrey Lake Development, Inc. - Dall Vetter, President
Street Address: 42361 Road 761
City, State, Zip: Cozad, NE 69130
Phone Number(s): 308-784-2554 / 308-784-2000
Lease/Deed in the Name Of: same as above
Address Of Subject Property: West side of Jeffrey Lake across from Addition No. 3, Section 9, T11N, R27W
(If Different From Above) of the 6th P.M., Lincoln County, Nebraska.
Name of Person/Contractor
To Complete Work: same as above
Street Address: _____
City, State, Zip: _____
Phone Number(s): _____

***Detailed Description Of Work To Be Performed: Place approximately 1,200 80# concrete bags along 300 to 350'
of shoreline as submitted with the Permit Application, drawings, etc. The slope of the concrete bag seawall can not
exceed 1:1.

***Provide cross-section and top view drawings on the back of this form as required.

To Be Provided By CNPPID:

Water body: Jeffrey Lake
Northing: 400971.76 Easting: 1526625.47 Latitude: 40 ° 56 ' 00.14 " Longitude: 100 ° 24 ' 43.00 "
Legal Description (to quarter section): The Southwest Quarter of Section 9, Township 11 North, Range 27 West of
the 6th P.M., Lincoln County, Nebraska.

Based on the information provided it has been determined that the proposed activity is authorized by General Permit 99-04. As a condition of this permit, a final inspection must be requested upon completion of the proposed activity. Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

 Date: 6/8, 2006
(Signature of Leaseholder or Deeded Owner)

Approval By The Central Nebraska Public Power and Irrigation District On Behalf Of The U.S. Army
Corps Of Engineers

_____, Date: _____, 2
(Authorized Signature of CNPPID)

THIS PERMIT EXPIRES JULY 31, 2006

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. Forward a copy to Central Nebraska Public Power and Irrigation District, P.O. Box 740, Holdrege, NE. 68949-0740.

Transferee _____ Date _____, 2

Tract No. JF

SHORELINE PROJECT DRAWINGS FOR: Jeffrey Lake Development Inc., Dail Vetter
(Applicant)

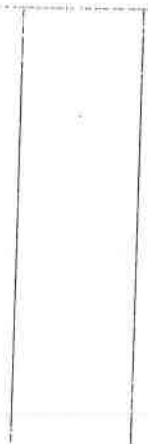
Provide a cross section drawing of the shoreline project (include height, width, material types, and normal water level).

SEE ATTACHED DRAWINGS

Provide a top view drawing of the shoreline project (include length, material types)

SEE ATTACHED DRAWINGS

(Permitting Procedures – PGP Permit Application – March 7, 2005)



**PERMIT TO CONSTRUCT STRUCTURE(S) ON THE PROPERTY
OF
THE CENTRAL NEBRASKA PUBLIC POWER
AND IRRIGATION DISTRICT**

The Central Nebraska Public Power & Irrigation District, a public corporation and political subdivision of the State of Nebraska, hereinafter called "Central District," whose address is 415 Lincoln St., P.O. Box 740, Holdrege, NE 68949-0740, in consideration of the fees to be paid and the covenants to be kept and performed by:

Applicant: Jeffrey Lake Development, Inc.
c/o Dail Vetter, President
42361 Road 761
Cozad, NE 69130

Legal: SW ¼ of Sec. 9, Township 11
North, Range 27 West
Jeffrey Reservoir

Telephone: (308) 784-2554 / (308) 784-2000

County: Lincoln County

hereinafter called "Licensee," hereby grants to the Licensee the right to construct, operate, maintain, repair, inspect, use, and remove the following described structure(s) on, above or under the following described property owned by the Central District and the right to enter said property for said purposes:

Description of Structure(s): Licensee desires to place approximately 1,200 80 lb. concrete bags along 300-350 feet of shoreline as shown on the attached drawings. The slope of the concrete bag seawall cannot exceed 1:1.

Legal Description of Location of Structure(s): Central District property located in the Southwest Quarter of Section 9, Township 11 North, Range 27, West of the 6th P.M., Jeffrey Reservoir, Lincoln County, Nebraska

Central District Facility Description of Location of Structure(s): West side of Jeffrey Lake across from Addition No. 3, Section 9.

This Permit is given upon the following terms and conditions:

1. FEES.

(a) Licensee will pay in advance to Central District for this Permit an administrative fee in the sum of zero dollars (\$ -0-), and the Licensee will pay all taxes and assessments that may be levied or assessed against the above described structure(s). This provision shall in no way affect Central District's right to terminate this Permit pursuant to Paragraph Thirteen (13) hereof.

(b) It is understood and agreed that the parties hereto do not waive any of their rights or remedies under the case now pending before the Lincoln County District Court in District Court Case No. 112-13, and that the Central District does not by granting this Permit recognize nor acquiesce in the decision of the District Court in such case. *It is expressly understood and agreed that the Central District reserves the right to charge a fair and reasonable annual fee for the Permit granted herein if allowed by law and that the Licensee agrees to pay such fee.* However, the Central District agrees that such annual fee will not be charged by the Central District without prior approval of the Lincoln County District Court as long as the injunction issued in Lincoln County District Court Case No. 112-13 is outstanding.

2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) This Permit is subject and subordinate to the prior and continuing right and obligation of the Central District to use and maintain its entire property including the right and power of the Central District to construct, maintain, repair, renew, use, operate, change, modify or relocate any of its facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Central District without liability to the Licensee or to any other party for compensation or damages.

(b) This Permit is also subject to easements, leases and licenses, if any, heretofore granted by Central District affecting the premises upon which said structure(s) is to be located.

3. CONSTRUCTION, OPERATION AND MAINTENANCE.

(a) The structure(s) shall be constructed, operated, maintained, repaired, inspected, used, and removed by the Licensee in strict conformity with the requirements of the Central District and all applicable requirements of any federal, state or municipal law or regulation, including all applicable dredge and fill permits, building, zoning and safety codes. The construction plans for said structure(s) shall be submitted by Licensee to the Central District and must be approved in writing by the Central District prior to construction of said structure(s).

(b) Central District shall have the right, for reasons of safety or otherwise, to require that repairs be made to said structure(s), and upon request from Central District, Licensee shall immediately make such repairs at Licensee's expense.

(c) All work performed on property of the Central District in connection with the construction, operation, maintenance, repair, inspection, use, and removal of said structure(s) shall be done to the satisfaction of the Central District.

4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire expense incurred in connection with the construction, operation, maintenance, repair, inspection, use, and removal of the structure(s), including any and all expense which may be incurred by the Central District in connection therewith.

5. **RELOCATION OR REMOVAL OF STRUCTURE(S).**

This Permit is subject to the needs and requirements of the Central District in the operation of its project and in the improvement and use of its property and facilities, and the Licensee shall immediately, at the sole expense of the Licensee, change, modify, relocate or remove all or any portion of the structure(s) as the Central District may designate, whenever, in the furtherance of its needs and requirements, the Central District shall find such action necessary or desirable.

6. **NO INTERFERENCE WITH CENTRAL DISTRICT'S OPERATION.**

The structure(s) and all parts thereof within and outside of the limits of the property of the Central District shall be constructed and, at all times, operated, maintained, repaired, inspected, used and removed in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the property and facilities of the Central District, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

7. **PROTECTION OF UNDERGROUND FACILITIES.**

(a) Underground facilities such as fiber optic cable systems and gas pipelines may be buried on the Central District's property. Before beginning any excavation on the property of the Central District, Licensee shall telephone Diggers Hotline of Nebraska at 1-800-331-5666 (a 24-hour number) as required by the Nebraska One Call Notification System Act (Neb. Rev. Stat. §§ 76-2301 etc.) to properly locate all underground facilities that may be buried in the area to be excavated. Licensee shall indemnify and hold the Central District harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph or the provisions of the Nebraska One Call Notification System Act.

(b) In addition to other indemnity provisions in this Permit, the Licensee shall indemnify and hold the Central District harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any underground facilities on Central District's property, and/or (2) any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to an Owner of an underground facility located on Central District's property or a customer or user of services of such underground facility.

8. **RESTORATION OF CENTRAL DISTRICT'S PROPERTY.**

In the event the Central District authorizes the Licensee to take down any fence of the Central District or in any manner move or disturb any of the other property or facilities of the Central District in connection with the construction, operation, maintenance, repair, inspection, use, and removal of the structure(s), then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property or facilities to the same condition as the same were in before such fence was taken down or such other property or facilities was moved or disturbed, and the Licensee shall indemnify and hold harmless the Central District, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property or facilities of the Central District.

9. **DAMAGE TO STRUCTURES.**

It is understood by the parties that said structure(s) will be in danger of damage or destruction by flood or other causes incident to the use, operation, maintenance or improvement of Central District's property and facilities, and Licensee accepts this Permit subject to such dangers. It is therefore agreed, as one of the material considerations of this Permit, without which the same would not be granted, that Licensee hereby assumes all risk of loss, damage, or destruction to said structure(s) without regard to whether such loss be occasioned by flood or other causes incident to or arising from the use, operation, maintenance or improvement of Central District's property and facilities, OR TO WHETHER SUCH LOSS OR DAMAGE BE THE RESULT OF NEGLIGENCE OR MISCONDUCT OF CENTRAL DISTRICT OR ITS OFFICERS, AGENTS AND EMPLOYEES.

10. **INDEMNITY.**

(a) As used in this section, "Central District" includes the Central District and its officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (i) injury to or death of persons whomsoever (including the Central District's officers, agents and employees, the Licensee's officers, agents and employees, as well as any other person); and/or (ii) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the property or facilities of the Central District, or property or facilities in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Central District from any loss which is due to or arises from: (i) The prosecution of any work contemplated by this Permit, including the construction, maintenance, repair, inspection, modification, relocation or removal of the structure(s) or any part thereof; or (ii) the presence, operation, or use of the structure(s) or contents, if any, escaping therefrom.

11. **REMOVAL OF STRUCTURE(S) UPON TERMINATION OF PERMIT.**

Prior to the termination of this Permit howsoever, the Licensee shall, at Licensee's sole expense, remove the structure(s) from the Central District's property and shall restore, to the satisfaction of the Central District, such property to as good condition as it was in at the time of construction of the structure(s). If the Licensee fails to do the foregoing, the Central

District may do such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Central District of the structure(s) of the Licensee and of the restoration of the property as herein provided, the Central District shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Central District may have against the Licensee.

12. WAIVER OF BREACH.

The waiver by the Central District of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Central District to avail itself of any remedy for any subsequent breach thereof.

13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the structure(s) for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Central District to the Licensee specifying such default, the Central District may, at its option, forthwith immediately terminate this Permit by written notice.

(b) In addition to the provisions of subparagraph (a) above, this Permit shall also terminate upon ninety (90) days advance written notice by either party to the other party.

(c) All notices required under this Permit shall be deemed good if properly deposited with the United States Postal Service addressed to the party being notified at such party's post office address above stated.

14. PERMIT NOT TO BE ASSIGNED.

The Licensee shall not assign this Permit, in whole or in part, or any rights herein granted and it is agreed that any transfer or assignment or attempted transfer or assignment of this Permit or any of the rights herein granted, whether voluntary, by operation of law, or otherwise shall be absolutely void and, at the option of the Central District, shall terminate this Permit.

15. SPECIAL PROVISION: FEDERAL ENERGY REGULATORY COMMISSION AUTHORITY.

In addition to the above, this Permit is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein because of its location within the FERC Project boundary.

(a) The following terms as used in this Permit shall have the meanings as defined in this Paragraph.

(1) "FERC" shall mean the Federal Energy Regulatory Commission or its successor.

(2) "Project" shall mean Project No. 1417 as licensed by the FERC.

(b) The use of the property of the Central District, including its use for access to the Central District's lakes or reservoirs, shall be at the sole risk of the Licensee without any liability on the part of Central District.

(c) Licensee shall not unduly restrict public access to Project water. Licensee shall take all reasonable precautions to ensure that construction, operation, maintenance, repair, inspection, use, and removal of structure(s) on the property of the Central District will occur in a manner that will protect the scenic, recreational, and environmental values of the Project. The use of the property of the Central District, as permitted herein, shall not endanger health, create a nuisance, or otherwise be incompatible with the overall recreational use of the Project, including particularly the Cultural Resources Management Plan and the Land and Shoreline Management Plan, as required by the FERC. Central District retains the right to enforce these provisions by any reasonable means including, without limitation, the right to perform inspections, implementation of a permitting system, direction to cease inappropriate land use or to remove inappropriate structure(s), and termination of this Permit.

(d) In granting this Permit, the Central District is under no obligation to maintain any dam or other water control facility, or to maintain water levels at the aforementioned lakes or reservoirs at any particular level or elevation. Central District shall have no liability for loss, cost or damage, actions at law or in equity, brought, acquiesced in, or acted upon by or on the part of Licensee as against Central District.

(e) In granting this Permit, the Central District retains the right to use and to flow waters of the Central District's lakes or reservoirs by means of dams or otherwise, and to maintain the said water or waters therein, at any height which it may desire at any time and for any purpose whatsoever and to overflow and flood the property of the Central District directly or indirectly by backflow, seepage, erosion, inundation or otherwise. The foregoing is to be without any let or hindrance and without liability for loss, cost or damage, actions at law or in equity, brought, acquiesced in, or acted upon by or on the part of Licensee as against Central District.

(f) In granting this Permit, the Central District retains the right to enter upon its property for all purposes necessary or appropriate for the construction, maintenance and operations of the Project, including without limitation purposes related to the control of water levels in the aforementioned lakes or reservoirs.

(g) Notwithstanding any provision contained in this Permit, Central District retains the right to perform any and all acts required by an order of the FERC without the prior approval of Licensee and without liability to the Licensee or to any other party for compensation or damages.

16. SPECIAL PROVISION: FINAL INSPECTION

This Permit is subject to a final inspection by a Central District representative and approval by the Central District of the completed project in writing. Licensee must notify the Central District at the completion of the work for the final inspection. If Licensee fails to comply with this provision, this Permit may be subject to suspension, modification or revocation.

IN WITNESS WHEREOF, the parties have duly executed this Permit the day and year shown below.

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT, A Political Subdivision of the State of Nebraska

By _____
General Manager

JEFFREY LAKE DEVELOPMENT, INC.

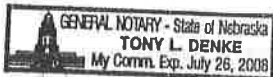
By _____
Dail Vetter, President

STATE OF Nebraska)
COUNTY OF Dawson) ss.

--- NOTARY ---

The foregoing instrument was acknowledged before me this 8TH day of JUNE, 2006, by DAIL VETTER, President, on behalf of Jeffrey Lake Development, Inc.

(Notary)
(Seal)



General Notary Public

STATE OF NEBRASKA)
COUNTY OF PHELPS) ss.

--- NOTARY ---

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Don Kraus, General Manager of The Central Nebraska Public Power and Irrigation District, a public corporation and political subdivision of the State of Nebraska, on behalf of the District and by authority of its Board of Directors.

(Notary Seal)

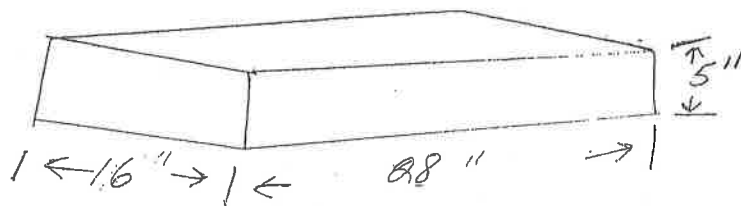
General Notary Public

MATERIAL DESCRIPTION

PLACING APPROX 1200 BAGS.

APPROX 80# FIBER BAG
W/ CONCRETE MIX

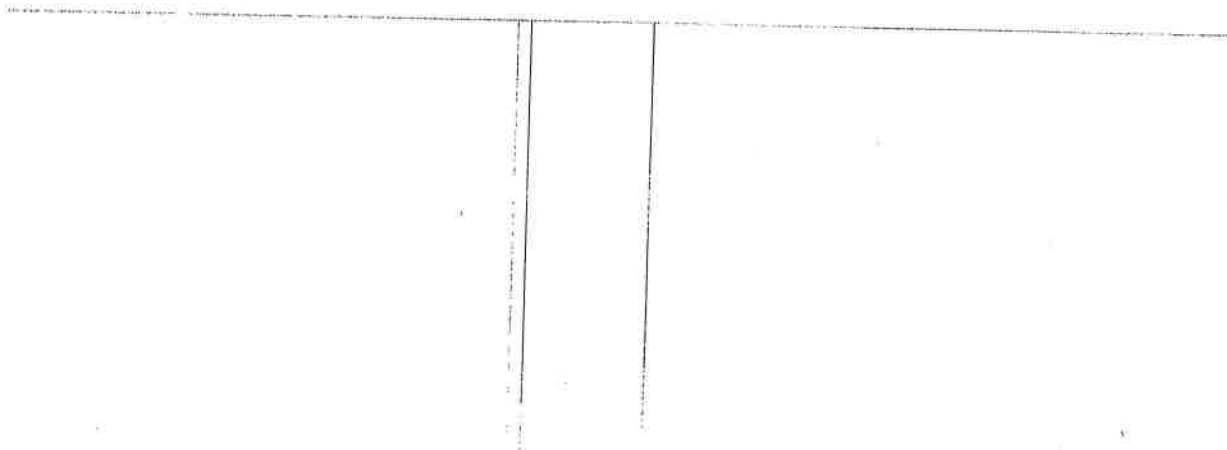
APPROX BAG SIZE



BAGS WILL BE SECURED
W/ 1/2" REBAR DRIVEN
INTO BAG & NOT EXPOSED

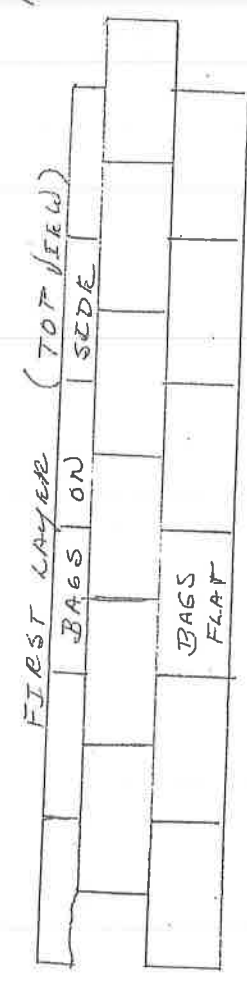
BAG ELEVATION APPROX 20" HIGH
FROM LAKE BED

WIDTH AT BASE 37"
WIDTH AT TOP 16"



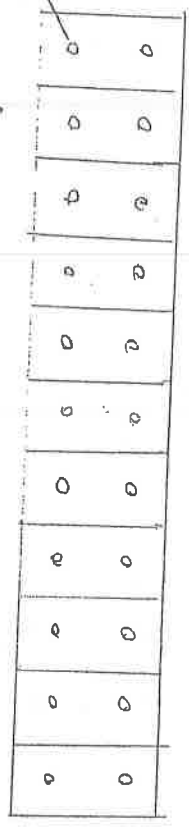
JEFFREY LAKE DEVELOPMENT, INC.
 PROPOSED GAGGING / SEAWALL DETACHMENT

APPROX 80#
 FIBER BAG W/
 CONCRETE MIX

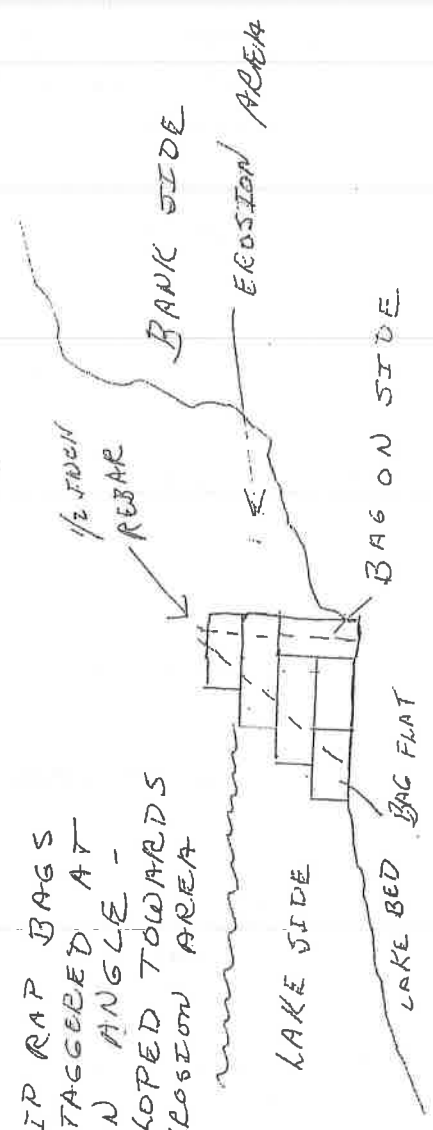


1/2 INCH
 REBAR

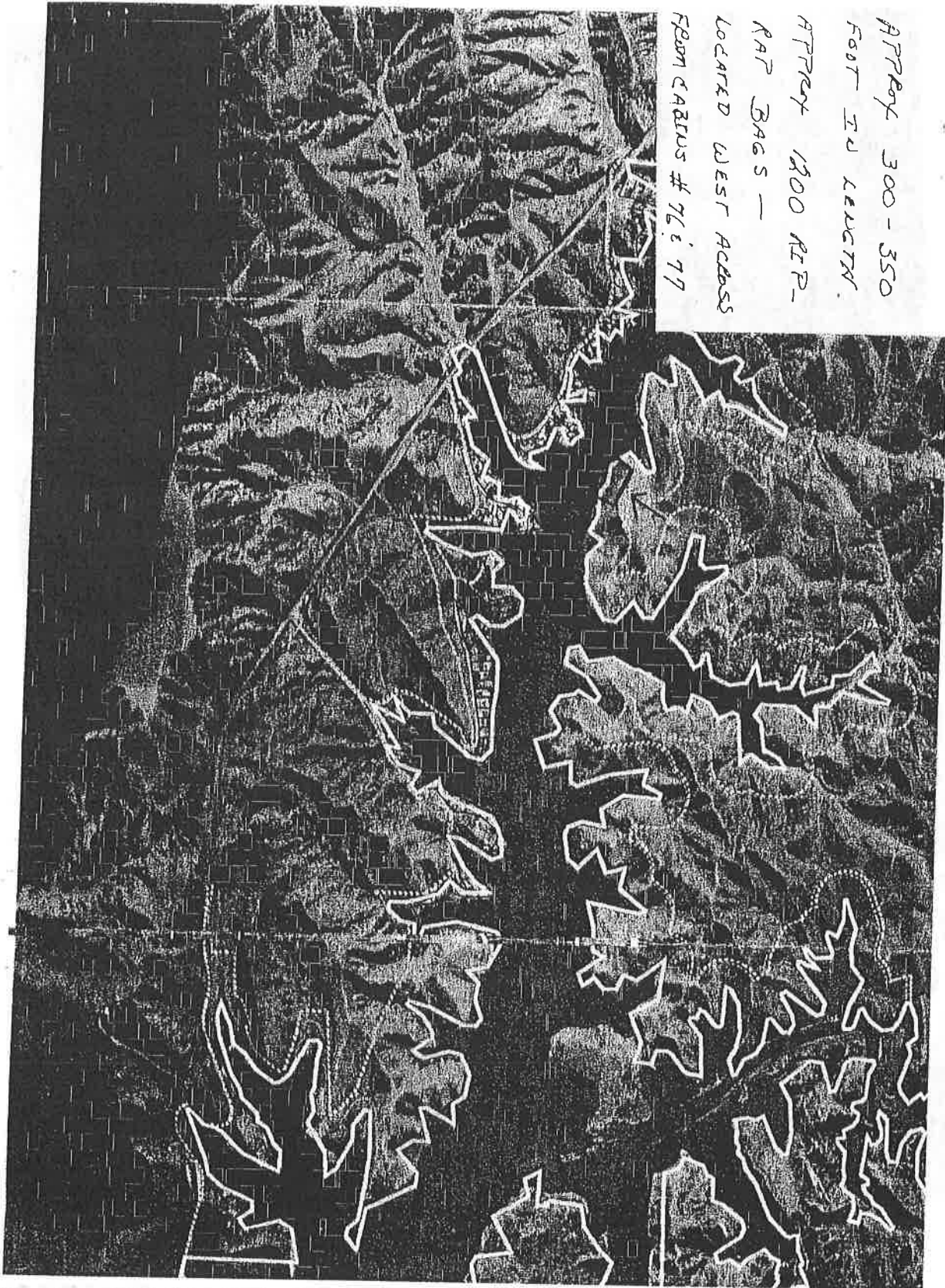
SECOND LAYER (TOP VIEW)



RIP RAP BAGS
 STAGGERED AT
 AN ANGLE -
 SLOPED TOWARDS
 EROSION AREA



APPX 300-350
FOOT IN LENGTH.
APPX 100 R.P.
RAT BAGS -
LOCATED WEST ACROSS
FROM CAGUS # 76 & 77





1. The area outlined by the dashed line is a large, irregularly shaped area. It contains several small, dark, rectangular structures. This area is located on the right side of the photograph.

2. The area outlined by the solid lines is a smaller, more regular area. It contains several buildings and structures. This area is located on the left side of the photograph.

3. The river flows from the top left towards the center of the photograph.

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT
PERMIT APPLICATION

Application for a: ☐ Special Water Access Facility (dock, watercraft lift, path, steps, etc.)
☒ Erosion Control Structure (vegetation, riprap, rock, seawall, etc.)
☐ Dredging, Excavating and Filling Activities
☐ Vegetative Cover Modification or Removal Activities
☐ Dwelling, addition to a dwelling, shed, garage or other improvements
☐ Nonconforming Facilities

*This Application will expire if not completed and returned to Central by June 15, 2006

Applicant: Jeffrey Lake Development, Inc. - Dail Vetter, Pres. Phone: 308-784-2554 / 784-2000

Address: 42361 Road 761, Cozad, NE 69130

Lake Name: Jeffrey Lake

Lake Phone: N/A

Lake Address (if different from above): N/A

Provide A General Description Of Proposed Construction Or Use: PLACE CONCRETE

RIP-RAP BAGS TO FORM SLOPED SEAWALL TO
CONTROL SHORELAND EROSION IN HIGH RISK
AREAS. (SEE PROPOSED BAGGING DIAGRAM)

You must complete, sign and return this Permit Application Form along with the following "X" items to Central before a decision will be made. Central reserves the right to require additional permits, approvals, information, etc. as deemed necessary by Central.

☐ Application Fee of \$_____ (Tenant/Subtenant - SWAF \$50.00, Dredge/Excavate/Fill \$50.00, Modification or Removal of Vegetation \$50.00, ECS and Dwellings/Additions/Other Improvements \$0.00; Adjacent Landowner - SWAF \$200.00, Dredge/Excavate/Fill \$200.00, Modification or Removal of Vegetation \$200.00, ECS \$0.00, Dwellings/Additions/Other Improvements N/A)

☐ Lake area association permit signed by authorized members and adjoining neighbors, or a written statement from association that no permit and/or signatures are needed (Central, for good cause shown, may issue a permit without the lake association requirements being met)

☐ Homeowners association permit signed by authorized members or a written statement from homeowners association that no permit is needed.

☐ Approved County building permit, or written statement from County that no permit is needed

☐ Approved Programmatic General Permit (issued by Central - may be required)

☐ Approved U.S. Army Corps of Engineers 404 Permit (issued by Corps - may be required)

Tract No. JF

- ___ Building Plan drawings (length, width, height and front and side elevation views)
- ___ Plot Plan drawing (distance to lot lines, septic system, lake, road, etc – example attached)
- ___ Plot Plan of the dock, dock anchoring device and/or shore station (distance to extended side lot lines, length, width and height of each structure – example attached)
- ☒ Material Specification List (list all construction materials proposed for all structures/facilities)
- ___ Signature of neighbor consenting to "shift" the extended side lot line (attached)
- ___ Signature of neighbors for a Single Use SWAF (vs) Common Use SWAF (attached)
- ___ Site Evaluation information per NDEQ Title 124, Chapter 4 (completed by NDEQ certified Professional – Chapter 4 attached)
- ___ Septic System Setback Form (completed by NDEQ certified professional - attached)
- ___ Soil Percolation Form B (completed by NDEQ certified professional – attached)
- ___ Consultation with U.S. Fish & Wildlife Service (by Central)
- ___ Consultation with Nebraska Game and Parks Commission (by Central)
- ___ Consultation with Nebraska State Historic Preservation Officer (by Central)
- ___ Consultation with Federal Energy Regulatory Commission (by Central)
- ___ Notice regarding the Migratory Bird Treaty Act (attached)
- ___ Vegetative Cover Modification or Removal Plan (permit & photo attached)
- ___ Legal survey of your leased or deeded lot/parcel
- ___ Proof of construction date (approved County building permit, construction contract, etc.)
- ___ Brochure, Photo, or other information and materials to assist permit application, if available
- ___ Letter from a licensed electrician stating compliance with local, state and NEC, if there will be electricity to an electrical boat lift, lights, etc., on the dock.
- ___ Central will provide and install four two-inch minimum diameter or width white reflectors at each of the two end corners of the SWAF farthest from the shoreline, and a reflector shall be placed along each side of the SWAF within one foot of each end corner.
- ☒ Other Show on the enclosed aerial photo were the proposed project(s) are to be located. Also, provide the length, width and height for each proposed project area and front and side elevation views for each proposed project area. These may be provided on a separate sheet of paper.

Date: 5/11, 2006

Application is hereby made for approval of the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete and accurate. **I agree to submit to Central, for written approval, any and all changes from the original application.** I agree that, if this application is approved by Central, I will comply with the terms and conditions of the permit issued by Central and any additional conditions or restrictions that may be imposed by Central at the time of approval. Applicant consents to Central installing four reflectors on the SWAF.

Applicant

Title

(Permitting Procedures – Permit Application – March 7, 2005)

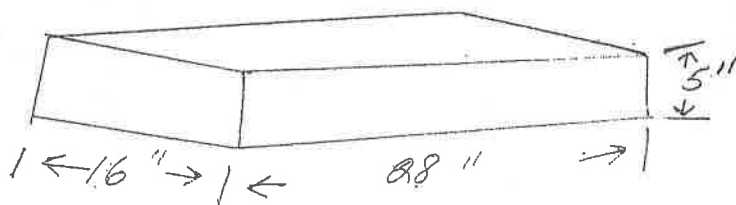
JEFFREY LAKE DEVELOPMENT, INC.

MATERIAL DESCRIPTION

PLACING APPROX 1200 BAGS.

APPROX 80# FIBER BAG
W/ CONCRETE MIX

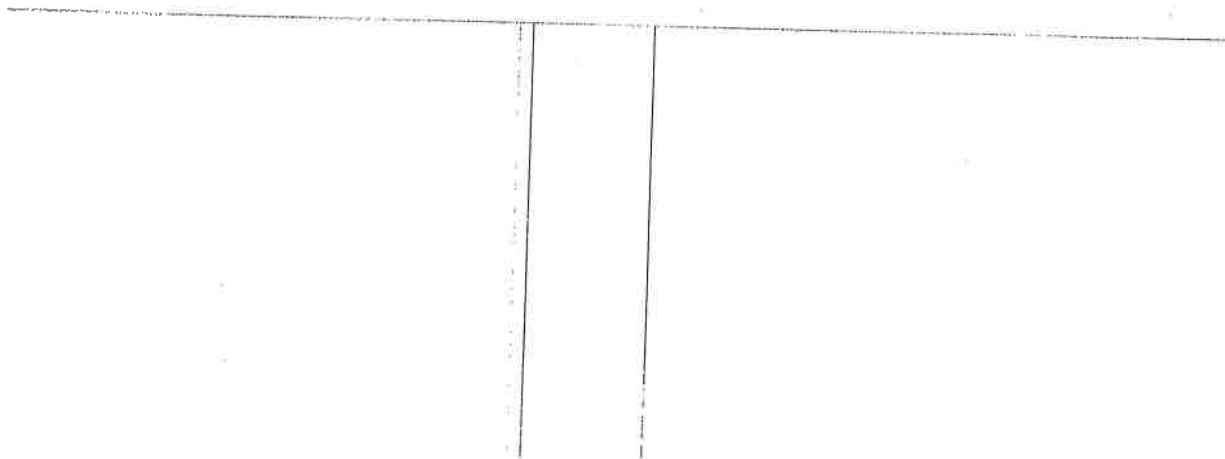
APPROX BAG SIZE



BAGS WILL BE SECURED
W/ 1/2" REBAR DRIVEN
INTO BAG & NOT EXPOSED

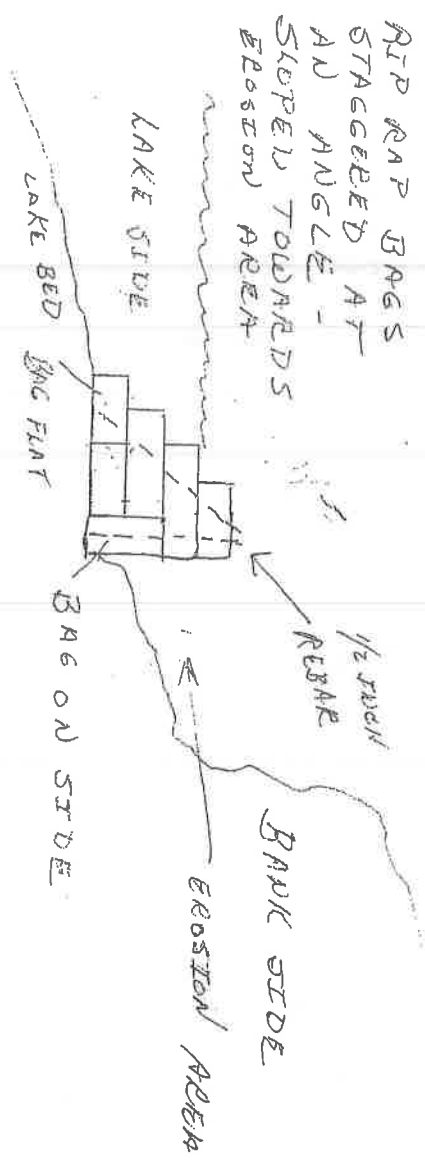
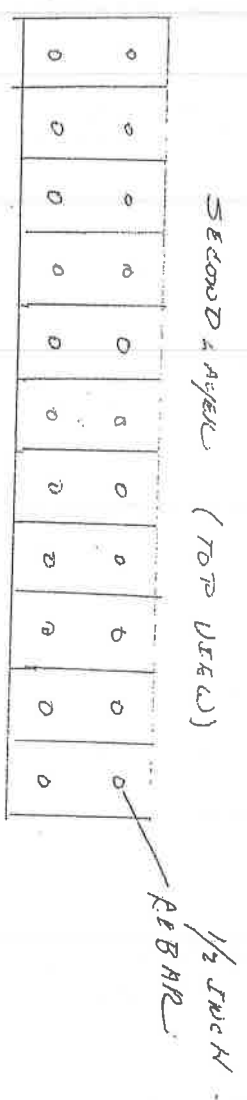
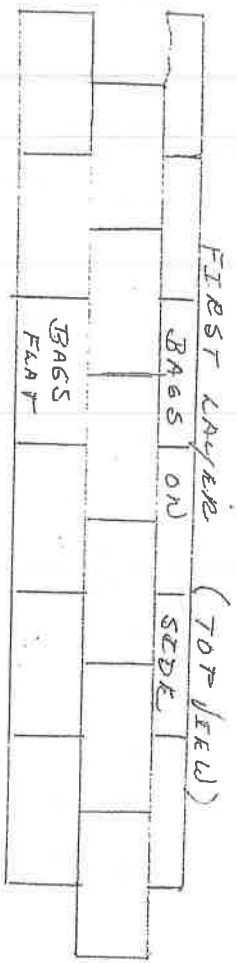
BAG ELEVATION APPROX 20" HIGH
FROM LAKE BED

WIDTH AT BASE 37"
WIDTH AT TOP 16"



VERITY LAKE DEVELOPMENT, INC.,
 PROPOSED TRAILING / SEAWALL DIAPHRAGM

APPROX 80#
 FIBER BAG W/
 CONCRETE MIX





CENTRAL
Nebraska Public Power
and Irrigation District

ORIGINAL TO LSLM
FOR FILING

Frank C. Vetter
Real Estate Administrator
P.O. Box 740
Holdrege, NE 68949-0740

E-mail address: fvetter@cnppid.com
Phone Number: 308.995.8601
Cell Number: 308.991.5602
Fax Number: 308.995.5705

June 14, 2006

Jeffrey Lake Development, Inc.
c/o Dall Vetter, President
42361 Road 761
Cozad, NE 69130

Re: Programmatic General Permit (PGP) & Permit to Construct - Jeffrey Lake
Legal Description: SW ¼ of Sec. 9, Township 11 North, Range 27

Dear Dall:

The Central Nebraska Public Power and Irrigation District (Central) has reviewed and issued a Programmatic General Permit on behalf of the U.S. Army Corps of Engineers (Corps) to place approximately 1200 80 lb. concrete bags along 300-350 feet of shoreline in areas as shown on the attachments at Jeffrey Lake. This permit was approved by Central on behalf of the Corps on June 13, 2006.

Additionally, enclosed is a copy of a fully executed Permit to Construct allowing the placement of the concrete bags along shoreline. This permit was approved by Central on June 13, 2006.

Finally, enclosed is a Permit Notice for placement by you at the construction site. As outlined on the notice, you must permanently post this Permit Notice on the above referenced leased lot until construction is completed to the satisfaction of Central. Please refer to the Permit Notice for placement and notification requirements.

Please contact me at 308-995-8601 should you have any questions or concerns regarding this matter. Thank you for your assistance in completing this permit.

Sincerely,

FRANK C. VETTER

Frank C. Vetter
Real Estate Administrator

FCV:db

Enclosures

cc: K Aden

J Hunt

ROW File: JF-AD4-S9-L02&L03

Home Office • 415 Lincoln St. • P.O. Box 740 • Holdrege, NE 68949-0740 • (308) 995-8601 • Fax (308) 995-6935

Central District Board of Directors

Gosper County:
Doyle D. Lavens
Geoffrey K. Bogle
William Knoerzer
Keith County:
John J. DeTuerk

Phelps County:
Roger D. Olson
Gary W. Dahlgren
Gordon N. Soneson
Lincoln County:
Robert L. Petersen

Kearney County:
Robert A. Garrett
K. Scott Olson
Dudley Nelson
Dawson County:
David L. Rowe

Adams County:
Wendell E. Johnson
O.J. McDougal, Jr.
Robert L. Johnson
General Manager
Don Kraus

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT
PERMIT NOTICE

Type of Permit(s):

- ☐ Special Water Access Facility
☒ Erosion Control Structures
☐ Dredging, Excavating and Filling Activities
☐ Vegetative Cover Modification or Removal Activities
☐ Dwelling, addition to a dwelling or other improvements
☐ Nonconforming Facilities

Permit Issued: June 13, 2006 Permit Expires: July 31, 2006

Applicant: Jeffrey Lake Development, Inc./Dail Vetter Phone: 308-784-2554 / 308-784-2000

Address: Jeffrey Lake south end west side across from Lots 02 & 03, Addition 4,

Southwest Quarter of Section 9, Township 11 North, Range 27 West of the 6th P.M., Lincoln
County, Nebraska.

Project Description: Place approximately 1,200 80 lbs. concrete bags along 300 to 350 feet
of shoreline as submitted on the Permit To Construct and attachments. The maximum
slope for concrete bagging projects can not exceed a slope of 1:1.

Approved by: FRANK C. VETTER
Real Estate Department

Date: June 13, 2006

Applicant must permanently post this PERMIT NOTICE at the address stated above until construction is completed to the satisfaction of Central. Applicant shall notify Central when construction is completed for a final inspection.

Violations or other concerns regarding this permit should be directed to Central's Holdrege office at 888-580-5299 or Gothenburg office at 308-537-3582.

(Permitting Procedures - Permit Notice - March 7, 2005)

Tract No. JF-AD4-S9-L02 & 03

G



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE-KEARNEY
1430 CENTRAL AVENUE STREET, SUITE 4
KEARNEY, NEBRASKA 68647-6856

REPLY TO
ATTENTION OF:

August 17, 2001

Mr. Kevin Boyd
Central Nebraska Public Power
and Irrigation District
P.O. Box 188
Gothenbourg, Nebraska 69138-0188

Dear Mr. Boyd:

The U.S. Army Corps of Engineers has issued a programmatic general permit (PGP), effective July 29, 2001, that is founded upon an existing permitting program of Central Nebraska Public Power and Irrigation District (CNPPID). The program includes the following lakes: Lake McConaughy, Jeffrey Reservoir, Central Midway Lake, East Midway Lake, Plum Creek Reservoir, and Johnson Lake. This letter verifies that this individual activity, which has been authorized by CNPPID, meets the terms and conditions of this PGP and complies with Section 404 of the Clean Water Act.

Sincerely,

Michael Rabbe
Nebraska State Program Manager

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT
PERMIT NOTICE

Type of Permit(s):

- ☐ Special Water Access Facility
☒ Erosion Control Structures
☐ Dredging, Excavating and Filling Activities
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Real Estate Department

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(Permitting Procedures - Permit Notice - March 7, 2005)

Tract No. JF-AD4-S9-L02 & 03



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE-KEARNEY
1430 CENTRAL AVENUE STREET, SUITE 4
KEARNEY, NEBRASKA 68847-6856

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Sincerely,

A handwritten signature in cursive script, reading "Michael Rabbe", is positioned above the printed name.

Michael Rabbe
Nebraska State Program Manager



CENTRAL

Nebraska Public Power
and Irrigation District

LEGALLY TO LFLM
FOR FILING -

Frank C. Vetter
Real Estate Administrator
P.O. Box 740
Holdrege, NE 68949-0740

E-mail address: fvetter@cnppid.com
Phone Number: 308.995.8601
Cell Number: 308.991.5602
Fax Number: 308.995.5705

June 14, 2006

Jeffrey Lake Development, Inc.
c/o Dail Vetter, President
42361 Road 761
Cozad, NE 69130

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Legal Description: SW ¼ of Sec. 9, Township 11 North, Range 27

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FRANK C. VETTER

Frank C. Vetter
Real Estate Administrator

FCV:db
Enclosures

cc: K Aden
J Hunt
ROW File: JF-AD4-S9-L02&L03

Home Office: • 415 Lincoln St. • P.O. Box 740 • Holdrege, NE 68949-0740 • (308) 995-8601 • Fax (308) 995-6935

Central District Board of Directors:

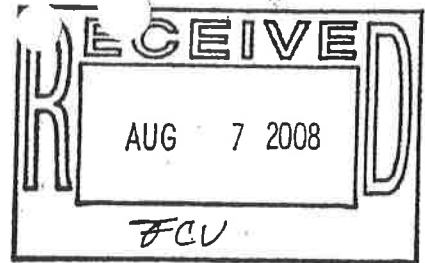
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Dawson County:
David L. Rowe

Adams County:
Wendell E. Johnson
O.J. McDougal, Jr.
Robert L. Johnson
General Manager:
Don Kraus

H



August 6, 2008

Central Nebraska Public Power and Irrigation District
Frank C. Vetter, Real Estate Administrator
415 Lincoln Street
P.O. Box 740
Holdrege, Ne 68949-0740

COPY

Re: Jeffrey Lake Development, Inc. – Shoreline Bagging Project

Dear Frank,

This letter is to reiterate our conversation on August 5, 2008 regarding JLDI ongoing bagging project to stabilize bank erosion and enhance vegetative growth. Jeffrey Lake Association over many years has maintained an ongoing program for bank stabilization and over that period of time has put in over 22,000 bags. In an effort to maintain the existing seawall structures and/or stabilize new areas, I requested a "PERMIT APPLICATION" for (vegetation, riprap, rock, seawall, etc.). This application would be similar to the "Programmatic General Permit", issued to Jeffrey Lake on June 14, 2006. (reference attachment). Your reply to me was and I quote "No permits will be issued to Jeffrey Lake until the lawsuit is resolved". Frank, I might add the area proposed for maintenance, repair, etc. is outside of the Jeffrey Lake Development, Inc. boundary and is on west side of Jeffrey Lake opposite of the cabin area.

Therefore, please consider this correspondence as a formal request for a "PERMIT APPLICATION". Jeffrey Lake Association would like to do maintenance, repair and patch on existing seawall areas on the west side of the lake where bags have caved over due to winter icing conditions and to top off areas where re-bar may be exposed. Our tentative date for the maintenance project is September 13, 2008.

Please provide us a written response to our request. Your consideration of this request will be appreciated.

Sincerely,


Dail Vetter, Board Member
Jeffrey Lake Development, Inc.

Enclosures: (7)

cc. Steve Windrum

I

May 15, 2009

Central Nebraska Public Power and Irrigation District
Frank C. Vetter, Real Estate Administrator
415 Lincoln Street
P.O. Box 740
Holdrege, Ne 68949-0740

Dear Frank,

This letter is to reiterate our conversation this morning regarding the ongoing bank stabilization and repair of existing sea walls on the west side of Jeffrey Lake. During our discussion, I was informed that applications for the "Programmatic General Permit" on west side of the lake would not be considered or allowed by CNPPID. You stated that an application would not be sent for the purpose requested.

As a matter of formality, I am requesting a "Permit Application" to submit to Central for the purpose of maintenance, repair, patch and top off areas where re-bar is exposed on existing seawall structures. Our proposed date to have manpower available for this intended project is July 11, 2009.

Would you please provide me with an application by May 22, 2009 as time is of essence and would like to have the approval in place with ample time to order material for the project.

Your consideration of this request will be appreciated.

Sincerely,


Paul Vetter, Board Member
Jeffrey Lake Development, Inc.

Cc: Steve Windrum

J

ORIGINAL

STEVE WINDRUM, P.C.

ATTORNEY AT LAW
P.O. Box 387 415 9th Street
Gothenburg, Nebraska 69138-0387
(308) 537-2321
Fax (308) 537-4487
E-mail steve@windrum.net

Steve Windrum

Office Hours
8:30-12:00, 1:00-5:00
Mon.-Tues.-Thurs.-Fri.
8:30-12:00 Wed.

January 14, 2010

FEDERAL EXPRESS

The Secretary, Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

FILED
SECRETARY OF THE
COMMISSION
2010 JAN 15 A 10:44
FEDERAL ENERGY
REGULATORY COMMISSION

RE: Motion to Intervene and for Recommendations for Terms and Conditions
Intervener: Jeffrey Lake Development, Incorporated
Applicant: Central Nebraska Public Power & Irrigation District
Project No.: 1417-246
Application type: Land and Shoreline Management Plan
Notice of December 17, 2009

Pursuant to notice above referenced, I enclose herein an original and 8 copies of Motion to Intervene and for Recommendations for Terms and Conditions of the Land and Shoreline Management Plan of the Applicant above referenced. I also enclose an extra copy of this letter together with a return envelope to me. I would appreciate the Commission's stamp being placed on the extra copy indicating receipt of all these items, and return to me in the enclosed envelope.

Cordially yours,



Steve Windrum
SW/lh
encs.

K

ORIGINAL

**BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**CENTRAL NEBRASKA PUBLIC POWER &
IRRIGATION DISTRICT,**

Project #1417-246

MOTION TO INTERVENE

RECOMMENDATIONS FOR TERMS AND CONDITIONS

LAND AND SHORELINE MANAGEMENT PLAN

Pursuant to "Notice of Application for Amendment of License and soliciting comments, motions to intervene, and protests," filed hereon on December 17, 2009, the undersigned (Movant) herewith moves the Commission to intervene, and submits its "Recommendations for Terms and Conditions," pursuant to such notice, and as set forth hereafter. The recommendation for terms and conditions to such Land and Shoreline Management Plan (LSMP) are specific, and will reference paragraphs, sections, and other parts and portions of said proposed Land and Shoreline Management Plan, both with respect to objecting to specific terms or conditions thereof, the inclusion of necessary terms thereof, the deletion of terms thereof, and otherwise. Reference hereafter will be made to parts and portions of the applicant's shoreline management plan as proposed and amended, and other extrinsic evidence or documents.

Pursuant to 18 CFR 385.214, the Movant further states and alleges that the Movant has a right to participate in this matter as expressly conferred by the notice above referenced, that the Movant represents an interest which may be directly affected by the outcome of the proceeding, in that the Movant is a nonprofit corporation, generally referred to as an association, of sublease holders of various subleases principally on the east side of Jeffrey Lake, in Lincoln County, Nebraska, some of which properties and leases are contained within Project lands. In addition, the Movant alleges with respect to certain parts and portions of its recommendations hereafter, for example, paragraph 2, on "Shoreline integrity," and paragraph 3, on "Wetlands," that Movant's participation is in the public interest.

1. **Grandfathering.** The captioned subject is first set forth in paragraph 1.7 at page 1-8. Among other things, the footnote to the first sentence, provides "Leases in place at the time of the LSMP implementation contain provisions making those leases subject to this plan and to federal, state, and local regulations." In the first instance, the lease of the undersigned, entered

into in May, 1980, and unmodified since then, contains no such provisions. The paragraph goes on to provide "Central may grandfather structures and facilities constructed before that date (the original LSMP in 2003) if the facility/use owner subsequently obtained a permit from Central under the LSMP and if those facilities and uses are otherwise legal." The section, and in particular, the sentence quoted, effectively eliminate and render void the concept, rights, etc., known as "grandfathering." More detail on this when this subject is revisited at §4.5. The Movant proposes the following rewording of this section:

A number of structures and facilities or uses existed within the Project boundary at the time of implementation of the original LSMP in 2003. Some of those include preexisting uses, structures, and facilities that would not otherwise be permissible under the current LSMP or permitting process. Such structures, facilities, and uses are "grandfathered" (meaning allowed to remain in place) as long as such facilities and uses are otherwise legal.

The Commission itself has acknowledged grandfathering as provided in the previous Land and Shoreline Management Plan, in a filing at 125 FERC ¶61,192, captioned "Order Denying Rehearing," issued November 20, 2008, and reference is made to paragraphs 5 and 6 of such Order, copies of which pages are attached hereto, which provide, in part, "The shoreline plan approved by the Commission included provisions to "grandfather" existing contracts (footnote 20, providing "Shoreline plan at 47-48). That being the case, we indeed are obligated to act consistently with the jurisdictional aspects of the those contracts unless and until, following public notice and the opportunity for comment, we were to determine that the licensee's compliance with those contracts was no longer consistent with the public interest."

2. **Shoreline integrity.** This subject is set forth at paragraph 2.2.5, beginning at page 2-5, of the proposed Plan. In the third paragraph of this section, general conditions and requirements in respect to shoreline integrity are discussed. It is provided, in part, that Central prefers natural or biotechnical methods, but "...broader erosion control measure applications, including riprap, may be allowed in certain locations. There is further provided in that paragraph that shoreline integrity protections are provided through "...(1) application of the FERC rules regarding construction of bulkheads and retaining walls contained in License Article 422..." The undersigned is cognizant of the general policy and procedure in respect to the use, in essence, as a "last resort," of vertical retaining walls. However, a specific application and installation of vertical retaining walls at Jeffrey lake, on the west side thereof, has resulted in

very positive benefits, consistent with all of the provisions of the FERC license requirements on the applicant, for scenic, recreational, and other values, on balance. See affidavit of Randy Cromer, hereto attached, marked Exhibit "A", for detail thereof.

The movant proposes, as either an addition to the end of the third paragraph in this section, or as a stand alone paragraph immediately thereafter, the following:

For example, the west side of Jeffrey Lake is characterized by many steep or shear slopes, which have no esthetic quality or constitute any panoramic vista or scenic view shed, but rather such steep slopes are the product of considerable erosion on such west side since the lake was created. Efforts have been undertaken and have been successfully implemented in certain areas wherein bag vertical seawalls have eliminated or substantially reduced such erosion, with vegetative cover having naturally occurred on the upland side of such seawalls. In those areas, such as the west side of Jeffrey Lake, and therefore Jeffrey Lake as a whole, such erosion will continue to occur, and thereby adversely affect the remaining environmental, cultural, and recreational resources of the lake itself, unless continued installation, if appropriate, of such shoreline and erosion control, is undertaken.

In addition, the fourth paragraph sets out four separate sources wherein shoreline integrity is protected. There should be added a fifth, that being those terms and provisions under the section 404 General Programmatic Permit between the applicant and the U.S. Army Corps of Engineers.

3. **Wetlands.** Paragraph 2.2.9 references "wetlands." The bagging project over the years on the west side of Jeffrey Lake, referred to in the preceding section, which has been successful to achieve the benefits of erosion control, together with the additional three objectives of Central's license, has implicated the U.S. Army Corps of Engineers 404 permitting process. In addition, dredging project in the north end of Jeffrey Lake, addressed in the previous LSMP, and as modified, and the subject of a motion to intervene on the part of this movant back in November of 2000, also implicated the terms and conditions of such 404 permit, and neither of these applications involved "wetlands." As such, the last sentence, and the third paragraph of which it consists, should be modified to read as follows:

Wetlands occur throughout the entire project, and, as with all shoreline applications, are protected through the U.S. Army Corps of Engineers 404 permitting process.

4. **Management classification and allowed uses – allowable use considerations by management classification.** The second portion of the caption just provided is found at section

3.2.1, on page 3-7. This section generally discusses the allowable uses within the various management plan classifications.

For the reasons set forth in paragraph I above, the third full paragraph in this section should be modified as follows:

While the LSMP "grandfathers" certain existing uses within the resource protection classification (provided the owner or permittee maintains these uses properly and that such uses were otherwise in compliance with applicable rules and regulations at the time of the commencement of such uses – see section 1.7), new uses in resource protection classification areas may be severely limited, and only allowed with specific restrictions designed to protect the resource in question.

In addition, the applicant/licensee is in litigation, and has been in litigation, with the Movant for many years last past, in respect to various lease issues between Central and the Movant. Most recently, an order was entered by the District Court of Lincoln County, Nebraska, wherein the applicant is enjoined from taking any enforcing action with respect to alleged violations of the lease between the applicant and the Movant. The potential exists, obviously, under such circumstance, for abuse of the management classification process, and the permitting process, of the applicant, with respect to the Movant's sublessees. By reason thereof, there should be added to paragraph 3.2.1 the following paragraph:

In no event shall Central's action in respect to any proposed use, through this Plan, or its permitting procedures, be utilized in a way to deny a use which is otherwise allowable under the terms of this LSMP. Further, Central is obligated in applying its permitting procedures and its approval or denial thereof, to do so on a "good faith" basis. In addition, as noted elsewhere in this Plan, Central is engaged in litigation with lake associations of Jeffrey Lake and Midway Lake. Under no circumstance will Central interpret, act upon or fail to act upon any application by reason of such litigation, except such required action on Central's part in respect to any given application yet further required by any then effective court order, judgment, or injunction.

Referring to Table 3-1, on page 3-10, headed "Allowable uses by Land and Shoreline Management Classification," movant believes there is an error in respect to one entry, that is, line 20, under "Uses," is described "Discharges." In management classifications A and B this is indicated to be "not allowed." "Discharges" are defined in the "standard terms list," on page v, as "(d)ischarges of water or other effluent into Project waters or onto Project lands or the artificial concentration of runoff into a conduit or channel in greater amounts or in different locations than would naturally occur." In the first instance, it would appear that "discharges of water," and "discharges of ...other effluent..." should be two separate uses/categories. In

respect to the alleged error, however, the Movant is familiar with two instances at Plum Creek Canyon and Johnson Lake wherein discharges of water from heat pump installations have recently been allowed.

5. 4.1 – Permitting procedures and standards. For the reasons set forth hereinabove in respect to the state of the litigation between the applicant/licensee and the Movant, there needs to be added an additional paragraph as the concluding paragraph under the introductory section, as follows:

Central acknowledges its obligation to consider, review, and act upon any individual application or proposal on a “good faith” basis, given due consideration to the needs and desires of the proposed permittee.

6. 4.4 – Transfer of permits. In the text of this section, respecting the subject of when “...any permitted use changes ownership...”, Central is given complete discretion as to whether or not the rights, uses, etc., under an existing permit “...transfer to the new owner.” Apart from the obvious inequity, injustice, and hardship, of Central being in a position to simply deny the transfer of an existing permit, the additional conditions, restrictions, qualifications, etc., contained in the balance of this paragraph could result in the applicant effectively denying a transfer. In addition, there is an injunction in place in case no. CI00-405 in the District Court of Lincoln County, Nebraska, from the year 2000 (when the case was filed), which declares unenforceable a permitting procedure term which prohibits assignment and transfer of a property interest under a permit when ownership of the accompanying lease and leasehold interest, together with the improvements on such leasehold interest, changes hands. See copy of such “Order” in that case, attached, together with copy of the permit form to which it is addressed, specifically ¶14. There should be substituted therefor the following:

When any permittee assigns or transfers the underlying ownership or interest in the underlying property, estate, or contractual right, the rights and benefits of such permittee in any existing permits with respect to such property shall be transferable by such permittee to the new owner, grantee, sublessee, or transferee. Central may establish and implement such reasonable procedures which will notify Central of the change of ownership. The transferee shall be bound by the terms of any permit currently effective which is transferable or transferred under the terms of this paragraph. In all such instances, Central shall be under an obligation to deal with the new permittee on a “good faith” basis, given the terms of the existing permit which is being transferred.

Central acknowledges that there is currently in place a final order and judgment in an action in the Lincoln County District Court, Nebraska, being case no. CI00-405, wherein

an injunction was entered prohibiting Central from denying the transferability and assignability of permits under its permitting system. Nothing contained in this paragraph shall be deemed to abrogate, nullify, or be inconsistent with the terms of such injunction, and no application of the terms of this paragraph by Central shall have the effect of creating or extinguishing any rights or liabilities of the parties inconsistent with the terms of such injunction.

7. **4.5 – Grandfathering.** See paragraph 1, above, on grandfathering. This paragraph 4.5 sets out in detail the issues, conditions, qualifications, restrictions, etc., in regard to the subject. It effectively eliminates the concept, rights, etc., embodied in the word “grandfathering” or “grandfather.” By contrast, the provisions of the current Land and Shoreline Management Plan which refer to grandfather or grandfathering, in three or four places, should be reinserted. An example of the effect of the terms and text of this paragraph eliminating the concept altogether appears in the fourth full paragraph in this section, on page 4-5, wherein it states:

Central may also deny a grandfathering for an existing use if it determines that the use is not allowed under the LSMP, poses an environmental or public safety hazard, or if the structure or facility is, in Central’s opinion, deteriorated to a point that repairs could not bring the use into compliance with current standards. Central may also deny grandfathering an existing use if (a) Central would deny a similar new use in that location, (b) Central determines that the extent to which the existing use infringes upon other uses of the land or shoreline designated under the LSMP is unacceptable.

As mentioned, the affect of this content is that there is no grandfathering at all.

See affidavit of Randy Cromer, longtime Jeffrey Lake sublessee, on this subject, hereto attached and made a part hereof, marked Exhibit “B”, as evidence in support of this position.

The movant has no quarrel with the need to address, and thereafter correct or remove, any uses, structures, etc., which pose identifiable and observable safety hazards, environmental hazards, etc. These types of uses and structures, however, can be addressed, corrected, and enforced, in regard to change, removal, correction, or the like, without any resort to exceptions, qualifications, restrictions, etc., to “grandfathering,” under other applicable provisions of the Plan, and/or local law applicable, once again, to uses and structures insofar as safety, environmental compatibility, etc.

8. **4.9 – Variance process.** At page 4-11 there are four paragraphs designated numerically. Paragraph 1 can be eliminated; it is, essentially, a duplication of paragraph 4.

9. **4.10 – Permitting fees.** The phrase “...and by good business practices,” the last phrase of the second sentence, should be eliminated, and a period inserted after “license.” There

should be added, in addition, the following sentence: "Central is not authorized by its FERC license to assess any fees for purposes of income generation, and in no event shall any fees assessed be of such amount or of such application as shall be intended or determined to be income producing or revenue enhancing."

10. **6.0 – Modifications and amendments to the LSMP.** There is provided, second sentence: "Central recognizes that the Project is a popular tourist destination and a growing residential area, and that use will most likely change over time." The sentence should end with the word "destination," and the phrases thereafter should be eliminated. From other content of the applicant's LSMP, the potential area for "residential use" is, in fact, essentially fully utilized to this point. In addition, the phrase "...that use will most likely change over time" is both ambiguous with respect to which of the two previous uses it refers to, and if such use "...will change over time," it would cease to be that use, and become some different use.

11. In addition, there should be added an additional section, under this heading, as follows:

6.5 – Additional notification – consultation requirements. Central has set forth in previous sections some of those entities that it intends to invite, consult, notify, with respect to the amendment process. In addition to that notification, Central will yet further notify what it has identified as stakeholders with sufficient advance notice of a change in status of any properties or uses which will impact upon those stakeholders, of any amendment to the Land and Shoreline Management Plan, on a six year basis, an annual basis, or otherwise. For example, Central is required under its current Land and Shoreline Management Plan to supplement that LSMP in the way of providing a yet additional plan whereby Central will remove, if not otherwise detrimental to its Project works, residential properties at Jeffrey Lake and Midway Lake, from Project lands, which plan of such removal of such residential properties has not yet occurred. Central will notify the officers and the boards of directors of each of such associations at the time of filing or submitting any plan amendment which impacts upon the removal, or nonremoval, of any such residential properties under the authority and through the leases of such associations.

12. There needs to be added an additional article/section:

7.0 – Transition from current Land and Shoreline Management Plan to new Land and Shoreline Management Plan. Central acknowledges that under the Land and Shoreline Management Plan currently in place that, pursuant to requirements of FERC as set forth in its order of November 6, 2000 which included Appendix A, that one or more items set forth in Appendix A are still pending in accordance with the plan amendment that was responsive to such order of November 6, 2000. More particularly, and referring to paragraph 14 of Appendix A, there has not been undertaken, prepared, and filed, with

FERC, as yet, a response to the paragraph 14 requirements, with Appendix A, with respect to Jeffrey Lake and Midway Lake. Central acknowledges its obligation to FERC, and to those stakeholders, agencies, and others impacted thereby, to complete any requirements on its part as set forth in Appendix A of November 6, 2000, and as same may have been modified or impacted by any subsequent filing or order entered thereafter. For clarity, Central states that it intends to comply with any and all requirements, submission of plans, and otherwise, which remain executory as of the submission of this new Land and Shoreline Management Plan, from the current plan, and the fact of the absence of any other terms or provisions of such executory duties and obligations of Central from the old plan, not being provided in this new Plan, does not relieve Central of any liability or obligation in respect to such terms, provisions, and conditions.


13. **Plan for reviewing FERC boundary (Appendix D).** The "schedule" set forth at paragraph D-5, should be eliminated. It makes reference to various actions, inspections, reviews, etc., which all predate the submission of this application. See paragraph above with respect to proposed additional paragraph 7.0 which could and should be part of Appendix D at least insofar as Jeffrey Reservoir and Midway Lakes.

WHEREFORE, the undersigned moves to intervene in the matter and, further, recommendation is hereby made that the Central Nebraska Public Power & Irrigation District be required to modify, delete, and include, as part of its Land and Shoreline Management Plan, the various recommendations hereinabove set forth.

Dated this 14th day of January, 2010.

JEFFREY LAKE DEVELOPMENT,
INCORPORATED, a Nebraska non-profit
corporation, movant

By:


Steve Windrum, #14552
Attorney for movant
P.O. Box 327
Gothenburg, NE 69138
PHONE: 308-537-2321

PROOF OF SERVICE

The undersigned certifies that on the 14th day of January, 2010, the foregoing instrument was served by depositing a copy thereof in the United States mail, postage prepaid, to the following:

Mr. Terry Barber
300 North 44th St #205
PO Box 4555
Lincoln, NE 68504

Michael A. Drain
Central Nebraska Public Power
& Irrigation District
P.O. Box 740
Holdrege, NE 68949-0740

Wightman & Wightman
P.O. Box 100
Lexington, NE 68850-0100

Martha Steincamp
Environmental Protection Agency
901 N. 5th St.
Kansas City, KS 66101-2907

Keith M. Brooks
Attorney/Advisor
Federal Energy Regulatory Commission
888 First Street, NE
Room 101-56
Washington, D.C. 20426

Michael Klein
Anderson, Klein, Peterson 7 Swan
PO Box 133
Holdrege, NE 68949-0133

Steve Shaimberg
National Wildlife Federation
1400 16th St NW
Washington, D.C. 20036-2217

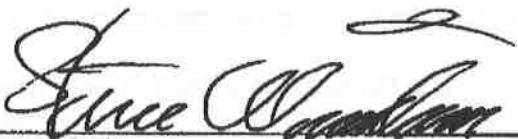
Nebraska Department of Natural Resources
Director
P.O. Box 94676
Lincoln, NE 68509-4676

Francis S. Kwapnioski
Nebraska Public Power District
P.O. Box 316
North Platte, NE 69103

James M. Lundgren
President
Nebraska Water Users, Inc.
76026 Road 432
Lexington, NE 68850-3717

Margot Zallen
Senior Attorney
U.S. Department of Interior
Office of the Solicitor
755 Parfet St, Ste 151
Denver, CO 80215-5599

Bob McCue
Supervisor
U.S. Fish and Wildlife Service
Federal Building
203 W. 2nd St.
Grand Island, NE 68801-5907


Steve Windrum

1/14/10

Project No. 1417-229

5

result occurs. Here, contrary to their claim, the Hixsons did in fact hold back until events took a turn not to their liking. The Hixsons were aware at the time the licensee filed its application that the application did not ask the Commission to authorize the licensee to follow the terms of the Wightman contract. They received notice from the Commission soliciting interventions and comments and chose to file comments, but did not intervene or oppose the application. No other entity sought to intervene, so there was no expectation that another lot owner was positioned to argue the case for them. Nothing changed between the time the application was filed and the issuance of the order to justify their filing for intervention at such a late date. It was only after the order was issued, and they did not like the result, that they sought to intervene. These facts do not meet the good cause standard for granting late intervention, much less the higher standard required after the issuance of a dispositive order. We therefore affirm the denial of late intervention and the rejection of the rehearing of Commission staff's July 9 Order.

13. The only issue that the Hixsons may properly raise here is whether the Secretary's notice denying their motion for intervention and dismissing their request for rehearing was in error. As discussed above, we have found no error in the notice. Nevertheless, we note that the Hixsons's arguments as to the July 9 Order are without merit.

14. The Hixsons assert that that the licensee breached the Wightman contract by filing an amendment application that was not completely consistent with the contract,¹⁷ and that "the failure of the Commission to incorporate the terms of the Wightman Agreement, absent some compelling reason, amounts to a violation of the due process and just compensation clauses of the Fifth Amendment to the United States' Constitution."¹⁸ Allegations of a breach of contract by the licensee are between the Hixsons and the licensee and are not within our jurisdiction.¹⁹ The Commission itself is under no obligation with respect to the contract. The licensee's obligations, as determined by the Commission, are delineated in the license and in the shoreline plan. The shoreline plan approved by the Commission included provisions to "grandfather" existing contracts.²⁰ That being the case, we indeed are obliged to act consistently with the jurisdictional

¹⁷ Hixson's August 7 motion to intervene and request for rehearing at 4.

¹⁸ *Id.*

¹⁹ The questions of whether the Wightman contract obligated the licensee to seek effectuation of its terms and whether the amendment application in fact was consistent with the contract are matters for a tribunal with jurisdiction over contract claims, and not for the Commission. In any event, the Hixsons do not in any of their pleadings explain how, if at all, the application conflicts with the contract.

²⁰ Shoreline plan at 47-48

Project No. 1417-229

6

aspects of those contracts unless and until, following public notice and the opportunity for comment, we were to determine that the licensee's compliance with those contracts was no longer consistent with the public interest. The situation is different with respect to the Wightman contract. That contract was executed after issuance of the project license and our approval of the shoreline plan. Thus, if the contract were presented to us, we would examine whether it was consistent with the license and the management plan, and not the other way around. However, the licensee did not seek our approval prior to executing the contract, so that we never made such a consistency determination. Therefore, we are under no obligation to require the licensee to implement the contract's terms, nor does our requiring the licensee to comply with the license and the shoreline plan in any way violate the Constitution. To the extent that we find such a contract inconsistent with the obligations we have placed on the licensee, the consequences of such a decision rest on the licensee.

The Commission orders:

The request for rehearing filed by Ephriam and Barbara Hixson, on October 6, 2008, is denied.

By the Commission.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

AFFIDAVIT

STATE OF NEBRASKA)
) ss.
COUNTY OF DAWSON)

RANDY CROMER, being on oath first duly sworn, deposes and says that:

1. I am a subleasee at Jeffrey Lake, in Lincoln County, Nebraska, and have been since 1972, continuously, and I have personal knowledge of the facts herein set forth. This affidavit is made for purposes of submitting and providing "evidence" in respect to the motion to intervene, and recommendations, of Jeffrey Lake Development, Incorporated, with respect to the application of Central Nebraska Public Power and Irrigation District for revision and update of their Land and Shoreline Management Plan, filed on or about December 7, 2009.

2. This affidavit concerns the provisions of such proposed Plan on "shoreline integrity."

3. Beginning many, many years ago, Jeffrey Lake Development, Incorporated, in conjunction with and with the approval and funding, in part, of the applicant/licensee, began a process of bank and shoreline stabilization on the west side of Jeffrey Lake consisting of vertical bagged walls, in a generally serpentine or curved pattern, consistent with the contour of the shoreline itself. This was done to reduce or minimize erosion from very steep banks on the west side of the lake which had silted in in such areas over the years.

4. This form of erosion control has been highly successful. Observation of the west side of Jeffrey Lake where these walls are situated indicates the growth of natural vegetation behind same, yet further stabilizing the shoreline. Additional areas have developed from time to time which need such identical shoreline protection and structure. In addition, repair and maintenance of the existing seawalls are needed from time to time by reason of the simple weathering and aging of same.

And further affiant saith not.

Dated this 12th day of January, 2010.

Randy Cromer
Randy Cromer, affiant

SUBSCRIBED and sworn to before me this 12th day of January, 2010.



Lori M. Haahe
Notary Public

1/11/10

Exhibit "A"

IN THE DISTRICT COURT OF LINCOLN COUNTY, NEBRASKA

JEFFREY LAKE DEVELOPMENT, INC.)
 A Nebraska Non-profit Corporation, et. al.,)

Plaintiffs,)

v.)

THE CENTRAL NEBRASKA PUBLIC POWER &)
 IRRIGATION DISTRICT, a public corporation)
 and political subdivision of the State of)
 Nebraska,)

Defendant.)

CASE NO: C100-405
 ORDER

This matter comes before the Court on October 26, 2006, for trial. The Plaintiffs are represented by Steve Windrum. The Defendant is represented by Michael C. Klein and Charles D. Brewster. Evidence is adduced. The matter is taken under advisement. The parties are given time to submit briefs.

This matter comes before the Court on January 5, 2007, after the Court, has reviewed the evidence and the briefs submitted by the parties.

The Court finds that after all these many years the issues presented to it at this trial bear a remarkable similarity to the evidence previously adduced. The intervening decision by the Nebraska Court of Appeals in regard to the freeboard line does not alter the evidence that was presented nor change the terms of the lease agreement entered into between the parties. Similarly, the FERC license issued to the Defendant does not change the lease agreement entered into between the parties.

The Court finds, once again, that the lease may not be amended unilaterally by the Defendant in regard to any construction below the freeboard

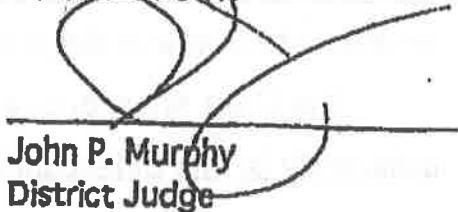
line or in regard to any construction or permission to construct in regard to "permanent shoreline structures, such as boat docks, boat storage facilities, stairways, and related structures". Further, the evidence adduced shows that the actions sought to be enjoined by the Plaintiff fall within the purview of the lease as do all of the proposed modifications or changes sought to be made by the individual sublease holders of the Plaintiffs.

The Court reiterates that the approval for permission to construct is on a case-by-case basis and the Defendant is required to review such request for approval on a good faith basis. The restrictions placed upon the Defendant by its FERC license may form the basis for a good faith refusal. However, the Court cannot address those issues since they are not properly presented to the Court by the action filed by the Plaintiffs.

Based on the evidence, the Court does grant to the Plaintiffs and against the Defendants an Injunction enjoining it from enforcing paragraphs 1(a), 1(b), 13(b) and 14 of the permit to construct. This Injunction is binding upon the Defendant, its officers, agents, servants, employees, and attorneys, or any other person actively in concert or participation with them who receive actual notice of this Order by personal service or otherwise. This Injunction shall be operative upon the Plaintiff's filing an undertaking with the Clerk of the District Court of Lincoln County, Nebraska, in the amount of \$100. The Injunction shall be served by the Clerk of the District Court of Lincoln County, Nebraska, upon the Defendant.

DECREED ACCORDINGLY.

BY THE COURT:



John P. Murphy
District Judge

**PERMIT TO CONSTRUCT STRUCTURE(S) ON THE PROPERTY
OF
THE CENTRAL NEBRASKA PUBLIC POWER
AND IRRIGATION DISTRICT**

The Central Nebraska Public Power & Irrigation District, a public corporation and political subdivision of the State of Nebraska, hereinafter called "Central District," whose address is 415 Lincoln St., P.O. Box 740, Holdrege, NE 68949-0740, in consideration of the fees to be paid and the covenants to be kept and performed by:

Applicant:

Legal:

Jeffrey Lake

Telephone No.:

County:

Lincoln County, Nebraska

hereinafter called "Licensee," hereby grants to the Licensee the right to construct, operate, maintain, repair, inspect, use, and remove the following described structure(s) on, above or under the following described property owned by the Central District and the right to enter said property for said purposes:

Description of Structure(s):

Legal Description of Location of Structure(s):

Jeffrey Lake

Central District Facility Description of Location of Structure(s):

Jeffrey Lake

Supply Canal M.P. _____

This Permit is given upon the following terms and conditions:

1. FEES.

(a) Licensee will pay in advance to Central District for this Permit an administrative fee in the sum of one hundred dollars (\$100.00), and the Licensee will also pay all taxes and assessments that may be levied or assessed against the above described structure(s). This provision shall in no way affect Central District's right to terminate this Permit pursuant to Paragraph Thirteen (13) hereof.

(b) It is understood and agreed that the parties hereto do not waive any of their rights or remedies under the case now pending before the Lincoln County District Court in District Court Case No. 112-13, and that the Central District does not by granting this Permit recognize nor acquiesce in the decision of the District Court in such case. It is expressly understood and agreed that the Central District reserves the right to charge a fair and reasonable annual fee for the Permit granted herein if allowed by law and that the Licensee agrees to pay such fee. However, the Central District agrees that such annual fee will not be charged by the Central District without prior approval of the Lincoln County District Court as long as the injunction issued in Lincoln County District Court Case No. 112-13 is outstanding.

2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) This Permit is subject and subordinate to the prior and continuing right and obligation of the Central District to use and maintain its entire property including the right and power of the Central District to construct, maintain, repair, renew, use, operate, change, modify or relocate any of its facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Central District without liability to the Licensee or to any other party for compensation or damages.

(b) This Permit is also subject to easements, leases and licenses, if any, heretofore granted by Central District affecting the premises upon which said structure(s) is to be located.

3. CONSTRUCTION, OPERATION AND MAINTENANCE.

(a) The structure(s) shall be constructed, operated, maintained, repaired, inspected, used, and removed by the Licensee in strict conformity with the requirements of the Central District and all applicable requirements of any federal, state or municipal law or regulation, including all applicable dredge and fill permits, building, zoning and safety codes. The construction plans for said structure(s) shall be submitted by Licensee to the Central District and must be approved in writing by the Central District prior to construction of said structure(s).

(b) Central District shall have the right, for reasons of safety or otherwise, to require that repairs be made to said structure(s), and upon request from Central District, Licensee shall immediately make such repairs at Licensee's expense.

(c) All work performed on property of the Central District in connection with the construction, operation, maintenance, repair, inspection, use, and removal of said structure(s) shall be done to the satisfaction of the Central District.

4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire expense incurred in connection with the construction, operation, maintenance, repair, inspection, use, and removal of the structure(s), including any and all expense which may be incurred by the Central District in connection therewith.

5. RELOCATION OR REMOVAL OF STRUCTURE(S).

This Permit is subject to the needs and requirements of the Central District in the operation of its project and in the improvement and use of its property and facilities, and the Licensee shall immediately, at the sole expense of the Licensee, change, modify, relocate or remove all or any portion of the structure(s) as the Central District may designate, whenever, in the furtherance of its needs and requirements, the Central District shall find such action necessary or desirable.

6. NO INTERFERENCE WITH CENTRAL DISTRICT'S OPERATION.

The structure(s) and all parts thereof within and outside of the limits of the property of the Central District shall be constructed and, at all times, operated, maintained, repaired, inspected, used and removed in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the property and facilities of the Central District, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

7. PROTECTION OF UNDERGROUND FACILITIES.

(a) Underground facilities such as fiber optic cable systems and gas pipelines may be buried on the Central District's property. Before beginning any excavation on the property of the Central District, Licensee shall telephone Diggers Hotline of Nebraska at 1-800-331-5666 (a 24-hour number) as required by the Nebraska One Call Notification System Act (Neb. Rev. Stat. §§ 76-2301 etc.) to properly locate all underground facilities that may be buried in the area to be excavated. Licensee shall indemnify and hold the Central District harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph or the provisions of the Nebraska One Call Notification System Act.

(b) In addition to other indemnity provisions in this Permit, the Licensee shall indemnify and hold the Central District harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any underground facilities on Central District's property, and/or (2) any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to an Owner of an underground facility located on Central District's property or a customer or user of services of such underground facility.

8. RESTORATION OF CENTRAL DISTRICT'S PROPERTY.

In the event the Central District authorizes the Licensee to take down any fence of the Central District or in any manner move or disturb any of the other property or facilities of the Central District in connection with the construction, operation, maintenance, repair, inspection, use, and removal of the structure(s), then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property or facilities to the same condition as the same were in before such fence was taken down or such other property or facilities was moved or disturbed, and the Licensee shall indemnify and hold harmless the Central District, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whatsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property or facilities of the Central District.

9. DAMAGE TO STRUCTURES.

It is understood by the parties that said structure(s) will be in danger of damage or destruction by flood or other causes incident to the use, operation, maintenance or improvement of Central District's property and facilities, and Licensee accepts this Permit subject to such dangers. It is therefore agreed, as one of the material considerations of this Permit, without which the same would not be granted, that Licensee hereby assumes all risk of loss, damage, or destruction to said structure(s) without regard to whether such loss be occasioned by flood or other causes incident to or arising from the use, operation, maintenance or improvement of Central District's property and facilities, OR TO WHETHER SUCH LOSS OR DAMAGE BE THE RESULT OF NEGLIGENCE OR MISCONDUCT OF CENTRAL DISTRICT OR ITS OFFICERS, AGENTS AND EMPLOYEES.

10. INDEMNITY.

(a) As used in this section, "Central District" includes the Central District and its officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (i) injury to or death of persons whatsoever (including the Central District's officers, agents and employees, the Licensee's officers, agents and employees, as well as any other person); and/or (ii) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the property or facilities of the Central District, or property or facilities in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Central District from any loss which is due to or arises from: (i) The prosecution of any work contemplated by this Permit, including the construction, maintenance, repair, inspection, modification, relocation or removal of the structure(s) or any part thereof; or (ii) the presence, operation, or use of the structure(s) or contents, if any, escaping therefrom.

11. REMOVAL OF STRUCTURE(S) UPON TERMINATION OF PERMIT.

Prior to the termination of this Permit however, the Licensee shall, at Licensee's sole expense, remove the structure(s) from the Central District's property and shall restore, to the satisfaction of the Central District, such property to as good condition as it was in at the time of construction of the structure(s). If the Licensee fails to do the foregoing, the Central

District may do such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Central District of the structure(s) of the Licensee and of the restoration of the property as herein provided, the Central District shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Central District may have against the Licensee.

12. WAIVER OF BREACH.

The waiver by the Central District of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Central District to avail itself of any remedy for any subsequent breach thereof.

13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the structure(s) for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Central District to the Licensee specifying such default, the Central District may, at its option, forthwith immediately terminate this Permit by written notice.

(b) In addition to the provisions of subparagraph (a) above, this Permit shall also terminate upon ninety (90) days advance written notice by either party to the other party.

(c) All notices required under this Permit shall be deemed good if properly deposited with the United States Postal Service addressed to the party being notified at such party's post office address above stated.

14. PERMIT NOT TO BE ASSIGNED.

The Licensee shall not assign this Permit, in whole or in part, or any rights herein granted and it is agreed that any transfer or assignment or attempted transfer or assignment of this Permit or any of the rights herein granted, whether voluntary, by operation of law, or otherwise shall be absolutely void and, at the option of the Central District, shall terminate this Permit.

15. SPECIAL PROVISION: FEDERAL ENERGY REGULATORY COMMISSION AUTHORITY.

In addition to the above, this Permit is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein because of its location within the FERC Project boundary.

(a) The following terms as used in this Permit shall have the meanings as defined in this Paragraph.

(1) "FERC" shall mean the Federal Energy Regulatory Commission or its successor.

(2) "Project" shall mean Project No. 1417 as licensed by the FERC.

(b) The use of the property of the Central District, including its use for access to the Central District's lakes or reservoirs, shall be at the sole risk of the Licensee without any liability on the part of Central District.

(c) Licensee shall not unduly restrict public access to Project water. Licensee shall take all reasonable precautions to ensure that construction, operation, maintenance, repair, inspection, use, and removal of structure(s) on the property of the Central District will occur in a manner that will protect the scenic, recreational, and environmental values of the Project. The use of the property of the Central District, as permitted herein, shall not endanger health, create a nuisance, or otherwise be incompatible with the overall recreational use of the Project, including particularly the Cultural Resources Management Plan and the Land and Shoreline Management Plan, as required by the FERC. Central District retains the right to enforce these provisions by any reasonable means including, without limitation, the right to perform inspections, implementation of a permitting system, direction to cease inappropriate land use or to remove inappropriate structure(s), and termination of this Permit.

(d) In granting this Permit, the Central District is under no obligation to maintain any dam or other water control facility, or to maintain water levels at the aforementioned lakes or reservoirs at any particular level or elevation. Central District shall have no liability for loss, cost or damage, actions at law or in equity, brought, acquiesced in, or acted upon by or on the part of Licensee as against Central District.

(e) In granting this Permit, the Central District retains the right to use and to flow waters of the Central District's lakes or reservoirs by means of dams or otherwise, and to maintain the said water or waters therein, at any height which it may desire at any time and for any purpose whatsoever and to overflow and flood the property of the Central District directly or indirectly by backflow, seepage, erosion, inundation or otherwise. The foregoing is to be without any let or hindrance and without liability for loss, cost or damage, actions at law or in equity, brought, acquiesced in, or acted upon by or on the part of Licensee as against Central District.

(f) In granting this Permit, the Central District retains the right to enter upon its property for all purposes necessary or appropriate for the construction, maintenance and operations of the Project, including without limitation purposes related to the control of water levels in the aforementioned lakes or reservoirs.

(g) Notwithstanding any provision contained in this Permit, Central District retains the right to perform any and all acts required by an order of the FERC without the prior approval of Licensee and without liability to the Licensee or to any other party for compensation or damages.

16. SPECIAL PROVISION: ARMY CORPS OF ENGINEERS 404 PERMIT

This Permit is subject to the Army Corps of Engineers 404 Permit. All necessary dredge and fill permits shall be submitted by the Licensee at the Licensee's expense and approved by all appropriate federal and/or state agencies prior to the execution of this Permit by the Central District.

17. SPECIAL PROVISION: FINAL INSPECTION

This Permit is subject to a final inspection by a Central District representative and approval by the Central District of the completed project in writing. Licensee must notify the Central District at the completion of the work for the final inspection. If Licensee fails to comply with this provision, this Permit may be subject to suspension, modification or revocation.

IN WITNESS WHEREOF, the parties have duly executed this Permit the day and year shown below.

ATTEST:

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION
DISTRICT, A Political Subdivision of the State of Nebraska

Assistant Secretary

By

General Manager

Date of Central District's signature: _____

_____, Co-Licensee

_____, Co-Licensee

STATE OF _____)

— NOTARY —

COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1999, by

(Notary)

(Seal)

My Commission Expires: _____

General Notary Public

STATE OF _____)

— NOTARY —

COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1999, by

(Notary)

(Seal)

My Commission Expires: _____

General Notary Public

App'd by Central District's Gen. Mgr.: Date _____ Asst. Secy. _____

AFFIDAVIT

STATE OF NEBRASKA)
) ss.
 COUNTY OF DAWSON)

RANDY CROMER, being on oath first duly sworn, deposes and says that:

1. I am a sublessee at Jeffrey Lake, in Lincoln County, Nebraska, and have been since 1972, continuously, and I have personal knowledge of the facts herein set forth. This affidavit is made for purposes of submitting and providing "evidence" in respect to the motion to intervene, and recommendations, of Jeffrey Lake Development, Incorporated, with respect to the application of Central Nebraska Public Power and Irrigation District for revision and update of their Land and Shoreline Management Plan, filed on or about December 7, 2009.

2. This affidavit concerns the provisions of such proposed Plan on "grandfathering." I have been a member of the Board of Directors of Jeffrey Lake Development, Incorporated, for several year last past, and on the Lot Committee. In such capacity, I am familiar with numerous uses, structures, improvements, etc., in and around Jeffrey Lake, both at the water level, and at higher elevations. In addition, I have reviewed numerous photographs of present structures and uses, both currently in place, and from prior years, as far back as 1968.

3. In addition, in the course of my duties as a member of the Lot Committee at Jeffrey Lake, and therefore examining and approving building permits and other permitted uses at Jeffrey Lake for Jeffrey Lake Development, Incorporated, I have become familiar, at least generally, with the alleged location of the FERC boundary line as same is so located at Jeffrey Lake, from information in respect to that boundary line as supplied to me by staff members of Central Nebraska Public Power & Irrigation District.

4. I have no knowledge as to whether or not any specific current use, structure, or improvement at Jeffrey Lake, would qualify, or would not qualify, for and in respect to grandfathering under the proposed terms of the Land and Shoreline Management Plan to which this affidavit is supplied (and I have read the terms of the proposed plan on that subject).

5. The permitting process under any Land and Shoreline Management Plan submitted in respect to Central's licensing requirements was first effective March 4, 2003, in accordance with the date thereof, being the first Land and Shoreline Management Plan, as approved by FERC. I know of my own personal knowledge that the various uses as I have most recently observed same, as recently as the late summer and fall of 2009, together with structures and improvements, in and around Jeffrey Lake, having a general location inside the FERC boundary line, as I have become familiar with respect to such boundary line, have been in place or existent for many years prior to March 4, 2003.

6. The current lease between Jeffrey Lake Development, Incorporated, and Central Nebraska Public Power & Irrigation District, is dated May 1, 1980. As mentioned, I have been living continuously on the lake and have been generally familiar with the shoreline since approximately 1972. I know from such observation that more than half of the currently existing uses, structures, and improvements, inside the FERC boundary line, have been in existence and substantially unchanged, to and through the current time, since prior to May 1, 1980.

And further affiant saith not.

Dated this 12th day of January, 2010.

Randy Cromer
 Randy Cromer, affiant

SUBSCRIBED and sworn to before me this 12th day of January, 2010.



Lori M. Haake
 Notary Public

1/11/10

Exhibit "B"

415 Lincoln St.
P.O. Box 740
Holdrege, NE 68949-0740

Frank C. Vetter
Real Estate Administrator



CENTRAL
Nebraska Public Power
and Irrigation District

Phone: (308) 995-8601
Fax: (308) 995-5705
Web: www.cnppid.com

Toll Free: 888-580-5299 ext 3556
Direct Line: 308-995-3556
E-Mail: fvetter@cnppid.com

June 16, 2011

Ms. Sally Jochum, President
Jeffrey Lake Development, Inc.
44 S. Lakeview Road
Brady, NE 69123

Re: Bagging Project

Dear Sally,

I have a copy of the meeting minutes from the Jeffrey Lake Development general meeting of May 14, 2011. The minutes indicate that there is a "bag day" scheduled for July 9, 2011. As you know, Jeffrey's lease with Central covers only specific areas on the east side of the lake. No part of the west side is leased to Jeffrey. As a result, it is not possible to do any work on the west side of the lake. Trespassing on Central's property is prohibited.

Sincerely,

The Central Nebraska Public Power and Irrigation District

A handwritten signature in black ink that reads "FRANK C. VETTER".

Frank C. Vetter
Real Estate Administrator

C: Don D. Kraus
Michael A. Drain
Kevin Boyd
Kent Aden

L

STEVE WINDRUM, P.C.

ATTORNEY AT LAW

P.O. Box 327 415 9th Street
Gothenburg, Nebraska 69138-0327

(308) 537-2321

Fax (308) 537-4487

Email: steve@windrum.net

Steve Windrum

June 21, 2011

Office Hours

8:30-12:00, 1:00-5:00

Mon.-Tues.-Thurs.-Fri.

8:30-12:00 Wed.

VIA FACSIMILE & REG MAIL

Mr. Michael Klein

Attorney at Law

P.O. Box 133

Holdrege, NE 68949-0133

RE: Jeffrey Lake Development, Inc.
2011 Bagging Project

Dear Mike:

You were not copied in on Frank's letter to Sally on the captioned matter, dated June 16th, so I provide you with such copy. Frankly, I would have thought a little more inquiry would have been in order before something so direct and imperative as Frank's letter, but I guess that is neither here nor there.

Any and all bagging planned for 2011, as that undertaking in 2010, is solely maintenance, repair and replacement of those areas on the west side of the lake previously permitted, all as you and I went through in an exchange of correspondence in 2010, that being such work and bagging as is required by the permit with the Corps of Engineers which requires the permittee to, in fact, simply to use a lay expression, "keep up" the property in good condition, repair, etc. Persons conducting the activity have been specifically admonished that what is to be done and proposed to be done is solely in the area or description set forth above, that is, maintenance, repair and replacement.

I will rely on the fact that we have this understanding regarding the matter unless I hear from you specifically to the contrary.

Cordially yours,

Steve Windrum

SW/en

cc: Sally Jochum, JLDI President, VIA EMAIL
Sandy Burke, VIA EMAIL



Steve Windrum

From: Anderson Klein Swan & Brewster [kleinlaw@atcjet.net]
Sent: Friday, June 24, 2011 4:18 PM
To: Steve Windrum
Cc: Frank C Vetter; Don Kraus; Michael Drain; Kevin Boyd; Kent Aden
Subject: Jeffrey Bagging Project

See attached.

Michael C. Klein
Anderson, Klein, Swan & Brewster
417 East Avenue, P.O. Box 133
Holdrege, NE 68949-0133
Phone 308-995-4458
FAX 308-995-8607
email kleinlaw@atcjet.net

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1388 / Virus Database: 1513/3723 - Release Date: 06/24/11

LAW OFFICE OF
ANDERSON, KLEIN, SWAN AND BREWSTER
417 EAST AVENUE, P. O. BOX 133
HOLDREGE, NEBRASKA 68949-0133
TELEPHONE (308)995-4458
FAX (308)995-8607
e-mail: kleinlaw@atejet.net

LANSING ANDERSON (1914-1990)
MICHAEL C. KLEIN
H. TITUS SWAN, of counsel
CHARLES D. BREWSTER
JONATHAN R. BRANDT

Please reply to:
☒ Holdrege Office
☐ Kearney Office

Kearney Office:
2033 Central Ave., P.O. Box 521
Kearney, Nebraska 68848-0521
Telephone (308)237-5545
Fax (308)237-7679

June 24, 2011

Sent via email

Mr. Steve Windrum
Attorney at Law
415 9th Street
P. O. Box 327
Gothenburg, NE 69138-0327

Re: Jeffrey "Bagging" Project

Dear Steve:

I have your letter of June 21, 2011, which I received by facsimile June 21, and regular mail June 22.

The 404 permit held by Jeffrey Lake Development, Inc. (Jeffrey) allows the cabin owners' association to continue maintenance on the project only if the land owner agrees, and the land owner determines that the project should be maintained.

Without Central's permission, no further work on the existing structures may occur.

Within the next day or so, the President of Jeffrey should receive notice that any permission Central may have previously given has been revoked. No further work on the existing structures may occur.

Sincerely yours,

ANDERSON, KLEIN, SWAN & BREWSTER

By 
Michael C. Klein

MCK:ct

cc Frank C. Vetter
Don D. Kraus
Michael A. Drain
Kevin Boyd
Kent Aden

415 Lincoln St.
P.O. Box 740
Holdrege, NE 68949-0740

Frank C. Vetter
Real Estate Administrator



CENTRAL
Nebraska Public Power
and Irrigation District

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Web: www.cnppid.com

Toll Free: 888-580-5299 ext 3556
Direct Line: 308-995-3556
E-Mail: fvetter@cnppid.com

June 24, 2011

Ms. Sally Jochum, President
Jeffrey Lake Development, Inc.
44 S. Lakeview Road
Brady, NE 69123

Re: Bagging Projects

Dear Sally,

The Central Nebraska Public Power and Irrigation District hereby gives Jeffrey Lake Development, Inc. notice of termination of all prior permits, permissions, etc. for "bagging" projects at Jeffrey Lake/Reservoir.

The above notice is directly related to my letter dated June 16, 2011 to you and Steve Windrum's letter dated June 21, 2011 to Michael Klein.

Sincerely,

Frank C. Vetter
Real Estate Administrator

FCV/enc.

C: Mike Klein
Don D. Kraus
Michael A. Drain
Kevin Boyd
Kent Aden



STEVE WINDRUM, P.C.

ATTORNEY AT LAW

P.O. Box 327 415 9th Street
Gothenburg, Nebraska 69138-0327

(308) 537-2321

Fax (308) 537-4487

Email: steve@windrum.net

Steve Windrum

June 27, 2011

Office Hours

8:30-12:00, 1:00-5:00

Mon.-Tues.-Thurs.-Fri.

8:30-12:00 Wed.

VIA FACSIMILE & REG MAIL

Mr. Michael Klein

Attorney at Law

P.O. Box 133

Holdrege, NE 68949-0133

RE: Jeffrey "Bagging" Project

Dear Mike:

I have your letter to me of June 24th earlier this afternoon as I dictate this (Friday evening). This will not go out until Monday, obviously, but I get it out of the way at this juncture, and I am fairly confident as to its content insofar as checking with representatives of my client who make these decisions, the president, and otherwise.

Given your letter content, the bagging project previously planned for this year is aborted. Nothing in this regard, or in any other content of this letter, is to be construed as any admission, waiver, etc. Indeed, we dispute the interpretation of the 404 permit as you set forth.

I do not recall the content of the 404 permit that you reference in the second paragraph of your letter. I would appreciate being advised as to the specific section, paragraph, part or subpart, etc., however denominated, which provides for this so I can determine the existence and impact thereof for the benefit of myself and my client.

Will look forward to receipt of that at your earliest convenience.

Cordially yours,

Steve Windrum

SW/en

cc: Sally Jochum, VIA EMAIL
Sandy Burke w/ enc., VIA EMAIL
Joe France w/ enc., VIA EMAIL

P



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE - KEARNEY
2214 2ND AVENUE
KEARNEY, NEBRASKA 68847-5315

<http://www.nwo.usace.army.mil/html/od-rne/nehome.html>

December 6, 2011

Mr. Steve Windrum
PO Box 327
Gothenburg, Nebraska 69138-0327

RE: Bank Stabilization on Jeffrey Lake

Dear Mr. Windrum:

This is in response to your August 16, 2011 letter regarding a conflict between the Jeffrey Lake Development Association and Central NE Public Power & Irrigation District (CNPPID). This is the history from our files.

The Programmatic General Permit (PGP-99-04) that was developed on behalf of CNPPID was first issued in July 2001. It is unknown whether or not CNPPID was involved in reviewing bank stabilization projects on their lakes prior to this. When a project complies with the PGP, an actual permit letter from the Corps is not sent to the landowner; CNPPID handles the application review, the permitting and the compliance inspections.

The Lake Association received a Nationwide #13 verification on June 25, 1999. "Quikrete Riprap" was the stabilization method of choice for this "bagging" procedure located in the SW¼ of Section 4, Township 11 North, Range 27 West, Lincoln County, Nebraska. A copy of the verification letter is enclosed.

On June 16, 2006, we received information from CNPPID that Jeffrey Lake Development was issued a PGP to "place approximately 1,200 80# concrete bags along 300-350 feet of shoreline as submitted with the permit application, drawings etc. The slope of the concrete bag seawall cannot exceed 1:1." This project was located in "Add 4, Section 9, Lots 2 & 3 - Jeffrey Lake". This location is in Township 11 North, Range 27 West.

On August 11, 2006, we received information from CNPPID that Jeffrey Lake Development was issued another PGP for the same location and project description as in the above. Apparently, Jeffrey Lake Development protected more shoreline than was originally allowed and this was an "after-the-fact" permit to authorize that which was done over and above the first permit.

You can find a copy of the PGP 99-04 at <http://www.nwo.usace.army.mil/html/od-rne/nehome.html> and click on "General Permits" on the left hand side of the page.

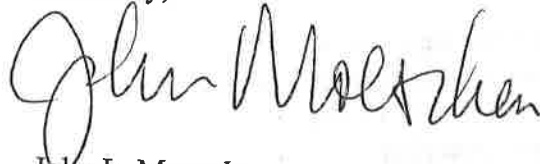
Q

In June of 2010, Jeffrey Lake Development submitted an application directly to the Corps for "repair and maintenance of existing cement bag seawalls". It was determined that this application was referring to work done under the Nationwide 13 verified on June 25, 1999. A copy of the letter is enclosed.

Our permits allow a project proponent to carry out an activity that involves the placement of fill material in waters of the U. S. The permits authorize the project proponent to maintain that which was permitted. The permits do not, however, convey property rights, nor do they authorize trespassing. If the cement bag seawall is, in fact, on CNPPID property and CNPPID will not allow maintenance of the seawall, the Corps cannot compel CNPPID to allow Jeffery Lake Development to maintain the seawall.

If you have any questions concerning this determination or jurisdiction, please feel free to contact Mrs. Barb Friskopp at the above address or call (308) 234-1403 or e-mail barbara.j.friskopp@usace.army.mil.

Sincerely,

A handwritten signature in dark ink, appearing to read "John L. Moeschen". The signature is fluid and cursive, with the first name "John" being more prominent.

John L. Moeschen
Nebraska State Program Manager

Enclosure

Steve Windrum

From: randycromer2@gmail.com on behalf of Randy Cromer <rcromer@nebnet.net>
Sent: Thursday, April 04, 2013 9:46 AM
To: Steve Windrum
Cc: Sally Jochum
Subject: Fwd: seawall materials
Attachments: Erosion Control Structures Material List.pdf

Steve:

Sally and I visited last week about the west side bagging. In the conversation the question arose, is bagging allowed at all?

I sent this email to Frank to see if bags were allowed. As you can see Frank's answer to my question is somewhat different. But the materials sheet plainly says bags are prohibited.

If Central does not allow bags, the only way we could repair the west side would be with riprap. I doubt that Central would give us a waiver to use bags, and the possibility of a waiver assumes that the prohibition of bags is solely a Central rule.

randy

----- Forwarded message -----

From: Frank Vetter <fvetter@cnppid.com>
Date: Wed, Apr 3, 2013 at 4:03 PM
Subject: RE: seawall materials
To: Randy Cromer <rcromer@nebnet.net>

Randy,

Attached is the current list of prohibited and acceptable materials. Cement bags are not on the list.

Frank

From: randycromer2@gmail.com [mailto:randycromer2@gmail.com] **On Behalf Of** Randy Cromer
Sent: Wednesday, April 03, 2013 3:20 PM
To: Frank Vetter
Subject: seawall materials

Frank:

Could you send me your current list of materials allowed on seawalls.

It is getting to be that time of year again.

Is there any truth to the rumor I heard that we can again use the cement bags?

randy

EROSION CONTROL STRUCTURES MATERIAL LIST

KEEP FOR YOUR RECORDS

Materials for erosion control structures

Prohibited

- Vehicle bodies
- Farm machinery
- Metal junk, including appliances, containers and barrels (including plastic barrels)
- Building debris (wood and roofing materials, sheet rock, brick, cinder block, etc.)
- Hollow core block (foundation block)
- Concrete bags
- Small aggregate
- Asphalt
- Organic debris
- Creosote
- Concrete with exposed rebar
- Tires
- Non-plated nuts, bolts, nails, cables, straps, etc. used in seawall construction
- Non-encapsulated, beaded polystyrene
- Treated lumber and pilings (creosote, chromate copper arsenate (CCA) or alkaline copper quaternary (ACQ)) used less than one foot above the ordinary high water mark of the lake (commonly referred to as the Normal Shoreline)

Acceptable

- Vegetation
- Clean broken concrete, rock or similar material
- Fabriform
- Concrete solid blocks
- Formed or fabricated concrete
- Plastic
- PVC
- Metal and plated metal
- Plated nuts, bolts, nails, cables, straps, etc. used in seawall construction
- Fiberglass
- Untreated lumber
- Treated lumber and wood pilings (creosote, chromate copper arsenate (CCA) or alkaline copper quaternary (ACQ)) used more than one foot above the ordinary high water mark of the lake (commonly referred to as the Normal Shoreline)

Central may consider materials not listed above on a case by case basis.

147 FERC ¶ 62,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Nebraska Public Power
and Irrigation District

Project No. 1417-246

ORDER MODIFYING AND APPROVING REVISED LAND AND SHORELINE
MANAGEMENT PLAN

(April 11, 2014)

1. On December 7, 2009, Central Nebraska Public Power and Irrigation District (Central) filed an application for Commission approval of its revised Land and Shoreline Management Plan (LSMP) pursuant to article 421 of the license for the Kingsley Dam Project (Kingsley Project or project) No. 1417.¹ For the reasons discussed below, the revised LSMP, as modified herein, is in the public interest because it comprehensively manages the project shoreline in a manner that protects environmental and public recreation resources, preserves historic and cultural resources, and protects scenic quality and aesthetic resources. Accordingly, this order approves Central's revised LSMP, as modified below.

BACKGROUND

A. Project Description

2. The Kingsley Project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Gosper, and Dawson Counties, Nebraska, and has an authorized capacity of 49.97 megawatts (MW). The Kingsley Project consists of two distinct segments: (1) Lake McConaughy and Lake Ogallala; and (2) Central Supply Canal (Tri-County Supply Canal).

3. The first segment contains Lake McConaughy and Lake Ogallala. Lake McConaughy, upstream of the Kingsley dam, is about 21 miles long and has approximately 30,500 surface acres. Kingsley dam is at the eastern end of the Lake McConaughy; an expanse of wetlands defines the western end. Except for those lands occupied by project facilities and four residential cabin areas, all project lands at Lake

¹ *Central Nebraska Public Power & Irrigation District*, 84 FERC ¶ 61,079 (1998) (Relicense Order).

S

McConaughy are leased to Nebraska Game and Parks Commission (Nebraska Game Commission) to create the Lake McConaughy State Recreation Area (State Rec. Area). Immediately downstream of the Kingsley dam, Lake Ogallala, has approximately 300 surface acres. Fishing, boating, camping, and bald eagle viewing are popular activities at Lake Ogallala. The Lake McConaughy State Rec. Area encompasses all of the shoreline within the project boundary at Lake Ogallala except for those areas with public works facilities which are not open to the public.

4. The second segment of the project begins at the Central (or Tri-County) diversion dam, located 50 miles downstream of Kingsley dam at the confluence of the North and South Platte rivers. The dam diverts water into a 75-mile-long supply canal, which flows through 27 canyon lakes of varying sizes and three hydroelectric developments (Jeffrey Hydro, Johnson-1 Hydro, and Johnson-2 Hydro) before water is returned to the Platte River east of Lexington, Nebraska.

5. The canyon lakes and other water bodies impounded along the supply canal vary in size from less than 1 surface acre to about 2,500 acres. The revised LSMP describes each lake that is equal to or greater than 20 acres. Most of the shoreline along the canal and around these lakes is available for public recreation. There are 10 lakes in Lincoln County, where the supply canal is diverted from the Platte River, including: Box Elder Canyon Lake (22 acres), Cottonwood Lake (33 acres), Snell Lake (53 acres), and Jeffrey Lake (575 acres). Box Elder Canyon Lake and Jeffrey Lake both have small Wildlife Management Areas (Wildlife Areas) managed by Nebraska Game Commission. Jeffrey Lake has residential homes along the shoreline on lands owned by Central and leased to a lake association. Some of these homes are within the project boundary. Appendix D of the LSMP includes a plan for reviewing the project boundary pursuant to article 421. The purpose of the plan is to assure that adequate lands are controlled to carry out project operations, including public access for recreation and to determine if lands can be removed from the project boundary that are currently used for residential or agricultural purposes without compromising project operational needs. This review is currently ongoing.

6. There are a number of lakes in Dawson County, the next county that the supply canal enters on its way east. The lakes of note along this stretch of the canal are: Hiles Canyon Lake (19 acres), the Midway Lakes (ranging from 48 to 341 acres), Gallagher Canyon Lake (182 acres), and Plum Creek Canyon Lake (252 acres). Plum Creek Canyon Lake has a small Wildlife Area and public boat access. Residential homes are scattered on private and project lands along its steep banks. Gallagher Canyon Lake has a State Rec. Area that provides camping, picnicking, and boating access. Two of the Midway Lakes have residential homes along their shorelines. Like Jeffrey Lake, most homes are on lands leased from Central. Some of these homes are within the project boundary.

7. With its northern portion in Dawson County and its southern portion in Gosper County, Johnson Lake (2,500 acres) is the largest lake on the canal system. Johnson Lake is the only lake in the canal system with its entire shoreline developed for residential, marina, or public recreational use. There are two State Rec. Areas at Johnson Lake, which offer a variety of public recreational opportunities including handicapped accessible fishing, camping, picnicking, and swimming. A public golf course is located just below the dam. Finally, a few small canyon lakes on the supply canal lie within Gosper County. One of these lakes, East Phillips Lake (142 acres), has a Wildlife Area with a public boat ramp and fishing access.

B. Licensee's Proposed Revised Land and Shoreline Management Plan

8. Central's current LSMP was approved in 2002, and revised in 2006 to allow for the expansion of a concession area.² Article 421 of the license requires Central to file an update to its LSMP every five years for Commission approval. The plan is to: (1) identify project lands reserved for wildlife, public recreation, residential, agricultural, and other uses; (2) specify proposed land use changes; (3) designate specific areas for campgrounds, recreational vehicles, fishing, hunting, and boating; (4) identify measures to protect threatened and endangered species consistent with other wildlife protection requirements in the license; (5) include provisions to control aquatic vegetation and sedimentation in project reservoirs; (6) be developed in consultation with the U.S. Fish and Wildlife Service (FWS) and the Nebraska Game Commission; and (7) be updated every three years for threatened and endangered species and every five years for the remainder of the plan with any changes in land or recreational use.

9. Central has filed this revised LSMP to comply with article 421. Central states that it sought to improve the organization of the original LSMP and make it more accessible and easier to use. Central proposes to use this revised LSMP as a baseline to evaluate developmental proposals and recreational needs at the project. The revised LSMP provides guidance on how Central would manage project lands and shoreline; it identifies specific allowable uses and the procedures that the licensee and the public would follow to undertake these uses. Specifically, the revised LSMP modifies its existing LSMP in three areas by: (1) reducing the existing six shoreline management classifications to five classifications and identifying and defining the allowable uses permitted under each classification, (2) modifying the permitting procedures as they relate to the new shoreline management classifications, and (3) extending the current five-year LSMP review cycle to a six-year cycle.

² See Order Modifying and Approving Land and Shoreline Management Plan, 101 FERC ¶ 62,015 (2002) and Order Revising Land and Shoreline Management Plan, 116 FERC ¶ 62,095 (2006).

10. The revised LSMP incorporates, as appendices, documents that the Commission must also review and approve under articles 421 (LSMP article) and 422 (standard land use article) of the project license, including: (1) the land and shoreline management classification maps (Appendix A); (2) descriptions of project lands and waters designated for public recreational use (Appendix B); (3) a management plan for least tern and piping plover nesting on the shore of Lake McConaughy (Appendix C);³ and (4) a plan for reviewing the FERC boundary (Appendix D).

C. Consultation

11. Pursuant to its original LSMP review consultation protocols and article 421, Central notified state and federal agencies of its intent to undertake revisions to the plan in late 2007, soliciting participation specifically from FWS, Nebraska Game Commission, Nebraska State Historic Preservation Officer (SHPO), U.S. Army Corps of Engineers (Corps), and the five counties – Garden, Keith, Lincoln, Gosper, and Dawson, Nebraska. Central held multiple meetings with the resource agencies and with members of the public, conference calls, and email exchanges over the course of two years, culminating in distribution of a revised LSMP draft for final agency comment. Central received comment letters from FWS and Nebraska Game Commission. FWS expressed an appreciation for the opportunity to review the draft LSMP and did not provide any objections. Nebraska Game Commission stated it had no objections to the classification maps or revised LSMP overall and that the revised LSMP does an appropriate job of ensuring shoreline integrity.

12. In mid-December 2007, Central held three public information meetings at various locations throughout the project area. Central organized a stakeholder group to serve in an advisory capacity during the LSMP revision process with members representing lake tenants, adjacent landowners, recreational users, commercial operators, agencies, local governments, and environmental interests. Central met with and sought input from the stakeholder group at various times throughout the process, including providing informal drafts of the revised LSMP and other materials over the course of the revision process. Central made the draft revised LSMP publicly available and solicited written feedback from the public and held another series of meetings in September 2009.

³ The licensee's plan for least tern and piping plover nesting on the shore of Lake McConaughy was approved by the Commission on February 25, 2011. *See Order Approving Management Plan for Least Terns and Piping Plover on the Shore of Lake McConaughy Pursuant to Article 421*, 134 FERC ¶ 62,171 (2011).

D. Public Notice, Comments, and Interventions

13. On December 7, 2009, Central filed its revised LSMP and on December 17, 2009, Commission staff issued a public notice accepting the revised LSMP and established January 19, 2010 as the deadline to file comments, protests, and motions to intervene. In response to the notice timely motions to intervene and comments were filed by Jeffrey Lake Development, Incorporated (Jeffrey Lake Development)⁴ and jointly by Ephriam and Barbara Hixson and Graupner, Sands & Barber (Hixson and Barber).⁵ The licensee filed a timely opposition to the motion filed by Hixson and Barber.⁶ On January 11, 2010, the United States Department of the Interior stated that it had reviewed the revised LSMP and had no additional comments on the plan.

14. On February 2 and 3, 2010, Central responded to Jeffrey Lake Development and Hixson and Barber's comments.⁷

15. On May 11, 2011, Commission staff issued an environmental assessment (EA) for review and comment. The comment period ended on June 13, 2011. Central filed comments to the EA on June 9, 2011. The FWS filed comments on June 20, 2011,

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules and Regulations. 18 C.F.R. § 395.214(c)(1).

⁵ The Hixsons incorporate by reference all matters raised in their submission of August 7, 2008 in a prior proceeding involving their property on Plum Creek Canyon Lake. The Commission has repeatedly declined to accept arguments incorporated by reference from a prior pleading. *See, e.g., Southern California Edison Company*, 135 FERC ¶ 61,164 at n.11 (2011); *Duke Energy Guadalupe Pipeline, Inc.*, 116 FERC ¶ 61,080 at P 19 (2006) (stating that "the Commission's standard practice is not to allow parties to incorporate by reference arguments made in prior pleadings). In any event, as noted in the order denying rehearing, *Central*, 125 FERC ¶ 61,192 (2008), the Commission previously found that the arguments raised by the Hixsons in their August 7, 2008 motion were without merit.

⁶ Where an answer in opposition is filed no later than 15 days after the motion to intervene is filed, the movant only becomes a party to the proceeding when the motion is expressly granted by the Commission. 18 C.F.R. § 395.214(c)(2). By notice issued June 29, 2010, the Commission's secretary granted the motion to intervene filed by Hixson and Barber.

⁷ Central generally disagreed with the comments but did provide clarification of the LSMP on the subject of "Discharges" and agreed to add residential heat pumps discharges as "Accessory Uses."

stating that it found the environmental measures to be adequate environmental protections. In the EA, Commission staff concluded that the implementation of the revised LSMP, with staff-recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

16. As discussed below, I have considered the comments, motions to intervene, and Commission staff's EA in deciding whether, and under what conditions, to approve the proposed LSMP.

DISCUSSION

A. Property Interests

17. Jeffrey Lake Development asserts that it entered into a lease with the licensee prior to the creation of the original LSMP and that its lease is not subject to the LSMP. Central disagrees with Jeffrey Lake Development's interpretation of the lease.

18. A licensee is required to acquire and retain all interests in non-federal lands necessary or appropriate to carry out project purposes.⁸ These interests can be obtained through easement, fee title, leases, and other types of conveyances. The instruments of conveyance define the extent of the licensee's right.⁹ The inclusion of lands within a project boundary serves the function of indicating that the lands are used in some manner for project purposes. However, the mere inclusion of lands within a project boundary will not restrict landowner uses, since such inclusion does not itself create or alter property rights.¹⁰ Thus, this order does not impact property rights. Whatever rights an entity has in lands within the project boundary, whether conferred by deed, lease, easement, or other conveyance, will not be altered by our action regarding this revised LSMP.¹¹

⁸ See standard Article 5 of the project license.

⁹ Any disputes regarding property rights are not within the Commission's jurisdiction; rather, they are matters for state courts to resolve. The project consists of "all lands, *to the extent of the licensee's interests in those lands*, enclosed by the project boundary" shown in the Exhibit G (Project Boundary) drawings. The current Exhibit G drawings for the project were approved in the Order Approving Revised Exhibit G Drawings, issued August 30, 2005, 112 FERC ¶ 62,182.

¹⁰ See, e.g., *PacifiCorp, order on rehearing*, 80 FERC ¶ 61,334, at 62,113 (1997).

¹¹ Order Modifying and Approving Shoreline Management Plan Pursuant to Article 407, issued March 27, 2013 142 FERC ¶ 62,256

19. Jeffrey Lake Development argues that the proposed LSMP infringes upon its rights in several ways, including the licensee's reservation of the right to issue permits, impose fees, and regulate erosion control. We disagree. As noted above, the licensee must secure all interests in non-federal lands necessary or appropriate to carry out project purposes; and whatever rights an entity has in those lands are not altered by the inclusion of such lands within the project boundary. In turn, as allowed by the licensee's interests in such lands, it has the authority under license article 422 to grant permission for certain types of use and occupancy of project lands and waters without prior Commission approval, only if the proposed use is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. The licensee also has the continuing responsibility to supervise and control these uses for which it grants permission. The licensee's proposal to regulate grandfathering, methods for protecting shoreline integrity, wetlands, and the transfer of permits within the project boundary falls within its license responsibilities to balance various public interests and protect project resources. As noted above, the licensee is required to acquire and retain the appropriate interests in project lands in order to carry out project purposes.

B. Revised Management Classifications and Allowable Uses

20. The original LSMP set forth six management categories – (1) Concessionaire; (2) Open Space; (3) Outside FERC Project Boundary; (4) Overlay Zone, which includes a Species Protection Zone, Day Use Area, and Non-Motorized Vehicle Area; (5) Project Works; and (6) Residential – that apply to land within and outside the project. The revised LSMP has five management classifications – (1) “A” classification; (2) “B” classification; (3) “C” classification; (4) Resource Protection; and (5) Project Works – that apply to land comprehensively within the project boundary. The revised classifications are intended to capture existing and anticipated future land and shoreline development patterns.

21. The proposed management classifications are defined as follows:

- (1) “A” classification areas are those areas within existing high density development in and outside the project boundary that present no unique environmental qualities or resource values that would preclude continuation of existing uses;
- (2) “B” classification areas are those areas that may have development adjacent to, but not within, the project boundary, and require a riparian buffer;
- (3) “C” classification areas are those areas that will not, or should not, support as high a level of private and commercial development as classifications “A” and “B” because of shoreline topography, aesthetic values, and known or potential environmental or cultural resources, and require a riparian buffer;

(4) resource protection classification is for specific resource management, species protection, and environmental purposes while permitting limited use; and

(5) project works classification includes areas occupied by dams, powerhouses, canals, or other structures or facilities essential to Central's operations.

22. The revised classification system uses a project-wide, as opposed to a by-reservoir, approach to balancing private and public use and resource protection efforts by locating the greatest future development opportunities in areas of existing development, while protecting shoreline integrity and natural aesthetics in places where there is currently little development. Although this results in some reservoirs with large percentages of some classifications and little or no amount of other classifications, the system as a whole provides a reasonable balance of uses. Figure 1, below, provides the length and percentage of project shoreline for each shoreline management classification.

| Shoreline Management Classification | Shoreline Length (miles) | Shoreline Percentage |
|-------------------------------------|--------------------------|----------------------|
| Resource Protection | 112 | 34% |
| A | 19 | 6% |
| B | 30 | 9% |
| C | 28 | 9% |
| Project Works | 137 | 42% |

Figure 1: Length and percentage of project shoreline for each shoreline management classification in revised LSMP. Source: Central's September 7, 2009 Revised Land and Shoreline Management Plan (filed December 2009).

23. Further, the revised LSMP lists the structures, activities, and uses that are generally allowed within each management classification. The LSMP notes that even if a use may be allowed under a certain management category, it may still require a permit from the licensee. Some allowable uses may also require review and approval by local, county, state, and/or Federal authorities. Other uses not described in the LSMP would be considered by Central on a case-by-case basis, and may require additional information and permitting review beyond that required for identified allowable uses. The LSMP establishes the broad-based management criteria that the licensee would use in evaluating proposed new uses for both commercial and residential activities, as well as, facility construction standards for each activity.

24. We agree that the LSMP's revised shoreline management classifications properly reflect the nature of the lands within the project boundary and will enable Central to better implement the LSMP. The land use classifications apply to all project lands, and represent a comprehensive effort to protect project lands and waters and to make them

available to the public to the maximum extent practicable. The goal of the revised five classifications and the activities that would be allowed within each classification is to minimize land use effects on project resources.

C. Permit Program

1. Permitting Procedures

25. The licensee would continue to issue permits for any development or construction (e.g., land disturbance, dredging, and private recreation structures) along the reservoir shoreline and within the project boundary before work begins, in accordance with license article 422. The revised LSMP outlines the licensee's existing step-by-step permitting process, and includes general guidelines (Appendix E) for shoreline permitting applicable to all development and construction activities within the project boundaries. The permitting procedures also include protections for migratory birds, bald eagle, least tern, piping plovers, burying beetles, shoreline integrity, cultural and recreational resources, native grasslands, and wetlands. The revised LSMP states that the licensee may make changes to these guidelines from year to year and to conform to the revised LSMP. The revised LSMP also describes the licensee's efforts in monitoring, enforcing, transferring, and revoking of shoreline permits, and its policy to allow variances for non-conforming structures, unless such structures contradict requirements in the license.

26. Jeffrey Lake Development argues that, under certain circumstances, there is potential for abuse of the management classification process as well as the permitting process with respect to the Jeffrey Lake Development sublessees. It recommends specific language for section 3.2.1 of the revised LSMP to address potential bias toward applications filed by individuals who are currently in litigation with Central and for section 4.1 of the revised LSMP to require Central to consider, review, and act upon any individual application or proposal on a good faith basis because of the past and current litigation between itself and Central.¹² Central opposes Jeffrey Lake Development's recommendations, asserting that it is always obliged to act in good faith.

27. Under the Commission's standard land use article, article 422 in Central's license, a licensee has the authority to grant permission for certain types of use and occupancy of project lands. The licensee "may exercise the authority only if the proposed use and

¹² Jeffrey Lake Development states that it has been in litigation with Central for many years with respect to various lease issues at Jeffrey Lake. Most recently, an order was entered by the District Court of Lincoln County, Nebraska, enjoining Central from taking any enforcement action with respect to alleged violations of the lease between Central and Jeffrey Lake Development.

occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project.”¹³ The licensee's authority to grant any non-project uses of project land under the standard land use article is within its discretion. Thus, Central can decide whether to grant particular applications. The Commission has explained that it wishes to avoid the burden arising from the need for it to act on minor matters such as the approval of routine applications for non-project uses of project lands.¹⁴ However, we may consider allegations that the manner in which a licensee exercises the authority we have given it is discriminatory or inconsistent with its license, its LSMP, or any guidelines that it has established.

2. Permit Transfer

28. Central proposes to continue to review permits at the time the permitted use changes ownership and decide whether to allow the current permit to transfer to the new owner or to require the new owner to apply for a new permit. Jeffrey Lake Development opposes Central's proposal to have complete discretion to transfer rights under an existing permit to a new owner. It states that the District Court of Lincoln County, Nebraska, enjoined Central from prohibiting assignment and transfer of property interest under a permit when ownership of the accompanying lease and leasehold interest, together with the improvements on such leasehold interest, changes hands.

29. Under article 422, the licensee may establish a permitting program for issuing permits for specified types of use and occupancy of project lands and waters and, as noted above, the licensee has the continuing responsibility to supervise and control these uses for which it grants permission. Thus, Central can decide whether to transfer permits. The Commission, however, does not recommend that a licensee allow the permittee to transfer the permit automatically if the property is sold. Instead, we recommend that the licensee review each permit individually to determine if it's appropriate to transfer upon the sale of a property.

3. Permitting Fees

30. Jeffrey Lake Development states that the following sentence should be added to section 4.10 of the revised LSMP: “Central is not authorized by its FERC license to assess any fees for purposes of income generation, and in no event shall any fees assessed be of such amount or of such application as shall be intended or determined to be income producing or revenue enhancing.”

¹³ *Relicense Order*, 84 FERC ¶ 61,079, at 61,349 (Article 422).

¹⁴ *See Brazos River Authority*, 11 FERC ¶ 61,162, at 61,347 (1980) (announcing general application of the standard land use article).

31. Central opposes Jeffrey Lake Development's recommendation, asserting that the proposed language would not serve as a check on excessive fees, but would rather prohibit fees altogether. Central cites the case *The Coalition for the Fair and Equitable Regulation of Docks on the Lake of the Ozarks v. FERC*,¹⁵ to argue that licensees may charge fees to offset the costs of administering a permitting program, but cannot make a profit off the permitting fees.

32. The Commission has long recognized that the use of project property for recreational purposes will likely cause a licensee to incur expenses that, in fairness, it should be able to recover. As a reflection of this policy, the Commission, since 1965, has maintained recreational development regulations at section 2.7 of the Commission's Regulations, which encourage the development of recreational facilities at licensed projects but provide that: "the Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities."¹⁶ Further, article 422 permits the licensee to "... establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to payment of reasonable fee to cover the Licensee's costs for administering the permit program." User fees, however, must be reasonable and related to the purpose of the permitting program.¹⁷ Jeffrey Lake Development has not demonstrated that the user fees imposed by Central are not related to the permitting program. If the permitting fees are or become unreasonable, under article 422 the Commission may require modification of the licensee's permit standards, guidelines, and procedures.

D. Grandfathering

33. In its revised LSMP, Central proposes to "grandfather" or allow, certain prior-existing uses that have not received the appropriate prior permission or do not meet current use requirements to continue. The revised LSMP outlines the factors Central may consider when determining whether to grandfather a use and the restrictions it may impose on grandfathered uses.

¹⁵ *The Coalition for the Fair and Equitable Regulation of Docks on the Lake of the Ozarks v. FERC*, 297 F.3d 771 (8th Cir. 2002), *cert. denied*, 123 S. Ct. 1749 (2003), (affirming *Union Electric Co.*, 90 FERC ¶ 61,249 (2000)).

¹⁶ 18 C.F.R. § 2.7 (2013).

¹⁷ *Union Electric Co.*, 90 FERC ¶ 61,249, at 61,837 (2000).

34. Jeffrey Lake Development contends that the revised LSMP eliminates the concept of grandfathering that was contained in the original LSMP, and recommends that specific provisions of the original LSMP that refer to grandfathering be included in the revised LSMP. Jeffrey Lake Development asserts that the Commission, in a previous order,¹⁸ acknowledged the grandfathering of existing contracts at the project and stated that the Commission is obligated to act consistently with the jurisdictional aspects of those contracts unless and until, following public notice and opportunity for comment, the Commission determines that the licensee's compliance with those contracts is no longer consistent with the public interest. Jeffrey Lake Development agrees with Central's need to address and possibly remove any uses or structures that pose identifiable and observable hazards. However, Jeffrey Lake Development maintains that these noncompliant uses and structures can be addressed in the revised plan without any resort to exceptions, qualifications, and restrictions.

35. Central argues that Jeffrey Lake Development confuses "grandfathering" for a "concept, right, etc." that exists beyond the LSMP. Central asserts that Jeffrey Lake Development's 1980 "master lease" with Central requires Jeffrey Lake Development to comply with existing federal, state, and local statutes and regulations and states that the lease is subject to restrictions set by the Commission. Further, Central states that Jeffrey Lake Development mistakenly believes that FERC must "grandfather" its master lease in the LSMP, when the Commission would only approve a licensee's proposal to grandfather existing uses in a LSMP. It argues that requiring Jeffrey Lake Development's revisions to section 4.5 of the LSMP would remove its ability to control its shoreline as required by its FERC license article 5. Last, Central requests the Commission to clarify its position on compliance with contracts that may conflict with license requirements.

36. As noted above, a licensee is required to acquire and retain all interests in non-federal lands necessary or appropriate to carry out project purposes.¹⁹ These interests can be obtained through easement, fee title, leases, and other types of conveyances. The instruments of conveyance define the extent of the licensee's right.²⁰ The inclusion of

¹⁸ *Central Nebraska Public Power & Irrigation District*, 125 FERC ¶ 61,192 (2008).

¹⁹ See standard Article 5 of the project license.

²⁰ Any disputes regarding property rights are not within the Commission's jurisdiction; rather, they are matters for state courts to resolve. The project consists of "all lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary" shown in the Exhibit G (Project Boundary) drawings. The current Exhibit G drawings for the project were approved in the license order. Order Approving Revised Exhibit G Drawings, issued August 30, 2005, 112 FERC ¶ 62,182.

lands within a project boundary serves the function of indicating that the lands are used in some manner for project purposes. However, the mere inclusion of lands within a project boundary will not restrict landowner uses, since such inclusion does not itself create or alter property rights.²¹ Thus, this order does not impact property rights. Whatever rights an entity has in lands within the project boundary, whether conferred by deed, lease, easement, or other conveyance, will not be altered by our action regarding this revised LSMP.

37. In turn, as allowed by the licensee's interests in such lands, it has the authority under license article 413 to grant permission for certain types of use and occupancy of project lands and waters without prior Commission approval, only if the proposed use is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. The licensee also has the continuing responsibility to supervise and control these uses for which it grants permission. The licensee's proposal to regulate recreational uses, buildings, shoreline access facilities, docks and boat launches, shoreline stabilization, excavation, vegetation modification, wildlife habitat, discharges, fueling, water intakes, agricultural uses, utilities, and signage within the project boundary falls within its license responsibilities to balance various public interests and protect project resources. As noted above, the licensee is required to acquire and retain the appropriate interests in project lands in order to carry out project purposes.

38. We approve Central's proposal to grandfather certain prior-existing uses that have not received the appropriate prior permission and/or that do not meet current use requirements. We reject Jeffrey Lake Development's revisions to grandfathering as we have no authority to require a licensee to authorize existing private uses of project lands and waters that do not relate to a project's public purposes.²²

E. Endangered Species

39. There is one federally threatened and are two federally endangered species with the potential to occur in the managed shoreline area. These species include the endangered interior least tern (*Sterna antillarum*); endangered American burying beetle (*Nicrophorus americanus*); and the threatened piping plover (*Charadrius melodus*).

²¹ See, e.g., *PacifiCorp, order on rehearing*, 80 FERC ¶ 61,334, at 62,113 (1997).

²² See, e.g., *Public Utility District No. 2 of Grant County, Washington*, 88 FERC ¶ 61,012, at 61,033 (1999); *Central Maine Power Company*, 75 FERC ¶ 61,052 (1996).

40. Recreation activities at Lake McConaughy have the potential to affect interior least terns and piping plovers if activities occur during the nesting season and disturb nesting birds. To reduce the potential for adverse effects and to comply with article 421 of the project license, Central filed its Management Plan for Least Tern and Piping Plover Nesting on the Shore of Lake McConaughy on March 9, 2010, which the Commission approved on February 25, 2011. The final plan incorporates comments from FWS and Nebraska Game Commission. As detailed in the management plan, Central would conduct annual surveys to identify nesting areas and implement measures to restrict activities in identified areas. Central would also conduct annual surveys to record nesting success and participate in annual consultations with FWS to determine the need for additional measures to reduce predation on tern and plover eggs. The revised LSMP also protects tern and plover nesting habitat around Lake McConaughy under the Tern and Plover Resource Protection Classification with specific restrictions such as, limits on beach access points and prohibition of beach construction or maintenance activities, fireworks, and unleashed dogs during the nesting season.
41. The revised LSMP could also permit activities that disturb the soil within American burying beetle habitat and potentially affect this species. To reduce potential effects on American burying beetle, the revised LSMP includes restrictions on lighting and soil disturbing activities adjacent to all project developments between Boxelder Canyon and Gallagher Canyon. In this area, the licensee would prohibit mercury vapor and ultraviolet lighting, including "bug zappers" within project lands around these developments. Additionally, the licensee would not permit any project, including disturbance of more than 100 square feet of previously undisturbed soil between May 31 and October 31, unless the specific area has been treated to reduce potential for American burying beetle presence. Such treatments include mowing of vegetation and daily removal of carrion over a 28-day period prior to soil disturbance.
42. While the licensee's proposed mowing and carcass removal over a 28-day period would reduce the potential for American burying beetle brood chambers in the soil disturbance area, American burying beetle pupa still may occur on site since the pupation period is longer than 28 days. Activities resulting in the mortality of American burying beetle pupa life stage would constitute "take" under the Endangered Species Act and should be avoided.
43. In the EA, Commission staff concluded that the revised LSMP could permit activities that include soil disturbance within American burying beetle habitat, and recommended that the licensee increase its mowing and carcass removal period from 28 to 48 days to increase the chance that any pre-existing American burying beetle pupa would have emerged prior to disturbance. In its June 9, 2011 letter, the licensee agreed with the Commission's recommendation to increase the treatment period to 48 days.
44. On May 17, 2011, Commission staff sent a letter to FWS requesting concurrence with our determination that the revised LSMP with our recommended changes would

not likely adversely affect interior least tern, piping plover, and the American burying beetle. On June 15, 2011, the FWS filed a letter concurring with our determination.

45. To reduce potential for disturbance to American burying beetle pupa, the licensee should increase the treatment period to 48 days to increase the chance that any pre-existing pupa will have emerged prior to disturbance.

F. Other SMP Measures

1. Shoreline Integrity

46. Jeffrey Lake Development recommends that Central add language in section 2.2.5 of the revised LSMP to accept cement bag seawalls for shoreline stabilization at Jeffrey Lake. Central opposes revising the LSMP to specifically approve cement bag seawalls for shoreline stabilization because it asserts that approving specific details for one lake is inappropriate for a project-wide policy and there is nothing in the current policy to prevent Central from approving the use of cement bag seawalls.

47. Central prefers natural or biotechnical methods to promote shoreline integrity; however, Central will consider allowing broader erosion control measure applications, such as riprap, in certain locations. Central protects shoreline integrity through: (1) constructing bulkheads and retaining walls in accordance to license article 422; (2) establishing of resource protection classifications for shoreline integrity at Lake Ogallala, Gallagher Canyon Lake, and several of the smaller Supply Canal lakes; (3) using Permitting Procedures and standards developed in consultation with the FWS and the Nebraska Game Commission; and (4) requiring vegetated buffer zones in "B," "C," and Resource Protection Management Classifications.

48. As stated in the EA, the LSMP allows for a variety of different erosion control measures and materials including vegetative controls, with riprap and other broader measures (which would include vertical sea walls) identified as a last resort. These measures are intended to protect habitat along the shoreline, as well as the scenic integrity of the lake. While erosion itself can have a negative effect on project aesthetics, shoreline protection measures such as retaining walls can also detract from scenic values. The use of native vegetation and other bioengineering methods would benefit both habitat and scenery at the project. As such, we do not require the modifications requested by Jeffrey Lake Development.

2. Plan for Reviewing FERC Boundary

49. Appendix I of the current LSMP requires the licensee to conduct a phased review of project boundaries and related issues and to submit annual progress reports pursuant to Central's Plan for Reviewing FERC Boundary, incorporated as Appendix D in the revised LSMP. The project boundary review is to: (1) assure that adequate lands are

controlled to carry-out project purposes, including public access to project lands and waters for recreational purposes; and (2) determine the extent that the project boundary could be changed to exclude lands used for residential or agricultural purposes without compromising project operational needs. Concurrently with its boundary review efforts, Central identifies and makes efforts to address a number of items related to management of project lands and shoreline, including: encroachments on project lands and waters, development of erosion agreements, research and review of historical survey information, and enforcement of terms in existing leases and agreements.²³

50. Central filed the revised Johnson Lake Boundary Review on June 19, 2013. While Central completed and filed the Lake McConaughy and Lake Ogallala Boundary Review in 2004, it discovered that some important shoreline, beach, and recreation areas were outside the current project boundary and is currently revising its review. Central has not completed the boundary reviews for Jeffrey Reservoir or Midway Lake. Jeffrey Lake Development wants dates adjusted. Central is currently filing annual reports on the status of its boundary review. Once this review is completed it will be filed for Commission approval. These dates and extensions are being addressed outside of the LSMP.

3. Recreational Lands

51. Hixson and Barber argue that the recreational lands within and adjacent to the project lands are unnecessary to the project, and thus, Central should be required to divest the recreational lands to the owners of the “improvements” on those lands.

52. We disagree. Central must retain sufficient control over its recreational lands in its project boundary. Section 10(a)(1) of the Federal Power Act (FPA) provides that licensed projects shall be best adapted to a comprehensive plan for improving or developing the waterway for beneficial public purposes, including recreation.²⁴ To this end, standard license article 5 requires licensees to acquire and retain all interests in non-federal lands necessary or appropriate to carry out project purposes and section 2.7 of the Commission’s regulations directs licenses to “acquire in fee and include within the project boundary enough land to assure optimum development of recreational resources afforded by the project.”²⁵

53. We consider it contrary to the public interest to allow a licensee that holds in fee lands needed for project purposes to transfer those lands to a third party, thus taking the

²³ Appendix D.

²⁴ 16 U.S.C. § 803(a)(1) (2012).

²⁵ 18 C.F.R. § 2.7 (2013).

lands away from an entity over which we have jurisdiction and giving them to one over which we do not. The end result of such a transaction would be to make it much more difficult for us to ensure that project purposes are resolved.²⁶ However, following a project boundary review and license amendment, Central may divest the recreational lands that are no longer within the project boundary.

4. Amendments to the LSMP

54. Jeffrey Lake Development recommends that section 6.0, *Modifications and Amendments to the LSMP*, be modified to include a distinct subsection that provides for additional notification and consultation within the amendment process. Central opposes the proposed revision because it already provides for adequate, extensive, and consistent stakeholder involvement for proposed amendments to the LSMP and other Commission-approved plans.

55. In its revised LSMP, Central outlines its agency and stakeholder consultation process before filing an amendment with the Commission. We find these measures to be reasonable. Moreover, we note that agencies and stakeholders have multiple opportunities to participate throughout an amendment application process. Commission staff will notice an amendment application requesting motions and notices to intervene and protests, and will issue an environmental document requesting public review and comment. Some amendment applications also require an applicant to satisfy the Commission's consultation requirements under section 4.38 of the Commission's regulations.²⁷

5. Revised Review Schedule

56. Article 421 requires Central to review and update the LSMP every five years and associated species protection plans every three years and to submit a Form 80 recreation report every six years. Central proposes two modifications to its review schedule: (1) to adjust the current review cycle for the LSMP to every six years to coincide with the Form 80 recreation reporting cycle; and (2) to realign the review cycle for the associated species protection plans so that every other three-year cycle coincides with its proposed six-year cycle of the LSMP and the six-year cycle of the Form 80.

57. Commission staff agrees that the revised review schedule is reasonable. The next cycle of the Form 80 is due on April 1, 2015. Therefore, ordering paragraph (B)

²⁶ See *Wisconsin Power Company*, 127 FERC ¶ 62,078, at P 10 (2009); *AmerenUE*, 117 FERC ¶ 61,301, at P 10 (2006).

²⁷ 18 C.F.R. § 4.38(6) (2013).

requires the schedule for the updated species protection plans to be filed concurrently with the 2015 Form 80s. The first revision to the LSMP is not due to be filed until the following Form 80 cycle in April 2021 (ordering paragraph (C)).

CONCLUSION

58. The revised LSMP fulfills the requirements of article 421, and will serve as a comprehensive guide for managing project shoreline lands in a manner consistent with license requirements and project purposes. The revised LSMP will help ensure that shoreline development is consistent with the protection and enhancement of environmental, scenic, cultural, and recreational values, without impeding the continued safe and reliable production of hydroelectric power at the project. Further, the revised LSMP would be updated every six years, concurrently with the Form 80 reporting cycle, to allow for adaptive management of shoreline resources. The revised LSMP, as modified below, should be approved.

59. Ordering paragraph (D) requires the licensee to file GIS data regarding the reservoir area and shoreline management classifications. This will allow detailed tracking of shoreline resources and uses, and facilitate future reviews.

The Director orders:

(A) Central Nebraska Public Power and Irrigation District's revised land and shoreline management plan, filed December 7, 2009, pursuant to license article 421, as modified by ordering paragraphs (B) and (C) below, is approved.

(B) The updated species protection plans shall be filed concurrently with the April 1, 2015 Form 80 recreation report and every three years thereafter.

(C) A revised land and shoreline management plan shall be filed with the Commission for approval, every six years with the Form 80 recreation report, beginning in April 1, 2021.

(D) Within 90 days of the date of this order, the licensee shall file two separate sets of GIS data in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The data shall include: (a) polygon files of the project reservoir(s) surface area including a separate polygon for the tailrace area; and (b) polyline files representing the shoreline management classifications (including the Sensitive Resources designation). The filing must be in CD or diskette format and shall include polygon data that represents the surface area of each reservoir/tailrace, as shown on the project boundary exhibits, and polyline data that represents the linear extent of each shoreline classification segment as shown on maps in the shoreline management plan.

A polygon GIS data file is required for the reservoir(s)/tailrace; with each reservoir separately identified. The attribute table for each reservoir/tailrace must include at least the reservoir name, water elevation, and elevation reference datum. A polyline GIS data file is required for the shoreline classifications associated with each reservoir. The attribute table for each reservoir must include at least the reservoir name and management classification description for each polyline, consistent with the shoreline management plan.

All GIS data must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-1417, *reservoir name* polygon/or *reservoir name* shoreline polyline data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the georeferenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees), the map datum (i.e., North American 27, North American 83), and the units of measurement (i.e., feet, meters, miles). The text file name shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-1417, project reservoir/or shoreline classification metadata, MM-DD-YYYY.TXT].

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2013). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Steve Hocking
Chief, Environmental Resources Branch
Division of Hydropower Administration
and Compliance

Document Content(s)

P-1417-246.DOC.....1-19

July 30, 2016

Mr. Don Kraus
General Manager
Central Nebraska Public Power & Irrigation District
PO Box 70
415 Lincoln St.
Holdrege< NE 68949-0740

Re; Sustained High Water Levels- Jeffrey Lake

Dear Mr. Kraus:

I am writing to express my concerns regarding the new Normal Lake Elevation Level at Jeffrey Reservoir.

I will provide some personal background for you to consider while you read this letter.

I started coming to Jeffrey Lake with my father in the 1950's to enjoy the scenic and recreational features of the lake, mostly fishing. My wife and I leased a lot from Jeffrey Lake Development in 1972, built a home and raised our 2 sons at Jeffrey. I am still a resident of the lake. I have fished all parts of the Lake from the South tip all the way to the check in the Supply canal. I think it is fair to say that I know the lake intimately.

The new Normal Lake Elevation Level that CNPPID has implemented this spring has had a devastating environmental impact on the health and sustainability of Jeffrey Lake as we the stakeholders of the area know it.

Even though the lake is currently being regulated around 2759' msl, and having witnessed the environmental damage being done at that level, I cannot imagine how much damage would be done if CNPPID decide to raise it to the FERC Lake limit of 2760' msl.

The East side of the lake is generally protected by various means of erosion control. The west side of the lake has no such protection, since what protection were there, those measures once supported by Central are now under water. Many of the high steep banks are falling into the lake on a daily basis, and more and more trees and vegetation are falling as well.

I have witnessed Barn Swallows build their nests in the high banks one day, and having them disappear the next. We used to have ducks and geese build nests on the shoreline on the West Side, there are fewer places for that to happen now. I used to watch the deer and their young walk the shoreline across from my home, as well as the turkeys coming to water. That is a thing of the past along much of the West shoreline now.

T

When you boat along the West side, all you see now are plumes of silt filled water. When there is high wind, these plumes are large. My boat is equipped with a depth finder; the indications are that the lake is getting shallower near all of the high banks.

As if this isn't bad enough, I will move on to conditions in the CNPPID Supply Canal. In the 44 years I have lived here I have never witnessed the amount of erosion and the number of trees that have fallen into the canal or will soon fall in. All of the high banks are caving off daily and with them the trees holding them as well. Areas where there were cat tails and vegetation holding the canal edge are gone. The higher water level is taking a toll more so here due to the current.

I recall several years ago Central, to their credit, hauling rip rap on a barge up the canal to stabilize many of these banks. That effort is now lost. Many of the deeper parts of this section of the canal are getting shallower.

I read in Central's press release the recreation and power plant efficiency were part of the reason for the dredging project. It was also stated that there would be less sediment going through the turbines and wearing them out faster. One only has to look down from the fore bay toward the hydro outlet to see that more silt is going thru the hydro due to the increased upstream erosion. The water is brown with silt.

I have checked the depths of the water in this part of the lake. Here too, most of the area is getting shallower. I suspect that you will find that you are getting very little for the time and money that this project cost. It is my belief that the silt is coming in faster than you are pumping it out.

Since you are pumping water behind the dam with the dredge, I have to wonder how stable the dam is anyway with the increased lake level and the saturated soil behind the dam. But I guess I am not an engineer.

While checking the depth of the North end of the lake and taking pictures of the environmental damage, I noted that erosion is also taking place at the East end of the dam. I hope we don't get a sustained wind out of the Southwest, as this eroded area will no doubt grow larger.

I would urge you to take the time to come to Jeffrey to see for yourself the environmental damage being done. If you are unable to do this you may, if you are interested, want to look at some of the photographs I have taken, I have posted them on the web at;

<https://goo.gl/photos/NMv2QRqn6Pxcg53o8>

Thank you
Randy Cromer

Steve Windrum

From: randycromer2@gmail.com on behalf of Randy Cromer <rcromer@nebnet.net>
Sent: Wednesday, August 10, 2016 12:34 PM
To: Steve Windrum; Terry Barber
Subject: Fwd: Jeffrey Lake erosion

----- Forwarded message -----

From: Don Kraus <dkraus@cnppid.com>
Date: Wed, Aug 10, 2016 at 11:47 AM
Subject: Jeffrey Lake erosion
To: Randy Cromer <rcromer@nebnet.net>

Thank you for your letter on July 30 regarding potential environmental damage resulting from erosion at Jeffrey Lake. Central staff conducted an inspection of Jeffrey Lake shoreline last week and we do not concur with all of your conclusions. As you are aware, Central has begun a significant dredging project in the northern end of Jeffrey Lake and will continue the project in 2017. We appreciate your communication of concerns regarding Jeffrey Lake.

Don Kraus

From: Randy Cromer <rcromer@nebnet.net>
Date: July 30, 2016 at 11:33:05 AM CDT
To: Don Kraus <dkraus@cnppid.com>
Subject: Jeffrey Lake erosion

Letter is attached

07/24/2016

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07/24/2016

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Dredge