

MEMORANDUM

TO THE BOARD:

SUBJECT: General's Manager Report

DATE: August 8, 2003

FROM: Steve Oltmans, General Manager

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- A. **INFORMATION/EDUCATION REPORT**: A copy of the I&E Report detailing Information and Education activities of the District for the month of July, 2003, is attached for your review.
- B. **MISCELLANEOUS/PERSONNEL ITEMS**:
1. On May 28, 2003 the District held an in-house Supervisors Meeting on Performance Appraisals. The facilitator for the meeting was Jon Breuning of the law firm Baird, Holm. I have attached a copy of the material distributed at the meeting.
 2. Attached is a letter from Stephen Gehring, whose firm, Cline, Williams, Wright, Johnson & Oldfather, sponsored the 2003 Greater Omaha Chamber of Commerce Select Tour. Mr. Gehring thanks the GM for participating in the Select Tour.
 3. Attached is a letter from Mike Linder, Director of the Nebraska Department of Environmental Quality, congratulating the GM for being reappointed by Governor Johanns to the Nebraska Environmental Quality Council.
- C. **REPORT ON PURCHASES – CONSTRUCTION SERVICES, PROFESSIONAL SERVICES, PERSONAL PROPERTY**: Pursuant to Board direction, attached is a report indicating construction services, professional services and personal property purchases for the month of July, 2003. Please review this report and contact me if you have any questions.
- D. **CURRENT AND ON-GOING PROJECTS – P-MRNRD LEGAL COUNSEL**: Attached is a copy of the current and on-going projects for District Legal Counsel, Paul Peters, as of July 14, 2003. I would ask each Director to review this listing. If you have any questions, please feel free to contact me.
- E. **NNRC NOTIFICATION OF FY 2004 FUNDING FOR WESTERN SARPY/CLEAR CREEK PROJECT**: Attached is a letter from the Department of Natural Resources informing the District that at its July 9, 2003 meeting, the Natural Resources Commission obligated \$1,332,000 in FY 2004 funds to the Western Sarpy/Clear Creek Project for right of way purchases. The total amount allocated from the Nebraska Resources Development Fund for the project is \$2,971,000.

F. **NEWS CLIPS:**

- ◆ Articles/Editorial on the Missouri River Issue
 - ❖ July 3, 2003, Omaha World Herald Article – Judge asked to rule on Missouri flows
 - ❖ July 8, 2003, Omaha World Herald Editorial – Time: enemy of the river. More delay in redoing the Missouri plan doesn't help the environment.
 - ❖ July 17, 2003, Lincoln Journal Star Article – Docked barge free to move out
 - ❖ July 18, 2003, Omaha World Herald Article – Terry, King try to kill river flow plan.
 - ❖ July 19, 2003, Omaha World Herald Article – Court rejects government request to stay flow order. The Corps of Engineers faces a contempt hearing for refusing to lower water levels on the Missouri River.
 - ❖ July 19, 2003, Omaha World Herald Article – S.D. governor seeks river summit
 - ❖ July 20, 2003, Omaha World Herald Editorial – Missouri madness. River debate is swamped by bombast, politics, legalese. Science seems to get lost.
 - ❖ July 21, 2003, Omaha World Herald Editorial Cartoon – Wanted: A Missouri (River) Compromise
 - ❖ July 21, 2003, Omaha World Herald Article – Alteration of Missouri order asked. The Justice Department wants a federal court in Nebraska to reconcile conflicting rulings on the river's flow.
 - ❖ July 22, 2003, Omaha World Herald Article – Missouri fight puts corps in hot seat. Contempt decision pending over flows.
 - ❖ July 23, 2003, Omaha World Herald Article – Corps found in contempt over order for Missouri
 - ❖ July 24, 2003, Omaha World Herald Article – 'It's a mess,' Bruning says after latest river flow ruling
 - ❖ July 25, 2003, Omaha World Herald Article – River fight lands in one court. A panel of judges takes the case away from two colleagues who had issued conflicting orders
 - ❖ July 26, 2003, Omaha World Herald Editorial – The Missouri 'mess.' A judge in Minnesota has a chance to begin sorting serious priorities on the river.
 - ❖ July 31, 2003, Omaha World Herald Editorial – The Missouri River flow debate is badly marred by emotionalism
 - ❖ July 31, 2003, Omaha World Herald Article – Governors discuss river options
 - ❖ August 3, 2002, Omaha World Herald Editorial – Re-creating a 'meandering' river would be an ill-considered step
 - ❖ August 6, 2003, Omaha World Herald Article – Corps will lower level of Missouri for 2 days. Officials will cut river flows briefly in light of the most recent court ruling.
 - ❖ August 7, 2003, Omaha World Herald Article – Omaha prepares to cope with lower river levels. A dam will keep docks afloat at a city marina.
- ◆ July 2, 2003, Omaha World Herald Article – States reach agreement on Republican River use
- ◆ July 4, 2003, Omaha World Herald Editorial – The picnic pack-out. It's time for Nebraskans to pitch in on the upkeep of state parks.
- ◆ July 8, 2003, Omaha World Herald Editorial – Midlands Voices by Paul D. Johnson – Congress should aim to preserve new path to farm conservation.
- ◆ July 11, 2003, Blair Tribune Article – Water signup extended. NRD likely to give property owners until Aug. 15 to decide.

- ◆ July 16, 2003, Burt County Plaindealer Article – Lower Decatur in new NRD budget.
- ◆ July 18, 2003, Omaha World Herald Article – Turner Boulevard trail is discussed. A possible path connecting parks may hinge on approval of a Happy Hollow trail plan.
- ◆ July 22, 2003, Omaha World Herald Editorial – A tale of two trails. Happy Hollow plans will clarify the issue and could hold implications for another locale.
- ◆ July 24, 2003, Omaha World Herald Article – Bill would help towns cut arsenic levels
- ◆ July 28, 2003, Omaha World Herald Article – Bird watchers compare 1804, now.
- ◆ July 29, 2003, Omaha World Herald Article – Summit to address Iowa water quality. The conference will focus on what to do about problem waterways, which have already been identified.
- ◆ July 29, 2003, Blair Pilot Tribune Letter to the Editor – Consider applying for water study
- ◆ August 6, 2003, Omaha World Herald Article – Rowers, paddlers want Boyer Chute made safe for their craft

July 2003

Information & Education Report

Information

- Continued work on updated “Nebraska’s Natural Resources Districts” brochure
- Purchased and distributed digital cameras to project managers and field offices.
- Updated web site pages
- Completed work on update of Back to the River slide program
- Finalized work on SPECTRUM and delivered to printer.
- Prepared recommendation on Environmental Education Grants Program
- Prepared booth for Sarpy County Fair
- Began work on Annual Report for publication in Omaha W-H Newspaper

Education

- Gave wetland program to school Kindercare group

**PAPIO MISSOURI RIVER
NATURAL RESOURCES DISTRICT**

**SUPERVISORS MEETING ON
PERFORMANCE APPRAISALS**

May 28, 2003

I. TRUE OR FALSE?

	T	F
1. Performance evaluations are as important to the employee as they are to management.	_____	_____
2. Getting annual evaluations done "on schedule" is not critical if the time doesn't feel right.	_____	_____
3. Daily and weekly communication between supervisor and employee is far more important than the annual evaluation.	_____	_____
4. Some problems solve themselves in time; these can be overlooked in the evaluation.	_____	_____
5. Even if a problem arose several months ago and was not addressed then, it is not unfair to address it in the evaluation.	_____	_____
6. Since every department is different, every department can have its own rating system.	_____	_____
7. It is a good idea to ask employees whether problems at work are the result of personal, family or medical problems.	_____	_____
8. To boost morale, evaluations should err on the high side of the rating system, with most employees receiving "4's" and "5's".	_____	_____
9. When I complete an employee's annual evaluation, I should be able to "empty" my file" on that employee.	_____	_____
10. A good evaluation requires a lot of detail and takes a long time to complete.	_____	_____

II. PERFORMANCE APPRAISALS: LEGAL TIPS

***"I love deadlines. I especially love
the swooshing sound they make as they go flying by."***

(Dilbert by Scott Adams)

- A. Communicate. Be sure employees know what will be expected from them, and tell them in person both when they are doing well and when there is a problem.
 - A rational employee should never be surprised when passed over or discharged due to poor performance.

- B. Focus and build on employees' strengths and successes, but do not let problems fester. They will only get worse with age.

"I don't suffer from stress, I'm a carrier."

(Dilbert by Scott Adams)

C. Be consistent from employee to employee, from job description to evaluation, from personnel policies to actual practices.

- Consistency should not be just department-wide, but facility-wide.

D. Evaluate behavior, not personality. This helps to avoid stereotyping and to eliminate pettiness.

- "Rarely volunteers" is better than "lazy." "Fails to follow through or complete tasks" is better than "senile."

"Never argue with an idiot. They drag you down to their level, then beat you with experience."

(Dilbert by Scott Adams)

- E. Avoid "grade inflation." Weak employees will not know they're weak, strong employees will become disenchanted, and nobody will believe you if you ever have to discharge for "poor performance."

- F. Keep it simple and follow your forms and systems.

III. REVIEW OF CURRENT FORMS, POLICY AND PROCEDURE

IV. TRUE AND FALSE QUESTIONS REVISITED

I. TRUE OR FALSE?

	T	F
1. Performance evaluations are as important to the employee as they are to management.	_____	_____
2. Getting annual evaluations done "on schedule" is not critical if the time doesn't feel right.	_____	_____
3. Daily and weekly communication between supervisor and employee is far more important than the annual evaluation.	_____	_____
4. Some problems solve themselves in time; these can be overlooked in the evaluation.	_____	_____
5. Even if a problem arose several months ago and was not addressed then, it is not unfair to address it in the evaluation.	_____	_____
6. Since every department is different, every department can have its own rating system.	_____	_____
7. It is a good idea to ask employees whether problems at work are the result of personal, family or medical problems.	_____	_____
8. To boost morale, evaluations should err on the high side of the rating system, with most employees receiving "4's" and "5's".	_____	_____
9. When I complete an employee's annual evaluation, I should be able to "empty" my file" on that employee.	_____	_____
10. A good evaluation requires a lot of detail and takes a long time to complete.	_____	_____

LAW OFFICES OF
CLINE, WILLIAMS, WRIGHT, JOHNSON & OLDFATHER, L.L.P.
ONE PACIFIC PLACE

1125 SOUTH 103RD, SUITE 320
OMAHA, NEBRASKA 68124-1090

(402) 397-1700

FAX (402) 397-1806

www.cline-law.com

CHARLES E. WRIGHT, COUNSEL

LINCOLN OFFICE:
1900 U.S. BANK BUILDING
233 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2095
(402) 474-6900

AURORA OFFICE:
1207 M STREET
P.O. BOX 510
AURORA, NEBRASKA 68818
(402) 694-6314

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BETH E. KIRSCHBAUM
TRAVIS P. O'GORMAN

July 2, 2003

Steve Oltmans
Papio-Missouri NRD
8901 South 154th Street
Omaha, NE 68138

Dear Steve:

As you know, our firm was fortunate enough to sponsor the Greater Omaha Chamber of Commerce Select Tour for the second year. On behalf of our firm, I want to extend our gratitude to you for your participation in the Select Tour. We had almost 60 volunteers from the community who gave unselfishly of their time to make the Select Tour a great success. Rod Moseman from the Chamber said that this year's Tour scored a 4.9 rating out of a possible 5, based upon the evaluations received from the consultants. This superb rating was due, in no small part, to you and the rest of the community volunteers.

I have never been in a community where there is such tremendous public/private cooperation and volunteer effort. It makes "showing off" Omaha a real pleasure. Several consultants have called back to indicate that they are making strong pitches to their clients for Omaha as a business relocation site.

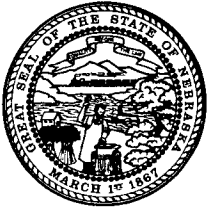
Steve, thank you again for your wonderful support and dedication to this effort on behalf of Omaha.

Best Regards,



Stephen E. Gehring
For The Firm

STATE OF NEBRASKA



Mike Johanns
Governor

AUG 04 2003

DEPARTMENT OF ENVIRONMENTAL QUALITY

Michael J. Linder

Director

Suite 400, The Atrium

1200 'N' Street

P.O. Box 98922

Lincoln, Nebraska 68509-8922

Phone (402) 471-2186

FAX (402) 471-2909

web site : www.deq.state.ne.us

Mr. Steven G. Oltmans
Papio-Missouri River NRD
8901 South 154 Street
Omaha, NE 68138

Dear Steve:

Congratulations on your reappointment by Governor Johanns to the Nebraska Environmental Quality Council. I am particularly pleased that you have agreed to continue to serve in this very important capacity.

I have developed a genuine respect and appreciation for your efforts, your thoughts, and the sincerity that you bring to the Council. Your participation and dedication is extremely important to the State of Nebraska, and I say thanks to you on behalf of the Department.

Once again, thanks for continuing to give of your time, and I continue to remain available should you have any questions or any need.

Sincerely,

A handwritten signature in black ink that reads "Mike".

Mike Linder
Director

ML:ca

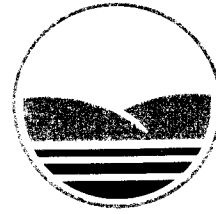
AUG 6 2003

July, 2003

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Updated: July 14, 2003

PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT



8901 S. 154TH ST.
OMAHA, NE 68138-3621
(402) 444-6722
FAX (402) 895-6745

**Current and On-Going Projects
P-MRNRD Legal Counsel**

★ = Top Priority

F = Future Work – No Assignment

N = New Assignment

O = Others Handling

W = Work in Progress

P = PFP's Portion Completed

- **Big Papio Channel Project - West Center Road to West Dodge Road (Woodward):**
 - Subordination Paperwork for Happy Hollow (W)
- **Little Papio:** (Cleveland)
- **Big Papio:** (Cleveland)
- **West Branch** (Cleveland):
 - Land Exchange with Sarpy Co. (96th St.) (W)
 - Land Exchange with Bellino (96th St.) (W)
- **Western Sarpy Dike** (Sklenar, Cleveland):
 - Closing with Bundy's (potentially modify ROW/offer) (F)
 - Complete easements – three dikes and one drainage ditch (F)
 - Amended drainage ditch easements on Hickey (First National and Bundy Properties) (W)
 - Preview Corps draft scope of services for appraisals(W)
 - ★ Review cabin floodproofing design/build contract w/WBJ (W)
- **Floodway Purchase Program** (Woodward):
 - Prepare draft Interlocal Agreement for Flood Mitigation Planning and Mapping Assistance Program (P)
 - Elbow Bend Purchase Agreements as needed (F)
- **Trail Projects** (Bowen):
 - Bennington Trail Interlocal Agreement (N)

- **Missouri River Corridor Project** (Becic):
 - ★ California Bend – Final settlement with tenant (Wright's) (W)
 - ★ Lower Decatur Bend – Appraisal Review, prepare ROW purchase agreement documents (W)
 - ★ Review/comment on LDB habitat easement letter to the COE (P)
- **USDA P.L. 566 Projects, Silver Creek and Pigeon/Jones Watershed** (Puls/Cleveland):
 - Papio Site S-30 – development agreements (F)
 - Silver Creek Site Easements– as needed (W)
 - Release of Site S-7 Easement (W)
 - ★ Pigeon/Jones Site 3 (Hubbard) easement (W)
- **Papio Watershed Dam Sites:**
 - Dam Site 19 agreement (Petermann) (W)
 - Candlewood Easements (Chris Curzon) (O)
 - Dam Site 13 Agreement (Petermann) (F)
- **Papio Creek Watershed Partnership (Stormwater)** (Woodward):
 - Storm water Utility Legislation (P)
- **Rural Water Projects:** (Sklenar)
 - Dakota County Rural Water – South Sioux City sale agreement (F)
 - ★ Water Purchase Agreement for DCRW Country Estates Mobile Home Park (W)
- **Other:**

STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES
Roger K. Patterson
Director

July 14, 2003

IN REPLY REFER TO:

Mike Johanns
Governor

Steve Oltmans, Manager
Papio-Missouri River NRD
8901 So 154th St
Omaha, NE 68138

Dear Steve,

At its July 9, 2003, meeting, the Natural Resources Commission obligated \$1,332,000.00 in FY 2004 funds to the Western Sarpy/Clear Creek Project for the following component:

3. Right-of-Way(Partial) \$1,332,000.00

This FY 2004 obligation of funds will be available on a reimbursement basis to the Papio-Missouri River NRD on July 1, 2003. This increases the total amount of NRDF funds obligated to the project to \$2,971,000.00.

You are advised to keep abreast of project costs. You will receive reimbursement only for those components that have been obligated funds by the Commission. Funds cannot be transferred from one component to another without the consent of the Commission. Any cost overruns, whether anticipated or real, relating to any components, need to be brought to my attention immediately.

Please contact Tom Pesek, Administrative Coordinator of the Nebraska Resources Development Fund, or me if you have any questions regarding the Commission's action or any other aspect of the Nebraska Resources Development Fund as it relates to the Western Sarpy/Clear Creek Project.

Sincerely,

for
Roger K. Patterson
Director

tfp

cc: Fred Conley
Beverly Donaldson
Vince Kramper
Roger Korell

JUL 15 2003

clrshare/Patterson

301 Centennial Mall South, 4th Floor • P.O. Box 94676 • Lincoln, Nebraska 68509-4676 • Phone (402) 471-2363 • Telefax (402) 471-2900

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Judge asked to rule on Missouri flows

W-14

WASHINGTON (AP) — Conservation groups asked a federal judge Wednesday to order lower water flows in the Missouri River this summer to protect birds and fish listed as federally endangered species.

The hearing in U.S. District Court of the District of Columbia was part of the groups' lawsuit to return the Missouri to a more natural ebb and flow.

American Rivers, Environmental Defense and other groups asked Judge Gladys Kessler to issue an injunction ordering low flows beginning this month.

She is expected to rule later.

"In many respects, this is a day of reckoning for the Missouri River," said David Hayes, an attorney for the groups.

The Army Corps of Engineers has spent more than a decade considering higher spring releases and low summer flows to benefit the piping plover, interior least tern and pallid sturgeon under the federal Endangered Species Act.

"We're at least 13 years into this process, your honor, and it's really an outrage," Hayes said.

The Justice Department is defending the corps and was joined Wednesday by officials from Missouri and Nebraska.

Those states and others along

Who should run it?

Sen. Byron Dorgan, D-N.D., says he plans to introduce legislation that would take the management of the Missouri River system from the Army Corps of Engineers and turn it over to the Bureau of Reclamation.

Paul Johnston, a spokesman for the corps in Omaha, said the corps still plans to finish the master manual revision this year.

The Bureau of Reclamation manages water projects, including the Colorado River and Hoover Dam, in 17 Western states.

the lower reaches of the Missouri are resisting the changes, which they say will flood homes and farmland and devastate the barge industry.

The government argued to the judge that lower flows violate the primary goal of operations along the Missouri River, which are barge, navigation and flood control.

"The corps does not have the discretion to implement the low summer flows the plaintiffs are seeking," said James Maysonett, the attorney for the government.

W-H
7-8-03

Time: enemy of the river

Conservation and environmental groups suing the Army Corps of Engineers over flow changes in the Missouri River have asked a federal judge to order the water lowered this summer. Their primary reason: time.

The corps has been struggling for more than a decade to make changes in its management manual for the river. Competing interests have stymied the process. Environmental proponents want the corps to engineer high water in the spring, followed in the summer by a low period, in order to benefit endangered birds and fish.

Upstream states like that idea, because more water would remain in their reservoirs, meaning increased tourist income. Downstream states don't, because the barge industry likely would be disrupted.

Farmers don't like the spring rise because they worry about floods; dock and marina operators don't like the summer lows because their facilities could be adversely affected. The list of special interest advocates goes on. None acts interested in compromise, though it has long seemed clear to us that compromise

**More delay
in redoing the
Missouri plan
doesn't help the
environment.**

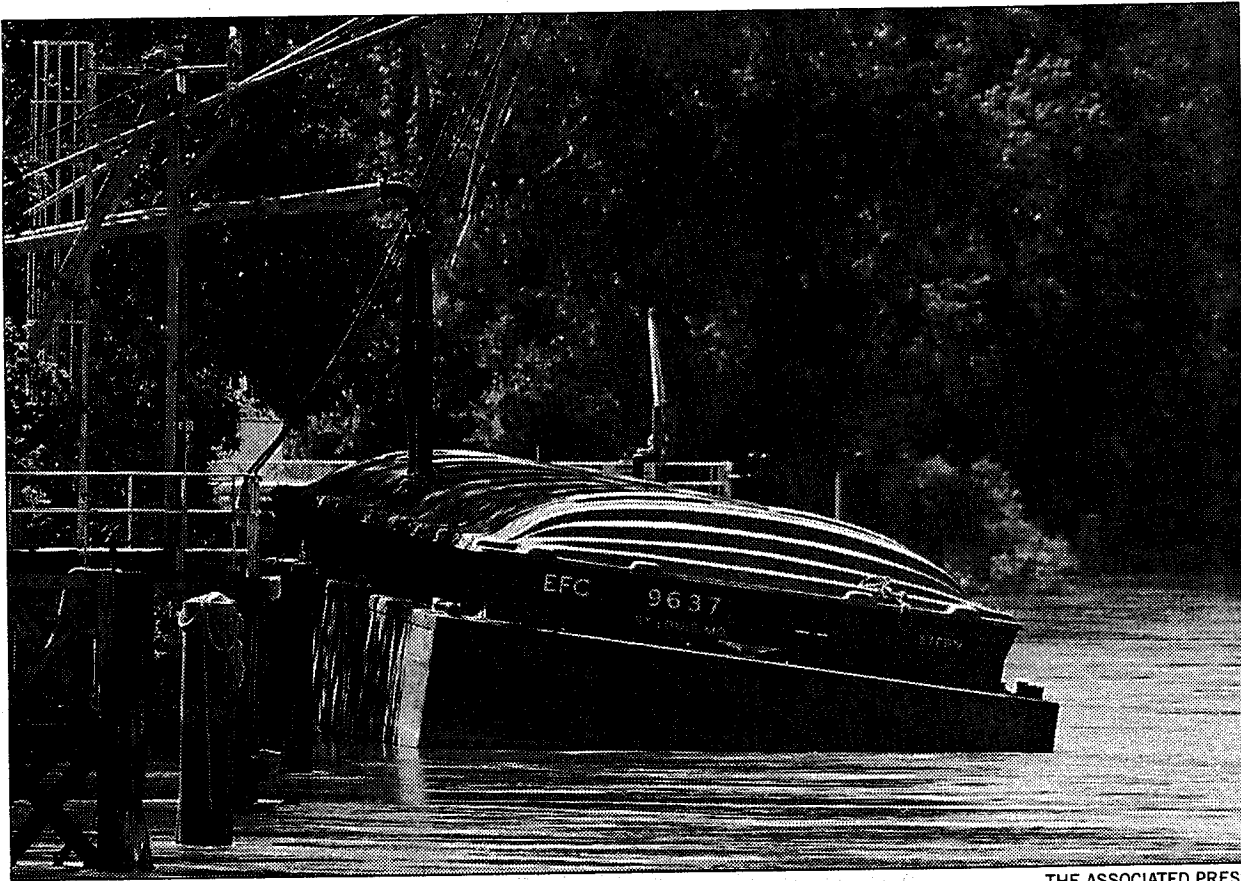
is the sensible and correct way to approach the problem.

Conservationists worried about time have an argument that grows more compelling every month. The longer a lawsuit takes, the longer the environment will have to wait for protection.

David Hayes, attorney for the environmental groups, told Judge Gladys Kessler: "We're at least 13 years into this process, your honor, and it's really an outrage."

Delay favors the opposition. Delay means unabated continuation of conditions that have produced declines in the endangered species and in the quality of habitat for all of the flora and fauna along the river. Delay allows the destruction to continue, perhaps even accelerate. At some point, it will become irreversible.

Whether that is enough to convince the court to order flow changes remains to be seen. But at the very least, Judge Kessler should recognize the urgency of the problem and the cost, in terms of the environment, that will be paid as time continues to pass.



THE ASSOCIATED PRESS

A barge sits pulled up close to shore at an elevator on the Missouri River Tuesday in Omaha. The barge, filled with 1,300 tons of fertilizer, was moved Tuesday over concerns that reduced water flows could ground it.

Docked barge free to move out

Journal Star
BY MARK THIESSEN 7-17-03
The Associated Press

OMAHA — A barge that was pulled close to shore near Omaha now is free to continue its journey.

The U.S. Army Corps of Engineers' decision Tuesday to refuse to comply with a federal order to lower Missouri River flows has, for now, alleviated concerns that flows will be too low to handle barge traffic.

The MEMCO Barge Lines of St. Louis boat anchored near downtown Omaha, holding 1,300 tons of fertilizer, was moved close to the shore earlier Tuesday, where it could have been unloaded if the corps had complied with the federal order.

Concern over barge navigation was heightened after a federal

judge refused to issue a stay of her opinion ordering the corps to reduce flows in the Missouri River to protect endangered wildlife.

The effect of the federal court ruling would have dropped the river's level in Omaha by more than 3½ feet from its current level of 18 feet, causing concern for barge traffic.

"At 14.4 feet, they would not be able to operate," said corps spokesman Paul Johnston, who is based in Omaha.

U.S. District Judge Gladys Kessler ordered the corps over the weekend to reduce the river's flow from 25,000 cubic feet per second to 21,000 to protect three endangered species — the least tern, piping plover and pallid sturgeon.

Another court ruling, issued in

June by the 8th U.S. Circuit Court of Appeals, said the corps must keep enough water in the lower Missouri to allow for barge navigation, power generation and other needs. Several other lawsuits also are pending.

Caught in the middle was the fertilizer barge, which had been placed on rocks near downtown Omaha.

The concern was that the barge would be too heavy to navigate in the reduced river, Johnston said.

Timing also plays a role, because the closest of four tow boats on the Missouri River is 170 miles away in Kansas City, Mo.

A round trip on the Missouri between the two cities takes a week.

Terry, King try to kill river flow plan

By MATT KELLEY
WORLD-HERALD BUREAU
7-12-82

WASHINGTON — A pair of congressmen from the Nebraska and Iowa sides of the Missouri River tried unsuccessfully Thursday to cut funding for a controversial plan to reduce summer river flows.

The legislation — proposed by Reps. Lee Terry, R-Neb., and Rep. Steve King, R-Iowa — would have temporarily cut off funding used to enforce envi-

ronmental regulations along the Missouri.

The target is the effort to restore more natural flows along the Missouri in order to protect three endangered species and improve recreation upstream. The plan would require lower flows during the summer, which Terry and other critics contend could strand barge traffic, disrupt power plants and leave riverside marinas landlocked.

The dispute has pitted barge

operators, farmers and power companies that favor high river levels in a roiling legal fight against environmental groups and upstream lawmakers. Both sides are appealing conflicting court decisions — one ordering the Army Corps of Engineers to cut river flows and another requiring steady flows.

The effort failed, however, when a House parliamentarian ruled that the tactic violated House rules against legislating on a spending bill.

Court rejects government request to stay flow order

■ The Corps of Engineers faces a contempt hearing for refusing to lower water levels on the Missouri River.

W-H 7-19-03

WASHINGTON (AP) — An appeals court on Friday rejected a government effort to halt a lower court's order to reduce water levels on the Missouri River.

Also Friday, the lower court scheduled a contempt hearing for Monday against the U.S. Army Corps of Engineers for refusing to comply with the order.

Conservation groups are suing the corps under the Endangered Species Act, saying the river must be restored to a more seasonal ebb and flow that would en-

courage fish spawning and bird nesting by threatened and endangered species.

U.S. District Judge Gladys Kessler in Washington granted an injunction earlier this week seeking low flows typical of the summer season on the Missouri. That was to have begun Wednesday.

The corps refused to comply, saying reduced water levels would violate an earlier ruling by a federal court in Nebraska that the Missouri must have enough water for barges to navigate and power plants to operate.

That led Kessler to schedule a contempt of court hearing for Monday morning.

The U.S. Court of Appeals for the District of Columbia denied the government's request for an emergency stay pending appeal of Kessler's ruling.

"It means that the corps can no longer hide, and that they're going to have to comply with the

law or face stiff penalties," said Chad Smith, spokesman for American Rivers, one of the groups suing the corps.

While the corps reduced flows slightly after Kessler's initial ruling, it refused to budge on Friday.

"There has been no decision on whether we're going to change releases," corps spokesman Paul Johnston in Omaha said Friday. "The Army's position is that we're sitting here with conflicting orders."

When the corps announced it would refuse to comply with Kessler's order and instead follow the earlier court order, it also announced plans to finish long-delayed revisions of its "master manual" for operating the river.

Delays have lasted more than a decade because of the battle over returning the Missouri to a more seasonal ebb and flow.

The Justice Department also is appealing Kessler's ruling.

W-H 7-19-03

S.D. governor seeks river summit

PIERRE, S.D. (AP) — South Dakota Gov. Mike Rounds wants a summit meeting of states to discuss ongoing battles involving the Missouri River, and he thinks a compromise is possible among the varying political interests.

A request for such a session was made Thursday in a letter to Lee Brownlee, acting assistant secretary of civil works for the Army. The Corps of Engineers is in charge of managing Missouri River dams in the Dakotas and Montana.

"At some point, leaders have to get together, express their points of view and then find some common ground," Rounds said. "It doesn't mean that we're going to get everything we want, but we most certainly should be better off than the way it is right now where everybody is in court."

Rounds said the many lawsuits in recent years over operation of the river have failed to settle disputes among states, and a sum-



Rounds

mit possibly could provide solutions.

Upstream and downstream states have wrangled for years over the river.

Interests in upstream states com-

plain that too much water is released through the dams in the spring and summer, endangering the multimillion-dollar fishing and recreational industry. Downstream states argue that too little water is a threat to the economic well-being of the barge industry and endangers critical water supplies.

The corps, which is caught in the middle of those competing views, has been working for 14 years to revise the manual that is used as a guide for operation of the dams. The corps plans to is-

sue the new Master Manual later this year. The operating plan was first published in 1960 and last revised in 1979.

Rounds offered to host a river summit, and that state, federal and private interests be invited.

"I am writing to offer my assistance in trying to reach an equitable resolution to the current deadlock on the Missouri River," the Republican governor said in his letter. "I am willing to propose a plan that takes into consideration all uses of the river and is environmentally friendly."

Although protection of barge traffic on the Missouri River often is mentioned by downstream interests, it is the much-larger barge industry on the Mississippi River that has so far been a subliminal issue in debate over operation of Missouri River dams, Rounds said.

The Missouri and Mississippi Rivers converge at St. Louis.

1/20/03

Missouri madness

The cat is amongst the pigeons now for sure. Dueling court cases resulting in contradictory rulings; state pitted against state; business battling environmentalists; members of Congress wildly waving proposed laws around so they can claim to be doing something about ... well, something.

River debate is swamped by bombast, politics, legalese. Science seems to get lost.

environmentalists' approach, a sharp spring rise followed by a mid-summer low. (And more water in upstream reservoirs for tourists.)

The focus of all the hubbub is the Missouri River. The problem will be to shut down the shouting and posturing, sort out the legal ins and outs and fit together the scientific jigsaw puzzle that will reveal what must be done to preserve the environment along the Missouri and protect the endangered species — and the other wildlife and flora — that depend on it for survival.

Getting there may be a wearisome process. It could take years, meaning that the habitat degradation and deterioration of the protected species will continue while the lawyers gas and the opposing sides accuse.

Legal briefs, accusations, proposed laws and press conferences are flying almost too fast to follow. Now South Dakota Gov. Mike Rounds has called for a summit meeting of states to discuss the issues. As these words were written, this was the situation:

The Army Corps of Engineers has always managed the river and its dams to benefit navigation, hydropower and similar activities. But increasing awareness of the importance of the environment — and the economic benefits that can flow from a more balanced approach to the river — caused conservationists to demand that the ecosystem be considered.

An environmental coalition of groups including American Rivers and the Nebraska Wildlife Federation is poised to ask Federal Judge Gladys Kessler to cite the corps for contempt of court at a hearing Monday. She recently ordered the corps to lower the water level in the Missouri this summer to benefit wildlife habitat. The corps refused; thus, contempt.

The corps refused because of an earlier order from a different federal judge, obtained by Nebraska state officials, requiring that river levels remain high enough to float barges and serve power plants.

Nebraska and other states have taken to the courts in recent years in efforts to influence river management. Upstream states favor the en-

Downstream states, generally including Iowa and Nebraska, fear that flow changes would cause spring flooding of fields, interruption of barge traffic and similar problems.

The Bush administration has kept a close eye on the proceedings, last year ordering the corps to delay completion of its master manual, a periodically updated blueprint for managing the river. The White House most likely is behind the corps' attempt to renegotiate with the federal Fish and Wildlife Service, which favors altered flow patterns based on its scientific studies.

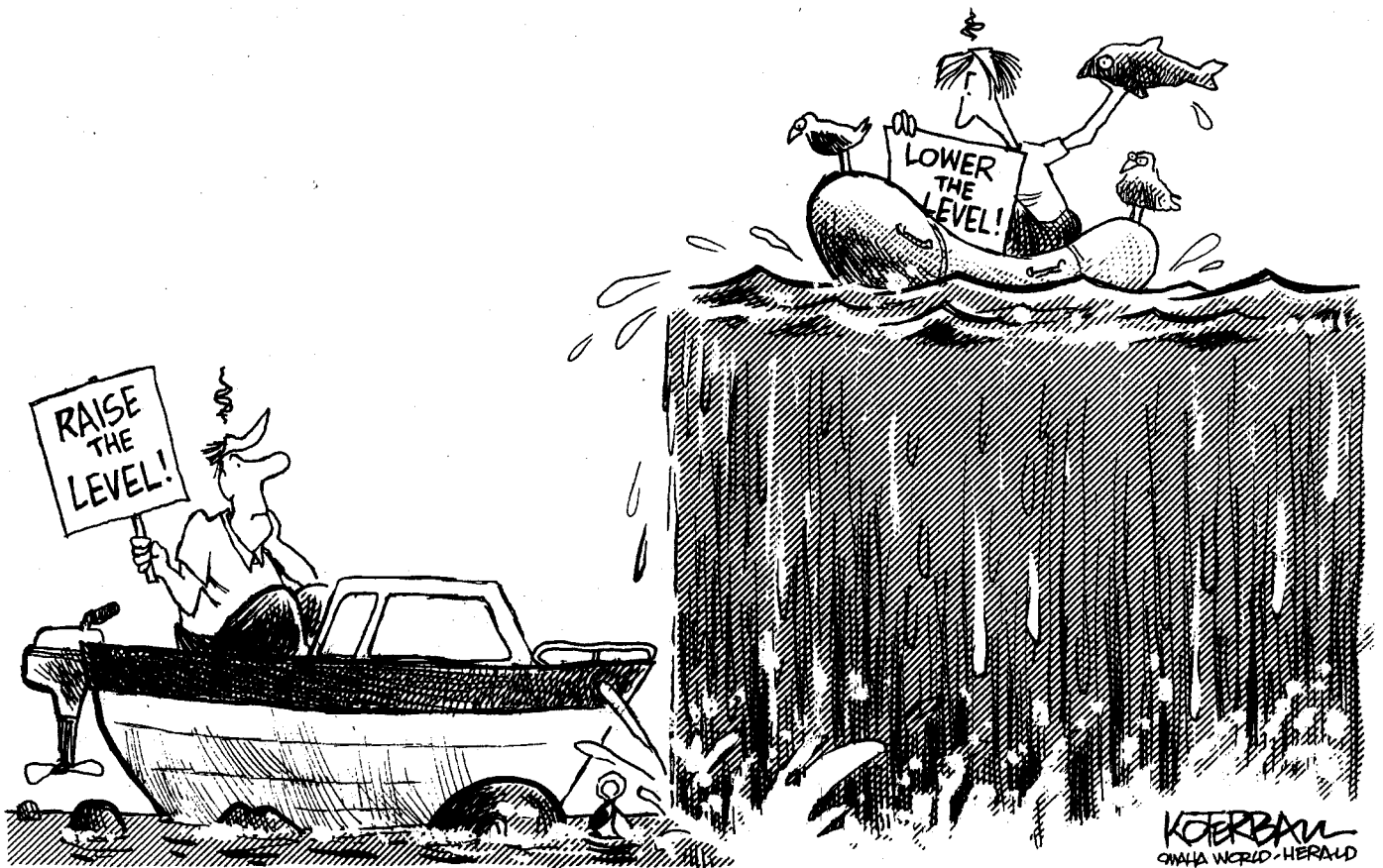
Now comes Congress. Missouri Sen. Kit Bond has been active in the struggle to subvert any changes in the river flow pattern. It's said he is looking at ways to get around Kessler's ruling. Thus, U.S. Reps. Lee Terry, R-Neb., and Steve King, R-Iowa, tried to cut off funding to enforce environmental regulations along the Missouri, an end run around Kessler. Their attempt was unsuccessful on a technicality.

A more worrisome fly in the ointment is a proposal by U.S. Rep. Sam Graves, R-Mo., who wants an overhaul of the Endangered Species Act. Let's not pretend here that this would be a *good* overhaul. Inserted into the midst of this debate, clearly the goal would be not to improve.

Rather, the act probably would emerge weaker, and protection of the environment across the nation would suffer. Graves has acknowledged that he wants to reduce the number of species (slightly more than 1,200 now) and lower the amount of critical habitat that could be protected.

Somewhere, buried by the lawsuits and the claims, overshadowed by the political maneuvering and fear, is science. The scientific studies we have seen on this issue support the flow changes and suggest that the actual damage to farmers and others along the river would be minimal. But the debate has become so complex, so caustically political, that it appears that science may no longer matter.

And, for the environment, for the people of Nebraska and Iowa, for the economy of the states along the river, that would be the worst outcome of all.



WANTED: A MISSOURI (RIVER) COMPROMISE

Alteration of Missouri order asked

■ The Justice Department wants a federal court in Nebraska to reconcile conflicting rulings on the river's flow.

WASHINGTON (AP) — The U.S. government on Sunday asked a federal court in Nebraska to modify an order requiring higher Missouri River water levels with a conflicting July 12 court ruling in favor of lower flows.

The Justice Department asked the Nebraska court to alter its ruling to comply with the new order for low flows, and the U.S. Army Corps of Engineers ordered barge shippers and other river users to secure vessels for lower flows.

Pending a ruling on Sunday's request, "it is anticipated that the ... flows will not be sufficient to maintain commercial navigation

from Sioux City, Iowa, to St. Louis, Mo.," the corps said Sunday.

The legal maneuvering came hours before a contempt hearing against the Army Corps of Engineers set for this morning in U.S. District Court in the District of Columbia.

U.S. District Judge Gladys Kessler in Washington scheduled the contempt hearing for the corps to explain why it is refusing to obey an injunction that she granted ordering lower flows on the Missouri.

Conservation groups are suing the corps under the Endangered Species Act, saying the river

See River: Page 2

MIDLANDS

OMAHA WORLD-HERALD

River: Contempt hearing is scheduled for today

Continued from Page 1

must be restored to a more seasonal ebb and flow, mimicking natural river conditions before dams and channels were built. That, the groups contend, would encourage fish spawning and bird nesting by threatened and endangered species.

Kessler granted an injunction July 12 sought by the conservation groups.

The corps on Tuesday refused to comply, saying that cutting flows would violate an earlier ruling by the U.S. District Court for Nebraska that the Missouri must have enough water for barges to navigate and power plants to operate.

"Right now, we have conflicting rulings. . . . One says continue to release water, the other says don't release water."

Paul Johnston, spokesman for the Army Corps of Engineers

That led Kessler to schedule the contempt-of-court hearing for this morning.

"Right now, we have conflicting rulings," Army Corps of Engineers spokesman Paul Johnston in Omaha said Sunday. "Even though they have different justifications, one says continue to release water, the other says don't release water."

On Friday, an appeals court

rebuffed a government effort to stay Kessler's order on an emergency basis, although the government's appeal is still pending. The U.S. Court of Appeals for the District of Columbia denied the government's request for an emergency stay pending appeal of Kessler's ruling.

When the corps announced that it would refuse to comply with Kessler's order and instead

follow the earlier court order, it also announced plans to finish long-delayed revisions of its "master manual" for operating the river.

Delays have lasted more than a decade because of the battle over returning the Missouri to a more seasonal ebb and flow.

Kessler acknowledged in her order that barge companies will lose revenues, water quality may suffer and consumers may pay more for power this summer along the Missouri River.

But she said that injury to wildlife — the least tern, piping plover and pallid sturgeon — will be irreparable without curtailing the Missouri's flow.

Missouri fight puts corps in hot seat

*Contempt decision
pending over flows*

Rulings conflict cited

7-22-63
By MATT KELLEY

WORLD-HERALD BUREAU

WASHINGTON — The dog days of summer are grinding along at the Omaha headquarters of the U.S. Army Corps of Engineers amid an escalating legal fight that has landed the agency in hot water with a federal judge.

Monday, U.S. District Judge Gladys Kessler summoned attorneys for the corps into a contempt of court hearing in Washington to find out why the agency is refusing to obey her order to lower flows along the Missouri River.

Kessler scolded Justice Department attorneys representing the corps and seemed inclined to hold the agency in contempt. She could rule as soon as this morning.

"The issue is extraordinarily serious," she said Monday.

Monday's hearing was the latest episode in a long-running court battle that has ensnared the corps within a tangle of two conflicting court orders, a handful of lawsuits and enough attorneys to fill a sizable riverboat.

"We're just kind of watching what the lawyers do," said Paul Johnston, a spokesman for the corps in Omaha.

In a ruling last week, Kessler ordered the corps to reduce flows along the Missouri to 21,000 cubic feet per second, a level that environmental advocates and the U.S. Fish and Wildlife Service say is necessary to protect three endangered species along the river.

The corps refused to comply, saying that cutting flows would

See River: Page 2

River: Corps caught in conflicting court rulings

Continued from Page 1

violate an earlier ruling by the U.S. District Court for the District of Nebraska. By the corps' interpretation, that ruling said the agency must maintain river flows above 25,000 cubic feet per second, high enough for barges to navigate the waterway and power plants to operate.

"We have one ruling that tells us to let more water out," Johnston said. "And we have another ruling that tells us to let less water out."

So over the past 72 hours, Justice Department lawyers have

bounced from one judge to the next, first in an unsuccessful attempt to overturn Kessler's order and then to ask the U.S. District Court in Nebraska to revise its order.

The whole argument could eventually wind up in front of the U.S. Supreme Court's chief justice, William Rehnquist, who has jurisdiction over appeals

**"The issue is
extraordinarily
serious."**

*U.S. District Judge
Gladys Kessler*

from Nebraska and Missouri.

The corps, meanwhile, has advised barge shippers and other

river users to prepare for lower flows. Johnston said it would take about two days to drop the river to the level ordered by Kessler.

Monday, Kessler chided attorneys for the government for taking too long in their legal ma-

neuverings. But she also expressed puzzlement as to how far she could go to compel another branch of government to follow her orders.

Minutes later, Nebraska Assistant Attorney General David Cookson told Kessler that the State of Nebraska would oppose any move by the corps to cut flows. That probably would land the corps in front of another judge, in another contempt hearing.

"The corps is sort of in an unenviable position," Cookson said.

Corps found in contempt over order for Missouri

By MATT KELLEY

WORLD-HERALD BUREAU

WASHINGTON — A federal judge on Tuesday ruled that the Army Corps of Engineers was in contempt of court, deepening a tense legal fight over water levels on the Missouri River.

U.S. District Judge Gladys Kessler ordered the corps to lower river levels along the Missouri by 8 a.m. Friday or pay \$500,000 for each day of noncompliance. The judge threatened "more draconian" penalties against the corps and the secretary of the Army if they still haven't complied by July 31.

Kessler ordered the river levels dropped on July 12 to protect the habitat of three endangered species. The order is opposed by barge operators, farmers and power companies.

"There can be no question," Kessler ruled Tuesday, "that the corps is in violation of the court's July 12 order."

Paul Johnston, spokesman for the corps in Omaha, said the agency remains torn between Kessler's demands and a conflicting order from the U.S. District Court for the District of Nebraska. The Nebraska court ordered the corps to maintain flows high enough for barges to navigate the waterway and power plants to operate.

"I suspect that if we comply with (Judge Kessler's) order, we'll be in contempt in the other court," Johnston said.

Kessler acknowledged Tuesday that a conflict might exist between the two orders.

But in her sharply worded ruling, the judge rejected as "nonsense" the corps' contention that it was acting in good faith. She accused the corps of trying to delay and avoid action in order to draw out legal proceedings and refrain from dropping river levels.

The ruling was a victory for American Rivers and a band of environmental groups suing to gain more natural flows along the Missouri. Those rising and dropping waters expose sandbars and shallows that serve as wildlife breeding grounds.

"The judge has issued the strongest statement she can that the corps is breaking the law," said Eric Eckl, a spokesman for American Rivers.

But while Kessler's ruling places more pressure on the corps, it will not end the long-running legal and political battle over management of the Missouri.

The latest showdown came to a head this week, after the corps refused to obey Kessler's July 12 injunction to drop river flows to 21,000 cubic feet per second. That's the level recommended in 2000 by the U.S. Fish and Wildlife Service to assist three species — the piping plover, least tern and pallid sturgeon.

Instead, corps officials chose to follow the conflicting order, which requires river flows to remain above 25,000 cubic feet per second to support barge traffic, power plants and local marinas.

The ruling was affirmed by the 8th U.S. Circuit Court of Appeals.

The next step appears to be an effort by the corps to persuade the Nebraska court and the 8th Circuit Court to amend their decisions. But any move to lower river levels will probably set off a whole new set of legal challenges by the State of Nebraska and others who want steady flows.

Omaha & the Region

'It's a mess,' Bruning says after latest river flow ruling

7-24-02
BY MATT KELLEY

WORLD-HERALD BUREAU

WASHINGTON — A federal judge in Omaha intensified a standoff over commerce and environmental conservation along the Missouri River, denying a request to allow lower flows on the river.

U.S. District Judge Laurie Smith Camp on Wednesday refused the U.S. Army Corps of Engineers' request to amend her earlier injunction requiring the corps to maintain river levels high enough for barge navigation.

On Wednesday, Camp affirmed her ruling from May 2002, saying barge traffic must take precedence over efforts to protect three endangered species on the river.

The judge acknowledged that her order conflicts with a ruling by U.S. District Judge Gladys Kessler, who has ordered the corps to bring down river flows to 21,000 cubic feet per second. On Tuesday, Kessler ruled the that corps was in contempt of court and ordered the agency to drop river levels by Friday morning or face fines of \$500,000 per day.

"Frankly, it's a mess," Nebraska Attorney General Jon

Bruning said.

Corps officials in Omaha say they're still weighing the legal ramifications of any decision about the river. For now, river flows exceed 25,000 cubic feet per second, enough for navigation.

Paul Johnston, spokesman for the corps, said engineers could cut flows to meet Kessler's order within minutes if such a decision is made.

"We're still conflicted," Johnston said. "The attorneys are all working on what to do from here."

The issues before Camp originated after Nebraska and Missouri filed suit to stop upstream states from retaining higher water levels for summer recreation. Missouri and Nebraska argued that resulting lower levels downstream would strand barges, spoil recreation and possibly shut down power plants in Nebraska.

The 8th Circuit Court of Appeals affirmed Camp's order to maintain higher levels downstream.

Kessler's ruling originated from a separate case, brought by several conservation groups seeking lower river levels and better habitat for the least tern, pallid sturgeon and piping

plover.

After Camp's ruling Wednesday, Bruning said the dual-track legal fight is probably headed for more appeals and eventually a hearing before U.S. Chief Justice William Rehnquist.

"The conflict is now more entrenched than ever," Bruning said. "The corps is in a completely untenable position."

Today, Bruning's office will ask a judicial panel to consolidate the cases in one court. That decision isn't likely to come for some time.

A band of conservation groups, led by Washington-based American Rivers, wants the corps to establish a more natural rise and fall along the river. Such an ebb and flow would expose sandbars and shallows on the river used as late-summer breeding grounds, according to the U.S. Fish and Wildlife Service.

In her ruling, Kessler said the corps' first obligation is to protect species under the Endangered Species Act. Kessler, unlike Camp, ruled that the congressionally passed Endangered Species Act should take precedence over the Missouri River Master Manual, the corps' internal guidebook for river operations.

River fight lands in one court 7/25/03

■ A panel of judges takes the case away from two colleagues who had issued conflicting orders.

BY MATT KELLEY
AND HENRY J. CORDES
WORLD-HERALD STAFF WRITERS

Seven trucks, a crane and bulldozer stood ready Thursday to close an Omaha marina on the Missouri River — just in case the Army Corps of Engineers decided by today to lower the river level.

But even as city officials worried about whether to seal off the marina, the roiling legal case

over river flows took a turn in favor of Omaha boaters and others who want higher water levels.

Thursday afternoon, a seven-judge panel in Washington consolidated the legal fight into one court, essentially stripping jurisdiction from judges who had issued conflicting orders.

"This is excellent news for the state of Nebraska," said Nebraska Attorney General Jon Bruning, an opponent of efforts to cut flows along the Missouri.

The panel, at Bruning's request, took the case away from U.S. District Judge Gladys Kessler, who had ordered the corps to cut river flows to protect three endangered species on the river. Kessler found the corps in contempt of court and ordered \$500,000-per-day fines if the

See Missouri: Page 2

Missouri: Legal fight is consolidated in one court

Continued from Page 1
corps failed to bring down the river by this morning.

Kessler's order conflicted with a Nebraska federal judge's order requiring water to continue to flow down the river to support barges, power plants and other river users. That judge, Laurie Smith Camp, also lost jurisdiction in the case.

Attorneys on all sides of the case were unsure Thursday evening whether Kessler's contempt order still stood. But it seemed increasingly unlikely that the corps would reduce flows any time soon.

The case moves next to the

court of U.S. District Judge Paul A. Magnuson in Minnesota.

Reducing dam releases in accordance with Kessler's order would drop the water level in Omaha by about a foot. That is not enough to affect the look of the river as it flows by the city's front door. Water levels get far lower than that during winter.

But that foot could be critical to the city's marina at N.P. Dodge Park, dropping water levels to a point at which it could become inoperable.

The city would have to erect a dam to preserve water levels in the marina, effectively ending the boating season for this year.

Without the dam, the floating docks would sink into the mud, bending and warping the concrete walkways and 350 boat slips.

The city would need to move quickly if dam releases dropped, completing a job that normally takes four days in about two, said Omaha's acting parks and recreation director, Larry Foster.

"We don't know what to do," he said Thursday afternoon.

Gen. William Grisoli knows the feeling. Just two weeks into his job as commander of the corps division that operates the Missouri's dam system, he faces a difficult task balancing all the in-

terests on the river.

Grisoli said Thursday morning in Omaha that he thinks the corps' current operations on the river, are meeting the agency's obligations under the federal Endangered Species Act.

He noted that biologists have counted 1,300 adult piping plovers on the Missouri this year, the most since the corps started monitoring the endangered birds. The number of adult least terns, another endangered bird, are at the second-highest level ever recorded.

"Right now," he said, "we feel comfortable with the flows that we have."

The Missouri 'mess'

The "mess" may be sorting itself out. Let us hope so.

Nebraska Attorney General Jon Bruning, describing the tortuous ins and outs of the multi-sided — and multi-venued — battle over water levels in the Missouri River, said recently, "Frankly, it's a mess. . . . The (Army Corps of Engineers) is in a completely untenable position."

But Thursday, the Judicial Panel on Multidistrict Litigation consolidated the dueling cases pending in several federal courts, assigning the issue to U.S. District Court Judge Paul Magnuson of Minnesota. And Friday, he called a two-week halt to everything, including a contempt ruling against the corps. Whew.

What with flying lawsuits, hurtling accusations, stubborn responses and political hoohaw, things have been busy on the river in recent weeks. The corps, which manages the river, has refused to allow the increased spring flows and low summer water levels demanded by environmentalists and the U.S. Fish & Wildlife Service to benefit endangered species and protect what habitat remains along the river.

The corps' reasoning: It has long managed the river to benefit other interests, primarily navigation. Low flows would likely temporarily interrupt barge shipping, among other effects. Low flows are, therefore, against corps policy.

The agency has been trying for 14 years to update its management plan for the river — environmental interests have demanded that it begin to take habitat and species into consideration, too — but it has been unable to do so because of entrenched special interests.

In recent weeks, a coalition of conservation groups including American Rivers Inc. and the Nebraska Wildlife Federation sued to force the corps to implement a low summer flow, as recommended by Fish and Wildlife. The corps refused, citing a previous federal court order to maintain enough water in the system for navigation.

Federal Judge Gladys Kessler

**A judge
in Minnesota
has a chance
to begin sorting
serious priorities
on the river.**

7/26/03
cited the corps for contempt. Her precedent: a 1978 Supreme Court decision that she said places the highest priority on the Endangered Species Act. But federal Judge Laurie Smith Camp refused to amend her order requiring water levels high enough for navigation — because she said precedent in the 8th Circuit Court of Appeals requires maintenance of navigation.

Thus, the corps' "untenable position": damned by one judge if it did, damned by another if it didn't.

Enter Magnuson and his two-week breather.

We hope he does not allow himself to be hijacked by the often emotional arguments that he will hear. This is not an either-or situation — not unless it is twisted into that shape by special interests.

Unfortunately, the longer it takes to reach a compromise to benefit wildlife habitat and species on the river, the more the environment will suffer, and the more difficult it will be to return habitat and species to a healthy balance.

As Magnuson ponders the issue, he should think about the effects of delays and more delays, and he should think about who wants those delays and why. He should contemplate the complexity of the science that underlies the arguments.

This is not a simple matter of a 1944 law on navigation and flood control vs. a 1973 law on endangered species. The river levels advocated by environmentalists and others, even before any discussion or compromise, would have a complex effect on the river and on the economies of the communities up and down its length. That effect would not be entirely negative or entirely positive.

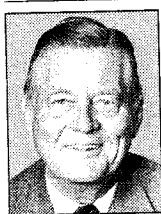
But (barring a genuine compromise) some court — perhaps Magnuson's — needs to weigh the science, look at the competing interests and make decisions that balance the varied interests along the river. And he — or someone — needs to act quickly.

Now, there is no balance. Unless the delays end, there never will be.

The Missouri River flow debate is badly marred by emotionalism

Time for another "The Bigger Picture" column, this one dealing with the controversy over the Army Corps of Engineers' management of Missouri River flow.

News report after news report gives details of the legal battle, which has been in at least four different federal courts in the past few weeks.



Harold W. Andersen

I question whether there is enough attention being focused on significant facts — "bigger picture" facts — that go well beyond the narrowly focused question of whether the river's summer flow below Gavins Point Dam should be managed exclusively for the benefit of three endangered species: the piping plover, the least tern and the pallid sturgeon.

The result of the intense focus on the courtroom battling has been to create two misleading impressions, it seems to me: first, that the endangered-species issue is the only one of significance before either the courts or the public and, second, that the survival of the three endangered species may be fatally or at least very significantly threatened unless the depth of the Missouri River flow is quickly lowered to provide what some believe is optimum plover/tern/sturgeon habitat.

The larger — and considerably more accurate — picture includes these elements: All three of the endangered species are being protected in a number of environmental locations other than a stretch of the Missouri River downstream from the Gavins Point dam.

Consider that the pallid's range extends from Montana to Louisiana and that the Department of the Interior is providing a \$250,000 grant for biologists to buy nearly 1,400 acres along the

confluence of the Missouri and Yellowstone Rivers in northwestern North Dakota in a project intended to protect and enhance pallid habitat.

As to the piping plover and the least tern: Insufficient attention has been paid to a statement issued more than a year ago by Wayne Boyd, chairman of the Nebraska Public Power District board.

Boyd pointed out that NPPD has managed three islands and three sandpits along the Platte River for habitat enhancement and discovered that sandpits have produced seven times as many terns and plovers for one-half of the cost as did islands in the river. Boyd also pointed out that nearly half of adult piping plovers on the Missouri River nest on three upstream reservoirs.

The single-focus, often emotional consideration of the issue is well illustrated in the language in a ruling by federal District Judge Gladys Kessler in the District of Columbia, ordering the Corps of Engineers to lower the stream flow or be held in contempt of court and pay a \$500,000 a day fine. Kessler said in a 66-page decision dealing with plover/tern/sturgeon habitat in one stretch of one river: "There is no dollar value that can be placed on the extinction of an animal species — the loss is to our planet, our children and future generations."

Fortunately, the case has been removed from Judge Kessler's emotional as well as legal jurisdiction.

This "the environmental sky is falling" attitude appears all the more irrational when one considers recent statements from Brig. Gen. William Grisoli, commander of the Corps of Engineers division that operates the Missouri's dam system. Grisoli noted that biologists have counted 1,300 adult piping plovers on the Missouri this year, the most since the corps started monitoring the endangered

birds. And the number of adult least terns is at the second-highest level ever recorded.

NPPD's President Boyd's comments, published at some length in an article in *The World-Herald*, included statements that should have helped broaden the issue but, unfortunately, have received too little attention.

Boyd said a NPPD analysis of proposals to increase river flow in the spring and reduce it in the summer indicates that electric power generation plants along the Missouri River below Gavins Point Dam could be adversely affected by as much as \$200 million a year. The increased costs to electric customers would result from the fact that Nebraska receives a significant amount of electrical power from generating plants cooled by Missouri River water and from hydroelectric power generated by upstream dams, Boyd said.

The NPPD chairman said further: "Missouri River flows affect municipal water supplies, municipal waste water operations, industrial water supply, hydropower, electrical-generation cooling, farming and agri-business activities, the barge industry, marina operations and many other recreational opportunities — and, last but not least, flood control."

Importantly, Boyd expressed doubt that the proposed change in river flow would produce more than a few, if any, benefits in terms of increasing tern and/or plover population — an opinion based not on endangered species emotionalism but on the NPPD's experience with tern and plover reproduction in sandpits in contrast to river islands.

Sunday: leveraging the Endangered Species Act to advance other agendas, including tourism in Montana and North and South Dakota.

■ The writer, retired publisher of *The World-Herald*, may be reached at P.O. Box 27347, Omaha, Neb., 68127. The telephone number is (402) 593-4553.

Governors discuss river options

7-31-03

By ROBYNN TYSVER

WORLD-HERALD STAFF WRITER

SIoux CITY, Iowa — The governors of Nebraska and South Dakota agreed Wednesday that the states need to seek an out-of-court settlement to the upstream-downstream lawsuits swirling around the Missouri River.

Nebraska Gov. Mike Johanns and South Dakota Gov. Mike Rounds said that approach would be cheaper for the states in the river basin and allow the best chance of a compromise that is acceptable to all.

They agreed to a seven-state river summit called for Sept. 24 by South Dakota.

Iowa Gov. Tom Vilsack, however, said he thought the federal government should take the lead because only the federal

government has the resources and power to carry out any solution.

He sent a letter Wednesday to congressional leaders asking them to intervene.

The three governors were in Sioux City to meet about issues facing the three-state region. It was the ninth such conference since 1988.

The Missouri River was a hot topic at this conference, held less than a week after six river lawsuits were consolidated with a federal district judge in Minnesota and a contempt order against the Army Corps of Engineers was put on hold.

For years, upstream and downstream states have been at odds over the management of the river. The upstream states, including South Dakota, want more water to remain in their

reservoirs for recreational purposes in the summer. The downstream states, including Nebraska and Iowa, want more water left in the river for barges, power plants and boaters.

Environmentalists also have filed suit, asking for changes in river flows to protect three endangered species: the pallid sturgeon, least tern and piping plover.

The idea behind the seven-state summit is to begin defining a process by which the states can seek an out-of-court settlement, Johanns said.

But Vilsack said it will take money to reach a compromise, which may require the creation of mitigation acres for wildlife or new flood-control measures.

"You're going to have to, at
See Governors: Page 2



RUDY SMITH/THE WORLD-HERALD

Participating Wednesday in the Tri-State Governors' Conference in Sioux City, Iowa, are, from left, Govs. Mike Rounds of South Dakota, Mike Johanns of Nebraska and Tom Vilsack of Iowa.

Governors: Managing Missouri River a hot topic

Continued from Page 1

the end of the day, have congressional intervention," Vilsack said.

Johanns disagreed. He said it was better for the states to find their own compromise than have a solution imposed by the courts or federal government.

"Not that I don't trust the people back in Washington, but I like us to be in control of our own

destinies," Johanns said.

Rounds said he thought more states would be willing to work toward compromise knowing that the possibility of a court-dictated settlement loomed.

All three governors said reaching an out-of-court settlement would not be easy. Johanns said other interests, including environmental groups, the

barge industry and others, would have to sign off on any compromise.

But, Johanns said, it's worth trying. He noted that Nebraska spent about \$20 million in a Republican River dispute with Kansas before a settlement was reached.

Johanns and Rounds said they planned to attend the summit. Vilsack said he would attend un-

less the summit conflicted with a planned trade mission to Taiwan.

Rounds said he'll invite others, including Indian tribal leaders, representatives of the barge industry and environmentalists. The summit will be held near Sioux City at Dakota Dunes, S.D., on the banks of the Missouri River.

Re-creating a 'meandering' river would be an ill-considered step

W-17 8-3-03

I said last Thursday that I would comment today on the way that some interests are leveraging the Endangered Species Act into serving purposes other than the preservation of habitat for the least tern, the piping plover and the pallid sturgeon.

Three upstream states — with substantially less population than the downstream states of Nebraska, Iowa and Missouri — are up-front about their primary motivation: Spokesmen for Montana and North and South Dakota support environmental activists' efforts



Harold W. Andersen

to impose a U.S. Fish and Wildlife Service river management formula on the Army Corps of Engineers because that formula would leave more water in upstream reservoirs during the summer months when higher water levels attract more tourists.

And an agenda broader than simply protecting the tern, plover and sturgeon showed clearly through a report from a National Academy of Sciences task force and in positions taken by the American Rivers organization.

The report from the National Academy of Sciences in support of the plover/tern/sturgeon formula for managing the Missouri called for a "more meandering river."

The Academy of Sciences report included the statement that "significant improvement in river ecology may require some relocations" involving possible "significant monetary and psychological costs." The report also advocated increasing the annual flow of sediment of the type that gave the "Muddy Missouri" its nickname.

As I have observed before, it seems to me that it is pretty difficult to make a case that it is sound public policy to muddy a

river through increased soil erosion.

The American Rivers organization's advocacy of "a more natural" river included an advertisement that contrasted the river today with what it was when Lewis and Clark explored Missouri River country nearly 200 years ago. Lewis and Clark, the ad said, "found a dynamic river of meandering channels, thousands of islands and sandbars, in a rich floodplain of wetlands grasses and forests. The river and its banks teemed with fish and wildlife."

The ad contrasted a painting of the river in its wild stage with a photo of a large dam.

There was no reference at all, of course, to the many people benefits (I'm talking now about the human species) that have resulted from taming the once-wild Missouri, including the elimination of most of those "thousands of islands and sandbars."

Channel stabilization and flood control management, for example, keep the river from taking off across country and allow recreational boating and riverside developments like the ConAgra campus, the Heartland of America Park, Lewis and Clark Landing and the new Omaha Arena/Convention Center.

In the case of the pallid sturgeon, the conservation activists' arguments weren't helped by a candid statement from Rob Holm, manager of the Garrison Dam National Fish Hatchery, where young pallids have been raised since 1996 and tagged with small radio devices. Holm said: "We want to determine where they move in the river, what habitats they like and what food is available."

Quite a contrast to the posture of some conservation activists who seem to believe that they already know exactly what's best for the pallid sturgeon.

Is there no middle ground in this controversy? There could be, but precious little time is being spent by the conservation activists in trying to work with those who believe in a middle ground.

Reaching a middle-ground compromise will be the objective when governors of states affected by the controversy meet Sept. 24 in Dakota Dunes, S.D. Certainly a compromise would be preferable to protracted and costly litigation.

I hope the governors consider strong evidence that a good deal of wildlife habitat restoration can be achieved without allowing the mighty Missouri to "meander" again. (It is worth remembering that a "meandering" Missouri in April 1952 put Omaha's Municipal Airport — now Eppley Field — under several feet of water and was kept from "meandering" into downtown Omaha only by construction of temporary floodwalls and sandbagging by an army of citizen volunteers.)

X Evidence of what might be called "middle ground" wildlife habitat restoration includes three projects in which the Corps of Engineers and the Pacific-Missouri River Natural Resources District are cooperating. The projects use former river channels left behind when the "meandering" Missouri cut itself a new channel.

The habitat restoration projects at Boyer Chute, California Bend and Decatur Bend involve allowing a carefully controlled flow from the now-channelized river to enter the former channel areas, creating "backwaters" that provide habitat for fish and waterfowl.

Acreage will be set aside around these new backwater areas to create favorable habitat for, for example, deer and bald eagles. Public entry to enjoy the sites is part of the plan.

The Boyer Chute, California Bend and Decatur Bend projects, it seems to me, offer persuasive evidence that substantial wildlife habitat restoration can be achieved without invoking the Endangered Species Act to force the Corps of Engineers to allow the Missouri to "meander."

■ The writer, retired publisher of The World-Herald, may be reached at P.O. Box 27347, Omaha, Neb., 68127. The telephone number is (402) 593-4553.

Corps will lower level of Missouri for 2 days

■ Officials will cut river flows briefly in light of the most recent court ruling.

8/6/03
By MATT KELLEY

WORLD-HERALD BUREAU

WASHINGTON — The Army Corps of Engineers announced Tuesday that it will lower the Missouri River next week, temporarily squeezing down a supply of water used to cool Nebraska power plants, run barges and operate marinas.

In a press release Tuesday night, the corps said it would comply with a court order issued more than three weeks ago to reduce river flows to create breeding habitats for three endangered species.

Unless a last-ditch appeal succeeds, the low flows will begin Aug. 12 and last for a little more than two days.

Nebraska Attorney General Jon Bruning, an opponent of a lower river level, said the short time frame of the low flow will all but wipe out its impact.

"One big rain will mitigate it," Bruning said. "And the impact on the river ecosystem is insignificant."

The decision came after a ruling this week by U.S. District Court Judge Paul Magnuson of Minnesota, who refused to lift an earlier court order mandating the low flows. Corps officials said Magnuson, appointed last month to referee six lawsuits over the river, effectively left the agency with few choices.

"We have to comply with that order," said Homer Perkins, a spokesman for the corps in Portland, Ore.

The corps plans to cut water flows at Gavins Point Dam near Yankton, S.D., at 10 p.m. on Aug. 12. The river will return to its current levels two days later.

Barring rain that refills the
See River: Page 2

River: Missouri will drop about a foot at Omaha

Continued from Page 1

river, the flow reduction would drop water levels in Omaha by about a foot.

While that wouldn't alter the appearance of the Missouri near Omaha, a falling river could incapacitate Omaha's marina at N.P. Dodge Park and might drive up costs for power companies along the river. Barges on the river would be stranded temporarily.

Upstream and downstream states along the Missouri have been fighting over the Missouri for years. South Dakota and North Dakota want more water for game fish and boaters in reservoirs. States such as Nebraska, Iowa and Missouri want the same water for barges, power plants and boaters.

Officials with American Rivers, the leading proponent of lower flows, insist that even a few days would help shorebird

chicks crowded onto small islands and breeding grounds.

By spreading out on more land, the chicks stand a better chance of avoiding predators and nasty weather, they said.

Most of the birds have already left their nests. The rest will fly away by Aug. 15.

Chad Smith, director of the Nebraska field office for American Rivers, said recently born pallid sturgeon would also benefit from the shallow river.

"It's better than nothing," Smith said. "This is still a critical time."

Corps officials had fended off calls from American Rivers and other conservation groups to lower river flows for the pallid sturgeon and two endangered shorebirds, the least tern and piping plover. At one point, the corps defied an order by U.S. District Judge Gladys Kessler in Washington, who ordered low

flows.

Throughout the legal fight, the corps argued that it was caught between two legal rulings — Kessler's order for low flows and a conflicting order from a federal judge in Nebraska mandating higher flows for barges.

This week, however, the corps lost its ability to call itself caught in the middle.

Magnuson ruled that the corps no longer is bound by an injunction requiring high river levels adequate for barge navigation. Magnuson said that injunction, issued earlier this year by U.S. District Judge Laurie Smith Camp, already had been lifted pending an appeal to the 8th Circuit Court of Appeals in St. Louis.

But Magnuson said he could not lift Kessler's injunction.

The corps plans to ask Magnuson once more to stay Kessler's

order. But if that fails, the agency plans to cut flows from about 25,000 cubic feet per second to about 21,000.

That would probably force city workers in Omaha to seal off the city marina with an earthen dam, closing its access to the Missouri. Without a dam, water would drain into the falling river, causing the floating docks in the marina to bend and warp.

The effect on power companies is less clear. Power officials say they're worried that a lower flowing Missouri will heat up, making it more difficult to cool their plants. Power plants are restricted from dumping water back into the river at higher temperatures because it can harm aquatic life.

World-Herald staff writer Nancy Gaarder contributed to this report.

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MIDLANDS

Omaha prepares to cope with lower river levels

A dam will keep docks afloat at a city marina

By MATT KELLEY
WORLD-HERALD BUREAU
8-7-03

WASHINGTON — Barring a reprieve from a judge, Omaha's marina will be sealed off from the Missouri River beginning Monday as city employees deal with plans to bring river levels down about a foot.

Power companies also are preparing for next week's scheduled drop in the river, which might make it more difficult to cool power plants.

And in Washington, attorneys representing the Army Corps of Engineers are making a last-ditch attempt to lift the court order that mandates the

lower river levels to protect three endangered species.

"We're going into territory we've never been in before," said Brian Barels, water resources manager for the Nebraska Public Power District.

On Tuesday night, the corps announced that it would be reducing dam releases on the

Missouri after District Court Judge Paul Magnuson refused to lift a court order mandating lower flows. Magnuson was appointed last month to oversee six cases involving the corps and Missouri River levels.

Corps officials filed a motion Wednesday asking Magnuson
See River: Page 2

River: Power plants concerned about temperature

Continued from Page 1
to rescind the order.

Barring a last-minute legal turnaround, the corps will cut flows at Gavins Point Dam near Yankton, S.D., at 10 p.m. Tuesday. The river will rise again three days later, Aug. 15, the end of breeding season for two endangered shorebirds — the least tern and the piping plover.

The lower flows would be the latest development in a long-running legal battle over the river.

Conservationists want the lower summer flows to create breeding habitat for the shorebirds and the pallid sturgeon, an endangered fish. That scenario also would benefit upstream states such as South Dakota and North Dakota that want the wa-

ter in late summer to attract tourists and build game fish populations in reservoirs.

Downstream states such as Missouri, Nebraska and Iowa prefer a higher-flowing river in late summer for barge traffic, power plants and marinas.

In Omaha, the brief drop in river levels would be enough to shut down the city marina at N.P. Dodge Park.

Already Wednesday, city officials were making plans to construct an earthen dam to trap water in the marina, keeping its docks afloat. Without water to support them, the floating docks would break and warp in the mud. Workers normally build the dam in the fall, at the end of boating season, as river levels drop for winter.

The city plans to wait until Monday — after Magnuson rules on the corps' appeal — to begin moving dirt. Building the dam could end the boating season at the marina for 2003.

Once it's in, "it's really hard to take that dam out," said Larry Foster, Omaha's acting parks and recreation director.

For electrical generating plants, the shallower river could mean higher costs.

A shallower river would probably raise the temperature of the river water used to cool power generating equipment. The higher temperatures could cause plants to run up against state regulations that prohibit utilities from dumping water back into the river if it's warm enough to harm aquatic plants

and fish. The plants would then have to reduce production to keep from overly raising river temperatures.

Barels, the water resources manager for NPPD, said the two- to three-day drop in river levels probably won't be long enough to cause serious problems for utilities. He said a heavy rain could keep the river high, or cloudy days might prevent the sun from heating the water.

The Omaha Public Power District is planning to monitor river temperature more frequently next week and, if necessary, switch some of its production to the natural-gas-powered units it uses to meet peak demands for power.

States reach agreement on Republican River use

7-2-03

THE ASSOCIATED PRESS

Officials from Kansas, Nebraska and Colorado have agreed on a model for regulating use of the Republican River — a plan for making more water available to Kansas farmers and cities in dry years.

The model, announced Tuesday, is a final piece of a settlement to a lawsuit filed by Kansas in 1998 after farmers complained that they were not getting their fair share of the water.

Kansas sought to bring Nebraska groundwater pumping along the river under control. Kansas officials estimated that in drought years, such as Kansas experienced in the late 1980s and early 1990s, Nebraska was using 40,000 more acre-feet of water than it should have.

State officials said Kansas was losing about 16 percent of the water it was entitled to under a 1943 compact among the three states. An acre-foot of water is equal to an acre of land covered by 1 foot of water. Topeka uses about 29,000 acre-feet a year, or 9.4 billion gallons.

"This adds to the total water supply in the state," said John Draper, a Santa Fe, N.M., attorney serving as a special Kansas assistant attorney general in water litigation.

A north fork of the Republican begins in Colorado and flows into Nebraska; a south fork begins in

Colorado and flows through northwest Kansas and into Nebraska. After the two forks join in Nebraska, the river flows into north-central Kansas.

The states reached a settlement in December 2002, and the U.S. Supreme Court approved it in May.

The announcement of an agreement on that model came a day after the states finished work on it and submitted it to a special master appointed by the Supreme Court. The court decides legal disputes among states but typically appoints a special master to hear water litigation.

Kansas officials said the agreement will allow the states to monitor and control water usage so that each claims its fair share under the Republican River compact — 300,000 acre-feet a year for Nebraska, 240,000 acre-feet a year for Kansas and 40,000 acre-feet a year for Colorado.

David Pope, chief engineer for the Kansas Division of Water Resources, said enforcing the compact is especially important in drought years.

Nebraska has imposed a moratorium on drilling new wells along the river and is metering wells and limiting their use.

The Republican River also supplies cities in northern Kansas and flows into Milford Lake, which in turn supplies communities along the Kansas River.

W-H
7-4-03

The picnic pack-out

Trash cans are getting hard to find in many state parks.

Iowa removed trash cans from many of its state park areas in 1992, asking people to carry their trash out with them. Several other states have done the same. Some of Nebraska's state parks and recreation areas are about to lose their trash service, too.

Garbage, restroom, mowing and road services will be severely curtailed at about two dozen public areas as Nebraska's Game and Parks Commission deals with more budget cutbacks. The budget plan was designed to have only a minimal impact, however, on the state's most popular — and revenue-producing — parks.

It's a fitting approach. States with the "carry in-carry out" trash philosophy say it works for the most part, freeing up staff time for other chores. (Plus it gets rid of unsightly, smelly cans that attract pests.)

And natural, unmowed spaces have their own constituencies, as do

**It's time for
Nebraskans
to pitch in
on the upkeep
of state parks.**

the well-groomed, more-ordered parks, such as Mahoney State Park.

In conjunction with the cuts, the Game and Parks Commission is appealing for more volunteers at the parks. It's a program similar to the "Adopt a Highway" program that has seen thousands of Nebraskans pick up litter along roadsides.

The program's good would extend beyond trash removal. Anyone who has ever slogged through the grass along a highway picking up old beer cans, food wrappers and other things best left unmentioned has surely thought twice about pitching litter out a car window — or letting their friends litter.

Whether it's simply carting off their own trash or volunteering for something more, those acts should remind Nebraskans that they're all partners in the upkeep of our state parks. It's not just our money, but our actions, that will keep those lands beautiful.

Congress should aim to preserve new path to farm conservation

BY PAUL D. JOHNSON

7/8/03

The writer is a northeast Kansas organic market gardener and a family-farm legislative advocate for several churches in Kansas. He is a member of the Prairie Writers Circle at The Land Institute, Salina, Kan.

The latest farm bill includes a pioneering plan to preserve working farmland while it supports farm families. But the newborn is now on Congress' chopping block.

The new plan, years overdue, is called the Conservation Security Program. In contrast to the usual subsidies for production, this landmark entitlement rewards responsible farming that conserves our soil and water for future generations.

The Agriculture Department this summer is developing the plan's exact rules. Enrollment is scheduled to start Oct. 1. But last month the House Appropriations Committee cut all funding. To add more insult to conscientious farmers, the committee zeroed out money for two other innovative programs that support family farms, rural communities and the environment — one that assists farmers pursuing alternatives to stay in business, such as direct marketing, and another that helps farmers become more energy-efficient.

The committee is essentially rewriting the farm bill, approved in 2002, to take us back to business as usual.

Traditional federal crop payments to farmers are tied to production. They guarantee an income for what the farmer grows but are keyed to output, regardless of how a farmer treats his land. Farmers keep very little of this income. The biggest beneficiaries are corporations that sell the farmer the equipment, fertilizers, pesticides and other supplies needed to boost production.

Conservation Security, on the other hand, would encourage good stewardship of the land on which we all depend.

Here is how the program would work. A farmer consults a USDA conservationist to evaluate the farm's effects on its natural resources. The farmer decides what level of conservation he is willing to achieve. A plan is developed for farming practices such as crop rotations, improved grazing and

grass buffer strips to filter runoff. At the highest level, the farmer must develop a whole-farm plan that will protect all identifiable resources from degradation.

Unlike federal crop payments that give 70 percent of \$17 billion annually to only 10 percent of enrolled farms for just eight specific crops, Conservation Security would cost an estimated \$4 billion over 10 years and address all crop and livestock operations in all regions of the country. It would help any farmer or rancher willing to adopt or continue verifiable conservation.

With more than 80 percent of farmers working off-farm to survive low grain and livestock prices, the program would be an important support for good stewardship. And it would be an effective way to address the many environmental problems blamed on agriculture.

If reasonable limits were set on crop payments to the largest farms, as proposed by Sen. Charles Grassley, all of the new innovative farm programs the House committee axed could be restored at no additional cost to the federal budget.

Agricultural policy is at a crossroads as the House and Senate work to finish farm bill funding details by the middle of this month. Conservation Security starts to define a new direction, one that rewards the most responsible farmers. It recognizes that conservation of soil and water is a long-term national responsibility that should be fairly shared by the farmer and the taxpayer. Lawmakers saw this in passing the 2002 farm bill.

Congress should stay the wise course it set last year. The long-term health of our most precious resource, the land, demands it.

■ The Land Institute is a nonprofit research organization whose stated goal is to develop an agricultural system with the ecological stability of the prairie and a grain yield comparable to that of current annual crops.

Water signup extended

NRD likely to give
property owners until
Aug. 15 to decide

By Keith Rydberg
Reporter

Several Washington County residents who live south of Blair are likely breathing a sigh of relief as the Papio-Missouri River Natural Resources District's board of directors has informally agreed to extend the application deadline for a rural water study.

During a subcommittee meeting Tuesday, July 8, the board of directors heard a request from Wayne Talbert, chairperson of a steering committee created to gain interest for the project, which would supply rural water to a 48-square-mile study area between Nebraska Highway 133 and U.S. Highway 75 south of Blair. After hearing Talbert's request and after a noticeable increase in the amount of applications received in recent weeks, the directors informally agreed to extend the deadline to August 15. A formal decision on extending the deadline was expected at the Thursday, July 10, meeting of the district's board of directors.

Originally, the district had set June 30 as the deadline for applications to be received. Along with the application, all interested parties were asked to send a \$2,600 hookup fee.

As of Thursday morning, the district had received 240 applications, which is significantly less than the 689 applications that the board of directors had originally set as a determination as to the feasibility of the project. However, Project Manager Dick Sklenar said that while the reduced number of applications

*down version
of project likely*

FROM PAGE 1

will likely mean the scale of the project will be reduced, the recent increase in returned applications will likely allow the study to be made albeit in a reduced form. Commenting that the board of directors would like to see at least 250 applications returned before members would consider supplying water to a portion of the study area, Sklenar said he is confident the remaining applications can be gathered with the extended deadline.

"It's still our thinking that it doesn't look like the entire study area can be served, but at least we will be able to provide water to a portion of the area," Sklenar said. "We've received a great outpouring of support and a great number of applications, especially in the last week of June and the first week of July. The number of applications we receive has been changing on a daily basis. Things are starting to look more hopeful."

Sklenar added that, if formal approval is made to extend the deadline, the board of directors is also considering adding a \$200 penalty to anyone submitting an application after the August 15 deadline, making the hookup fee \$2,800 rather than \$2,600.

"The main reason for this is that we want to get our applications in as soon as possible so that our consulting firm (hgm Associates Inc.) can analyze the results of the applications and make a determination as to what should be done as far as reducing the overall study area," Sklenar explained. "We want to get the results of the consulting firm's decision back to the public as soon as possible so we do not drag our feet on this."

Sklenar would not say what portion of the study area would be most likely to receive rural water first, Talbert said he believes the southern portion of the county from Dutch Hall Road to County Road P32 would likely be first in line. Talbert said he understands why the district is basing its decision on the number of applications received.

"The district is essentially a business so it's understandable why they are wanting to do it this way," Talbert said.

Lower Decatur in new NRD budget

7-16-03
Following a public hearing July 10, Papio Missouri River Natural Resources District advanced a \$24 million budget for the upcoming fiscal year. The budget includes nearly \$1 million earmarked for the long-delayed Lower Decatur bend project.

A "Back to the River" initiative, Lower Decatur is designed to restore some of the Missouri River's natural character sacrificed when it was channelized for barge navigation and flood control.

The \$6.1 million project is a joint effort between the NRD and the Corps of Engineers, the body responsible for managing the river. Roughly 600 acres of Burt County land is involved; 125 acres are cropland.

The NRD seeks the land because it is among the few places along the river where a restoration project can be successful. The Lower Decatur Bend area was named as one of a dozen priority areas when over 40 Missouri River Corridor project sites were picked in 1989.

Preliminary figures show \$500,000 for land rights at the site two miles south and two miles east of Decatur. NRD spokesman Jim Becic said the most recent delay is due to replotting legal descriptions at the site. Previous legal descriptions were never field checked for accuracy. The NRD expects to be finished field checking in about a week.

"The acreage should be close to the previous descriptions," Becic said. "When we're done, we'll have an accurate legal description for each tract and we'll be able to use a minimal amount of farmland."

Becic said offers based on the new descriptions could be ready for presentation to the three landowners in the area, Mike Williams, Mike Olson and Tob Isle, Inc., in perhaps as soon as two months.

The NRD also awaits federal approval from the Army Corps of Engineers on a change to habitat easement language offered to the landowners. The change allows deer hunting in the area as a management tool.

"That's been a big sticking point for the landowners, and for us, too," Becic said. "You need to have (hunting) available to control populations."

Easement language had never been used before in restoration projects. The owners think an easement will help them control

future access to the project area. The NRD has no plans to develop the area for public use, however, they could turn management of the property over to another body, such as the U.S. Fish and Wildlife Service, which would be free to do as it wished.

The proposed budget also includes \$452,000 for construction. The money already is available from Nebraska Environmental Trust. Becic said the NRD probably will have to contribute \$500,000 of its funds in order to meet the Corps' cost-share requirements. As the sponsoring body, the NRD must supply 25 percent of the money and obtain the needed right-of-way for the project. The rest of the funding comes from federal sources.

If work can begin this calendar year, the NRD's cash portion is expected to be included in the 2004-05 budget.

As part of its 2003-04 budget, the NRD is asking property owners in its six-county area to pay \$30.73 in taxes for each \$100,000 worth of property, the same levy as the last two years. The preliminary figures are based on a five percent increase in property valuations. The total tax bill for landowners won't be known until current valuation figures are released in mid-August. The draft budget calls for \$24.04 million in total spending, up from \$23.01 million last year. Property taxes provide \$10.71 million in revenue, a \$510,000 increase over last year.

The budget is expected to be approved following another public hearing during the board's Aug. 8 meeting. It is set for 8 p.m. at NRD headquarters at Chalco Hills Recreation Area, 8901 S. 154th St. in Omaha.

Turner Boulevard trail is discussed

■ A possible path connecting parks may hinge on approval of a Happy Hollow trail plan.

By JULIA McCORD

WORLD-HERALD STAFF WRITER

7-18-03

A preliminary plan to improve and connect the parks and green spaces along Turner Boulevard from Dodge to Pacific Streets got good reviews at the Leavenworth Neighborhood Association meeting Thursday.

But the chances of getting the proposed trail built are slim if the one slated for the Happy Hollow area gets shot down, warned Larry Foster, Omaha's Parks and Recreation chief.

That's because the federal government supplies 80 percent of the funds to build trails, Foster said.

If one plan for an inner-city trail is rejected, a second prob-

ably won't be approved, he said.

The Omaha City Council voted Tuesday to spend \$42,000 to design the controversial Happy Hollow trail, which would follow Happy Hollow Boulevard from Memorial Park to near Decatur Street. However, the council could still shelve the proposal.

The Leavenworth Neighborhood Association hasn't taken a position on the Happy Hollow trail. But the consensus of those at Thursday's meeting was that their trail is a top priority.

"Linking the inner city to the trail system is very important to the population in this high-density area," said association member Jim Thompson.

Big Muddy Workshop, a landscape architecture firm, developed the 10-year master plan.

Under the plan, the trail would start at Hanscom Park at 32nd and Woolworth Avenues, travel west up Woolworth to Turner Boulevard and then north along Turner to Dodge Street.

Included in the wish list are historic-style pedestrian lights and ornamental street signs.

OMAHA DAILY HERALD FOUNDED 1865
 OMAHA DAILY WORLD FOUNDED BY GILBERT M. HITCHCOCK 1885
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Omaha World-Herald

JOHN GOTTSCHALK, *Publisher*
 LARRY KING, *Executive Editor* CHARLES REINKEN, *Editorial Page Editor*
 DEANNA J. SANDS, *Managing Editor*

A tale of two trails

It's good that the Omaha City Council has authorized an official and thorough design for a proposed trail along Happy Hollow Boulevard running north from Memorial Park. If nothing else, a meticulous map should eliminate a lot of the guesswork.

Editorially, we favor such a trail, and the stance is not based on ivory-tower theorizing. A member of The World-Herald's editorial writing staff lives a quarter of a block from the route, and, if the trail is built, will be able to look out the front door and see joggers and cyclists along one-fourth of its length.

Still, there is no "right" or "wrong" answer. The issue is complex, and honorable people hold fervent viewpoints on both sides. But one factor has hampered the debate so far: the lack of a professional and complete plan. Sketches have shown up on Internet sites, and some photocopies have circulated showing speculative and probably outdated lines drawn years ago by planners. But no official path has been designated.

That will now change. A highly specific plan may not stop the squabble, but at least it will eliminate disagreement as to what the squabble is about.

The trail question took on an interesting added dimension last week. A preliminary proposal was fielded for a comparable trail that would stretch along Turner Boulevard be-

Happy Hollow plans will clarify the issue and could hold implications for another locale.

tween Dodge and Pacific Streets. Members of the Leavenworth Neighborhood Association gave very high marks to the proposal for their neighborhood.

The two trails wouldn't be identical, naturally. But there are similarities worth noting: Both would traverse residential neighborhoods, and both would cross several streets. The Happy Hollow trail would cross probably 12. The Turner trail would cross, by our reckoning, no fewer than 10. Three are fairly busy: Farnam, Harney and Leavenworth.

Between the two neighborhoods, the contrast in response could hardly be greater: Along Happy Hollow, the street intersections have been a cause of major consternation. In the Leavenworth meeting, the topic occasioned no concern. Go figure.

There's an added, and worrisome, connection: Trails are funded about 80 percent by federally disbursed dollars. If the Happy Hollow trail didn't get built, chances are federal officials would decline funding for a Turner Boulevard trail.

Thus, the Happy Hollow trail could become a make-or-break issue for another trail a couple of miles to the southeast. The plans for Happy Hollow, which could be finished by the end of the year, carry a double significance. It's appropriate that they're going forward.

Omaha World-Herald

MIDLANDS

Bill would help towns cut arsenic levels

By JAKE THOMPSON
WORLD-HERALD BUREAU

WASHINGTON — Marty Conroy, public works director in McCook, Neb., has an arsenic-caused headache that Sen. Chuck Hagel and others are trying to treat with a dose of federal cash.

Drinking water in McCook and in 74 other systems in Nebraska contains naturally occurring arsenic that exceeds a new standard imposed by the U.S. Environmental Protection



Nelson



Hagel

Agency.

Nebraska state officials have estimated that it could cost \$120 million for cities — includ-

ing McCook, Benkelman, Columbus, Gering, Cozad, Broken Bow and many smaller communities — to comply with the EPA rule.

The agency is lowering maximum allowable arsenic from 50 parts per billion to 10 ppb. Most of the Nebraska communities have levels between 10 ppb and 15 ppb. They face having to build new treatment plants or wells, passing the cost to customers.

"It would at least double their water bills," Conroy said, "and

with the larger residential users it could triple their bills."

Nebraska lawmakers have argued that the presence of arsenic hasn't been shown to make people sick. But last month a federal appeals court upheld the EPA's requirement, rejecting a challenge by the State of Nebraska and the City of Alliance.

This week Hagel and New Mexico's senators, Republican Pete Domenici and Democrat Jeff Bingaman, co-sponsored legislative proposals for \$12 bil-

See *Arsenic*: Page 2

Arsenic: Hagel co-sponsors bill to give towns aid

Continued from Page 1
lion to help communities in Nebraska and other Western states meet the EPA rule that goes into effect in 2006.

If approved, the legislation would provide communities of

200,000 or fewer people with \$1.9 billion a year over six years beginning in 2004 to remove arsenic from drinking water.

Sen. Ben Nelson, D-Neb., has not joined the effort but is speaking at a statewide confer-

ence on the arsenic problem next month in McCook that will address possible grants that communities might seek to lower arsenic levels.

In McCook, city officials are weighing whether to dig a new

well field 17 miles north of town for about \$12 million or build a new treatment facility for about \$15 million. Without federal aid, residential customers would pay \$19 to \$35 more a month for water, Conroy said.

Bird watchers compare 1804, now

By DAVID HENDEE

WORLD-HERALD STAFF WRITER



PHIL JOHNSON/THE WORLD-HERALD

Clem Klapchake is one of the volunteers surveying the species of birds in the marshes, woods and prairie flanking the Missouri River.

7-28-03
Just as it was nearly two centuries ago when Lewis and Clark traveled up the Missouri River, these are the summer doldrums for birdwatching in Omaha.

Although the explorers spent about two weeks in July and August 1804 in what is now the metro Omaha-Council Bluffs area — including five nights at Camp White Catfish on present-day Gifford Point below Fontenelle Forest — their journals note few sightings of birds.

But the lack of migrating birds isn't discouraging Jim Ducey of Omaha and
See Birds: Page 2

Birds: List readied for Lewis and Clark enthusiasts

Continued from Page 1

a corps of veteran birders from compiling a list of species now here as an indication of the wide diversity of birds probably seen or heard by the explorers.

"It was the dawn of Nebraska's ornithological history," Ducey said of Lewis and Clark's bird observations. "Obviously, the Indians were here and were aware of the birds and their calls, but we don't have their record of identification."

Ducey's volunteers are out in the marshes, woods and prairie flanking the river to chronicle the species currently found in the various habitats.

Their plan is to prepare a list of the 22 or so species noted by Lewis and Clark as they made their way up Missouri between present-day Nebraska and Iowa and another of the more than 50 species now typically seen along the river.

✕ The lists are expected to be posted on the Papio-Missouri

"Birds are quality indicators of habitat. If people come back here on the 250th Lewis and Clark anniversary and they don't see turkey vultures or Carolina wrens or chickadees, they'll know that something has changed."

Jim Ducey, a birdwatcher

River Natural Resources District Web site for use by Lewis and Clark enthusiasts following the trail during the bicentennial years.

Sitting in the shade of a tree at Gifford Point, where he noted more than 100 swallows darting over the grassy field in pursuit of insects, Ducey said it doesn't take much effort to imagine the explorers camped nearby. He envisions them inspecting the nearby hills with a monocular.

"Who knows what they may have seen?" Ducey said. "They may have seen bald eagles or

(the now-extinct) passenger pigeons and Carolina parakeets along the river. They probably saw these species along the entire stretch of river but didn't keep track of them."

Ducey, who studies birds as a hobby, said that the woody growth this time of year may have prevented them from spotting scarlet tanagers or cerulean warblers in the treetops.

Wild turkey, Canada geese, ruffed grouse, an interior least tern and a great egret are among the few birds noted in the explorers' journals from the

"Omaha" stretch of the river. Clark heard a whippoorwill calling near present-day Blair, Neb., during the explorers' return trip in September 1806.

The bird survey is being conducted by about a dozen birders from Gifford Point north to at least present-day Fort Atkinson State Historical Park, the site of the explorers' first council with American Indians.

Ducey said it is not possible to directly compare today's list of birds with the Lewis and Clark list, but the birds do help illustrate changes in the environment.

"Birds are quality indicators of habitat," he said. "If people come back here on the 250th Lewis and Clark anniversary and they don't see turkey vultures or Carolina wrens or chickadees, they'll know that something has changed. It's nice to record that so that down the road, somebody will know what was here."

Summit to address Iowa water quality

7-29-03

■ The conference will focus on what to do about problem waterways, which have already been identified.

DES MOINES (AP) — Gov. Tom Vilsack announced plans Monday for a summit meeting on water quality this fall, saying a broad consensus has been formed that the state needs to move forward on cleaning rivers and lakes.

The conference will be Nov. 24 and 25 in Ames, and planning for the event has included a broad range of groups, including the Iowa Farm Bureau Federation and the Iowa Environmental Council, the governor

said.

"The first step is to acknowledge there is a problem, which we have now done," he said.

Last December, the state developed a list of 188 Iowa waterways that are impaired or don't meet water quality standards.

"The reason we now have a consensus is because we have hard scientific data from the water monitoring that's taken place," Vilsack said. "We now know the condition of our water."

Debate continues over the dominant cause. Some point to the runoff of chemicals applied to farm fields, while others see livestock operations as the culprit. Still others fault urban runoff.

"I want to resist pointing fingers," said Vilsack. "This is not a rural problem, this is an all-Iowa problem."

Still, he argued that there will have to be changes in lifestyle and in farming practices if water quality is to be bolstered.

In dealing with farm chemicals, Vilsack noted that many rural groups understand that they are under pressure to change practices, and they acknowledge that it's better to make

those changes on their own without waiting for outside forces.

"I think the farm community recognizes that if this is not addressed aggressively now, that we are simply inviting the federal government to come in and tell us how to farm," Vilsack said.

One problem facing the state's 72,000 miles of rivers and streams is phosphorous levels related to the runoff of fertilizers, and Vilsack said farmers could gain from better practices.

"I think it's safe to say that we could perhaps better educate farmers and those who tend the land about how much fertilizer is needed," Vilsack said.

Consider applying for water study

To the editor:

I am writing to you in regard to the Papio-Missouri River NRD Washington County Rural Water Study. The water hook up application deadline of August 15 is drawing close. It is my hope that my neighbors in the study area will seriously consider applying, if they haven't done so already.

My family has lived in the rural Blair countryside for 10 years. The beauty of the country is what brought us to this

place. However, since our arrival, there have always been problems with our well water.

An unpleasant odor and hardness are common well water problems. However, after testing, iron, nitrates, and other pollutants proved the water to be undesirable for our consumption.

After the efforts of many well cleanings, a water softener, and consideration of an expensive filter system, my family decided

upon bottled water. However, it sure would be nice to be able to turn on the faucet and, without worry, get a drink of clean water. I urge the residents of the rural water study area to please consider turning in your application and hook up fee before the August 15 deadline. In the long run, it would be worth the expense for our families.

Mona Neuvirth

Blair

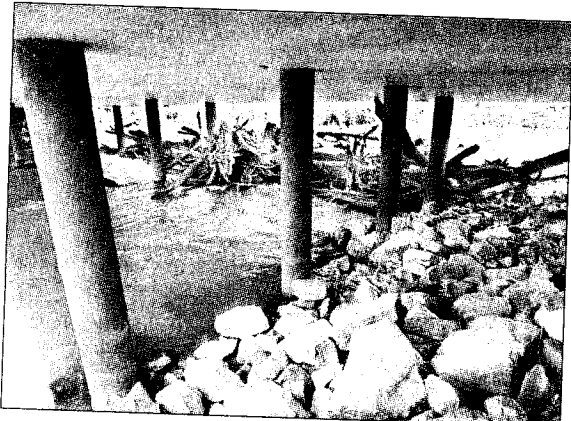
BLAIR PILOT TRIBUNE
7/29/03

Rowers, paddlers want Boyer Chute made safe for their craft

W.H. 8-6-03

By NANCY GAARDER

WORLD-HERALD STAFF WRITER



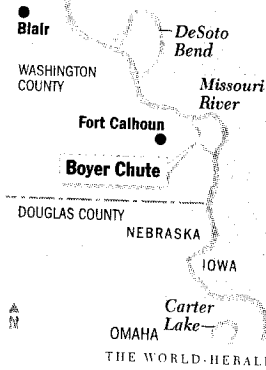
PHIL JOHNSON/THE WORLD-HERALD

Debris collects against supports for a bridge at Boyer Chute National Wildlife Refuge, making boating more difficult on the side channel of the Missouri River.

Taxpayers spent \$6 million to restore Boyer Chute along the Missouri River with the goal of creating better habitat for wildlife in a way that people could enjoy.

But designers miscalculated the effects of a bridge across the chute, and for safety reasons, canoeing, one of the chief ways to appreciate the chute, has been banned.

The Papio-Missouri River Natural Resources District, the original owner and one of the government agencies that helped develop the chute, is calling on the federal Fish and Wildlife Service, the current owner, to give higher priority to restoring nonmotorized boating.



"We need to attack it," said Steve Oltmans, general manager at the NRD. "I feel somewhat obligated to try to do that because we did promise the public there

would be canoeing there. There was considerable amount of interest then and there still is."

Any changes by the federal government, though, may be a long time coming. The chute has been closed to boating for years, and lacking some certainty that the safety of boaters can be guaranteed, Boyer Chute National Wildlife Refuge manager Bryan Schultz said he would be reluctant to reopen it.

"If we open it up to canoeing, then mom and dad might drop the kids off thinking that it's a totally easy waterway to go down," he said. "That's a concern to us. The unwary person can get into trouble real quick."

A chute is a side channel of a river. Isolated from both the

See Chute: Page 2

Boyer Chute: Bridge creates conditions unsafe for boaters

Continued from Page 1

main channel and busy roadways, the two-mile Boyer Chute provides solitude and an opportunity to enjoy nature that isn't possible on the main channel of the Missouri River.

"This particular stretch is absolutely beautiful," said canoeist Dan Geier. "I've had deer swim across in front of me. I've seen pheasants and turtles. You'll have big fish boil up under your canoe."

"This is the thrill of being next to nature," he said. "To not let people experience it by canoe after spending that much money on it is absolutely mind-boggling."

The chute has been closed to boating because of hazards posed by a bridge across it that provides access to the 1,500-acre island on the other side. The chute narrows at the bridge, causing the current to flow faster, and the bridge's piers trap debris, worsening the danger from the fast-flowing current.

If a boater doesn't paddle away from the debris, the current can carry the boat into it, creating the potential for capsizing. If that were to happen, the boater could be sucked under the debris and drowned.

But Geier, who has been tickled for canoeing the chute, said the problem could be solved a number of ways.

Better maintenance, he said, would keep the bridge free of debris. Or the refuge could allow boating on the chute as long as people pull out of the water just above the bridge. Boaters would then carry their boats around the

bridge. Or the refuge could allow boaters to start just below the bridge.

When the Papio-Missouri River Natural Resources District and Army Corps of Engineers built the chute and the bridge, they intended the chute to be open to motorless boating.

When work was completed, the Fish and Wildlife Service took over ownership of it as the Boyer Chute National Wildlife Refuge. Schultz, who has been refuge manager for two years, said he inherited the no-boating policy. Any change, though, rests primarily with him.

Oltmans wrote Schultz in July asking that the Fish and Wildlife Service look for a way to make boating possible.

The Corps of Engineers, the NRD and the Fish and Wildlife Service have met to talk about the issue, and the corps is contemplating whether to undertake a study that examines the alternatives.

Allowing boating on the chute would have an added benefit, Oltmans said. "If you want to educate the public about the benefits of revitalizing the river," he said, "I don't know of a better way than canoeing that chute."

For his part, Schultz said there are many other ways people can enjoy the investment made in the refuge.

"There are lots of other ways to enjoy it," he said. "We allow fishing year round, there's trails along the chute, an auto trail on the west side and walking trails on the east side. We allow mushroom hunting . . . there's lots of other types of public uses."