

Memorandum

To: Finance, Expenditure & Legal

Re: MOU by NDOR, Hawkins Construction, Nebraska Land Trust and Papio-Missouri River NRD

Date: June 8, 2007

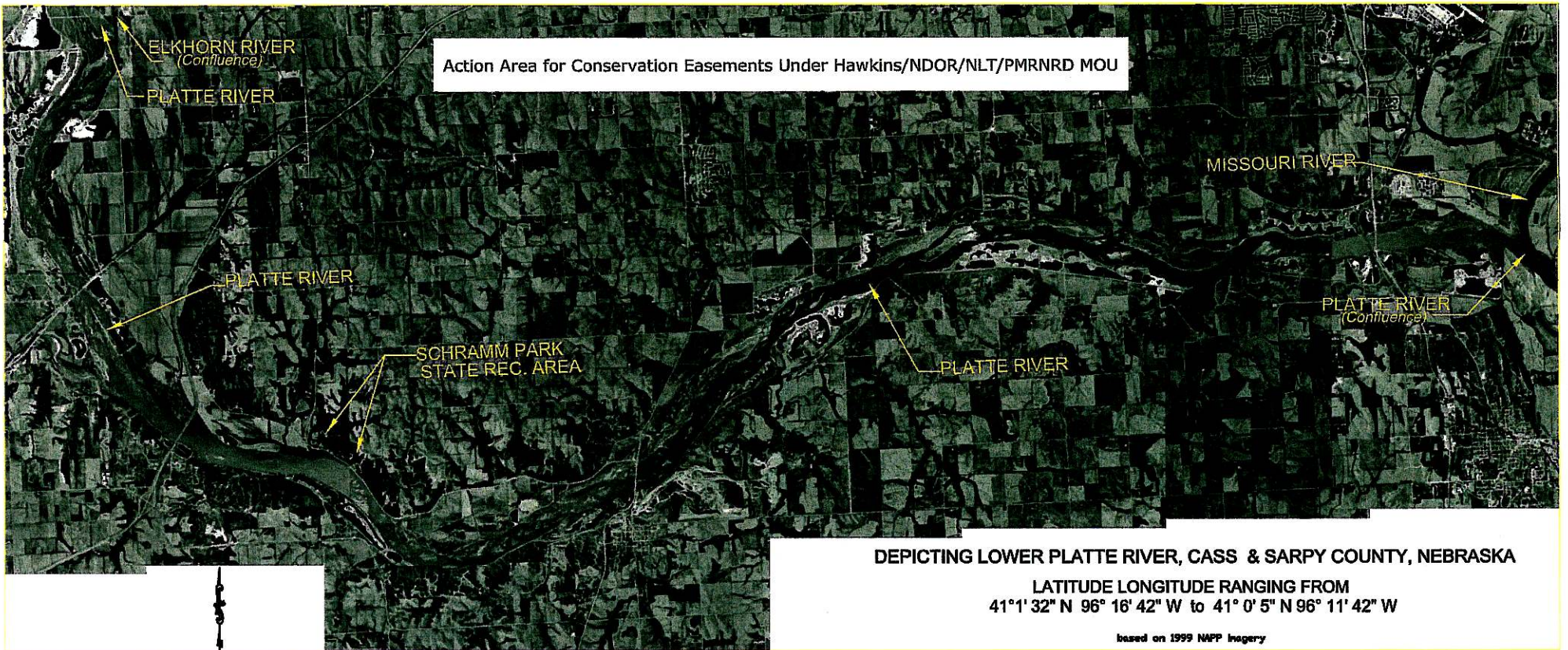
From: John Winkler, General Manager

Hawkins Construction Company and the Nebraska Department of Roads (NDOR) has recently entered into a settlement agreement with the Environmental Protection Agency (EPA) which resolved certain environmental allegations made by EPA concerning construction of the I-80 bridge crossing the Platte River near Mahoney State Park.

A significant component of the settlement is the acquisition by Hawkins and NDOR (through the Nebraska Land Trust) of certain conservation easements along the Platte River, specifically, in the Schramm Park area. Because the Papio Missouri-River NRD has expressed a common interest and the proposed project area lies within the District the attached MOU allows the NRD to participate directly in this effort.

A Memorandum of Understanding has been prepared and is attached for the subcommittee's review and recommendation. The parties to this MOU believe it represents a means by which to jump-start a program of conservations in the vicinity of the Platte River (see attached memo from LPRCA) that will benefit all landowners in the Lower Platte Basin. In addition, the MOU holds minimal to no risk to the District and allows the District to recover any administrative expenses from participating in the project from settlement funds.

Management recommends that the subcommittee recommend to the Board that the General Manager be authorized to execute the MOU to participate in the project as outlined in the MOU agreement.



Action Area for Conservation Easements Under Hawkins/NDOR/NLT/PMRNRD MOU

ELKHORN RIVER
(Confluence)

PLATTE RIVER

PLATTE RIVER

SCHRAMM PARK
STATE REC. AREA

PLATTE RIVER

MISSOURI RIVER

PLATTE RIVER
(Confluence)

DEPICTING LOWER PLATTE RIVER, CASS & SARPY COUNTY, NEBRASKA

LATITUDE LONGITUDE RANGING FROM
41°1' 32" N 96° 16' 42" W to 41° 0' 5" N 96° 11' 42" W

based on 1999 NAPP Imagery

MEMORANDUM OF UNDERSTANDING
by and among
**THE NEBRASKA DEPARTMENT OF ROADS,
HAWKINS CONSTRUCTION COMPANY,
THE NEBRASKA LAND TRUST**
and
THE PAPIO-MISSOURI NATURAL RESOURCES DISTRICT

This Memorandum of Understanding ("MOU") is entered into this ___ day of _____ 2007 by and among the entities listed above (collectively referred to herein as the "Parties").

PREFACE

WHEREAS: The Nebraska Department of Roads ("NDOR") is an agency of the State of Nebraska engaged in the construction, maintenance and improvement of roads and highways throughout the State, including Interstate-80; and

WHEREAS: Hawkins Construction Company ("Hawkins") is a corporation organized under the laws of the State of Nebraska engaged in the business of highway and bridge construction, including the construction of the Interstate-80 bridge over the Platte River under contract No. CN12312 with NDOR; and

WHEREAS: NDOR and Hawkins (collectively the "Defendants") have been accused by the United States Environmental Protection Agency ("EPA") of violating Section 404 of the Clean Water Act in connection with construction of the Interstate-80 bridge; and

WHEREAS: EPA and the Defendants have agreed to avoid litigation and defense of EPA's accusation based, in part, on the Defendants' implementation of a Supplemental Environment Project ("SEP") within the Lower Platte River Watershed having a value of \$54,928.12 and related mitigation project ("MP") within the Action Area identified on Exhibit A involving the acquisition of 10 additional acres of conservation easements for an amount not to exceed \$100,000.00; and

WHEREAS: The Nebraska Land Trust ("NLT") is a 501(c)(3) nonprofit organization organized under the laws of the State of Nebraska that has adopted Standards and Practices promulgated by the Land Trust Alliance and actively acquires or stewards conservation lands and conservation easements, with the goal of land conservation in Nebraska; and

WHEREAS: The Papio-Missouri Natural Resources District ("NRD") is a natural resources district organized under the laws of the State of Nebraska with responsibilities and authority to undertake various conservation-related measures; and

WHEREAS: The NLT and the NRD desire to work with the Defendants and coordinate with the U.S. Fish & Wildlife Service ("FWS") and the Nebraska Game & Parks

Commission ("Commission") to select a potential project site, implement perpetual conservation easement(s), and develop habitat restoration plans that benefit endangered and threatened species, including the least tern, piping plover and pallid sturgeon, all in furtherance of the SEP and MP.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants expressed herein, the Parties agree as follows:

AGREEMENT

I. PURPOSE.

The purpose of this MOU is to set forth the terms and conditions upon which the Parties will work cooperatively to implement the SEP and MP and to maximize the conservation benefit of the SEP and MP for federal and state endangered and threatened species.

II. ROLES OF THE PARTIES.

A. Defendants.

The Defendants shall contribute, on the schedule set forth in Section III below, funds to implement the SEP and MP (the "Contributed Funds") for the purpose of acquisition and administration of perpetual conservation easements and habitat restoration, in part, for the benefit of endangered and threatened species using habitats along the lower Platte River. The Defendants shall have responsibility and authority to pre-approve execution by NLT of any conservation easement purchase agreement. The Defendants' pre-approval shall not be unreasonably withheld.

B. NLT.

The NLT shall receive and shall administer the Contributed Funds in consultation with FWS and the Commission, and with the assistance of the NRD, for the purpose of acquisition and administration of perpetual conservation easements and habitat restoration efforts. The NLT shall be responsible for the following:

- Identifying, in coordination with FWS and the Commission, and with the assistance of the NRD, potential sellers of perpetual conservation easements and negotiating the purchase of the perpetual conservation easements; *provided, however*, NLT shall place a priority on the acquisition of easements in proximity to the Platte River and, particularly, on lands containing features that are hydrologically or biologically connected to the Platte River and that would benefit the least tern, piping plover and /or pallid sturgeon.

- To implement the MP, acquiring and holding the legal interest in conservation easements within the Action Area identified in Exhibit A hereto.
- To implement the SEP, acquiring and holding the legal interest in conservation easements within the Lower Platte River Watershed.
- Managing the conservation easements acquired with Contributed Funds in perpetuity consistent with the Standards and Practices promulgated by the Land Trust Alliance and the limitations of Exhibit B hereto.

C. NRD.

The NRD shall provide technical assistance to the NLT as requested by the NLT in support of the purposes of this MOU, for which the NRD shall be entitled to compensation from the Contributed Funds.

The NRD may contribute supplemental funds in any amount to leverage the Contributed Funds and expand the scope or number of interests acquired by NLT with the Contributed Funds.

III. CONTRIBUTION AND MANAGEMENT OF FUNDS.

Upon successful negotiation between the NLT and a landowner regarding terms upon which a conservation easement may be acquired, NLT shall inform the Defendants of said terms and seek approval to execute a purchase agreement for a conservation easement with the landowner. The Defendants shall provide such approval or withhold such approval within 7 days. Upon receiving approval to execute a purchase agreement, the NLT may proceed to execute the purchase agreement. Upon execution of a purchase agreement, the NLT shall present a copy of the purchase agreement to the Defendants. Within 14 business days thereafter, the Defendants shall transfer an amount equivalent to that identified in the purchase agreement as Contributed Funds to the NLT. The NLT shall utilize the Contributed Funds to consummate the transaction contemplated in the purchase agreement. The NLT shall provide a receipt of such transfer to the Defendants within 7 business days. Upon acquiring the conservation easement (i.e. after closing), the NLT shall immediately record the conservation easement in the applicable County Recorder's Office and provide a copy of the recorded instrument to the Defendants.

The foregoing process shall be repeated until the SEP and MP are complete, at which time this MOU shall expire. The NLT shall complete its acquisition of conservation easements under the MP not later than eight (8) months from the "Effective Date" of that certain Order on Consent among EPA and the Defendants attached as Exhibit C. However, this term may be extended for up to one hundred twenty (120) days upon approval from EPA pursuant to the terms of that Order. The NLT shall complete its acquisition of conservation easements under the SEP not later than thirteen (13) months from the "Effective Date" of that certain Consent Agreement / Final Order among EPA and the Defendants attached as Exhibit D. The first ten (10) acres of conservation easements acquired under this MOU shall be deemed to be acquired under the MP and

shall be located within the Action Area identified in Exhibit A. All additional acres acquired shall be deemed to be acquired under the SEP and shall be located within the Lower Platte River Watershed.

The NLT may request that a portion of the Contributed Funds, not to exceed \$15,000.00, be provided to the NLT immediately to offset its preliminary "start-up" costs under this Agreement. Upon receiving such request, the Defendants shall transfer the requested amount to the NLT; *provided* that the requested amount shall be used by the NLT solely in furtherance of the acquisition of the conservation easements (e.g., for legal, appraisal, title insurance, stewardship endowment, and related costs). Any amount advanced to the NLT under this paragraph at the expiration of this MOU shall be placed into a stewardship endowment for the conservation easements acquired under this Agreement. The NLT shall, within 14 business days, provide an accounting of its expenditures of funds provided by Defendants under this paragraph upon request by the Defendants.

IV. ACKNOWLEDGEMENT.

All promotional materials (i.e., signage, brochures, articles, etc...) generated by the NLT or the NRD regarding conservation easements acquired with Contributed Funds shall contain the following statement acknowledging the source of the Contributed Funds and technical assistance: "These lands are being conserved thanks, in part, to funding and technical assistance made available in a partnership with the U.S. Fish and Wildlife Service, Nebraska Game & Parks Commission, the Papio-Missouri Natural Resources District, the Nebraska Land Trust, the Nebraska Department of Roads and Hawkins Construction Company. This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

V. GENERAL PROVISIONS.

Limitations on Authorities: Nothing in this Memorandum should be construed as affecting the authorities of any party, or as binding them beyond their respective authorities, or to require any party to expend funds in excess of available appropriations.

Modification: Any party may propose changes during the term of this Memorandum. Such changes may be made upon written consent of all parties and EPA.

No Restriction on Similar Agreement: This instrument in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations or individuals. It is the express intent of the Parties that the Contributed Funds be leveraged to the maximum extent practicable by supplemental funding from any legally available source. Nothing herein is intended to preclude the NRD or any other entity, including the NLT, from paying a portion of the purchase price of any conservation easement not identified in the purchase contract as Contributed Funds.

No Admission: Neither this instrument, nor performance of any act contemplated under it, shall constitute an admission of guilt or liability in any context, administrative, civil or criminal, for the Clean Water Act violations alleged to have occurred or the consequences of those alleged violations.

Execution in Counterparts: This instrument may be executed in counterparts.

VI. CONTACTS

Notifications required hereunder may be sent by first class mail, postage pre-paid, or by properly addressed electronic mail to the following principal contacts:

Nebraska Department of Roads

Jennifer A. Huxoll
Attorney General's Office
Roads Section
1500 Highway 2
P.O. Box 94759
Lincoln, NE 68509-4759
(402) 479-4611
(402) 479-4375 (fax)
Jennifer.Huxoll@dor.state.ne.us

Nebraska Land Trust

David Sands
Executive Director
233 South 13th Street, Suite 1712
Lincoln, NE 68508
(402) 438-5263
dsands@nelandtrust.org

Hawkins Construction Company

Jim Gregory
Project Manager
P.O. Box 9008, Station C
Omaha, NE 68109
(402) 342-1607
(402) 342-3221 (fax)
jgregory@hawkins1.com

Papio-Missouri NRD

John Winkler
General Manager
8901 S. 154th Street
Omaha, NE 68138-3621
(402) 444-6222
jwinkler@papionrd.org

VII. APPROVALS.

NEBRASKA DEPARTMENT OF ROADS

By: _____

Its: _____

NEBRASKA LAND TRUST

By: _____

Its: _____

HAWKINS CONSTRUCTION
COMPANY

By: _____

Its: _____

PAPIO-MISSOURI NRD

By: _____

Its: _____

ATTACHMENT 2

ACCESS

The easements shall provide access to inspect the Protected Property for the U. S. Environmental Protection Agency (EPA) and the U.S. Corps of Engineers (Corps), any successor agencies and departments of the EPA and the Corps, and their authorized representatives.

RESTRICTIONS ON PROTECTED PROPERTY

The easements shall include the following restrictions of use on the Protected Property:

1. No removal or destruction of native plant and animal species except for hunting and fishing subject to landowner permission and state law and control of weeds and pests consistent with normal conservation practices.
2. No development of the Protected Property for industrial, residential, or commercial purposes, including but not limited to, any buildings, billboards, telecommunications towers, motocross tracks, golf courses, wind turbines, power lines, mobile homes, feedlots or other commercial livestock feeding facilities.
3. No mining, oil, or gas development, including removal of sand and gravel.
4. No dumping of trash and refuse on the property, including, but not limited to, household garbage, chemical containers, liquid waste, appliances, scrap metal, concrete, construction waste and furniture.
5. No transport of water off the Protected Property.
6. No construction of new roads, no grading and permanent changes to topography and landscape of riverbed.
7. No lead shot to be used on the Protected Property.
8. No grazing or keeping of cattle, sheep, horses or other livestock on the Protected Property.
9. No expansion of production agriculture on the Protected Property except small food plots for wildlife purposes.

10. Another organization or agency shall be assigned a Contingent Right to enforce the easement, in the event that the land trust fails to do so or ceases to do so.

11. No commercial logging or timber harvest unless a Forestry Management Plan is approved by the Nebraska Land Trust and the Respondents Nebraska Department of Roads and Hawkins Construction Company.



MEMO

TO: John Winkler, P-MRNRD General Manager / P-MRNRD Board of Directors
FROM: Rodney L. Verhoeff, Coordinator – LPRCA
DATE: June 5th, 2007

RE: *Conservation Easement History along the Lower Platte River Corridor – Schramm Bluffs Region*

The Lower Platte River Corridor is an exceptional area teeming with diverse habitat, a variety of fish & wildlife species (including several T&E species), beautiful views, open spaces/rural lands/recreational areas, and plentiful, clean water. **Since inception in 1996, the LPRCA has recognized the need to utilize a variety of resources protection “tools” to ensure the sustainability of these resources and preserve the natural characteristics of this landscape.** In a state where 95% or more of the land is privately owned, options that are voluntary and incentive-based are necessary.

Conservation easements constitute one of these voluntary options and they keep the ownership of property in the hands of the landowner. Rather than giving up all property rights as is the case with fee title or condemnation, the landowner willingly gives up certain development rights, but keeps title to the property. The conservation easement contract is tailored to the wishes of the landowner and generally provides cash payments for the rights or tax benefits in the case of a donated easement. In this manner, special lands are protected in perpetuity, and the landowner keeps ownership of the property. **The benefits are numerous: The resources are protected; the landowner has peace of mind knowing that his/her property will continue to be protected for generations to come; and there is an economic incentive to encourage participation by landowners who may have a considerable amount of wealth tied up into the land itself.**

The LPRCA has embraced conservation easements as effective tools for managing and protecting the Lower Platte River Corridor. Initially, we began to develop our own easement program, but quickly realized that we did not have the expertise, capacity, or the funding to carryout an effective program. We have chosen to work through the NRDs and state agencies to take advantage of their existing programs. Most recently, the Nebraska Land Trust (NLT) formed as the only Nebraska-wide land trust with a specific focus on the Niobrara River and the Lower Platte River. **The LPRCA and the 3 NRDs on the Alliance were asked to join the NLT board, which each did.** The NLT continues to grow and we just finished a great strategic planning session for the NLT to address the growing interest in conservation easements in the Lower Platte River Corridor among other areas.

The Schramm Bluffs area in SW Sarpy County (near I-80) was identified early in the history of the LPRCA as a very important and unique landscape with it limestone/shale/sandstone bluffs, tributaries, forested areas, and general rural character. In fact, the LPRCA held a Bluffs Region charrette in 1998 to specifically focus on land use planning for this area. The threats that were emerging at that time are even more real today – conversion of a natural and rural landscape into residential, commercial, and industrial developments. Multiple developments are planned for the area and several have already received the green light from Sarpy County to commence. The possibility of an interchange at the Pflug Road overpass has brought great attention to this area and to the realization that development could happen sooner than later. **Land use decisions today, will shape the landscape tomorrow for better or worse. Economic development and resources protection can both happen at the same time, but it will take careful planning and assessment, cooperation on all levels, and proper implementation of sustainable development principles.** The LPRCA is undertaking the Environmental Suitability Assessment (formerly named the Environmental Carrying Capacity Study) and the Cumulative Impact Study (CIS) to assist local jurisdictions with this process. However, there is considerable activity happening now that may already be in place before these studies/assessments are

completed. Even if these studies were completed before any further development happened, there is still a need to have effective land and resource protection tools available such as conservation easements.

Conservation easements can be expensive to purchase and oversee/enforce. Land values today can run from \$3,000 to nearly \$45,000 per acre depending upon development potential. Easements can be donated and, in this case, would not require any payment from the granting entity. This option generally allows the grantee to qualify for tax deductions, but also requires the grantee to pay a stewardship fee of around 10-15% of the easement value. The other option is for the grantor to purchase an easement from a willing landowner. In this case, the grantor pays the difference between the highest value (usually development value) and the lowest value (usually agricultural value). This can be several hundred thousand or even millions of dollars. Few private foundations, trusts (including the Nebraska Environmental Trust), and granting entities will entirely fund an easement purchase if at all. This is one reason the NLT focuses on donated easements, since this option doesn't require a large funding source. However, this is often in contrast to the wishes of many landowners who want to put an easement on their property but would prefer a cash payment to do so. Again, many landowners have their wealth tied up into land and hope to liquidate this land once they reach retirement age.

In summary, the Schramm Bluffs Region of the Lower Platte River Corridor (in SW Sarpy County) is a very unique and special place worthy of protection. With its bluffs, forested lands, multiple tributaries, scenic vistas, and rural character, it represents one of the remaining "gems" in the corridor. Several experts from outside Nebraska have visited and assessed the bluffs region among other areas in Nebraska. At least two were economists and the others were land use planners. All have independently proclaimed the value of protecting the natural areas not only because of their inherent ecological value, but because of the economic value they offer. One concept repeatedly came up – sustainability of the natural resources.

Development pressures continue to mount in the Schramm Bluffs area (and other areas of Sarpy County) and the proposed construction of a new interchange at Pflug Road may hasten this development. Several new developments have already been greenlighted by Sarpy County for this area. Although local jurisdictions have admirably begun to incorporate conservation development concepts into their land use plans, this idea is a new one, and taking the concept from paper to the landscape has been a learning process. Concerned with how these developments could change the landscape, several residents of the bluffs region have formed a preservation group – the Schramm Association for a Viable Environment (SAVE) – to protect the rural character of the area and preserve their agricultural heritage. Land use and development in the Schramm Bluffs is a very contentious issue and has been for some time. The 1998 LPRCA planning charrette, which focused on the bluffs region, pulled all stakeholders together to develop a land use concept for the area. Unfortunately, this effort was misperceived by some stakeholders as an attempt to create a regional zoning authority that would strip land use authority away from the local jurisdictions. Quite the opposite, the intention was to develop a common vision and empower local jurisdictions and other stakeholders to follow through with implementation. This example showcases the sensitivity of development issues in the area.

There is room for both economic development and resources protection, but it will require considerable planning and cooperation to ensure the appropriate type of development goes in at the appropriate location(s) and at the right scale. Those dwindling environmentally sensitive/important areas deserve our attention now (proactive) rather than after the fact (reactionary). The cost of a little planning and cooperation today is much less than trying to restore later. Conservation easements offer one of the few voluntary options to landowners interested in protecting their lands. It truly is a win-win situation – the land is protected in perpetuity, the landowner has peace of mind knowing that the land is preserved according to their wishes, and there is an economic incentive (either tax break or cash payment) to encourage landowners to voluntarily participate. Easements can be a costly venture albeit one of the most effective. Funding sources are very limited and any opportunity to work with landowners to protect the few remaining special areas should be viewed as a rare opportunity – an opportunity we need to seize and replicate throughout the landscape. Cumulatively, we can protect the unique Lower Platte River Corridor one piece at a time and conservation easements provide one vehicle to do so.