

11-08-07
DRAFT

INTERLOCAL COOPERATIVE AGREEMENT
LOWER PLATTE BASIN COALITION

This Agreement (hereinafter "this Agreement") is entered into and between:

Central Platte Natural Resources District (CPNRD),
Lower Elkhorn Natural Resources District (LENRD),
Lower Loup Natural Resources District (LLNRD),
Lower Platte North Natural Resources District (LPNNRD),
Lower Platte South Natural Resources District (LPSNRD),
Papio-Missouri River Natural Resources District (P-MRNRD),
Upper Elkhorn Natural Resources District (UENRD),
Upper Loup Natural Resources District (ULNRD),

Loup River Public Power District (LPPD),
North Loup Public Power and Irrigation District (NLPP&ID),
Twin Loup Reclamation District (TLRD),

City of Papillion,

all of which are political subdivisions of and are situated in the State of Nebraska and are collectively referred to as "Parties" and individually as "Party".

Whereas the Nebraska Game and Parks Commission (G&P) has issued a "Draft" Biological Opinion stating that further degradation in magnitude and structure of the hydrograph of the Lower Platte River and that the continued issuance of surface water appropriations by the Nebraska Department of Natural Resources (DNR) for an area including the lower Platte River Basin, the Loup River Basin, Elkhorn River Basin and Salt Creek Basin will jeopardize the continued existence of the pallid sturgeon, interior least tern and piping plover in Nebraska. Whereas the G&P has asked the DNR to declare this river section fully appropriated and halt further development. DNR has given notice that when the final Biological Opinion is received they will begin the process to decide if the G&P request should be put into place.

Whereas the Parties desire to form a coalition to protect the interests of available surface water allocations in the Loup, Elkhorn and Lower Platte River watersheds for future development, while providing adequate and reasonable in-stream flows for the pallid sturgeon, interior least tern, piping plover and their habitat.

Therefore, in consideration of the mutual covenants expressed, the Parties agree as follows:

1. AUTHORITY:

This Agreement is made and entered into by the Parties pursuant to the authority conferred upon each under the Interlocal Cooperation Act; Neb. Rev. Stat. §13-801 through §13-827.

2. COALITION:

The Parties hereby create the Lower Platte Basin Coalition (hereinafter referred to as "COALITION"). The COALITION shall be governed by the terms of this Agreement and pursue the purposes described in Section 3. The COALITION shall be an entity separate and distinct from the respective Parties hereto, and no Party is the agent, employee or representative of the COALITION or any other Party. The Parties hereto agree that contracts entered into, obligations undertaken, and liabilities incurred by the COALITION shall be the separate contracts, obligations and liabilities of the COALITION and not the contracts, obligations or liabilities of the respective Parties hereto.

3. PURPOSE:

The purpose of this Agreement is for the Parties to form a COALITION to consider the environmental, economic and legal aspects of the pending actions by G&P and DNR and collectively:

- a) Study and research both the technical and legal foundation for the G&P request.
- b) Make formal comments on the technical soundness of the G&P data.
- c) Protect future Municipal and other Partner water development needs.
- d) Coordinate positive political action as may be needed.

This Agreement shall provide the organizational and administrative structure and enumeration of the powers, privileges and authority of the COALITION and the financial cooperative effort necessary to carry out its purpose. The powers, privileges and authorities of the COALITION shall not exceed those powers, privileges or authorities exercised or capable of being exercised by each of the Parties to this Agreement, nor shall they be used in a manner that is in violation of any of the Parties' public purposes.

4. BOARD OF DIRECTORS:

The affairs, actions and conduct of the business of the COALITION shall be managed by a Board of Directors. Each member of the Board of Directors shall be entitled to one vote and the majority of the votes cast on any issue shall determine the issue, except where a higher percentage shall be specifically required by this Agreement or by-laws adopted by the Board. The Board of Directors shall be composed of members, one each representing each of the Parties to this Agreement. Each director and any designated alternate shall be duly and properly appointed by the respective governing bodies of each of the separate and individual Parties to this Agreement, but it shall not be required that any director of the COALITION so appointed be a publicly elected member of the governing body of any Party to this Agreement. Each Board member shall serve at the pleasure of his or her respective organization. Any vacancy, which occurs in the Board, shall be filled within 60 days through the appointment of a replacement by the represented Party. Members of the Board of Directors shall select from their membership a Chair, Vice Chair, and Secretary/Treasurer. The Board of Directors shall exercise authority over the COALITION in accordance with applicable laws

and shall set the policy, and shall delegate executive, supervisory and organizational authority to its officers and committees. Meetings of the Board of Directors shall be conducted at least annually and at such other frequent times as may be required by the business of the COALITION. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business. A lesser number in attendance at any meeting shall have power to adjourn.

5. CHAIR, VICE CHAIR, AND SECRETARY/TREASURER:

The Chair shall preside at all the meetings of the Board of Directors; shall decide all questions of order; with advice of the Board, appoint the members to all committees except the executive committee; be an ex-officio member of all committees; and have such general powers and duties of supervision and management as shall be necessary and germane or required for the execution and prosecution of the affairs of the COALITION.

The Vice Chair shall serve in the absence of the Chair and in the Chair's absence shall have all of the powers and duties of the Chair and shall have such other powers and duties as the Chair or Board of Directors shall from time to time delegate to the Vice Chair.

The Secretary/Treasurer to the Board shall keep minutes of all meetings conducted by the COALITION, and shall be the keeper of the records of the COALITION. The Secretary/Treasurer shall prepare and submit in writing a monthly report of the state of the finances of the COALITION and direct the payment of COALITION money only upon authorization of the COALITION or by the Chair of the Board or in the absence of the Chair by the Vice Chair. Payment of all accounts after authorization shall be made on check signed by the Secretary/Treasurer or the Executive Director of the Nebraska Association of Resources Districts. The Secretary/Treasurer shall serve without bond.

In addition to the foregoing, the officers shall have such other and additional duties, powers, privileges and authority as the Board of Directors may, in by-laws or otherwise, determine appropriate or necessary and by Board action delegate or direct.

6. COMMITTEES:

The Board of Directors or the Chair shall have the power to establish such committees as may be necessary, appropriate or beneficial to the conduct of the affairs of the COALITION. Such committees shall have such powers, duties and authorities as shall be delegated to it by the Board of Directors, which powers, duties, and authorities shall not be inconsistent with or exceed those powers and duties granted to the COALITION under this Agreement. The Board of Directors and the Chair are authorized to designate from its members an Executive Committee which shall consist of the COALITION'S Chair, Vice Chair, Secretary/Treasurer and two at large Directors. The five-member Executive Committee will have at least one representative from each of the three partner

groups, NRDs, PP&ID and Municipalities. The Executive Committee shall have and may exercise only such powers and authorities as are delegated to it by the Board of Directors. The designation of any committees and the delegation thereto of authority shall not operate to relieve the Board of Directors or any member thereof of any responsibility imposed by this Agreement nor shall the Board of Directors delegate to any committee the authority to set policy or to make expenditures on behalf of the COALITION. Any committee established by the Chair shall be approved by the Board at its next meeting.

7. POWERS:

The COALITION shall have all the powers, privileges and authority exercised or capable of being exercised by each of the individual and separate Parties to this Agreement to achieve the purposes of the COALITION as set forth in this Agreement. Such powers, privileges and authority shall include but not be limited to, the power, privilege and authority to:

(a) Receive and accept donations, gifts, grants, bequests, appropriations or other contributions or assistance in monies, services, materials or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any persons or organizations, and to use or expend all such contributions in carrying on its operations.

(b) Establish advisory groups by appointing individuals from among the Parties to this Agreement and pay necessary and proper expenses of such groups as the Board shall determine, and the power to dissolve such groups.

(c) Employ or contract with such persons or entities as are necessary to carry out the purposes of the COALITION and this Agreement and to pay the necessary and proper expenses of said persons or entities.

(d) Adopt and promulgate rules and regulations to carry out the purposes of the COALITION and this Agreement.

(e) Establish such committees as are necessary to carry out the purposes of the COALITION and this Agreement and to pay the necessary and proper expenses of such committee.

(f) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(g) Make, amend and repeal by-laws, rules and regulations to carry out and effectuate its powers and purposes, which by-laws, rules and regulations shall not be inconsistent with the Interlocal Cooperation Act or this Agreement.

The foregoing clauses shall be construed both as objects and powers but no recitation, expression or declaration as to such specific powers herein enumerated

shall be deemed to be exclusive and it is hereby expressly declared that all other lawful power conferred upon each of the individual and separate Parties to this Agreement not inconsistent with the authorization given under the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 through §13-827 are hereby included. As used in this Agreement the term “persons” shall have the same meaning as used in Neb. Rev. Stat. §49-801(16). Provided further nothing in this Agreement shall operate to relieve any Party hereto of any obligation or responsibility imposed upon it by law nor shall this Agreement or its operation preclude any Party hereto from conducting or pursuing independent action in regard to each Party's separate and independent obligations or responsibilities.

8. DURATION:

The COALITION shall commence business from and after the date on which two Parties to this Agreement have executed this Agreement and the COALITION and this Agreement shall continue in existence until the completion of all proceedings including appeals and remands from appeals affecting or concerning the stated purposes of the COALITION. The business and purpose of the COALITION may be successfully completed as determined by the Board of Directors in keeping with Section 11 below.

9. FINANCES AND BUDGET:

Annually or at such other frequent intervals as the Board of Directors of the COALITION may determine, each of the Parties hereto shall contribute such funds as are necessary to conduct the operations and to pursue the purposes of the COALITION and the Purposes of this Agreement as provided in this Section 3.

Funds will be collected from the Parties for the initial operation of the COALITION as follows:

CPNRD	\$4,000
LENRD	\$4,000
LLNRD	\$4,000
LPNNRD	\$4,000
LPSNRD	\$4,000
PMRNRD	\$4,000
UENRD	\$4,000
ULNRD	\$4,000
LRPPD	\$2,000
NLPP&ID	\$2,000
TLRD	\$2,000
Papillion	\$4,000

This provision may be modified if all proposed Parties are not signatories to this Agreement. Payment shall be made within 30 days of a Partner entering into the Agreement.

Funds will be held in a separate fund by the Nebraska Association of Resources Districts.

Annually, beginning no more than 30 days after the formation of the COALITION and commencement of business, and continuing each year thereafter during the existence of this COALITION, the Board of Directors shall establish and adopt a budget for the prosecution and completion of the work undertaken by the COALITION.

Concurrent with the establishment of the budget each year, the Board of Directors of the COALITION shall consult with each remaining Party to this Agreement regarding its ability to contribute toward such funds as are necessary to conduct the operations and to pursue the purposes of the COALITION. Upon completion of the budget, the Board of Directors of the COALITION shall determine the assessment to be submitted to each remaining Party to this Agreement and shall thereafter assess each of such Parties for said amount. Upon receipt of the assessment, each remaining Party shall have 60 days to pay the assessment or submit a written notice of withdrawal. In the event of such withdrawal, the withdrawing Party shall not be liable for the assessment imposed during the 60 days preceding the withdrawal. In addition, the Board of Directors shall be entitled to and shall have the power to solicit and obtain such contributions and other funds and monies as may be available to the COALITION from all persons, associations, and entities of any kind whatsoever including persons not a Party to this Agreement.

10. WITHDRAWAL:

Any Party to this Agreement may withdraw from this Agreement and from representation on the COALITION upon written notification to the Chair of the COALITION. Such withdrawal shall be effective upon receipt of the written notification. Any Party withdrawing from the Agreement and from representation shall be entitled to immediately secure its own representation, and shall waive any conflict or perceived conflict it may have with any of the agents or contractees of the COALITION, so that said agents or contractees may continue in their/its representation or contract with the COALITION. Following withdrawal, the withdrawn member shall no longer be a Party to this Agreement, and the withdrawn member shall not be bound by this Agreement, except that (a) the withdrawn member shall not be entitled to any refund of any contribution or assessment previously paid to the efforts of the COALITION, and (b) the withdrawn member shall remain liable for its share of any costs properly approved and incurred (costs for labor and services are not considered incurred until the work has been performed for the COALITION) by the COALITION through the effective date and time of withdrawal to the extent such costs exceed all sums available to the COALITION through the date of withdrawal. Such share shall be determined in accordance with the allocation for the assessment of Parties

outlined in 9 above as of the date of the withdrawal notice. The Parties agree that a withdrawn Party shall not be liable or responsible for any costs, obligations or liabilities incurred by the COALITION after such Party's withdrawal. In the event of such withdrawal, the COALITION shall make such adjustments as are necessary to the composition of its Board of Directors, and its future budgets and finances as are necessary to accommodate and continue the operation of the COALITION in the absence of such withdrawing member.

11. PARTIAL AND COMPLETE TERMINATION:

This Agreement and the COALITION created hereby shall be terminated upon the earlier of the completion of its purposes and objectives described herein or upon the vote of two-thirds of the then constituted Board of Directors for the complete or partial termination of the COALITION and this Agreement. At such time as two-thirds of the Board of Directors shall vote to terminate the COALITION and the Agreement, all outstanding debts and obligations of the COALITION shall be paid, all property acquired by the COALITION shall be disposed of by distribution of the same to the remaining members as represented by the Board of Directors and all unused funds and appropriations shall be returned to the then-remaining members as represented by the Board of Directors in such proportion as represented by the pro rata share paid by each member based upon the last contributions made by remaining members during the last assessment period preceding the date of termination.

12. AMENDMENT AND MODIFICATION:

For all matters other than membership, this Agreement may be amended or modified upon the approval of written modifications by all then remaining Parties hereto in writing, signed by and duly adopted and approved by the governing bodies of each of the remaining Parties hereto.

13. CHANGE IN MEMBERSHIP:

This Agreement may be amended or modified to increase or decrease its membership upon approval by 2/3rds vote of the members of the Board of Directors of the COALITION. Any additional new members shall be required to have the written approval of its governing body and shall have admission to membership in the COALITION and as a Party hereto approved by a duly adopted resolution of its governing body.

14. APPROVAL:

This Agreement shall be effective and the COALITION established hereby shall come into existence as soon as the governing bodies of at least two of the respective proposed Parties hereto shall have adopted resolutions approving and authorizing the execution of this Agreement and the establishment of the COALITION described herein at a duly called public meeting.

15. ASSOCIATE MEMBERS:

The COALITION is authorized to admit ASSOCIATE MEMBERS upon 2/3 vote of the Parties. ASSOCIATE MEMBERS are allowed to provide support and assistance for the purpose of pursuing the objects and purposes of the COALITION. ASSOCIATE MEMBERS may include municipalities, utility districts, public power districts, for-profit and non-profit organizations, and all other persons as defined by Neb. Rev. Stat. §49-801(16). ASSOCIATE MEMBERS shall not have the ability to participate in the management or operation of the COALITION. ASSOCIATE MEMBERS may be allowed to appoint a representative to the Board of Directors, which representative shall be a non-voting ex-officio member of the Board of Directors, but which representative shall be entitled to attend all meetings of the Board of Directors and to be appointed to such committees and attend such committee meetings as the Board of Directors shall determine. Membership dues for ASSOCIATE MEMBERS shall be determined by the Board of Directors.

16. INTEGRATION:

This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by any Party other than those expressly set forth herein. All prior and contemporaneous negotiations, discussions, memos and other writing are merged and incorporated herein, it being the intention of the Parties that this be a final and full expression of their agreement. No agent, employee or other representative of any Party hereto is empowered to alter any of the terms herein unless such alteration is done in writing and signed by all Parties hereto.

17. ASSIGNMENT:

No Party hereto may assign its rights under this Agreement without the express written consent of all other Parties as represented by the remaining Board of Directors at the time of the request for approval of the assignment.

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO, EACH ACKNOWLEDGING THE RECEIPT OF GOOD, ADEQUATE, AND VALUABLE CONSIDERATION, AS FOLLOWS:

This Agreement may be executed in any number or counterparts, each of which shall be an original, but all such counterparts shall constitute one and the same instrument. This Agreement is hereby approved and executed by the following Parties on the dates shown below.

Central Platte Natural Resources District	Date
Voting Director _____	
Alternate Director _____	

Lower Elkhorn Natural Resources District Date
Voting Director _____
Alternate Director _____

Lower Loup Natural Resources District Date
Voting Director _____
Alternate Director _____

Lower Platte North Natural Resources District Date
Voting Director _____
Alternate Director _____

Lower Platte South Natural Resources District Date
Voting Director _____
Alternate Director _____

Papio-Missouri River Natural Resources District Date
Voting Director _____
Alternate Director _____

Upper Elkhorn Natural Resources District Date
Voting Director _____
Alternate Director _____

Upper Loup Natural Resources District Date
Voting Director _____
Alternate Director _____

Loup River Public Power District Date
Voting Director _____
Alternate Director _____

Twin Loup Reclamation District Date
Voting Director _____
Alternate Director _____

North Loup Public Power & Irrigation District

Date

Voting Director _____

Alternate Director _____

City of Papillion

Date

Voting Director _____

Alternate Director _____