

Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: Lower Platte River Coalition

Date: November 1, 2007

From: Gerry Bowen

LB 962 (2005 Legislature) requires the Nebraska Department of Natural Resources (NDNR) to evaluate the water appropriations in the various river basins in the state each year. NDNR follows a procedure that results in a designation of “not fully appropriated”, “fully appropriated”, or “over appropriated.” In fully or over appropriated basins, NRD’s are required to develop an integrated management plan for both ground and surface water usage.

For 2007, NDNR has issued a preliminary determination that the Lower Platte River is not fully appropriated (see attached notice). The area covered in this determination includes the Elkhorn and Loup River basins in the state (see map). The Nebraska Game and Parks Commission sent a letter challenging that determination since, in their opinion, allowing further water appropriations on the Lower Platte River will jeopardize the existence of the least tern, piping plover, and the pallid sturgeon (see attached letter). In further support of their position, NGPC has issued a draft Biological Opinion (BO) on the Lower Platte River that concentrates on the three species listed above (see attached summary) and the required flows in the river for these species.

As you may recall, the District joined in the Pallid Sturgeon Task Force which conducted a series of studies through the University of Nebraska-Lincoln (UN-L), on the lower Platte River to determine the habitat needs of the pallid sturgeon. The final report was a prime reference that NGPC used in developing the BO.

The NGPC, however, conducted additional studies through UN-L outside the Task Force purview concerning channel morphology and connectedness which resulted in their determination of flows needed for endangered species. The NGPC wanted to include this data and conclusions in the Task Force Final Report. The other Task Force members objected to this inclusion based on the fact that the Task Force scope did not include this additional work, and because they and other peer reviewers challenged the scientific basis that NGPC used in making the flow recommendations.

The BO includes this additional information and makes flow recommendations that they want NDNR to consider in making the determination of status of appropriations on the lower Platte River.

Further, if NDNR changes its preliminary determination based on NGPC’s position, a de facto instream flow right would be granted on the lower Platte River for endangered species. This would circumvent the legal process to obtain such an instream flow.

The District has been asked to join a coalition of other NRDs, cities, and power and irrigation districts (and potentially other partners) to:

- a. Study and research both the technical and legal foundation for the NGPC request,
- b. Make formal comments on the technical soundness of the NGPC data,
- c. Legally challenge, if necessary, any decisions or actions by NDNR, and
- d. Coordinate positive political action as may be needed.

The attached interlocal agreement is the proposed document to accomplish these purposes. The District's financial obligation under this agreement would be \$4,000.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Lower Platte River Coalition Interlocal Agreement, subject to minor changes deemed necessary by the General Manager and accepted as to form by District Legal Counsel.**

10-31-07

NOTICE OF PRELIMINARY DETERMINATION THAT THE MISSOURI TRIBUTARY BASINS, BLUE RIVER BASINS, LOWER PLATTE RIVER BASIN AND A PORTION OF THE LOWER NIOBRARA RIVER BASIN ARE NOT FULLY APPROPRIATED

NOTICE TO THE PUBLIC

Pursuant to the Nebraska Ground Water Management and Protection Act ("Act"), the Nebraska Department of Natural Resources ("Department") hereby provides notice that the Department, in accordance with the Act:

1. Has made a preliminary determination that the lower portion of the Lower Niobrara River Basin, and the entirety of the Lower Platte River Basin, the Missouri Tributary Basins, and the Blue River Basins are not fully appropriated. The portion of the Niobrara Basin that is not fully appropriated is that portion between the Spencer Hydropower Dam and the Missouri River.
2. A map showing the geographic areas preliminarily considered to be not fully appropriated is available on the Department's website, at <http://www.dnr.ne.gov>. Additional copies may be requested by calling the Department at (402) 471-2363, or by mailing a request to the Department of Natural Resources, P.O. Box 94676, Lincoln, NE 68509-4676.
3. One or more public hearings on the preliminary determination will be held on or before January 14, 2008. The Department will make a final decision on whether or not these basins are or are not fully appropriated on or before February 14, 2008.

NOTICE OF PRELIMINARY DETERMINATION THAT LOWER NIOBRARA RIVER BASIN IS FULLY APPROPRIATED

NOTICE TO THE PUBLIC

Pursuant to the Nebraska Ground Water Management and Protection Act ("Act"), the Nebraska Department of Natural Resources ("Department") hereby provides notice that the Department, in accordance with the Act:

1. Has made a preliminary determination that a portion of the Niobrara River Basin as depicted on the map available on the Department's website (<http://www.dnr.ne.gov>) is fully appropriated. The fully appropriated portion of the Niobrara Basin includes the surface watershed of the Niobrara River and its tributaries from the Mirage Flats Diversion Dam to the Spencer Hydropower Dam and the ground water aquifers considered to be hydrologically connected to that portion of the Niobrara River and its tributaries;
2. Has placed stays on new uses of surface water in this portion of the Niobrara River Basin; and
3. Has notified the affected Natural Resources Districts (NRDs) that stays, as described below, on new uses of ground water will take effect in the area considered to be hydrologically connected.

A. On receipt of notice by the affected NRDs, there shall be an immediate stay on the issuance of water well construction permits in the area considered to be hydrologically connected to this portion of the Niobrara River Basin.

B. On October 27, 2007, the following stays shall also be imposed in the area considered to be hydrologically connected to this portion of the Niobrara River Basin:

1. On the construction of new water wells if construction has not commenced prior to October 17, 2007, unless a construction permit for the water well was issued by the NRD prior to October 17, 2007, and the permit contains conditions which meet the objectives of Neb. Rev. Stat. Section 46-715(3), and

2. On the use of an existing water well to increase the number of acres historically irrigated.

The Department has placed an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in the surface water portion of the Niobrara Basin preliminarily determined to be fully appropriated and on October 27, 2007, there will also be a stay on any increase of the number of acres historically irrigated with an existing surface water right.

A map showing the geographic areas and the corresponding legal description of the ground water portion of the Niobrara River Basin preliminarily considered to be fully appropriated are available on the Department's website, at <http://www.dnr.ne.gov>. Additional copies may be requested by calling the Department at (402) 471-2363, or by mailing a request to the Department of Natural Resources, P.O. Box 94676, Lincoln, NE 68509-4676.

The stays shall remain in effect at least until the Department has made a final determination about whether this portion of the Niobrara River Basin is fully appropriated. One or more public hearings on the preliminary determination will be held on or before January 14, 2008. The Department will make a final decision on whether or not this portion of the Niobrara River Basin is fully appropriated on or before February 14, 2008. A decision whether or not to continue the surface water stays will also be made at that time. The NRDs will then have 90 days to decide whether or not to hold public hearings on the question of whether the stays on ground water use should be terminated. The NRD must make a decision whether or not to terminate the stays in whole or part within 45 days of its final public hearing.

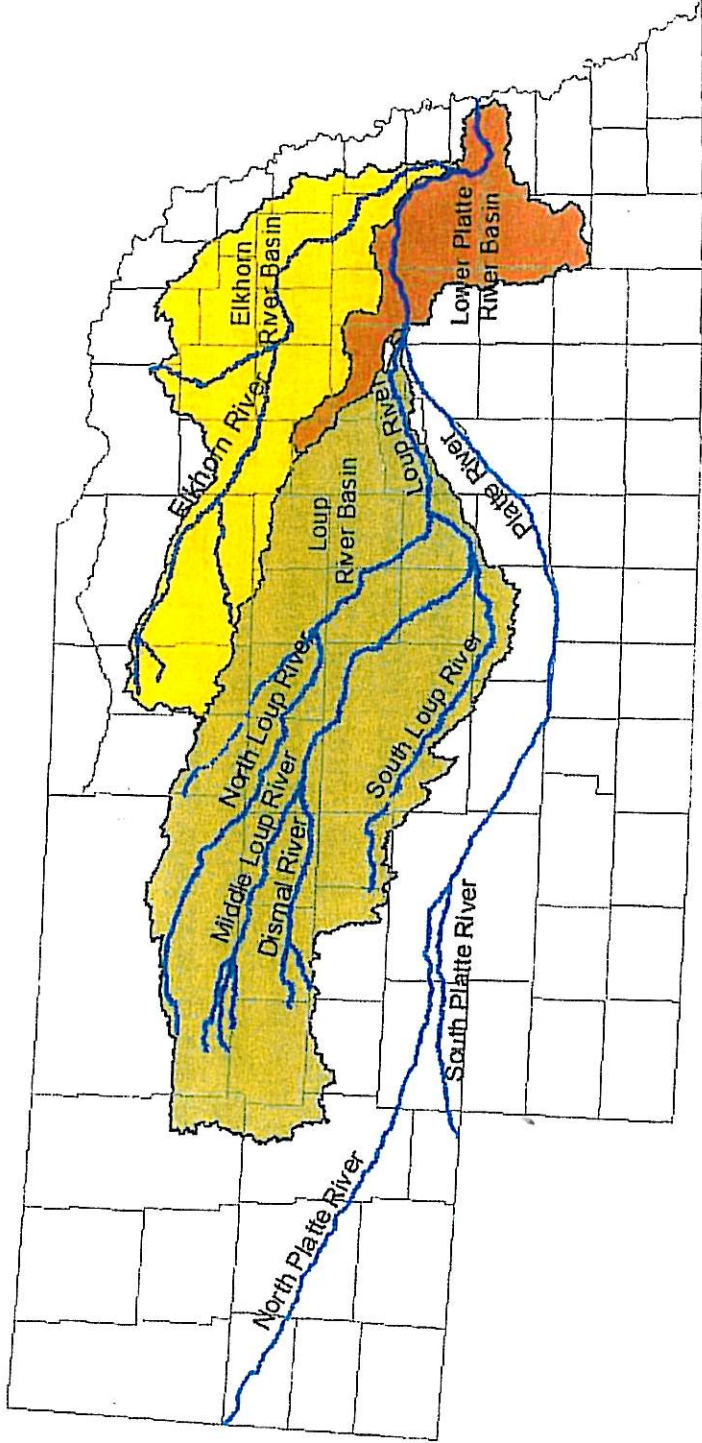


Figure 1: Action area of this Biological Opinion.



Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370
Phone: 402-471-0641 / Fax: 402-471-5528 / www.OutdoorNebraska.org

September 25, 2007

Ann Bleed
Department of Natural Resources
301 Centennial Mall South
Lincoln, NE 68509-4676

Re: Addendum to 2007 request for at-risk species information for DNR's annual evaluation of water supplies for fully appropriated and over appropriated basins (FAB report).

Dear Ms. Bleed,

Please make reference to the Department of Natural Resources (DNR) July 10th request and the August 3rd, 2007 letter from the Nebraska Game and Parks Commission (Commission) which provided information regarding threatened and endangered species and their requirements for areas of the state which are not considered fully appropriated or over appropriated. At that time, the Commission did not have specific flow recommendations for the pallid sturgeon, least tern and piping plover as pertains to the lower Platte River basin and tributaries. A biological opinion is being developed for these species as a result of consultation between the Department of Natural Resources and the Nebraska Game and Parks Commission regarding surface water appropriations. The conclusion of the biological opinion also addresses the request made by the Department of Natural Resources on July 10, 2007 referenced above. Therefore, this letter is an addendum to the Commission August 3, 2007 letter.

The pallid sturgeon (*Scaphirhynchus albus*) is a state and federally endangered fish. This species has a complex life cycle that requires habitat with certain depth, velocity and river connectivity. Least terns (*Sternula antillarum athalassos*) are state and federally endangered and piping plovers (*Charadrius melodus*) are state and federally threatened. These birds rely on sandbars for nesting which are created by the hydrograph of the lower Platte River. Recent studies from Dr. Ed Peters and Dr. Jim Parham that targeted the habitat needs of sturgeon species in the lower Platte River are now being finalized. Additional hydrological analysis for the lower Platte River has recently been completed by Dr. Parham, which includes an analysis of flows required for sandbar creation. This information is being incorporated in the biological opinion for the pallid sturgeon, least tern and piping plover for the lower Platte River.

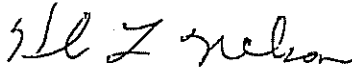
The lower Platte River is a section of the Platte River which begins at the Loup River confluence and extends downstream to the Missouri River confluence. The species mentioned above utilize the lower Platte River and require the semblance of the natural hydrograph that still remains in this stretch of the Platte River. The hydrograph is dependent on inputs from the Loup River,

Elkhorn River and Salt Creek basins, therefore the action area of the biological opinion includes the Loup, Elkhorn and Lower Platte watersheds.

The biological opinion concludes that there can be no additional degradation in magnitude and structure of the hydrograph and that further depletions within the action area will jeopardize the continued existence of pallid sturgeon, least terns and piping plovers. This biological opinion is being prepared as prescribed in Rule and Regulations of the Nebraska Game and Parks Commission governing the inter-agency consultation process, and under the authority of the Nongame and Endangered Species Conservation Act §37-807(3). Supporting details will follow in the biological opinion document.

If you have any questions or need additional information on the jurisdiction of the Commission under the authority listed above, please feel free to contact me.

Sincerely,



Kirk Nelson
Assistant Director
Nebraska Game and Parks Commission

CC Nebraska Game and Parks Commissioners
Rex Amack, NGPC
Kristal Stoner, NGPC



Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370
Phone: 402-471-0641/ Fax: 402-471-5528 / www.OutdoorNebraska.org

October 10, 2007

Jesse Bradley
Department of Natural Resources
301 Centennial Mall South, 4th Floor
PO Box 94676
Lincoln, NE 68509

Re: 2008 Fully Appropriated Basins Report

Dear Mr. Bradley,

Please make reference to your letter dated September 26th, 2007. This letter is in response to your request for a review of this report's potential impacts to threatened and endangered species in Nebraska. We have completed our review of the report under Neb. Rev. Stat. § 37-807 (3) of the Nongame and Endangered Species Conservation Act and we offer the following comments.

The Nebraska Game and Parks Commission (Commission) supports the determination that the Niobrara River Basin upstream of Spencer Hydropower is fully appropriated. However, the Commission sent a letter dated September 25, 2007 with updated information for the Fully Appropriated Basin Report regarding threatened and endangered species in the lower Platte River (See enclosed Commission letter) which stated that there can be no further degradation in magnitude and structure of the hydrograph of the lower Platte River and that further depletions within the action area will jeopardize the continued existence of pallid sturgeon, least terns and piping plovers.

Therefore, the Commission has determined that the draft 2008 Fully Appropriated Basins Report, which does *not* designate the Lower Platte River Basin as fully appropriated, jeopardizes the continued existence of pallid sturgeon, least terns and piping plovers in Nebraska.

All federally listed threatened and endangered species are also state listed. For assessment of potential impacts on federally listed, candidate or proposed threatened or endangered species, please contact John Cochmar, Nebraska Field Office, U.S. Fish and Wildlife Service, 203 W. Second St., Grand Island, NE 68801.

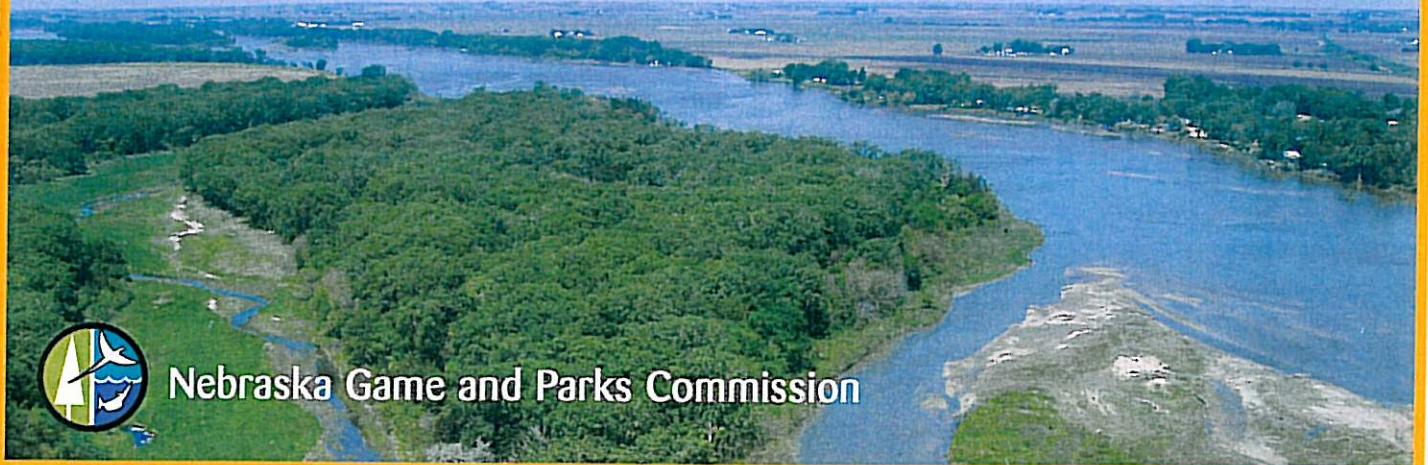
Thank you for the opportunity to comment. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Kristal J. Stoner
Environmental Analyst Supervisor
Nebraska Natural Heritage Program
Nebraska Game and Parks Commission
(402) 471-5444, Kristal.stoner@ngpc.ne.gov

CC: Kirk Nelson, NGPC
Ann Bleed, DNR
Pam Anderson, DNR
Nate Donovan, NGPC

Lower Platte River: Finding a Balance



Nebraska Game and Parks Commission

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Mission of the Nebraska Game and Parks Commission

To provide stewardship of the state's fish, wildlife, park, and outdoor recreation resources in the best long-term interests of the people and those resources.

Summary

Analysis of scientific data has revealed that further depletions of water from the lower Platte River would put habitat and, consequently, the existence of endangered and/or threatened species in jeopardy. An agency biological opinion, therefore, concludes that there can be no additional degradation in magnitude and structure of the hydrograph and that further depletions within the Action Area will jeopardize the continued existence of pallid sturgeon, interior least terns and piping plovers in Nebraska.

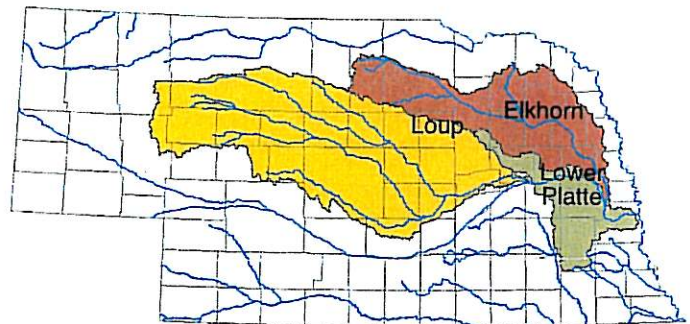
About the Biological Opinion

- **Authority** – This biological opinion was prepared under the authority of the Nebraska Nongame and Endangered Species Conservation Act State Statute 37-807(3) and in consultation with the Nebraska Department of Natural Resources over issuance of surface water appropriations.
- **Purpose** – This opinion provides a written report concluding whether issuing additional surface water appropriations, an action under the jurisdiction of the Nebraska Department of Natural Resources, likely will jeopardize the continued existence of endangered and/or threatened species in Nebraska.
- **Species** – Interior least tern and pallid sturgeon, state and federally endangered; piping plover, state and federally threatened. The pallid sturgeon uses the lower Platte River downstream of the Elkhorn River. The interior least tern and piping plover use the lower Platte River downstream of the Loup River.

What is the Lower Platte River?

The lower Platte River is a section of the Platte River that begins at the Loup River confluence near Columbus and extends downstream to its mouth at the Missouri River. The hydrograph is dependent on inputs of flow that include the Loup River, Elkhorn River, Salt Creek basins, and the central Platte River. The Platte River Recovery Program has addressed depletions to the central Platte River, therefore the Action Area of the biological opinion includes the Loup, Elkhorn and lower Platte River watersheds.

Action Area of Biological Opinion



What is a Hydrograph?

Rivers have variable seasonal flows and levels that form the hydrograph. The Platte River hydrograph historically had two “pulses” of higher flows that many species have adapted to over time. Human development adversely affects the “pulses” of the river. Nebraska’s central Platte River has been significantly affected and the lower Platte is beginning to show effects.

Interior least terns, piping plovers, pallid sturgeons and many other species depend on the lower Platte River and require the semblance of the natural hydrograph that still remains in this portion of the river to create sustainable habitats and migratory pathways.

Important Points to Recognize

- Water is a precious resource and the balance between users is challenging. Millions of dollars are spent restoring other Nebraska river systems. To prevent the same thing from happening to the lower Platte River, the remaining flows need to be protected. We can recognize this now and start working toward solutions.
- By protecting the remaining flows of water in the lower Platte, the Action Area will further sustain municipal and domestic water supplies.
- The decline in populations of endangered and threatened species tells us that the river ecology has been impacted.
- The presence of a healthy and dynamic lower Platte River is extremely important to the Interstate 80 Corridor Development effort.
- Even in its presently degraded state, the lower Platte River still exhibits many ecosystem characteristics important to the habitats of these riverine species.

Lower Platte River: An Invaluable Resource

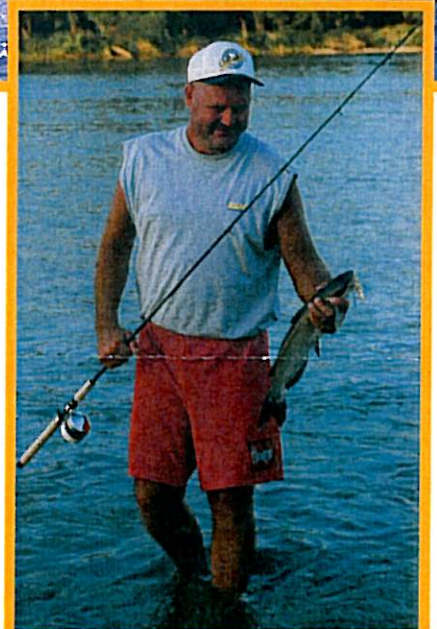
The lower Platte River provides important economic, social and natural resources for the citizens of Nebraska. Hundreds of thousands of Nebraskans rely on the river for a broad range of uses, including:

- **Public Water Supply** – Platte River water provides more than 50 percent of the state's drinking water supply.
- **Recreation** – Boating, fishing, camping, hunting, hiking, biking, swimming, paddling, picnicking and wildlife viewing are among the many activities enjoyed.
- **Fishing** – Since 1987, approximately 50 fish species have been documented. A study in 1993 revealed that anglers fishing the river were most affected by water quality, water quantity, and the presence of natural beauty.
- **Hunting** – The river offers tremendous hunting opportunities for deer, turkeys and waterfowl, among other game.
- **Home-site Development** – The natural beauty, variety of recreation and proximity to large population centers make the area attractive to home-site developments.

- **Mining** – In 2000, the estimated value for mineral production within Nebraska was more than \$161 million. Sand, gravel and limestone are some of the aggregates mined from the lower Platte floodplain area.
- **Tourism** – Visitors to Nebraska tourist attractions spent \$2.8 billion in 2002. Many of the state's top attractions, including state parks, recreation areas, an aquarium, and museums, are located in the area.
- **Fish and Wildlife Habitat** – The river and its accompanying wetlands woodlands and marshes, provide vital habitat for a variety of fish, mammals, birds, reptiles and aquatic invertebrates. It is an important part of a riverine ecosystem.
- **Agricultural Production** – Thousands of acres of farmland are irrigated with water used from the area. Grazing and cattle and swine production also are prominent throughout the area.



Many Nebraskans enjoy river recreation (above), including an angler admiring his channel catfish caught near Louisville (right).



Piping Plover



Interior Least Tern



Pallid Sturgeon

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),

Central Nebraska Public Power and Irrigation District (CNPP&ID),
Loup Public Power District (LPPD),
Nebraska Public Power District (NPPD),
North Loup Public Power and Irrigation District (NLPP&ID),
Twin Loup Reclamation District (TLRD),

Fremont Department of Utilities (FDU),
Lincoln Water System (LWS),
Metropolitan Utilities District (MUD),
Papillion Utilities District (PUD),

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 in-stream flow depletions to the Lower Platte River will jeopardize the continued existence of the pallid sturgeon, interior least tern and piping plover in Nebraska. G&P has identified the “Action Area” of this Opinion to include the Loup, Elkhorn and Lower Platte River watersheds.

Whereas the G&P has asked Nebraska Department of Natural Resources (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) If necessary, legally challenge any decisions or actions by DNR.
- e) 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 Resource 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 in as little as 120 days or ___ years as determined by the Board of Directors.

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
CNPP&ID	\$4,000
LPPD	\$2,000

NLPP&ID	\$2,000
NPPD	\$4,000
TLRD	\$2,000
FDU	\$4,000
LWS	\$4,000
MUD	\$4,000
PUD	\$4,000

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

Funds will be held in a separate fund by the Nebraska Association of Resource 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 objects 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. ADDITIONAL AND FURTHER CONTRACTS FOR SUPPORT AND MUTUAL ASSISTANCE:

The COALITION is authorized and empowered to seek and obtain contracts, Agreements and other arrangements whereby the COALITION shall receive support and assistance for the purpose of pursuing its objects and purposes from such other entities as COALITION from time to time shall determine necessary or appropriate including, but not limited to, municipalities, for-profit and non-profit organizations, and all other persons as defined by Neb. Rev. Stat. §49-801(16). Provided, however, such contract shall not exceed any authority or powers delegated to the COALITION by the Parties to this Agreement and such contract shall not give rise to nor create any ability of any such third Parties to participate in the management or operation of the COALITION. Provided further, that upon a majority vote of the then existing members of the Board of Directors of the COALITION, any person or entity providing support and mutual assistance may be allowed to appoint, for such period of time as the Board shall determine, 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.

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 _____	

Central Nebraska Public Power & Irrigation District Date

Voting Director _____

Alternate Director _____

Loup Public Power District

Date

Voting Director _____

Alternate Director _____

Twin Loup Reclamation District

Date

Voting Director _____

Alternate Director _____

Nebraska Public Power District

Date

Voting Director _____

Alternate Director _____

North Loup Public Power & Irrigation District

Date

Voting Director _____

Alternate Director _____

Fremont Department of Utilities

Date

Voting Director _____

Alternate Director _____

Lincoln Water System

Date

Voting Director _____

Alternate Director _____

Metropolitan Utilities District

Date

Voting Director _____

Alternate Director _____

Papillion Utility District

Date

Voting Director _____

Alternate Director _____

Platte River limits are questioned

BY DAVID HENDEE

WORLD-HERALD STAFF WRITER

Three cities and eight natural resources districts may challenge a bid by the Nebraska Game and Parks Commission to have the lower Platte River in eastern Nebraska declared off limits to some new uses of water.

The Game and Parks Commission has said that further appropriations of the river's water for irrigation, for example, would jeopardize the continued existence of pallid sturgeons, interior least terns and piping plovers that depend on the river for survival.

The cities and resources districts met Tuesday in Lincoln and agreed to form the Lower Platte River Coalition. They are worried about the effect managing the river for endangered species could have on water supplies in the basin.

The Lower Platte area stretches from the Loup River near Columbus to the Missouri River at Plattsmouth.

The Game and Parks Commission says its research indicates that lower flows in the river would harm the threatened and endangered species.

The new coalition hopes to persuade the Nebraska Department of Natural Resources not to rely on the Game and Parks assessment when the department decides this year whether the river's water should remain open to additional use.

Representatives of eight resources districts and a few irrigation districts joined the cities

Cities and NRDs may challenge proposed restrictions to protect threatened species.

of Fremont and Papillion and Omaha's Metropolitan Utilities District at Tuesday's meeting. Each entity will decide soon whether to join the coalition's challenge.

Dan Crouchley, a MUD attorney, said water supplies of Nebraska cities were given special protection by the Legislature last year, but growth questions still cause concerns for municipalities.

"We would be concerned . . . if the Endangered Species Act was triggered and limited the amount of water we're allowed to take from the Platte," he said. "It's a small risk, but it's a risk we simply wanted to protect ourselves against."

MUD pumps water from both the Missouri and Platte Rivers.

One water treatment plant operates south of Omaha on the Platte, and a new plant on the Platte west of Omaha is to begin operation next summer.

"We've got 50 years of water out there (at the new facility), and we want to make sure we can use it in the future," Crouchley said.

John Miyoshi, general manager of the Lower Platte North NRD at Wahoo, said the Game and Parks study of the river appears to be an attempt to bypass the state's regular system for allocating water from river basins.

"Nobody wants to ignore protecting wildlife and water," Miyoshi said. "But we feel there are other ways for Game and Parks to seek the stream flows it needs."