

MEMORANDUM

TO THE BOARD:

SUBJECT: General's Manager Report

DATE: September 5, 2003

FROM: Steve Oltmans, General Manager

A. **INFORMATION/EDUCATION REPORT**: A copy of the I&E Report detailing Information and Education activities of the District for the month of August, 2003, is attached for your review.

B. **MISCELLANEOUS/PERSONNEL ITEMS**:

1. On August 11, 2003, the National Corn Growers Association held their meeting at the Natural Resources Center. The purpose of the meeting was to discuss Missouri River issues. Attached is a letter from Elizabeth Croker thanking the District for the use of the meeting room.

C. **REPORT ON PURCHASES – CONSTRUCTION SERVICES, PROFESSIONAL SERVICES, PERSONAL PROPERTY**: Pursuant to Board direction, attached is a report indicating construction services, professional services and personal property purchases for the month of August, 2003. Please review this report and contact me if you have any questions.

D. **CURRENT AND ON-GOING PROJECTS – P-MRNRD LEGAL COUNSEL**: Attached is a copy of the current and on-going projects for District Legal Counsel, Paul Peters, as of August 15, 2003. I would ask each Director to review this listing. If you have any questions, please feel free to contact me.

E. **OMAHA CHAMBER OF COMMERCE HERITAGE AWARD LUNCHEON**: The River City Roundup Heritage Award Luncheon will be held on Wednesday, September 24, 2003 at 11:45 p.m. at the Omaha Convention Center & Arena Ballroom. The P-MRNRD is one of the sponsors of the Agri-Business Leadership Award which will be awarded to Richard L. Gady. The District has purchased a table for this function. Please let Pat Teer know by September 19th if you would like to represent the District at this function.

F. **NEWS CLIPS**:

- ➔ August 7, 2003 Omaha World Herald Editorial – A revival plan for Great Plains states
- ➔ August 8, 2003, Blair Enterprise Article – NRD inching closer to number of homes needed for water study

- ➔ August 8, 2003, Blair Enterprise Letter to the Editor – Sign up for rural water, enjoy life
- ➔ August 12, 2002, Omaha World Herald Article – Boats bottled up at Omaha marina. Officials say there's no guarantee that boaters will be able to return to the Missouri River after the flow returns to normal.
- ➔ August 13, 2003, Omaha World Herald Article – Nebraska defends stand on Missouri River levels. Environmentalists say the state is obstructing efforts to held wildlife
- ➔ August 19, 2003, Omaha World Herald Editorial – Missouri mud. It's time for compromise. Let's set aside emotion and politics for science and facts.
- ➔ August 18, 2003, Blair Pilot Tribune Article – Scaled-down rural water plan likely
- ➔ August 20, 2003, Burt County Plaindealer Article – Summit Lake has limited use
- ➔ August 22, 2003, Omaha World Herald Editorial – Midlands Voices – Omaha revitalization can give Kansas City a lesson about vision.
- ➔ August 24, 2003 – Omaha World Herald Editorial - Lift our eyes. Debate over the Missouri River needs to shift into future tense.
- ➔ August 25, 2003, Omaha, World Herald Editorial – Funding mirages. The president's pledges about national parks don't hold up to close scrutiny.
- ➔ August 25, 2003, Omaha World Herald Article – Even in state, river goals vary. Nebraska water officials say they aren't set against ebb-and-flow compromises for the Missouri.
- ➔ August 27, 2003, Omaha World Herald Editorial Cartoon – Nebraska Lake Plan: Pay Farmers No to Irrigate ...
- ➔ August 31, 2003, Omaha World Herald Editorial – Bob Kerrey: Habitat enhancement for the river's wildlife also benefits people.
- ➔ September 2, 2003, Omaha World Herald Article – Old Kramer Power Plant will make way for riverfront park
- ➔ September 3, 2003, Omaha World Herald Editorial Cartoon – Omaha Welcomes You Back to the River
- ➔ September 2, 2003, Omaha World Herald Editorial – Endangered species suit threatens river

August 2003

Information & Education Report

Information

- Published Summer 2003 SPECTRUM Newsletter
- Continued work on update of NE NRDs brochure
- Prepared recommendations on grants programs
- Prepared and staffed booth at Sarpy County Fair
- Continued work on NRD Annual Report to be published in Omaha W-H Newspaper on September 21st
- Continued work on copies of BttR slide program update.
- Updated web site pages.
- Began work on Walnut Creek Watershed die cut fish handout

Education

- Returned to work from Maternity Leave
- Held 8 hour LEP training—certifying 29 educators in LEP
- Coordinated 90 volunteer hours
- Presented Animal Adaptation programs at Kindercare
- Planned Volunteer Picnic with Randy Lee for all NRD volunteers
- Set up Non-profit checking account for LEP through Pheasants Forever
- Applied for Home Depot Environmental Education Grant
- Began planning for fall field trips at Chalco Hills

Elizabeth Bina Croker

August 21, 2003

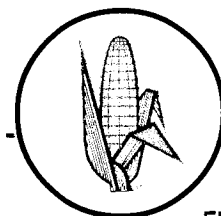
Dear Steve,

On behalf of the National Corn Growers Association, I would like to thank you and your staff for allowing us to use your board room on August 11. You have a great facility; it fit our needs perfectly.

As you know, the purpose of our meeting was to discuss Missouri River issues. We had a good dialogue and productive discussion. Thank you for helping to facilitate that. Please let me know if I can ever assist you.

Sincerely,
Betsy Croker

AUG 25 2003



National
Corn Growers
Association
www.ncga.com

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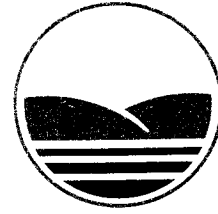
NCGA DC OFFICE
122 C Street, NW
Suite 510
Washington, DC 20001

August, 2003

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Updated: August 15, 2003

PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT



8901 S. 154TH ST.
OMAHA, NE 68138-3621
(402) 444-6222
FAX (402) 895-6543

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

★ = Top Priority

F = Future Work – No Assignment

N = New Assignment

O = Others Handling

W = Work in Progress

P = PFP's Portion Completed

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

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

THE GREATER OMAHA
CHAMBER OF COMMERCE
CORDIALLY INVITES YOU AND YOUR GUESTS
TO ATTEND THE

HERITAGE AWARD LUNCHEON

AND JOIN US IN RECOGNIZING

HAWKINS
CONSTRUCTION COMPANY

AS THE RECIPIENT OF THE
2003 HERITAGE AWARD

WEDNESDAY, SEPTEMBER 24, 2003
11:45 A.M.

OMAHA CONVENTION CENTER & ARENA
JUNIOR BALLROOM
455 NORTH 10TH STREET

\$35 PER PERSON OR \$350 PER TABLE OF TEN
WESTERN DRESS ENCOURAGED
PLEASE RSVP BY SEPT. 19TH

PARKING IS \$6 AT THE OMAHA CONVENTION CENTER & ARENA

ALSO TO BE RECOGNIZED AT THE EVENT

AGRI-BUSINESS LEADERSHIP AWARD

PRESENTED BY THE AGRICULTURE COUNCIL OF THE
GREATER OMAHA CHAMBER OF COMMERCE TO

RICHARD L. GADY
CONAGRA FOODS, INC., RETIRED

SPECIAL THANKS TO THESE MEMBERS OF THE
AGRICULTURE COUNCIL FOR SPONSORING THIS AWARD:

CONAGRA FOODS, INC.
MCCARTHY GROUP, INC.
FARMERS NATIONAL COMPANY
THE J.C. ROBINSON SEED COMPANY
PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT
CLAAS OMAHA LLC

AK-SAR-BEN YOUTH AMBASSADOR AWARD

SPONSORED BY
JOHN AND CARMEN GOTTSCHALK

A revival plan for Great Plains states

8-7-03
BY TYLER SUTTON AND CURT FREESE

Sutton is president of the Conservation Alliance of The Great Plains, based in Lincoln. Freese is director of the Northern Great Plains Program of the World Wildlife Fund, in Bozeman, Mont.

The Northern Great Plains of Montana, the Dakotas, Wyoming and Nebraska are at an economic, demographic and ecological crossroads.

The dominant industry on the Northern Great Plains, agriculture, is unable to sustain a viable — much less, prosperous — economic base for the region despite being propped up by nearly \$16 billion in subsidies and disaster relief over the past five years and by the below-market leasing of 13 million acres of federal land for livestock grazing.

Meanwhile, the natural landscape, a potential important source of new economic growth, is a shadow of what it once was.

Just 150 years ago, the abundance of wildlife and prairie grasslands in the Northern Great Plains rivaled the Serengeti of East Africa. Today, farming and livestock grazing cover nearly 99 percent of the region, whereas refuges, parks and other conservation areas cover only 1 percent. Native prairie continues to be converted to crops, mainly because of farm subsidies.

The combination of public attitudes and fair-trade policies will eventually reduce agricultural subsidies in the region. This, combined with increasingly

competitive national and global markets, leaves little hope that grain and livestock production will ever again sustain the region.

A new approach to federal rural policy is urgently needed. One proposal comes in the form of the New Homestead Opportunity Act introduced in Congress by U.S. Sens. Byron Dorgan of North Dakota and Chuck Hagel of Nebraska.

The measure proposes to stabilize rural areas that have experienced significant population loss by providing individual and business tax breaks for living there and by establishing a venture capital fund to promote business development.

The senators deserve credit for recognizing that the key to stemming population loss is to create economic opportunity in small communities. But the proposed act falls far short of what is needed because it fails to address the root causes of the problem.

According to a recent study by the U.S. Department of Agriculture's Economic Research Service, one of the three main factors associated with population decline in rural areas is the lack of natural amenities for outdoor recreation.

Other studies of the western United States confirm that counties with ready access to national parks, wilderness areas and other outdoor recreation opportunities, compared to those without these amenities, experience substantially higher rates of population growth and economic prosperity.

A natural amenity economy arises when conservation areas and abundant wildlife attract new businesses and residents, generate significant revenues from tourism, and create jobs through institutional expenditures in land and wildlife management.

Economic revitalization of the Northern Great Plains will require that communities attract and retain well-educated people who participate in the national and global economy. Many rural communities have much to offer businesses in the form of a responsible work force, good schools and safe streets.

Few plains communities, however, provide large conservation areas that can provide high-quality outdoor recreation, from hunting and fishing to nature study, hiking and camping.

We can create a system of conservation areas in our nation's prairie heartland for local communities and the world to enjoy. All the pieces of our natural heritage are there, waiting for us to have the vision and fortitude to put them back together again.

get...

NRD inching closer to number of homes needed for water study

By Keith Rydberg
Reporter

With fewer than 10 days left until the application deadline for the installation of rural water lines south of Blair, some citizens in the affected area are making a last push to get residents to show their support.

The area in question covers 48 square miles in roughly a triangular area located between Nebraska Highway 133 and U.S. Highway 75 south to County Road P32. Residents in that area have approached the Papio-Missouri River Natural Resources District regarding the possibility of having rural water lines installed.

After a feasibility study was conducted, the consulting firm hgm Associates Inc. determined that applications from 80 percent of all residents (689 people) will be needed to make the project cost-effective for the district. Along with each application, the district is asking for a \$2,600 fee that would cover the expenses of connecting each home to the rural water line if it is installed. If the consulting firm ultimately determines that not enough applications were received to warrant proceeding with the project, the fees will be refunded.

As of Wednesday afternoon, the district had received 274 applications. While this number is less than the 689 applications needed to run water lines to the entire area, NRD Project Manager Dick Sklenar said the district is still considering that

made by hgm Associates to see if the plan would be profitable for the district with the final decision likely not being made until October or November. However, Sklenar said the number of applications received makes the project likely to be implemented.

"We're getting more optimistic although we are hopeful that we can possibly get another 15 applications submitted to us before the August 15 deadline," Sklenar said.

The district is also working with a steering committee of citizens to help the members gather more support for the project. Providing a list of people who had submitted a \$100 fee for the feasibility study but who have not submitted the \$2,600 fee, Sklenar said the district is also providing packets for the committee members to give to citizens in the study area.

"This is really going to take the support of the residents of the area to make it work," Sklenar said. "We want to give the steering committee every opportunity possible to make this successful. Obviously, the more applications we receive,

the more chance residents will have of the project being successful."

Wayne Talbert, chairman of the steering committee, said the 12 members of the committee are currently recanvassing the entire study area to make sure everyone is aware of the project and to remind people of the deadline.

Talbert said one of the biggest challenges people are facing is coming up with the \$2,600 necessary for the application.

"Obviously, we're trying to get everyone signed up in the area but, at the same time, we understand that people are going through some hard times," Talbert said. "The \$2,600 hookup fee is quite a chunk of change."

Talbert added that, as he lives on County Road P32, he has a personal interest in seeing the project implemented. Noting that people living around the Fort Calhoun cemetery have already begun to haul water from elsewhere, his two wells are still providing water although they tend to "spit" at times.

"Our water usage is really touch-and-go," Talbert said.

Letters

Sign up for rural water, enjoy life

To the editor,

I know many of the residents are upset about all the people who are relocating to the Washington County/Blair area. This doesn't alter the fact that it's going to happen, and we have found out that there is nothing that can be done about it. The county is pushing to increase the population between Highways 75 and 133 south of Blair to the county line.

As most of you know the water is already an issue. Rural water is being considered for the area. I find it very disappointing that only

240 residents have signed up, as of the end of June, for this water.

Water has been a huge problem in this area for a long time. I know some of you have good water and have had plenty of water, but do you know how long that will last? In my area our water is not suggested for human consumption, and we are running out of water.

One of the area well contractors says residents who don't sign up for the rural water are foolish. We all need to think about this a little harder. What good is our home if we do not have water?

I know \$2,600 is a lot of money, but many of you drive expensive cars and have expensive homes. All you are doing is increasing the value of your property. If the money is an issue, contact your banker and take out a small home improvement loan or just an unsecured loan. This is no laughing matter or one to just ignore. This water is needed here and it is needed very

badly.

I hope those of you who have not signed up for the water get your head out of the sand and look at what is going on in this part of the county. You only have a few days left to do what needs to be done. Sign up for the rural water and feel secure in the fact that if you have a nice home like I do, you'll be able to enjoy it and not worry about every little drop of water that you use. My home will not be worth anything if I don't have water, and neither will yours. Thank you.

Cindi Perchal
Blair

8/3/03

Boats bottled up at Omaha marina



PHIL JOHNSON/THE WORLD-HERALD

Thomas Watt watches a bulldozer push dirt into the channel of the marina at N.P. Dodge Park on Monday. The resulting dam will keep the marina's docks afloat after the river level drops.

■ Officials say there's no guarantee that boaters will be able to return to the Missouri River after the flow returns to normal.

8-12-03
By HENRY J. CORDES

WORLD-HERALD STAFF WRITER

Just when the boating season on the Missouri River should be at its peak, it could be over at the city's N.P. Dodge Park marina.

City crews on Monday built an earthen dam to close the marina in preparation for a court-ordered reduction in river levels. There's no guarantee the marina will open again before spring.

A handful of boat owners came out Monday morning to watch as workers pushed loads of dirt into

the channel that connects the marina to the river.

"We're all wondering what's going to happen," said Ken Chandler of Omaha, who has boated on the river with his family for nearly a decade. "We pay a lot of money to be down here."

But Chandler, other boaters and city officials were even more concerned about what even a temporary closure bodes for the future — that the next court order requiring lower flows for endangered species could come

See River: Page 2

River: Boating season in question

Continued from Page 1
even earlier in the boating season and last even longer.

"You can't call it a wake-up call because we've been worried about this for three or four years, but there's a crisis here and there's going to be a crisis here the year after and the year after," said Larry Foster, the city's acting parks director.

Environmentalists who pushed for the lower river flows called the marina closing unfortunate but avoidable. The Army Corps of Engineers, which controls flow levels on the Missouri, has been told for years that it needs to operate the river in ways more friendly to wildlife but has done nothing to help river users adjust their operations or prepare for it.

"The Missouri River is not a lake," said Chad Smith of Lincoln, Missouri River coordinator for American Rivers. "Rivers go up and down because that's what they do, and we have to find a way to work with that."

On Sunday night, the corps began dropping releases from Gavins Point Dam near Yankton, S.D., in accordance with a court order requiring lower river flows for endangered wildlife.

By tonight, releases will hit the flow level required by the court — 21,000 cubic feet per

second. River levels would remain at that level for three days before they would be gradually raised to 25,000 cfs beginning Friday.

The reduced dam releases are expected to drop the river level in Omaha by only about a foot, but that is still enough to endanger the floating docks at the Dodge Park marina. If the marina's water level is allowed to drop with the river, the floating docks would become grounded and damaged.

The lower water levels have the potential to affect marina access up and down the river, including at Bellevue. But it appears that the uniqueness of Omaha's floating docks and the way they are situated have made it the only area marina to shut down.

Boat owners have strongly urged the city to take out the dam yet this season once the lower water passes. The boating season has barely begun on the river. High water brought on by the wet spring delayed boating earlier.

"It's nobody's fault, but we haven't had a season yet," said Dave Fox of Fort Calhoun, Neb., who docks a 22-foot Sea Ray at the marina.

Foster said city officials share the hope that the closure will be a short one, with the best-

case scenario being that the marina could reopen sometime next week. But he also offered no guarantees. The city won't reopen the marina unless it is assured that the river will return to levels that won't endanger the docks.

And that does appear in question, said Larry Murphy, who leads the team that controls dam releases for the corps. While the court order allows the corps to raise dam releases back up to 25,000 cfs on Friday, it can't legally go above that level until after Sept. 1.

Given the low in-flow from tributaries because of recent drought conditions in the basin, current projections are that it would take 27,000 cfs dam releases to bring the river back to where it was.

"I don't want to put a dark cloud over everyone's parade, but there is a chance the river won't come up to the level they require unless we get more rain," Murphy said.

Smith, of American Rivers, said it all underscores the need for the corps to work with interests on the river to prepare for more variable flows. With gates to hold in water or other engineering changes, there's no reason the Omaha marina can't continue to operate, he said.

Nebraska defends stand on Missouri River levels

■ Environmentalists say the state is obstructing efforts to help wildlife.

8-13-83
BY HENRY J. CORDES
WORLD-HERALD STAFF WRITER

With the positions it has taken this summer in legal battles over the Missouri River, the State of Nebraska has emerged as one of the biggest barriers to changing river flows to aid endangered wildlife, environmentalists said Tuesday.

"They have litigated to stop these changes harder than the State of Missouri and have become the most intransigent force on the river," said Tim Searchinger, an attorney with Environmental Defense in

Washington.

Nebraska Attorney General Jon Bruning, whose office represented the state in the litigation, defended the stands taken as protecting the state's economic interests.

This week's closing of the riverside marina at Omaha's N.P. Dodge Park offered proof that there is a financial stake for Nebraska in the kinds of flow changes environmentalists have been fighting for on the river.

"If the expectation is Nebraska is going to roll over for the environmentalists, it's not going to happen," Bruning said.

"We care about their concerns, but we also care about the concerns of recreation and agriculture."

Nebraska was in Washington fighting to stop a judge's order that river flows be lowered this summer to create more habitat for two endangered shorebirds and an endangered fish. It also obtained another court order in Nebraska that the U.S. Army Corps of Engineers used to justify its decision not to implement the Washington court order.

In the end, another judge decided that there wasn't a conflict between the orders and ordered the corps to make the flow changes it is now implementing for the last few weeks of the breeding season on the river.

The corps expected to drop the river to the lowest level required by the end of the day Tuesday.

In a Tuesday conference call from Washington, environmentalists said they were surprised by the aggressive stand against flow changes that Nebraska has taken this summer, which they said seemed in conflict with the state's previous support for compromise solutions on the river.

Nebraska was among a majority of states in the Missouri River basin that last year endorsed a plan for experimental flow changes to aid wildlife.

Bruning said all the legal stands his office took this summer were in accordance with the state's past position. He said he

worked closely with the Nebraska Department of Natural Resources, which has represented Gov. Mike Johanns' administration on Missouri River issues.

He said the problem is that environmentalists this summer were seeking to get "the whole pie" with their lawsuits on behalf of wildlife.

The environmentalists reserved their sharpest criticism Tuesday for the Corps of Engineers. While the corps tried to present itself as legally caught in the middle, Searchinger said, the corps consistently took legal positions that showed it has no interest in changing its dam operations on the river.

OMAHA DAILY HERALD FOUNDED 1865
 OMAHA DAILY WORLD FOUNDED BY GILBERT M. HITCHCOCK 1885
 OMAHA WORLD-HERALD FIRST PUBLISHED JULY 15, 1889

Omaha World-Herald

JOHN GOTTSCHALK, *Publisher*

LARRY KING, *Executive Editor*

CHARLES REINKEN, *Editorial Page Editor*

DEANNA J. SANDS, *Managing Editor*

Missouri mud

The Missouri River situation just seems to get muddier.

This is where it stood at the end of last week: The Army Corps of Engineers had complied with an order from Minnesota federal Judge Paul Magnuson requiring it to lower the river level below Sioux City. The level began rising again Friday.

The corps fought hard to maintain a higher river level — to benefit navigation and similar interests, it said. But the courts upheld the importance of the environmental goal behind reduced water flows. In summer, a reduced flow is designed to aid endangered and threatened species. Piping plovers, for instance, nest on sand bars in the river; in theory, having more sand bars equals more and safer nests equals more birds.

The problem with this in practice, at least in this instance, was that the corps stalled so long that most of the young birds have left their nests; some plovers and least terns have begun to migrate south for the winter. Whether the few days of low water will be of practical benefit to the pallid sturgeon — or to other, more plentiful species the altered river flows are designed to help — is questionable at best.

The action does, however, seem to strengthen the hand of environmental groups that have been pressing for changes in river management. Of the many lawsuits launched by various parties to the debate, one — filed by American Rivers, the Nebraska Wildlife Federation and other environmental organizations — resulted in Magnuson's order. It sets a precedent that the corps may find hard to retreat from.

One of the main arguments against lowering the river, even for a few days, came from barge owners, who said they would have to sus-

It's time for compromise. Let's set aside emotion and politics for science and facts.

pend operations. But how many barges operate on the Missouri between Sioux City and the Nebraska-Kansas border at this time of year? Figures are hard to come by. Kevin Knepper, gener-

al manager of the Big Soo Terminal, one of three Sioux City barge stations, said his operation doesn't have any barges scheduled to arrive until "the first or second week of September." The water level will be near normal by that time.

Another complaint against cutting the river level was heard from irrigators who use the Missouri for their crops. What no one has yet explained is how many Iowa and Nebraska farmers and how many acres irrigate from the Missouri.

As summer fades, so too might the urgency of the debate over the corps' management plan — which it has suggested it would finish this winter, and which it has hinted would not contain flow changes demanded by environmental interests.

But winter, when little is happening on the river, offers an escape from time pressures and allows emotions and politics to be set aside in favor of facts and scientific evidence.

South Dakota Gov. Mike Rounds and Nebraska Gov. Mike Johanns recently agreed on a seven-state river summit Sept. 24, at which various interests can begin work on a real settlement of the issue. Compromise is the way to go, and the summit is a good start.

It won't be all that long until spring, when the debate will heat up with the temperature. We hope that before then, facts and science will have led to a workable compromise. We hope, too, that the corps will have reached decisions — and a management plan for the river — that will be best for all of the people who live along the Missouri.

8/19/03

BLAIR PLAT TRIBUNE

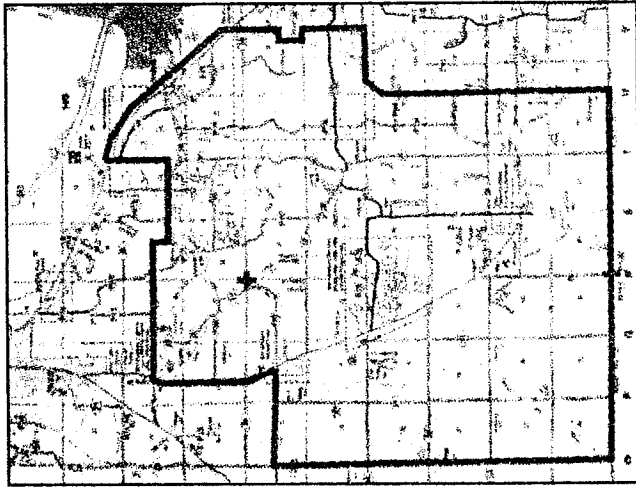
Scaled-down rural water plan likely

By Keith Rydberg
Reporter

Now that a cutoff date for rural water applications has passed, the consulting firm hired by the Papio-Missouri River Natural Resources District is beginning to determine which portions of a 48-square-mile study area are most likely to receive water.

As of the Aug. 15 cutoff date for applications, Dick Sklenar, project manager for the district, said 293 applications had been received. Although applications will continue to be accepted, a \$200 fee will be added to the \$2,600 fee applicants have been asked to pay upon submitting an application. The fee will go toward paying for initial construction costs involved with the installation of the water lines if the project is determined to be feasible. While a decision has not been reached, water will either be supplied to the area by the city of Blair or by the Metropolitan Utilities District.

Sklenar noted that, if the project is determined not to be cost-effective, all application fees will be refunded. Also, if only certain portions of the study area, located between Nebraska Highway 133 and U.S. Highway 75, are selected to receive rural water, people submitting applications in areas where the installation will not occur will also have their application fees refunded. While the number of applications received is less than the 689 applications necessary for the entire area to be serviced, Sklenar said it is looking more likely that at least a portion of the area



This map shows the original area targeted for rural water service. With less than half the hoped-for number of signups, a smaller version of the project is being considered.

will receive rural water. A final decision is expected in 60 to 90 days.

"The number of applications we receive is really growing like mushrooms and we may get some more yet as there may be some applications that did not get postmarked until Aug. 15," Sklenar said. "We're getting very close to 300 applications and we're getting very optimistic that this project will move forward."

Chris Koenig, project manager for

SEE WATER PAGE 3A

WATER: Scaled-down area likely

FROM PAGE 1

the consulting firm HGM Associates, said that the firm will now look at the applications that were received in the area by the district to determine where interest for the project is greatest. Assuming that the majority of the applications have already been sent to the district, Koenig said the addresses of the individuals submitting applications will be plotted on a map with the areas of the most density most likely to be considered for water-line installation. At the present time, Koenig said the northeast portion of the study area is where the most interest has been thus far, especially along County Road 32.

"Going five miles from where the water lines will be laid for one user is obviously not feasible," Koenig said. "We're taking a look at the area right now to determine which areas are the most viable and then we'll start branching out from there."

Although the formal announcement of HGM's determination is not expected to be made until November, Koenig said the firm will likely give a preliminary report to the district's board of directors within the next four weeks.

If the rural water study is determined to be feasible, it will also cause some changes to the comprehensive plan. Washing-

ton County Planning Administrator Doug Cook explained that tentative plans are to require all subdivisions having lots between two to five acres to hook up to a water line if the line is within one mile of the subdivision. If the subdivision is not within one mile of a water line, a community well must be provided. Subdivisions having lots between five to 10 acres must either hook up to a rural water system, have a community well or must access a public water system. Any rural acreage greater than 10 acres has the additional option of having private wells installed as well.

Among those hoping the rural water installation proves feasible is the Gateway Development Corporation, which has already stated its support of the project. While the board of directors for the corporation are still determining whether to offer financial assistance for the project, Executive Director Trista Farrens said the project will play a role in the further development of Washington County.

"The project is one of those things we all felt we needed to support," Farrens said. "We feel that having the system is important to the long-term growth of the area. Hopefully, we can help to bring this project to fruition."

Summit Lake has limited use

Plains Dealer 8-20-03
Summit Lake State Recreation Area has been opened for some limited use, say officials for the Nebraska Game and Parks Commission.

A gate on the west side of the lake has been opened, providing minimal use for camping and fishing, said Jim Swenson of the Game and Parks office in Lincoln.

"We've been getting very positive comments since we dropped the gate," Swenson said.

Summit Lake, about four miles southwest of Tekamah, has been closed for renovation for several years. Officials began drawing down the water level in the 190-acre lake in 2000 and reached the 30- to 40-acre level by summer 2001.

Construction started in fall 2001.

At the same time, any remaining fish were killed and restocking began. Construction on the lake was completed last year.

Improvements have been made this month on the road near the new west entrance, Swenson said.

"For the balance of the summer, things will remain along those lines," Swenson said. "We're still recovering."

Over the winter, crews will take care of maintenance on buildings, he said.

Jeff Schuckman of the Game and Parks' Norfolk office said he would like to see more water in the lake. The warm, dry sum-

mer hasn't helped.

"We need Mother Nature to cooperate to get it filled up," he said.

The boat ramps remain closed because of the low water level. But fishing is allowed, he said.

"We want everyone to be mindful of size limits," he said. "If a fish is not big enough to take home, use common sense."

Restocking of fish will continue, including catfish, this fall, he said.

"Next spring," Swenson said, "given we have good spring runoff and rainfall and lake levels improve, we'll continue to bring things online. The area continues to be in our interest."

Omaha revitalization can give Kansas City a lesson about vision

8/27/03

BY MIKE HENDRICKS

The writer is a columnist for The Kansas City Star, where this originally appeared.

A new downtown arena. A re-developed riverfront. Hundreds of millions of dollars in new investment, all adding up to a happening urban core.

Here in Kansas City, we dream about all that. Up in Omaha, they've gone and done it.

I hadn't been back to my hometown in several years, so downtown Omaha was unfamiliar when I crossed the Interstate 480 bridge from east to west.

Along the riverfront, derelict buildings and old industrial sites have been cleared since a 1999 bond issue.

Where the Union Pacific rail yards once were now stands a \$291 million arena and convention center. Architecturally, it's a beaut. And at 1.1 million square feet, it can seat 15,800 for basketball and up to 17,000 for concerts, while providing meeting space for most mid-sized conventions.

It doesn't open until next month, but the arena's already an attraction. Largely because of it, the Gallup Organization of Gallup Poll fame is building a corporate campus nearby.

It will be somewhat in the shadow of a 40-story office tower that First National Bank opened recently. And although Union Pacific may no longer have its shops downtown, that great big rolling railroad company is building a new headquarters there.

A new regional office for the National Park Service is in the works as well. So is a \$90 million performing arts center now under construction.

I'm sure it will prove mighty handy to all the folks who may want to live in the high-rise apartments to be built on both sides of the river.

In fact, those on the Iowa side might even walk there over the \$22.6 million pedestrian bridge

downtown and nearby riverfront is said to total \$1.6 billion in recent years, according to the Omaha World-Herald.

And yet it's all happening in a metro area with less than half our population.

Surely, there's a lesson here for Kansas City. I mean, we're not talking Chicago or Dallas or Minneapolis/St. Paul here.

We're talking Omaha, folks, the farm club city to the north. We keep saying we're winners, but Omaha is like Tony Pena. Omaha believes.

Memo to Kansas City Mayor Kay Barnes: Please get up another one of your bus tours. Only instead of viewing the local sites, head north on I-29 about three hours and have a look-see.

Afterward, I'd fire anyone who fails to be excited about the possibilities for Kansas City after seeing what Omaha has accomplished in the last few years.

Yes, I know, we have plans in Kansas City for a new arena, a performing arts center, riverfront development, etc.

But some of us are getting a little impatient with what's not happening downtown. All that loft development is great. I am personally thrilled that my employer is investing \$200 million on a downtown printing plant, thus bolstering the argument that the printed word will likely live on for a while longer, at least.

But the absence of action is creating a vacuum where we get confusion about where this city is heading. Last week, the downtown baseball stadium pipe dream was pumped full of hot air again, based on one city councilman's offhand remarks.

Arena? Stadium? Some new entertainment districts?

Let's just make up our mind,

Lift our eyes 2/24/03

Finally, someone official has begun asking the right questions and thinking in the right direction on the Missouri River. We can only hope such enlightenment spreads.

The progressive thinkers are at the Nebraska Game and Parks Commission, which has long stood with environmental interests who want a better, balanced approach to management of the Missouri. On proposals for altering water levels maintained on the river by the Army Corps of Engineers into a more natural pattern of spring rises and summer lows, Game and Parks said: It's necessary. Get used to it. Adapt.

On the closure of the Omaha city marina at N.P. Dodge Park because of low water in recent days: Problems can be fixed. Adapt.

On possible changes in river management or structures needed to benefit the ecosystem: Modify man-made structures to accommodate the biology of the system. In other words, adapt.

Adapt. A great word, one with deep and potentially lasting implications. It implies change. Progress. Using today to build tomorrow — better. That is what has been lacking in the wrangling going on between conservationists and special interests with turf to protect.

Environmentalists, who have said they are open to real compromise if someone will take them up on it, want opponents of change to take a broader and more scientifically oriented view of the river. A look, in other words, that would help preserve the Missouri as a living organism rather than allow it to continue degenerating into a near-lifeless ditch.

The city marina has, until now, been an illustration of the short-sightedness with which too many people approach the Missouri. The marina and its manager, Larry Foster, acting city parks director, are essentially blameless, caught like a fish between two cats in the debate and used to rally opposition to changes in the river.

The marina cannot handle significant changes in the level of water in the Missouri. So when the Army

Debate over the Missouri River needs to shift into future tense.

Corps of Engineers lowered the water level briefly recently to comply with a federal court order, the marina had to be isolated.

Even now that water releases have risen again, drought has affected river levels and the marina won't open until next month — perhaps. The shutdown has generated a lot of hot air but, until Game and Parks came along, no insight and no vision.

The marina's future must be: Adapt. Study the problem. Look for solutions rather than complaining. Game and Parks volunteered to help the city — a heartening opportunity.

Other practical problems need the same "solutions, not complaints" treatment. Barge traffic on the Missouri is marginal at best, and navigational benefits for the entire Missouri-Mississippi system could come from more natural flows, though those are rarely mentioned. Does the future lie in preserving the status quo, or in adapting navigation to flow changes?

High spring river levels would flood farmers out scarcely more than happens now. Multiple studies have indicated as much, but anecdotal scaremongering outshouts dull scientific facts. Does the future lie in farmers who can work with the river's ecosystem rather than indulging their apprehensions about change?

It is the same with other special interests. As Game and Parks biologist Gene Zuerlein said about the marina's troubles, "*It can be fixed.*"

But we must look for answers instead of prolonging the debate by obstruction and antagonism. This is not about what is going on with the Missouri River tomorrow. It is about what will go on with the river in 10 years, in 50 years, in 100 years, when our grandchildren's grandchildren want to see what a real, living river looks like.

That is what is needed for this generation's legacy — a river of life, a river that posterity can visit and use and rejoice in.

Let us lift our eyes from the moment. Let us look at the future.

OMAHA DAILY HERALD FOUNDED 1865
 OMAHA DAILY WORLD FOUNDED BY GILBERT M. HITCHCOCK 1885
 OMAHA WORLD-HERALD FIRST PUBLISHED JULY 15, 1889

Omaha World-Herald

JOHN GOTTSCHALK, *Publisher*
 LARRY KING, *Executive Editor* CHARLES REINKEN, *Editorial Page Editor*
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Funding mirages

With his environmental record under assault (and with reason), President Bush has staged a string of events around the country in recent days to tout "progress" on his 2000 campaign pledge to make major investments in the national park system.

He has chosen a shaky point upon which to stand.

The National Park Service has been trying for almost two decades to address chronic fiscal shortcomings that have left a backlog of deferred maintenance needs at 388 national park areas, valued at more than \$35 billion.

Bush pledged while campaigning to spend nearly \$5 billion upgrading those parks — enough to eliminate the estimated backlog at the time. The president claims to have spent \$2.9 billion toward that pledge.

But wait. Only \$370 million of that is new money. The National Parks Conservation Association documents that the rest has simply been diverted from other areas of the National Park Service budget.

It's a budget the NPCA and the Park Service have already demonstrated to be tight. Over the past several years the two groups teamed business and government-management graduate students with park managers to analyze park needs. Their analysis says that on average, national parks receive 32 percent less funding than is needed. Even if that overestimates the case, it underscores the long-term shortages that contributed to the \$35 billion maintenance backlog.

Part of the parks' problems, however, have been the Park Service's

**The president's
pledges about
national parks
don't hold up
to close scrutiny.**

lack of a good asset management program. Spurred by a 1988 General Accounting Office report (the GAO is the investigative arm of Congress), the Park Service has developed a computer system to track the condition of, and calculate the real cost of, maintaining the thousands of assets in the park system.

The system is developed — but it's not fully implemented. Detailed surveys of all those park assets won't be completed until 2006.

That means, the GAO said in July, that the Park Service still does not have a reliable estimate of the parks' condition or the full cost of the needed repairs.

Still, Bush's claims that he is spurring significant progress on the backlog don't float. More than two dozen former Park Service employees, including four former agency directors, sent Bush and Interior Secretary Gale Norton a letter recently faulting their funding proposals for the park system and its maintenance backlog. It's one of a long list of complaints about park oversight on Bush's watch.

From seeking oil and mining rights on park grounds (notably the Arctic National Wildlife Refuge) to infringing on parks with more roads or relaxing regulations that will worsen pollution over some parks, Bush earned a D-minus on the NPCA's report card.

With all those other issues, park funding was actually the bright spot — a C-plus — on the report. It's disheartening that this is the environmental "highlight" Bush must campaign on.

Even in state, river goals vary

By HENRY J. CORDES
WORLD-HERALD BUREAU

Nebraska water officials say they aren't set against ebb-and-flow compromises for the Missouri.

LINCOLN — Though Nebraska battled upstream states and environmental groups in court over Missouri River flows this summer, the state has not dug in its heels in support of the status quo, Gov. Mike Johanns and state water officials say.

They say Nebraska will con-

tinue to be a leader in efforts to find compromises that help endangered wildlife and keep more water upstream during periods of drought while still protecting economic interests downstream that depend on the water.

"People can say we were fighting very aggressively, and yes, we were," Johanns said. "We had to protect our interests. But we have been hanging in there since day one trying to reach a resolution on these issues."

It might not have seemed that way this summer, when environmental groups criticized Nebraska for the stands it took during court battles over Missouri River flows. The attorney for one wildlife group said Nebraska had become the most in-

transigent force on the river.

Johanns, Roger Patterson, director of the Nebraska Department of Natural Resources, and Dave Cookson, the top water law litigator in the Nebraska Attorney General's Office, called the characterization unfair and said it misrepresents Nebraska's official stand on the Missouri.

Nebraska since 1999 has been
See River: Page 2

River: Goals on Missouri vary, even in Nebraska

Continued from Page 1
on record in support of a compromise proposal that would keep more water in upstream reservoirs, something sought for more than a decade by the states of South Dakota, North Dakota and Montana. Missouri is the only state among the eight in the basin that hasn't endorsed the plan.

Nebraska also endorsed a proposal last year to begin implementing a modest, experimental ebb and flow on the river to benefit endangered wildlife.

The idea behind the plan, strongly pushed by Nebraska, was to see what impact the changes have on recovery of endangered species, as well as economic interests in the basin, without committing to the changes permanently. The proposal in the end failed to break the river gridlock, with Iowa and Missouri opposed.

But the proposals that were battled out before the courts this

summer went well beyond those compromise positions that Nebraska supports, Patterson and Cookson said.

North Dakota and South Dakota went to court to block all releases from reservoirs in those states. At the same time, wildlife groups sought immediate implementation of far more significant flow changes than Nebraska backed.

Given the impact those "abrupt" changes would have on economic interests in Nebraska, Patterson said, the state had no choice but to battle the other states and environmental groups in court.

"Nebraska has shown that it's willing to meet the needs of the other parties," Patterson said. "But if you try to take all the marbles, we're going to put up a fight."

Cookson said he hoped the strong stands Nebraska took in court this summer "will help push everyone out of the court-

room and back to the table."

As Nebraska's top water official, Patterson has been charged by Johanns with coming up with Nebraska's official positions on the Missouri River.

It's a balancing act. Even within the state government, there's no unanimity on what the state's position should be.

The Nebraska Game and Parks Commission has endorsed the same natural flow proposal pushed by wildlife groups, feeling it would not only help endangered species but also increase hunting, fishing and recreational opportunities for all Nebraskans.

As the state's wildlife agency, it makes sense for Game and Parks to support that position, Patterson said, but he said he has to take a broader view. He must also consider the impact of any proposal on farmers, power companies and other interests that depend on water coming down the river.

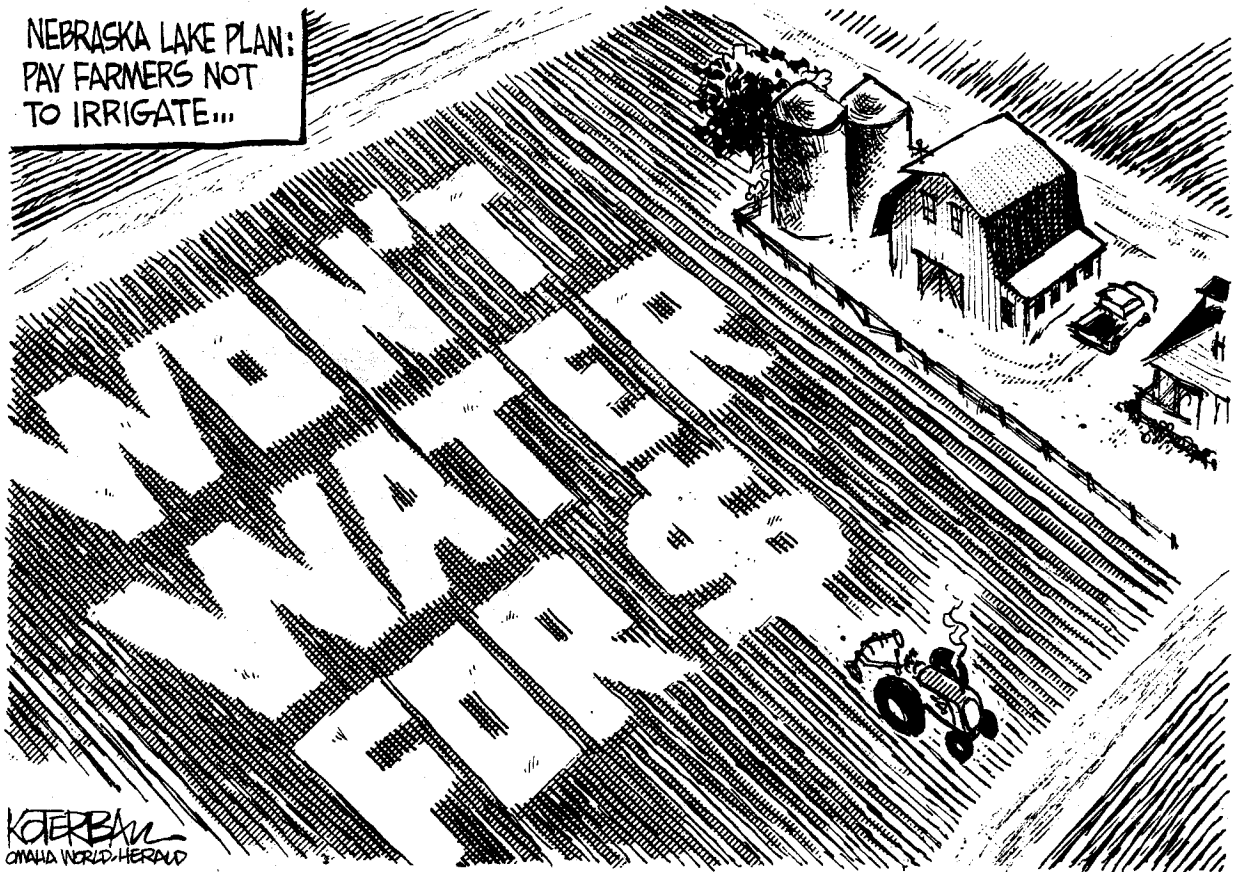
Johanns — a former water law attorney himself — said Nebraska still has a strong interest in seeking compromise and staying out of court, particularly in light of events over the last three weeks on the river.

A federal judge ordered a brief drop in dam releases to aid endangered wildlife. The primary consequences in Nebraska were a brief disruption in the river's already negligible barge traffic and the closure of a city-owned marina in Omaha.

But the next court order could produce more dramatic flow changes over longer periods of time. That could mean more pronounced consequences for farmers, power producers and other economic interests on the river, Johanns said.

"In court, the gavel comes down and you win or lose, and if you're on the losing side, you're out of luck," he said. "I'd like to make it as much win-win as possible."

NEBRASKA LAKE PLAN:
PAY FARMERS NOT
TO IRRIGATE...



KOBEBAN
OMAHA WORLD-HERALD

Bob Kerrey: Habitat enhancement for the river's wildlife also benefits people

BY BOB KERREY

The writer is president of the New School University in New York City. He was governor of Nebraska from 1983 to 1987 and a U.S. Senator from Nebraska from 1989 to 2001.

The current legal controversy about whether the U.S. Army Corps of Engineers must alter its management practices of the Missouri River in order to be in compliance with the law (the Endangered Species Act) is a much bigger issue for Nebraskans than the future of fish and wildlife species most of us have never seen. The issue is the future of a species we know all too well: our own.

The outcome of this debate will determine much of the future of the lives of everyone who lives in the Missouri River basin. So rather than focusing on the lives of the least tern or the pallid sturgeon, it is best to focus on our own. The central question that emerges from this focus is: How can the management of the river improve our economy and the quality of our lives?

About the legal question itself: The Corps of Engineers cannot manage the river in violation of federal law. And the law was written in part because man-made solutions to real problems associated with life along the river - such as the devastation of floods and unreliable navigation channels - have caused massive declines in fish and wildlife habitat.

One of the responses to this has been mitigation efforts such as the work at Boyer Chute north of Omaha. Redeveloping wildlife habitat can be an effective way to balance the constructive effects of dams and channels with their destructive effects. Unfortunately, presidential budgets and congressional appropriations have always fallen short of what is needed to build these wildlife areas. As a result, the overall decline of habitat continues at an alarming pace. That reduces the options available to the Corps of Engineers.

Nebraskans should look carefully at these mitigation efforts. They can teach us a lot about the economic and quality-of-life improvements that are possible if we put the development of fish and wildlife populations high on our list of priorities. These projects are good not only for fish and birds but also for human beings. They bring in dollars and jobs from human recreation. Further, because we like living close to these improvements, the investments improve the valuation of the property.

Supporting the plan for reduced summer flows would not by itself solve the problem. Absent a larger vision and a more complete strategy, this action alone would prove disappointing and divisive. We need to do much more. Three things are on my list of action items:

- Nebraska - the only state with upstream and downstream interests - should convene and mediate a water summit in Omaha. All of the basin states should be invited. The goal of the summit should be to strengthen the Missouri River Basin States Association through agreed-upon changes in federal law. Currently, the law gives the basin states little authority in decisions about either the quantity or quality of Missouri River stream flow. That authority rests either with administrative agencies like the Corps of Engineers and the Bureau of Reclamation or is handed over to federal courts when we sue over our disputes.

Among the key questions we need answered is whether we are chasing fools' gold by expecting real economic payoff from the very costly effort of maintaining a navigable channel in the river. Perhaps it still makes sense for Missouri, but it seems to me the cost vs. benefit for Nebraskans and Iowans is not very favorable. Under current law, there is no way for us to objectively measure this or to take corrective action if we decide we should. Under current law, the status quo wins every time.

- Amend the Flood Control Act of 1944 to give the basin states more collective authority to plan their collective future. We should at the very least change the law to permit adaptive management techniques to be used by the key stakeholders in the region. We should also combine our political strength to fight for full funding of the mitigation efforts.

- Fully fund urban sewage separation projects. Our cities remain the largest polluters of the river. Until we invest the money needed to make certain that raw sewage does not enter the river after every heavy rain, those who live and pay taxes in the cities will do more damage to the river than all other basin inhabitants combined.

The Missouri River is the most important natural landmark in our region. During the 200 years since Lewis and Clark led their expedition, we have invited our engineers to tame its wildness while expecting the river to continue to sustain our lives. This is an unrealistic and costly expectation. The basin that sustained so much life that Lewis and Clark were in awe continues to shrink in size.

This is not just bad news for the pallid sturgeon and the least tern. This is bad news for all of us.

Old Kramer Power Plant will make way for riverfront park

After power plant, Bellevue turns eyes to sewage facility

9-2-03

BY SHANNON HENSON
WORLD-HERALD STAFF WRITER

Bellevue's riverfront jewel may be a little tarnished by its smell.

The city's wastewater treatment plant — where sewage is treated before going into the Missouri River — sits between Hawthorn Park and the Kramer Power Plant.

Despite the hard work of city employees, some days the plant is "a little ripe," said Mayor Jerry Ryan. "It'd be nice if it weren't there, but..."

Workers will start demolishing the Kramer plant this fall.

Officials then will develop an area that combined with Hawthorn will make a park of more than 250 acres along the Missouri

River.

A study commission for the future site has trees screening the sewage facility. It would be "hidden" in the center of the recreation area, which would be encircled by a new road.

But visitors may be able to smell the plant on some days.

So what's stopping the city from moving it or finding a different way to deal with the waste? That may be, literally, the million-dollar question.

"I don't know what it would cost," said Councilman John Ott. "But it would be nice to look at doing something with it."

Ott said the wastewater treatment plant is in a bad location, but visiting the riverfront for beauty and recreation is a fairly new concept.

Bellevue riverfront development plan

BY SHANNON HENSON
WORLD-HERALD
STAFF WRITER

The City of Bellevue has big plans for the site of the closed power plant on the Missouri River.

Wildlife habitat
Youth sports practice area
Group campsite
Scenic overlook and river walk
Interpretive area
Picnic areas

Athletic fields
Existing campground
Existing marina
Site of closed Kramer Power Plant

THE WORLD-HERALD

The City of Bellevue plans to implode the building, collapsing it into its basement.

to the Missouri River.

The land has been fenced off and idle since the late 1980s, when Nebraska Public Power District decided the plant was too old and inefficient.

Almost as soon as its employees walked out, speculation about the site began.

Maybe it would reopen. Or maybe be turned into a place to burn the city's garbage for generator fuel.

Then came the idea almost everyone latched onto.

The City of Bellevue could buy Kramer and its 101 acres for park land. The acquisition would expand the riverfront access from Fontenelle Forest to Hawthorn Park, which at 151

acres is the city's largest park.

Years of talk became reality last week. The Bellevue City Council agreed to demolish the building with NPPD this fall.

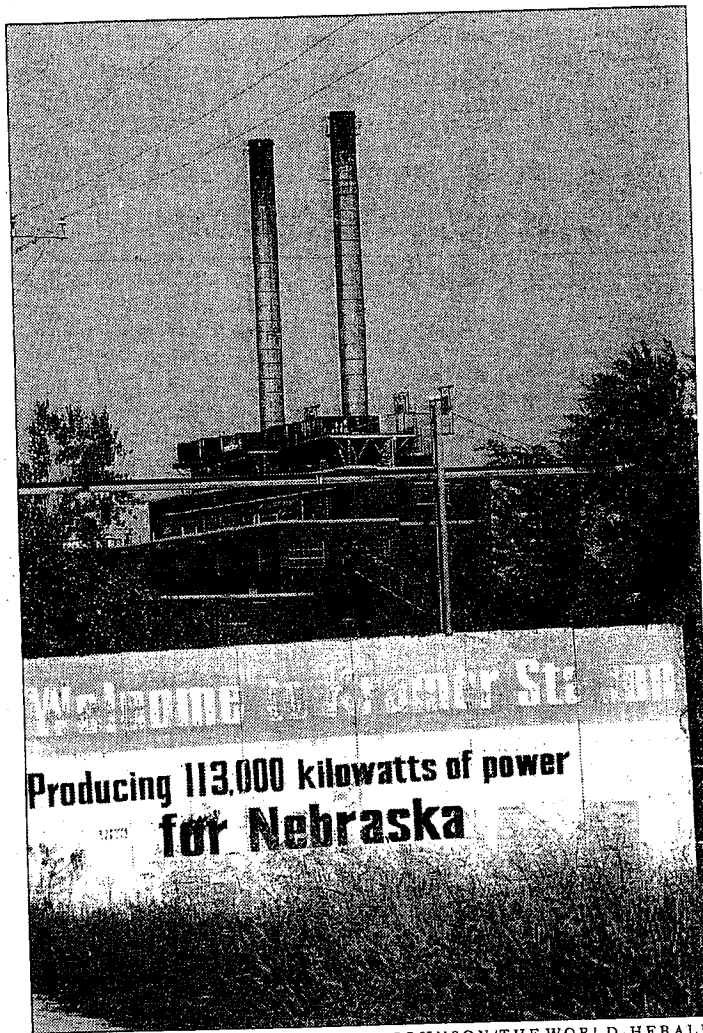
As several officials toured the site last week, the question everyone was asking was: "Did you believe this day would ever come?"

They walked through a building that in a few months will vanish. They walked past graffiti-covered walls and shattered windows, one with a wrench embedded in it.

They walked over the fly ash that still covers some of the floor. Fireworks boxes and soda and beer cans also litter the area.

Some walked through the locker room, where the red metal doors still stood open. An office looked as if the workers walked out not knowing they would never return. When officials last visited, family pic-

See Plant: Page 2



PHIL JOHNSON/THE WORLD-HERALD

The City of Bellevue plans to demolish the old Kramer Power Plant and build a park to expand the riverfront access.

Plant: Park planned at site

Continued from Page 1

tures were hanging from the walls.

The Kramer exterior appears in good shape, its red bricks reaching seemingly into the sky. Most likely, the bricks will go with the rest of the building — into the ground.

A brick former water treatment plant also will be imploded and turned into an observatory site. Some smaller metal outbuildings will be spared, maybe to hold equipment like lawn mowers.

Some people — one in particular — thought the Kramer should be saved.

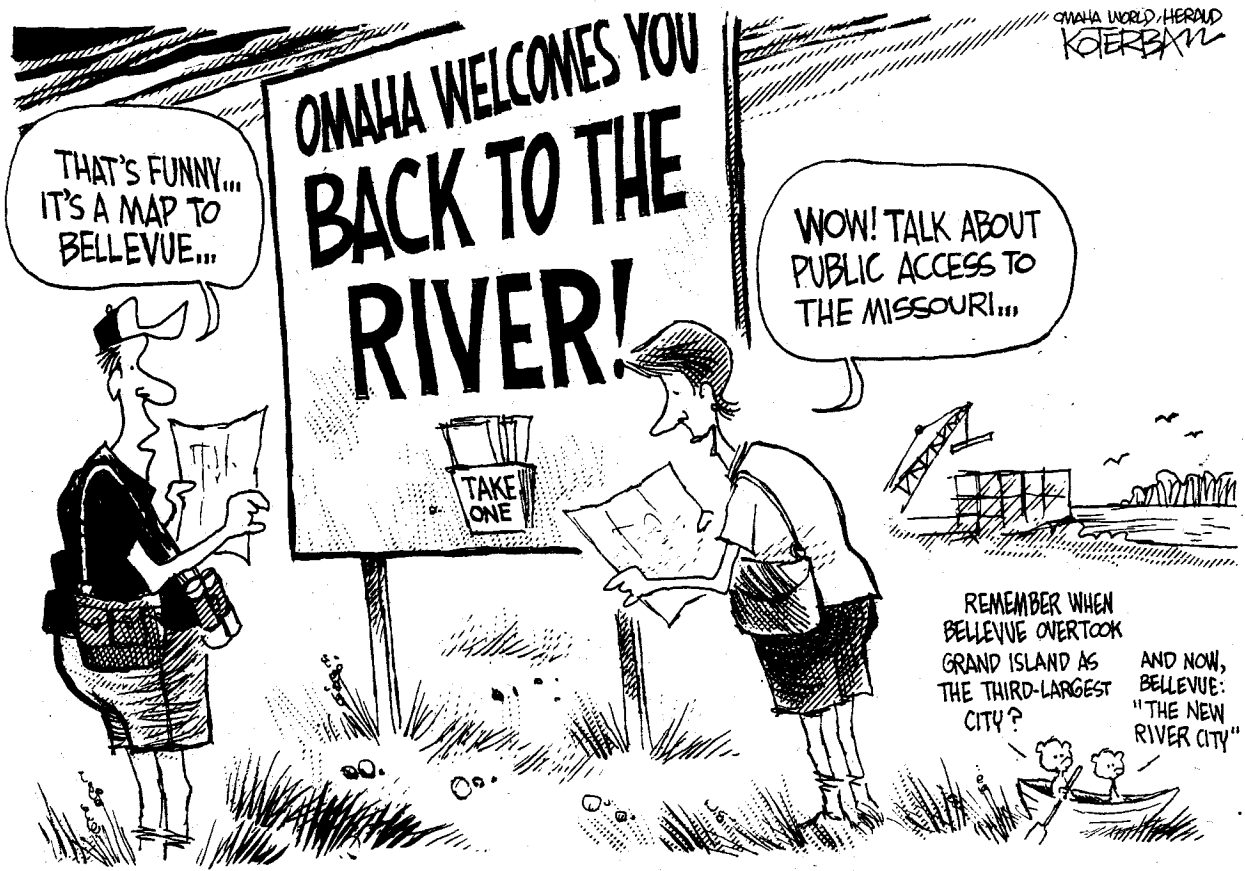
Retired architect Willis Regier wanted it to be converted to a building with swimming pools, bowling alleys and a restaurant. A building that would fit well into the planned park.

City officials liked the idea, but wanted Regier to come up with the funding. He hadn't yet.

So the land will house baseball, football and soccer fields; picnic areas; an environmental and historic interpretive area; and a wildlife habitat.

The city will start seeking grants to make it happen so the Kramer site can start its new life.

9-3-03



Endangered species suit threatens river

BY DANA JOEL GATTUSO

The writer is a senior fellow with the National Center for Public Policy Research in Washington, D.C.

9/2/03

You know environmental lawsuits have spun out of control when the Army Corps of Engineers is forced to lower the Missouri River to a level that seriously threatens water quality — all in the name of preserving habitat for the nesting piping plover.

Earlier this month, a federal district court ordered the corps to drop water levels from the Missouri River dams so piping plovers, least terns and pallid sturgeons can breed on or near sandbars.

With water levels now at their lowest since the 1950s and water temperatures rising rapidly, the Missouri Department of Natural Resources last month released an advisory warning that the river is close to violating water quality standards.

State officials also warned that many residents risk losing electric power, since the Missouri is used as a coolant by several power plants along the river, and not enough water is being released to service the generators.

The court order followed a lawsuit filed by American Rivers and nine other environmental groups under the Endangered Species Act charging that the Corps of Engineers failed to reduce the Missouri's water levels to protect the habitat of endangered species.

Judge Gladys Kessler, who wrote the original July court decision, conceded significant human sacrifice: "Navigation will be interrupted for the remainder of the summer and barge companies will lose revenues. Water quality may be affected and there may well be higher water purification costs. Hydroelectric resources will be affected, and consumers may suffer higher costs."

But these hardships, in Judge Kessler's view, can't compete with the species at issue because, in her words, "there is no dollar value that can be placed on the extinction of an animal species — the loss is to our planet, our children and future generations."

Kessler seems to be saying that the needs of a sturgeon are naturally placed so far above human needs that cost assessments should not even be considered.

Sadly, nonsensical litigation such as this is not rare. Rather, it is an epidemic that not only compromises human needs but, ironically, compromises the protection of endangered species.

Endangered Species Act lawsuits are so routine that the Fish and Wildlife Service spends more time and dollars handling litigation than saving endangered species.

The Fish and Wildlife Service reports that as much as two-thirds of its budget for placing endangered species on

the protection list is consumed fulfilling court orders and settlement agreements. Its \$6 million budget for designating critical habitat was depleted by the end of July. Its officials are asking Congress to authorize funds from other endangered species-protection programs so that pending court orders can be completed.

The environmental litigation craze dates to the Clinton administration. In 2000, Clinton's Fish and Wildlife Service director, Jamie Rappaport Clark, was forced to place a moratorium on 25 endangered species under consideration for protection so she could handle a flood of court orders.

Calling it a "biological disaster," she protested that litigation "has turned our priorities upside-down. Species that are in need of protection are having to be ignored."

Judges' decisions, constrained by the rigid language of the Endangered Species Act, also muddle priorities and discourage scientific determinations. Nowhere is this more true than lawsuits over "critical habitat designations" — a contentious mandate under the Endangered Species Act that frequently requires the protection of an endangered species' habitat over protection of the endangered species.

In fact, one court ruled that the Fish and Wildlife Service must designate critical habitat for endangered species even if it is considered a lower priority than other protection activities.

Small wonder that the National Research Council has concluded, "Designation of critical habitat is often controversial and arduous, delaying or preventing the protection it was intended to afford."

Yet the majority of environmental civil cases filed are over designations — and, in most cases, over missed designation deadlines due to resource constraints.

Environmental groups fuel the judicial absurdity and artfully use the courts to drive their political agenda. They also know that it pays to take an agency to court.

As required by law, attorney fees are funded by taxpayer dollars every time a plaintiff wins a case. That can mean big bucks. Data from the Department of Justice, as reported by The Sacramento Bee, show that environmental lawyers typically charge \$150 to \$350 an hour. In the 1990s, the average award was \$70,000, though tax-financed awards of \$100,000-plus are not uncommon.

Congress must put an end to this litigation plague. Without needed reforms, frivolous litigation will continue to jumble priorities, sacrificing methods that truly protect species and wildlife.