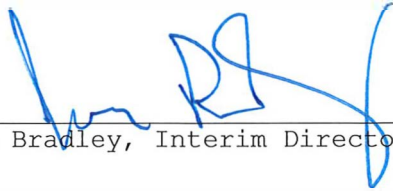


5. If after such time, new objections and requests for hearing, and a new motion to dismiss are filed, the Department will confer with the parties to set a progression schedule for any needed briefings and/or a telephonic hearing date for oral argument.

DEPARTMENT OF NATURAL RESOURCES

October 29, 2020



Jesse Bradley, Interim Director

CERTIFICATE OF SERVICE

I, Laurel Gower, hereby certify that a copy of this Order, the Amended Application, and October 8, 2020, WSA was sent by first class mail to each of the following on October 29, 2020:

Steven C. Smith
Adam A. Hoelsing
Megan A. Dockery
Simmons Olsen Law Firm, P.C., L.L.O
1502 Second Avenue
Scottsbluff, NE 69361-3174

Stephen D. Mossman
Mattson Ricketts Law Firm
134 S 13th Street, Suite 1200
Lincoln, NE 68508-1901

Vanessa A. Silke
Baird Holm LLP
1700 Farnam Street, Suite 1500
Omaha, NE 68102-2068

David Bargaen
Rembolt Ludtke LLP
3 Landmark Centre
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508



Laurel Gower, Clerk

Amended Platte to Republican Basin High Flow Diversion Project Interbasin Transfer Permit Application (the “PRD Project”)

PREPARED FOR

**Platte to Republican Basin High Flow Diversion Project (the “PRD Project”)
30 North John Street
Alma, Nebraska 68920**

PREPARED BY

**Olsson
601 P Street, Suite 200
Lincoln, NE 68508**

June 24, 2020



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Attachment B	Appropriation Permit – DNR Form APA-001
Attachment C	Interbasin Addendum – NeDNR Form SW-400
Attachment D	Final Economic Impact Study of the Platte River Diversion Project
Attachment F	Amended Water Services Agreement (PRD and CNPPID) June 4 th , 2020

SECTION 1 - INTRODUCTION

The Platte to Republican Basin High Flow Diversion Project (the “PRD Project” or “PRD”) will construct a diversion to transfer excess flows from the Platte River Basin into the Turkey Creek valley in the Republican River Basin (Figure 1). The PRD will provide water to the Republican River Basin only during times of excess flow in the Platte River Basin. The primary project objectives are to help the Lower Republican and the Tri-Basin Natural Resources Districts (NRDs) meet the requirements of their Integrated Management Plans (IMPs) and assist the State of Nebraska to meet its obligations under the Republican River Compact (Compact). The purpose of the PRD project is to use the available unappropriated water for the benefit of the citizens of Nebraska.

This amended application is submitted to provide the necessary documentation for the Nebraska Department of Natural Resources (NeDNR) as requested by the NeDNR in order to grant the right to appropriate water to the cooperating partners of the PRD project. Specifically, this amended application provides the clarification as directed by the February 26th, 2020 Order entered by NeDNR on its May 22, 2019 order to Show Cause.

The two partners collectively applying for this interbasin transfer permit are the Lower Republican and Tri-Basin NRDs. Olsson provided engineering, design, and permitting assistance to the PRD and has prepared this application under contract with the interlocal cooperative Platte to Republican Basin High Flow Diversion Project.

There are three forms submitted with this application included as attachments:

Attachment A Application for Variance – NeDNR Form SW-001 and the Order Granting Leave to File

Attachment B Copy of the Proposed Appropriation Permit – DNR Form APA-001

Attachment C Copy of the Proposed Interbasin Addendum – NeDNR Form SW-400

Project Description

The project will divert unappropriated water from the Platte River at the Tri-County diversion dam, through the CNPPID supply canal, through the E65 canal, into a new diversion structure, and discharge into the valley above the East Branch Turkey Creek, a tributary of the Republican River. Although detailed design elements for the PRD project may not be needed for permit approval, it is important to have an overall understanding of the new and existing structures that will accommodate the flow associated with this interbasin transfer permit application. As such, this section summarizes the project design elements as presented in the PRD Project Feasibility Review Report (Olsson, 2017).

For the PRD project, excess flows will be diverted from the Platte River at the Tri-County diversion dam located east of North Platte, Nebraska. The Tri-County diversion dam is an 874-foot-long concrete and steel structure located just east of the confluence of the North and South Platte Rivers. The diversion dam either diverts water through the headgates of CNPPID’s supply canal or passes water down river. Water diverted through the 75-mile-long supply canal delivers water to CNPPID’s three main irrigation canals, E65, E67 and Phelps (Figure 2).

Water diverted into CNPPID’s supply canal for the PRD project will flow into the E65 canal inlet located just upstream of Johnson Lake southwest of Lexington. The water made available to the

project would be water diverted into the supply canal that would otherwise be returned the Platte River at the J2 return located southeast of Lexington. When there are excess flows downstream of the J2 return, as measured at a stream gage near Grand Island, NE, some of the water would be retained in the E65 canal and delivered to the PRD project.

As part of the PRD project, CNPPID will construct a diversion structure on the E65 canal between Elwood and Smithfield. Using the new diversion, excess Platte River flows will be diverted from the E65 canal into the valley above the East Branch Turkey Creek (Figure 3). As per the design capacity of the PRD project, the maximum capacity of flow into Turkey Creek valley will be 100 cfs.

Turkey Creek is a tributary to the Republican River and generally runs north to south starting approximately 4 miles east of Elwood, Nebraska. It empties into the Republican River between Edison and Oxford, Nebraska. The upper 4 to 5 miles of the Turkey Creek drainage basin is a valley area and many stretches do not have a defined bed and bank or ordinary high-water mark. This upper section does have a defined centerline, but the overall capacity in this section is less than the capacity in the middle and lower sections. There are several farm ponds that currently retain a portion of runoff along the upper section of the Turkey Creek drainage basin. The middle and lower portions of the Turkey Creek drainage basin have fully defined beds and banks that carry base flow. The primary land use within the Turkey Creek drainage basin is pasture and farmland.

To accommodate the temporarily increased flow to Turkey Creek during a diversion, a series of channel and structural improvement recommendations will be made along the creek in Gosper and Furnas County. The recommended improvements are separated into two main categories. The first type of improvement includes maintenance of the existing creek channel so that the channel can support the diverted flows without causing additional erosion. The second type of improvement includes maintenance of existing structures including bridges, culverts, and farm ponds, so that they will not be impacted by the diverted flows.

The following is a summary of these specific design improvements based on the PRD Project Feasibility Review Report (Olsson, 2017):

Drainage Basin Improvements

The improvement for the upper section of Turkey Creek valley includes installation of a new underground polyvinyl chloride (PVC) pipe for an approximately 3,000-foot length (Figure 1). The new pipe will range from 36 inches to 48 inches in diameter based on the final design and will protect the steeper slopes of the upper section of Turkey Creek valley from erosion.

Along the middle section of Turkey Creek valley (approximately the next 5 miles) the channel capacity varies. Regrading will be recommended along specific sections of the creek to increase the capacity. The regrading will consist of widening the existing channel in some areas above the high-water mark to allow the diverted flows to stay within the stream banks.

The final section of Turkey Creek currently has sufficient capacity to handle the diverted flows along with the current base flow. No substantial improvements are proposed along this stretch with the exception of minor regrading to repair existing erosion issues caused by historic high flow events. Minor grading will take place above the ordinary high-water mark to minimize impacts to the existing stream.

Maintenance to Existing Structures

The second category of maintenance addresses existing structures and erosion control measures that will be installed at each drainage structure location. Many of the existing drainage structures on Turkey Creek have erosion issues at the upstream face that need to be addressed regardless of whether the diverted flows are introduced into Turkey Creek. If measures are not taken to control erosion in these areas, erosion will continue to expand and may eventually compromise bridge abutments or cause failure along roadway embankments. Specifically, riprap will be installed at the upstream face to provide protection either at bridge abutments or the inlets of culverts. Additionally, new overflow structures and/or additional pipes will be constructed at farm pond locations to allow the diverted flow to travel downstream instead of creating additional ponding areas and erosion along the farm pond embankment.

In summary, the PRD project will include the following new/existing infrastructure and improvements:

- The existing CNPPID supply canal will be used to divert 150 cfs of excess flows from the Platte River into E65 canal of which up to 50 cfs will be conveyance loss in the CNPPID system (based on CNPPID estimates),
- CNPPID will build a new diversion structure on the E65 canal between Elwood and Smithfield to divert excess flow from the Platte Basin to the Republican Basin at a maximum rate of 100 cfs,
- To accommodate the diverted flows in the east branch of Turkey Creek valley, approximately 3,000 linear feet of underground pipe will be installed along the upper section of the valley,
- Two small, fourteen medium, and five large erosion protection measures will be built along the middle and lower sections of Turkey Creek valley to protect the streambed and existing infrastructure,
- Four new drainage structures, three new culverts, and seven farm pond improvements will be completed to protect the existing infrastructure.

SECTION 2 - ANALYSIS OF EXCESS FLOW

One of the first questions that is posed about the PRD project is – is there water available for diversion from the Platte Basin into the Republican River? Additionally, in the petition to the NeDNR for leave to file or consider an application for a new surface water appropriation within a moratorium or stay area (often called a variance), it is necessary to provide an analysis of unappropriated water. To answer the question on whether there is water available and to fulfill the permit requirement to provide an analysis of unappropriated flow, three sources of information are presented.

Platte Republican Diversion Feasibility Review Report (Olsson 2017)

The first source of information was summarized in the PRD Feasibility Review Report (Olsson, 2017). In the feasibility report, a summary was presented on the potential water available to divert from the Platte River. The report summarized data from the NeDNR on the potential amount of water that may be available in the Platte River. The evaluation involved a comparison of the historic Platte River streamflows against all currently existing demands to this water to compute flows in excess of current demands. Initially, data from the NeDNR study from the Overton gage for the years 2000 to 2008 was used to estimate the excess flows that may be available to divert into Turkey Creek valley during a given year and to calculate the actual water the project could provide based on several assumed capacity limitations. These years were chosen because it was a dry period in which Nebraska could have potentially benefited from the diversion of water into the basin by assisting the state with Compact compliance.

In the feasibility report, data was presented listing total monthly excess flows available in the Platte River basin during 2000 to 2007. Originally, the analysis did not take into account future needs for projects in the Platte River Basin designed to meet the Platte River Recovery Implementation Program (PRRIP) goals as well as goals and objectives of the Platte Basin integrated management plans. With assistance from the Executive Directors Office of the PRRIP (J. Farnsworth, personal communication, June 6, 2017), the evaluation was revised and updated through 2016 to take into account future needs in the Platte Basin and additional potential benefits that could have been realized during more recent years. The estimate for future needs in the Platte is up to 1,000 cfs of additional diversions. Table 1 shows the average annual amount of water that would be available to divert from the Platte River basin from 2000 to 2016 with and without an assumed increased use of 1,000 cfs, for a PRD project capacity of 40 cfs and 100 cfs.

Table 1 – Potential Acre-Feet Available to Divert

YEAR	Without additional 1,000 cfs		With additional 1,000 cfs	
	40 cfs	100 cfs	40 cfs	100 cfs
2000	9,340	21,721	3,722	8,989
2001	8,102	19,117	772	1,742
2002	7,419	16,782	0	0
2003	2,408	4,877	0	0
2004	2,752	5,651	0	0
2005	2,994	7,277	0	0
2006	2,487	5,120	79	198
2007	3,665	8,366	79	198
2008	4,346	9,973	713	1,782

YEAR	Without additional 1,000 cfs		With additional 1,000 cfs	
	40 cfs	100 cfs	40 cfs	100 cfs
2009	5,227	12,474	356	752
2010	16,889	41,818	8,217	20,176
2011	25,859	64,469	20,176	49,559
2012	7,827	19,261	2,732	6,712
2013	9,249	21,950	2,119	5,207
2014	8,732	21,115	2,812	6,811
2015	19,206	47,401	12,474	30,730
2016	20,117	49,124	13,266	32,076

One additional factor needs to be taken into account, which is the extent to which water was actually needed in the Republican River Basin during these years. During 2013-2016, the Republican River Basin NRDs pumped approximately 132,000 acre-feet of groundwater into Republican River tributaries from the Rock Creek and Nebraska Cooperative Platte Republican Enhancement Projects in order to ensure that Nebraska complied with the Republican River Compact during those years.

Table 2 presents the total available excess flow that could have been diverted from the Platte Basin into the Republican Basin during 2013-2016. As it is unclear when the Platte Basin will have the infrastructure in place to create an additional 1,000 cfs of diversions in the Platte Basin, the potential benefits of the project when similar years recur in the future is estimated to be between approximately 30,000 and 130,000 acre-feet (139,590 capped at the approximate need for water during 2013-2016) depending on the capacity of the final diversion project.

Table 2 – Potential Acre-Feet Available to Divert during September through April

Design Option	Without Additional 1,000 cfs	With Additional 1,000 cfs
40 cfs	57,303 acre-feet	30,670 acre-feet
100 cfs	139,590 acre-feet	74,824 acre-feet

The results of the analysis summarized in Figure 4 illustrate the daily discharge in the Platte River with and without the proposed diversion. The results are for the last four years of flow recorded at the stream gage in Overton, NE. In blue, is the historic Platte River discharge in cfs. In red is an estimate of the Platte River discharge if the PRD project were in place. The green line represents the diversion of excess flows from the Platte River into the Republican River Basin that would have occurred if the PRD were in place and all current water appropriations were allowed prior to the diversion.

Evaluation of Historic Platte River Streamflow in Excess of State Protected Flows and Target Flows, NeDNR 2010

The second source of information was an analysis on the availability of excess flows completed in 2010 entitled, "Evaluation of Historic Platte River Streamflow in Excess of State Protected Flows and Target Flows" (NeDNR, 2010). The analysis was prepared by HDR and the Flatwater Group for NeDNR and as written in the introduction to the analysis:

“This document describes the analysis conducted to evaluate the historic quantity of excess water in the Platte River. The purpose of this project was to develop a planning tool to estimate the rate of flow and the duration and frequency of water in excess of state protected flows by reach; and to determine the quantity of water in excess of target flows based on wet, dry, and normal hydrologic classification. The study included the area from the North Platte River at Lewellen, Nebraska, and the South Platte River at Julesburg, Colorado, to the Platte River near Louisville, Nebraska.”

In the report, the excess natural flow (or excess flow as used in this permit application) was a computed value that represents the difference between the available natural flow and the natural flow demand. The analysis used data from Platte River gages, canal diversions and returns for the period beginning in 1954 through the end of 2008. The analysis identified that at the Overton gage near the PRD project, for the 54-year time period analyzed, the average number of days with excess natural flow ranged from 2.6 days in August to 21.9 days in both February and March. For comparison, at the Louisville gage in the Lower Platte River, for the same 54-year time period, the average number of days with excess natural flow ranged from 12.2 days in August to 30.2 in March.

NeDNR Order Granting Leave to File and Application for a New Surface Water Appropriation within and Area Subject to a Moratorium by Petition VAR-6282 (NeDNR 2017)

The final source of information relates to recent surface water appropriations granted within the Platte River basin on the same point of diversion as this application which is at North Platte with the same excess flows on the Platte below the J-2 return. On September 6, 2017, NeDNR granted a new temporary surface water appropriation on the Platte River pursuant to petition VAR-6282. As stated in the conclusions of the order, “Petitioner has provided evidence that indicates there is likely to be unappropriated water in the future on the Platte River prior to and after some irrigation seasons because of the flow in excess of appropriated water and Desired Minimum Discharge” as defined in the order. This and other similar permits would not have been granted if unappropriated water was not available on the Platte River.

In summary, the three sources of information indicate that there is sufficient excess flow in the Platte to enable diversion to the PRD project. The PRD is intended to be an additional water management tool that will be used in conjunction with the water management actions currently implemented by the Tri-Basin and Lower Republican NRDs through their IMPs. Specifically, the PRD will be used in conjunction with the groundwater and surface water controls such as moratoria, transfer provisions, and well-metering requirements currently applied across the districts. The PRD will be one of the many tools in the toolbox that will provide flexibility and reliability to the water management actions available for use by the NRDs to meet the requirements of their IMPs and the Compact.

SECTION 3 - INTERBASIN TRANSFER ADDENDUM QUESTIONS A-F

The department's form NeDNR Form SW-NeDNR400 titled "Interbasin Transfer of Water *Addendum* to Application for a Permit to appropriate Water" is to be filled out along with an appropriation that proposes transferring water from one basin to another. Since the PRD application involves diverting water from the Platte River to the Republican River, items 1-10 have been filled out in the attached application (Attachment C Interbasin Addendum – NeDNR Form SW-400) and responses to questions A-F are submitted in the following subsections.

A. The economic, environmental, and other benefits of the proposed interbasin transfer and use.

Primary Economic Benefits

The PRD project provides a beneficial impact to the state's residents by helping meet the obligations that the State of Nebraska has under the Interstate Compact between Kansas, Nebraska and Colorado, known as the Compact. The Compact and the more recent Final Settlement Stipulation (FSS), which resolved interstate litigation concerning the Compact in 2002, lay out specific limitations on Nebraska use of the water supply of the Republican River Basin. The current level of irrigation development in the Republican River Basin results in a violation of these limitations under certain climate and water use conditions in the absence of management actions such as development of projects like the PRD. For example, NeDNR forecasted that, in lieu of additional actions, it was expected that Nebraska would overuse its water supply allotment for the years 2013-2017 (NeDNR, 2013, 2014, 2015, 2016 and 2017). The PRD project will provide additional water supply to the Republican River Basin when excess flows are available in the Platte River and when these potential violations might otherwise occur.

To comprehend the dangers associated with Nebraska overusing its allotment of Republican River Basin water supplies, it is important to understand what non-compliance has cost the State of Nebraska in the past, and the cost the State of Nebraska would likely incur given a future violation. The facts of the Kansas v. Nebraska lawsuit were reported on the Legal Information Institute website as follows:

"On May 3, 2010, Kansas filed a Motion with the Supreme Court of the United States that revived previous litigation between Kansas and Nebraska concerning a water rights dispute. The dispute reflects ongoing tensions between Kansas and Nebraska concerning a water rights agreement signed in 1943. The 1943 Republican River Compact agreement ("Compact") allocates 49 percent of the river's water to Nebraska, 40 percent to Kansas, and 11 percent to Colorado. Notably, the "Compact Clause" of the United States Constitution dictates that Congress must approve any compact—an agreement—between two states.

Starting in 1999 and continuing through the action at hand, Kansas accuses Nebraska of violating the Compact by allowing farmers to divert more water than they should for private use. The Compact, however, does not contain clauses for dispute resolution, actual administration of the Compact, or for damages. Colorado, not accused of wrongdoing itself, is involved as one of the members of the Compact and as a party interested in the outcome of the case.

In the previous dispute, Kansas alleged that Nebraska's use of hydraulic wells to drain the Republican River and its tributaries constituted consumption that counted against Nebraska's allocated share of the water. The Court decided to exercise original jurisdiction on January 19, 1999. The Court appointed a Special Master ("Master") to handle proceedings and give findings and suggestions to the Court. Thereafter the parties entered into settlement discussions on how to properly account for water consumption in accordance with the Compact. In 2003, the parties adopted a groundwater agreement known as the Final Settlement Stipulation ("FSS").

In 2010, Kansas claimed Nebraska violated the FSS by over-consuming water from the Republican River and that Nebraska's violation harmed Kansas. Kansas thus requested the Court for various remedies. In April 2011, the Court again appointed a Master to direct the proceedings of the litigation, take evidence, and report to the Court with recommendations.

After taking evidence and hearing the parties' claims, the Master issued a Special Master's Report and gave suggestions to the Supreme Court regarding how to settle the dispute. The Master concluded that Nebraska used more water than it should, and that the Court should use its equitable powers to craft a remedy to suit the situation. The Master suggested that the parties abide by a new accounting procedure to determine water use. The Master further concluded that the Court deny Kansas' request that Nebraska be held in contempt. The Master also recommended that the Court enter judgment in the amount of \$5.5 million against Nebraska and in favor of Kansas for Nebraska's failure to meet the standards set forth in the compact in 2006. Finally, the Master suggested that the Court deny Kansas' other requests for relief, including requests for injunctive relief, sanctions, and appointment of a river master."

<https://www.law.cornell.edu/supct/cert/126orig>

Additionally, the Supreme Court indicated that the penalty for a future violation would likely be significantly greater in the future (U.S. Supreme Court, 2014). The total of \$5.5 million includes disgorgement of a portion of Nebraska's gains as a result of the violation (i.e., the award was for more than Kansas' losses alone). In the words of the Special Master, "Nebraska's incentive to extend its recent record of strong compliance should be increased by its knowledge that, in the event of a relapse after this date, Nebraska will have a difficult time parrying a request for disgorgement even in the absence of a deliberate breach."

The possibility of future litigation is not an idle threat. The State of Kansas recently filed a friend-of-the-court brief on water litigation in the State of New Mexico. In the brief, it was clear that Kansas will continue to pursue litigation should Nebraska fail to meet its obligations under the Compact and FSS. Given that Nebraska no longer has any financial incentive to overuse its allotment of the Republican River Basin's water supply, and that demand for water exceeds the supply in some years, one of two things must happen: 1) Nebraska must reduce its demand on the water supply or 2) increase the supply. As will be shown below, the economic implications of reducing these demands are dramatic. By moving water that is not needed in the Platte Basin to the Republican River, the PRD project would provide an enormous economic benefit to the water users and other residents of the Republican River Basin.

From the time the states adopted the FSS through conclusion of the litigation described above, the Nebraska Legislature appropriated many tens of millions of dollars from the general fund

through NeDNR toward Compact compliance and legal support. In other words, the State of Nebraska has invested heavily in the economic well-being of the residents of the Republican River Basin. As will now be shown below, this investment, and additional future investments through projects such as the PRD, are small relative to the economic benefits of sustaining the current level of irrigation development in the basin.

Economic Impact of the PRD Project

To estimate the specific economic impacts of the PRD project, Dr. Eric Thompson from the University of Nebraska-Lincoln Bureau of Business Research (UNL-BBR) prepared an economic impact study of the PRD project (Thompson, 2018). The full report is included as Attachment D and the following is a summary of the methodology and findings presented in the report.

The methodology of the analysis is described as follows. The study assessed the economic impact that the proposed PRD project would have on both the Platte and the Republican River basins. Specifically, the study assessed: 1) any loss of economic activity in the Platte River basin, if present, which results from the diversion of water from the Platte River during years when the project is utilized; 2) any loss in economic activity due to an occupation tax revenue from lands which must be raised to support construction or operation of the PRD; and 3) any gain in economic activity in the Republican River basin due to avoiding irrigation shutdowns or reduced allocations in the Lower Republican NRD.

The analysis considered that the PRD project would only be utilized in select years when there is sufficient excess flow in upper portions of the Platte River basin which are not allocated or appropriated for current or expected future downstream use. The water allocated to the Republican River basin would aid the Lower Republican NRD to support compliance with the Compact without shutting down groundwater irrigated acres. The continued operation of irrigated acres would be the direct economic impact of the project.

The Lower Republican NRD has approximately 78,000 rapid response groundwater irrigated acres which would be shutdown, if necessary, to keep the district in compliance with their IMP and the State of Nebraska in compliance with the Compact. There would be lost agricultural activity and lost income if those 78,000 acres engaged in dryland rather than irrigated production. As was discussed in the 2007 UNL-BBR report "The Economic Impact of Reduced Irrigation in the Republican River Basin", the resulting decline in agricultural production is a direct economic impact on the basin economy (Thompson, 2007).

The PRD project may also impact the economy by generating recreation opportunities. Water diverted through the PRD project in many cases would be stored in Harlan County Lake until such time that it is needed for compliance with the Compact. Such storage would result in a higher water level and enhanced recreation opportunities at Harlan County Lake. A report from the U.S. Department of Interior Bureau of Reclamation provides estimates of the economic benefits of enhanced recreation opportunities at Harlan County Lake (U.S. Bureau of Reclamation, 2017). The report generated estimates of the recreation benefits at Harlan County Lake under alternative climate and infrastructure investment scenarios. Under one estimate, the net present value of annual recreation benefits from a combination of higher lake levels and warmer temperatures was nearly \$50 million. However, information in the report did not break out the share of benefit which could be attributed to higher lake levels versus warmer temperatures. As result, it is not feasible to use estimates from the Republican River Basin Study to estimate specific recreation benefits from the PRD project, as this would only influence water levels but not temperatures. The results of the Republican River Basin Study, however, do indicate that there are additional economic

benefits for individuals utilizing Harlan County Lake for recreation, as well as additional economic impacts in the Republican River basin.

In addition to this direct impact, there also is a multiplier impact on the economy. The multiplier impact occurs for two reasons: changes in business spending on supplies and services, and changes in household spending as employees spend their paychecks. In the report, such multiplier impacts are estimated using the IMPLAN model. The sum of the direct economic impact and the multiplier impact is the total economic impact.

These economic impacts in the Republican River basin would be the only economic impacts expected to result from the project. This is because no economic impacts are expected for the Platte River basin. The PRD project only would be utilized in years when there are excess flows of water on the Platte River. In other words, absent the PRD project, this water otherwise would flow through the Platte River basin and leave the State of Nebraska without decreasing economic activity.

There would also be a construction period impact from the project. The direct economic impact during the construction period was estimated based on construction cost estimates. The multiplier impact during the construction period, due to spending on materials and as workers spend their paychecks, was also estimated using the IMPLAN model. The direct impact would be added to the multiplier impact to yield the total economic impact during the construction period.

The findings of the analysis are described as follows. Impact estimates were developed for the Republican River basin during two periods. First, impact estimates were developed for the construction period when the PRD project infrastructure is put in place. Second, impact estimates were developed for compact "call years" when the PRD project would help avoid the "shut down" of groundwater irrigated production in the Republican River basin.

As stated in the report, the potential economic impact of the PRD is substantial. The estimated economic impact during the construction period would be \$0.91 million in output, including \$0.53 million in labor income paid out over 14 jobs-years. During call years, the economic impact in the Republican River basin would range from \$14.17 million to \$33.05 million, depending on how much of the water needed to meet interstate agreements and obligations comes from the PRD project versus other sources. This total impact would include a labor income impact ranging between \$2.41 million to \$5.63 million over the course of a year which would be paid out in 28 to 65 jobs. Even larger impacts are possible under an alternative regulatory scenario where more of the Lower Republican NRD acres would potentially lose irrigation. Impacts also would grow if irrigation needed to be shut down in other areas of the Republican River basin. Additionally, given these large impacts during each call year, the project would have a substantial cumulative impact over its lifetime. If there are two call years out of each ten years, as anticipated, over a 50-year project lifetime the impacts would occur ten times over that period or \$141.7 million to \$330.5 million.

The PRD project also would at times lead to higher water levels at Harlan County Lake. Higher lake levels are associated with greater recreation amenities according to the U.S. Department of Interior Republican River Basin Study. Greater recreation amenities would result in economic benefits for individuals engaged in recreation and economic impacts for local businesses who provide goods and services to visitors. Higher levels of recreation amenities result because Harlan County Lake would have a larger surface area, which is more attractive for potential visitors.

Environmental and Other Benefits:

The PRD project will provide the following secondary benefits:

- **Municipal and industrial use** – by providing additional streamflow to Turkey Creek and the Republican River basin, the project will provide additional groundwater recharge that could be used for more sustainable municipal and industrial groundwater supplies.
- **Wildlife habitat** – by providing additional streamflow to Turkey Creek and the Republican River, wildlife habitat along the rivers and within Harlan Reservoir will be enhanced. The Nebraska Game and Parks Commission (NGPC) noted (Harlan County 2016 Fish Population Survey) that aquatic habitat conditions associated with high water levels have been reduced and lower production of shoreline species has occurred. Further they indicate that some fisheries species are not sampled anymore due to the absence of coves which results in low fish counts.
- **Conservation and preservation of water resources** – The past few years have seen significant flows in the Platte River at a time when water supplies have been relatively low in the Republican River Basin. For example, in the summer of 2010, the peak discharge on the Platte River at Maxwell, Nebraska was over 7,600 cfs, and again in the summer of 2011, the peak discharge nearly exceeded 7,900 cfs. These flows occurred at times when flows in the Republican River at McCook, south of Maxwell, were about 190 to 200 cfs. The PRD project will conserve and preserve some of the excess Platte River flows that would otherwise be lost to the Missouri River.
- **Aquifer recharge** – The PRD project will increase recharge along Turkey Creek during times of diversion.
- **Flood reduction** - The PRD project will provide a small increment of flood magnitude reduction in the Platte River valley downstream of the J-2 River Return.

B. Any adverse impact of the proposed interbasin transfer and use.

None.

This can be definitely stated due to the application's specific request for the condition to be included in any final order that the appropriation granted to the PRD project will never be able to exercise a call over any future junior appropriations granted for water uses of the Platte River within the Platte River Basin. This will mean that the owners of the PRD project will not be able to request administration of junior appropriators in the Platte Basin, and junior appropriators in the Platte Basin will always be able request administration of the PRD project to protect their rights.

C. Any current beneficial uses being made of the unappropriated water in the basin of origin.

The only known uses of unappropriated water in the Platte River are for meeting the Target Flows of the PRRIP. The applicants recognize the requirements placed on the State of Nebraska by the Nebraska New Depletions Plan, which is incorporated into the Water Action Plan of the PRRIP. It is also understood that the target flows are subject to future modifications. Therefore, any final order granting this application should also be conditioned in a manner similar to Permit A-18922 to appropriate water for the purpose of groundwater recharge through the Cozad Canal System, which includes the following condition: "Only those flow's in excess of the Desired Minimum Discharge shall be considered to be available to be diverted." The term "Desired Minimum Discharge" (DMD) is quantitatively defined and incorporated into the permit and is based on the

current target flows and would change per the conditions of the permit if the target flows change in the future. Therefore, the current beneficial uses of the unappropriated water in the basin of origin will be protected from any impacts of the PRD project.

D. Any reasonably foreseeable future benefits of leaving the water in the basin of origin for current or future beneficial uses.

None.

Through conditions of the permit described in response to Questions B and C (above), current and future beneficial uses provided through appropriations and agreements will continue to occur by leaving the water in the basin of origin when needed for those appropriations and agreements.

Additionally, the objective of the PRD project is firmly supported under Goal #2 of the second increment of the Basin-Wide Plan for Joint Integrated Water Resources Management of Overappropriated Portions of the Platte River Basin, Nebraska (2019-2029) that became effective on September 11, 2019.

E. The economic, environmental, and other benefits of leaving the water in the basin of origin for current or future beneficial uses

In response to Nebraska Revised Statutes § 46-289 (5), the economic, environmental and other benefits of leaving the water in the basin of origin for current or future beneficial uses can be summarized as follows:

Economic Benefits. An economic impact study of the Platte Republican Diversion Project was completed by the University of Nebraska Bureau of Business Research on January 13, 2018. As stated in the Executive Summary, "No losses are expected in the Platte River basin because the Diversion project would only be utilized in years when there were excess flows of water on the Platte. In other words, absent the Platte Republican Diversion project, this water otherwise would have flowed through the Platte River basin and left the State of Nebraska without any decrease in economic activity in the Platte River basin." Stated differently there can be no lost economic benefits by simply preventing a non-use of excess water in the Platte Basin.

Environmental Benefits. The environmental needs of the basin of origin have been quantified through several formal processes. The first was the application for instream flows by the Nebraska Game and Parks Commission (NGPC) for the central and lower Platte River and by the Central Platte Natural Resources District (NDR). These applications were made due to the requirement of § 46-2,109, which states in part:

Each natural resources district and the Game and Parks Commission shall conduct studies to identify specific stream segments which the district or commission considers to have a critical need for instream flows. Such studies shall quantify the instream flow needs in the identified stream segments. (Emphasis Added)

After holding hearings, the Department of Water Resources granted these applications in the early 1990's. "The Central Platte NRD[s] ... instream flow water rights on the Platte River ... protect and enhance wildlife." The NGPC instream flows provide benefits for fish and whooping crane habitat. Collectively, these instream flow water rights provide these environmental benefits

from the J-2 return to the confluence with the Missouri River (i.e., the entire river reach that the PRD project could impact). The PRD project will not jeopardize these environmental benefits because these benefits are protected by the senior water rights held by the Central Platte NRD and the NGPC.

If either entity determines environmental benefit(s) to leaving additional water in the basin of origin (not identified when they were originally required to conduct studies pursuant to § 46-2,109), they may protect those benefits from PRD diversions by securing any needed increase in the current instream flow levels. The PRD's permit application includes the requested condition that junior users in the Platte Basin have priority over PRD project diversions, so any changes in the instream flows will be protected from PRD diversions.

The second formal process of determining the environmental needs of the Basin of origin consisted of the definition of the U.S. Fish and Wildlife Services Target Flows (hereinafter "Target Flows") for the critical habitat reach of the Platte River. As part of the Platte River Recovery and Implementation Program (PRRIP), the States of Nebraska, Wyoming, and Colorado, as well as the United States, have agreed not to allow any water uses initiated after 1997 that would result in an increase to any shortages to Target Flows that may exist or occur. Furthermore, they have agreed to develop projects and programs that would mitigate post-1997 depletions to Target Flows.

Therefore, there are environmental benefits to leaving additional water in the Platte Basin under two conditions: 1) during times when the Target Flows are not being met, and 2) during times when water is needed for projects or programs that will assist in meeting the PRRIP and New Depletion Plan requirements. However, under the conditions requested with this the permit application, water will be left in the basin of origin under these circumstances. As all currently defined environmental needs for water will not be interfered with under the PRD project, there is no other state recognized environmental benefit to leaving the water diverted under the PRD project in the basin of origin.

Other Benefits. There is currently no other benefit to leaving the water that would be diverted by the PRD project in the basin of origin. While recreation in the Platte Basin is another known benefit of stream flow in the Platte River, the flow protections described above (the instream flow rights and the Target Flows) appear to provide adequate flow to support significant recreational benefits.

F. Alternative sources of water supply available to the applicant.

Three alternative sources of water supply were evaluated for this permit application. Of the three, the first was deemed too expensive, the second is currently being implemented through the IMPs, and the third alternative is currently in progress through this application.

Surface Water Purchase and Augmentation Projects

As part of the PRD feasibility study two alternative sources of water supply were compared to the PRD project (Olsson, 2017). The two alternatives implemented in the Republican River Basin to increase streamflow were: 1) Surface water leases from irrigation districts and 2) the Nebraska Cooperative Republican Platte Enhancement (N-CORPE) Project. The following describes these two alternatives and the cost of water for each alternative. Development of another large-scale augmentation project or future surface water purchases are considered to be the next best alternatives to developing the PRD project.

Surface Water Purchase: From 2006 to 2008, surface water was leased from irrigation districts in the basin to assist with compliance with the Compact. The state and the local NRDs paid \$18,722,500, which resulted in a reduction of consumptive use of 51,614 acre-feet, which equates to \$362 per acre-foot of water.

Nebraska Cooperative Republican Platte Enhancement (N-CORPE) Project: The N-CORPE project is a large-scale streamflow augmentation project located in southern Lincoln County. This project provided construction costs and delivery costs for water to accomplish the goal of increasing streamflow. Based on project costs and an assumed average annual delivery of 3,750 acre-feet, the annual delivery cost for water from N-CORPE is \$272.59 per acre-foot.

As described in the feasibility study, the unit cost for water from the PRD project is substantially less than the cost of these two alternatives. The cost of water for the PRD is projected to be \$60 per acre foot.

IMP Implementation of Controls and Management Activities

The Tri-Basin and Lower Republican NRDs developed IMPs in collaboration with NeDNR that include basic controls for Compact and FSS compliance. Tri-Basin NRD's IMP is dated September 2012, and the IMP jointly developed by the NeDNR and the Lower Republican NRD is dated January 15, 2016. The basic controls for compliance included moratoria, transfer provisions, and well-metering requirements. Additionally, controls included in the IMPs for implementation during compact call years were: 1) curtailment of groundwater pumping within the Rapid Response Region in each NRD; and 2) a one-year pumping allocation that would apply to the entire district and would limit groundwater use from each well regardless of any carry-over allocation from previous years. Both of these alternatives were evaluated in the economic analysis by Dr. Eric Thompson and the conclusions indicated that there would be a significant negative impact on the economy of the Republican River Basin as described in Section A, above.

Republican River Basin-wide Planning

In 2014, LB1098 added the requirement for basin-wide planning in fully-appropriated river basins with two or more NRDs. To meet that requirement, a dedicated group of stakeholders worked collaboratively with the Upper Republican, Middle Republican, Lower Republican and Tri-Basin NRDs and the NeDNR to develop the Republican River Basin-wide Plan (NeDNR 2019). The goals of the plan are:

1. Maintain Nebraska's compliance with the Republican River Compact and applicable state laws
2. Maximize Nebraska's efficient and beneficial consumptive use of its portion of the water supply, increase certainty for long-range planning of water supplies to reduce the need for regulatory actions, and increase collaborative efforts among water management entities and stakeholders across the Basin
3. Positive public relations, including information sharing, within and outside the Basin
4. When possible, pursue projects that not only benefit water supplies and uses, but also create benefits for fish, wildlife, recreation, and conveyance within the Republican River Basin

Specifically, to address goal number 2, the stakeholder group worked to identify alternative water sources along with ways to minimize consumptive use of water across the basin. Objective 2.2 of the plan is to:

Improve the efficiency of use, availability, and reliability of water supplies for current irrigators.

One of the action items identified to meet this objective included interbasin transfers:

Action Item 2.2.2 Participate in projects to improve the reliability, availability, and sustainability of water supplies in the Basin, which may include but are not limited to:

- a. Voluntary reduction of irrigated acres (temporary or permanent)*
- b. Interbasin transfers*
- c. Conjunctive management projects such as aquifer recharge or streamflow augmentation*

The plan goes on to describe the idea in more detail:

Interbasin transfers - The idea of interbasin transfers, or diverting available water to the Republican Basin from other basins during periods of high flows, has garnered much support from stakeholders throughout the Plan development process. The most likely basin to serve as a suitable basin of origin for an interbasin transfer project would be the Upper Platte River Basin in Nebraska, but other basins within and outside the state have also been suggested at times during Stakeholder Advisory Committee meetings. Interbasin transfers would benefit the Republican Basin by bringing additional water into the Basin and may also benefit the basin of origin (such as the Upper Platte Basin) by potentially reducing the impacts of flooding downstream of the diversion site.

The plan was formally adopted in March 1, 2019.

In conclusion, three alternative sources of water supply were evaluated for this permit application. Of the three, the first was deemed too expensive, the second is currently being implemented through the IMPs, and the third alternative is currently in progress through this application.

G. Alternative sources of water available to the basin of origin for future beneficial uses.

Through conditions of the permit described in response to Question B and C (above), alternative future sources of water available to the basin of origin are any and all currently unappropriated water of the Platte River. Future uses will be met, to the extent allowed by actual Platte River flows, by leaving the water in the basin of origin when needed for those uses.

SECTION 4 - SUMMARY

As demonstrated above, the PRD project is in the public interest because the overall benefits to the state and applicant's basin (which are significant) are greater than or equal to any adverse impacts to the state and the basin of origin, because there will be none. The interbasin transfer permit for up to 150 cfs from the Platte Basin for deliveries to the Republican Basin via the CNPPID E65 canal, and to Turkey Creek should be granted with the conditions described above, and any other deemed necessary to protect the public interest.

SECTION 5 - REFERENCES

Olsson Associates, 2017. Platte Republican Diversion Feasibility Review Report. Prepared for PRD, July 2017, 442 pgs.

NeDNR, 2010. Evaluation of Historic Platte River Streamflow in Excess of State Protected Flows and Target Flows. Prepared for NeDNR by HDR and the Flatwater Group. December 2010. 202 pgs.

NeDNR, 2013. Forecast of Allowable Depletions in the Republican Basin During 2014 and 2024.

NeDNR, 2014. Forecast of Allowable Depletions in the Republican Basin During 2015 and 2025.

NeDNR, 2015. Forecast of Allowable Depletions in the Republican Basin During 2016 and 2026.

NeDNR, 2016. Forecast of Allowable Depletions in the Republican Basin During 2017 and 2026.

NeDNR, 2017. Forecast of Allowable Depletions in the Republican Basin During 2018 and 2026.

NeDNR., 2019. Republican River Basin-Wide Plan, Jointly developed by the Upper Republican, Middle Republican, Lower-Republican, and Tri-Basin Natural Resources Districts and the Nebraska Department of Natural Resources Adopted March 1, 2019.

NeDNR., 2019. Basin-Wide Plan for Joint Integrated Water Resources Management of Overappropriated Portions of the Platte River Basin, Nebraska SECOND INCREMENT (2019-2029), cooperatively developed by cooperatively developed by the Department, Central Platte Natural Resources District (NRD), North Platte NRD, South Platte NRD, Tri-Basin NRD, and Twin Platte NRD (Districts). Adopted August 9, 2019 and effective September 11, 2019.

NGPC., 2016. Harlan County Reservoir 2016 Fish Population Survey.

Thompson, Eric. 2007. The Economic Impact of Reduced Irrigation in the Republic River Basin, Bureau of Business Research Report.

Thompson, Eric, 2018. Economic Impact Study of the Platte River Diversion Project, Prepared for the Central Nebraska Public Power and Irrigation District, Final Report.

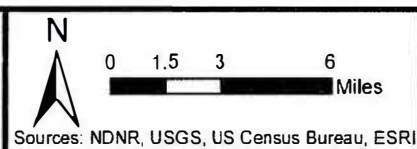
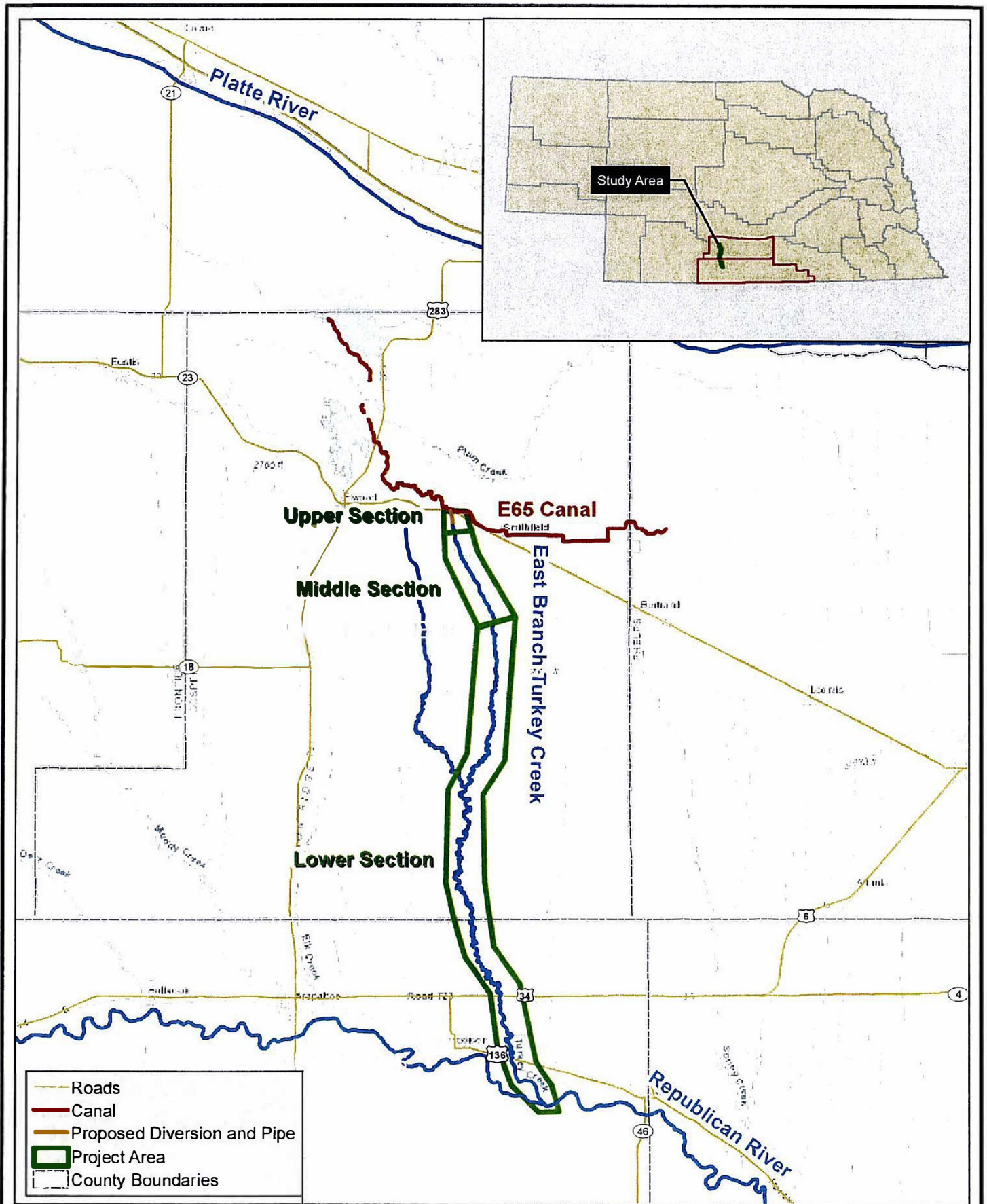
U.S. Department of Interior, Bureau of Reclamation, 2016. Reclamation: Managing Water in the West, Republican River Basin Study, December 19, 2017.

U.S. Supreme Court, 2014. Syllabus Kansas v. Nebraska et al., On Exceptions to Report of Special Master. October Term, 2014.

SECTION 6 - RELIANCE

This document was prepared solely for the PRD under contract with the PRD in accordance with professional standards at the time the services were performed. This document is governed by the specific scope of work authorized by the PRD and is not intended to be relied upon by any other party except for regulatory authorities contemplated by the scope of work. All data, drawings, documents, or information contained this report have been prepared exclusively for the person or entity to whom it was addressed and may not be relied upon by any other person or entity without the prior written consent of and the PRD.

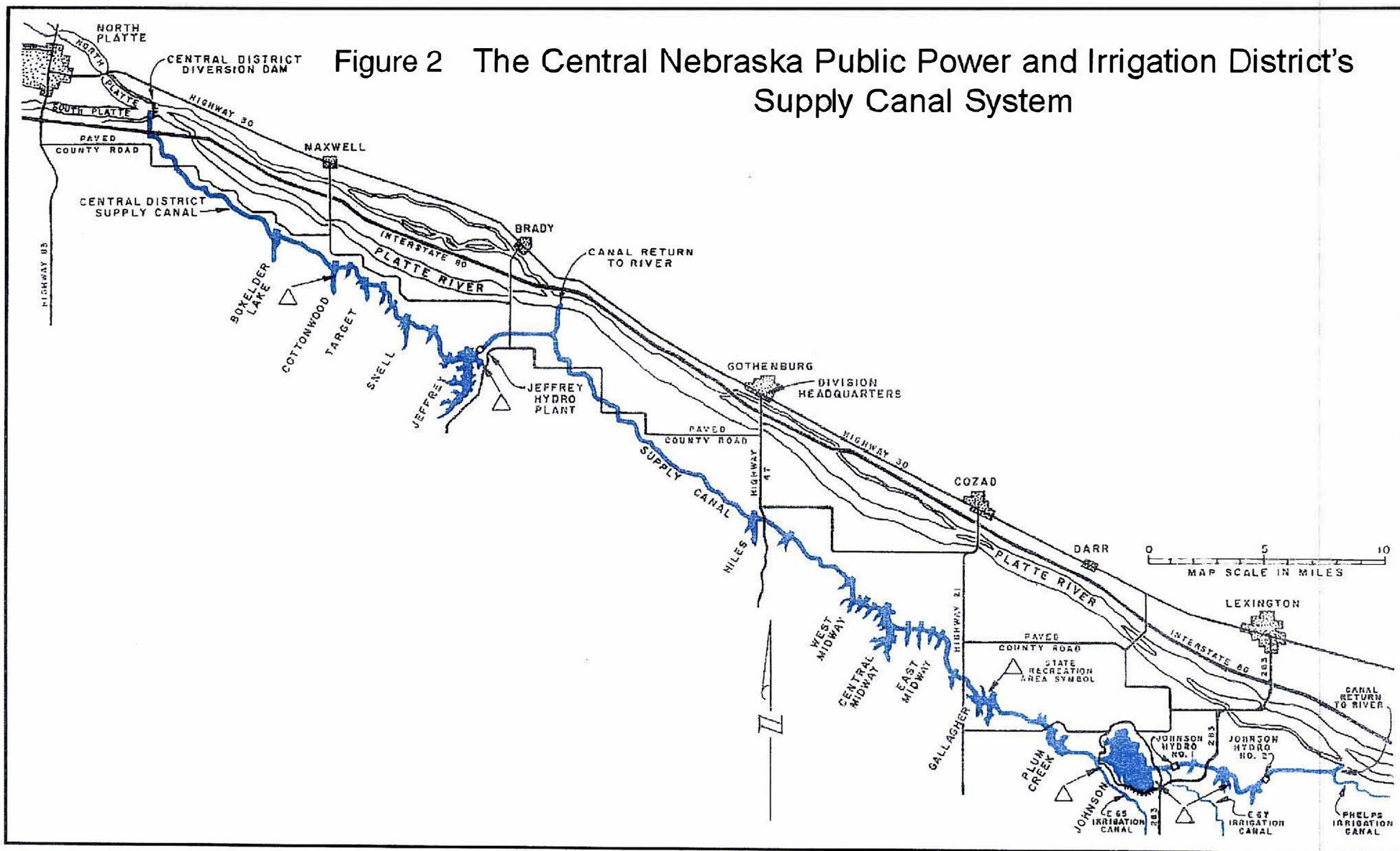
FIGURES



Platte to Republican Basin High Flow Diversion Project

FIGURE
1

Figure 2 The Central Nebraska Public Power and Irrigation District's Supply Canal System



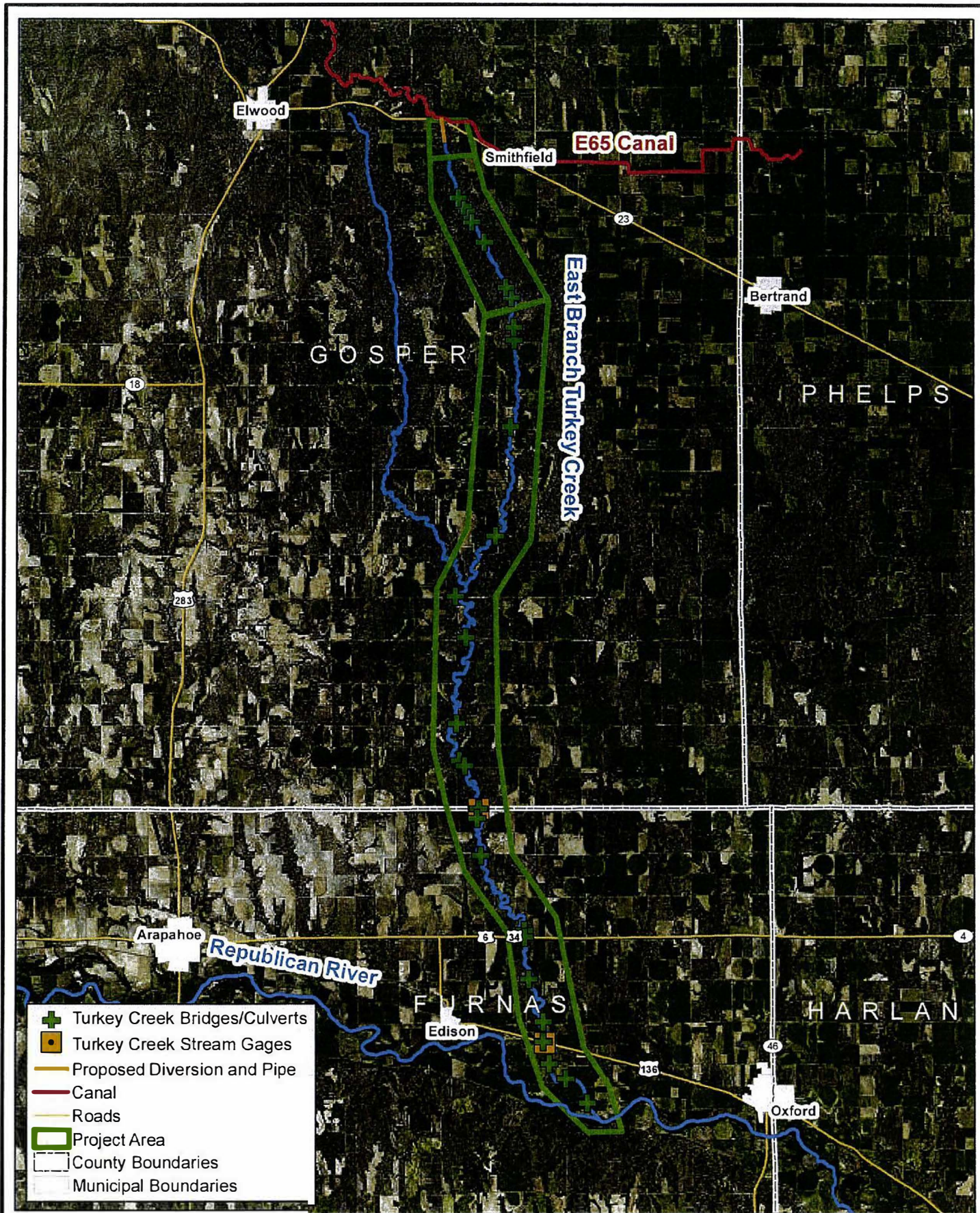
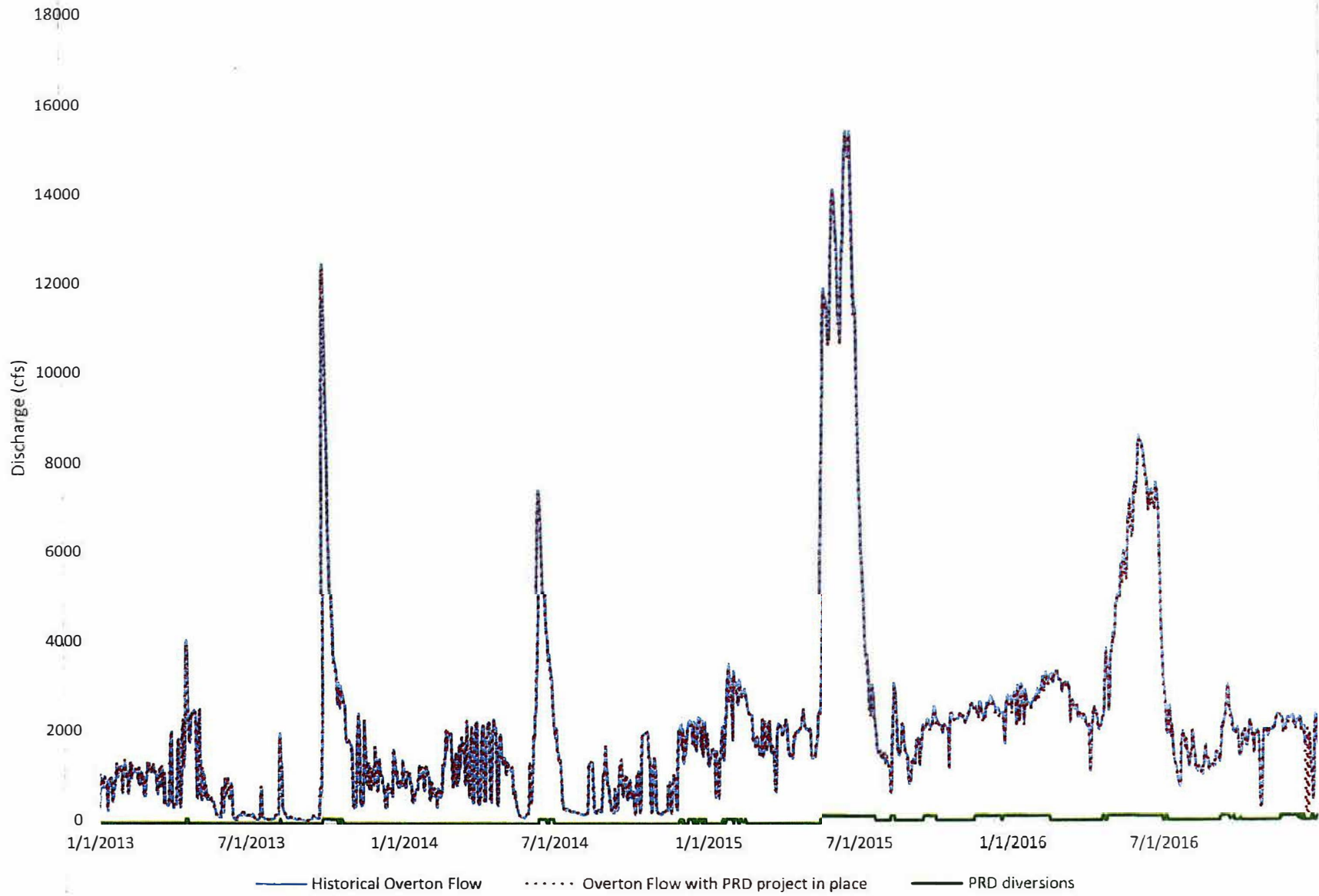


Figure 4 Daily Discharge in the Platte River at Overton



ATTACHMENT A

**APPLICATION FOR VARIANCE – NeDNR FORM SW-001
AND THE
ORDER GRANTING LEAVE TO FILE**

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

PETITION REQUESTING LEAVE TO FILE OR CONSIDER AN APPLICATION FOR
A NEW SURFACE WATER APPROPRIATION WITHIN A MORATORIUM OR STAY AREA
UNDER TITLE 457 N.A.C. CHAPTER 23

Instructions:

1. Complete items 1 through 5 by printing in ink or typing the appropriate information and by placing an X in the appropriate box.
2. Attach a copy of the completed proposed application for a new surface water appropriation.
3. Attach any supporting documentation.
4. Include a \$10 non-refundable filing fee.

FOR DEPARTMENT USE ONLY

Filed in the office of the Department of Natural Resources
at _____ on _____, 20____

Modification VAR- _____

SW Application: _____ RightID: _____

Water Division: _____

Receipt Number: _____ Amount: \$ _____

1. Name and contact information of petitioner:

Name: Platte to Republican Basin High Flow Diversion Project

Address 1: 30 N. John Street

Address 2: _____

City & State: Alma, Nebraska

Zip Code: 68920 Phone Number: (308) 995 - 6688

E-Mail Address: jthorburn@tbnrd.org Cell Phone: () _____ - _____

2. Check the situation that applies:

- Application already filed. Application Number: A-19594
- Application not filed. (Enclose copy of proposed application)

3. Description of proposed project:

The proposed project will divert water from the Platte River through E65 canal to a diversion point between Smithfield and Elwood, NE where water will be diverted into the east branch of Turkey Creek and will enter the Republican River near Edison, Nebraska.

4. The proposed project must meet at least one of the following criteria. (Check all that apply)

1. The proposed project is for a non-consumptive use. (Attach description of use)
2. The applicant has a credible proposal for replacing any consumptive use that will occur in a manner such that the project will not harm other users. (Attach offset plan)
3. The Applicant has credible information that indicates there **may be** unappropriated water available at the proposed location at the time the depletion is likely to occur. (Attach analysis)
4. The project existed prior to any informal moratorium, formal moratorium or stay. (Attach proof)
5. There is a public safety issue that must be addressed and the proposed project addresses that issue. (Attach explanation)
6. The proposed use is a temporary use for public construction and the total volume requested is less than ten (10) acre-feet.

5. Other reason(s) to show good cause why a variance should be granted:

Neb. Rev. Statue 46-715(4)(b) requires that IMPs ensure the the state remain in compliance with Interstate compacts or formal state agreements to water supplies. This variance will assist the NRD's in meeting the requirements of their IMPs and assist the State of NE. in meeting obligations under the RRC.

6/23/20 Date John Thorburn Signature of Petitioner (or authorized agent) John Thorburn Print Name

If you have any questions regarding this form, please contact the Surface Water Permitting Section at the Department of Natural Resources (402) 471-2363

Forward this petition, all supplemental documentation and a \$10 non-refundable filing fee to:

State of Nebraska
Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, Nebraska, 68509-4676

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO FILE AN APPLICATION FOR
A NEW SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A
MORATORIUM BY PETITION VAR-6600

WATER DIVISION 1-A

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in the Platte River Basin upstream of the confluence with the Loup River near Columbus, Nebraska. The moratorium included all tributary streams above the Loup River confluence including the North and South Platte Rivers and tributaries. Subsequently, integrated water management plans have continued the moratorium on issuing new surface water appropriations.
2. Provisions of *Neb. Rev. Stat. § 46-714(3)(n)* allow for new surface water appropriations and increases in irrigated acres if the Department grants a variance and subsequently approves a permit for such new use.
3. On March 2, 2018, John Thorburn, on behalf of the Platte Republican Diversion Interlocal Agreement Partners, and Don Kraus, P.E., General Manager of The Central Nebraska Public Power and Irrigation District (CNPPID) (Petitioners) filed petition VAR-6600 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area or Stay Area. The petition requests leave to file an application for an interbasin transfer for the purpose of meeting the requirements of Integrated Management Plans, the Republican River Compact and the December 15, 2002, Final Settlement Stipulation in the *Kansas v. Nebraska and Colorado, No. 126 Original*. Platte River water would be diverted via the Tri-County diversion dam, through the CNPPID supply canal, E-65 Canal, and Elwood Reservoir before being released into the East Branch of Turkey Creek, a tributary to the Republican River.
4. When filing a variance request, a project proponent must offer a clearly stated basis for such request and must offer sufficient good cause shown. *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code Chapter 23* lists six circumstances that may be put forward as justification for granting a variance to apply for a new water use, in conjunction with an examination of good cause shown.

FINDINGS

1. The formal moratorium issued by the Department in 2004 has been continued in the surface water controls included in the integrated management plans (IMPs) adopted by the Platte River Basin Natural Resources Districts and the Department.
2. Petitioners provided information that indicates at times there may be unappropriated water in the Platte River Basin upstream of the confluence of the Loup and Platte Rivers.
3. The proposed application is for diverting unappropriated water to assist the Natural Resources Districts in meeting the requirements of their IMPS and to meet compliance with the Republican River Compact and the Final Settlement Stipulation.

CONCLUSIONS

1. The Petitioner has provided evidence that indicates at times there may be unappropriated water in the future on the Platte River prior to and after some irrigation seasons, thereby meeting the requirements of *Department of Natural Resources Rules for Surface Water 457 Neb. Admin. Code Chapter 23, § 001.03.*
2. The potential benefits of helping the Lower Republican and Tri-Basin Natural Resources Districts meet requirements of their IMPS and assist the State of Nebraska to meet its obligations under the Republican River Compact that the Petitioners expect to result from the proposed project show sufficient good cause for the Department to allow the application to be filed.

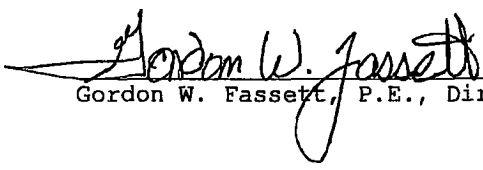
ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-6600 for Leave to File an Application for a Permit to Appropriate Water is GRANTED.
2. This Order granting leave to file or consider an application for a new surface water appropriation within a moratorium or stay area pursuant to petition VAR-6600 shall be in effect for one year from the date this order is signed.
3. This decision shall not bind the Director to approve any application to which it relates, or in any way be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of such an application.

DEPARTMENT OF NATURAL RESOURCES

March 23, 2018


Gordon W. Fassett, P.E., Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Bridgeport, Nebraska. A copy of this Order was mailed on March 23, 2018, to the following:

Don Kraus, P.E., General Manager
The Central Nebraska Public Power and Irrigation District
415 Lincoln Street, P.O. Box 740
Holdrege, Nebraska 68949-0740

John Thorburn
Platte Republican Diversion Interlocal Agreement Partners
30 South John Street
Alma, Nebraska 68920

ATTACHMENT B

APPROPRIATION PERMIT – DNR FORM APA-001

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
APPLICATION FOR A PERMIT TO APPROPRIATE WATER

Corrected Filed 6/24/2020
and 7/3/2018

Complete items 1 through 1 by printing in ink or typing the appropriate information and by placing an X in the appropriate box.

For Department Use Only

1. Name and address of owner of land under proposed project. Names must be exactly as described on the deed or document transferring ownership of property. Landowner must sign the application.

Landowner under proposed delivery point: Platte to Republican Basin High Flow Diversion Project (PRD), 30 N. John Street. Alma, NE 68920

Landowner of the diversion and delivery works: Central Nebraska Public Power and Irrigation, 415 Lincoln Street, Holdrege, NE 68949

E-mail address: jthorburn@tbnrd.org Telephone No. (308) 995-6688

Filed in the office of the Department of
Natural Resources at 4:26 a.m./p.m.

on April 4, 2018

Application No. A-19594

2. Name, address, and telephone number of applicant if different than landowner.

Platte to Republican Basin High Flow Diversion Project (PRD)
30 N. John Street. Alma, NE. 68920

Map No. _____

Water Division 1-A

Receipt No A-5092 Amount \$10.00

Right ID 13325

E-mail address: jthorburn@tbnrd.org Telephone No. (308) 995-6688

3a. A permit is sought to:

Use natural flow Use impounded water*

3b. A permit is sought for the purpose of:

Irrigation Manufacturing Domestic
 Other Interstate Compact Compliance
 Temporary**

4a. Identify the source of water (name of stream or reservoir).

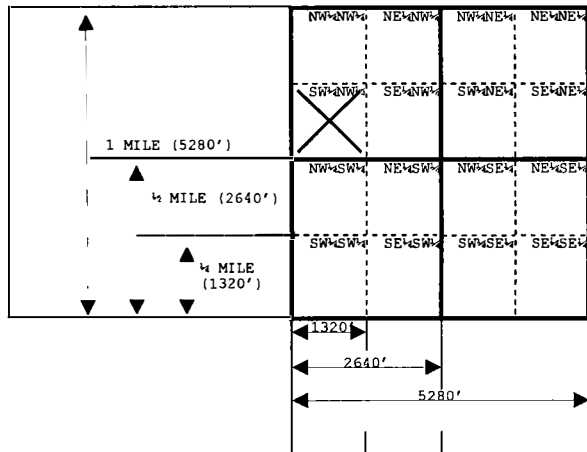
Platte River

4b. If applicable, identify the facility name for transporting water from the source (portable pump, name of canal or pipeline).

CNPPID Supply and E65 Canals, PRD Pipeline

5. Identify the location of the Headgate Pump

Section 8, Township 13 North, Range 29 E W County Lincoln



The box at left represents one square mile (section). Place an X within each appropriate 40-acre tract to indicate the location(s) of each headgate or pump.

If applicable, indicate the height, in feet, of any diversion or check dams on the line below.

* A separate permit to impound water must be obtained.

** A temporary permit maybe granted for a maximum of one year.

6. If applicable, identify the location of lands by 40-acre subdivisions that will be irrigated.

LEGAL SUBDIVISIONS	Sec.	Twp.	Rge.	No. of Acres	LEGAL SUBDIVISIONS	Sec.	Twp.	Rge.	No. of Acres
TOTAL NUMBER OF ACRES TO BE IRRIGATED:									0.0

Enclosed is an aerial photograph that I have marked to show the approximate location of land to be irrigated as described above.

7. State the approximate quantity of water desired for
appropriation 150 cfs at headgate to divert 100 cfs to Turkey Creek

Gallons per minute
 Cubic feet per second
 Acre-feet (impounded water)

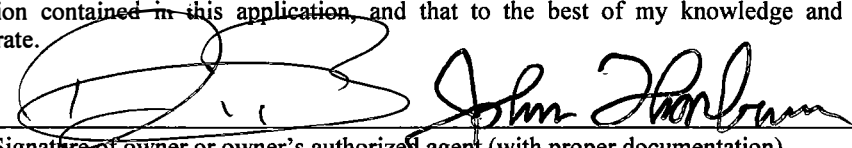
8a. State the estimated time required for completion of all water diversion facilities.
Seven months after appropriation is granted

8b. State the earliest date when water will have been used for beneficial purposes.
When conditions of the permit are met

9. Will this project be constructed under a federal program, receive federal funding, or have federal planning assistance?
 No Yes If yes, explain: _____

10. I certify that am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete and accurate.

6/25-20
Date


Signature of owner or owner's authorized agent (with proper documentation)

A final project map may accompany this application or must be filed within six months following departmental approval of this application, drawn in accordance with NAC Title 457 – Rules for Surface Water, Chapter 10, (<http://dnr.nebraska.gov/swr/surface-water-rules>). At the request of the applicant, the Department will assist with preparation of the project map.

This form must be completed in full. An incomplete or defective application will be returned with 90 days being allowed for resubmission. Failure to resubmit a corrected application within this period shall cause dismissal of the application and consequent loss of priority and fees.

A non-refundable filing fee, payable to the Department of Natural Resources, computed from the table below must accompany this application. Forward this application and applicable fees to:

State of Nebraska
Department of Natural Resources
301 Centennial Mall South / P.O. Box 94676
Lincoln, Nebraska 68509-4676
(402) 471-2363

Nature of Use	Cost	Nature of Use	Cost
Domestic	\$10	Manufacturing	
Agricultural		General	\$10
Irrigation from Stream		Power Generation for each theoretical 50 horsepower	\$5
0-1,000 acres	\$200	Other	\$10
Each additional 1,000 acre unit	\$100		
or portion thereof in excess of the first 1,000 acre unit			
Irrigation from Storage Reservoir			
0-1,000 acres	\$50		
or portion thereof in excess of the first 1,000 acre unit			
Each additional 1,000 acre unit	\$25		
or portion thereof in excess of the first 1,000 acre unit			

ATTACHMENT C

INTERBASIN ADDENDUM – NeDNR FORM SW-400

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

INTERBASIN TRANSFER OF WATER *ADDENDUM TO* Corrected Filed
APPLICATION FOR A PERMIT TO APPROPRIATE WATER 6/24/2020 and

Pursuant to *Nebraska Revised Statutes* § 46-288, interbasin transfer shall mean the diversion of water in one river basin and the transportation of such water to another river basin for storage or utilization for a beneficial use. 7/3/2018

Instructions:

This form is an addendum to be filed along with an application for a permit to appropriate water that proposes water being transferred from one river basin to another river basin.

Complete items 1 through 10:

- Items 1 through 9 by printing in ink or typing the appropriate information.
(If additional space is needed please attach separate sheet and reference in form.)
- Item 10 attached to this addendum.

The answers to the following questions A-G must be provided on 8½ x 11 inch paper (or folded to such size). An answer is required for each item A-G. Each answer must be separately identified in the attachment(s).

- A. The economic, environmental and other benefits of the proposed interbasin transfer and use.
- B. Any adverse impact of the proposed interbasin transfer and use.
- C. Any current beneficial uses being made of the unappropriated water in the river basin of origin.
- D. Any reasonably foreseeable future benefits of leaving the water in the river basin of origin.
- E. The economic, environmental and other benefits of leaving the water in the basin of origin for current or future beneficial uses.
- F. Alternative sources of water supply available to the applicant.
- G. Alternative sources of water available to the basin of origin for future beneficial uses.

FOR DEPARTMENT USE ONLY

Filed in the office of the Department of Natural Resources

at 10:45 a.m. July 3, 2018

Surface Water Permit: A-19594

Right ID: 13325

Map Number: _____

Water Divisions: 1-A to _____

Receipt Number: _____ Amount: \$ _____

1. Owner(s) of land for location of diversion and for locations of beneficial use under application:

Name: Diversion and Delivery Works Owner: CNPPID and Beneficial Use: Platte to Republican Basin High Flow Diversion Project (PRD)

Address 1: CNPPID: 415 Lincoln Street and PRD: 30 N. John Street

Address 2: _____

City & State: CNPPID: Holdrege, NE and PRD: Alma, Nebraska

Zip Code: CNPPID: 68949 and PRD: 68920 Phone Number: (308) 995 - 6688

E-Mail Address: CNPPID: dbrundage@cnppid.com and PRD: jthorburn@tbnrd.org Cell Phone: () - _____

2. Person to contact concerning the application:

Name: Platte to Republican Basin High Flow Diversion Project

Address 1: 30 N. John Street

Address 2: _____

City & State: Alma, Nebraska

Zip Code: 68920 Phone Number: (308) 995 - 6688

E-Mail Address: jthorburn@tbnrd.org Cell Phone: () - _____

3. River basin FROM which the transfer is proposed: (refer to map on back) Platte River Basin

4. River basin TO which the transfer is proposed: (refer to map on back) Republican River Basin

5. State the proposed beneficial use of the water to be transferred: Interstate Compact Compliance

6. Describe the location and method of diversion: Platte River at the Tri-County diversion dam, through supply canal, to E65 canal, to PRD pipeline into Turkey Creek.

7. Describe the location of beneficial use: The benefit for this appropriation is interstate compact compliance which is an obligation of the entire state. Beneficial use will be to the citizens of the entire State of Nebraska.

8. Identify the quantity of water subject to this transfer.

a. Rate of diversion from source in cubic feet per second (cfs) or gallons per minute (gpm): 150.00 cfs gpm

b. Volume of proposed transfer per year in acre-feet (af): _____ * _____ af *The volume will depend on the amount of unappropriated water available from the Platte River each year.

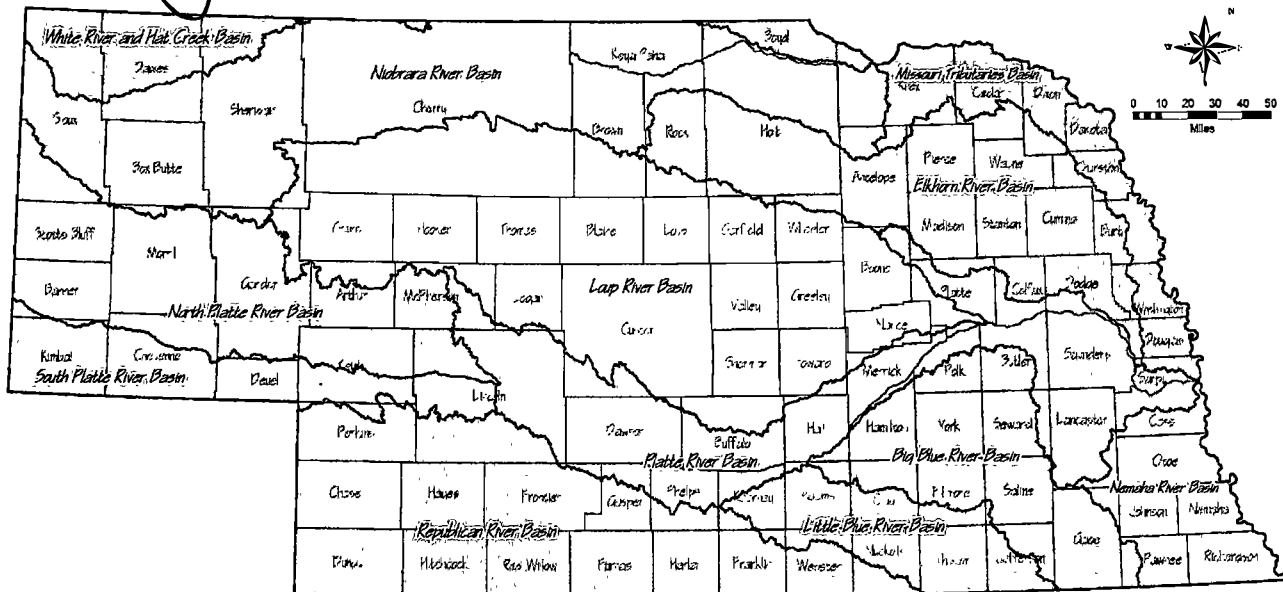
9. Identify the duration/timing of the transfer: The diversion may occur anytime throughout the year when conditions of the permit are met.

10. Provide current aerial photography clearly marked with the location of diversion, water transport facilities, location of use (if applicable) and any other pertinent information.

I certify that I am familiar with the information contained in this addendum and all attachments, and that to the best of my knowledge and belief, such information is true.

6-23/20 Date *John Thorburn* Signature of Landowner John Thorburn and Devin Brundage Print Name

6/23/20 Date *John Thorburn* Signature of Person to Contact Concerning Application John Thorburn Print Name



If you have any questions regarding this form, please contact the Surface Water Permitting Section at the Department of Natural Resources (402) 471-2363

Forward this addendum, all supplemental documentation and aerial photograph to:
 State of Nebraska
 Department of Natural Resources
 301 Centennial Mall South
 P.O. Box 94676
 Lincoln, Nebraska, 68509-4676

ATTACHMENT D

FINAL ECONOMIC IMPACT STUDY OF THE PLATTE RIVER DIVERSION PROJECT



A Bureau of Business Research Report
From the University of Nebraska—Lincoln

Final Report

Economic Impact Study

of the Platte River Diversion Project

Prepared for the Central Nebraska Public Power and Irrigation District

January 13, 2018

Bureau of Business Research
Department of Economics
College of Business
University of Nebraska—Lincoln
Dr. Eric Thompson, Director

UNIVERSITY OF
Nebraska
Lincoln

Executive Summary

The proposed Platte Republican Diversion project (or Diversion project) would support compliance with Nebraska's interstate agreements and obligations as well as water management plans developed cooperatively by the Lower Republican and Tri-Basin Natural Resources Districts and the State of Nebraska. This study from the University of Nebraska-Lincoln Bureau of Business Research (UNL-BBR) estimates gains in economic activity in the Republican River Basin due to the project. No losses are expected in the Platte River basin because the Diversion project would only be utilized in years when there were excess flows of water on the Platte. In other words, absent the Platte Republican Diversion project, this water otherwise would have flowed through the Platte River basin and left the State of Nebraska without any decrease in economic activity in the Platte River basin.

Impact estimates are developed for the Republican River basin during two periods. First, impact estimates are developed for the construction period when the Platte Republican Diversion project infrastructure is put in place. Second, impact estimates are developed for compact "call years" when the Diversion project would help avoid the "shut down" of groundwater irrigated production in the Republican River basin. This report focuses on the avoided shut down of groundwater irrigated production in the Lower Republican Natural Resources District. The estimated economic impact during the construction period would be \$0.91 million in output, including \$0.53 million in labor income paid out over 14 jobs-years. During call years, the economic impact in the Republican River basin would range from \$14.17 million to \$33.05 million, depending on how much of the water needed to meet interstate agreements and obligations comes from the Platte Republican Diversion project versus other sources. This total impact would include a labor income impact ranging between \$2.41 million to \$5.63 million over the course of a year which would be paid out in 28 to 65 jobs. Even larger impacts are possible under an alternative regulatory scenario where more Lower Republican NRD acres would potentially lose irrigation. Impacts also would grow if irrigation needed to be shut down in other areas of the Republican River basin.

The Platte Republican Diversion project also would at times lead to higher water levels at Harlan County Lake. Higher lake levels are associated with greater recreation amenities according to the U.S. Department of Interior *Republican River Basin Study*. Greater recreation amenities would result in economic benefits for individuals engaged in recreation and economic impacts for local businesses who provide goods and services to visitors. Higher levels of recreation amenities result because Harlan County Lake would have a larger surface area, which is more attractive for potential visitors.

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I. Introduction

The proposed Platte Republican Diversion project would support compliance with Nebraska's interstate agreements and obligations as well as Integrated Management Plans (IMPs) developed cooperatively by the Lower Republican and Tri-Basin NRDs and the State of Nebraska. This study from the University of Nebraska-Lincoln Bureau of Business Research (UNL-BBR) provides a localized economic impact analysis for the project. In particular, the analysis compares lost economic activity due to the diversion of water from the Platte River basin with gains in economic activity in the Republican River basin. Those gains would be due to avoiding periodic groundwater irrigation shutdowns or reduced irrigation allocations which could become necessary in the absence of the Diversion project.

II. Methodology

This study assesses the economic impact that the proposed Platte Republican Diversion project would have on each river basin. Specifically, the study will assess: 1) any loss of economic activity in the Platte River basin, if present, which results from the diversion of water from the Platte River during years when the project is utilized (Olsson, 2017)¹, 2) any loss in economic activity due to an occupation tax revenue from lands which must be raised to support construction or operation of the Diversion Project, and 3) any gain in economic activity in the Republican River basin due to avoiding irrigation shutdowns or reduced allocations in the Lower Republican Natural Resources District.

Analysis will consider that the Platte Republican Diversion project only would be utilized in select years when there is sufficient excess flow in upper portions of the Platte River basin which are not allocated or appropriated for current or expected future downstream use. The water allocated to the Republican River basin would aid the Lower Republican to support compliance with the Republican River compact without shutting down groundwater irrigated acres. The continued operation of irrigated acres would be the direct economic impact of the project.

The potential economic impact is substantial. The Lower Republican Natural Resources District has approximately 78,000 rapid response groundwater irrigated acres which would be shutdown, if necessary, to keep the district in compliance with their IMP and the State in compliance with the Compact. There would be lost agricultural activity and lost income if those 78,000 acres engaged in dryland rather than irrigated production.² As was discussed in the 2007 UNL Bureau of Business Research report *The Economic Impact of Reduced Irrigation in the Republican River Basin*, the resulting decline in agricultural production is a direct economic impact on the basin economy.

The Platte Republican Diversion project also may impact the economy by generating recreation opportunities. Water diverted through the Platte Republican Diversion project in many cases would be stored in Harlan County Lake until such time that it is needed for compliance with the

¹ Olsson Associates, 2017. *Platte Republican Diversion Project Feasibility Review*. No. 016-1500 (July).

² The report does not consider any potential impacts of the Platte Republican Diversion project on surface water irrigated acres.

Republican River Compact. Such storage would result in a higher water level and enhanced recreation opportunities at Harlan County Lake. A report from the U.S. Department of Interior Bureau of Reclamation provides estimates of the economic benefits of enhanced recreation opportunities at Harlan County Lake.³

In addition to this direct impact, there also is a multiplier impact on the economy. The multiplier impact occurs for two reasons: changes in business spending on supplies and services, and changes in household spending as employees spend their paychecks. Such multiplier impacts are estimated using the IMPLAN model.⁴ The sum of the direct economic impact and the multiplier impact is the total economic impact.

These economic impacts in the Republican River basin would be the only economic impacts expected to result from the project. This is because no economic impacts are expected for the Platte River basin. The Platte Republican Diversion project only would be utilized in years when there are excess flows of water on the Platte River. In other words, absent the Platte Republican Diversion project, this water otherwise would flow through the Platte River basin and leave the State of Nebraska without decreasing economic activity.⁵

The last point is that there also would be a construction period impact from the project. The direct economic impact during the construction period would be estimated based on construction cost estimates from the report *Platte Republican Diversion Project Feasibility Review* (see footnote 1). The multiplier impact during the construction period, due to spending on materials and as workers spend their paychecks, also would be estimated using the IMPLAN model. The direct impact would be added to the multiplier impact to yield the total economic impact during the construction period.

³ U.S. Department of Interior, Bureau of Reclamation, 2016. Reclamation: Managing Water in the West, Republican River Basin Study. Available at: <https://www.usbr.gov/watersmart/bsp/docs/finalreport/republican/republican-river-basin-study-final-report.pdf>. Access on December 19, 2017.

⁴ The IMPLAN model is the leading model for calculating multiplier impacts for specific projects and economic regions based on the input-output structure of the economy. In particular, the IMPLAN model calculates the multiplier impact based on the unique industrial structure of the region.

⁵ Analysis conducted by Olsson Associates (see footnote 1) of water availability even assumed a significant future increase in use in the Platte River basin, after consultation with relevant natural resource experts.

III. Findings

This section presents estimates for the construction period impact of the Platte Republican Diversion Project and the potential impact during call years. The construction period impact is presented first.

A. Construction Period Impact

The construction period impact is based on project costs estimates from the Olsson Associates report *Platte Republican Diversion Project Feasibility Review* (see footnote 1). That report contained four possible construction scenarios based on the capacity of the construction project (diverting 40 cubic feet per second [cfs] versus 100 cfs) and the engineering method for the upper portion of the project (grading versus pipe installation). Construction impact estimates in this report are based on the 100 cfs capacity project utilizing pipe installation. The estimated construction cost for that project is \$1.59 million.

The direct construction impact is based on that \$1.59 million project cost. However, not all construction costs represent a direct economic impact on the basin economy. In particular, specialized equipment installed at the site is not necessarily manufactured within the basin, so the full purchase cost does not represent a direct economic impact. After making this adjustment, the direct economic impact from construction is \$1.33 million.

There are also economic costs associated with the project. In particular, local sources would be required to pay part of the cost of construction. A grant of \$0.9 million has been obtained to defray part of the cost of the project but another \$0.69 million is still required. The ultimate source for this additional funding is unknown, but a local source may be required, and funds utilized to pay for this project would not be available for other projects, creating a negative economic impact. Given the amount of money involved, it is not expected that payments would occur via a long-term bond. Instead, a short-term payment plan is anticipated; in particular, it is assumed that the required amount would be paid during the construction period using funds being raised annually. For example, taxes raised through property taxing authorities of the Lower Republican Natural Resources District and the Tri-Basin Natural Resources District could provide the required funds. The ultimate source of tax payments is the household income of land owners. The economic impact estimate, therefore, should reflect this lost household income as well as the economic impact of construction activity. Impact estimates in Table 1 reflect both. The direct impact is the \$0.64 million, which is the direct construction impact of \$1.33 million less the \$0.69 million of project costs paid locally.

Table 1 also shows the local multiplier impact estimated utilizing the IMPLAN model. This multiplier shows an additional impact on the basin economy of \$0.27 million during the construction period. The multiplier impact results as supplies are purchased locally to support construction and as construction workers spend a portion of their paycheck within the region. The total economic impact during the construction period is \$0.91 million.

Table 1 also shows the economic impact in terms of other key measures of the economy. These represent alternative measures of impact and should not be added to the economic impact as measured by output. In fact, the other measures are simply components of output. Value-added is a component of output referring to payments to the factors of production including labor, land,

certain taxes, and the consumption of capital (i.e., the depreciation of construction equipment as it is used). Labor income, which is the salaries, wages and benefits paid to employees plus any proprietor's income, is the principal component of value-added. There are also jobs associated with this labor income. Table 1 shows the full-year equivalent jobs associated with the given level of labor income. The term job-years reflects the varying length of a construction period; for example, two job-years could mean a single job lasting two years, or two jobs lasting one year.

Direct impacts in terms of value-added, labor income and job-years are estimated using the IMPLAN model. Average ratios between output and value-added, output and labor income, and output and employment from the infrastructure construction sector are applied to total spending estimates to yield the direct impacts. IMPLAN also is used to estimate economic multipliers in terms of value-added, labor income and job-years. The impact in terms of value-added is \$0.64 million. Most of the value-added is due to labor income of \$0.53 million. This labor income is spread over an estimated 14 job-years.

Table 1
Economic Impact in the Republican River Basin during Construction Period

Impact Measure	Direct Impact	Multiplier Impact	Total Impact
Output (Millions \$)	0.64	0.27	0.91
Value-Added (Millions \$)	0.50	0.15	0.64
Income (Millions \$)	0.43	0.09	0.53
Job-Years	12	2	14

Source: BBR calculations using IMPLAN

B. Annual Impact From Maintaining Activity in the Republican River Basin

Table 2 shows the potential annual economic impact during call years from economic activity maintained in the Republican River basin due to the Platte Republican Diversion project. Water used during these years would help the Lower Republican Natural Resources District avoid shutting down "rapid response" acres. This section estimates that economic impact from avoiding such a shut-down; that is, the additional economic activity which occurs in a year if rapid response acres are engaged in irrigated rather than dryland production. Analysis addresses 78,000 such rapid response acres in the Lower Republican Natural Resources District. The direct impact occurs because there are more input purchases with irrigated production, along with higher labor and proprietor income. There is also a cost for the purchase of water.⁶

The economic impact from maintaining economic activity for one year is \$47.22 million in economic output. This annual output impact includes \$14.01 million in value-added. Once again, a majority of value-added is realized as labor income. Specifically, the annual impact in terms of labor income is \$8.04 million. This income would be earned in 92 full-year equivalent jobs.

⁶ The estimated rate for diverting of water from Turkey Creek would be \$38/AF (acre-foot) in 2018, according to rate information provided by the Lower Republican Natural Resources District. Given that the Lower Republican Natural Resources District may need to provide up to 10,000 acre-feet during a call year, the cost of water could be as much as \$380,000, although the amount would be less if the Platte Republican Diversion project only needs to provide a portion of the call year requirement.

Table 2
Annual Gain in Economic Activity from Maintaining 78,000 Acres in Irrigated Production in the Republican River Basin

Impact Measure	Direct Impact	Multiplier Impact	Total Impact
Output (Millions \$)	37.09	10.13	47.22
Value-Added (Millions \$)	9.20	4.82	14.01
Income (Millions \$)	5.35	2.69	8.04
Employment (Job-Years)	28	64	92

Source: BBR calculations using IMPLAN

The Platte Republican Diversion project would be one source of water available to avoid shutting down irrigated acres during a particular call year. For example, the Lower Republican Natural Resources District also can utilize the NCORPE project to draw water required to meet obligations to Kansas during a call year. The Platte Republican Diversion project, as a result, may not be solely responsible for avoiding the shut down of rapid response acres in any particular year. The economic impact of the Diversion project would be impacted as a result. Table 3 shows the annual gain in economic activity from maintaining 78,000 acres in irrigated production if the Diversion project is assigned 30%, 50% or 70% of the “credit” for avoiding the shut down of irrigation in any particular year. The impact ranges from \$14.17 million to \$33.05 million. The labor income impacts ranges between \$2.41 million to \$5.63 million over the course of a year which would be paid out in 28 to 65 jobs.

Table 3
Annual Gain in Economic Activity Depending on Share Attributed to the Platte Republican Diversion Project

Percentage	Type of Impact			
	Output (Millions \$)	Value-Added (Millions \$)	Labor Income (Millions \$)	Employment (Job-Years)
30%	14.17	4.20	2.41	28
50%	23.61	7.01	4.02	46
70%	33.05	9.81	5.63	65

Source: BBR calculations using IMPLAN

Given these large impacts during each call year, the project would have a substantial cumulative impact over its lifetime. If there are 2 call years out of 10, as anticipated, over a 50-year project lifetime the impacts shown in Table 3 would occur 10 times over that period.

C. Note on the Average Net Annual Impact

The potential annual economic impact referenced in Table 3 pertains to the contribution of the Platte Republican Diversion project during call years. These are years when Republican River Compact agreements might require the “shut down” of groundwater irrigated acres in the Lower Republican Natural Resources District. The frequency of call years is uncertain and a function of climate conditions in Nebraska and neighboring states such as Colorado and Wyoming. In call years, available water generated through projects such as the Platte Republican Diversion project or alternative sources such as the NCORPE project can be used to supplement streamflow and avoid the shut down of irrigated acres.

The economic impact of the Platte Republican Diversion project therefore varies from year-to-year. During call years, a range of potential impacts is presented in Table 3. In other years, the only potential economic benefit would result from the higher water levels at Harlan County Lake. This implies that the magnitude of the average annual impact would depend on the frequency of call years.

D. Recreation Benefits

The Platte Republican Diversion project also would at times lead to higher water levels at Harlan County Lake. Higher levels are associated with greater recreation amenities (see footnote 3), and associated economic benefits for individuals engaged in recreation. There also would be direct economic impacts on local businesses which provide goods and services to visitors. Higher levels of recreation amenities result because Harlan County Lake would have a larger surface area, which is more attractive for potential visitors.

The *Republican River Basin Study* (see footnote 3) generated estimates of the recreation benefits at Harlan County Lake under alternative climate and infrastructure investment scenarios. Under one estimate, the net present value of annual recreation benefits from a combination of higher lake levels and warmer temperatures was nearly \$50 million. However, information in the report did not break out the share of benefit which could be attributed to higher lake levels versus warmer temperatures. As results, it is not feasible to use estimates from the *Republican River Basin Study* to estimate specific recreation benefits from the Platte Republican Diversion project, as this would only influence water levels but not temperatures. The results of the *Republican River Basin Study*, however, do indicate that there are additional economic benefits for individuals utilizing Harlan County Lake for recreation, as well as additional economic impacts in the Republican River basin, beyond the impacts reported in Tables 2 and 3.

IV. Findings under an Alternative Impact Scenario

Economic impacts presented in the previous section were based on regulations described in the Integrated Management Plans of Natural Resource Districts located in the Republican River basin. Those plans typically refer to options to “shut down” rapid response acres within Natural Resources Districts in response to a call year. This section considers the economic impact from an alternative regulatory approach which calls for a 60% reduction in total groundwater irrigation activity in the Upper, Middle and Lower Republican Natural Resources Districts.⁷ Such reductions could be implemented in a variety of ways including reducing the allocation on all irrigated acres, shutting down a significant share (up to 60%) of all irrigated acres in a NRD, or a combination of both. The key point is that all irrigated acres in a District would be impacted, not just the rapid response acres.

The implementation and reduction of allocations are one way to reduce irrigation within a Natural Resources District. Marginal reductions in allocations may even be a less economically impactful way to reduce irrigation compared to “shutting down” irrigated acres (Thompson, 2007).⁸ Irrigated producers may find ways to marginally reduce irrigation through investing in and using “precisions agriculture” equipment which economizes on the use of water, fertilizer and other inputs. However, such mitigating activities would not be as effective in the case of a drastic reduction in allocations such as a 60% reduction. We therefore assume that it would be equivalent to model a 60% reduction in the irrigated acres of production in the Lower Republican Natural Resources District.

Table 4 shows the potential annual economic impact resulting from a 60% reduction in groundwater irrigated acres in the Lower Republican Natural Resources District. There are 282,000 groundwater only irrigated acres in the Lower Republican Natural Resources District.⁹ At a 60% reduction, this implies a total of 169,500 impacted acres included in the estimates in Table 4.

The economic impact from maintaining irrigated production on these 169,500 acres for one year is \$102.05 million in output. This annual output impact includes \$30.11 million in value-added. Once again, a majority of value-added is realized as labor income. Specifically, the annual impact in terms of labor income is \$17.40 million. This income would be earned in 199 full-year equivalent jobs.

Table 5 shows the annual gain in economic activity from maintaining 169,500 acres in irrigated production if the Diversion project is assigned 30%, 50% or 70% of the credit. The impact ranges from \$30.62 million to \$71.44 million. The labor income impacts ranges between \$5.22 million to \$12.18 million which would be paid out in 60 to 139 full-year equivalent jobs.

⁷ Nebraska Department of Natural Resources, 2009. Integrated Management Planning In the Republican River Natural Resources Districts. (October).

⁸ Thompson, Eric. 2007. *The Economic Impact of Reduced Irrigation in the Republic River Basin*, Bureau of Business Research Report.

⁹ Nebraska Department of Natural Resources, 2016. Irrigated Acres by HC Area Handout, Republican River Basin Wide Plan-Stakeholder Meeting #8, Nov. 1, 2016

Table 4
Annual Gain in Economic Activity from Maintaining Acres in Irrigated Production in the Republican River Basin under the Alternative Scenario

Impact Measure	Direct Impact	Multiplier Impact	Total Impact
Output (Millions \$)	80.14	21.91	102.05
Value-Added (Millions \$)	19.68	10.42	30.11
Income (Millions \$)	11.58	5.82	17.40
Employment (Job-Years)	60	138	199

Source: BBR calculations using IMPLAN

Table 5
Annual Gain in Economic Activity Depending on Share Attributed to the Platte Republican Diversion Project under the Alternative Scenario

Percentage	Type of Impact			
	Output (Millions \$)	Value-Added (Millions \$)	Labor Income (Millions \$)	Employment (Job-Years)
30%	30.62	9.03	5.22	60
50%	51.03	15.05	8.70	99
70%	71.44	21.08	12.18	139

Source: BBR calculations using IMPLAN

Appendix 1. About the UNL Bureau of Business Research and Key Personnel

A. The Bureau of Business Research

The Bureau of Business Research is a leading source for analysis and information on the Nebraska economy. The Bureau conducts both contract and sponsored research on the economy of the United States as well as Nebraska and its communities including: 1) economic and fiscal impact analysis; 2) models of the structure and comparative advantage of the current economy; 3) economic, fiscal, and demographic outlooks, and 4) assessments of how economic policy affects industry, labor markets, infrastructure, and the standard of living. The Bureau also competes for research funding from federal government agencies and private foundations from around the nation and contributes to the academic mission of the University of Nebraska-Lincoln through scholarly publication and the education of students.

B. Key Personnel

Dr. Eric Thompson – Principal Investigator

Dr. Eric Thompson will be the principal investigator on this project. Dr. Thompson is the Director of the Bureau of Business Research and an Associate Professor of Economics at the University of Nebraska-Lincoln. Dr. Thompson has conducted a broad group of economic impact studies including impact studies of Nebraska agriculture, irrigation and regulation of irrigation, Sandhill Cranes migration, the Nebraska child care industry, the Omaha Zoo, the Nebraska horseracing industry, Husker Harvest Days, and the UNL Athletic Department. Dr. Thompson also works on demographic projections, and analyses of economic development programs for Nebraska and cities in Nebraska. He also has conducted numerous economic impact studies for the Lincoln Department of Economic Development, the Omaha Chamber of Commerce, the Nebraska Department of Economic Development, various Nebraska industries and Nebraska tourism attractions. Dr. Thompson's research has received support from the United States Department of Labor, the United States Department of Agriculture, the Robert Wood Johnson Foundation, the Nebraska Health and Human Services System, as well as Lincoln, Omaha, and Nebraska organizations and agencies. In his previous employment, Dr. Thompson served as the Director of the Center for Business and Economic Research and a Research Associate Professor of Economics at the University of Kentucky. Dr. Thompson received his Ph.D. in agricultural economics from the University of Wisconsin-Madison in 1992. His research fields include regional economics, economic forecasting, and state and local economic development. His research has been published in *Regional Science and Urban Economics*, the *Journal of Regional Science*, the *American Journal of Agricultural Economics*, the *Journal of Cultural Economics*, and the *Economic Review of the Federal Reserve Bank of Cleveland*.

ATTACHMENT E

AMENDED WATER SERVICES AGREEMENT BETWEEN PRD AND CNPPID

RECEIVED JUN - 9 2017

AMENDED WATER SERVICE AGREEMENT

This AMENDED WATER SERVICE AGREEMENT ("Amended Agreement") is made as of the Effective Date (as defined in Section 1.9) by and among THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter "Central"); and the PLATTE TO REPUBLICAN BASIN HIGH FLOW DIVERSION PROJECT (hereinafter "PRD Project"), a political subdivision of the State of Nebraska. Central and the PRD Project may individually be referred to as a "Party" and shall collectively be referred to herein as the "Parties." This Amended Agreement supersedes all prior agreements, provided that the Parties shall account for work already performed and funds already expended and/or allocated pursuant to the Water Services Agreement executed on or about August 9, 2017.

WITNESSETH:

WHEREAS, the PRD Project wishes to create a project for diversion of flows from the Platte River Basin to the Republican River Basin;

WHEREAS, Central agrees to the use of its existing facilities and the construction of additional facilities needed to deliver water to Turkey Creek (Exhibit C) to assist the LRNRD and Tri-Basin with achieving the goals and objectives of their joint Integrated Water Resources Management Plans; and

WHEREAS, the PRD Project desires to acquire an Appropriation, as defined in section 1.1 below, on its own behalf to assist in compliance with the Republican River Compact and conform with the Integrated Water Resources Management Plans of the LRNRD and Tri-Basin.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

DEFINITIONS, OWNERSHIP AND TERM

Section 1. Definitions

The meanings for the capitalized terms used in this Amended Agreement are set forth as follows or in the body of this Amended Agreement:

- 1.1 "Appropriation" shall mean one or more new appropriation(s) acquired by the PRD Project which will authorize and limit its use to the diversion and delivery of water, using facilities owned by Central, to the Diversion Structure (as hereinafter defined) for release into

Turkey Creek (Exhibit C) for the purposes expressed and pursuant to the requirements provided in this Amended Agreement.

- 1.2 "Business Day" means a day on which the Federal Reserve Member Banks in New York City are open for business; and a Business Day shall open at 8:00 A.M. and close at 5:00 P.M. local time in Omaha, NE.
- 1.3 "Cost of Construction Services" shall mean the actual costs of planning, final design, engineering, financing, acquiring, constructing, and startup of the Diversion Project (as hereinafter defined) hereafter paid or incurred by Central in accordance with this Amended Agreement.
- 1.4 "Cost of Permitting" shall mean all costs needed for initial design, permitting but does not include the acquisition of the Appropriation.
- 1.5 "Day" means a calendar day.
- 1.6 "Diversion Project" means the Diversion Structure and the Appropriation, related permits and other items needed to deliver water to Turkey Creek.
- 1.7 "Diversion Structure" shall mean a new release structure, consisting of physical materials such as a gate, pipe, concrete, etc., constructed to divert water from the E65 Canal into Turkey Creek as shown on Exhibit C.
- 1.8 "E65 Canal Diversions" shall mean water that is diverted into the E65 Canal under the Appropriation and remains in or recharges within the E65 Canal minus any recharge diversions for another entity who is receiving recharge benefits in the E65 Canal.
- 1.9 "Effective Date" shall mean the date upon which this Amended Agreement shall become effective which shall be the date the last signature is affixed hereto.
- 1.10 "Engineer" shall mean the person(s) or firm(s) on Central staff or hired by Central to perform engineering services in connection with the Diversion Project.
- 1.11 "Force Majeure" means causes or events beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, which by exercise of due diligence and reasonable foresight could not reasonably have been avoided, including, without

limitation, acts of God, unusual or extreme actions of the elements such as floods, earthquakes, hurricanes, landslides, droughts or tornadoes; lightning; fire; ice storms; epidemics, quarantines, icing conditions in supply canal; sabotage; vandalism beyond that which could reasonably be prevented by the Party; terrorism; war; riots; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any license, permit, approval, rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits or approvals required by any Governmental Authority. The term Force Majeure does not include (i) any acts or omissions of any third party (other than as identified in Section 15.1), including, without limitation, any vendor, material man, customer or supplier of a Party, unless such acts or omissions are themselves excused by reason of Force Majeure; or (ii) a Party's inability to pay amounts due under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

- 1.12 "Governmental Authority" means any municipal, local, state, regional or federal administrative, legal, judicial, or executive agency, court, commission, department, or other such entity of competent jurisdiction, but excluding any agency department, state, or other entity acting in its capacity as a Party.
- 1.13 "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority, or other entity.
- 1.14 "Project Accounts" shall mean one or more separate accounts opened by Central and designated solely for use by Central for construction of the Diversion Project.
- 1.15 "Prudent Utility Practices" shall mean any of the practices, methods and acts at a particular time, which in the exercise of reasonable judgment in light of the facts, including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. In applying the standard of Prudent Utility Practices

to any matter under this Amended Agreement, equitable consideration should be given to the circumstances, requirements and obligations of each of the Parties hereto and there shall be taken into account the fact that Central is a political subdivision of the State of Nebraska with prescribed statutory and legal powers, duties and responsibilities. It is recognized that Prudent Utility Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

- 1.16 "Total Amount Diverted" shall mean all water diverted into the E65 Canal in accordance with the Appropriation.
- 1.17 "Turkey Creek Diversions" shall mean water that is diverted into the E65 Canal and released through the Diversion Structure into Turkey Creek.
- 1.18 "Water Service Charges" shall mean all payments for water services as defined in Section 5 during the Operation Phase.
- 1.19 "Water Service Rate" shall mean the applicable rate per acre-foot of diversion associated with water services as shown in Exhibit B.
- 1.20 "Water Service Termination Fee" shall mean ("the Cost of Construction Services") minus ("the accumulated Water Service Charges for Turkey Creek Diversions paid under this Amended Agreement") until such number is negative in which case it will be zero.

Section 2. Ownership and Term of Agreement

- 2.1 Ownership of Diversion Project.** All property, materials and permits which are acquired or constructed by Central and in the name of Central, for the Diversion Project shall be owned by Central.
- 2.2 Submission of Application for Appropriation.** The PRD Project shall be responsible for acquiring the Appropriation from the Nebraska Department of Natural Resources. Central shall not be a holder of the Appropriation. Central shall provide such information and agreements as are necessary to acquire the Appropriation. The PRD Project shall not, and shall not seek to, transfer, amend, or otherwise modify the Appropriation without the consent of Central. Within 90 days of the issuance of the Appropriation by the Nebraska

Department of Natural Resources, either Party may terminate this Amended Agreement if the Appropriation contains provisions that, in the opinion of a Party, are inconsistent with this Amended Agreement.

2.3 Term.

2.3.1. The term of this Amended Agreement shall begin on the Effective Date and shall remain in effect until June 30, 2038 unless terminated as provided in this Amended Agreement.

2.3.2. In the event of termination under this Amended Agreement (including the end of the term), the obligation to pay for costs that are incurred or arise under this Amended Agreement prior to termination shall survive. At the end of the term or upon termination, and after payment of all costs for the Diversion Project, the following shall occur: (i) the obligations, rights and benefits of the PRD Project under this Amended Agreement shall terminate (except as to any obligations incurred before the end of the term that extend beyond the term); (ii) Central shall retain ownership of the Diversion Project assets free and clear of this Amended Agreement; and (iii) the PRD Project shall relinquish the Appropriation. Notwithstanding the foregoing sentence, early terminations during the Permitting Phase, Construction Phase, Operations Phase or due to default are addressed in Sections 2, 4, 5 and 7, respectively.

Section 3. Approval Obligations of the Parties

Each Party shall use its best efforts to obtain all acceptances or approvals required in order to effect the agreement of the Parties hereunder in the most expeditious manner possible and the Parties shall act in good faith to implement this Amended Agreement fully and expeditiously without modification or condition.

Section 4. Permitting and Construction of the Diversion Project

4.1 **Diversion Project Costs.** The PRD Project shall be responsible and liable for the Cost of Permitting, the Cost of Construction Services, and the Project Construction Fee for the Diversion Project.

4.2 **Construction Phase.** The acquisition of the necessary permits will be the first major

activity prior to the Construction Phase. After acquisition of all needed permits, the Appropriation for the Diversion Project and a written authorization to proceed from the PRD, Central will proceed with the Construction Phase (design and construction) of the Diversion Project. All work completed in the Construction Phase of the Diversion Project shall be included in the Costs of Construction Services. A scope of work shall be provided to the PRD Project with design information. Central shall then issue an invoice for the design and construction of the Diversion Project in the amount of \$275,000. The PRD Project shall pay the invoice to Central in the amount of \$275,000 within sixty (60) Business Days of the receipt, whereupon, Central shall deposit the payment into the Project Accounts and proceed with the Construction Phase of the Diversion Project. Central shall transfer the Project Construction Fee from the Project Accounts to its own regular accounts as the Cost of Construction Services are incurred.

- 4.3 Project Construction Fee.** In addition to paying the Cost of Permitting and Cost of Construction Services, the PRD Project shall be responsible and liable for payment to Central of a fee (the "Project Construction Fee") in the amount of three percent (3.0%) times the Cost of Permitting and Cost of Construction Services. The Project Construction Fee compensates Central for the administrative costs and overhead associated with the construction of the Diversion Project, and the receipt, management, and disbursement of funds for the Diversion Project.
- 4.4 Construction Responsibilities.** Central shall be responsible for the hiring, payment, and oversight of contractors during the Construction Phase of the Diversion Project. Central shall be solely responsible and liable for any and all claims arising from gross negligence by Central during the Construction Phase of the Diversion Project.
- 4.5 Subsequent Permitting or Construction Payments; Termination During Permitting or Construction Phase.** If, during the Permitting Phase or the Construction Phase, Central determines that the payments will not cover the Cost of Permitting, Cost of Construction Services or the Project Construction Fee as described in sections 4.2, 4.3 and 4.4, Central shall issue one or more additional invoices to the PRD Project. The PRD Project shall either (a) pay the additional invoice within thirty (30) Days or (b) submit a notice of termination of the Amended Agreement to Central, whereupon Central may cease work on the Diversion Project. In the event that the PRD Project does not pay the payments as specified herein,

Central shall submit a written notice to the PRD Project requiring payment within twenty (20) Days, and Central may cease work on the Diversion Project until the required payments are made. If payment is not made within such required period, then this Amended Agreement shall terminate and, after payment of all costs incurred for the Diversion Project, Central shall return any funds remaining in the Project Accounts to the PRD Project, the obligations, rights and benefits of the Parties under this Amended Agreement shall terminate (except as to any obligations incurred prior to termination), and the Parties shall have no further obligations hereunder.

- 4.6 Completion of Construction Phase.** When Central has completed construction of the Diversion Project, Central shall return any unspent monies to the PRD Project and provide an itemized list of Diversion Project costs.

Section 5. Operation of the Diversion Project (“Operations Phase”)

5.1 Operation of the Diversion Project.

- 5.1.1. The Operations Phase shall commence upon conclusion of the Construction Phase. During the Operations Phase, Central shall utilize Prudent Utility Practices in the operation, maintenance, and replacement of the Diversion Project to deliver water into Turkey Creek in accord with the Appropriation to assist the PRD Project with implementation of its members’ Integrated Management Plan.
- 5.1.2 The Parties understand and agree that Central owns and operates other facilities within its water delivery and regulation system, located upstream and downstream of the Diversion Project facilities, that are used for hydropower production, irrigation, and other purposes, and these facilities may in the future be modified or rebuilt, and Central may build other facilities within its water delivery and regulation system. The Parties further understand and agree that the water to be delivered to the Diversion Project may be water that will pass through certain of other facilities owned by Central. Notwithstanding any other provision herein, this Amended Agreement shall not create or establish, or be construed to create or establish, by implication or otherwise, any obligation, restriction, or limitation, now or in the future, with respect to operation of other facilities owned by Central, that are used or in the future may be used for delivery of water to the Diversion

Project. Without limiting the effect of the preceding sentence, and for the sake of clarity, the Parties understand and agree that Central shall not be in default of this Amended Agreement if Central modifies Central facilities or changes its operations in a way that affects the volume, rate, frequency, or timing of water available for diversion by the Diversion Project.

5.1.3 Central makes no guarantees regarding the volume, rate, frequency, or timing of water available for diversion by the Diversion Project, and it is understood and agreed that Central does not provide a guarantee to the PRD Project or any other Person that any particular amount of diversion will be supplied by the Diversion Project. The provisions of this Amended Agreement are subject to the rights and obligations of Central under its water appropriations, and the provisions of this Amended Agreement shall not be construed as modifying, limiting, or changing the rights and benefits of said water appropriations. Nothing in this Amended Agreement shall interfere with or limit Central's rights to obtain new water appropriations or to amend existing water appropriations.

5.1.4. Central may reduce or suspend diversions under this Amended Agreement for good cause as determined by Central.

5.2 Water Service.

5.2.1. Water Diversion. During the Operations Phase, Central may divert water into the E65 Canal and into Turkey Creek at the Diversion Structure (as shown on Exhibit C) in accordance with the Appropriation. The PRD Project agrees that all uses of water received under this agreement shall be in accordance with the Appropriation.

5.2.2. Amount. The Total Amount Diverted shall be measured by Central using the E65 Canal measuring flume currently located at milepost (MP) 2.8. The portion of the Total Amount Diverted that is Turkey Creek Diversions will be measured by Central using a water meter at the Diversion Structure as shown on Exhibit C. It is understood by the Parties that all measurement facilities or locations may be revised from time to time as determined by Central. All remaining diversions passing the MP 2.8 flume that are not for another authorized beneficial purpose or for an entity who is receiving recharge benefits shall be considered E65 Canal Diversions. All

measurements made through Central's measuring device and so recorded by Central operating personnel shall be considered final. Central may make reasonable adjustments in the calculation of the Total Amount Diverted, as necessary to account for similar operations from other water sources, or for other reasons as may be appropriate. Central shall consult with the PRD Project in making such adjustments. Central will keep detailed accounting of all diversions for the Diversion Project. All data used by Central regarding the measurement or accounting of the Total Amount Diverted, and under the Appropriation shall be shared with the Parties.

5.2.3. **Coordination of Delivery.** The PRD Project shall provide written notice to Central when the Nebraska Department of Natural Resources determines that water is available for diversion from the Platte River for the PRD Project operations. Such written notice shall further inform Central of the date when delivery of water through the Diversion Structure may begin. Central will determine if its facilities are available for said delivery of water and, if so, will then begin diversion operations in accordance with this Amended Agreement. If the PRD Project requests, in writing, that Central reduce or cease diversions, Central agrees to reduce or cease diversions as soon as practicable.

5.3 Water Service Charges. The PRD Project shall pay Central for all annual permit fees and the Total Amount Diverted according to the following provisions (payment shall be due within 60 days of invoice):

- 5.3.1 **Annual Permit Fees.** The PRD Project shall pay for all annual permit fees associated with the Diversion Structure.
- 5.3.2 **Turkey Creek Diversions.** The PRD Project shall pay a Water Service Rate specified in Exhibit B for the Turkey Creek Diversions.
- 5.3.3 **E65 Canal Diversions.** The PRD Project shall pay a Water Service Rate as specified in Exhibit B for the E65 Canal Diversions.
- 5.3.4 **The PRD shall not pay Water Service Rates as specified in Exhibit B for the Total Amount Diverted as long as the accumulated Water Service Charges invoiced under this Amended Agreement are less than the Cost of Construction Services.**

5.3.5. The PRD shall pay Water Service Rates as specified in Exhibit B for the Total Amount Diverted after the accumulated Water Service Charges invoiced under this Amended Agreement exceed the Cost of Construction Services and for the remainder of the agreement.

5.3.6. The Total Amount Diverted, Turkey Creek Diversions, and E65 Canal Diversions shall be adjusted according to provisions in paragraph 5.2.

5.3.7. Central shall invoice the PRD Project for the Water Service Charges quarterly or upon completion of the services.

5.4 Termination During Operations Phase. During the Operations Phase, either Central or the PRD Project may terminate this Amended Agreement by providing 60 days' written notice to the other Party. The termination shall be effective 60 days from the date of notice. If Central terminates this Amended Agreement before the accumulated Turkey Creek Diversion Water Service Charges are greater than the Cost of Construction Services, then Central shall pay a Water Service Termination Fee. Prior to the effective date of any such termination the PRD Project shall perform its obligations hereunder, including payments for Water Service Charges. Upon termination, Central shall continue to own the Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Amended Agreement.

Section 6. Dispute Resolution; Period for Billing Adjustments

6.1 Dispute Resolution. In the event of a dispute under this Amended Agreement, the following shall occur:

6.1.1. All disputes with references thereto, arising out of the performance of this Amended Agreement, or changes therein, or work in connection therewith, shall initially be submitted to Central for decision.

6.1.2. In the event that the PRD Project disagrees with Central's decision, a senior executive of Central and a senior executive of the PRD Project shall immediately

confer, discuss, and review Central's decision.

6.1.3. In the event that the meeting referred to in Section 6.1.2. fails to resolve the dispute, Central's decision shall be implemented, subject to the right of the Party to pursue available remedies, and shall remain in effect unless and until otherwise determined by a Governmental Authority. Each Party may pursue all remedies available at law or in equity, except that termination shall occur only as provided in this Amended Agreement. Pending final decision of any dispute hereunder, the disputing Party shall proceed with its obligations and performance in accordance with the written decision of Central.

6.1.4. Central's power of initial decision is intended only as an agreed mechanism to keep the Diversion Project moving forward in the event of a dispute and does not: (1) create any presumption in favor of Central's decisions, (2) alter the Parties' substantive obligations under this Amended Agreement, or (3) change either the standard of review or standard of liability which would otherwise apply to this Amended Agreement.

6.2 Limitation on Time Period for Billing Adjustments. Any claim for a billing adjustment shall be limited to expenditures incurred or revenues received in the twenty-four (24) months immediately preceding the date such claim or error is raised by such Party. Any claim for a billing adjustment not raised within such twenty-four (24) month period shall be deemed waived and shall be barred. All other claims shall be governed by the applicable provisions of Nebraska law.

Section 7. Default and Remedies

7.1 Default. A default shall occur under this Amended Agreement if there is a material breach of this Amended Agreement, including but not limited to a failure to make payments as required under this Amended Agreement, that a Party fails to cure or to make acceptable arrangements to cure as hereinafter provided. For purposes of this Section 7, a "Payment Default" shall mean a failure to make payments when due under this Amended Agreement.

7.2 Effect of Termination Due to PRD Project Default

7.2.1. In the event of termination by Central due to a default by the PRD Project during the Permitting or Construction Phase, then this Amended Agreement shall terminate and, after payment of all costs incurred for the Diversion Project, Central shall return any funds remaining in the Project Accounts to the PRD Project, the obligations, rights and benefits of the Parties under this Amended Agreement shall terminate (except as to any obligations incurred prior to termination), except that Central shall continue to own the Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Amended Agreement.

7.2.2. In the event of termination by Central due to a default by the PRD Project during the Operations Phase, the following shall occur: (i) the PRD Project shall pay all outstanding bills and (ii) the obligations, rights and benefits of the PRD Project with respect to the Diversion Project shall terminate and cease to exist, except that Central shall continue to own the Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Amended Agreement.

7.3 Late Payments. If the PRD Project fails to make any payment when due pursuant to this Amended Agreement, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the sum of three percent (3%) per annum plus the prime lending rate as from time to time may be published in the Money Rates section of The Wall Street Journal (the "Interest Rate").

Section 8. Approvals

The obligation of Central to perform under this Amended Agreement shall be subject to Central obtaining and continuing to receive all necessary permits.

Section 9. Waivers

Any waiver at any time by any Party of its rights with respect to any default under this Amended Agreement, or with respect to any other matter arising in connection with this Amended Agreement, shall not be deemed a waiver with respect to any other default or matter.

Section 10. Notices

All notices given pursuant to this Amended Agreement by any Party to another Party shall be in writing and either personally delivered, or sent by facsimile or electronic mail, or mailed by certified or registered mail, postage prepaid, or sent by nationally recognized overnight courier, and addressed as provided in Exhibit A or at such other address or addresses as any Party may designate by notice given to the other Party(ies). With respect to all notices so delivered, the same shall be deemed effective on the day sent.

Section 11. Damages

To the fullest extent permitted by law and notwithstanding anything to the contrary herein, in no event shall any Party be liable for punitive, indirect, exemplary, consequential, or incidental damages including, without limitation, claims of third parties arising in connection with this Amended Agreement.

Section 12. Force Majeure

12.1 Applicability of Force Majeure.

12.1.1. No Party shall be responsible or liable for any delay or failure in its performance under this Amended Agreement, nor shall any delay, failure or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure; provided that:

- (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform; and
- (iv) when the non-performing Party is able to resume performance of its obligations under this Amended Agreement, that Party shall give the other Party written notice to that effect.

12.1.2. Except as otherwise expressly provided for in this Amended Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Amended Agreement (including, but not limited to,

payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

Section 13. Miscellaneous

- 13.1 Amendments.** This Amended Agreement may be further amended only by written agreement between all of the Parties.
- 13.2 Entire Agreement/Order of Precedence.** This Amended Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter contemplated by this Amended Agreement and supersedes all other prior agreements, whether oral or written.
- 13.3 Counterparts.** This Amended Agreement may be executed in multiple counterparts to be construed as one.
- 13.4 Severability.** If any part, term or provision of this Amended Agreement is held by a Governmental Authority to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Amended Agreement did not contain the particular part, term, or provision held to be unenforceable, and a new provision shall be deemed to be substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties hereto as evidenced by the provision so severed.
- 13.5 Governing Law.** This Amended Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.
- 13.6 Jurisdiction.** The Parties agree that any legal proceeding relating to this Amended Agreement shall be filed in a state or federal court of competent jurisdiction and proper venue located within the State of Nebraska.
- 13.7 No Third Party Beneficiaries.** The Parties agree that no other parties are an intended third-party beneficiary of this Amended Agreement. In addition, neither the PRD Project

or Central shall transfer or assign this Amended Agreement or any water diverted through the Diversion Project without agreement of all Parties.

13.8 Independent Contractors. Nothing in this Amended Agreement shall be construed as creating any agency relationship between the Parties, including any partnership or joint venture, other than that of independent contractors. Nothing in this Amended Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person not a party to this Amended Agreement. This Amended Agreement shall not empower any Party to act as any other Party's agent or to represent to any third party that it has the ability to bind any other Party, without the express permission of the Party to be bound.

13.9 Rules of Construction.

13.9.1. The descriptive headings of the various sections and subsections of this Amended Agreement have been inserted for convenience of reference only and shall not be construed as to define, expand, or restrict the rights and obligations of the Parties.

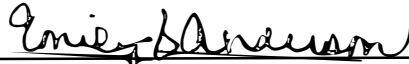
13.9.2. Wherever the term "including" is used in this Amended Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase, or term.

13.9.3. The terms defined in this Amended Agreement shall include the plural as well as the singular and the singular as well as the plural.

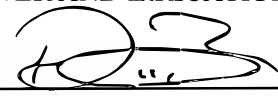
13.9.4. Whenever a statute, code, rule, or regulation is used in this Amended Agreement, such term shall also include all successor statutes, codes, and regulations.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended Agreement to be executed by their duly authorized representatives.


ATTEST:

By: 
Printed Name: Emily J. Anderson
Its: Executive Asst.
Date: 6/3/2020

THE CENTRAL NEBRASKA PUBLIC
POWER AND IRRIGATION DISTRICT

By: 
Printed Name: Devin Brundage
Its: General Manager
Date: 6/3-20

ATTEST:

By: 
Printed Name: Carol Lynch
Its: Admin. Sec.
Date: 6-4-20

THE PLATTE TO REPUBLICAN BASIN
HIGH FLOW DIVERSION PROJECT


By: 
Printed Name: John Thorburn
Its: Chairman
Date: 6/4/20

EXHIBIT A
Notice Addresses

Todd Siel, General Manager
Lower Republican Natural Resources District
30 North John Street
P.O. Box 618
Alma, NE 68920

John Thorburn, General Manager
Tri-Basin Natural Resources District
1723 Burlington Street
Holdrege, NE 68949

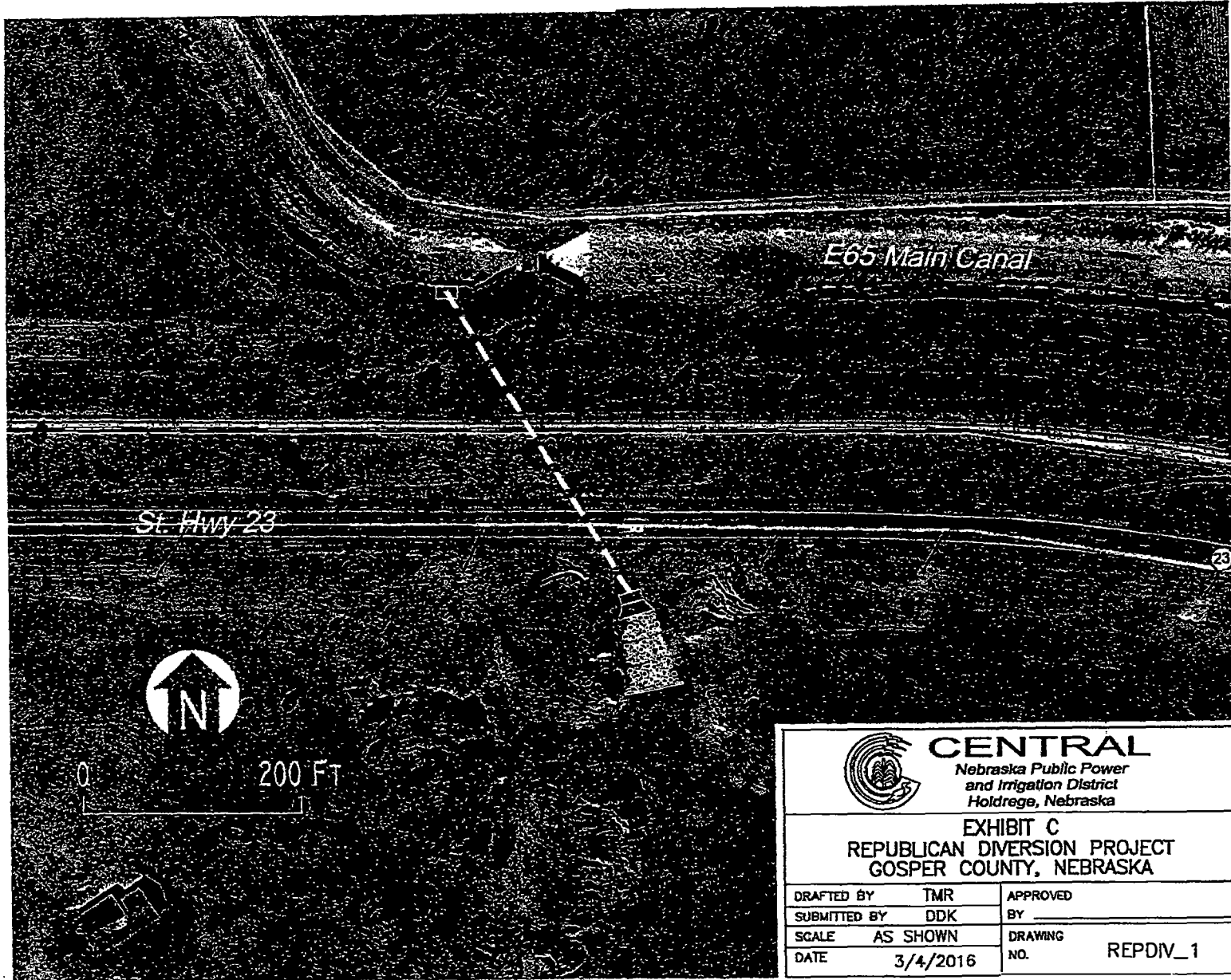
Devin Brundage, General Manager
The Central Nebraska Public Power and Irrigation District
415 Lincoln Street
PO Box 740
Holdrege, NE 68949

Exhibit B

Water Service Rates

Year	Total Amount Diverted (\$/AF)	
	Turkey Creek Diversions	E65 Canal Diversions
2020	\$39.53	\$46.26
2021	\$40.32	\$47.64
2022	\$41.13	\$49.07
2023	\$41.95	\$50.54
2024	\$42.79	\$52.06
2025	\$43.64	\$53.62
2026	\$44.52	\$55.23
2027	\$45.41	\$56.89
2028	\$46.32	\$58.59
2029	\$47.24	\$60.35
2030	\$48.19	\$62.16
2031	\$49.15	\$64.03
2032	\$50.13	\$65.95
2033	\$51.14	\$67.93
2034	\$52.16	\$69.97
2035	\$53.20	\$72.06
2036	\$54.27	\$74.23
2037	\$55.35	\$76.45
2038	\$56.46	\$78.75

EXHIBIT C



CENTRAL
Nebraska Public Power
and Irrigation District
Holdrege, Nebraska

EXHIBIT C
REPUBLICAN DIVERSION PROJECT
GOSPER COUNTY, NEBRASKA

DRAFTED BY	TMR	APPROVED	
SUBMITTED BY	DDK	BY	
SCALE	AS SHOWN	DRAWING	
DATE	3/4/2016	NO.	REPDIV_1

EXHIBIT D

INTERLOCAL COOPERATIVE AGREEMENT

INTERLOCAL COOPERATION AGREEMENT

This Agreement is entered into by and between the Tri-Basin Natural Resources District and the Lower Republican Natural Resource District (referred to herein collectively as "NRDs" or "Parties"). Both of these NRDs is a political subdivision of, and is situated in, the State of Nebraska.

IT IS AGREED by and between the Parties hereto, each acknowledging the receipt of good, adequate, and valuable consideration, 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 (the "Interlocal Act").

2. PLATTE TO REPUBLICAN BASIN HIGH FLOW DIVERSION PROJECT: The Parties hereby create the Platte to Republican Basin High Flow Diversion Project (the "PRD Project"). The PRD Project shall be governed by the terms of this Agreement and shall be the instrument through which and by which the Parties pursue the purposes described herein. The PRD Project shall be an entity separate and distinct from the respective Parties hereto, and no Party hereto is the agent, employee or representative of the PRD Project or any other Party. The Parties hereto agree that contracts entered into, obligations undertaken, and liabilities incurred by the PRD Project shall be the separate contracts, obligations and liabilities of the PRD Project, and not the contracts, obligations or liabilities of the respective Parties. The PRD Project shall constitute a separate body corporate and politic of the State of Nebraska exercising public powers and acting on behalf of the Parties hereto.

3. PURPOSE: The PRD Project shall provide the authority, resources, services, studies, and facilities needed for the representation of the interests of the Parties in proceedings before all agencies, tribunals, courts, and any administrative, legislative, executive, or judicial bodies concerning or affecting the NRDs' actions, decisions, and policies to regulate/manage water to assist the State of Nebraska with compliance with the Republican River Compact, 2A NEB. REV. STAT. APP. § 1-106 (1995). The PRD Project will specifically undertake the creation of a high flow diversion project from the Platte River Basin to the Republican River Basin. The PRD Project shall specifically act within authority so granted by the Nebraska Unicameral and laws of Nebraska. This Agreement shall provide the organizational and administrative structure, and enumeration of the powers, privileges and authority of the financial cooperative effort of the PRD Project. The powers, privileges and authorities of the PRD Project shall not exceed those powers, privileges or authorities exercised, or capable of being exercised, by each of the Parties, and as may be otherwise provided for in the Interlocal Act, 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 PRD Project shall be by a Board of Directors ("Board"). Each member of the Board shall be entitled to one vote, and the majority of the votes cast on any issue shall determine the issue, except where a unanimous vote shall be specifically required by this Agreement or by-laws adopted by the Board. A unanimous vote shall be required before the issuance of any bonds for the acquisition of water rights. The Board shall be composed of a voting member from each

Party (designated herein as a "Voting Member") and one other person designated by each Party ("Member"). Only a Voting Member shall be allowed to cast a vote and each Party shall have but one vote. In the event a designated Voting Member for any Party is absent for a vote, the Member for that Party shall be authorized to vote in the Voting Member's stead. Each Voting Member and Member shall be duly and properly appointed by the respective governing bodies of each of the separate and individual Parties, but it shall not be required that either person so appointed, be a publicly elected member of the governing body of any Party. Each Member and Voting Member shall serve at the pleasure of his or her respective governing body or director. Any vacancy which occurs in the Board shall be filled within 60 days through the appointment of a replacement by the represented Party. The Board shall select from their membership a Chairman, Vice Chairman, and Secretary/Treasurer. The Board shall exercise authority over the PRD Project in accordance with applicable laws and shall set the policy, delegating executive, supervisory and organizational authority to its officers and committees. Meetings of the Board shall be conducted at least annually and at such other frequent times as may be required by the business of the PRD Project. A majority, i.e., two (2) Members, shall constitute a quorum for the transaction of business.

5. CHAIRMAN, VICE CHAIRMAN, AND SECRETARY/TREASURER: The Chairman shall preside at all the meetings of the Board, 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 PRD Project. The Vice Chairman shall serve in the absence of the Chairman and, in the Chairman's absence, shall have all of the powers and duties of the Chairman, and shall have such other powers and duties as the Chairman shall from time to time delegate to the Vice Chairman. The Secretary/Treasurer to the Board shall keep minutes of all meetings conducted by the PRD Project, and shall be the keeper of the records of the PRD Project. The Secretary/Treasurer shall prepare and submit in writing a monthly report of the state of the finances of the PRD Project and pay PRD Project money only upon authorization signed by the Chairman or, in the absence of the Chairman, by the Vice Chairman. Payment of all accounts after authorization shall be made on check signed by the Secretary/Treasurer. 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 may, in by-laws or otherwise, determine appropriate or necessary, and by Board action delegate or direct.

6. COMMITTEES: The Board or the Chairman shall have the power to establish such committees as may be necessary, appropriate or beneficial to the conduct of the affairs of the PRD Project. Such committees shall have such powers, duties and authorities as shall be delegated to it by the Board, which powers, duties, and authorities shall not be inconsistent with or exceed those powers and duties granted to the PRD Project under this Agreement. The Board and the Chairman are authorized to designate from its members an executive committee which shall consist of the PRD Project's Chairman, Vice Chairman, Secretary/Treasurer and the Chairmen of the various committees established by the Board, which executive committee shall have and may exercise only such powers and authorities as are delegated to it by the Board. The designation of any committees and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed by this Agreement, nor shall the Board delegate to any committee the authority to set policy or to make expenditures on behalf of

the PRD Project. Any committee established by the Chairman shall be approved by the Board at its next meeting.

7. **POWERS:** The PRD Project shall have all the powers, privileges and authority exercised or capable of being exercised by each of the individual and separate Parties to achieve the purposes of the PRD Project as set forth in this Agreement and as may be otherwise provided for in the Interlocal Act. Such powers, privileges and authority shall include, but not be limited to, the power, privilege and authority to:

- (a) Acquire and sell real property.
- (b) Sue and be sued.
- (c) Have a seal and alter the same at pleasure or to dispense with the necessity thereof.
- (d) 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, and to use or expend all such contributions in carrying out its operations.
- (e) Establish advisory groups by appointing individuals from among the Parties and pay necessary and proper expenses of such groups as the Board shall determine, and dissolve such groups.
- (f) Employ such persons as are necessary to carry out the purposes of the PRD Project and this Agreement and to pay the necessary and proper expenses of said persons.
- (g) Adopt and promulgate rules and regulations to carry out the purposes of the PRD Project and this Agreement.
- (h) Establish such committees as are necessary to carry out the purposes of the PRD Project and this Agreement and to pay the necessary and proper expenses of such committees.
- (i) Make and execute contracts, leases, easements and other instruments necessary or convenient to the exercise of its powers.
- (j) 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.
- (k) Borrow money, make and issue negotiable bonds, bond anticipation notes, refunding bonds and notes (collectively, the "Indebtedness"), all in accordance with the Interlocal Act and LB 701 (as enacted by the One

Hundredth Legislature First Session (2007) and specifically Sections 2-3226.01 through 2-3226.06, R.R.S. Neb. 2007, as amended) and any amendments to either of said acts, and to secure the payment of such Indebtedness or any part thereof by a pledge and/or mortgage of and grant of a security interest in any or all of the PRD Project's assets (including but not limited to (i) any and all real estate, improvements to real estate, fixtures and equipment and (ii) any and all bonds and payments of principal and interest on such bonds issued to the PRD Project by any of the Parties) or net revenues and any other funds or property which the PRD Project has a right to, or may hereafter have the right to pledge for such purposes.

- (l) Provide in the proceedings authorizing such Indebtedness for remedies upon default in the payment of principal and interest on any Indebtedness, including, but not limited to, the appointment of a trustee to represent the holders of such Indebtedness and the appointment of a receiver to the PRD Project's property, such trustee and receiver to have the powers and duties provided for in the proceedings authorizing such obligations.
- (m) Allocate funds raised by the PRD Project from the proceeds of any Indebtedness to the Parties or to the PRD Project for the purposes of effecting river-flow enhancement projects.
- (n) Contract for the improvement, operation and management of any and all property of the PRD Project with any persons, including any of the Parties.

8. **FINANCES AND BUDGET:** Annually or at such other frequent intervals as the Board may determine, each of the Parties hereto shall contribute such funds as are necessary to conduct the day-to-day operations of the PRD Project. Each NRD shall make an initial contribution of \$_____. This initial contribution shall be deposited in an account in the name of the PRD Project, at a bank insured by the FDIC, and selected by the Board.

If Indebtedness is issued by the PRD Project, each of the NRDs shall levy and collect such taxes or other charges as are necessary to ensure timely repayment of such PRD Project Indebtedness, including but not limited to taxes and charges, specifically including but not limited to the occupation tax provided for in Section 2-3226.05, R.R.S. Neb. 2007, as amended, needed to make payments of principal and interest on any bonds issued by such NRD to the PRD Project to support such PRD Project Indebtedness. Each NRD shall be responsible on a proportional basis relative to the total amount required for Indebtedness repayment according to the following percentages: The Tri-Basin Natural Resources District shall be responsible for 50% of the total revenue needs; Lower Republican Natural Resources District shall be responsible for 50% of the total revenue needs. Funds collected by the PRD Project for repayment of any Indebtedness may be deposited in a trust account or such other account, different from that identified in the first paragraph of this section, as may be required by agreement or permitted by law.

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

Concurrently with the establishment of the budget each year, the Board of the PRD Project shall consult with each Party regarding their ability to contribute such funds as are necessary to conduct the operations and to pursue the purposes of the PRD Project. Upon completion of the budget, the Board shall determine the assessment to be submitted by each Party and shall thereafter assess each of such Parties for said amount. Each Party shall have 60 days after receipt of notice from the PRD Project that an assessment is due to contribute its share of the funds required under the terms of the assessment.

9. WITHDRAWAL: No Party may withdraw while the PRD Project has any outstanding indebtedness. Any Party may withdraw from this Agreement and from representation in the PRD Project, at any time while no indebtedness of the PRD Project is outstanding, upon written notification to the Chairman. 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. Following withdrawal, the withdrawn NRD shall no longer be a Party, and the withdrawn NRD shall not be bound by this Agreement, except that the withdrawn NRD shall remain liable for its share of any costs properly approved and incurred by the PRD Project through the effective date and time of withdrawal.

10. PARTIAL AND COMPLETE TERMINATION: This Agreement may not be terminated while any indebtedness is outstanding. If and when there is no indebtedness of the PRD Project outstanding, this Agreement and the PRD Project created hereby, shall be terminated upon the earlier of the completion of its purposes and objects described herein or upon the unanimous vote of the then constituted Board for the complete or partial termination of the PRD Project and this Agreement. At such time as the Board shall vote to terminate the PRD Project and the Agreement in accordance with the terms of this Section 10, all outstanding obligations of the PRD Project shall be paid, all property acquired by the PRD Project shall be disposed of by distribution of the same to the remaining Parties as represented on the Board and all unused funds and appropriations shall be returned to the then-remaining Parties as represented on the Board in such proportion as represented by the proportionate share payable by each NRD under the second paragraph of Section 8 of this Agreement (including as such proportionate shares may have been modified in the event of the withdrawal of a Party under the terms of Section 9 of this Agreement or a change in membership under Section 12 of this Agreement).

11. AMENDMENT AND MODIFICATION: As and to the extent that any indebtedness is outstanding, the prohibitions of Sections 9 and 10 of this Agreement on withdrawal of any Party and on partial or complete termination of this Agreement may not be amended or modified. For all other matters this Agreement may be amended or modified upon the approval of modifications by all Parties.

12. CHANGE IN MEMBERSHIP: This Agreement may be amended or modified to increase its membership upon unanimous vote of the Board. Any new member shall be required

to have the written approval of its governing body, and shall have admission to membership in the PRD Project as a Party hereto, approved by a duly adopted resolution of its governing body. In the event of any increase in the membership, the proportionate shares set forth in Section 8 of this Agreement shall be modified, provided, that no such modification shall alter the obligations of any Party on any bonds issued by such party to the PRD Project to support Indebtedness incurred by the PRD Project and outstanding as of the time of the increase in membership.

13. APPROVAL: This Agreement shall be effective and the PRD Project established hereby shall come into existence as soon as the governing bodies of the respective Parties hereto shall have adopted resolutions approving and authorizing the execution of this Agreement and the establishment of the PRD Project described herein at a duly called public meeting. Counterparts of this Agreement shall be executed and delivered by each of the Parties to all of the other Parties. Executed originals shall be placed on file at an office designated by the Board.

14. ADDITIONAL AND FURTHER CONTRACTS FOR SUPPORT AND MUTUAL ASSISTANCE: The PRD Project is authorized and empowered to seek and obtain contracts, agreements and other arrangements whereby the PRD Project shall receive support and assistance for the purpose of pursuing its objects and purposes from such other entities as PRD Project from time to time shall determine necessary or appropriate, including, but not limited to, 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 PRD Project by the Parties 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 PRD Project, and provided further that upon a majority vote of the Board, 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, which representative shall be a non-voting, ex-officio member of the Board, but which representative shall be entitled to attend all meetings of the Board and to be appointed to such committees and attend such committee meetings as the Board shall determine.

15. 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.

16. ASSIGNMENT: No Party hereto may assign its rights under this Agreement.

17. NOT FOR PROFIT: It is expressly acknowledged and agreed that the PRD Project is a public body and is to be operated not for profit, and no profit or dividend will inure to the benefit of any individual.

18. SEVERABILITY: If any provision, term, or clause in the Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have signed and executed this agreement on the dates shown next to their respective signatures as follows.

Tri-Basin Natural Resources District

By

John Johnson

Date

2/10/16

Lower Republican Natural Resources District

By

Michael Clement

Date

2-16-16

June 25, 2020

Jesse Bradley
P.O. Box 94676
301 Centennial Mall South
Lincoln, NE 68509

SUBJECT: SUPPLEMENT TO Application A-19594 - Amended Platte to Republican Basin High Flow Diversion Project Interbasin Transfer Permit Application and Surface Water Appropriation Permit Application along with Response to February 26th, 2020 'Show Cause Order' letter regarding the Interbasin Transfer for Application A-19594

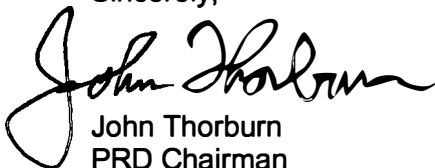
Dear Mr. Bradley,

On June 24, 2020, the Platte to Republican Basin High Flow Diversion Project ("PRD Project" or "PRD") filed with the Nebraska Department of Natural Resources ("NDNR") its Amended Platte to Republican Basin High Flow Diversion Project Interbasin Transfer Permit Application and Surface Water Appropriation Permit Application (the "Amended Application") in response to NDNR's Order of February 26, 2020. After filing, it was noticed that DNR Form APA-001, Application for a Permit to Appropriate Water that was filed as part of the Amended Application mistakenly left off a signature for John Thorburn on behalf of PRD, which Mike Thompson with NDNR had directed should include a signature for both PRD and The Central Nebraska Public Power and Irrigation District ("Central") in this unique circumstance.

Attached hereto is a revised DNR Form APA-001, Application for a Permit to Appropriate Water that includes both a signature for John Thorburn on behalf of PRD and Devin Brundage on behalf of Central. Please supplement the Amended Application and related filings of June 24, 2020, with this attached revised Form APA-001 to correct those filings. This filing is made within the 120 days from the date of the February 26, 2020 NDNR Order timeframe allowed for filing the Amended Application.

Please let me know if you have questions or need additional information. I can be reached by email at jthorburn@tribasinprd.org or at (308.995.6688) by telephone.

Sincerely,



John Thorburn
PRD Chairman

cc: Mike Thompson, Nebraska Department of Natural Resources
Todd Siel, Lower Republican Natural Resources District
Scott Dicke, Lower Republican Natural Resources District
Devin Brundage, Central Nebraska Public Power and Irrigation District
Cory Steinke, Central Nebraska Public Power and Irrigation District

Enclosed: Revised DNR Form APA-001, Application for a Permit to Appropriate Water

AMENDED WATER SERVICE AGREEMENT

This AMENDED WATER SERVICE AGREEMENT (“Amended Agreement”) is made as of the Effective Date (as defined in Section 1.9) by and among THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter “Central”); and the PLATTE TO REPUBLICAN HIGH FLOW DIVERSION PROJECT (hereinafter “PRD Project”), a political subdivision of the State of Nebraska. Central and the PRD Project may individually be referred to as a “Party” and shall collectively be referred to herein as the “Parties.” This Amended Agreement supersedes all prior agreements, provided that the Parties shall account for work already performed and funds already expended and/or allocated pursuant to the Water Services Agreement executed on or about August 9, 2017.

WITNESSETH:

WHEREAS, the PRD Project wishes to create a project for diversion of flows from the Platte River Basin to the Republican River Basin;

WHEREAS, Central agrees to the use of its existing facilities and the construction of additional facilities needed to deliver water to Turkey Creek (Exhibit C) to assist the LRNRD and Tri-Basin with achieving the goals and objectives of their joint Integrated Water Resources Management Plans; and

WHEREAS, the PRD Project desires to acquire an Appropriation, as defined in section 1.1 below, on its own behalf to assist in compliance with the Republican River Compact and conform with the Integrated Water Resources Management Plans of the LRNRD and Tri-Basin.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

DEFINITIONS, OWNERSHIP AND TERM

Section 1. Definitions

The meanings for the capitalized terms used in this Amended Agreement are set forth as follows or in the body of this Amended Agreement:

- 1.1 “Appropriation” shall mean one or more new appropriation(s) acquired by the PRD Project which will authorize and limit its use to the diversion and delivery of water, using facilities owned by Central, to the Diversion Structure (as hereinafter defined) for release into

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DEPARTMENT OF
NATURAL RESOURCES

Turkey Creek (Exhibit C) for the purposes expressed and pursuant to the requirements provided in this Amended Agreement.

- 1.2 “Business Day” means a day on which the Federal Reserve Member Banks in New York City are open for business; and a Business Day shall open at 8:00 A.M. and close at 5:00 P.M. local time in Omaha, NE.
- 1.3 “Cost of Construction Services” shall mean the actual costs of planning, final design, engineering, financing, acquiring, constructing, and startup of the Diversion Project (as hereinafter defined) hereafter paid or incurred by Central in accordance with this Amended Agreement.
- 1.4 “Cost of Permitting” shall mean all costs needed for initial design, permitting but does not include the acquisition of the Appropriation.
- 1.5 “Day” means a calendar day.
- 1.6 “Diversion Project” means the Diversion Structure, related permits and other items needed to deliver water to the PRD Project property.
- 1.7 “Diversion Structure” shall mean a new release structure, consisting of physical materials such as a gate, pipe, concrete, etc., constructed to divert water from the E65 Canal into Turkey Creek as shown on Exhibit C.
- 1.8 “E65 Canal Diversions” shall mean water that is diverted into the E65 Canal under the Appropriation and remains in or recharges within the E65 Canal minus any recharge diversions for another entity who is Receiving recharge benefits in the E65 Canal.
- 1.9 “Effective Date” shall mean the date upon which this Amended Agreement shall become effective which shall be the date the last signature is affixed hereto.
- 1.10 “Engineer” shall mean the person(s) or firm(s) on Central staff or hired by Central to perform engineering services in connection with the Diversion Project.
- 1.11 “Force Majeure” means causes or events beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, which by exercise of due diligence and reasonable foresight could not reasonably have been avoided, including, without

limitation, acts of God, unusual or extreme actions of the elements such as floods, earthquakes, hurricanes, landslides, droughts or tornadoes; lightning; fire; ice storms; epidemics, quarantines, icing conditions in supply canal; sabotage; vandalism beyond that which could reasonably be prevented by the Party; terrorism; war; riots; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any license, permit, approval, rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits or approvals required by any Governmental Authority. The term Force Majeure does not include (i) any acts or omissions of any third party (other than as identified in Section 15.1), including, without limitation, any vendor, material man, customer or supplier of a Party, unless such acts or omissions are themselves excused by reason of Force Majeure; or (ii) a Party's inability to pay amounts due under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

- 1.12 "Governmental Authority" means any municipal, local, state, regional or federal administrative, legal, judicial, or executive agency, court, commission, department, or other such entity of competent jurisdiction, but excluding any agency department, state, or other entity acting in its capacity as a Party.
- 1.13 "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority, or other entity.
- 1.14 "Project Accounts" shall mean one or more separate accounts opened by Central and designated solely for use by Central for construction of the Diversion Project.
- 1.15 "Prudent Utility Practices" shall mean any of the practices, methods and acts at a particular time, which in the exercise of reasonable judgment in light of the facts, including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. In applying the standard of Prudent Utility Practices

to any matter under this Amended Agreement, equitable consideration should be given to the circumstances, requirements and obligations of each of the Parties hereto and there shall be taken into account the fact that Central is a political subdivision of the State of Nebraska with prescribed statutory and legal powers, duties and responsibilities. It is recognized that Prudent Utility Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

- 1.16 “Total Amount Diverted” shall mean all water diverted into the E65 Canal in accordance with the Appropriation.
- 1.17 “Turkey Creek Diversions” shall mean water that is diverted into the E65 Canal and released through the Diversion Structure into Turkey Creek.
- 1.18 “Water Service Charges” shall mean all payments for water services as defined in Section 5 during the Operation Phase.
- 1.19 “Water Service Rate” shall mean the applicable rate per acre-foot of diversion associated with water services as shown in Exhibit B.
- 1.20 “Water Service Termination Fee” shall mean (“the Cost of Construction Services”) minus (“the accumulated Water Service Charges for Turkey Creek Diversions paid under this Amended Agreement”) until such number is negative in which case it will be zero.

Section 2. Ownership and Term of Agreement

- 2.1 Ownership of Diversion Project.** All property, materials and permits which are acquired or constructed by Central and in the name of Central, for the Diversion Project shall be owned by Central.
- 2.2 Submission of Application for Appropriation.** The PRD Project shall be responsible for acquiring the Appropriation from the Nebraska Department of Natural Resources. Central shall not be a holder of the Appropriation. Central shall provide such information and agreements as are necessary to acquire the Appropriation. The PRD Project shall not, and shall not seek to, transfer, amend, or otherwise modify the Appropriation without the consent of Central. Within 90 days of the issuance of the Appropriation by the Nebraska

Department of Natural Resources, either Party may terminate this Amended Agreement if the Appropriation contains provisions that, in the opinion of a Party, are inconsistent with this Amended Agreement.

2.3 Term.

2.3.1. The term of this Amended Agreement shall begin on the Effective Date and shall remain in effect until June 30, 2038 unless terminated as provided in this Amended Agreement.

2.3.2. In the event of termination under this Amended Agreement (including the end of the term), the obligation to pay for costs that are incurred or arise under this Amended Agreement prior to termination shall survive. At the end of the term or upon termination, and after payment of all costs for the Diversion Project, the following shall occur: (i) the obligations, rights and benefits of the PRD Project under this Amended Agreement shall terminate (except as to any obligations incurred before the end of the term that extend beyond the term); (ii) Central shall retain ownership of the Diversion Project assets free and clear of this Amended Agreement; and (iii) the PRD Project shall relinquish the Appropriation. Notwithstanding the foregoing sentence, early terminations during the Permitting Phase, Construction Phase, Operations Phase or due to default are addressed in Sections 2, 4, 5 and 7, respectively.

Section 3. Approval Obligations of the Parties

Each Party shall use its best efforts to obtain all acceptances or approvals required in order to effect the agreement of the Parties hereunder in the most expeditious manner possible and the Parties shall act in good faith to implement this Amended Agreement fully and expeditiously without modification or condition.

Section 4. Permitting and Construction of the Diversion Project

4.1 Diversion Project Costs. The PRD Project shall be responsible and liable for the Cost of Permitting, the Cost of Construction Services, and the Project Construction Fee for the Diversion Project.

4.2 Construction Phase. The acquisition of the necessary permits will be the first major

activity prior to the Construction Phase. After acquisition of all needed permits, the Appropriation for the Diversion Project and a written authorization to proceed from the PRD, Central will proceed with the Construction Phase (design and construction) of the Diversion Project. All work completed in the Construction Phase of the Diversion Project shall be included in the Costs of Construction Services. A scope of work shall be provided to the PRD Project with design information. Central shall then issue an invoice for the design and construction of the Diversion Project in the amount of \$275,000. The PRD Project shall pay the invoice to Central in the amount of \$275,000 within sixty (60) Business Days of the receipt, whereupon, Central shall deposit the payment into the Project Accounts and proceed with the Construction Phase of the Diversion Project. Central shall transfer the Project Construction Fee from the Project Accounts to its own regular accounts as the Cost of Construction Services are incurred.

- 4.3 Project Construction Fee.** In addition to paying the Cost of Permitting and Cost of Construction Services, the PRD Project shall be responsible and liable for payment to Central of a fee (the "Project Construction Fee") in the amount of three percent (3.0%) times the Cost of Permitting and Cost of Construction Services. The Project Construction Fee compensates Central for the administrative costs and overhead associated with the construction of the Diversion Project, and the receipt, management, and disbursement of funds for the Diversion Project.
- 4.4 Construction Responsibilities.** Central shall be responsible for the hiring, payment, and oversight of contractors during the Construction Phase of the Diversion Project. Central shall be solely responsible and liable for any and all claims arising from gross negligence by Central during the Construction Phase of the Diversion Project.
- 4.5 Subsequent Permitting or Construction Payments; Termination During Permitting or Construction Phase.** If, during the Permitting Phase or the Construction Phase, Central determines that the payments will not cover the Cost of Permitting, Cost of Construction Services or the Project Construction Fee as described in sections 4.2, 4.3 and 4.4, Central shall issue one or more additional invoices to the PRD Project. The PRD Project shall either (a) pay the additional invoice within thirty (30) Days or (b) submit a notice of termination of the Amended Agreement to Central, whereupon Central may cease work on the Diversion Project. In the event that the PRD Project does not pay the payments as specified herein,

Central shall submit a written notice to the PRD Project requiring payment within twenty (20) Days, and Central may cease work on the Diversion Project until the required payments are made. If payment is not made within such required period, then this Amended Agreement shall terminate and, after payment of all costs incurred for the Diversion Project, Central shall return any funds remaining in the Project Accounts to the PRD Project, the obligations, rights and benefits of the Parties under this Amended Agreement shall terminate (except as to any obligations incurred prior to termination), and the Parties shall have no further obligations hereunder.

- 4.6 Completion of Construction Phase.** When Central has completed construction of the Diversion Project, Central shall return any unspent monies to the PRD Project and provide an itemized list of Diversion Project costs.

Section 5. Operation of the Diversion Project (“Operations Phase”)

5.1 Operation of the Diversion Project.

- 5.1.1. The Operations Phase shall commence upon conclusion of the Construction Phase. During the Operations Phase, Central shall utilize Prudent Utility Practices in the operation, maintenance, and replacement of the Diversion Project to deliver water into Turkey Creek in accord with the Appropriation to assist the PRD Project with implementation of its members’ Integrated Management Plan.
- 5.1.2 The Parties understand and agree that Central owns and operates other facilities within its water delivery and regulation system, located upstream and downstream of the Diversion Project facilities, that are used for hydropower production, irrigation, and other purposes, and these facilities may in the future be modified or rebuilt, and Central may build other facilities within its water delivery and regulation system. The Parties further understand and agree that the water to be delivered to the Diversion Project may be water that will pass through certain of other facilities owned by Central. Notwithstanding any other provision herein, this Amended Agreement shall not create or establish, or be construed to create or establish, by implication or otherwise, any obligation, restriction, or limitation, now or in the future, with respect to operation of other facilities owned by Central, that are used or in the future may be used for delivery of water to the Diversion

Project. Without limiting the effect of the preceding sentence, and for the sake of clarity, the Parties understand and agree that Central shall not be in default of this Amended Agreement if Central modifies Central facilities or changes its operations in a way that affects the volume, rate, frequency, or timing of water available for diversion by the Diversion Project.

5.1.3 Central makes no guarantees regarding the volume, rate, frequency, or timing of water available for diversion by the Diversion Project, and it is understood and agreed that Central does not provide a guarantee to the PRD Project or any other Person that any particular amount of diversion will be supplied by the Diversion Project. The provisions of this Amended Agreement are subject to the rights and obligations of Central under its water appropriations, and the provisions of this Amended Agreement shall not be construed as modifying, limiting, or changing the rights and benefits of said water appropriations. Nothing in this Amended Agreement shall interfere with or limit Central's rights to obtain new water appropriations or to amend existing water appropriations.

5.1.4. Central may reduce or suspend diversions under this Amended Agreement for good cause as determined by Central.

5.2 Water Service.

5.2.1. Water Diversion. During the Operations Phase, Central may divert water into the E65 Canal and into Turkey Creek at the Diversion Structure (as shown on Exhibit C) in accordance with the Appropriation. The PRD Project agrees that all uses of water received under this agreement shall be in accordance with the Appropriation.

5.2.2. Amount. The Total Amount Diverted shall be measured by Central using the E65 Canal measuring flume currently located at milepost (MP) 2.8. The portion of the Total Amount Diverted that is Turkey Creek Diversions will be measured by Central using a water meter at the Diversion Structure as shown on Exhibit C. It is understood by the Parties that all measurement facilities or locations may be revised from time to time as determined by Central. All remaining diversions passing the MP 2.8 flume that are not for another authorized beneficial purpose or for an entity who is receiving recharge benefits shall be considered E65 Canal Diversions. All

measurements made through Central's measuring device and so recorded by Central operating personnel shall be considered final. Central may make reasonable adjustments in the calculation of the Total Amount Diverted, as necessary to account for similar operations from other water sources, or for other reasons as may be appropriate. Central shall consult with the PRD Project in making such adjustments. Central will keep detailed accounting of all diversions for the Diversion Project. All data used by Central regarding the measurement or accounting of the Total Amount Diverted, and under the Appropriation shall be shared with the Parties.

5.2.3. **Coordination of Delivery.** The PRD Project shall provide written notice to Central when the Nebraska Department of Natural Resources determines that water is available for diversion from the Platte River for the PRD Project operations. Such written notice shall further inform Central of the date when delivery of water through the Diversion Structure may begin. Central will determine if its facilities are available for said delivery of water and, if so, will then begin diversion operations in accordance with this Amended Agreement. If the PRD Project requests, in writing, that Central reduce or cease diversions, Central agrees to reduce or cease diversions as soon as practicable.

5.3 Water Service Charges. The PRD Project shall pay Central for all annual permit fees and the Total Amount Diverted according to the following provisions (payment shall be due within 60 days of invoice):

5.3.1 **Annual Permit Fees.** The PRD Project shall pay for all annual permit fees associated with the Diversion Structure.

5.3.2 **Turkey Creek Diversions.** The PRD Project shall pay a Water Service Rate specified in Exhibit B for the Turkey Creek Diversions.

5.3.3 **E65 Canal Diversions.** The PRD Project shall pay a Water Service Rate as specified in Exhibit B for the E65 Canal Diversions.

5.3.4 The PRD shall not pay Water Service Rates as specified in Exhibit B for the Total Amount Diverted as long as the accumulated Water Service Charges invoiced under this Amended Agreement are less than the Cost of Construction Services.

5.3.5. The PRD shall pay Water Service Rates as specified in Exhibit B for the Total Amount Diverted after the accumulated Water Service Charges invoiced under this Amended Agreement exceed the Cost of Construction Services and for the remainder of the agreement.

5.3.6. The Total Amount Diverted, Turkey Creek Diversions, and E65 Canal Diversions shall be adjusted according to provisions in paragraph 5.2.

5.3.7. Central shall invoice the PRD Project for the Water Service Charges quarterly or upon completion of the services.

5.4 Termination During Operations Phase. During the Operations Phase, either Central or the PRD Project may terminate this Amended Agreement by providing 60 days' written notice to the other Party. The termination shall be effective 60 days from the date of notice. If Central terminates this Amended Agreement before the accumulated Turkey Creek Diversion Water Service Charges are greater than the Cost of Construction Services, then Central shall pay a Water Service Termination Fee. Prior to the effective date of any such termination the PRD Project shall perform its obligations hereunder, including payments for Water Service Charges. Upon termination, Central shall continue to own the Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Amended Agreement.

Section 6. Dispute Resolution; Period for Billing Adjustments

6.1 Dispute Resolution. In the event of a dispute under this Amended Agreement, the following shall occur:

6.1.1. All disputes with references thereto, arising out of the performance of this Amended Agreement, or changes therein, or work in connection therewith, shall initially be submitted to Central for decision.

6.1.2. In the event that the PRD Project disagrees with Central's decision, a senior executive of Central and a senior executive of the PRD Project shall immediately

confer, discuss, and review Central's decision.

6.1.3. In the event that the meeting referred to in Section 6.1.2. fails to resolve the dispute, Central's decision shall be implemented, subject to the right of the Party to pursue available remedies, and shall remain in effect unless and until otherwise determined by a Governmental Authority. Each Party may pursue all remedies available at law or in equity, except that termination shall occur only as provided in this Amended Agreement. Pending final decision of any dispute hereunder, the disputing Party shall proceed with its obligations and performance in accordance with the written decision of Central.

6.1.4. Central's power of initial decision is intended only as an agreed mechanism to keep the Diversion Project moving forward in the event of a dispute and does not: (1) create any presumption in favor of Central's decisions, (2) alter the Parties' substantive obligations under this Amended Agreement, or (3) change either the standard of review or standard of liability which would otherwise apply to this Amended Agreement.

6.2 Limitation on Time Period for Billing Adjustments. Any claim for a billing adjustment shall be limited to expenditures incurred or revenues received in the twenty-four (24) months immediately preceding the date such claim or error is raised by such Party. Any claim for a billing adjustment not raised within such twenty-four (24) month period shall be deemed waived and shall be barred. All other claims shall be governed by the applicable provisions of Nebraska law.

Section 7. Default and Remedies

7.1 Default. A default shall occur under this Amended Agreement if there is a material breach of this Amended Agreement, including but not limited to a failure to make payments as required under this Amended Agreement, that a Party fails to cure or to make acceptable arrangements to cure as hereinafter provided. For purposes of this Section 7, a "Payment Default" shall mean a failure to make payments when due under this Amended Agreement.

7.2 Effect of Termination Due to PRD Project Default

7.2.1. In the event of termination by Central due to a default by the PRD Project during the Permitting or Construction Phase, then this Amended Agreement shall terminate and, after payment of all costs incurred for the Diversion Project, Central shall return any funds remaining in the Project Accounts to the PRD Project, the obligations, rights and benefits of the Parties under this Amended Agreement shall terminate (except as to any obligations incurred prior to termination), except that Central shall continue to own the Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Amended Agreement.

7.2.2. In the event of termination by Central due to a default by the PRD Project during the Operations Phase, the following shall occur: (i) the PRD Project shall pay all outstanding bills and (ii) the obligations, rights and benefits of the PRD Project with respect to the Diversion Project shall terminate and cease to exist, except that Central shall continue to own the Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Amended Agreement.

7.3 Late Payments. If the PRD Project fails to make any payment when due pursuant to this Amended Agreement, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the sum of three percent (3%) per annum plus the prime lending rate as from time to time may be published in the Money Rates section of The Wall Street Journal (the “Interest Rate”).

Section 8. Approvals

The obligation of Central to perform under this Amended Agreement shall be subject to Central obtaining and continuing to receive all necessary permits.

Section 9. Waivers

Any waiver at any time by any Party of its rights with respect to any default under this Amended Agreement, or with respect to any other matter arising in connection with this Amended Agreement, shall not be deemed a waiver with respect to any other default or matter.

Section 10. Notices

All notices given pursuant to this Amended Agreement by any Party to another Party shall be in writing and either personally delivered, or sent by facsimile or electronic mail, or mailed by certified or registered mail, postage prepaid, or sent by nationally recognized overnight courier, and addressed as provided in Exhibit A or at such other address or addresses as any Party may designate by notice given to the other Party(ies). With respect to all notices so delivered, the same shall be deemed effective on the day sent.

Section 11. Damages

To the fullest extent permitted by law and notwithstanding anything to the contrary herein, in no event shall any Party be liable for punitive, indirect, exemplary, consequential, or incidental damages including, without limitation, claims of third parties arising in connection with this Amended Agreement.

Section 12. Force Majeure

12.1 Applicability of Force Majeure.

12.1.1. No Party shall be responsible or liable for any delay or failure in its performance under this Amended Agreement, nor shall any delay, failure or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure; provided that:

- (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform; and
- (iv) when the non-performing Party is able to resume performance of its obligations under this Amended Agreement, that Party shall give the other Party written notice to that effect.

12.1.2. Except as otherwise expressly provided for in this Amended Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Amended Agreement (including, but not limited to,

payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

Section 13. Miscellaneous

- 13.1 Amendments.** This Amended Agreement may be further amended only by written agreement between all of the Parties.
- 13.2 Entire Agreement/Order of Precedence.** This Amended Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter contemplated by this Amended Agreement and supersedes all other prior agreements, whether oral or written.
- 13.3 Counterparts.** This Amended Agreement may be executed in multiple counterparts to be construed as one.
- 13.4 Severability.** If any part, term or provision of this Amended Agreement is held by a Governmental Authority to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Amended Agreement did not contain the particular part, term, or provision held to be unenforceable, and a new provision shall be deemed to be substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties hereto as evidenced by the provision so severed.
- 13.5 Governing Law.** This Amended Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.
- 13.6 Jurisdiction.** The Parties agree that any legal proceeding relating to this Amended Agreement shall be filed in a state or federal court of competent jurisdiction and proper venue located within the State of Nebraska.
- 13.7 No Third Party Beneficiaries.** The Parties agree that no other parties are an intended third-party beneficiary of this Amended Agreement. In addition, neither the PRD Project

or Central shall transfer or assign this Amended Agreement or any water diverted through the Diversion Project without agreement of all Parties.

13.8 Independent Contractors. Nothing in this Amended Agreement shall be construed as creating any agency relationship between the Parties, including any partnership or joint venture, other than that of independent contractors. Nothing in this Amended Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person not a party to this Amended Agreement. This Amended Agreement shall not empower any Party to act as any other Party's agent or to represent to any third party that it has the ability to bind any other Party, without the express permission of the Party to be bound.

13.9 Rules of Construction.

13.9.1. The descriptive headings of the various sections and subsections of this Amended Agreement have been inserted for convenience of reference only and shall not be construed as to define, expand, or restrict the rights and obligations of the Parties.


13.9.2. Wherever the term “including” is used in this Amended Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase, or term.

13.9.3. The terms defined in this Amended Agreement shall include the plural as well as the singular and the singular as well as the plural.


13.9.4. Whenever a statute, code, rule, or regulation is used in this Amended Agreement, such term shall also include all successor statutes, codes, and regulations.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended Agreement to be executed by their duly authorized representatives.

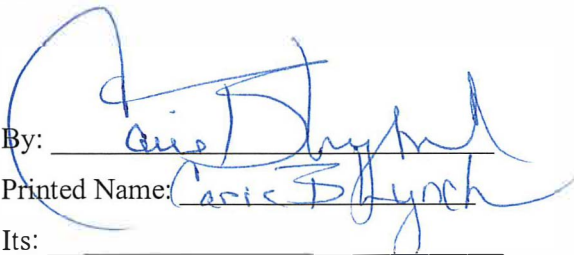
ATTEST:

By: 
Printed Name: Emily J. Anderson
Its: Executive Assistant
Date: October 1, 2020

THE CENTRAL NEBRASKA PUBLIC
POWER AND IRRIGATION DISTRICT

By: 
Printed Name: Devin Bandage
Its: General Manager
Date: 1-Oct-20

ATTEST:

By: 
Printed Name: Cassie Blynn
Its: _____
Date: 10-1-20

THE PLATTE TO REPUBLICAN HIGH
FLOW DIVERSION PROJECT

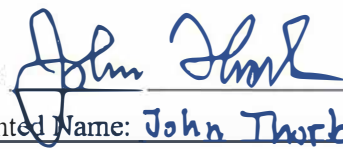
By: 
Printed Name: John Thorburn
Its: Chairman
Date: 10/1/20

EXHIBIT A
Notice Addresses

Todd Siel, General Manager
Lower Republican Natural Resources District
30 North John Street
P.O. Box 618
Alma, NE 68920

John Thorburn, General Manager
Tri-Basin Natural Resources District
1723 Burlington Street
Holdrege, NE 68949

Devin Brundage, General Manager
The Central Nebraska Public Power and Irrigation District
415 Lincoln Street
PO Box 740
Holdrege, NE 68949

Exhibit B		
Water Service Rates		
	Total Amount Diverted (\$/AF)	
Year	Turkey Creek Diversions	E65 Canal Diversions
2020	\$39.53	\$46.26
2021	\$40.32	\$47.64
2022	\$41.13	\$49.07
2023	\$41.95	\$50.54
2024	\$42.79	\$52.06
2025	\$43.64	\$53.62
2026	\$44.52	\$55.23
2027	\$45.41	\$56.89
2028	\$46.32	\$58.59
2029	\$47.24	\$60.35
2030	\$48.19	\$62.16
2031	\$49.15	\$64.03
2032	\$50.13	\$65.95
2033	\$51.14	\$67.93
2034	\$52.16	\$69.97
2035	\$53.20	\$72.06
2036	\$54.27	\$74.23
2037	\$55.35	\$76.45
2038	\$56.46	\$78.75

EXHIBIT C



EXHIBIT D

INTERLOCAL COOPERATIVE AGREEMENT

INTERLOCAL COOPERATION AGREEMENT

This Agreement is entered into by and between the Tri-Basin Natural Resources District and the Lower Republican Natural Resource District (referred to herein collectively as “NRDs” or “Parties”). Both of these NRDs is a political subdivision of, and is situated in, the State of Nebraska.

IT IS AGREED by and between the Parties hereto, each acknowledging the receipt of good, adequate, and valuable consideration, 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 (the “Interlocal Act”).

2. PLATTE TO REPUBLICAN BASIN HIGH FLOW DIVERSION PROJECT: The Parties hereby create the Platte to Republican Basin High Flow Diversion Project (the “PRD Project”). The PRD Project shall be governed by the terms of this Agreement and shall be the instrument through which and by which the Parties pursue the purposes described herein. The PRD Project shall be an entity separate and distinct from the respective Parties hereto, and no Party hereto is the agent, employee or representative of the PRD Project or any other Party. The Parties hereto agree that contracts entered into, obligations undertaken, and liabilities incurred by the PRD Project shall be the separate contracts, obligations and liabilities of the PRD Project, and not the contracts, obligations or liabilities of the respective Parties. The PRD Project shall constitute a separate body corporate and politic of the State of Nebraska exercising public powers and acting on behalf of the Parties hereto.

3. PURPOSE: The PRD Project shall provide the authority, resources, services, studies, and facilities needed for the representation of the interests of the Parties in proceedings before all agencies, tribunals, courts, and any administrative, legislative, executive, or judicial bodies concerning or affecting the NRDs’ actions, decisions, and policies to regulate/manage water to assist the State of Nebraska with compliance with the Republican River Compact, 2A NEB. REV. STAT. APP. § 1-106 (1995). The PRD Project will specifically undertake the creation of a high flow diversion project from the Platte River Basin to the Republican River Basin. The PRD Project shall specifically act within authority so granted by the Nebraska Unicameral and laws of Nebraska. This Agreement shall provide the organizational and administrative structure, and enumeration of the powers, privileges and authority of the financial cooperative effort of the PRD Project. The powers, privileges and authorities of the PRD Project shall not exceed those powers, privileges or authorities exercised, or capable of being exercised, by each of the Parties, and as may be otherwise provided for in the Interlocal Act, 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 PRD Project shall be by a Board of Directors (“Board”). Each member of the Board shall be entitled to one vote, and the majority of the votes cast on any issue shall determine the issue, except where a unanimous vote shall be specifically required by this Agreement or by-laws adopted by the Board. A unanimous vote shall be required before the issuance of any bonds for the acquisition of water rights. The Board shall be composed of a voting member from each

Party (designated herein as a "Voting Member") and one other person designated by each Party ("Member"). Only a Voting Member shall be allowed to cast a vote and each Party shall have but one vote. In the event a designated Voting Member for any Party is absent for a vote, the Member for that Party shall be authorized to vote in the Voting Member's stead. Each Voting Member and Member shall be duly and properly appointed by the respective governing bodies of each of the separate and individual Parties, but it shall not be required that either person so appointed, be a publicly elected member of the governing body of any Party. Each Member and Voting Member shall serve at the pleasure of his or her respective governing body or director. Any vacancy which occurs in the Board shall be filled within 60 days through the appointment of a replacement by the represented Party. The Board shall select from their membership a Chairman, Vice Chairman, and Secretary/Treasurer. The Board shall exercise authority over the PRD Project in accordance with applicable laws and shall set the policy, delegating executive, supervisory and organizational authority to its officers and committees. Meetings of the Board shall be conducted at least annually and at such other frequent times as may be required by the business of the PRD Project. A majority, i.e., two (2) Members, shall constitute a quorum for the transaction of business.

5. CHAIRMAN, VICE CHAIRMAN, AND SECRETARY/TREASURER: The Chairman shall preside at all the meetings of the Board, 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 PRD Project. The Vice Chairman shall serve in the absence of the Chairman and, in the Chairman's absence, shall have all of the powers and duties of the Chairman, and shall have such other powers and duties as the Chairman shall from time to time delegate to the Vice Chairman. The Secretary/Treasurer to the Board shall keep minutes of all meetings conducted by the PRD Project, and shall be the keeper of the records of the PRD Project. The Secretary/Treasurer shall prepare and submit in writing a monthly report of the state of the finances of the PRD Project and pay PRD Project money only upon authorization signed by the Chairman or, in the absence of the Chairman, by the Vice Chairman. Payment of all accounts after authorization shall be made on check signed by the Secretary/Treasurer. 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 may, in by-laws or otherwise, determine appropriate or necessary, and by Board action delegate or direct.

6. COMMITTEES: The Board or the Chairman shall have the power to establish such committees as may be necessary, appropriate or beneficial to the conduct of the affairs of the PRD Project. Such committees shall have such powers, duties and authorities as shall be delegated to it by the Board, which powers, duties, and authorities shall not be inconsistent with or exceed those powers and duties granted to the PRD Project under this Agreement. The Board and the Chairman are authorized to designate from its members an executive committee which shall consist of the PRD Project's Chairman, Vice Chairman, Secretary/Treasurer and the Chairmen of the various committees established by the Board, which executive committee shall have and may exercise only such powers and authorities as are delegated to it by the Board. The designation of any committees and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed by this Agreement, nor shall the Board delegate to any committee the authority to set policy or to make expenditures on behalf of

the PRD Project. Any committee established by the Chairman shall be approved by the Board at its next meeting.

7. **POWERS:** The PRD Project shall have all the powers, privileges and authority exercised or capable of being exercised by each of the individual and separate Parties to achieve the purposes of the PRD Project as set forth in this Agreement and as may be otherwise provided for in the Interlocal Act. Such powers, privileges and authority shall include, but not be limited to, the power, privilege and authority to:

- (a) Acquire and sell real property.
- (b) Sue and be sued.
- (c) Have a seal and alter the same at pleasure or to dispense with the necessity thereof.
- (d) 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, and to use or expend all such contributions in carrying out its operations.
- (e) Establish advisory groups by appointing individuals from among the Parties and pay necessary and proper expenses of such groups as the Board shall determine, and dissolve such groups.
- (f) Employ such persons as are necessary to carry out the purposes of the PRD Project and this Agreement and to pay the necessary and proper expenses of said persons.
- (g) Adopt and promulgate rules and regulations to carry out the purposes of the PRD Project and this Agreement.
- (h) Establish such committees as are necessary to carry out the purposes of the PRD Project and this Agreement and to pay the necessary and proper expenses of such committees.
- (i) Make and execute contracts, leases, easements and other instruments necessary or convenient to the exercise of its powers.
- (j) 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.
- (k) Borrow money, make and issue negotiable bonds, bond anticipation notes, refunding bonds and notes (collectively, the "Indebtedness"), all in accordance with the Interlocal Act and LB 701 (as enacted by the One

Hundredth Legislature First Session (2007) and specifically Sections 2-3226.01 through 2-3226.06, R.R.S. Neb. 2007, as amended) and any amendments to either of said acts, and to secure the payment of such Indebtedness or any part thereof by a pledge and/or mortgage of and grant of a security interest in any or all of the PRD Project's assets (including but not limited to (i) any and all real estate, improvements to real estate, fixtures and equipment and (ii) any and all bonds and payments of principal and interest on such bonds issued to the PRD Project by any of the Parties) or net revenues and any other funds or property which the PRD Project has a right to, or may hereafter have the right to pledge for such purposes.

- (l) Provide in the proceedings authorizing such Indebtedness for remedies upon default in the payment of principal and interest on any Indebtedness, including, but not limited to, the appointment of a trustee to represent the holders of such Indebtedness and the appointment of a receiver to the PRD Project's property, such trustee and receiver to have the powers and duties provided for in the proceedings authorizing such obligations.
- (m) Allocate funds raised by the PRD Project from the proceeds of any Indebtedness to the Parties or to the PRD Project for the purposes of effecting river-flow enhancement projects.
- (n) Contract for the improvement, operation and management of any and all property of the PRD Project with any persons, including any of the Parties.

8. FINANCES AND BUDGET: Annually or at such other frequent intervals as the Board may determine, each of the Parties hereto shall contribute such funds as are necessary to conduct the day-to-day operations of the PRD Project. Each NRD shall make an initial contribution of \$_____. This initial contribution shall be deposited in an account in the name of the PRD Project, at a bank insured by the FDIC, and selected by the Board.

If Indebtedness is issued by the PRD Project, each of the NRDs shall levy and collect such taxes or other charges as are necessary to ensure timely repayment of such PRD Project Indebtedness, including but not limited to taxes and charges, specifically including but not limited to the occupation tax provided for in Section 2-3226.05, R.R.S. Neb. 2007, as amended, needed to make payments of principal and interest on any bonds issued by such NRD to the PRD Project to support such PRD Project Indebtedness. Each NRD shall be responsible on a proportional basis relative to the total amount required for Indebtedness repayment according to the following percentages: The Tri-Basin Natural Resources District shall be responsible for 50% of the total revenue needs; Lower Republican Natural Resources District shall be responsible for 50% of the total revenue needs. Funds collected by the PRD Project for repayment of any Indebtedness may be deposited in a trust account or such other account, different from that identified in the first paragraph of this section, as may be required by agreement or permitted by law.

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

Concurrently with the establishment of the budget each year, the Board of the PRD Project shall consult with each Party regarding their ability to contribute such funds as are necessary to conduct the operations and to pursue the purposes of the PRD Project. Upon completion of the budget, the Board shall determine the assessment to be submitted by each Party and shall thereafter assess each of such Parties for said amount. Each Party shall have 60 days after receipt of notice from the PRD Project that an assessment is due to contribute its share of the funds required under the terms of the assessment.

9. WITHDRAWAL: No Party may withdraw while the PRD Project has any outstanding Indebtedness. Any Party may withdraw from this Agreement and from representation in the PRD Project, at any time while no Indebtedness of the PRD Project is outstanding, upon written notification to the Chairman. 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. Following withdrawal, the withdrawn NRD shall no longer be a Party, and the withdrawn NRD shall not be bound by this Agreement, except that the withdrawn NRD shall remain liable for its share of any costs properly approved and incurred by the PRD Project through the effective date and time of withdrawal.

10. PARTIAL AND COMPLETE TERMINATION: This Agreement may not be terminated while any Indebtedness is outstanding. If and when there is no Indebtedness of the PRD Project outstanding, this Agreement and the PRD Project created hereby, shall be terminated upon the earlier of the completion of its purposes and objects described herein or upon the unanimous vote of the then constituted Board for the complete or partial termination of the PRD Project and this Agreement. At such time as the Board shall vote to terminate the PRD Project and the Agreement in accordance with the terms of this Section 10, all outstanding obligations of the PRD Project shall be paid, all property acquired by the PRD Project shall be disposed of by distribution of the same to the remaining Parties as represented on the Board and all unused funds and appropriations shall be returned to the then-remaining Parties as represented on the Board in such proportion as represented by the proportionate share payable by each NRD under the second paragraph of Section 8 of this Agreement (including as such proportionate shares may have been modified in the event of the withdrawal of a Party under the terms of Section 9 of this Agreement or a change in membership under Section 12 of this Agreement).

11. AMENDMENT AND MODIFICATION: As and to the extent that any Indebtedness is outstanding, the prohibitions of Sections 9 and 10 of this Agreement on withdrawal of any Party and on partial or complete termination of this Agreement may not be amended or modified. For all other matters this Agreement may be amended or modified upon the approval of modifications by all Parties.

12. CHANGE IN MEMBERSHIP: This Agreement may be amended or modified to increase its membership upon unanimous vote of the Board. Any new member shall be required

to have the written approval of its governing body, and shall have admission to membership in the PRD Project as a Party hereto, approved by a duly adopted resolution of its governing body. In the event of any increase in the membership, the proportionate shares set forth in Section 8 of this Agreement shall be modified, provided, that no such modification shall alter the obligations of any Party on any bonds issued by such party to the PRD Project to support Indebtedness incurred by the PRD Project and outstanding as of the time of the increase in membership.

13. APPROVAL: This Agreement shall be effective and the PRD Project established hereby shall come into existence as soon as the governing bodies of the respective Parties hereto shall have adopted resolutions approving and authorizing the execution of this Agreement and the establishment of the PRD Project described herein at a duly called public meeting. Counterparts of this Agreement shall be executed and delivered by each of the Parties to all of the other Parties. Executed originals shall be placed on file at an office designated by the Board.

14. ADDITIONAL AND FURTHER CONTRACTS FOR SUPPORT AND MUTUAL ASSISTANCE: The PRD Project is authorized and empowered to seek and obtain contracts, agreements and other arrangements whereby the PRD Project shall receive support and assistance for the purpose of pursuing its objects and purposes from such other entities as PRD Project from time to time shall determine necessary or appropriate, including, but not limited to, 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 PRD Project by the Parties 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 PRD Project, and provided further that upon a majority vote of the Board, 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, which representative shall be a non-voting, ex-officio member of the Board, but which representative shall be entitled to attend all meetings of the Board and to be appointed to such committees and attend such committee meetings as the Board shall determine.

15. 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.

16. ASSIGNMENT: No Party hereto may assign its rights under this Agreement.

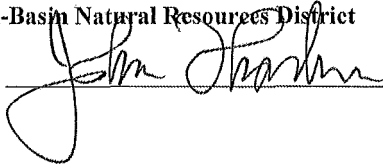
17. NOT FOR PROFIT: It is expressly acknowledged and agreed that the PRD Project is a public body and is to be operated not for profit, and no profit or dividend will inure to the benefit of any individual.

18. SEVERABILITY: If any provision, term, or clause in the Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have signed and executed this agreement on the dates shown next to their respective signatures as follows.

Tri-Basin Natural Resources District

By



Date

2/10/16

Lower Republican Natural Resources District

By



Date

2-16-16