

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES

PETITION TO THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
FOR 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

Complete items 1 through 5 by printing in ink or typing the appropriate information and by placing an X in the appropriate box. Attach supporting documentation and a \$10 non-refundable filing fee.

For Department Use Only

1. Name and address of petitioner:

The Central Nebraska Public Power and Irrigation District  
P.O. Box 740, 415 Lincoln Street  
Holdrege, NE 68949

Modification No.: VAR-7722  
Date Filed: November 4, 2019  
Time Filed: 8:41 am  
SW Appropriation No.:  
(if applicable)  
Right ID No.:  
(if applicable)  
Water Division: 1-A  
Receipt No.: A-5244  
Amount: \$10.00

E-mail address: Telephone No. (308) 995-8601

2. Check the situation that applies:

- ☐ Application Already Filed Application Number: \_\_\_\_\_  
☒ Application Not Filed (Enclose copy of proposed application)

3. Description of proposed project:

Diversion of unappropriated water into the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood WPA, Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA for the purpose of groundwater recharge. CNPPID requests that if this Appropriation is granted, then A-19617 be retired or cancelled.

4. The Proposed Project — (Check all that apply):

- ☐ 001.01 — Is a non-consumptive use  
☐ 001.02 — Will replace (offset) any consumptive use (Attach Offset Plan)  
☒ 001.03 — Is for possible unappropriated water (Attach Analysis)  
☐ 001.04 — Existed before the stay or moratorium (Attach Proof)  
☐ 001.05 — Addresses a public safety issue (Attach Explanation)  
☐ 001.06 — Is a temporary use for public construction (<10 AF)

5. Other reason why a variance should be granted:

The temporary right would allow CNPPID to assist the Platte River Recovery Implementation Program (PRRIP), the Nebraska Department of Natural Resources, and the Tri-Basin Natural Resources District with the retiming of excess water for groundwater recharge in the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood WPA, Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA.

10/30/19  
Date

  
Signature of Applicant (or authorized agent)

Send to the following address (along with \$10 non-refundable filing fee):

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

# STATE OF NEBRASKA

## DEPARTMENT OF NATURAL RESOURCES

### APPLICATION FOR A PERMIT TO APPROPRIATE WATER

Complete items 1 through 10 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.

The Central Nebraska Public Power and Irrigation District  
P.O. Box 740, 415 Lincoln Street  
Holdrege, NE 68949-0740

Filed in the office of the Department of

Natural Resources at \_\_\_\_\_ a.m./p.m.

on \_\_\_\_\_

Application No. \_\_\_\_\_

Map No. \_\_\_\_\_

Water Division \_\_\_\_\_

Receipt No. \_\_\_\_\_ Amount \_\_\_\_\_

Right ID \_\_\_\_\_

E-mail address: \_\_\_\_\_ Telephone No. (308) 995-8601

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

E-mail address: \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_

- 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 \_\_\_\_\_  
☒ Temporary\*\* Groundwater Recharge

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

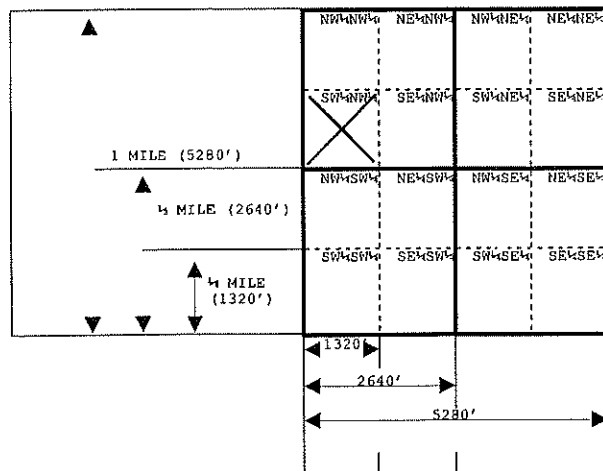
Platte River

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

Tri-County Supply Canal, E65 Canal, and Phelps Canal

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

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

appropriation, 950 cfs

8a. State the estimated time required for completion of all water diversion facilities.

Existing (LINDER WPA complete Fall 2019)

8b. State the earliest date when water will have been used for beneficial purposes.


Now or as soon as possible.

9. Will this project be constructed under a federal program, receive federal funding, or have federal planning assistance?

☐ No ☒ Yes If yes, explain: It is anticipated that the Platte River Recovery Implementation Program (PRRIP) will pay for recharge services associated with this water right.

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.

10/30/19  
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
Domestic .....	\$10
Agricultural	
Irrigation from Stream	
0-1,000 acres .....	\$200
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	

Nature of Use	Cost
Manufacturing	
General .....	\$10
Power Generation for each theoretical 50 horsepower .....	\$5
Other .....	\$10

## CNPPID's Intentions

### Temporary Permit to Appropriate Water for Groundwater Recharge on the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area, Funk Lagoon Waterfowl Production Area, Johnson Waterfowl Production Area, Linder Waterfowl Production Area, and Victor Lakes Waterfowl Production Area in Gosper, Phelps, and Kearney Counties

The applicant, The Central Nebraska Public Power and Irrigation District (CNPPID) intends to divert Platte River flows in excess of the U.S. Fish and Wildlife Service's Target Flows (target flows) and state protected flows (as defined in the Nebraska New Depletions Plan) for the purpose of groundwater recharge, on the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area (WPA), Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA, for the Platte River Recovery Implementation Program (PRRIP), the Nebraska Department of Natural Resources (Department) and the Tri-Basin Natural Resources District (TBNRD).

Only at those times when flow in the Platte River exceeds the quantity necessary to satisfy target flows and state protected flows would diversion occur. Included with CNPPID's Petition For Leave is the Platte River Hydraulic Analysis showing that CNPPID expects unappropriated flows in the Platte River.

The hydraulic analysis and description of excess flows or unappropriated water in the Platte River is based on an assumption that, because of the Platte River Recovery Implementation Program, any new appropriations to Platte River water may be limited to only being able to divert water in excess of U.S. Fish and Wildlife Service's "Target Flows." CNPPID is unaware of any formalization of a requirement to protect Target Flows in the seeking or granting of new appropriations. Therefore, CNPPID wants to clarify that this petition requests the next available water in the Platte River based on priority and submission date and that any limitations regarding Target Flows would be those requirements that may be shared by all future appropriations, or as otherwise may be required as a matter of law.

Diversion for groundwater recharge into CNPPID's E65 Canal and Phelps Canal would not exceed 950 cfs. The proposed area of groundwater recharge will be the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood WPA, Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA, as shown on the attached maps (Maps 2 and 3).



415 Lincoln St.  
P.O. Box 740  
Holdrege, NE 68949-0740



Phone: (308) 995-8601  
Fax: (308) 995-5705  
Web: [www.cnppid.com](http://www.cnppid.com)

VIA Certified Mail  
7012 0470 0001 2395 7693

October 30, 2019

RECEIVED  
NOV 04 2019  
DEPARTMENT OF  
NATURAL RESOURCES

Mike Thompson  
Nebr. Department of Natural Resources  
P.O. Box 94676  
Lincoln, NE 68509-4676

Subject: Petition for Leave to File an Application for a Temporary Permit to Appropriate Water for Groundwater Recharge on the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area, Funk Lagoon Waterfowl Production Area, Johnson Waterfowl Production Area, Linder Waterfowl Production Area, and Victor Lakes Waterfowl Production Area in Gosper, Phelps, and Kearney Counties

Dear Mr. Thompson:

Enclosed please find a Petition for Leave to File an Application for a Temporary Permit to Appropriate Water, a check for the Petition filing fee of \$10.00, a copy of CNPPID's Application for a Permit to Appropriate Water, CNPPID's intentions, a Report describing the project and anticipated operations with exhibits, and a 'cd' with all data and documents associated with this filing.

A copy of this transmittal letter has been enclosed. Please date stamp the copy and return it to CNPPID in the postage-paid, self-addressed envelope that is also enclosed.

Any notices regarding this application should be sent to Cory Steinke, CNPPID, P.O. Box 740, Holdrege, NE 68949-0740.

Sincerely,

A handwritten signature in blue ink, appearing to read "Devin Brundage". The signature is stylized with loops and a long horizontal stroke.

Devin Brundage  
General Manager

mm  
Enclosures

# PETITION



# APPLICATION





**REPORT TO ACCOMPANY**

**THE**

**APPLICATION FOR A TEMPORARY PERMIT**  
**TO APPROPRIATE WATER FOR GROUNDWATER RECHARGE**  
**ON THE E65 CANAL, PHELPS CANAL, ELWOOD RESERVOIR,**  
**COTTONWOOD RANCH COMPLEX, COTTONWOOD WATERFOWL**  
**PRODUCTION AREA, FUNK LAGOON WATERFOWL PRODUCTION**  
**AREA, JOHNSON WATERFOWL PRODUCTION AREA, LINDER**  
**WATERFOWL PRODUCTION AREA, AND VICTOR LAKES**  
**WATERFOWL PRODUCTION AREA IN GOSPER, PHELPS, AND**  
**KEARNEY COUNTIES**

**October 2019**

**SUBMITTED BY**

**THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT**

**TO**

**STATE OF NEBRASKA**  
**DEPARTMENT OF NATURAL RESOURCES**

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT

REPORT TO ACCOMPANY  
THE  
APPLICATION FOR A TEMPORARY PERMIT  
TO APPROPRIATE WATER FOR GROUNDWATER RECHARGE  
ON THE E65 CANAL, PHELPS CANAL, ELWOOD RESERVOIR, COTTONWOOD  
RANCH COMPLEX, COTTONWOOD WATERFOWL PRODUCTION AREA, FUNK  
LAGOON WATERFOWL PRODUCTION AREA, JOHNSON WATERFOWL PRODUCTION  
AREA, LINDER WATERFOWL PRODUCTION AREA, AND VICTOR LAKES  
WATERFOWL PRODUCTION AREA IN GOSPER, PHELPS, AND KEARNEY COUNTIES

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**EXHIBITS**

Exhibit 1    The CD contains the following documents and data:

- (1)    Cover Letter
- (2)    Petition for Leave Form
- (3)    Application for a Permit to Appropriate Water Form
- (4)    CNPPID's Intentions
- (5)    Report to Accompany the Application for a Temporary Permit to Appropriate Water for Groundwater Recharge on the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area (WPA), Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA in Gosper, Phelps, and Kearney Counties

- (6) Platte River Hydraulic Analysis Summary Document (See Exhibit 2 for the printed document.)
- (7) Spreadsheet of Platte River Hydraulic Analysis of Flows in the Platte River

Exhibit 2 A summary of the Platte River Hydraulic Analysis of Flows in the Platte River and associated spreadsheet. The data analysis is on the CD in Exhibit 1.

Exhibit 3 Water Service Agreements between CNPPID, PRRIP, the Nebraska Department of Natural Resources, and Tri-Basin Natural Resources District.

### **MAPS**

Map 1 CNPPID - SUPPLY CANAL AND LAKES  
LINCOLN, DAWSON AND GOSPER COUNTIES  
Drawing No. SC-LAKES1  
Date: 11/19/98

Map 2 PLATTE RIVER EXCESS FLOWS FOR RECHARGE  
IN E65 CANAL AND ELWOOD RESERVOIR, VICTOR,  
LINDER & COTTONWOOD WPA'S  
IN GOSPER & PHELPS COUNTY, NEBRASKA  
Drawing No. RCHG\_WPAs\_2017  
Date: 8/14/2017

Map 3 PLATTE RIVER EXCESS FLOWS FOR RECHARGE IN PHELPS CANAL, FUNK  
LAGOON & JOHNSON WPA IN GOSPER, PHELPS & KEARNEY COUNTIES,  
NEBRASKA  
Drawing No. RCHG\_WPA\_2017-2  
Date: 08/14/2017



# THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT

## REPORT TO ACCOMPANY

### THE APPLICATION FOR A TEMPORARY PERMIT TO APPROPRIATE WATER FOR GROUNDWATER RECHARGE ON THE E65 CANAL, PHELPS CANAL, ELWOOD RESERVOIR, COTTONWOOD RANCH COMPLEX, COTTONWOOD WPA, FUNK LAGOON WPA, JOHNSON WPA, LINDER WPA, AND VICTOR LAKES WPA IN GOSPER, PHELPS, AND KEARNEY COUNTIES

#### **Project Description**

Parties in the Platte River Basin are in need of projects that can retime excess flows in the Platte River or develop offsets for streamflow depletions. Studies have shown that recharge projects may be able to retime flows in the Platte River for beneficial uses. CNPPID has existing facilities (canals) that can accomplish these needs. This application requests a temporary water appropriation for diverting water for the purpose of groundwater recharge into the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area (WPA), Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA, for the Platte River Recovery Implementation Program (PRRIP), the Nebraska Department of Natural Resources (Department) and the Tri-Basin Natural Resources District (TBNRD)<sup>1</sup>. The project will use Platte River flows in excess of the U.S. Fish and Wildlife Service's Target Flows<sup>2</sup> and state protected flows (as defined in the Nebraska New Depletions Plan). A Platte River Hydraulic Analysis summary, which shows the availability of excess flows, and an analysis showing Supply Canal diversions are included in Exhibit 2 and in this Report with the data analysis included on the CD in Exhibit 1.

CNPPID will divert surface water from the Platte River at CNPPID's Diversion Dam, near North Platte, Nebraska, through the Supply Canal into the E65 Canal and Phelps Canal for the purpose of groundwater recharge. Once excess flows are diverted into the E65 and Phelps Canals, water may be released from the E65 Canal into Elwood Reservoir, Cottonwood WPA, Linder WPA, and Victor Lakes WPA, or may be released from the Phelps Canal into the Cottonwood Ranch Complex, Funk WPA, and the Johnson WPA, all for the purpose of groundwater recharge. Because CNPPID already utilizes the Supply Canal for diversions under other more senior appropriations for hydropower production, no additional water would be diverted from the Platte River at the point of diversion under this appropriation. However, under this appropriation the water so diverted would then be further diverted into the E65 Canal or Phelps Canal, rather than being returned to the Platte River at the Johnson No. 2 River Return (J2 Return), so long as excess water is available.

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<sup>1</sup> Agreements between CNPPID, PRRIP, Department, and TBNRD are included in Exhibit 3 to this Report.

<sup>2</sup> Taken from the Nebraska Depletions Plan, Platte River Recovery Implementation Program, Attachment 5, Section 8, December 7, 2005, pg 4.

## **Temporary Application**

CNPPID would like to take advantage of available excess flows in the Platte River and seek a temporary water right permit for the purpose of groundwater recharge for the PRRIP, the Department, and the TBNRD. This temporary permit request is for one year from the date that the request may be granted by the Department. The hydraulic analysis (Exhibit 2) shows that the Platte River will most likely produce flows in excess of instream flow rights and the U.S. Fish and Wildlife Service's (FWS) target flows. This temporary right would enable CNPPID to divert those excess flows for groundwater recharge on the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood WPA, Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA.

## **Project Facilities**

CNPPID's Diversion Dam is located just below the confluence of the North Platte River and the South Platte River, approximately 50 miles downstream from Kingsley Dam. The Diversion Dam near North Platte is a combination concrete ogee spillway and radial gate structure extending 874 feet across the Platte River. The Diversion Dam diverts the natural streamflow of the North Platte River and the South Platte River and storage water releases from Lake McConaughy into the headgates of CNPPID's 75.5-mile-long Supply Canal.

The Supply Canal has a capacity of 2,250 cfs and extends from the Diversion Dam to the J2 Return, located south and east of Lexington. The Supply Canal diverts water on a year-round basis and furnishes water for CNPPID's three hydroelectric generating power plants and the cooling water for Nebraska Public Power District's Canaday Steam Plant. Jeffrey Reservoir and Johnson Reservoir are located along the Supply Canal and serve as regulating reservoirs. The Diversion Dam and Supply Canal are shown on Map 1.

The E65 Canal is a large irrigation canal that diverts water from the Supply Canal just above the Johnson Lake inlet structure and consists of a main canal, distribution laterals, and buried pipelines. It provides water to land in Gosper and Phelps Counties during the irrigation season. Elwood Reservoir, Cottonwood WPA, Linder WPA and Victor Lakes WPA are located near the E65 Canal and are able to receive water from pumps, canal laterals and pipelines from the E65 Canal system. The E65 Canal, Elwood Reservoir, Cottonwood WPA, Linder WPA, and Victor Lakes WPA are shown on Map 2.

The Phelps Canal is CNPPID's largest irrigation canal. It begins at the J2 Return and consists of 56.9 miles of main canal and 235.6 miles of distribution laterals and buried pipelines. It provides water to land in Gosper, Phelps, and Kearney Counties. The Cottonwood Ranch Complex, Funk Lagoon WPA, and Johnson WPA are located near the Phelps Canal and are able to receive water from canal laterals and pipelines along the Phelps Canal system. The Phelps Canal, Cottonwood Ranch Complex, Funk Lagoon WPA, and Johnson WPA are shown on Map 3.

## Platte River Diversion Operations and Data

CNPPID holds permits to divert natural flow and storage water from the Platte River into the Supply Canal for the purposes of irrigation, power production and instream flows for fish and wildlife. CNPPID normally diverts all water that is available at the Diversion Dam into the Supply Canal up to a 2,250 cfs capacity and all remaining water is passed downstream of the Diversion Dam into the Platte River. Tables 1 and 2 show historic diversions into the Supply Canal and flows passing the Diversion Dam.

Table 1. Supply Canal Diversions, acre feet

WY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
2000	134860	129854	131260	133811	125845	130832	130786	123870	130673	135771	130544	70194
2001	60854	63310	56212	75908	76594	72499	81358	87769	91336	138476	129045	71317
2002	42770	45160	64780	61810	53970	61390	57890	53740	89610	140800	112000	42320
2003	40920	39270	38330	39320	35550	40470	51080	52700	49040	135100	131200	31970
2004	19896	19422	21166	24234	28398	30982	28120	61697	66527	109263	108202	31928
2005	21031	25268	27648	29094	26175	29724	33713	33900	91065	134542	96890	25444
2006	27590	25051	30626	32806	27000	26788	33069	38680	85222	135391	82811	23834
2007	28453	26760	28934	28779	35585	42847	45609	46898	77186	131090	79366	24407
2008	27880	26316	28853	34557	33283	32369	36087	33283	31863	118303	86290	29564
2009	42471	32036	27532	36086	32490	32155	76255	60965	104597	129695	104047	48868
2010	69280	79866	57991	79266	55678	91160	70755	127440	131674	138394	138323	130820
2011	134805	128794	118111	91826	93161	132970	129482	135840	131861	136567	137419	126986
2012	134784	127460	120616	112995	120004	105596	100559	71262	97711	145900	122981	57088
2013	24188	27139	48363	47983	46684	47476	108826	59622	71427	137331	93362	78954
2014	107882	50201	56829	76468	71364	73804	92896	65363	135182	131614	123692	52415
2015	49517	79052	117631	97442	98595	100155	117070	134158	135695	140977	140635	133710
2016	133460	134583	132315	132208	127815	129313	128209	137343	133546	139313	138608	128066
2017	120720	131896	112714	110322	113175	136162	98965	124296	131998	137155	135320	76638



Table 2. Flow Passing Tri-County Diversion, acre feet

WY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
2000	83130	39600	42050	51972	43603	25813	23195	23899	63101	107210	84977	0
2001	10	0	0	0	0	0	20	1914	9995	112835	73399	0
2002	0	0	0	123	0	0	0	0	10054	124124	23500	52
2003	0	0	3	0	0	3	0	0	0	27508	24432	0
2004	0	260	0	0	0	0	4	20	12	14170	1624	0
2005	0	0	0	0	0	0	0	0	7125	12112	153	33
2006	0	0	0	0	0	0	0	0	132	38128	5217	0
2007	0	0	0	0	0	0	0	0	6750	26542	2818	0
2008	0	0	0	0	0	0	0	0	0	14589	27741	0
2009	0	0	0	0	0	0	14187	0	46651	16189	275	0
2010	0	0	1259	2153	1002	174	0	43681	229827	54890	79085	26843
2011	13247	6817	9302	10335	14871	92034	98505	203179	394428	314284	226318	162013
2012	96118	25045	38890	42921	27267	6582	2056	0	7178	32318	13266	0
2013	0	0	3	7	7	0	15344	3	0	16785	23	209690
2014	50879	0	38	537	583	0	0	268	173294	8011	16709	0
2015	0	1227	8696	46708	11884	0	3219	206772	338919	92875	52343	24880
2016	2796	12631	28241	43061	46941	4458	41505	329289	333276	69216	54858	25740
2017	3586	3768	21442	21218	14976	27409	3525	66477	74932	51412	34811	7

Winter diversions into the Supply Canal are typically for power production uses. If the Environmental Account Manager wishes to release Environmental Account water in the non-irrigation season, CNPPID would also divert that water if possible into the Supply Canal. Water only passes the Tri-County Diversion Dam if the Supply Canal is diverting at capacity, icing or maintenance issues exists along the Supply Canal, or if CNPPID is in an agreement with another agency to intentionally bypass water past the Supply Canal. The temporary permit request will not change any of CNPPID's historic or future diversion operations. CNPPID will continue to divert all flows possible and pass any remaining flows down the Platte River.

### Proposed Recharge Operations

CNPPID intends to divert excess water into E65 Canal and Phelps Canal for the purpose of groundwater recharge on the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood WPA, Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA. The proposed areas of recharge are shaded on the attached maps (Map 2 and Map 3). All flows diverted for groundwater recharge will be measured by a Parshall Flume at Milepost 2.8 (MP 2.8) on the E65 Canal and MP 1.6 on the Phelps Canal. Recharge operations can only be accomplished in the E65 Canal and Phelps Canal in the non-irrigation season since those facilities are being used for irrigation purposes during the irrigation season. However,

recharge operations could occur year round in Elwood Reservoir, the Cottonwood Ranch Complex and the WPAs if canal capacity and excess flow is available. Water diverted into Elwood Reservoir under this appropriation may be released into the E65 Canal at a later date for the same groundwater recharge purposes for the TBNRD and/or Department.

### **Rate of Diversions**

Recharge diversions on the E65 Canal shall not exceed a peak flow of 350 cfs. Flows of up to 350 cfs will be diverted to fill the canal sections, and then reduced to match pumping and seepage loss demands in the canal, Elwood Reservoir, Cottonwood WPA, Linder WPA, and Victor Lakes WPA. Recharge diversions on the Phelps Canal shall not exceed a peak flow of 600 cfs. Flows of up to 600 cfs will be diverted to fill the canal sections, and then reduced to match seepage loss demands in the canal, Cottonwood Ranch Complex, Funk Lagoon WPA, and Johnson WPA. The total maximum diversion rate for this Application is 950 cfs.

### **Reduction of J2 Return Flows**

CNPPID diverts water through its Supply Canal for hydropower production. Diverting surface water for groundwater recharge only slightly modifies the operations of CNPPID's system, primarily reducing the amount of water returned to the Platte River at the J2 Return.

CNPPID is requesting to divert excess flows into the E65 and Phelps Canals in this temporary permit request. Excess flows are flows in the Platte River that are in excess of target flow requirements established by the U.S. Fish and Wildlife Service (FWS) for the PRRIP and in excess of that needed by existing surface water appropriations. A hydraulic analysis is included in this packet (Exhibit 2) that illustrates that excess flows at the J2 Return are present. The Department also has published a report, "Evaluation of Historic Platte River Streamflow in Excess of State Protected Flows and Target Flows", which also shows the presence of excess flows at the J2 Return. Since the permit accompanying this temporary request is only requesting to divert into the E65 and Phelps Canals at times when excess flows are present and diversions are not to exceed the amount of excess flows present at any given time, any depletion to J2 Return flows during times of diversion under this temporary permit would not cause harm to any existing surface water appropriations or target flows.

### **Expected Benefits**

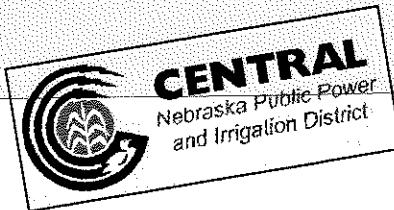
The permit associated with this temporary request is for the diversion of natural flow into the E65 and Phelps Canals for the purpose of groundwater recharge on the E65 Canal, Phelps Canal, Elwood Reservoir, Cottonwood Ranch Complex, Cottonwood WPA, Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA for the PRRIP, the Department and the TBNRD. Expected benefits of these diversions are to help reduce the shortages to FWS target flows and assist local Natural Resources Districts and the State of Nebraska in offsetting the

impacts of some of the uses which have occurred subsequent to 1997, as required by the PRRIP and LB962.

The PRRIP was developed on January 1, 2007, by the governors of Nebraska, Colorado and Wyoming and the U.S. Secretary of the Interior to provide defined benefits for four threatened or endangered species using the Platte River Basin. LB 962 was adopted by the Nebraska Legislature in 2004 calling for the management, conservation, and beneficial use of hydrologically connected ground water and surface water. LB 962 requires the development of integrated management plans and offsets for streamflow depletions caused by post July 1, 1997, uses with additional offsets that may be needed to return overappropriated basins to fully appropriated conditions.



# EXHIBIT 1



PETITION FOR LEAVE TO FILE AN APPLICATION FOR A  
TEMPORARY PERMIT TO APPROPRIATE WATER FOR  
GROUNDWATER RECHARGE ON THE E65 CANAL, PHELPS  
CANAL, ELWOOD RESERVOIR, COTTONWOOD RANCH  
COMPLEX, COTTONWOOD WPA, FUNK LAGOON WPA,  
JOHNSON WPA, LINDER WPA, AND VICTOR LAKES WPA IN  
GOSPER, PHELPS & KEARNEY COUNTIES

OCTOBER 2019



## EXHIBIT 2



# Platte River Hydraulic Analysis

The Central Nebraska Public Power and Irrigation District (CNPPID) analyzed Platte River flows at Grand Island, North Bend and Louisville over a nineteen-year period (1996-2014) to illustrate the availability of unappropriated water in the Platte River. CNPPID identified the U.S. Fish and Wildlife Service's Target Flows and state protected flows (as defined in the Nebraska New Depletions Plan) as flow requirements that must be exceeded prior to distinguishing unappropriated water. These flow requirements vary throughout the year with the target flows differing for type of year (wet, average, and dry) also.

For the purpose of this hydraulic analysis, CNPPID analyzed the flows in the Platte River that exceed the higher of the "wet" condition daily target flows and instream flow appropriations (such as, Central Platte Natural Resource District's appropriations (A-17004 through A-17009), and Nebraska Game and Parks Commission's appropriations (A-17329 through A-17332)). This analysis conservatively quantifies the amount of excess water available at Grand Island because of the use of the "wet" target flow criteria. Actual conditions for most of, if not all of, the drought cycle were classified as "dry" conditions, therefore the target flows would have been lower and more unappropriated water was in the Platte River than shown in this analysis. CNPPID acknowledges that the state protected flows include Water Action Plans that may utilize some of the unappropriated water in the Platte River, but due to the uncertainty of the projects and required flows, they were not included in this analysis.

The analysis consists of nineteen years of data, 1996 through 2014, to cover a time frame that represents wet, average and dry years. The attached Platte River Hydraulic Analysis Summary shows the number of days that the Grand Island, North Bend and Louisville river flow exceeds the requirements, the annual amount of unappropriated water at each location, and the annual amount of unappropriated water available at CNPPID's J2 Return for the past nineteen-year period.

The analysis shows unappropriated water in the Platte River for all but one year at Grand Island and every year at North Bend and Louisville. It is evident that the limiting factor for available unappropriated water at the J2 Return is the flow requirements and flow conditions at Grand Island. There seems to be around one-third of the amount of unappropriated water at Grand Island as there is at North Bend and Louisville over the analyzed period.

Days of Excess at Grand Island (Using FWS "Wet" Target Flows, NGPC and CPNRD rights)

Days of Excess Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	24	7	8	2	14	17	27	30	29	20	18	31	227
1997	31	10	7	16	10	17	10	22	29	28	30	31	241
1998	31	18	12	30	20	15	11	18	30	0	30	31	246
1999	31	14	5	13	21	30	15	27	30	31	30	31	278
2000	31	15	15	17	9	7	8	1	0	0	12	10	125
2001	28	4	7	3	13	0	4	6	13	0	4	29	111
2002	26	0	4	0	0	0	0	0	0	0	0	0	30
2003	1	0	0	0	0	0	0	0	0	0	0	1	2
2004	0	0	0	0	0	0	0	0	0	0	0	0	0
2005	0	0	0	0	6	5	0	0	0	0	0	0	11
2006	0	0	0	0	0	0	0	0	0	0	0	3	3
2007	1	7	0	6	5	7	11	13	0	0	0	0	50
2008	0	0	0	0	13	18	11	2	0	4	15	2	65
2009	7	2	0	4	0	10	5	0	0	2	21	25	76
2010	30	4	14	0	12	18	31	27	24	0	15	31	206
2011	28	8	22	30	29	30	31	31	30	31	30	31	331
2012	31	14	6	0	0	0	0	0	0	0	0	0	51
2013	9	0	0	7	0	0	0	0	5	19	10	2	52
2014	0	0	2	0	0	20	5	4	2	0	0	25	58
Grand Total	309	103	102	128	152	194	169	181	192	135	215	283	2163

Days of Excess at North Bend (Using NGPC instream flow rights)

Days of Excess Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	26	29	31	30	31	30	31	31	30	31	30	24	354
1997	31	28	31	30	31	30	20	22	30	31	30	31	345
1998	24	28	30	30	31	30	31	31	30	31	30	31	357
1999	31	28	31	30	31	30	31	30	30	31	30	31	364
2000	31	29	31	30	31	30	28	16	25	31	30	25	337
2001	31	28	31	30	31	28	20	18	29	31	30	26	333
2002	30	21	25	30	31	24	0	3	11	30	29	28	262
2003	14	25	31	30	31	30	7	0	11	26	30	16	251
2004	0	13	31	30	26	30	22	5	13	30	30	26	256
2005	15	28	31	30	31	30	10	12	13	28	27	24	279
2006	31	24	31	30	12	6	0	8	25	31	29	25	252
2007	20	28	31	30	31	30	27	31	30	31	30	31	350
2008	31	29	31	30	31	30	31	17	17	29	30	22	328
2009	31	28	31	30	31	30	31	31	30	31	30	31	365
2010	29	28	31	30	31	30	31	31	30	31	30	31	363
2011	31	28	31	30	31	30	31	31	30	31	30	31	365
2012	31	29	31	30	31	13	0	0	0	11	28	16	220
2013	27	25	31	30	31	30	5	29	3	31	30	4	276
2014	0	0	19	30	31	30	27	22	30	31	11	0	231
Grand Total	464	476	570	570	565	521	383	368	417	557	544	453	5888

## Days of Excess at Louisville (Using NGPC Instream flow rights)

Days of Excess Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	22	26	31	30	31	30	31	31	30	31	30	25	348
1997	31	28	31	30	31	30	23	20	30	31	30	31	346
1998	31	28	31	30	31	30	31	31	30	31	30	30	364
1999	31	28	31	30	31	30	31	31	30	31	30	31	365
2000	31	29	31	30	31	30	30	5	1	17	30	28	293
2001	31	28	31	30	31	29	24	10	24	31	30	24	323
2002	31	19	25	30	31	13	0	5	2	12	25	18	211
2003	13	15	29	30	31	30	11	0	5	0	4	11	179
2004	3	14	31	28	17	30	22	0	9	4	30	18	206
2005	18	28	31	30	31	30	10	2	0	0	11	23	214
2006	31	22	31	30	13	3	0	3	21	19	19	20	212
2007	22	28	31	30	31	30	20	31	30	31	30	31	345
2008	31	29	31	30	31	30	31	28	28	31	30	25	355
2009	31	28	31	30	31	30	31	31	30	31	30	31	365
2010	31	28	31	30	31	30	31	31	30	31	30	31	365
2011	31	28	31	30	31	30	31	31	30	31	30	31	365
2012	31	29	31	30	31	20	0	0	0	0	12	15	199
2013	21	18	31	30	31	30	4	21	0	31	29	4	250
2014	0	0	18	30	31	30	27	21	30	31	12	0	230
<b>Grand Total</b>	<b>471</b>	<b>453</b>	<b>568</b>	<b>568</b>	<b>557</b>	<b>515</b>	<b>388</b>	<b>332</b>	<b>360</b>	<b>424</b>	<b>472</b>	<b>427</b>	<b>5535</b>

## Amount of Excess at Grand Island, af

Amount of Excess Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	20033	6942	5891	60	28582	41296	27511	61211	115281	36873	51075	51730	446486
1997	47068	4364	7359	5236	8093	166138	44054	75552	68431	52226	101972	139619	720110
1998	162131	62044	41634	124147	50599	18784	14975	41158	25131	0	62282	64008	666892
1999	93026	18090	1924	6665	150726	193570	93661	135830	122164	49111	73647	115717	1054131
2000	125992	35425	22671	4126	11286	8727	9759	40	0	0	4146	6784	228955
2001	31438	1507	4146	1944	15769	0	2321	3372	14202	0	1408	17792	93899
2002	21640	0	793	0	0	0	0	0	0	0	0	0	22433
2003	198	0	0	0	0	0	0	0	0	0	0	99	298
2004	0	0	0	0	0	0	0	0	0	0	0	0	0
2005	0	0	0	0	26896	4582	0	0	0	0	0	0	31478
2006	0	0	0	0	0	0	0	0	0	0	0	575	575
2007	417	16126	0	21005	3293	5435	5812	11346	0	0	0	0	63432
2008	0	0	0	0	66943	67360	21640	377	0	8271	15908	655	181153
2009	2063	853	0	5217	0	21243	2856	0	0	635	27333	16800	76999
2010	43240	2817	24357	0	26896	178297	92887	30189	34077	0	43240	81324	557324
2011	65297	4304	63333	118455	136286	309386	314742	192300	203467	99869	82454	111374	1701268
2012	107109	20549	3213	0	0	0	0	0	0	0	0	0	130871
2013	1884	0	0	8351	0	0	0	0	55895	78983	3749	496	149358
2014	0	0	198	0	0	80391	4364	3471	258	0	0	46573	135255
<b>Grand Total</b>	<b>721538</b>	<b>173021</b>	<b>175520</b>	<b>295204</b>	<b>525370</b>	<b>1095209</b>	<b>634581</b>	<b>554844</b>	<b>638905</b>	<b>325968</b>	<b>467213</b>	<b>653543</b>	<b>6260918</b>

# Amount of Excess at North Bend, af

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	57918	173358	196862	184009	289492	384125	101456	273267	286814	250397	224671	219296	2641665
1997	147176	400469	286933	292348	203210	330292	106633	135136	167983	262001	316368	282946	2931494
1998	254880	334240	304705	520074	234152	412965	132200	145589	113298	205828	302603	194879	3155411
1999	206681	262794	276004	394955	503551	834399	316289	222787	204102	231950	253293	222231	3929036
2000	230205	200294	247481	207891	150548	99651	77773	15709	18506	95069	146362	58136	1547626
2001	91836	90249	290702	370756	312163	76722	20847	23782	74262	110778	88028	98263	1648388
2002	42447	54546	133946	124941	72299	42368	0	4066	6922	46057	64523	62123	654238
2003	19141	54050	128570	116788	206224	66943	7160	0	13944	20807	67518	26143	727290
2004	0	102468	165146	51869	79459	89555	83148	754	32886	34632	81363	54824	776104
2005	18209	137992	115777	138746	180875	256308	9600	11603	6109	21819	30744	149020	1076807
2006	96834	63492	108914	115995	14400	3134	0	9957	67856	49409	38658	56153	624803
2007	38182	266900	213206	279297	307145	301333	41336	176928	68609	176730	84914	112881	2067462
2008	109271	197775	187520	169926	422327	601972	130772	24417	16562	202496	134005	70831	2267874
2009	150369	199064	141047	159216	102130	219117	76365	95109	80649	157054	230185	96696	1707000
2010	69700	146442	407867	175203	182422	1187779	421097	140789	145847	161576	148961	137655	3325338
2011	195573	242384	338464	357466	460787	628789	462354	295859	222965	351635	260434	226694	4043404
2012	206760	262457	266106	210945	137179	33343	0	0	0	16840	59703	43597	1236930
2013	70890	121549	184466	203527	167070	111651	5098	47902	15412	362524	146660	16899	1453648
2014	0	0	150627	131863	98144	380118	123314	87740	168836	211818	57145	0	1409604
Grand Total	2006072	3310521	4144345	4205813	4123577	6060564	2115442	1711394	1711562	2969419	2736139	2129267	37224116

# Amount of Excess at Louisville, af

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	143348	379999	305221	276381	711600	887676	170859	638389	325572	305201	271581	209517	4625340
1997	215011	567876	463841	417685	342729	482229	202456	120954	243217	329479	342709	342074	4070260
1998	473918	424866	543122	924509	485144	930480	373592	296950	75135	221517	404356	192042	5345630
1999	205689	367721	371867	785605	967750	1188117	533462	343007	223322	212195	227031	254880	5680640
2000	284950	310398	282411	210767	152908	183295	158541	7934	397	34691	132081	55320	1813690
2001	169193	119407	591718	580570	641920	202218	52880	12774	84636	57978	64642	97271	2675200
2002	91439	50976	236056	154455	145867	76087	0	26797	1408	15689	20252	31657	850680
2003	15471	28166	136465	134323	381249	141503	22513	0	18823	0	4027	5415	887950
2004	2579	229094	282609	50222	211322	155665	125496	0	18863	1051	54844	29336	1161080
2005	32073	166931	108676	251349	309228	430558	21680	555	0	0	3888	124822	1449760
2006	117602	50778	110620	249663	29316	3213	0	4760	118712	15273	16205	61786	777920
2007	116729	563929	453726	498394	620419	550620	26242	378392	148743	485105	243812	194641	4280750
2008	214714	338564	434347	382240	804032	1478303	358994	48239	67518	423299	383054	192459	5125760
2009	422763	519538	329975	311727	183573	497224	175540	164690	179646	266206	356455	119724	3527060
2010	95010	163956	1013211	297942	320474	2821489	749485	308553	261941	223124	259481	229511	6744170
2011	319879	452655	494070	597232	755495	1009602	775350	371291	261961	321168	288520	265888	5913110
2012	248890	294689	331046	277948	234390	62123	0	0	0	0	4979	19895	1473950
2013	39591	89793	160148	228618	236076	199719	6665	23643	0	366412	149318	25270	1525250
2014	0	0	144200	168300	226536	862168	253352	198925	311786	251032	51511	0	2467810
Grand Total	3208847	5119334	6793329	6797931	7760027	12162286	4007106	2945855	2341680	3529420	3278745	2451507	60396060

Excess available at J2 on days of Excess at Grand Island, af

Excess available at J2 Return													Grand Total
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	20033	6942	5891	60	24734	31115	26515	53257	74857	35961	46037	51730	377133
1997	43530	4364	7359	5236	8093	23584	922	39868	62189	51087	83966	111506	441704
1998	92356	54407	33700	88702	41747	16019	13083	34008	25069	0	62282	64008	525380
1999	76771	18090	1924	6665	44981	79260	20583	63049	80158	47452	71503	108385	618819
2000	113182	33366	21303	4126	9750	7815	9193	40	0	0	3466	5990	208231
2001	31438	1507	4146	1944	15327	0	2321	3372	14202	0	1210	17792	93259
2002	21640	0	793	0	0	0	0	0	0	0	0	0	22433
2003	198	0	0	0	0	0	0	0	0	0	0	0	198
2004	0	0	0	0	0	0	0	0	0	0	0	0	0
2005	0	0	0	0	2633	4582	0	0	0	0	0	0	7215
2006	0	0	0	0	0	0	0	0	0	0	0	0	0
2007	0	8648	0	8538	1764	4472	5743	7685	0	0	0	0	36849
2008	0	0	0	0	5242	3852	7654	0	0	595	11921	0	29263
2009	1289	0	0	2663	0	18215	2856	0	0	0	26865	16800	68689
2010	41181	2817	17015	-559	20876	48286	61817	30025	34077	0	43240	79167	377942
2011	58465	4304	50598	93417	65896	79904	55627	59383	97319	85194	76679	95720	822507
2012	91378	20549	3213	0	0	0	0	0	0	0	0	0	115140
2013	1884	0	0	7693	0	0	0	0	5912	27420	2757	496	46162
2014	0	0	60	0	0	37758	4364	2775	258	0	0	46397	91612
Grand Total	593346	154995	146002	218483	241043	354862	210679	293462	394041	247708	429926	597991	3882537

Excess available at J2 on days of Excess at North Bend, af

Excess available at J2 Return													Grand Total
Year	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	44732	76127	79437	84184	55373	71646	42308	63224	95724	90160	102269	69260	874444
1997	74558	92147	102503	93403	78394	58779	1041	39831	89474	101121	107510	111506	950267
1998	78626	104193	94046	93998	81575	64168	29508	48027	89699	108060	112421	86196	990518
1999	90798	101874	93099	83750	86946	80930	27866	68547	89221	108349	110035	112468	1053884
2000	115012	103160	97088	86623	62658	43631	23586	6668	15619	41691	46755	37349	679840
2001	59954	61863	52466	55099	34920	18145	10614	16862	47800	39689	17320	41128	455859
2002	37548	28166	31841	22325	9549	7851	0	533	4760	10093	12618	21175	186459
2003	10528	18532	19515	16271	8326	2510	0	0	199	0	13796	7461	97138
2004	0	12186	14659	0	0	0	0	0	0	4211	14935	12945	58936
2005	10005	20265	16892	16299	5712	34889	0	0	2360	10522	12614	15262	144821
2006	19977	9119	28993	8662	5	1	0	0	1968	14622	11963	14447	109756
2007	8002	26711	37022	36009	23085	31173	21433	16875	1454	18010	16104	21934	257811
2008	23090	25031	22733	22096	25055	3872	20631	8358	1	32675	34201	4431	222175
2009	24596	24999	15028	51463	15108	40635	12407	0	24507	45224	67526	44978	366471
2010	50336	42818	55220	35362	74409	81999	64956	63583	100965	102897	107465	85681	865691
2011	76546	77200	92363	93417	86196	79904	55627	59383	97319	109966	101368	98189	1027478
2012	93807	102282	79821	64320	23288	5716	0	0	0	4960	16924	15312	406428
2013	29028	29732	29858	63218	13071	5510	0	3049	3946	71108	38235	4646	291401
2014	0	0	28689	62098	20767	65785	9959	13497	20563	43585	1302	0	266244
Grand Total	847143	956405	991274	988595	704436	697142	319937	408438	685579	956944	945361	804368	9305621



## Excess available at J2 on days of Excess at Louisville, af

Excess  
available  
at J2  
Return

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
1996	51067	74330	84753	84184	55373	71646	42473	63224	95724	90160	104887	72295	890115
1997	74669	92147	102503	93403	78394	58779	2596	37443	90025	101121	107510	111506	950097
1998	97810	104193	100889	93998	81575	64168	29604	51068	64361	107787	112421	88757	996632
1999	90798	101874	93099	83750	86946	80930	27876	70197	89221	108349	110035	109705	1052780
2000	114962	103160	97088	86623	62658	43402	26824	3564	397	18075	45539	41193	643484
2001	61527	61863	52639	55099	34920	18420	13655	9991	43416	30732	15862	44992	443115
2002	46731	26777	31444	22325	9549	3351	0	315	299	2112	7810	15861	166575
2003	9428	8839	17689	16798	8326	2510	0	0	0	0	0	3227	66817
2004	912	12384	14659	0	0	0	0	0	0	337	13764	10517	52574
2005	10912	20265	16892	16299	5712	34889	0	0	0	0	2214	15262	122445
2006	19977	8168	28993	8662	5	1	0	0	1810	4582	5312	10679	88188
2007	9983	26711	37022	36009	23085	31173	12175	15214	1454	18010	17361	21934	250131
2008	25372	25031	23046	22096	25055	3872	21384	10692	2399	34350	34201	5542	233040
2009	24596	24999	17353	52942	15108	40635	13138	0	24507	45573	67526	44541	370919
2010	57740	42818	55220	36274	74409	81999	64956	63583	102483	103401	107465	96019	886367
2011	77296	82136	92363	93417	86196	79904	55627	59383	97319	109966	101368	97911	1032887
2012	94668	102282	79821	64628	23288	5716	0	0	0	0	2618	10393	383414
2013	19531	23359	29858	64121	13071	5510	0	1858	0	71108	36994	4646	270056
2014	0	0	27731	64540	21230	68285	9959	13091	20563	43585	2630	0	271613
<b>Grand Total</b>	<b>887980</b>	<b>941337</b>	<b>1003063</b>	<b>995167</b>	<b>704898</b>	<b>695189</b>	<b>320267</b>	<b>399623</b>	<b>633978</b>	<b>889248</b>	<b>895518</b>	<b>804981</b>	<b>9171249</b>

## Available Excesses at J2 for Each Location, af

Year	Location		
	Grand Island	North Bend	Louisville
1996	377133	874444	890115
1997	441704	950267	950097
1998	525380	990518	996632
1999	618819	1053884	1052780
2000	208231	679840	643484
2001	93259	455859	443115
2002	22433	186459	166575
2003	198	97138	66817
2004	0	58936	52574
2005	7215	144821	122445
2006	0	109756	88188
2007	36849	257811	250131
2008	29263	222175	233040
2009	68689	366471	370919
2010	377942	865691	886367
2011	822507	1027478	1032887
2012	115140	406428	383414
2013	46162	291401	270056
2014	91612	266244	271613
<b>Total</b>	<b>3882537</b>	<b>9305621</b>	<b>9171249</b>

## EXHIBIT 3

**WATER SERVICE AGREEMENT – RECHARGE FROM EXCESS FLOWS  
BETWEEN  
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT AND  
NEBRASKA COMMUNITY FOUNDATION, ACTING AS THE CONTRACTING AGENT OF THE  
GOVERNANCE COMMITTEE OF THE  
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

THIS AGREEMENT made and entered into this 25<sup>th</sup> day of September, 2019, by and between **The Central Nebraska Public Power and Irrigation District**, a public corporation and political subdivision of the State of Nebraska, with its principal office located at 415 Lincoln Street, P.O. Box 740, Holdrege, NE 68949-0740, hereinafter referred to as "Central" and the **Nebraska Community Foundation** a Nebraska non-profit corporation, with its principal office located at 8100 South 15th Street, Suite A, P.O. Box 83107, Lincoln, Nebraska 68501-3107, hereinafter referred to as "Foundation," acting as the contracting agent of the Governance Committee of the Platte River Recovery Implementation Program, with its principal office located at 4111 4<sup>th</sup> Avenue, Suite 6, Kearney, Nebraska 68845, (hereinafter the Nebraska Community Foundation and Platte River Recovery Implementation Program are collectively referred to as "Platte Program" and the Nebraska Community Foundation is referred to individually as the "Foundation"). Central and the Platte Program may individually be referred to as "Party" and shall collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Central is the owner of the Phelps Canal as shown on Exhibit A; and

WHEREAS, in November 2018 Central was granted an order from the Nebraska Department of Natural Resources (hereinafter "DNR") for a "Temporary Permit to Appropriate Water for Groundwater Recharge via the E65 Canal, Phelps Canal, Elwood Reservoir, and Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area (WPA), Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA" (hereinafter "Appropriation"); and

WHEREAS, the Platte Program desires Central to augment Platte River stream flows via groundwater recharge; and

WHEREAS, Central desires to provide such recharge services; and

WHEREAS, Central also has an agreement with the State of Nebraska (State) for recharge services using the Phelps Canal;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein contained and the terms and conditions hereinafter set forth, it is hereby covenanted and agreed:

**1. WATER SERVICE.**

a. During the term of this Agreement, Central will provide the Platte Program with groundwater recharge via seepage through the Phelps Canal for the purposes described above in the non-irrigation season. The Total Amount Diverted will be divided into a 75% share to the Platte Program and a 25% share to the State. The Total Amount Diverted shall be measured by Central using the Phelps Canal measuring flume located at milepost (MP) 1.6 on the Phelps Canal (including water diverted and not available for recharge because of evaporation). The Total Amount Diverted will be adjusted by subtracting any deliveries or releases made by Central from the Phelps Canal

and for the difference in storage in the canal at the end of the irrigation season, at the end of each subsequent quarter or billing period, and at the beginning of the next irrigation season. The non-irrigation season will begin when Central stops releasing water into sections of the Phelps Canal for irrigation and end when Central begins releasing water into sections of the Phelps Canal for irrigation, as determined by Central.

b. Central will provide written notice to the Platte Program when flows are available for diversion into the Phelps Canal for recharge under the Appropriation. The Platte Program shall provide written notice to Central of the date when delivery into the Phelps Canal may begin and/or a maximum amount of water to be diverted into the Phelps Canal. Central will then begin diversions in accordance with this Agreement. If the Platte Program requests, in writing, that Central not deliver, reduce or cease diversions, Central agrees to not deliver, reduce or cease diversions as soon as practicable and the Platte Program's portion of diversions under this agreement will be made available to the State.

c. Central may make reasonable adjustments in 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 Platte Program in making such adjustments. All data used by Central regarding the Total Amount Diverted calculations shall be shared with the Platte Program.

d. Central may reduce or suspend groundwater recharge diversions under this Agreement for good cause, including but not limited to maintenance on the canal, construction on the canal, or if high groundwater levels are observed, as determined by Central.

2. **WATER SERVICE CHARGES.** The Foundation shall pay Central a Water Service Charge on a per acre-foot basis as specified in Exhibit B for the water service described above. All measurements made through Central's measuring device and so recorded by Central operating personnel shall be considered final. Central shall invoice the Foundation for the water service charges quarterly. Payment shall be due within 60 days of invoice.

3. **TERM.** The term of this Agreement shall commence January 1, 2020 (the "Commencement Date"), and shall expire on December 31, 2023.

4. **DATA SHARING.** Central and the Platte Program agree to share all hydraulic and hydrologic data collected in association with this Agreement.

5. **WATER APPROPRIATIONS.** The source of supply shall be water which is available pursuant to the Appropriation. The water service described herein shall be subject to the DNR approving such Appropriation. The water delivered pursuant to this Agreement shall be consistent with and limited to the terms and provisions of the Appropriation.

6. **FORCE MAJEURE.** Central shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control of, and without the fault or negligence of Central, including, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire, severe cold or other weather event, epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including but not limited to the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state or local governments), which Central could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of Central under this Agreement shall be excused and suspended without penalty or damages, provided that Central shall give the Platte Program notice describing the particulars of the occurrence or condition, the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition, and Central

proceeds with reasonable diligence to remedy its inability to perform and informs the Platte Program of the actions taken to remedy the consequences of the event or condition.

7. **DEFAULT.** If any Party to this Agreement fails to perform or otherwise breaches any of the terms of this Agreement, then such failure shall constitute a default. In the event of default by any Party, the non-defaulting Party/s shall give written notice of the default to the defaulting Party. Following such written notice, the defaulting Party may cure the default within thirty (30) days. Upon cure, this Agreement shall remain in full force and effect. If the defaulting Party fails to cure, the non-defaulting Party/s shall be entitled to any and all legal and equitable remedies except Central's total liability to the Platte Program and Foundation for any loss or damage, including but not limited to special and consequential damages, arising out of or in connection with the performance of this Agreement shall not exceed either the amount of Water Service Charges paid by the Foundation to Central pursuant to this Agreement or \$50,000, whichever is less.

8. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the Parties hereto with respect to the water service contemplated hereby and supersedes all prior agreements and understandings between the Parties with respect to such subject matter.

9. **AMENDMENT.** No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.


10. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding on the Parties, their successors and assigns. This Agreement may not be assigned by the Platte Program or the Foundation without the written consent of Central.

11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date first stated above.

NEBRASKA COMMUNITY FOUNDATION

Date 9/25/2019

By   
Diane M. Wilson  
Manager of Public/Private Partnerships

THE CENTRAL NEBRASKA PUBLIC POWER AND  
IRRIGATION DISTRICT,

Date 9/19/19

By   
Devin Brundage  
General Manager



PLATTE RIVER RECOVERY IMPLEMENTATION  
PROGRAM ACKNOWLEDGEMENT

I hereby certify that the Governance Committee of the Platte Program has authorized the Nebraska Community Foundation, acting as contracting agent of the Governance Committee of the Platte Program, to enter into this agreement.

Date

9/13/19

By

Jason Farnsworth  
Executive Director

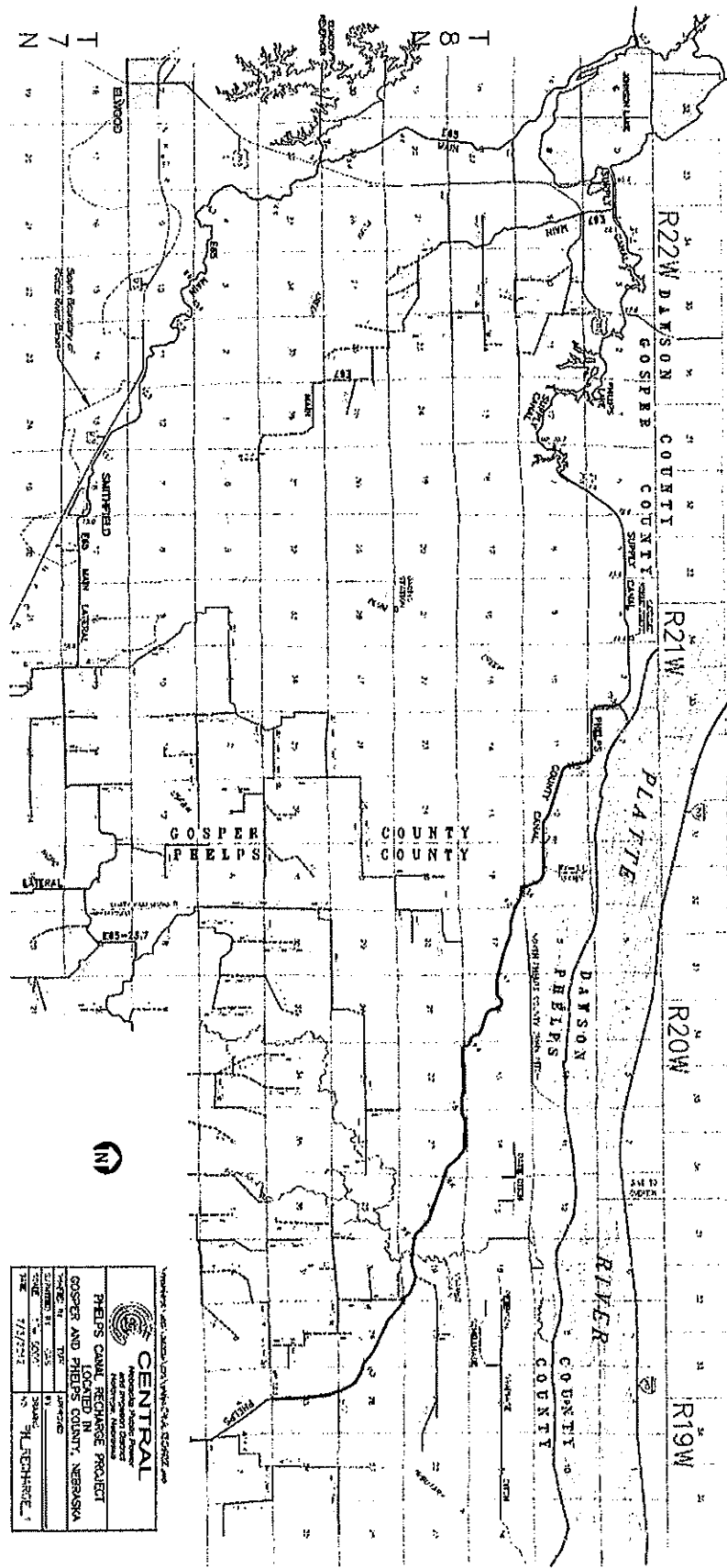



Exhibit "A"

 <b>CENTRAL</b> Agricultural Services and Property Services and Property Services	
<b>PHELPS CANAL RECHARGE PROJECT</b> LOCATED IN GOSPER AND PHELPS COUNTIES, NEBRASKA	
DATE: 1/1/2011	BY: J. L. RECHARGE
SCALE: 1" = 1/4" AS SHOWN	DATE: 1/1/2011
PROJECT: 1/1/2011	BY: J. L. RECHARGE

## Exhibit B

### Water Service Charges

Year	Price per Acre Foot
2019	\$31.91
2020	\$32.87
2021	\$33.86
2022	\$34.87
2023	\$35.92



**WATER SERVICE AGREEMENT-  
ELWOOD RESERVOIR GROUNDWATER RECHARGE FROM EXCESS FLOWS BETWEEN  
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT,  
NEBRASKA COMMUNITY FOUNDATION  
AND  
PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

THIS AGREEMENT made and entered into this 24th day of June, 2019, by and between **The Central Nebraska Public Power and Irrigation District**, a public corporation and political subdivision of the State of Nebraska, with its principal office located at 415 Lincoln Street, P.O. Box 740, Holdrege, NE 68949-0740, hereinafter referred to as "Central" and the **Nebraska Community Foundation** (representing all signatories to the Platte River Recovery Implementation Program), a Nebraska non-profit corporation, with its principal office located at 8100 South 15th Street, Suite A, P.O. Box 83107, Lincoln, Nebraska 68501-3107, and the **Platte River Recovery Implementation Program**, with its principal office located at 4111 4<sup>th</sup> Avenue, Suite 6, Kearney, Nebraska 68845 (hereinafter the Nebraska Community Foundation and Platte River Recovery Implementation Program are collectively referred to as "Platte Program" and the Nebraska Community Foundation is referred to individually as the "Foundation"). Central and the Platte Program may individually be referred to as "Party" and shall collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Central is the owner of the Elwood Reservoir as shown on Exhibit A; and

WHEREAS, in November 2018 Central was granted an Appropriation from the Nebraska Department of Natural Resources (hereinafter "DNR") for a "Temporary Permit to Appropriate Water for Groundwater Recharge via the E65 Canal, Phelps Canal, Elwood Reservoir, and Cottonwood Ranch Complex, Cottonwood Waterfowl Production Area (WPA), Funk Lagoon WPA, Johnson WPA, Linder WPA, and Victor Lakes WPA" (hereinafter "Appropriation"); and

WHEREAS, the Foundation and the Platte Program desire Central to provide groundwater recharge in Elwood Reservoir for purposes of enhancing Platte River stream flows; and

WHEREAS, Central desires to provide such recharge services within the red highlighted areas shown in Exhibit A; and

WHEREAS, Central also has an agreement with the Tri-Basin Natural Resources District (Tri-Basin) and the State of Nebraska (State) for recharge services using Elwood Reservoir and the E65 Canal;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein contained and the terms and conditions hereinafter set forth, it is hereby covenanted and agreed:

1. WATER SERVICE.

a. During the term of this Agreement, Central will provide the Platte Program and Tri-Basin/State with groundwater recharge via seepage through the E65 Canal and Elwood Reservoir for the purposes described above. That part of the Total Amount Diverted that is pumped into Elwood Reservoir shall be divided into a 50% share to the Platte Program and a 50% share to Tri-Basin/State. The remainder of the Total Amount Diverted that is released into the E65 Canal shall be credited to Tri-Basin/State. The water billed to the Platte Program shall not exceed 30,000 acre feet per calendar year unless agreed to by the Platte Program in writing. The Total Amount Diverted shall be measured by Central using the E65 Canal measuring flume located at milepost (MP) 2.8 (including water



diverted and not available for recharge because of evaporation). The portion of the Total Amount Diverted that is delivered to Elwood Reservoir will be estimated using pump performance curves developed by Central and/or annubar measurements, with all remaining diversions passing the MP 2.8 flume considered diversions for the E65 Canal. The Total Amount Diverted will be adjusted, as appropriate, by subtracting any deliveries or releases made by Central from the E65 Canal, at the end of each subsequent quarter or billing period, and at the beginning of the next irrigation season.

b. Central will provide written notice to the Platte Program when flows are available for diversion into Elwood Reservoir for recharge under the Appropriation. The Platte Program shall provide written notice to Central of the date when delivery into Elwood Reservoir may begin and a maximum amount of water to be diverted into Elwood Reservoir. Central will then begin diversions in accordance with this Agreement. If the Platte Program requests, in writing, that Central not deliver, or reduce or cease diversions, Central agrees to not deliver, reduce or cease diversions as soon as practicable and the Platte Program's portion of diversions under this agreement will be made available to Tri-Basin/State.

c. Central may make reasonable adjustments in the Total Amount Diverted and Elwood Reservoir diversions as necessary to account for similar operations from other water sources, or for other reasons as may be appropriate. Central shall consult with the Platte Program in making such adjustments. All data used by Central regarding the Total Amount Diverted and Elwood Reservoir diversion calculations shall be shared with the Platte Program.

d. Central may reduce or suspend groundwater recharge diversions under this Agreement for good cause, including but not limited to (a) maintenance or construction on the canal or Elwood Reservoir, (b) high groundwater levels, or (c) icing conditions, all as determined by Central.

2. **WATER SERVICE CHARGES.** The Platte Program shall have the Foundation pay Central a Water Service Charge on a per acre-foot basis as specified in Exhibit B for the water service described above. All measurements made through Central's measuring device and pumping estimates into Elwood Reservoir, so recorded by Central operating personnel shall be considered final. Central shall invoice the Platte Program for the water service charges quarterly. Payment shall be due within 60 days of invoice.

3. **TERM.** The term of this Agreement shall commence when this Agreement is signed by the Parties (the "Commencement Date"), and shall expire on December 31, 2023.

4. **DATA SHARING.** The Parties agree to share all hydraulic and hydrologic data collected in association with this Agreement.

5. **WATER APPROPRIATIONS.** The source of supply shall be water which is available pursuant to the Appropriation. The water service described herein shall be consistent with and limited to the terms and provisions of the Appropriation.

6. **FORCE MAJEURE.** Central shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control of, and without the fault or negligence of Central, including, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire, severe cold or other weather event, epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including but not limited to the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state or local governments), which Central could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of Central under this Agreement shall be excused and suspended without penalty or damages, provided that Central

shall give the Foundation and the Platte Program prompt written notice describing the particulars of the occurrence or condition, the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition, and Central proceeds with reasonable diligence to remedy its inability to perform and informs the Foundation and the Platte Program of the actions taken to remedy the consequences of the event or condition.

7. **DEFAULT.** If any Party to this Agreement fails to perform or otherwise breaches any of the terms of this Agreement, then such failure shall constitute a default. In the event of default by any Party, the non-defaulting Party/ies shall give written notice of the default to the defaulting Party. Following such written notice, the defaulting Party/ies may cure the default within thirty (30) days. Upon cure, this Agreement shall remain in full force and effect. If the defaulting Party/ies fails to cure, the non-defaulting Party/ies shall be entitled to any and all legal and equitable remedies except Central's total liability to the Foundation and the Platte Program for any loss or damage, including but not limited to special and consequential damages, arising out of or in connection with the performance of this Agreement shall not exceed either the amount of Water Service Charges paid by the Foundation and the Platte Program to Central pursuant to this Agreement or \$50,000, whichever is less.

8. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the Parties hereto with respect to the water service contemplated hereby and supersedes all prior agreements (including, with respect to the time period covered by this Agreement, the Water Service Agreement dated October 20, 2017 (WSA); Amendment No. 1 to the WSA dated January 8, 2018; and Amendment No. 2 to the WSA dated November 26, 2018) and understandings between the Parties with respect to such subject matter.

9. **AMENDMENT.** No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

10. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding on the Parties, their successors and assigns. This Agreement may not be assigned by the Foundation or the Platte Program without the written consent of Central.

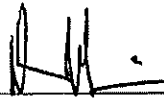
11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the law of the State of Nebraska.

12. **FUNDING.** Should the Foundation or Platte Program determine that the anticipated source of funding will no longer be available, the Foundation or Platte Program will utilize the provisions in Section 1.b., to request that Central cease diversions.


13. **LAWS.** In executing this Agreement, each Party shall be responsible for its compliance with all applicable state and federal laws.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date first stated above.

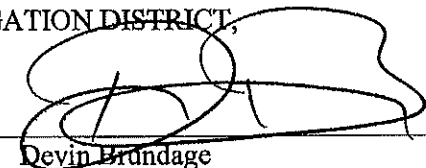
NEBRASKA COMMUNITY FOUNDATION,

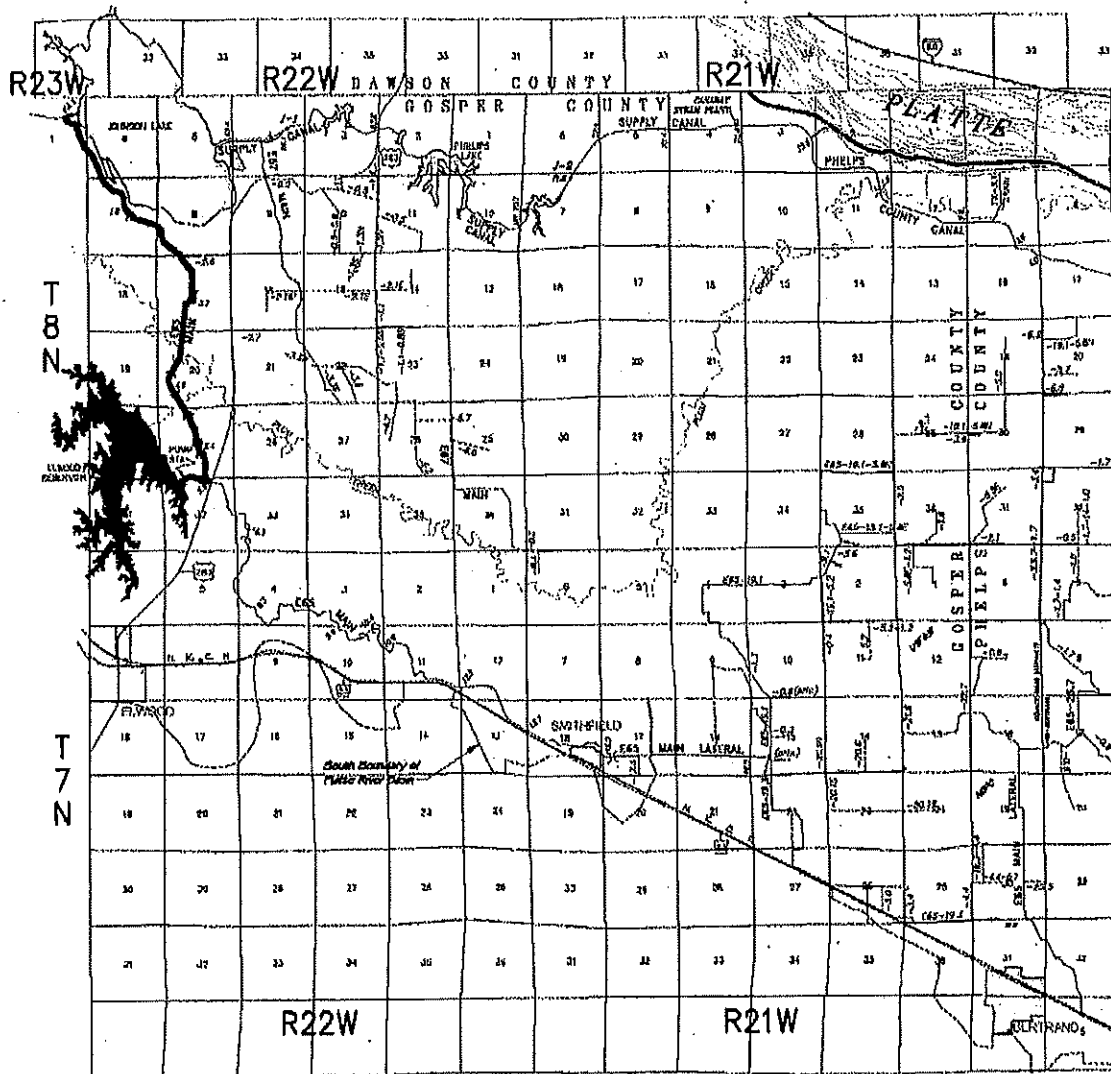
By   
Diane M. Wilson  
Manager of Public/Private Partnerships

PLATTE RIVER RECOVERY IMPLEMENTATION  
PROGRAM – Office of the Executive Director

By   
Jason Farnsworth  
Executive Director

THE CENTRAL NEBRASKA PUBLIC POWER AND  
IRRIGATION DISTRICT,

By   
Devin Brundage  
General Manager



#### LEGEND

— EXCESS FLOWS RECHARGE

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**CENTRAL**  
Nebraska Public Power  
and Irrigation District  
Holdrege, Nebraska

#### PLATTE RIVER EXCESS FLOWS FOR RECHARGE IN ELWOOD RESERVOIR, GOSPER COUNTY, NEBRASKA

DRAFTED BY	TMR	APPROVED	
SUBMITTED BY	DRF	BY	
SCALE	1" = 1.4 MI.	DRAWING	
DATE	01/21/2015	NO.	RCHG_JAN2015

<b>EXHIBIT B</b>	
<b>Water Service Charges</b>	
<b>Elwood Reservoir Diversions</b>	
<b>Year</b>	<b>\$ / Acre foot</b>
2019	\$48.46
2020	\$49.92
2021	\$51.41
2022	\$52.96
2023	\$54.54







## **WATER SERVICE AGREEMENT**

This WATER SERVICE AGREEMENT ("Agreement") is made as of the Effective Date (as defined in Section 1.7) by and among THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter "Central"); the NEBRASKA COMMUNITY FOUNDATION (representing all signatories to the Platte River Recovery Implementation Program), a Nebraska non-profit corporation, with its principal office located at 8100 South 15<sup>th</sup> Street, Suite A, Lincoln, Nebraska 68512 and the PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM, with its principal office located at 4111 4<sup>th</sup> Avenue, Suite 6, Kearney, Nebraska 68845 (hereinafter the Nebraska Community Foundation and Platte River Recovery Implementation Program are collectively referred to as "Platte Program" and the Nebraska Community Foundation is referred to individually as the "Foundation"). Central and the Platte Program may individually be referred to as a "Party" and shall collectively be referred to herein as the "Parties."

### **WITNESSETH:**

WHEREAS, the Platte Program will be making a significant investment in Cottonwood Ranch and is interested in a long term agreement for diversion of flows from the Phelps Canal to Cottonwood Ranch; and

WHEREAS, Central agrees to pursue acquisition of permits, an Appropriation (or Appropriations) and construction of facilities needed to deliver water from the Phelps Canal to Cottonwood Ranch (see Exhibits C and D) for an initial period of fourteen years with extensions based on mutually acceptable terms and conditions up to an additional thirty six years; and

WHEREAS, the Platte Program either owns or has agreements/leases on Cottonwood Ranch permitting the delivery of water to the land; and

WHEREAS, the Foundation has been selected by the Program Signatories as the financial management entity providing support to the Governance Committee and Executive Director established pursuant to the Program Cooperative Agreement; and

WHEREAS, the Foundation is only authorized to enter into contracts specifically authorized by the Governance Committee; and

WHEREAS, the Foundation pays financial obligations of the Governance Committee under the contracts authorized by the Governance Committee in accordance with the terms of the contracts; and

WHEREAS, the Foundation serves as the Governance Committee's contracting agent through Memorandum of Agreement No. R12AG60019; and

WHEREAS, Memorandum of Agreement No. R12AG60019 and the Platte River Recovery Implementation Program documents require that all contracts of the Platte River Recovery Implementation Program are conditioned on the continuing availability of funds from the Program Signatories; and

WHEREAS, the Program Signatories provide funding to the Foundation for Platte River Recovery Implementation Program implementation, including the Diversion Project, through separate financial assistance agreements; and

WHEREAS, the Foundation, by executing this Agreement, is acting as the contracting agent of the Governance Committee.

**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 Agreement are set forth as follows or in the body of this Agreement:

1.1 "Appropriation" or "Appropriations" shall mean one or more appropriation(s) acquired by Central which authorize delivery of Excess Flows to the Diversion Structure (as hereinafter defined) for delivery to Cottonwood Ranch (Exhibits C and D). Appropriation or Appropriations for purposes of this Agreement include those listed on Exhibit E, and any extensions or replacements thereof.

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 Agreement.

1.4 "Cost of Permitting" shall mean all costs needed for initial design, permitting and acquisition of the Appropriation.

1.5 "Cottonwood Ranch" means a tract or tracts of land located in portions of Sections 15 and 16, Township 08 N, Range 19 W where the outlet structure will be constructed and where water associated with this Agreement will be delivered.

1.6 "Cottonwood Ranch Diversions" shall mean all water diverted to Cottonwood Ranch through the Diversion Structure in accordance with the Appropriation.

1.7 "Day" means a calendar day.

1.8 "Diversion Project" means the Diversion Structure, pipeline, outlet structure, remote terminal unit, the Appropriation, related permits and other items needed to deliver water to Cottonwood Ranch.

1.9 "Diversion Structure" shall mean a new release structure, consisting of physical materials such as a gate, concrete, etc., constructed to divert water from the Phelps Canal to Cottonwood Ranch as shown on Exhibit D.

1.10 "Effective Date" shall mean the date upon which this Agreement shall become effective which shall be the date the last signature is affixed hereto.

1.11 "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.

1.12 "Excess Flows" shall mean water that has been diverted by Central under its existing appropriations and is available for diversion into a recharge or retiming project under the Appropriation(s) or other appropriations.

1.13 "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.

1.14 "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.

1.15 "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority or other entity.

1.16 "Phelps Canal Diversions" shall mean water diverted into the Phelps Canal that remains in or recharges within the Phelps Canal between the Mile Post (MP) 1.6 Flume and the MP 13.3 Structure minus any recharge diversions for any entity (including the Platte Program) who is receiving recharge benefits in the above described reach pursuant to a separate agreement.

1.17 "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.

1.18 "Program Signatories" shall mean the Secretary of the Department of Interior and the Governors of Nebraska, Colorado and Wyoming.

1.19 "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 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.

1.20 "Total Amount Diverted" shall mean all water diverted into the Phelps Canal in accordance with the Appropriation as described in Section 5.2.2.

1.21 "Water Service Charges" shall mean all payments for water services as defined in Section 5 during the Operation Phase.

1.22 "Water Service Rate" shall mean the applicable rate per acre-foot of diversion associated with recharge operations as shown in Exhibit B.

## **Section 2. Ownership and Term of Agreement**

**2.1 Ownership of Diversion Project.** Central shall own all property, materials and permits, including the Appropriation, which are acquired or constructed by Central and in the name of Central, for the Diversion Project from the diversion structure to the property line of Cottonwood Ranch. All pipeline and outlet structure facilities on the Cottonwood Ranch lands shall be the property of the Platte Program or its assignee.

**2.2 Submission of Application for Appropriation.** Central shall provide the Platte Program with copies of any applications for Appropriations and any Appropriations approved by the Nebraska Department of Natural Resources ("Department").

### **2.3 Term.**

2.3.1. The term of this Agreement shall begin on the Effective Date and shall remain in effect until December 31, 2032. The Parties agree to work in good faith to develop extensions to the Term based upon mutually acceptable conditions for up to an additional 36 years.

2.3.2. In the event of termination under this Agreement (including the end of the term), the obligation to pay for costs that are incurred or arise under this Agreement prior to termination shall survive. At the end of the term, and after payment of all costs for the Diversion Project, the following shall occur: (i) the obligations, rights and benefits of the Platte Program under this Agreement shall terminate (except as to any obligations incurred before the end of the term that extend beyond the term); and (ii) Central and the Platte Program shall retain ownership of their respective Diversion Project assets as set forth in Section 2.1 free and clear of this Agreement. Notwithstanding the foregoing sentence, early terminations during the Construction Phase or due to default are addressed in Sections 4 and 7, respectively.



2.3.3 This Agreement may be renewed or extended with a written Amendment that is agreeable to the Parties.

### **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 Agreement fully and expeditiously without modification or condition.

### **Section 4. Permitting and Construction of the Diversion Project**

**4.1. Diversion Project Development.** Central shall permit and construct the Diversion Project utilizing Prudent Utility Practices.

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

**4.3 Permitting Phase.** Within sixty (60) Days of the Effective Date, the Platte Program shall issue to Central a notice to proceed with Permitting Phase for the Diversion Project and submit an initial payment of \$5,000 for acquisition of permits, initial design and acquisition of the Appropriation needed for the Diversion Project which costs are not a part of the Cost of Construction Services. If the notice to proceed and the initial payment of \$5,000 have not been issued within such period, then this Agreement shall terminate and the Parties shall have no further obligations hereunder. Within ten (10) Days of receipt of the notice to proceed and initial payment, Central shall deposit the payment into the Project Accounts, whereupon Central shall proceed with the initial activities for the Diversion Project.

**4.4 Construction Phase.** After acquisition of all needed permits, the Appropriation for the Diversion Project and the Platte Program's written authorization to proceed, Central will proceed with design and construction of the Diversion Project. All work completed in the Construction Phase of the Diversion Project shall be included in the Cost of Construction Services. A scope of work shall be provided to the Platte Program with design information. Central shall then issue an invoice for the design and construction of the Diversion Project in the amount of \$1,000,000. The Platte Program shall pay the invoice to Central in full 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 funds from the Project Accounts to its own regular accounts as the Cost of Construction Services are incurred.

**4.5 Project Construction Fee.** In addition to paying the Cost of Permitting and the Cost of Construction Services, the Platte Program 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 the 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. The Project Construction Fee shall be paid with the funds deposited into the Project Accounts as described in Sections 4.3 and 4.4.

**4.6 Construction Responsibilities.** Central shall be responsible for the hiring, payment and oversight of contractors during the Construction Phase of the Diversion Project. Central shall require that any contractors or subcontractors working on the Diversion Project, including Central, obtain statutory workers' compensation insurance and general liability insurance in such amounts as are reasonable given the scope of the Diversion Project. The Platte Program shall be named as an additional insured on any such general liability insurance policy. 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.

The Platte Program will be provided a copy of any Request for Bid documents sent out to contractors. In addition, the Platte Program will be provided a copy of any bid tabs for work or materials exceeding \$100,000 as soon as available.

**4.7 Subsequent Permitting or Construction Payments; Termination During Permitting or Construction Phase.** If, during the Permitting or Construction Phase, Central determines that the payments previously made by the Platte Program will not cover the Cost of Permitting, Cost of Construction Services, or the Project Construction Fee as described in sections 4.3, 4.4 and 4.5, Central shall issue one or more additional invoices to the Platte Program. The Platte Program shall either (a) pay the additional invoice within thirty (30) Days or (b) submit a notice of termination of the Agreement to Central, whereupon Central may cease work on the Diversion Project. In the event that the Platte Program does not pay the payments as specified herein, Central shall submit a written notice to the Platte Program 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 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 Platte Program, the obligations, rights and benefits of the Parties under this

Agreement shall terminate (except as to any obligations incurred prior to termination), and the Parties shall have no further obligations hereunder.

**4.8 Completion of Construction Phase.** When Central has completed construction of the Diversion Project, Central shall return any unspent monies to the Platte Program and provide an itemized list of 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 from the Phelps Canal to Cottonwood Ranch in accordance with the Appropriation. In the event the Department engages in administration or cancellation of the Appropriations, or otherwise requests information from Central regarding the Program's use of water under this Agreement, Central shall give written notice to the Platte Program, and shall not object to the Platte Program's participation in such actions with the Department and Central.

If there is not enough water under the Appropriation to provide full delivery to all projects identified in the Appropriation, Central will allocate deliveries in accordance with Exhibit F – Excess Flow Diversion Sharing, unless the Department provides a different allocation. Within sixty (60) days of a written request from the Platte Program, and on not less than an annual basis, Central shall provide a written accounting of its allocation and deliveries of water under the Appropriations to the Platte Program. In the event Central breaches this provision, Central shall provide the Platte Program a right of first refusal, in the amount of the volume of water under-delivered to the Platte Program in a given year, for the Platte Program to use in future years.

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 other facilities owned by Central. Notwithstanding any other provision herein, this 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 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 shall supply water to the Diversion Project in accordance with the Appropriation(s). However, 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 Platte Program or any other Person that any particular amount of diversion will be supplied by the Diversion Project. The provisions of this Agreement are subject to the rights and obligations of Central under its water appropriations, and the provisions of this Agreement shall not be construed as modifying, limiting or changing the rights and benefits of said water appropriations. Nothing in this 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 also reduce or suspend diversions under this Agreement for good cause, including but not limited to (a) maintenance or construction on the Phelps Canal or the pipeline as reasonably determined by Central or (b) high groundwater levels as reasonably determined by Central in accordance with the pre-determined protocol for high ground water levels as established by Central and reviewed with the Platte Program.

## **5.2 Water Service.**

5.2.1. Water Diversion. During the Operations Phase, Central will divert water into the Phelps Canal and into the Diversion Structure (as shown on Exhibit D) in accordance with the Appropriation. The Platte Program 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 Parshall Flume at MP 1.6 on the Phelps Canal. The Total Amount Diverted shall consist of Cottonwood Ranch Diversions, Phelps Canal Diversions and any recharge diversions for any entity

(including the Platte Program) who is receiving recharge benefits on the Phelps Canal pursuant to a separate agreement. Cottonwood Ranch Diversions shall be measured using a flowmeter as shown on Exhibit D. Phelps Canal Diversions shall be calculated as Total Amount Diverted minus Cottonwood Ranch Diversions minus recharge diversions for any entity (including the Platte Program) who is receiving recharge benefits on the Phelps Canal pursuant to a separate agreement. It is understood by the Parties that all measurement facilities or locations may be revised from time to time as determined by Central. All measurements made through Central's measuring devices and so recorded by Central operating personnel shall be considered final. Central may make reasonable adjustments in the calculation of the Total Amount Diverted, Phelps Canal Diversions, and Cottonwood Ranch Diversions. Central shall consult with the Platte Program in making such adjustments. All data used by Central regarding the measurement or accounting of the Total Amount Diverted, Phelps Canal Diversions and Cottonwood Ranch Diversions shall be shared with the Platte Program.

5.2.3. **Coordination of Delivery.** Central will provide written notice to the Platte Program when flows are available for diversion to Cottonwood Ranch in accordance with the Appropriation(s). The Platte Program shall provide written notice to Central of the date when delivery of water through the Diversion Structure may begin. Central will then begin diversion operations in accordance with this Agreement. If the Platte Program requests, in writing, that Central reduce or cease diversions, Central agrees to reduce or cease diversions as soon as practicable. Upon receipt of authorization to deliver water to the Diversion Project, Central shall begin diversions from the Phelps Canal to the Diversion Project.

**5.3 Water Service Charges.** The Platte Program shall pay Central for the Total Amount Diverted according to the following provisions (payment shall be due within 60 days of invoice):

5.3.1 **Phelps Canal Diversions.** The Platte Program shall pay a Water Service Rate as specified in Exhibit B for the Phelps Canal Diversions.

5.3.2 **Cottonwood Ranch Diversions.** The Platte Program shall pay a Water Service Rate as specified in Exhibit B for the Cottonwood Ranch Diversions.

(i) The Platte Program shall not pay for Cottonwood Ranch Diversions until the cumulative Water Service Charges that would have been due using the Water Service Rates as specified in Exhibit B for Cottonwood Ranch Diversions equal



the Cost of Construction Services.

(ii) The Platte Program shall pay Water Service Rates as specified in Exhibit B for Cottonwood Ranch Diversions beginning when the cumulative Water Service Charges for Cottonwood Ranch Diversions invoiced under this Agreement exceed the Cost of Construction Services and for the remainder of the Agreement.

5.3.3 The Total Amount Diverted, Phelps Canal Diversions and Cottonwood Ranch Diversions shall be determined according to provisions in paragraph 5.2.

5.3.4 Central shall invoice the Platte Program for the Water Service Charges quarterly or upon completion of the services. Invoices shall include a credit for amounts not payable by the Platte Program pursuant to paragraph 5.3.2(i).

#### **Section 6. Dispute Resolution; Period for Billing Adjustments**

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

6.1.1. All disputes arising out of the performance of this 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 Platte Program disagrees with Central's decision, a senior executive of Central and a senior executive of the Platte Program 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 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 Agreement, or (3) change either the standard of review or standard of liability which would otherwise apply to this 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 Agreement if there is a material breach of this Agreement, including but not limited to a failure to make payments as required under this 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 Agreement.

### **7.2 Effect of Termination Due to Platte Program Default**

7.2.1. In the event of termination by Central due to a default by the Platte Program during the Construction Phase, then this 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 Platte Program, the obligations, rights and benefits of the Parties under this Agreement shall terminate (except as to any obligations incurred prior to termination), except that Central and the Platte Program shall continue to own their respective Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Agreement.

7.2.2. In the event of termination by Central due to a default by the Platte Program during the Operations Phase, the following shall occur: (i) the Platte Program shall pay all outstanding bills and (ii) the obligations, rights and benefits of the Platte Program with respect to the Diversion Project shall terminate and cease to exist and (iii) the assignment provisions in section 13.12 shall be applicable. If, however, no entity assumes the responsibility of the Platte Program as described in Section 13.12, then Central and the Platte Program shall continue to own their respective Diversion Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Agreement.

**7.3 Late Payments.** If the Platte Program fails to make any payment when due pursuant to this 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 Agreement shall be subject to Central obtaining and continuing to receive all necessary permits and the Appropriation for the Diversion Project.

### **Section 9. Waivers**

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

### **Section 10. Notices**

All notices given pursuant to this 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 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 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 Agreement, that Party shall give the other Party written notice to that effect.

12.1.2 Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this 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 Agreement may be amended only by written agreement among all of the Parties.

**13.2 Entire Agreement/Order of Precedence.** This Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter contemplated by this Agreement and supersedes all other prior agreements, whether oral or written.

**13.3 Counterparts.** This Agreement may be executed in multiple counterparts to be construed as one.

**13.4 Severability.** If any part, term or provision of this 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 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 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 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 Agreement. In addition, except as provided in Section 13.12, neither the Platte Program nor Central shall transfer or assign this Agreement or any water diverted through the Diversion Project without agreement of all Parties.

**13.8 Independent Contractors.** Nothing in this 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 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 Agreement. This 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 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 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 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 Agreement, such term shall also include all successor statutes, codes and regulations.

**13.10 Damages.** The Parties agree that Central shall have no liability for any claims from



seepage or erosion after the water leaves the Outlet Structure as shown on Exhibit C.

**13.11 Foundation.** The Foundation has represented to Central, and Central hereby acknowledges, that the Foundation is the financial management entity providing support to the Governance Committee of the Platte River Recovery Implementation Program and that the Foundation, by executing this Agreement, is acting as the contracting agent of the Governance Committee of the Platte River Recovery Implementation Program.

**13.12 Assignment.** If the Platte River Recovery Implementation Program is dissolved for any reason, is not renewed, or should the Platte Program default under Section 7.2. hereof, the Foundation may assign its interest in this Agreement to one or more Program Signatories, in which case the assignee(s) will assume the responsibilities of the Platte Program. If the Foundation is no longer the financial management entity providing support to the Governance Committee of the Platte River Recovery Implementation Program for any reason, subject to written consent of the other Parties, which consent shall not be unreasonably withheld, the Foundation, as the financial management entity representing the Platte River Recovery Implementation Program, may assign its responsibilities and interest under this Agreement to a successor financial management entity providing support to the Governance Committee of the Platte River Recovery Implementation Program, provided that the successor assumes all obligations of the Foundation under this Agreement. The Foundation will provide written notice of any such assignment to the other Parties.

If no Program Signatory has an interest in accepting assignment as discussed above, then this Agreement shall terminate. Central is willing to develop a follow up agreement with Nebraska Public Power District, the owner of Cottonwood Ranch, on mutually acceptable terms and conditions.

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

ATTEST:

By: Emily J. Anderson  
 Printed Name: Emily J. Anderson  
 Its: Secretary  
 Date: 8/16/18

THE CENTRAL NEBRASKA PUBLIC  
 POWER AND IRRIGATION DISTRICT

By: Don Kraus  
 Printed Name: Don Kraus  
 Its: General Manager  
 Date: 8/16/18

ATTEST:

By: *Julian M. Rasso*  
Printed Name: Julian M. Rasso  
Its: Office Assistant  
Date: 8/22/18

ATTEST:

By: *Dean C. Batie*  
Printed Name: Dean C. Batie  
Its: \_\_\_\_\_  
Date: 8/15/18



NEBRASKA COMMUNITY FOUNDATION

By: *Diane M. Wilson*  
Printed Name: Diane M. Wilson  
Its: Mgr. of Public/Private Partnerships  
Date: 8/22/2018

PLATTE RIVER RECOVERY  
IMPLEMENTATION PROGRAM

By: *Jason M. Farnsworth*  
Printed Name: Jason M Farnsworth  
Its: EXECUTIVE DIRECTOR  
Date: 8/15/18

**EXHIBIT A**

**Notice Addresses**

**Diane M. Wilson, Manager of Public/Private Partnerships**  
**Nebraska Community Foundation**  
**8100 South 15<sup>th</sup> Street, Suite A**  
**PO Box 83107**  
**Lincoln, Nebraska 68512-83107**

**Jason M. Farnsworth, Executive Director**  
**Platte River Recovery Implementation Program**  
**4111 4<sup>th</sup> Avenue, Suite 6**  
**Kearney, Nebraska 68845**

**Don D. Kraus, General Manager**  
**The Central Nebraska Public Power and Irrigation District**  
**415 Lincoln Street**  
**PO Box 740**  
**Holdrege, NE 68949**

**EXHIBIT B**  
**Water Service Charges**

	Total Amount Diverted Water Service Rate (\$/AF)	
	Phelps Canal Diversions	Cottonwood Ranch Diversions
2018	\$30.98	\$25.50
2019	\$31.91	\$26.01
2020	\$32.87	\$26.53
2021	\$33.86	\$27.06
2022	\$34.87	\$27.60
2023	\$35.92	\$28.15
2024	\$36.99	\$28.72
2025	\$38.10	\$29.29
2026	\$39.25	\$29.88
2027	\$40.43	\$30.47
2028	\$41.64	\$31.08
2029	\$42.89	\$31.71
2030	\$44.17	\$32.34
2031	\$45.50	\$32.99
2032	\$46.86	\$33.65

**EXHIBIT C**

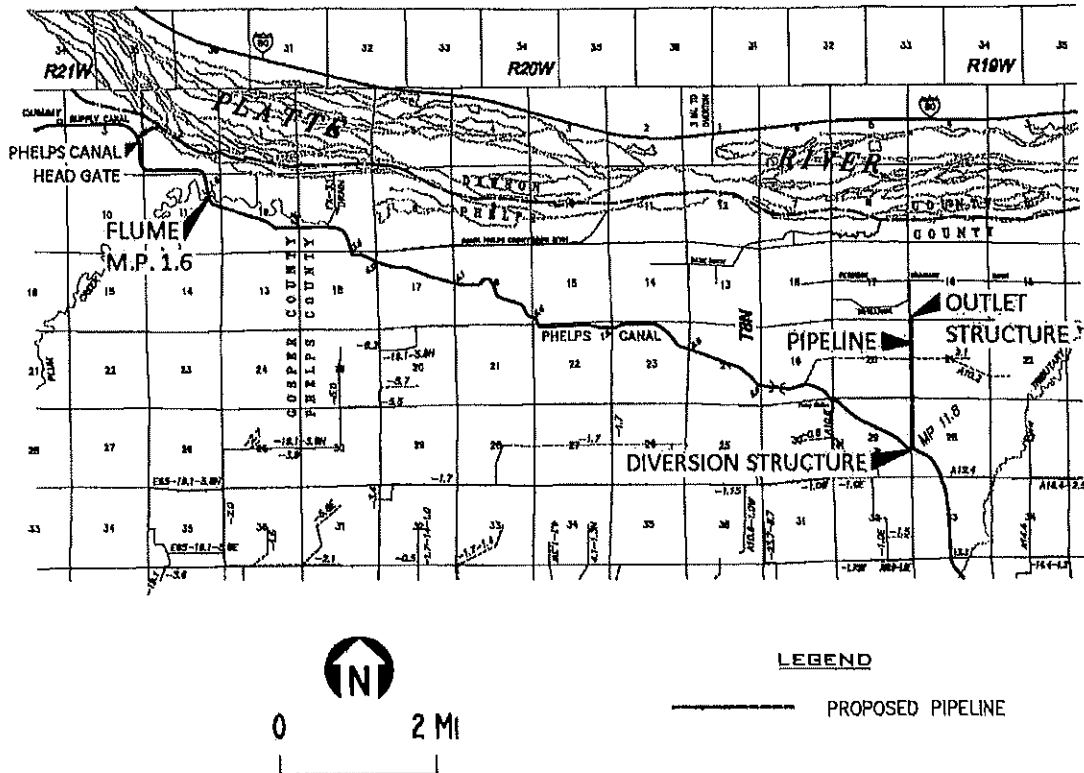


Exhibit "C"

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 <b>CENTRAL</b> Nebraska Public Power and Irrigation District Holdrege, Nebraska	
VICINITY MAP OF PIPELINE - PHELPS CANAL TO COTTONWOOD RANCH PROPERTY, T8N-R20W, PHELPS COUNTY, NEBRASKA	
DRAFTED BY TMR	APPROVED
SUBMITTED BY DDK	BY
SCALE AS SHOWN	DRAWING
DATE 4/2/2018	NO. CTNWD_PPL_EX C

EXHIBIT D



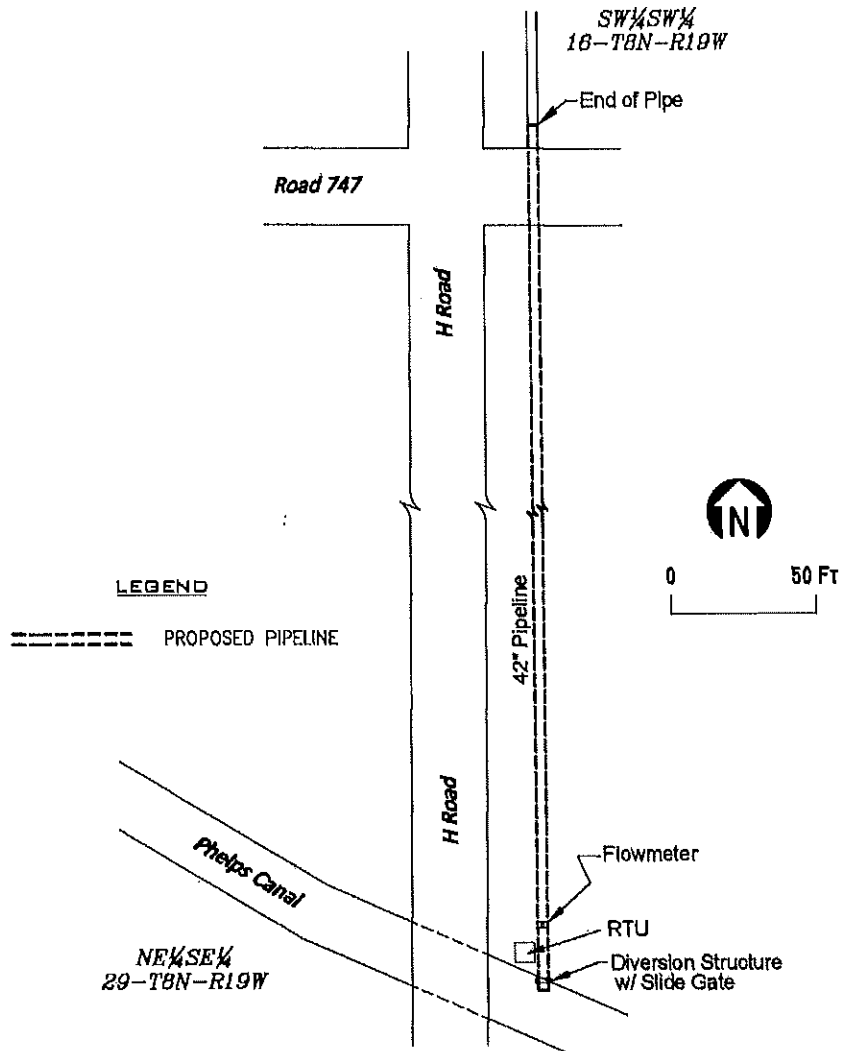



Exhibit "D"

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 <b>CENTRAL</b> Nebraska Public Power and Irrigation District Holdrege, Nebraska	
PIPELINE PLAN -- PHELPS CANAL TO COTTONWOOD RANCH PROPERTY, T8N-R20W, PHELPS COUNTY, NEBRASKA	
DRAFTED BY	TMR
SUBMITTED BY	DDK
SCALE	AS SHOWN
DATE	4/2/2018
APPROVED	BY
DRAWING NO. CTNWD_PPL_EX D	

**EXHIBIT E**

**Appropriation**

**Approval of Application A-19650, 12-01-2017**

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES  
APPROVAL OF APPLICATION A-19560  
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.
2. On September 11, 2009, a Basin-Wide Integrated Management Plan (BWP) for the over-appropriated area of the Platte River Basin was adopted by order of the Department. The BWP was also adopted by the following Natural Resources Districts (NRD): the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. These NRDs are collectively referred to in the BWP as the "Platte River Basin NRDs." The individual integrated management plans referenced in the next paragraph are required to be in conformance with the goals and objectives of the BWP.
3. In the second half of 2009, the initial integrated management plans (IMPs) were adopted by order of the Department, pursuant to Neb. Rev. Stat. § 46-718(2) for the following Natural Resources Districts (NRDs): the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. There have been subsequent revisions to the IMPs. Goals of the BWP include achieving a fully appropriated condition and preventing reductions in streamflow that would cause non-compliance with any extant interstate agreements. Methods to achieve these goals include using periodic or intermittent unappropriated water (excess flows) to recharge underground aquifers or otherwise retiming excess flows to enhance stream flows at times when there are shortages to U.S. Fish and Wildlife Service (USFWS) designated target flows or state-protected flows. As part of the surface water controls contained in each IMP and adopted by the Department the moratorium on issuing new surface water appropriations was continued.
4. On January 1, 2007, work officially commenced on the Platte River Recovery and Implementation Program (PRRIP or Program). PRRIP's goals include reducing shortages to USFWS's target flows and providing additional land habitat for threatened or endangered species in the Lexington to Chapman reach of the Platte River. In order to meet these goals, each signatory to PRRIP has adopted depletions plans to address the mitigation of the adverse impacts of water-related activities on stream flows in the Platte River. The State of Nebraska, through the Department will utilize the integrated management process to achieve the goals of PRRIP (BWP and IMPs).

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5. On August 21, 2017, The Central Nebraska Public Power and Irrigation District (CNPPID) filed Petition VAR-6282 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area. The draft application attached to the petition is for a temporary permit to appropriate water from the Platte River for the purpose of groundwater recharge via the Phelps Canal, Cottonwood Ranch Complex, Funk Lagoon Waterfowl Production Area (WPA) and Johnson WPA via pipeline.
6. On September 6, 2017, the Department granted leave to file an application for a permit to appropriate water by approving petition VAR-6282.
7. On September 13, 2017, CNPPID, filed in the Department application A-19560 for a temporary permit to appropriate water for the purpose of groundwater recharge and map number 20105. The application proposes to divert water from the Platte River at the headgate of the applicant's Tri-County Canal located in Section 08, Township 13 North, Range 29 West of the 6<sup>th</sup> P.M. in Lincoln County, which then connects to the Phelps Canal, Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA via pipeline.
8. Temporary permits may not be granted for a term of more than one year.
9. For the purposes of this order "Desired Minimum Discharge" (DMD) describes one criterion that will be used to determine whether, and to what extent diversion may occur for projects such as that proposed under A-19560. Table A lists the DMD values for the Platte River, measured in cubic feet per second (cfs) at the Grand Island stream gage, for specific time periods. The magnitude of these flows differs according to the PRRIP's designation of wet, normal or dry hydrologic conditions, derived from the USFWS's recommendations for species flows and annual pulse flows and found in the PRRIP Water Plan Reference Materials Attachment 5, Section 11, Appendix A-5. The flow values listed in Table A include instream flow appropriation values when they exceed the target flows. These instream flow appropriations must also be satisfied in order for unappropriated water to be considered available for possible diversion.

#### CONCLUSIONS

1. Construction of the Phelps Canal and Johnson WPA diversion works are complete. Diversion works to deliver water to Funk Lagoon WPA and Cottonwood Ranch Complex via pipelines are yet to be completed.
2. Applicant has demonstrated there may be periods when unappropriated water in the Platte River is available. It is anticipated there may be water available for diversion for some periods under this application in the future.
3. The purpose of this application is to divert unappropriated excess flows, if available, for recharge of the groundwater aquifer in order to mitigate stream depletions from groundwater pumping and increase base flow into local streams, which supports key goals and objectives of the BWP and IMPs. Accretions to streamflow that may occur as a result of recharge under this appropriation are beneficial if they are achieving the goals of the BWP and IMPs. Additionally, the BWP and IMPs provide support for Nebraska's participation in the PRRIP. Nebraska is a party to the PRRIP

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and in part, Nebraska will achieve its commitments under the PRRIP through implementation of Water Action Plan projects; such as the Cottonwood Ranch Complex project. Diversions under A-19560 may be used for PRRIP purposes. Any diversions under this application must not be to the detriment of achieving the goals of the BWP and IMPs in the most effective manner, as determined by the Department.

4. This diversion project is expected to be operated in accordance with the goals and objectives of the BWP and IMPs. As stated above, Nebraska has also committed to achieve its obligations to the PRRIP. Therefore, under Nebraska's current commitment to the PRRIP the project shall only divert water when USFWS target flows are exceeded or when such requirement is waived by the Department. As such, this project will not require a depletion offset for the purpose of ensuring that these target flows are met.
5. The Department has and will continue to exercise prudence in determining the most effective beneficial use of what is frequently a limited and intermittent water supply in the fully and over-appropriated reaches of the Platte River system.
6. Certain conditions should be imposed on this appropriation to ensure the public interest is met for the near-term and long-term. Significant public investments have been and will continue to be made toward achieving the goals of the BWP and IMPs; including PRRIP commitments. The Department believes the limited water resources available in the fully and over-appropriated reaches of the Platte River system must be prioritized to serve these goals while continuing to meet the public interest. To ensure this outcome, this appropriation and existing or future appropriations of similar type should be adaptively managed and/or modified to continue achieving BWP and IMPs goals. This adaptive management should consider the order and prioritization in which appropriations are authorized to divert, the rate at which the appropriation is authorized to divert, and other factors deemed by the Department as necessary toward continuing to meet the public interest.
7. The diversion of water for aquifer recharge in furtherance of achieving the goals of the BWP, IMPs and the PRRIP is beneficial. There may be unappropriated water available at times during the next one-year period, and subject to the adaptive management principles outlined in (6) above, the application is deemed to be in the public interest. Therefore it should be approved with reasonable conditions to best facilitate achieving the aforementioned goals.

ORDER

IT IS HEREBY ORDERED that application A-19560 is APPROVED subject to the following conditions:

1. The source of water is the Platte River.
2. The priority date is September 13, 2017.
3. This appropriation is temporary and may not be used for more than one year from the approval date of this Order.

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4. The water diverted under this temporary permit shall only be used for the purpose of groundwater recharge in support of the PRRIP, BWP and IMPs through and along the existing Phelpa Canal to facilities served by the canal for recharge at the Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA.
5. This appropriation is a natural flow appropriation. The rate of recharge must essentially match the rate of delivery into each recharge area with only modest increases in head to provide for effective recharge of water to the groundwater aquifer. The Department may reduce the diversion rate if it determines that water is being stored above ground in addition to the recharge activity. The Appropriator has six months from the approval date of this order to consult with, develop and provide the Department with a document containing specific details for a plan to monitor and record how water deliveries are completed and also benefiting the recharge areas. The plan may include provisions for instrumentation and telemetry for real time monitoring of water deliveries and water elevations at the recharge sites.
6. The term "Desired Minimum Discharge" (DMD) is quantitatively defined in Table A attached to and hereby incorporated into the conditions of this Order. Only those flows in excess of the DMD, as defined in Table A, shall be considered to be available to be diverted. Appropriation A-19560 will utilize only periodically available unappropriated water.
7. The Department may reduce or deny diversion under this appropriation if there is not enough available unappropriated water to satisfy all appropriations and the Department determines that there are more beneficial uses for the limited water supply at other locations, and that doing so is in the public interest. An adaptive management approach to determining which potentially complimentary or competing temporary excess water recharge projects receive a portion of a limited water supply, will be applied consistently to best serve the stated goals while continuing to meet the public interest.
8. In order to ensure the public interest is best served relative to the purpose for which this appropriation is being granted, the Department imposes the following hydrologic and administrative conditions, to determine whether and in what quantity water may be available for diversion:
  - A. The Appropriator shall have measuring devices installed and operational at the diversion location and at the delivery locations for each recharge area designated in this approval order prior to commencing diversions under this appropriation. Accurate measurement of diversions and deliveries will be documented by the Appropriator and made available upon request by the Department.
  - B. Prior to initiating any diversion of water under appropriation A-19560, Appropriator must coordinate with the Department's Bridgeport field office in charge of water administration during regular business hours to confirm that conditions are met for diversion under this appropriation and that diversions may commence.



- C. Appropriator must receive written permission from the Department's Bridgeport field office to divert under this appropriation prior to diversion. This condition may be met by an acknowledged email exchange. This permission and approval to divert from the Department will specify the rate of diversion allowed according to conditions described below.
  - D. No diversion under this appropriation may occur unless the previous day's twenty-four-hour average flow of the Platte River, as measured at the Grand Island stream gage or other Department-specified gage, is in excess of the DMD. This requirement may be waived if written permission is granted by the Department.
  - E. The current hydrologic condition of wet, normal or dry, as designated by PRRIIP, shall determine the appropriate DMD value from Table A.
  - F. Once diversion under this appropriation has begun, the Appropriator shall notify the Bridgeport field office prior to cessation of diversion under this appropriation. If this falls on a holiday or weekend, then the notification must be received by the next business day. Once diversion has ceased for a period of twenty-four hours or more, permission must be obtained from the Department according to paragraphs B and C above before resuming diversion under this appropriation.
  - G. The Appropriator shall notify the Bridgeport field office within twenty-four hours of the final irrigation season delivery along each major segment of the Appropriator's supply and irrigation canal system. If this falls on a holiday or weekend, then the notification must be received by the next business day.
- 9. The Department reserves the right to make adjustments to the amounts and measurement location(s) listed in Table A.
  - 10. The water diverted under A-19560 through the Tri-County Canal and the Phelps Canal system **may not be used for direct irrigation** by The Central Nebraska Public Power and Irrigation District's customers. The water diverted under A-19560 may flow only through the headgate, canal, lateral and pipeline systems directly to the recharge areas. Any water diverted for the purpose authorized under this permit that does not seep into the groundwater aquifer shall be returned to the river at established spills and drains.
  - 11. The Department acknowledges that water diverted under A-19560 may also be secondarily used to generate power, in accordance with existing appropriations, on route to the recharge areas designated under this approval, so long as the water is delivered to the recharge areas in the most expeditious manner using existing approved water infrastructure.

12. When the abovementioned specified conditions of this appropriation are met, water may be diverted at a rate specified by the Department up to a maximum rate of 600 cfs into the headgate of the Tri-County Canal located in Section 08, Township 13 North, Range 29 West of the 6<sup>th</sup> P.M. in Lincoln County, and the same water less transit losses allowed to flow into and through the Parshall flume at milepost 1.6 located in Section 11, Township 08 North, Range 21 West of the 6<sup>th</sup> P.M. in Gosper County, for recharge on the Phelps Canal, and a portion of which may be supplied to Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA.
13. The Appropriator must comply with all relevant statutes.
14. If a relinquishment is not submitted first, then A-19560 will EXPIRE one year from the approval date of this Order and appropriation A-19560 will be CANCELLED without further action by the Department as of that date.
15. Within six months after the final date of diversion under this temporary permit, the Appropriator shall provide a report containing the following elements: Provide a table of water deliveries to each of the following recharge areas — The Phelps Canal, Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA. A copy of any other data or reports provided to the PRRIP Executive Director Office, or pursuant to any contractual arrangements between CNPPID and the Department. Maps or plans must be provided to the Department, which include a depiction of the areas used to recharge the groundwater aquifer and the infrastructure used to deliver the water, including the pipelines to be constructed at the Cottonwood Ranch Complex and Funk Lagoon WPA. Provide data gathered from any groundwater level measurements during and after water has been recharged under this appropriation that demonstrates an increase in the elevation of the local water table has occurred around these sites.

#### ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Approval may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations.

#### DEPARTMENT OF NATURAL RESOURCES

December 1, 2017

  
Gordon W. Fasseyt P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order may request a contested case hearing in accordance with the Neb. Admin. Procedures Act §§ 84-901 et. seq. RRS and the Department's Rules of Practice and Procedure Title 454 Neb. Admin. Code Chapter 7. The request must be received by the Department at its Lincoln office

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(Nebraska State Office Building, 4<sup>th</sup> Floor, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of \$10.

A copy of this approval was posted on the Department's website and provided to the Department's field offices in Bridgeport and North Platte, Nebraska. A copy of this approval was mailed on December 7, 2017, to the following:

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

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**Table A - Desired Minimum Discharge of the Platte River in cfs  
Measured at the Grand Island Stream Gage Relevant to Appropriation A-19560**

Period	PRRIP Target Flows Grand Island		
	Wet*	Normal*	Dry*
January 1 - January 31	1,000	1,000	600
February 1 - February 14	1,800	1,800	1,200
February 15 - February 28	3,350	3,350	2,250
March 1 - March 15	3,350	3,350	2,250
March 16 - March 22	1,800	1,800	1,200
March 23 - March 31	2,400	2,400	1,700
April 1 - April 14	2,400	2,400	1,700
April 15 - May 3	2,400	2,400	1,700
May 4 - May 10	2,400	2,400	1,700
May 11- May 19	1,200	1,200	800
May 20 - May 31	3,700	3,400	800
June 1 - June 20	3,700	3,400	1,000**
June 21 - June 23	1,200	1,200	1,000**
June 24 - July 31	1,200	1,200	1,000**
August 1 - August 22	1,200	1,200	800
August 23 - August 31	1,200	1,200	800
September 1 - September 15	1,200	1,200	800
September 16 - September 30	1,000	1,000	600
October 1 - October 11	2,400	1,800	1,350**
October 12 - November 10	2,400	1,800	1,500**
November 11 - November 15	2,400	1,800	1,300
November 16 - December 31	1,000	1,000	600

\* The current Hydrologic Condition, (Wet Normal or Dry) determined by PRRIP can be found at:

<https://platteriverprogram.org/PubsAndData/Pages/CurrentHydrologicCondition.aspx>

\*\*Represents the minimum discharge required by instream flow appropriation, which is greater than PRRIP Target Flows, and senior to A-19560

**EXHIBIT F****Excess Flow Diversion Sharing**

Central currently has multiple projects that utilize Excess Flows. Those projects include: E65 Canal Recharge, Phelps Canal Recharge, Elwood Reservoir Recharge, Cottonwood Ranch Recharge, and Waterfowl Production Area (WPA) Recharge (hereinafter "Initial Projects"). There are 5 WPAs on the E65 and Phelps Canals. The Phelps Canal (down to MP 13.3) and the E65 Canal (down to MP 5.9) (hereinafter "Base Recharge Projects") must get the first Excess Flows in order to deliver to the remaining projects. Once diversions for the Base Recharge Projects are covered, Central will equally share any remaining Excess Flows among the Initial Projects. Future recharge projects will receive water after the Initial Projects have received their full allocation of water, subject to conditions which may be included in the appropriations for the recharge projects.

**General Sharing Principle:**

Total available Excess Flows – flows for Base Recharge Projects = Remaining Excess Flows  
 Project share = Remaining Excess Flows / number of projects

**Example:**

130 cfs of Excess Flows available

Flows for Base Recharge Projects

Phelps Canal to MP 13.3 - 30 cfs

E65 Canal to MP 5.9 - 10 cfs

130 cfs – 40 cfs (Base Recharge Projects) = 90 cfs remaining

Three projects (Cottonwood Ranch, Elwood Reservoir, WPAs) = 33.3 % share of remaining water

90 cfs / 3 = 30 cfs/project

**Distribution:****Base Recharge Projects**

Phelps Canal to MP 13.3 - 30 cfs

E65 Canal to MP 5.9 – 10 cfs

**Initial Distribution**

Cottonwood Ranch – 30 cfs

Elwood Reservoir – 30 cfs

WPAs – 30 cfs

**Limitations**

Elwood Reservoir minimum diversion of 75 cfs

**Final Distribution**

Cottonwood Ranch – 45cfs

WPAs – 45 cfs

**Measuring Points:**

E65 Canal MP 2.8 – Measures total E65 flow

Elwood Reservoir Flowmeter – Measures Elwood Reservoir flows

E65 MP 5.9 – Calculated flow for projects downstream of MP 5.9

Phelps Canal MP 1.6 Flume – Measures total Phelps Canal flow

Cottonwood Ranch Flow Meter- Measures Cottonwood Ranch flow

Phelps Canal MP 13.3 – Measures flow for projects downstream of MP 13.3

**Limitations:**

Elwood Reservoir pumps require a minimum of 75 cfs to be operational.

WPA diversions will experience transportation losses to each site and may make diversions to those projects inefficient at low flows.

E65 and Phelps Canal maintenance may limit certain project diversions capabilities.

Ice conditions may limit or prohibit diversion of Excess Flows

Each project share may be moved to another project if mutually agreed to by water service agreement signatories





**WATER SERVICE AGREEMENT-  
GROUNDWATER RECHARGE FROM EXCESS FLOWS BETWEEN  
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT,  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
AND  
TRI-BASIN NATURAL RESOURCES DISTRICT**

THIS AGREEMENT made and entered into this 15th day of December, 2017, by and between The Central Nebraska Public Power and Irrigation District, a public corporation and political subdivision of the State of Nebraska, with its principal office located at 415 Lincoln Street, P.O. Box 740, Holdrege, NE 68949-0740, hereinafter referred to as "Central" and Tri-Basin Natural Resources District, a political subdivision of the State of Nebraska, with its principal office located at 1723 North Burlington Street, Holdrege, NE 68949, hereinafter referred to as "Tri-Basin", and the State of Nebraska, acting by and through the Nebraska Department of Natural Resources, with its principal office located at 301 Centennial Mall South, Lincoln, NE 68509-4676, hereinafter referred to as "State". Sometimes hereinafter Central, State and Tri-Basin shall be collectively referred to as "Parties" or individually as "Party".

**WITNESSETH:**

WHEREAS, Central is the owner of the E65 Canal and Elwood Reservoir and the United States Fish and Wildlife Service is the owner of Cottonwood Waterfowl Production Area (hereinafter "Cottonwood WPA") all as shown on Exhibit A; and

WHEREAS, in August 2017 Central filed for an order from the Nebraska Department of Natural Resources (hereinafter "DNR") for a "Temporary Permit to Appropriate Water for Groundwater Recharge on the E65 Canal, Elwood Reservoir, and Cottonwood WPA" (hereinafter "Appropriation"); and

WHEREAS, the State and Tri-Basin desires Central to provide groundwater recharge on the E65 Canal and in Elwood Reservoir for purposes of enhancing Platte River stream flows, studying groundwater recharge, sustaining groundwater supplies for the benefit of Tri-Basin's constituents, and implementing the State/Tri-Basin joint Integrated Management Plan (IMP); and

WHEREAS, Central desires to provide such recharge services within the red highlighted areas shown in Exhibit A; and

WHEREAS, Central also has an agreement with the Platte River Recovery and Implementation Program (Platte Program) for recharge services using Elwood Reservoir;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein contained and the terms and conditions hereinafter set forth, it is hereby covenanted and agreed:

**1. WATER SERVICE.**

a. During the term of this Water Service Agreement, (hereinafter "Agreement"), Central will provide the State and Tri-Basin with groundwater recharge via seepage through the E65 Canal, Cottonwood WPA, and Elwood Reservoir for the purposes described above. The Total Amount Diverted shall consist of diversions into Elwood Reservoir, the E65 Canal, and the Cottonwood WPA during the non-irrigation season. That part of the Total Amount

Diverted that is pumped into Elwood Reservoir shall be divided into a 50% share for the Platte Program and a 50% share for Tri-Basin/State. The water billed to Tri-Basin/State shall not exceed 13,500 acre feet. The Total Amount Diverted shall be measured by Central using the E65 Canal measuring flume located at milepost (MP) 2.8 (including water diverted and not available for recharge because of evaporation). The portion of the Total Amount Diverted that is delivered to Elwood Reservoir will be estimated using pump performance curves developed by Central and/or annubar measurements, with all remaining diversions passing the MP 2.8 flume considered diversions for the E65 Canal or the Cottonwood WPA. The Total Amount Diverted will be adjusted, as appropriate, by subtracting any deliveries or releases made by Central from the E65 Canal, at the end of each subsequent quarter or billing period, and at the beginning of the next irrigation season. The non-irrigation season will begin when Central stops releasing water into sections of the E65 Canal for irrigation and end when Central begins releasing water into sections of the E65 Canal for irrigation, as determined by Central.

b. During the term of this Agreement, the State and Tri-Basin may request that water diverted under the Appropriation and this Agreement into Elwood Reservoir be released into the E65 Canal for the same purpose of groundwater recharge. Elwood releases for this purpose will be calculated by utilizing annubar readings at Elwood Reservoir or gate measurements on the E65 Canal.

c. Central may make reasonable adjustments in the Total Amount Diverted and Elwood Reservoir diversions as necessary to account for similar operations from other water sources, or for other reasons as may be appropriate. Central shall consult with the State and Tri-Basin in making such adjustments. All data used by Central regarding the Total Amount Diverted and Elwood Reservoir diversion calculations shall be shared with the State and Tri-Basin.

d. Central may reduce or suspend groundwater recharge diversions under this Agreement for good cause, including but not limited to (a) maintenance or construction on the E65 Canal or Elwood Reservoir, (b) high groundwater levels, or (c) icing conditions, all as determined by Central.

e. Any Party shall have the right to terminate the diversions under this Agreement, thus ending this Agreement, by providing notice to the Parties by Wednesday of any week and diversions will cease on the next Sunday at midnight. The notice shall be provided via email to all Parties and include [csteinke@cnppid.com](mailto:csteinke@cnppid.com).

2. **WATER SERVICE CHARGES.** The State and/or Tri-Basin shall pay Central a Water Service Charge as specified in Exhibit B for the water service described above. The State's payment portion and Tri-Basin's payment portion shall not exceed 1. \$342,090 if all subject water is delivered in 2017, 2. \$352,350 if all subject water is delivered in 2018, or 3. \$362,948 if all subject water is delivered in 2019. The State and Tri-Basin will divide the preceding costs described in section 2 of this Agreement in a 60/40 split; 60% paid by the State and 40% paid by Tri-Basin. All measurements made through Central's measuring devices and pumping estimates into Elwood Reservoir, so recorded by Central operating personnel shall be considered final. Central shall invoice the State and Tri-Basin for their respective portions of water service charges quarterly. Payment shall be due within 60 days of invoice. Central will not invoice State or Tri-Basin for administrative costs or salaries.

3. **TERM.** The term of this Agreement shall commence when this Agreement is signed by all the Parties (the "Commencement Date"), and shall expire on December 31, 2019 unless sooner terminated pursuant to paragraph 1(e) or paragraph 12.

4. **DATA SHARING.** The Parties agree to share all hydraulic and hydrologic data collected in association with this Agreement.

5. **WATER APPROPRIATIONS.** The source of supply shall be water which is available pursuant to the Appropriation. The water service described herein shall be consistent with and limited to the terms and provisions of the Appropriation.



6. **FORCE MAJEURE.** Central shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control of, and without the fault or negligence of Central, including, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire, severe cold or other weather event, epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including but not limited to the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state or local governments), which Central could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of Central under this Agreement shall be excused and suspended without penalty or damages, provided that Central shall give the State and Tri-Basin prompt written notice describing the particulars of the occurrence or condition, the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition, and Central proceeds with reasonable diligence to remedy its inability to perform and informs the State and Tri-Basin of the actions taken to remedy the consequences of the event or condition.

7. **DEFAULT.** If any Party to this Agreement fails to perform or otherwise breaches any of the terms of this Agreement, then such failure shall constitute a default. In the event of default by any Party, the non-defaulting Party or Parties shall give written notice of the default to the defaulting Party. Following such written notice, the defaulting Party or Parties may cure the default within thirty (30) days. Upon cure, this Agreement shall remain in full force and effect. If the defaulting Party or Parties fails to cure, the non-defaulting Party or Parties shall be entitled to any and all legal and equitable remedies except Central's total liability to the State and Tri-Basin for any loss or damage, including but not limited to special and consequential damages, arising out of or in connection with the performance of this Agreement shall not exceed either the amount of Water Service Charges paid by the State and Tri-Basin to Central pursuant to this Agreement or \$50,000, whichever is less.

8. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the Parties hereto with respect to the water service contemplated hereby and supersedes all prior agreements and understandings between the Parties with respect to such subject matter.

9. **AMENDMENT.** No amendment to this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

10. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding on the Parties, their successors and assigns. This Agreement may not be assigned by State or Tri-Basin without the written consent of Central.

11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the law of the State of Nebraska.

12. **FUNDING.** By execution of this Agreement, the State represents and affirms that it has requested and will make every effort to secure funds for this project. Should the anticipated source of funding no longer be available, the State will use its best efforts to secure alternative sources of funding. If funds ultimately are determined by the State to be not available, the contract is voidable by any Party. The State agrees to be responsible for its share of all costs due to Central for water service charges prior to providing notice to Central that funding is no longer available.

13. **LAWS.** In executing this Agreement, each Party shall be responsible for its compliance with all applicable state and federal laws.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date first stated above.

TRI-BASIN NATURAL RESOURCES DISTRICT,

By John Horburn  
General Manager

THE STATE OF NEBRASKA,  
ACTING BY AND THROUGH THE NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES,

By Harmon W. Jassett  
Director

THE CENTRAL NEBRASKA PUBLIC POWER AND  
IRRIGATION DISTRICT,

By Dan Kraus  
General Manager

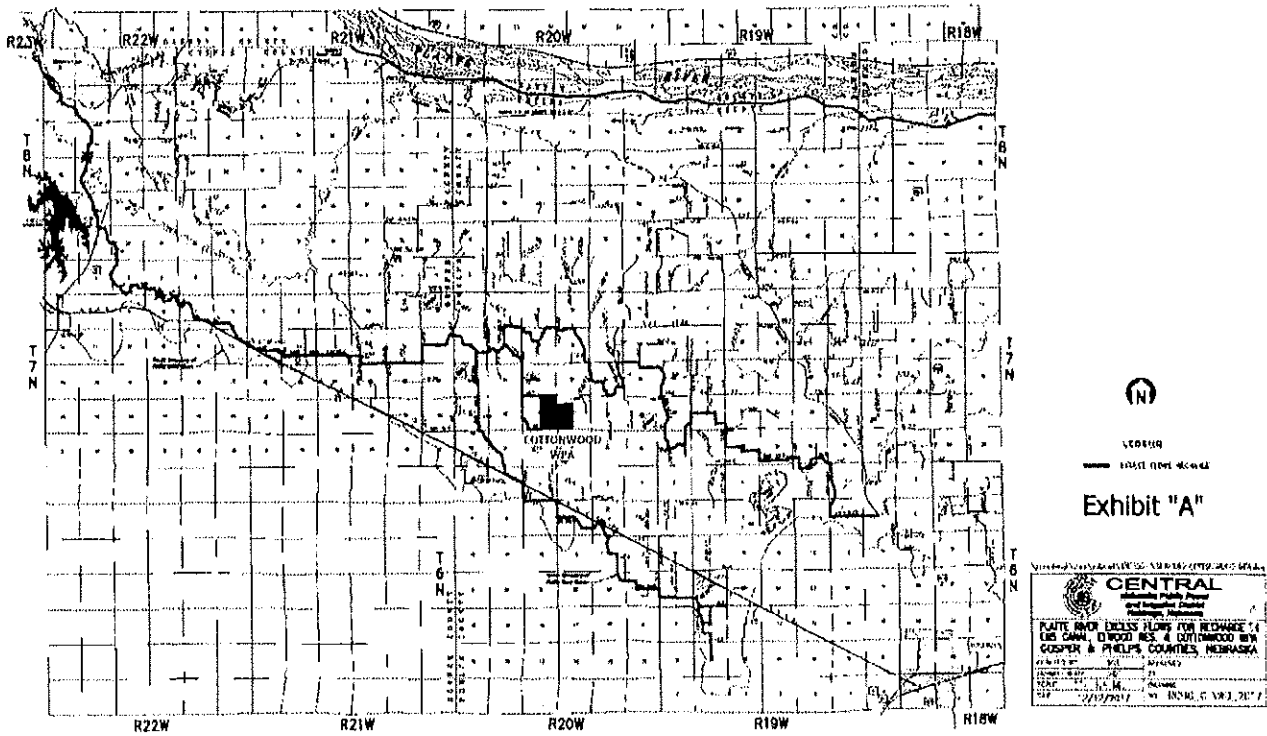
**APPROVED**

BY NDNR LEGAL COUNSEL

RT

DATE 12/18/2017

# EXHIBIT A





<b>Exhibit B</b>			
<b>Water Service Charges</b>			
	<b>Price per Acre Foot Diverted</b>		
<b>Year</b>	<b>Elwood Reservoir</b>	<b>E65 Canal</b>	<b>Cottonwood WPA</b>
<b>2017</b>	<b>\$50.68</b>	<b>\$42.33</b>	<b>\$37.25</b>
<b>2018</b>	<b>\$52.20</b>	<b>\$43.60</b>	<b>\$38.00</b>
<b>2019</b>	<b>\$53.77</b>	<b>\$44.91</b>	<b>\$38.75</b>



## **WATER SERVICE AGREEMENT**

This WATER SERVICE AGREEMENT ("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 TRI-BASIN NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska (hereinafter "Tri-Basin"). Central and Tri-Basin may individually be referred to as a "Party" and shall collectively be referred to herein as the "Parties."

### **WITNESSETH:**

WHEREAS, the parties wish to create a project to assist with recharge using the E-65 Canal and Phelps Canal for recharge in the Waterfowl Protection Areas (hereinafter "WPA(s)"), specifically as follows: Victor Lake WPA, Cottonwood WPA, Johnson WPA, Linder WPA, and Funk Lagoon WPA (hereinafter collectively referred to as "Rainwater Basin Recharge Project").

WHEREAS, Central agrees to pursue acquisition of permits, an appropriation (or appropriations) and construction of facilities needed to deliver water to the Rainwater Basin Recharge Project to assist Tri-Basin with achieving the goals and objectives of its Integrated Water Resources Management Plan,

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 Agreement are set forth as follows or in the body of this Agreement:

- 1.1. "Appropriation" shall mean a new appropriation acquired by Central which will authorize delivery of water to the Rainwater Basin Recharge Project (see Exhibit B).

1.2. "E-65 Canal Diversions" shall mean water that is diverted into the E-65 Canal under the Appropriation and remains in or recharges within the E-65 Canal minus any recharge diversions for another entity who is receiving recharge benefits in the E-65 Canal.

1.3. "Effective Date" shall mean the date upon which this Agreement shall become effective which shall be the date the last signature is affixed hereto.

1.4. "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.

1.5. "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.

1.6. "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority or other entity.

1.7 "Phelps Canal Diversions" shall mean water that is diverted into the Phelps Canal under the Appropriation and remains in or recharges within the Phelps Canal minus any recharge diversions for another entity who is receiving recharge benefits in the Phelps Canal.

1.8. "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 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.

1.9. "Total Amount Diverted" shall mean all water diverted into either the E-65 Canal or Phelps Canal in accordance with the Appropriation.

1.10. "Water Service Charges" shall mean all payments for water services as defined in Section 5 during the Operation Phase.

1.11. "Water Service Rate" shall mean the applicable rate per acre-foot of diversion associated with water services as shown in Exhibit C.

1.12 "WPA Diversions" shall mean water that is diverted into the WPA(s) from the E-65 Canal or Phelps Canal.

## **Section 2. Ownership and Term of Agreement**

**2.1 Ownership of Rainwater Basin Recharge Project.** All property, materials and permits, including the Appropriation, which are acquired or constructed by Central and in the name of Central for the Rainwater Basin Recharge Project, shall be owned by Central.

### **2.2 Term.**

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

2.2.2. In the event of termination under this Agreement (including the end of the term), the obligation to pay for costs that are incurred or arise under this Agreement prior to termination shall survive.

## **Section 3. Operation of the Rainwater Basin Recharge Project ("Operations Phase")**

### **3.1 Operation of the Rainwater Basin Recharge Project.**

3.1.1. Central shall utilize Prudent Utility Practices to deliver water into the Rainwater Basin Recharge Project in accord with the Appropriation.

3.1.2. 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 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 Rainwater Basin Recharge Project may be water that will pass through certain of other facilities owned by Central. Notwithstanding any other provision herein, this 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 Rainwater Basin Recharge 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 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 Rainwater Basin Recharge Project.

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

3.1.4. Central may reduce or suspend diversions under this Agreement for good cause, including but not limited to (a) maintenance or construction on the canal or Elwood Reservoir or (b) high groundwater levels, all as determined by Central.

### **3.2 Water Service.**

3.2.1. Water Diversion. Central may divert water into the E-65 Canal, Phelps Canal, Victor Lake WPA, Cottonwood WPA, Johnson WPA, Linder WPA, and Funk Lagoon WPA (as shown on Exhibit B) in accordance with the Appropriation and those diversions will be measured as follows:

a. E-65 Canal Diversions. The Total Amount Diverted shall be measured by Central using the E-65 Canal measuring flume currently located at milepost (MP) 2.8. E-65 Canal Diversions shall be calculated as the Total Amount Diverted minus diversions to Elwood Reservoir, WPA Diversions, diversions for any other entity, and recharge in the E-65 Canal for another entity. 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 or E-65 Diversions as necessary to account for similar operations from other water sources, or for other reasons as may be appropriate. Central shall consult with Tri-Basin in making such adjustments. Central will keep detailed accounting of all diversions for the Rainwater Basin Recharge Project. All data



used by Central regarding the measurement or accounting of the Total Amount Diverted and E-65 Diversions under the Appropriation shall be shared with Tri-Basin.

b. Phelps Canal Diversions. The Total Amount Diverted shall be measured by Central using the Parshall Flume at MP 1.6 on the Phelps Canal. Phelps Canal Diversions shall be calculated as Total Amount Diverted minus WPA Diversions, diversions for any other entity or recharge diversions in the Phelps Canal for another entity. 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 or Phelps Canal Diversions as necessary to account for similar operations from other water sources, or for other reasons as may be appropriate. Central shall consult with Tri-Basin in making such adjustments. Central will keep detailed accounting of all diversions for the Rainwater Basin Recharge Project. All data used by Central regarding the measurement or accounting of the Total Amount Diverted and Phelps Canal Diversions under the Appropriation shall be shared with Tri-Basin.

c. WPA Diversions. (Victor Lake WPA, Cottonwood WPA, Johnson WPA, Linder WPA, and Funk Lagoon WPA). The WPA Diversions shall be measured by Central using flow meters at each of the five WPAs shown on Exhibit B. 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 Tri-Basin in making such adjustments. Central will keep detailed accounting of all diversions for the Rainwater Basin Recharge Project. All data used by Central regarding the measurement or accounting of the Total Amount Diverted under the Appropriation shall be shared with Tri-Basin.

3.2.2. Coordination of Delivery. Central will provide written notice to Tri-Basin when Central has decided to make flows available for diversion to the Rainwater Basin Recharge Project. Tri-Basin shall provide written notice to Central of the date when delivery of water through the Diversion Structure may begin. Central will then begin diversion operations in accordance with this Agreement. If Tri-Basin requests, in writing, that Central reduce or cease diversions, Central agrees to reduce or cease diversions as soon as practicable.

**3.3 Water Service Charges.** Tri-Basin shall pay Central for the Total Amount Diverted according to the following provisions (payment shall be due within 60 days of invoice):

3.3.1. E-65 Canal Diversions. Tri-Basin shall pay a Water Service Rate specified in Exhibit C for recharge from diversions into the E-65 Canal.

3.3.2. Phelps Canal Diversions. Tri-Basin shall pay a Water Service Rate specified in Exhibit C for recharge from diversions into the Phelps Canal.

3.3.3. WPA Diversions. Tri-Basin shall pay a Water Service Rate specified in Exhibit C for recharge from diversions into the WPAs.

3.3.4. All diversions shall be adjusted according to provisions in paragraph 3.2.

3.3.6. Central shall invoice Tri-Basin for the Water Service Charges quarterly.

3.3.7. Water Service Charges shall not exceed \$125,000 in any calendar year, without prior written approval from Tri-Basin.

#### **Section 4. Dispute Resolution; Period for Billing Adjustments**

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

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

4.1.2. In the event that Tri-Basin disagrees with Central's decision, a senior executive of Central and a senior executive of Tri-Basin shall immediately confer, discuss and review Central's decision.

4.1.3. 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 court

of competent jurisdiction or the Nebraska Department of Natural Resources as appropriate. Each Party may pursue all remedies available at law or in equity, except that termination shall occur only as provided in this 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.

4.1.4. Central's power of initial decision is intended only as an agreed mechanism to keep the Rainwater Basin Recharge 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 Agreement, or (3) change either the standard of review or standard of liability which would otherwise apply to this Agreement.

**4.2 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 5. Default and Remedies**

**5.1 Default.** A default shall occur under this Agreement if there is a material breach of this Agreement, including but not limited to a failure to make payments as required under this 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 Agreement.

### **5.2 Effect of Termination Due to Tri-Basin Default**

5.2.1. In the event of termination by Central due to a default by Tri-Basin, then this Agreement shall terminate and, after payment of all costs incurred for Rainwater Basin Recharge Project, the obligations, rights and benefits of the Parties under this Agreement shall terminate (except as to any obligations incurred prior to termination), except that Central shall

continue to own the Rainwater Basin Recharge Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Agreement.

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

**5.3 Late Payments.** If Tri-Basin fails to make any payment when due pursuant to this 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 6. Approvals**

The obligation of Central to perform under this Agreement shall be subject to Central obtaining and continuing to receive all necessary permits and the Appropriation for the Rainwater Basin Recharge Project.

#### **Section 7. Waivers**

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

#### **Section 8. Notices**

All notices given pursuant to this 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 9. 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 Agreement.

### **Section 10. Force Majeure**

#### **10.1 Applicability of Force Majeure.**

10.1.1. No Party shall be responsible or liable for any delay or failure in its performance under this 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 Agreement, that Party shall give the other Party written notice to that effect.

10.1.2. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this 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 11. Miscellaneous**

**11.1 Amendments.** This Agreement may be amended only by written agreement between all of the Parties.

**11.2 Entire Agreement/Order of Precedence.** This Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter contemplated by this Agreement and supersedes all other prior agreements, whether oral or written.

**11.3 Counterparts.** This Agreement may be executed in multiple counterparts to be construed as one.

**11.4 Severability.** If any part, term or provision of this 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 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.

**11.5 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

**11.6 Jurisdiction.** The Parties agree that any legal proceeding relating to this Agreement shall be filed in a state or federal court of competent jurisdiction and proper venue located within the State of Nebraska.

**11.7 No Third Party Beneficiaries.** The Parties agree that no other parties are an intended third-party beneficiary of this Agreement. In addition, neither Tri-Basin nor Central shall transfer or assign this Agreement or any water diverted through the Rainwater Basin Recharge Project without agreement of all Parties.

**11.8 Independent Contractors.** Nothing in this 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 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 Agreement. This 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.

**11.9 Rules of Construction.**

11.9.1. The descriptive headings of the various sections and subsections of this 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.

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

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

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



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

ATTEST:

By: Emily J. Anderson  
Printed Name: Emily J. Anderson  
Its: Secretary  
Date: 11/10/17

THE CENTRAL NEBRASKA PUBLIC  
POWER AND IRRIGATION DISTRICT

By: Don Kraus  
Printed Name: Don Kraus  
Its: General Manager  
Date: 11/10/17

ATTEST:

By: Cassie Lynch  
Printed Name: Cassie Lynch  
Its: Admin. Sec  
Date: 11-15-17

TRI-BASIN NATURAL  
RESOURCES DISTRICT

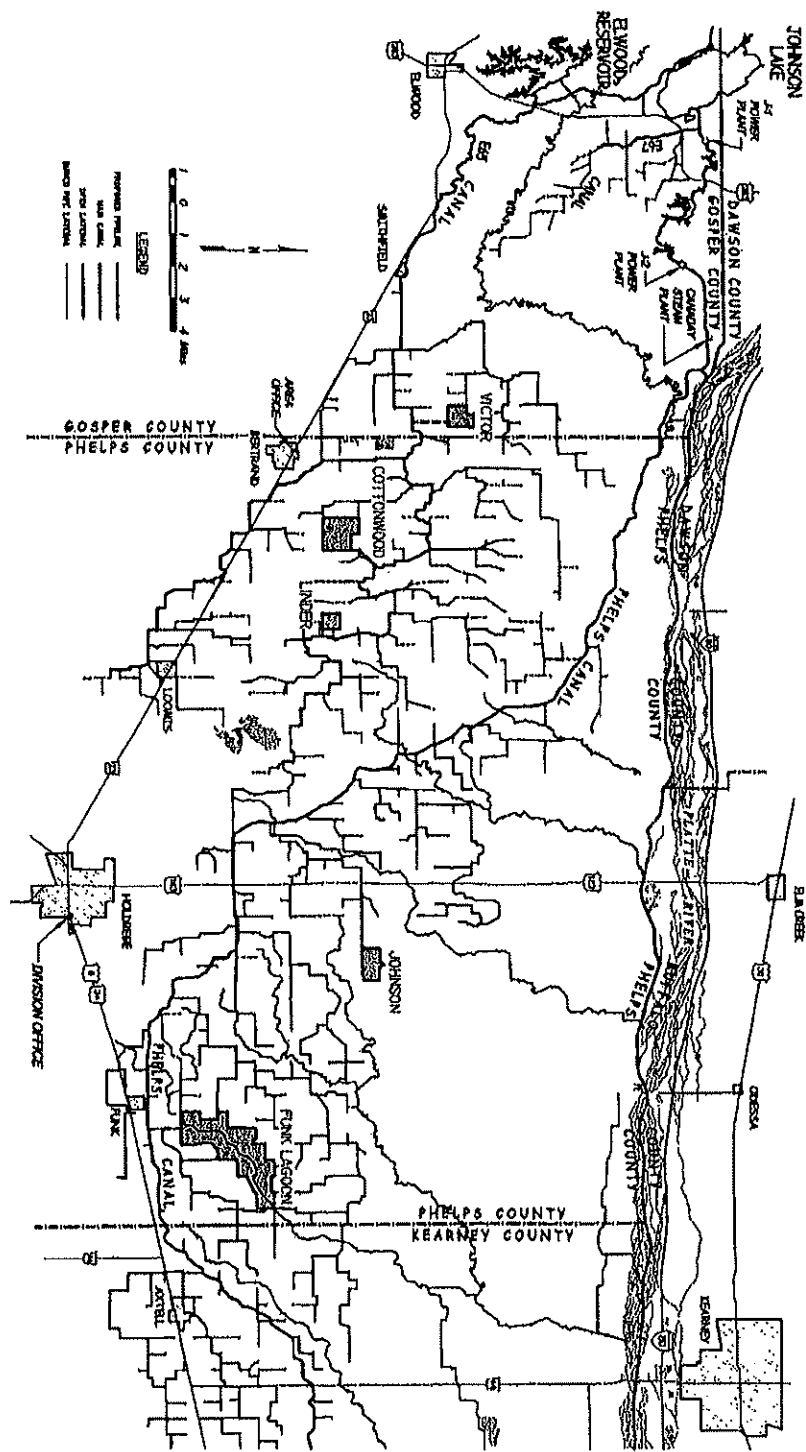
By: John Thorburn  
Printed Name: John Thorburn  
Its: Manager  
Date: 11/15/17

**EXHIBIT A**  
**Notice Addresses**

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

**Don D. Kraus, General Manager**  
**The Central Nebraska Public Power and Irrigation District**  
**415 Lincoln Street**  
**PO Box 740**  
**Holdrege, NE 68949**

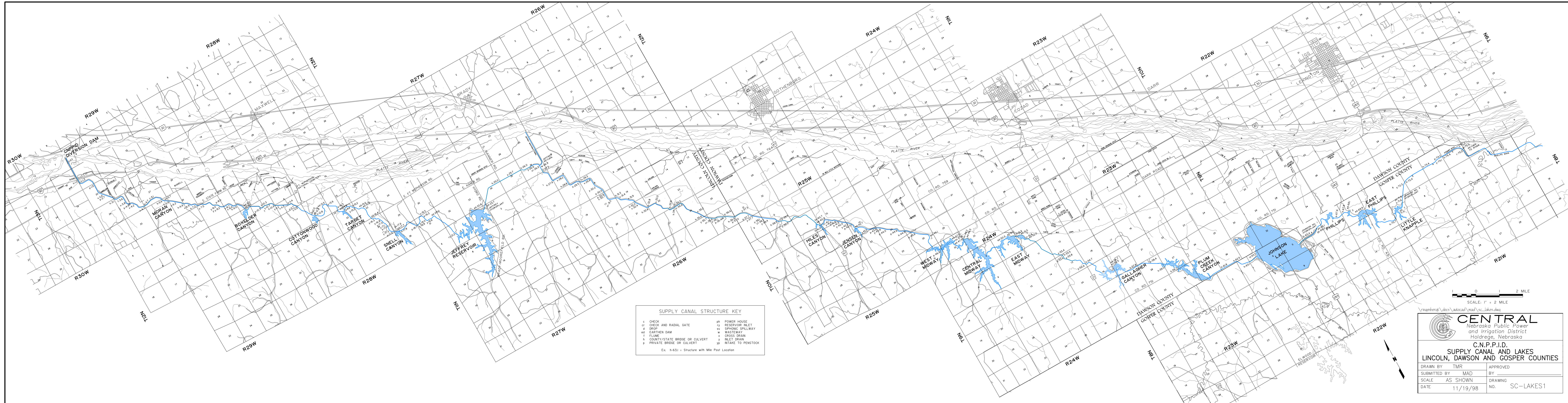
EXHIBIT B



## EXHIBIT C


CNPPID Recharge Rate Summary							
Delivery Costs, \$/af							
Year	Phelps Canal Diversions	Johnson WPA	Funk Lagoon WPA	E65 Canal Diversions	Linder WPA	Cottonwood WPA	Victor Lake WPA
2018	\$30.98	\$25.50	\$25.50	\$43.60	\$38.00	\$38.00	\$38.00
2019	\$31.91	\$26.01	\$26.01	\$44.91	\$38.75	\$38.75	\$38.75
2020	\$32.87	\$26.53	\$26.53	\$46.26	\$39.53	\$39.53	\$39.53
2021	\$33.86	\$27.06	\$27.06	\$47.64	\$40.32	\$40.32	\$40.32
2022	\$34.87	\$27.60	\$27.60	\$49.07	\$41.13	\$41.13	\$41.13
2023	\$35.92	\$28.15	\$28.15	\$50.54	\$41.95	\$41.95	\$41.95
2024	\$36.99	\$28.72	\$28.72	\$52.06	\$42.79	\$42.79	\$42.79
2025	\$38.10	\$29.29	\$29.29	\$53.62	\$43.64	\$43.64	\$43.64
2026	\$39.25	\$29.88	\$29.88	\$55.23	\$44.52	\$44.52	\$44.52
2027	\$40.43	\$30.47	\$30.47	\$56.89	\$45.41	\$45.41	\$45.41
2028	\$41.64	\$31.08	\$31.08	\$58.59	\$46.32	\$46.32	\$46.32
2029	\$42.89	\$31.71	\$31.71	\$60.35	\$47.24	\$47.24	\$47.24
2030	\$44.17	\$32.34	\$32.34	\$62.16	\$48.19	\$48.19	\$48.19
2031	\$45.50	\$32.99	\$32.99	\$64.03	\$49.15	\$49.15	\$49.15
2032	\$46.86	\$33.65	\$33.65	\$65.95	\$50.13	\$50.13	\$50.13
2033	\$48.27	\$34.32	\$34.32	\$67.93	\$51.14	\$51.14	\$51.14
2034	\$49.72	\$35.01	\$35.01	\$69.97	\$52.16	\$52.16	\$52.16
2035	\$51.21	\$35.71	\$35.71	\$72.06	\$53.20	\$53.20	\$53.20
2036	\$52.75	\$36.42	\$36.42	\$74.23	\$54.27	\$54.27	\$54.27
2037	\$54.33	\$37.15	\$37.15	\$76.45	\$55.35	\$55.35	\$55.35
2038	\$55.96	\$37.89	\$37.89	\$78.75	\$56.46	\$56.46	\$56.46
Inflator	3%	2%	2%	3%	2%	2%	2%





SUPPLY CANAL STRUCTURE KEY			
c	CHECK	ph	POWER HOUSE
cr	CHECK AND RADIAL GATE	ry	RESERVOIR INLET
d	DROP	ss	SIPHONIC SPILLWAY
ed	EARTHEN DAM	w	WASTEWAY
f	FLUME	x	CROSS DRAIN
h	COUNTY/STATE BRIDGE OR CULVERT	y	INLET DRAIN
p	PRIVATE BRIDGE OR CULVERT	vp	INTAKE TO PENSTOCK
Ex: h-63.1 = Structure with Mile Post Location			

0 1 2 MILE  
SCALE: 1" = 2 MILE



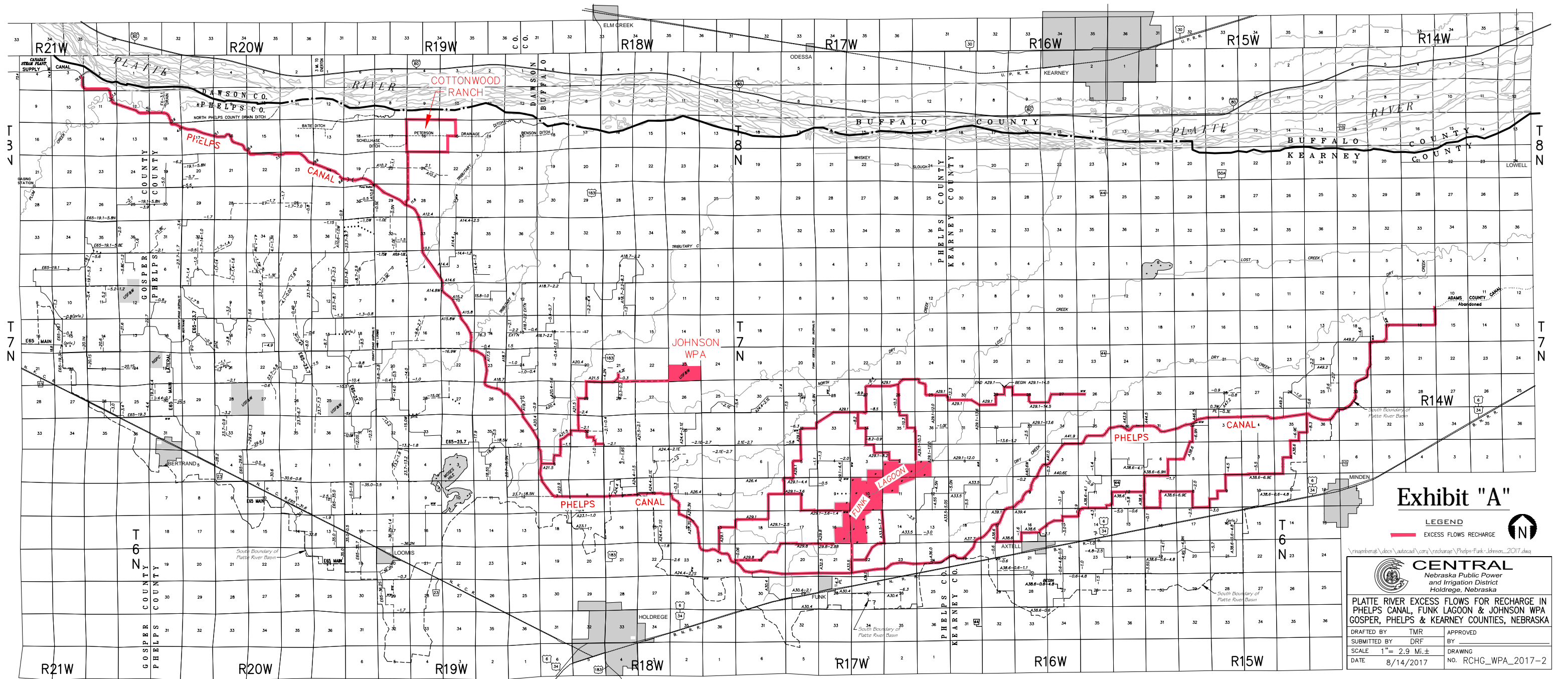
**CENTRAL**  
Nebraska Public Power  
and Irrigation District  
Holdrege, Nebraska

**C.N.P.P.I.D.**  
**SUPPLY CANAL AND LAKES**  
**LINCOLN, DAWSON AND GOSPER COUNTIES**

DRAWN BY	TMR	APPROVED	
SUBMITTED BY	MAD	BY	
SCALE	AS SHOWN	DRAWING	
DATE	11/19/98	NO.	SC-LAKES1







# Exhibit "A"

LEGEND  
EXCESS FLOWS RECHARGE

\\nrgserverat\docs\autocad\com\recharge\Phelps-Funk-Johnson\_2017.dwg

**CENTRAL**  
Nebraska Public Power  
and Irrigation District  
Holdrege, Nebraska

PLATTE RIVER EXCESS FLOWS FOR RECHARGE IN  
PHELPS CANAL, FUNK LAGOON & JOHNSON WPA  
GOSPER, PHELPS & KEARNEY COUNTIES, NEBRASKA

DRAFTED BY: TMR	APPROVED BY:
SUBMITTED BY: DRF	BY:
SCALE: 1"= 2.9 Mi.±	DRAWING NO. RCHG_WPA_2017-2
DATE: 8/14/2017	