

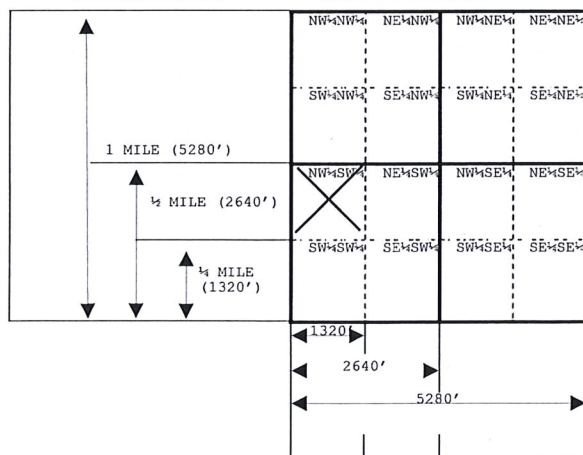
**STATE OF NEBRASKA**  
**DEPARTMENT OF NATURAL RESOURCES**  
**APPLICATION FOR A PERMIT TO APPROPRIATE WATER**

Complete items 1 through 10 by printing in ink or typing the appropriate information and by placing an X in the appropriate box.	<b>For Department Use Only</b>
<p>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.</p> <p style="margin-left: 20px;">The Central Nebraska Public Power and Irrigation District P.O. Box 740, 415 Lincoln Street Holdrege, NE 68949-0740</p> <p>E-mail address: _____ Telephone No. (308) 995-8601</p>	<p>Filed in the office of the Department of Natural Resources at <u>8:30</u> a.m./p.m. on <u>December 2, 2021</u> Application No. <u>A-19799</u></p>
<p>2. Name, address, and telephone number of applicant if different than landowner.</p> <p>E-mail address: _____ Telephone No. ( ) _____</p>	<p>Map No. _____ Water Division <u>1-A</u> Receipt No. <u>172</u> Amount <u>10-</u> Right ID <u>13982</u></p>

<p>3a. A permit is sought to:</p> <p><input type="checkbox"/> Use natural flow      <input checked="" type="checkbox"/> Use impounded water*</p>	<p>3b. A permit is sought for the purpose of:</p> <p><input type="checkbox"/> Irrigation      <input type="checkbox"/> Manufacturing      <input type="checkbox"/> Domestic  <input type="checkbox"/> Other _____  <input checked="" type="checkbox"/> Temporary** Testing Infrastructure on Cottonwood Ranch Project</p>
<p>4a. Identify the source of water (name of stream or reservoir).</p> <p>Kingsley Reservoir (A-2374, Environmental Account A-17965)</p>	<p>4b. If applicable, identify the facility name for transporting water from the source (portable pump, name of canal or pipeline).</p> <p>Lake McConaughy, North Platte River, Sutherland Canal System, Supply Canal, Phelps Canal</p>

5. Identify the location of the ☒ Headgate      ☐ Pump

Section 3, Township 14 North, Range 38 E ☐ W ☒ County Keith



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

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

\_\_\_\_\_

\* A separate permit to impound water must be obtained.  
 \*\* A temporary permit maybe granted for a maximum of one year.

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

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

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

7. State the approximate quantity of water desired for

appropriation, 200 cfs, 2,000 acre feet

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

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

Existing

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

November 2021

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

☐ No ☒ Yes If yes, explain: Project will be in collaboration with the Platte River Recovery Implementation Program.

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.

Date

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

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

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

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

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

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

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)

November 30, 2021

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

**Re: An Application for a Temporary Permit to Appropriate Environmental Account  
Water for Groundwater Recharge on the Cottonwood Ranch Complex**

Dear Mr. Thompson:

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

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

Sincerely,

Devin Brundage  
General Manager

mm

Enclosures



STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO FILE AN APPLICATION FOR  
A TEMPORARY SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A  
MORATORIUM BY PETITION VAR-9453

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. The Department's July 14, 2004, Order and the provisions of *Neb. Rev. Stat. § 46-714(3)(n)* allow for new surface water appropriations and increases in irrigated acres if the Department grants a variance and subsequently approves a permit for such new use.
3. On October 19, 2021, Devin Brundage, on behalf of The Central Nebraska Public Power and Irrigation District (Petitioner), filed petition VAR-9453 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area or Stay Area. The petition requests leave to file an application for a temporary permit for the purpose of diverting Environmental Account water into the Phelps Canal and into Cottonwood Ranch to test infrastructure, specifically gate calibration and butterfly valve cavitation issues. The overall purpose will be for the benefit of Fish and Wildlife and reductions to shortages to target flows on the Platte River via the Cottonwood Ranch Complex.
4. When filing such a petition, a project proponent must offer a clearly stated basis for such request and must offer sufficient good cause shown. *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code Chapter 23* lists six circumstances that may be put forward as justification for granting a petition to apply for a new water use, in conjunction with an examination of good cause shown.

ANALYSIS

1. The source of the water is appropriation A-2374 with a priority date of April 27, 1934.



2. Pursuant to terms of the license to operate the Kingsley Hydroelectric Power Plant issued by the Federal Energy Regulatory Commission an Environmental Account was created to apportion water stored under Petitioner's appropriation A-2374 for the purpose of instream uses for fish and wildlife.
3. The draft application attached to the petition proposes that a portion of the water accrued to the Environmental Account (A-2374) be released from Kingsley Reservoir (Lake McConaughy) and routed through the North Platte River, Nebraska Public Power District's (NPPD) systems, the Platte River and Petitioner's canal system to the Phelps Canal and finally delivered to the Cottonwood Ranch Complex.
4. The expected benefit from the use of water under the requested application would be to further test, adjust and calibrate the infrastructure constructed at the Cottonwood Ranch Complex. The overall future purpose for water use at the Cottonwood Ranch Complex will be for the benefit of Fish and Wildlife and reductions to shortages to target flows on the Platte River.

#### CONCLUSIONS

1. Environmental Account Water under A-2374 stored in Lake McConaughy proposed for use in the draft application existed prior to the formal moratorium.
2. The requested appropriation would be a secondary appropriation of water already stored under A-2374. This storage-use appropriation would not divert natural flow or cause limitation in other appropriator's diversions of natural flow.
3. The proposed project is sought to further test and calibrate the infrastructure constructed at the Cottonwood Ranch Complex. The overall long term purpose for the Cottonwood Ranch Complex would be for the benefit of Fish and Wildlife and reductions to shortages to target flows on the Platte River, which is in the public interest. Petitioner has shown good cause, thereby meeting the requirements of Department of Natural Resources Rules for Surface Water 457 Neb. Admin. Code Chapter 23.
4. For these reasons, Petitioner should be granted leave to file a temporary application to divert a portion of water under appropriation A-2374 from the Environmental Account to further test, adjust and calibrate the infrastructure constructed at the Cottonwood Ranch Complex for the benefit of fish and wildlife.

#### ORDER

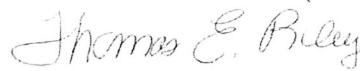
##### IT IS HEREBY ORDERED:

1. Petition VAR-9453 meets the requirements of *Department of Natural Resources Rules of Surface Water, Title 457 Neb. Admin. Code Chapter 23, § 001.04*, has shown sufficient good cause, and is GRANTED.
2. This Order granting leave to file or consider an application for a new surface water appropriation within a moratorium or stay area pursuant to

petition VAR-9453 shall be in effect for one year from the date this order is signed.

3. This decision shall not bind the Director to approve any application to which it relates, or in any way be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of such an application.

DEPARTMENT OF NATURAL RESOURCES



November 29

Thomas E. Riley, P.E., Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Bridgeport, Nebraska. A copy of this Order was mailed on November 29, 2021, to the following:

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



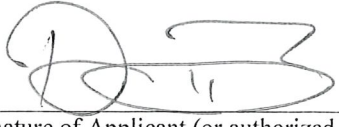
# PETITION



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
<p>1. Name and address of petitioner:</p> <p>The Central Nebraska Public Power and Irrigation District P.O. Box 740, 415 Lincoln Street Holdrege, NE 68949</p> <p>E-mail address: _____ Telephone No. ( 308 ) 995-8601</p>		<p>Modification No.: _____</p> <p>Date Filed: _____</p> <p>Time Filed: _____</p> <p>SW Appropriation No.: _____ (if applicable)</p> <p>Right ID No.: _____ (if applicable)</p> <p>Water Division: _____</p> <p>Receipt No.: _____</p> <p>Amount: _____</p>
<p>2. Check the situation that applies:</p> <p><input type="checkbox"/> Application Already Filed      Application Number: _____</p> <p><input checked="" type="checkbox"/> Application Not Filed (Enclose copy of proposed application)</p>		
<p>3. Description of proposed project:</p> <p>Using Environmental Account water for groundwater recharge on Cottonwood Ranch Complex, a Platte River Recovery Implementation Program (PRRIP) recharge project, intended for the benefit of fish and wildlife.</p>		
<p>4. The Proposed Project — (Check all that apply):</p> <p><input type="checkbox"/> 001.01 — Is a non-consumptive use</p> <p><input type="checkbox"/> 001.02 — Will replace (offset) any consumptive use (Attach Offset Plan)</p> <p><input type="checkbox"/> 001.03 — Is for possible unappropriated water (Attach Analysis)</p> <p><input checked="" type="checkbox"/> 001.04 — Existed before the stay or moratorium (Attach Proof)</p> <p><input type="checkbox"/> 001.05 — Addresses a public safety issue (Attach Explanation)</p> <p><input type="checkbox"/> 001.06 — Is a temporary use for public construction (&lt;10 AF)</p>		
<p>5. Other reason why a variance should be granted:</p> <p>The PRRIP desires to use EA water for groundwater recharge on the Cottonwood Ranch Complex. This application will provide a confirmed source of water that may be used for recharge operations should excess flows not be available for diversion.</p>		
<p>13-Oct-21      </p> <p>Date      Signature of Applicant (or authorized agent)</p>		

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



# APPLICATION

# REPORT



**REPORT TO ACCOMPANY**  
**THE**  
**APPLICATION FOR A TEMPORARY PERMIT**  
**TO APPROPRIATE ENVIRONMENTAL**  
**ACCOUNT WATER FOR GROUNDWATER**  
**RECHARGE ON THE COTTONWOOD RANCH**  
**COMPLEX**

**October 2021**

**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  
ENVIRONMENTAL ACCOUNT WATER FOR GROUNDWATER RECHARGE  
ON THE COTTONWOOD RANCH COMPLEX

**Project Description**

The Platte River Recovery Implementation Program (PRRIP) has a Water Action Plan that identifies groundwater recharge as one of thirteen water projects to be implemented during the PRRIP first increment to reduce shortages to the U.S. Fish and Wildlife Service's Target Flows (target flows) described in the PRRIP Document. The PRRIP operates the Cottonwood Ranch Complex (Cottonwood Ranch) as a groundwater recharge project and desires to use Environmental Account water from Lake McConaughy as a source of water for the groundwater recharge operations on Cottonwood Ranch.

The Applicant, CNPPID, requests a new temporary water use appropriation to divert Environmental Account (EA) water from Lake McConaughy, into the Supply Canal, into CNPPID's Phelps Canal and then into Cottonwood Ranch for the purpose of groundwater recharge. The Department has already granted permission to use excess flows for this project, but Central and the PRRIP wish to have access to a second source in case excess flows are not available. A Water Service Agreement between CNPPID and the PRRIP for Cottonwood Ranch Diversions is in Exhibit A.

**Temporary Application**

CNPPID seeks a temporary permit for the purpose of diverting Environmental Account water into the Phelps Canal and into Cottonwood Ranch to test infrastructure, specifically gate calibration and butterfly valve cavitation issues. The overall purpose will be for the benefit of Fish and Wildlife and reductions to shortages to target flows on the Platte River. This temporary permit request is for one year from the date that the request may be granted by the Nebraska Department of Natural Resources (Department).

**Source of Water**

This application will use Environmental Account water located in Kingsley Reservoir (also known as Lake McConaughy), Appropriation A-2374, as a water source. Appropriation A-2374 is permitted for irrigation, hydropower production and instream fish and wildlife uses.

A portion of Appropriation A-2374 is available for use under Appropriation A-17695, also referred to as the Lake McConaughy "Environmental Account" (EA). This application is requesting a new temporary use of the same source of water that is available in Lake McConaughy as Environmental Account water. This new groundwater recharge use of the EA water will be documented, treated and calculated in the same manner as the current EA water and will essentially decrease the amount of water available for Appropriation A-17695.

## **Water Transportation Facilities**

CNPPID requests that EA releases from Lake McConaughy under this temporary permit travel through CNPPID's and the Nebraska Public Power District's (NPPD) systems, the North Platte River and the Platte River, as described in A-17695, with one minor change at the end of CNPPID's system. Instead of the EA water returning to the Platte River at the Johnson No. 2 River Return (J2 Return), the EA water will be diverted into the Phelps Canal and into Cottonwood Ranch. A map showing the Phelps Canal and Cottonwood Ranch Complex is located in Exhibit B.

## **Testing Operations**

Environmental Account water will be diverted into the Phelps Canal and into the Cottonwood Ranch Complex through a pipeline from the Phelps Canal. It is anticipated that water will be diverted through pipeline at different rates to investigate the cavitation issues at the main butterfly valve at the project inlet structures and then diverted at rates needed to test the calibration of the gates within the project.

CNPPID diverts water through its Supply Canal year-round for hydropower production and additionally for irrigation during the irrigation season. Releasing EA water from Lake McConaughy and diverting that water into the Supply Canal and Phelps Canal for groundwater recharge only slightly modifies the operations associated with EA water within CNPPID's system. That portion of EA water released from Lake McConaughy under this temporary use appropriation for diversion into the canal and Cottonwood Ranch Complex would not return to the Platte River at the J2 Return, but instead be diverted into the Phelps Canal for use in Cottonwood Ranch Complex.

## **Quantity and Rate of Diversions**

A maximum flow of 200 cfs and 2,000 acre feet total shall be expected for diversions into Cottonwood Ranch in this temporary permit. Flows of up to 200 cfs will be diverted to fill the Phelps Canal sections and diversions through the pipeline will vary from low flows to up to 60 cfs to divert water into Cottonwood Ranch.

## **Effects to the Platte River and Existing Appropriations**

Since the permit request is only requesting a new temporary use for EA water and the source of EA water is storage out of Lake McConaughy, any diversions under this temporary application will not cause harm to any existing surface water appropriations or target flows.

## **Expected Benefits**

Expected benefits of these diversions will assist the PRRIP by providing groundwater recharge, which will help reduce the shortages to the U.S. Fish & Wildlife Service target flows and benefit fish and wildlife on Cottonwood Ranch Complex.



# EXHIBIT 1





APPLICATION FOR A TEMPORARY PERMIT TO  
APPROPRIATE ENVIRONMENTAL ACCOUNT WATER FOR  
GROUNDWATER RECHARGE ON THE COTTONWOOD  
RANCH COMPLEX  
NOVEMBER 2021



## EXHIBIT 2



## **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

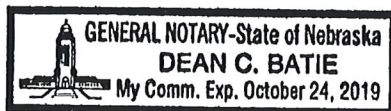


ATTEST:

By: *Julian M. Rosso*  
Printed Name: Julian M. Rosso  
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**

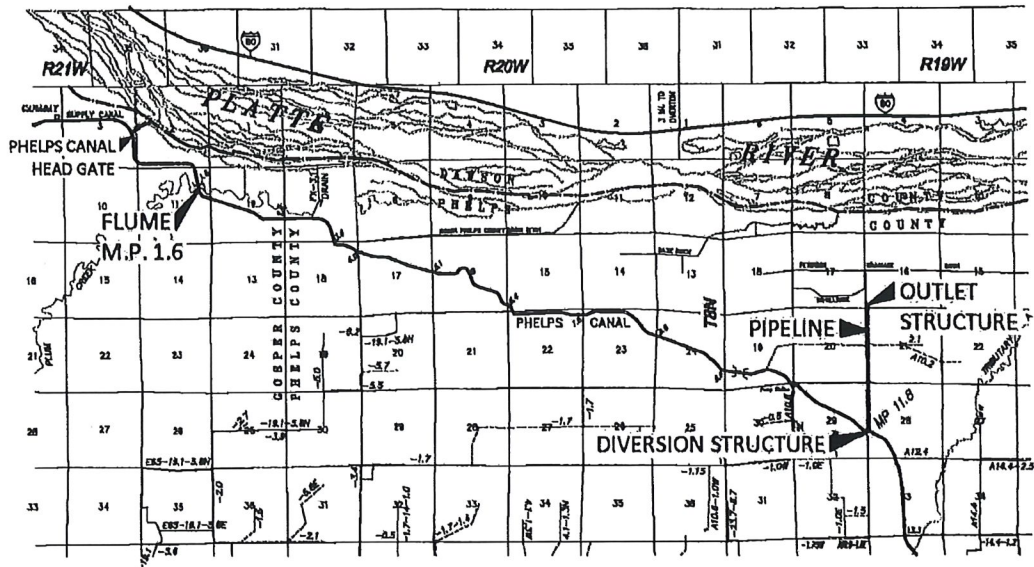


**EXHIBIT B**  
**Water Service Charges**

	<b>Total Amount Diverted</b> <b>Water Service Rate (\$/AF)</b>	
	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**






**LEGEND**

— PROPOSED PIPELINE

**Exhibit "C"**

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

**EXHIBIT D**

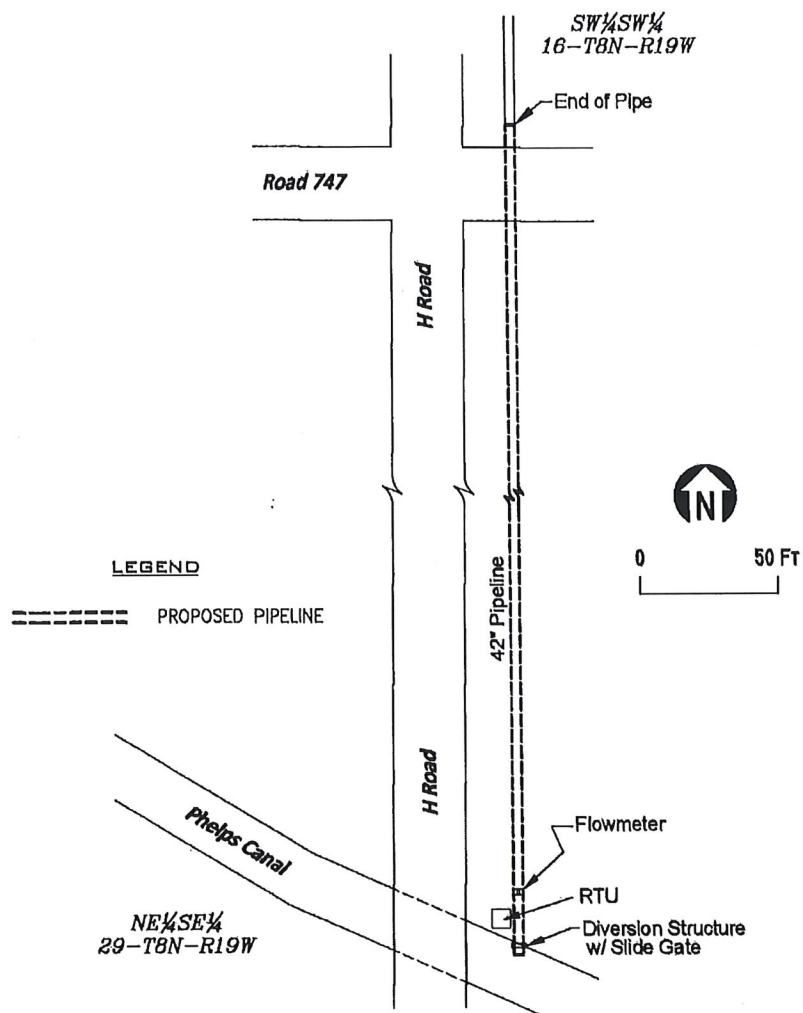



Exhibit "D"

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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	APPROVED
SUBMITTED BY DDK	BY _____
SCALE AS SHOWN	DRAWING
DATE 4/2/2018	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).

A-19560 CNPPID Temp RC Approval  
sw - 12012017 - 13272- ord

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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 Phelps 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 PRRIP, 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.

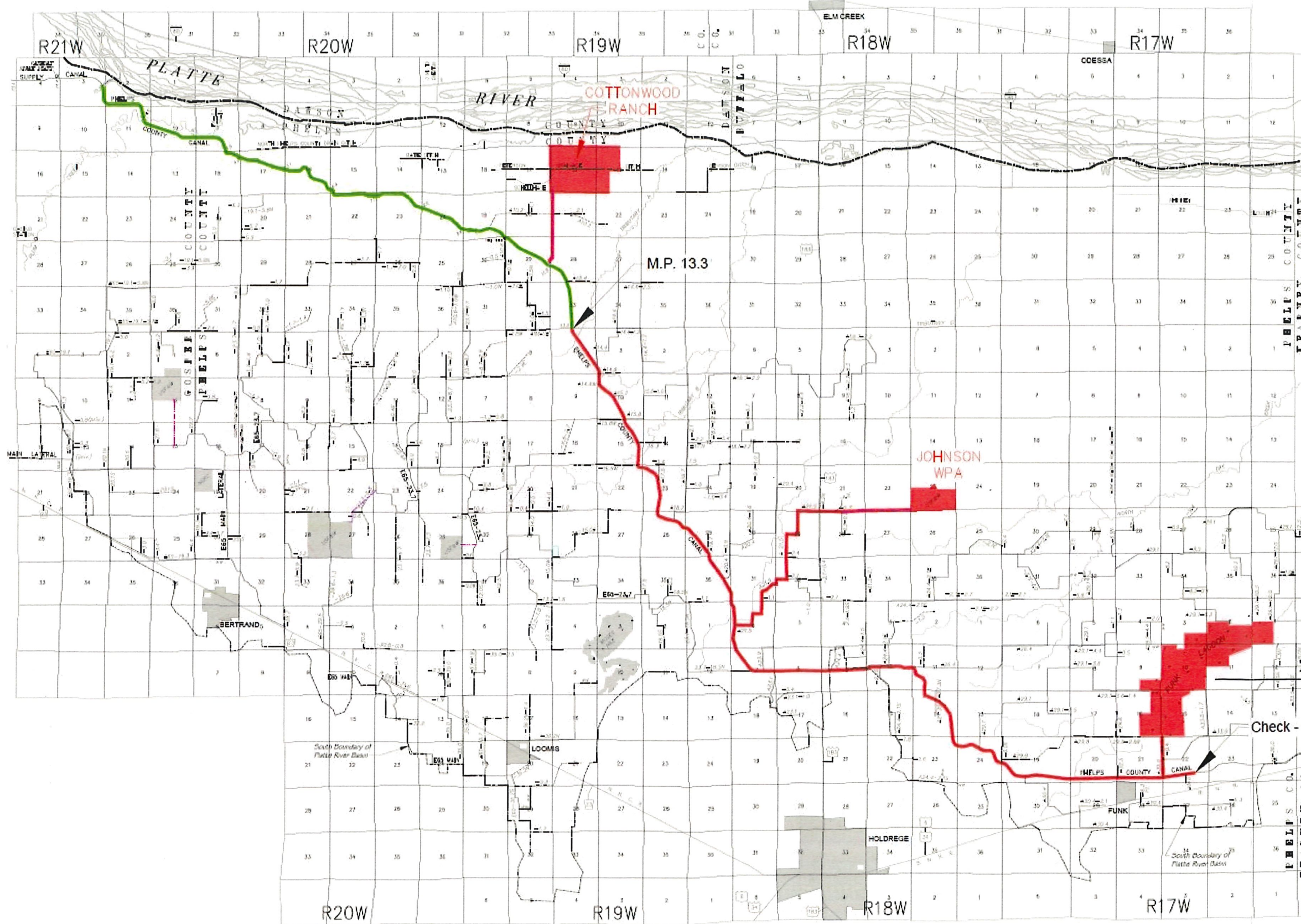
Ice conditions may limit or prohibit diversion of Excess Flows

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



# MAP 1





# LEGEND

- EXCESS FLOWS RECHARGE PHELPS HE-004 TO 13.3
- EXCESS FLOWS RECHARGE PHELPS 13.3 TO 34.2, COTTONWOOD RANCH, JOHNSON WPA AND FUNK LAKE

## Exhibit "B"

Check - M.P. 34.2

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<b>CENTRAL</b> Nebraska Public Power and Irrigation District Holdrege, Nebraska	
<b>PLATTE RIVER EXCESS FLOWS FOR RECHARGE          IN PHELPS CANAL VICINITY AND WPA'S          GOSPER &amp; PHELPS COUNTY, NEBRASKA</b>	
DRAWN BY: TMR	APPROVED BY:
SUBMITTED BY: CAS	DATE:
SCALE: 1" = 2.14 MI	DRAWING NO: X5FLOW_PHELPS CANAL
DATE: 6/7/2019	