

Summary
Scottsbluff Listening Session on Platte River Recovery and Implementation
Program

September 6, 2006, Gering Civic Center
(From notes taken by Ann Bleed and Jim Cook, DNR)

People present 250-300

Testimony

Mark Butler—U.S. Fish and Wildlife Service—without a Program, FWS will be charged with relying upon what they know about the species needs. That means that there will be no incremental approach and that water users subject to a federal nexus will have to come up with their share of the 29,000 acres of land needed and their share of the 417,000 acre feet of shortage to target flows.

John Lawson – Bureau of Reclamation—Consultation with the FWS will occur relative to the Federal dams on the North Platte River. The BuRec has 7 dams to provide water for over 400,000 acres, 75% of which are in Nebraska. He expects a major reduction in water supply following the consultation. Also, to the extent that costs are incurred for land impacts, etc., those costs would be reimbursable from the Bureau contractors, i.e., the irrigation districts who receive water from those federal dams. There would not be a federal cost share.

Brian Wolford – Farm Service Agency, USDA-- The counter cyclical payments to farmers are based on historic use and therefore will not be subject to ESA. CRP and CRIP may be available to provide water conservation tools.

Richard Vaughn – NRCS, USDA – Worked with the Fish and Wildlife Service on a model to address the consumptive use of conservation activities. Concluded there was very little impact on flows from NRCS conservation projects.

Don Kraus – The program is a good alternative because of what it provides:

- Can't change goals without unanimous consent of the Governance Committee
- Establishes a good neighbor policy for land management
- Taxes will be paid on land in the Program
- There is a fair share policy among the three states and no one state will make things worse for another
- Central and NPPD are contributing greater than 1/3 of the water and ¼ of the land required by the first increment of the Program
- Additional land will be acquired on a willing seller, willing lesser basis
- Program allows consideration of habitats that are alternative to riverine habitat

- Program includes adaptive management to test hypotheses on what the species need

Don Adams – Nebraskans First – Irrigation is the lifeblood of the state and the Program will adversely impact irrigation. The Program wants to drag us back to the predevelopment era. There are plenty of terns all over the country, the Pallid sturgeon was never an inhabitant of the Platte River, there is no longer a critical habitat on the Platte for plovers and less than 1% of the whooping cranes stop in the Central Platte. The endangered species are doing very well without the program. Given that the area is fully or overappropriated under LB 962, there is no way to get water for ESA without taking it from irrigators. The loss will be a \$265 - \$280 million hit to the area for the 417,000 acre feet that is lost. The Program represents extreme and excessive regulation. The Program will keep on taking and increase the control of the federal government over Nebraskans. The Fish and Wildlife Service will become the water masters of the Platte. There are other options to the Program.

Ron Cacek – North Platte NRD – the NRD supports the Program because the Program is important to the area. It is in the best interest of the valley for the Governor to sign the agreement. Without the agreement the lifeblood of the valley will be jeopardized. It is inconceivable that we will allow the lack of a Program to disrupt the system of return flows established in the valley. The Program provides 13 years of certainty. Without the Program there is no certainty. The NPNRD initiated talks with the Central Nebraska Public Power and Irrigation District to develop a drought management program.

Duane Hovorka Nebraska Wildlife Federation – the program will have a positive impact on the habitat and on business related to habitat. There will be some negative impacts on the fishery in Lake McConaughy because of the environmental account. The Nebraska Sportsman Club unanimously supports the program. The federation also collected more than 850 signatures at the State Fair in favor of the Program.

Kathi Swanson – North Platte Valley Water Users Council -family has ranch south of Box Butte Reservoir. Water is vital to Nebraska. There are two realities: The ESA is here to stay. In the Program, Nebraska has a role in the decision making and the Feds pay part of the bill. The Service is also bound by the agreement. If there was no agreement, the Service could mandate that we offset the full 417,000 acre feet of shortage to target flows, which is estimated by the University of Nebraska at Scottsbluff to cost \$28 million if we had to reduce irrigated acres to provide the water. The Program provides an insurance policy for 13 years. We want to have local control and be able to reach the goal without reducing irrigated acres.

Dennis Strauch – Manager, Pathfinder Irrigation District - With no Program there will be major impacts on the North Platte area above Lake McConaughy. The Bureau facilities provide 65% more water than Lake McConaughy – With no Program the North Platte area might have to provide 165,000 acre feet and 5000 acres of habitat. The cost of the habitat would be \$20 million. The cost of the water is uncertain. The loss of agricultural revenues would be \$18.2 million and there would be a \$13 million loss of agricultural

sales for seed, etc. The benefits of the Program include coverage for the ESA requirements, avoids some of the adverse impacts of regulation, the federal government will contribute \$157 million. The Program will provide a mechanism to develop research to better understand the biological system. Using a cooperative approach will go a long ways to avoiding litigation. (The power districts spent over \$40 million on legal fees to fight the ESA when renewing their FERC license.) Nebraska would have a seat at the table when decisions are made and there is assurance of equity among the states.

Hod Kosman - Platte Valley Cos, Landowners Council - the Program will be an agreement, not a compact, which makes a big difference. He has a big concern about the impact on the area if there is no program.

Jim Merrigan – I am an irrigator but I am also concerned about maintaining habitat for fish and wildlife. The ecosystem depends on return flows from the irrigation projects. The agreement should be signed.

Rawnda Pierce – Twin Cities Development - discussed the financial impact of not having the Program—would cause a significant loss in property tax valuations, which would in turn change the distribution of school aid under the state formula. Failure to sign the agreement could cause loss of 406 jobs.

Howard Olsen – Chair, Scottsbluff/Gering Chamber of Commerce - Water is extremely important to the area but the water supply itself is extremely fragile. Urged adoption of the Program. “Don’t make the Panhandle the endangered species.”

Owen Palmer – CEO 21st Century Equipment – employs 240 people whose jobs are dependent upon production agriculture. The key to the Program in the collaboration it provides. We need to collaborate with the states of Wyoming and Colorado.

John Maser – chair of NPNRD, irrigator and real estate agent – We understand regulation will be necessary if there are no incentives and we are willing to do what is needed. We don’t want the federal government to create another Klamath Falls situation in Nebraska or have Nebraska be like California, which lost half of its irrigation water. Support the Program.

Stan Walker – a key benefit of the Program is collaboration with the other states and the federal government. The cost of the Program will be shared - \$22 million from Colorado and \$6 million from Wyoming. And we won’t have to hire and pay lawyers, which is likely to happen because without the Program there is a greater likelihood of litigation. Urges signing the Program. Next farm legislation could have “river buster” provisions to deal with ESA issues if we don’t find other ways.

Steve Smith – Water Attorney - Of the 21 surface water irrigation districts in the valley above McConaughy, all but two have adopted resolutions supporting the Program. The two that haven’t have simply not yet met to pass the resolution. These districts irrigate

around 292,000 acres. Cost of litigation to resolve ESA issues will exceed the \$8M to \$11.5M estimated additional cost to the state for the Program.

(Note: Governor Heineman had to leave at this point--about 2:45pm, MDT--a fifteen minute break was held)

Robert Wilson – The University conducted a GIS survey of 350,000 acres and discovered that 5% are infested with Russian Olives and Salt Cedars. They increase the consumptive use of water by 1.5 billion.cubic feet? If these species are replaced by grass we could save 28,000 acre feet.

Gene Osborne – Rancher, Osborne Cattle – the deed to the family ranch was signed in 1888 gave me ownership of the water under my land. He is stunned by what he sees is a gradual take over of his property right to water by the government, first with the adoption of the American rule in 1830, then the Sporhase and the Bamford cases which gave the government the right control. We are like the boiled frog. The government is slowly taking control of our water and we aren't doing anything about it. Do not acquiesce to fear of the FWS.

John Heaston – from the Nature Conservancy – the Conservancy supports signing the agreement.

Mike Sarchet – a member of the Ninemile Creek Landowner Council and an irrigator. We should not react to the future with fear but should draw on the confidence that our forefathers had when they settled in Nebraska. We in Nebraska are confident people and believe we can find solutions. If we can stay in the game, we will find solutions that will benefit us and provide a heritage to future generations. Urged adoption of the Program.

Questions/other comments after formal comment period:

- Question from Hod Kosman--Doesn't LB962 allow regulation to achieve the statutory goals instead of rely just on incentives? A: yes
- Question to Mark Butler:
 1. What will happen in the second increment? A: It is not known what will happen with water in the second increment, but the environmental groups such as Audubon and the Nature Conservancy will be able to contribute land to make up the required 29,000 acres of habitat.
 - 2, How do you define success? A: There are quantitative measures delineated in the adaptive management plan that will be used to measure the success of the Program.

Don Adams – pointed out Table on 5-143 of the Environmental Impact Statement stating that the Program will or may cause jeopardy to the endangered species – in other words the Fish and Wildlife Service will continue to want more from Nebraska to comply with the ESA.

Bob Busch—Panhandle irrigator—Will recommend that the Governors Platte River Advisory Council support the Program. He's fearful of what will happen if there is no program. Thanked FWS for using good judgment in managing the EA in Lake McConaughy during the drought.