

Ann Diers

From: Ann Diers [adiers@dnr.ne.gov]
Sent: Tuesday, July 18, 2006 1:51 PM
To: Ann Bleed (ableed@dnr.state.ne.us)
Cc: Jim Cook (jcook@dnr.state.ne.us)
Subject: Draft Instream Flow Interlocal Agreement

Ann:

Attached is the draft of the Agreement for the Instream Flow group. I am copying this email to Jim Cook (since the group had suggested that he could be helpful in putting the Agreement together).

I drafted this using some of the format of the Pallid Sturgeon Interlocal Agreement, but taking the objectives from the list generated at our meeting on July 11th. I have put in bold and brackets additional questions that need to be answered for further drafting to occur.

My notes reflect that DNR agreed to draft and send the initial concept for this Agreement. Ron and Kent were going to discuss the concept with upstream NRDs. Russ Callan was going to discuss the concept with downstream NRDs. DNR agreed to discuss the concept with the municipalities. Brian Barels was going to contact the power entities. The expectation was stated that each entity should have a representative at the next meeting, which was scheduled for 10/3 at 1:30 in the NPPD Auditorium in Kearney (after the COHYST meeting which is scheduled for earlier in the day).

Ann

Ann D. Diers
Legal Counsel
Nebraska Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676
Phone: (402) 471-3931
Fax: (402) 471-2900
e-mail: adiers@dnr.state.ne.us

**INTERLOCAL COOPERATIVE AGREEMENT
INSTREAM FLOW STUDY
RELATING TO LOWER PLATTE RIVER BASIN**

This Agreement (“Agreement”) is made by and among the following parties: Central Platte Natural Resources District (“CPNRD”), Lower Loup Natural Resources District (“LLNRD”), Upper Loup Natural Resources District (“ULNRD”), Upper Elkhorn Natural Resources District (“UENRD”), Lower Elkhorn Natural Resources District (“LENRD”), Lower Platte North Natural Resources District (“LPNNRD”), Lower Platte South Natural Resources District (“LPSNRD”), Papio-Missouri Natural Resources District (“PMNRD”), Twin Platte Natural Resources District (“TPNRD”), Tri-Basin Natural Resources District (“TBNRD”), Upper Big Blue Natural Resources District (“UBBNRD”), Nebraska Public Power District (“NPPD”), Central Nebraska Public Power and Irrigation District (“CNPPID”), Loup Public Power District (“LPPD”), City of Fremont (“Fremont”), City of Kearney (“Kearney”), City of Lincoln (“Lincoln”), City of Omaha (“Omaha”), City of Grand Island (“Grand Island”), Nebraska Game and Parks Commission (“NGPC”), and Nebraska Department of Natural Resources (“NDNR”). Collectively, the parties to this Agreement may be referred to as the “Parties,” and individually as a “Party.”

The purposes of this Agreement are to provide a mechanism for the Parties to collaborate to determine the appropriate scope of a study concerning the needs of fish and wildlife species present in the Lower Platte, to provide funding for that study, and to provide for a specific time frame during which such collaboration and study may occur without the risk of legal action being instituted by any Party, or any Party recommending or supporting any changes in law concerning the current instream flow laws, Neb. Rev. Stat. §§ 46-2,107 through 46-2,119. Although this document sets forth a cooperative process, all signatories to this Agreement recognize that they each have statutory responsibilities that cannot be delegated, and that this Agreement does not and is not intended to abrogate any of their responsibilities.

The NDNR, pursuant to Neb. Rev. Stat. § 46-713, is charged with completing an annual evaluation and report on the state’s river basins. The NGPC holds certain instream flow appropriations that have the potential to affect the conclusions reached by the NDNR in its annual evaluation and report. The conclusions reached by the NDNR in such annual evaluations and reports have the potential to require natural resources districts to enter into a joint integrated management planning process with the NDNR, pursuant to Neb. Rev. Stat. § 46-715. This planning process requires the affected natural resources districts to consult with certain stakeholders, including municipalities and power and irrigation entities within such natural resources districts. **[Do we need NARD to be a non-party signatory to the Agreement for purposes of any agreement by it to submit an application to the Nebraska Environmental Trust Fund? That is what was done with the Pallid Sturgeon Study Agreement]**

In consideration of the mutual covenants expressed, the Parties agree as follows:

1. Authority: This Agreement is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 through 13-827 and shall be construed to be in conformity therewith.
2. Administration: **[How does the group want to deal with the issue of administration? For the Pallid Sturgeon Study Agreement, there was a Task Force of three members from NGPC, and one member from each other Party. Contracts and efforts were conducted with the approval of the Task Force, and 2/3 of the members constituted a quorum]**
3. Objectives: The Parties to this Agreement hereby adopt the following objectives:
 - a. Develop a scope, budget and schedule for the study of the water level needs of fish and wildlife species present in the Lower Platte **[This is my wording – how does the group want to describe? Do we need to add any further specification?]** This objective shall be referred to in this Agreement as the Developmental Work, and shall be completed within one year of the effective date of this Agreement, unless the time for completion of the Developmental Work is extended by agreement of the Parties pursuant to 2. **[I drafted a sample of a time frame that could be specified for the developmental work to be completed in, but this can be changed by the group. If changed, you will also need to draft corresponding changes in 3.h. and 5]**
 - b. Each Party hereby agrees to fund the Developmental Work described in 3.a. at the following level of participation:

| | |
|---------|--------|
| CPNRD | _____% |
| LLNRD | _____% |
| ULNRD | _____% |
| UENRD | _____% |
| LENRD | _____% |
| LPNNRD | _____% |
| LPSNRD | _____% |
| PMNRD | _____% |
| TPNRD | _____% |
| TBNRD | _____% |
| UBBNRD | _____% |
| NPPD | _____% |
| CNPPID | _____% |
| LPPD | _____% |
| Fremont | _____% |
| Kearney | _____% |

| | |
|--------------|--------|
| Lincoln | _____% |
| Omaha | _____% |
| Grand Island | _____% |
| NGPC | _____% |
| NDNR | _____% |
| <hr/> | <hr/> |
| Total | 100% |

- c. During the term of this Agreement, the Parties each agree that they will refrain from instituting or participating in any legal challenge to any instream flow permit. The Parties further agree that they will not engage in any attempts to repeal or revise the instream flow laws cited above during the term of this Agreement.
 - d. Following completion of the Developmental Work, the Parties will make a determination of whether to proceed with the study as scoped and budgeted.
 - e. A determination to proceed with the study shall automatically extend the term of this Agreement for the period of time scheduled for completion of the study.
 - f. In the event the Parties determine to proceed with the study, the Parties agree that they will fund the study at the same levels established in 3.b.
 - g. The agreements stated in 3.c. will be extended during the time scheduled for completion of any study undertaken pursuant to this Agreement.
 - h. In the event the Parties determine to not proceed with the study, this Agreement shall terminate effective on the later of one year from its effective date, or the end of the time scheduled for completion of the Developmental Work. Any funds remaining which have not been expended for the purposes of this Agreement shall be returned to the Parties following termination of the Agreement in proportion to the amounts contributed as established in 3.b.
4. Effective Date: this Agreement shall become effective upon execution by all Parties.
5. Term of Agreement: This Agreement shall be effective for an initial term ending on the later of one year from its effective date, or the end of the time scheduled for completion of the Developmental Work, provided, the term of this Agreement will be automatically extended for the period of time scheduled for completion of any study undertaken pursuant to this Agreement.

6. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall constitute one and the same instrument.

This Agreement is hereby approved and executed by the following parties on the dates shown below.

Central Platte Natural Resources District

Date

Lower Loup Natural Resources District

Date

Upper Loup Natural Resources District

Date

Upper Elkhorn Natural Resources District

Date

Lower Elkhorn Natural Resources District

Date

Lower Platte North Natural Resources District

Date

Lower Platte South Natural Resources District

Date

Papio-Missouri Natural Resources District

Date

Twin Platte Natural Resources District

Date

Tri-Basin Natural Resources District

Date

Upper Big Blue Natural Resources District

Date

Nebraska Public Power District

Date

Central Nebraska Public Power and Irrigation District

Date

Loup Public Power District

Date

City of Fremont

Date

City of Kearney

Date

City of Lincoln

Date

City of Omaha

Date

City of Grand Island

Date

Nebraska Game and Parks Commission

Date

Nebraska Department of Natural Resources

Date