

Ann Diers

From: Chad Smith [csmith@americanrivers.org]
Sent: Wednesday, January 25, 2006 8:53 AM
To: Ann Bleed; cpnrd@cpnrd.org; dkraus@cnppid.com; rex.amack@ngpc.ne.gov
Cc: Susan France; Ann Diers; fchavez@whoopingcrane.org; duanehovorka@alltel.net; don.gabelhouse@ngpc.ne.gov; larry.hutchinson@ngpc.ne.gov; kirk.nelson@ngpc.ne.gov
Subject: [DNR Spam Notice:] RE: Platte River instream flow diversion

Thanks for the comments, Ann. I do look forward to continued work with the instream flow subcommittee to come up with some creative solutions. I did find out recently that a couple of bills have been introduced in the Legislature that would impact the work of that group. I thought that wasn't going to happen, so we should have an interesting discussion next Friday in Kearney!

For those that have not read them, the two stories I referenced in my original e-mail are included below.

Chad Smith, Director
 Nebraska Field Office - American Rivers
 6512 Crooked Creek Drive
 Lincoln, NE 68516
 (402) 423-7930
 (402) 423-7931 (FAX)
 (402) 432-7950 (CELL)
csmith@americanrivers.org

ELWOOD'S FISH GET MORE WATER

Omaha World-Herald

January 25, 2006

By Larry Porter, World-Herald Bureau

LINCOLN - Elwood Reservoir's valued fish species, including walleye, muskies, wipers and spotted bass, began receiving water Tuesday that should ensure their survival through the remainder of the year.

Central Nebraska Public Power and Irrigation District officials received permission Monday night from the State Natural Resources Department to override the Platte River's instream flow appropriation and began the diversion process Tuesday morning.

Elwood, the state's hardest-hit reservoir by the prolonged drought, is currently 43 feet below full pool. It will receive a flow of 190 cubic feet per second through Feb. 15, which is expected to raise the level by 10 to 12 feet.

At this time of year, the Central Platte Natural Resources District owns the right to a flow in the river of 500 cubic feet per second from Lexington to Columbus. The Platte's daily flow last week averaged about 600 cfs. The diversion of 190 cfs into Elwood reduces the river's daily average flow below the appropriation, which required Central Platte NRD to waive its right to the water.

The instream flow of 500 cfs at this time of year is needed to keep alive the prey fish and invertebrates that will feed piping plovers and least terns - which are on the list of threatened and endangered species - when they return to nest along the river this spring.

If the water hadn't been diverted into Elwood, the reservoir's water level probably would have plunged to the point where its fish population would have died later this summer.

"It's a tough decision when you pit one wildlife decision over another," said Larry Hutchinson, a fisheries biologist with the Nebraska Game and Parks Commission.

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Chad Smith of Lincoln, director of the Nebraska field office for American Rivers, a conservation group, has misgivings about the diversion of water from the Platte into Elwood.

"I grew up in Lexington and have fished Elwood most of my life," Smith said. "I'm also a duck hunter on the river in that area. But the bottom line is that I'm concerned about the precedent being set. I'm worried that in the long term those types of requests will happen more frequently.

"From a precedent standpoint, I'm concerned that what little water is in the Platte for fish and wildlife can be so quickly traded around when push comes to shove. What does this mean for the long term when we need more water in Elwood and McConaughy? You start to wonder how secure those instream flows are."

Don Gablehouse, chief of the commission's fisheries division, said he hopes the decision does not set a precedent.

"I hope we don't make a habit of it," Gabelhouse said. "A lot of our people - and others - put a lot of effort into getting that instream flow appropriation. But I'd also hate to see the fish that are in Elwood go floating belly up. It still may happen, but it won't be because we didn't try."

Jeremie Kerkman, civil engineering supervisor for Central Nebraska Public Power and Irrigation District, said this seemed to be the most convenient time to suspend instream flow rights.

"It is our belief that the instream flow rights are of least value at this time before the spring migration," Kerkman said.

Elwood is a unique reservoir, Kerkman added, because it is managed strictly as a fishing lake. Recreational boating is illegal because of a speed limit of 5 mph.

"While this will mean less water running through Johnson Lake and through hydro plants that will result in less generation and less revenue," Kerkman said, "it will help keep the fish population in Elwood alive for at least another year and, hopefully, will outlast the drought.

"There are still some long-term concerns about the fishery at Elwood, but this will alleviate a lot of concerns for this year."

Beginning March 1, the Central Platte NRD's instream flow right increases from 500 cfs to 1,100 cfs to provide for sandhill crane roosting habitat. The appropriation increases to 1,300 cfs April 1 for whooping crane and sandhill crane needs. The commission also has an additional appropriation of 50 cfs from April 1 through April 14 for whooping crane needs.

From April 15 through May 3, Central Platte NRD owns an instream flow right of 1,500 cfs, which is primarily to serve the needs of whooping cranes.

DIVERSION TAKES WATER FROM PLATTE TO HELP ELWOOD FISHING

Lincoln Journal Star

January 25, 2006

By Joe Duggan

A first-of-its-kind water trade-off triggered by Nebraska's ongoing drought is dropping the Platte River to raise Elwood Reservoir.

On Tuesday morning, the state's largest irrigation district began diverting water from the river to the reservoir south of Lexington. The reservoir supports trophy muskies, walleye and wipers and is a popular destination for anglers.

State fisheries biologists supported the action to avoid almost certain loss of game fish in the drought-stricken reservoir this summer. But an advocate for the Platte River expressed concern that the action might one day be seen as bad precedent.

The water elevation in Elwood is about 43 feet below capacity, making boat access difficult and causing stress on fish. The plan by Central Nebraska Public Power and Irrigation District will raise the reservoir's level 11 feet by Feb. 15, when the diversion will end, said Tim Anderson, public relations manager for the district. The increase should allow boat access at the

lake and improve conditions for fish survival.

What makes the action unique is that the diverted water represents an instream flow that protects fish and wildlife in the Platte. Specifically, the instream flow was granted in 1990 to protect fish and insects that provide food for interior least terns and piping plovers.

The Central Platte Natural Resources District, which holds the instream flow right, agreed to the Elwood diversion. So did the state Department on Natural Resources.

Before signing off, however, the state Natural Resources department checked with the Nebraska Game and Parks Commission to see if increasing Elwood would have an adverse effect on fish and wildlife in the river, Director Ann Bleed said Tuesday.

"We talked with and got a letter from the Game and Parks Commission and that letter said it would be in the public interest to divert water into Elwood until Feb. 15," she said.

Still, the diversion raised questions among those concerned about fish and wildlife in the Platte. Chad Smith, who directs the Nebraska office of American Rivers, a national river conservation organization, said the case is a tough policy call. While the diversion won't cause "devastating ecological impact" on the river, Smith would oppose using instream flows to bail out other water interests during the drought.

"Those instream flow rights are our last, best chance to keep some water in the Platte, particularly in times like now when there isn't enough water to go around," he said.

The Platte's current flow is about 400 cubic feet per second. The Elwood plan will divert about 190 cfs.

Last week, an avian ecologist with the Platte River Whooping Crane Maintenance Trust said reducing flow will force waterfowl using the river to find other places to roost. In addition, the annual migration of 500,000 sandhills cranes will begin in the next couple of weeks.

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Subject: Re: Platte River instream flow diversion

Chad - thanks for the heads-up and your comments and your concerns that this diversion may further the perception that somehow instream flow rights are less significant and more easily traded away than irrigation or other water rights. The fact is that the Department has, even in this decision, not in any way treated instream flow rights as less significant and more easily traded than any other right.

If the right had been an irrigation right, we probably would not have been denying Elwood the right to divert unless the senior irrigator put a call on the river. In this case, we not only were not waiting for a call, but we asked the holder of the right to state in writing that they would allow the diversions and also sought input from the state's Game and Parks Commission, the state agency with the responsibility to protect fish and wildlife, to insure that such a call would not cause injury to the fish and wildlife depending on stream flows. The department will follow the recommendation of the Commission to allow diversions only until February 15. As your e-mail pointed out, these are stressful times for all water users. In sum, the Department did not undertake this decision lightly and hopefully set a precedent for seeking input from the Commission before making any decisions of this nature in the future.

Chad I also want to take this opportunity to thank you for your input on the instream flow subcommittee. Your thoughtful comments I am sure will help us find creative solutions for effectively managing instream flow permits.

Ann

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Sent: Tuesday, January 24, 2006 10:06 PM

Subject: Platte River instream flow diversion

Ann/Rex/Don/Ron:

Just thought I would give you a heads-up that in stories by Larry Porter in tomorrow's (January 25) *Omaha World-Herald* and by Joe Duggan in the *Lincoln Journal Star* I am quoted as expressing concern over the recent diversion of Central Platte NRD's Platte instream flow water into Elwood Reservoir. I thought I would informally send along some explanation since I have only had a chance to talk with Don about this for a short time.

I fish Elwood and duck hunt on the Platte in Dawson County, so from that standpoint I have mixed feelings. I don't see this short diversion at this time of year having a major biological impact on the Platte, though I know there are concerns about whether the flow diversion will disrupt waterfowl and early crane use of the river. I also know that Elwood storage is very low and that the fishery there, which is important for recreation and the local economy, is in dire straits. There is no question that these are times to think creatively, and you are all faced with tough policy choices.

However, my main concern is about what this means in the future for the CPNRD instream flow and the NGPC Platte instream flow, as well as any other instream flow rights that may be secured on the Platte or other rivers and streams in the future. I am concerned that this diversion may further the perception that somehow instream flow rights are less significant and more easily traded away than irrigation or other water rights, and that as we move forward with discussions about Platte River management, fully appropriated basins, etc. there will be a greater push to give up instream flow water for other uses, and ultimately do away with them entirely. I understand that people have concerns about the current instream flow rights and how they are administered, but that does not mean those rights have not been fairly and properly secured and that they aren't serving an important purpose. Hopefully, this one-time action won't snowball into a pattern.

I was not aware that the NGPC would be considering the request from CNPPID last week until after the fact, though I knew the plan was on the street for review. In the future, I hope that I, along with folks like Duane and Felipe, will be brought into the mix early if these kinds of actions are being contemplated again so that we can express our concerns at the front-end of the process and help kick around ideas that protect the instream flow rights but also solve the other problems in question.

Thanks for your consideration.

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