

VOLUME I

APPENDIX C

MANAGEMENT PLAN FOR LEAST TERN AND PIPING PLOVER NESTING ON THE  
SHORE OF LAKE McCONAUGHY

**MANAGEMENT PLAN  
FOR LEAST TERN AND PIPING PLOVER NESTING  
ON THE SHORE OF LAKE McCONAUGHY**

**INTRODUCTION**

On July 29, 1998, The Central Nebraska Public Power and Irrigation District (Central) was issued a license by the Federal Energy Regulatory Commission (FERC) to operate Project No. 1417 (Project). License Article 421 requires that Central have a FERC-approved plan to manage the land and shorelines of the Project. As part of this plan Central is to evaluate the need for and include measures as appropriate to address the protection of least tern (*Sternula antillarum*) and piping plover (*Charadrius melodus*) nesting sites at Lake McConaughy. Article 421 in part states:

*“The plan shall also include, at a minimum, an evaluation of the need for, and measures as appropriate to address: (a) protection of least tern and piping plover nesting sites at Lake McConaughy similar to programs existing at the time of license issuance, which include limited fencing to exclude livestock from nesting areas and public education efforts;...”*

Central’s *Land and Shoreline Management Plan (LSMP)* addresses that requirement with this separate *Management Plan for Least Tern and Piping Plover Nesting on the Shore of Lake McConaughy (Tern & Plover Plan)*. The Tern & Plover Plan identifies the measures to be undertaken by Central to protect piping plovers and least terns (collectively, the species) nesting at Lake McConaughy.

The Tern & Plover Plan details the nature and scope of Central’s activities under its FERC license. Because conditions vary from year to year, Central retains the flexibility to choose among management activities that are appropriate for that year, as identified in consultation with, and with the approval of, the U.S. Fish and Wildlife Service (USFWS) and the Nebraska Game and Parks Commission (NGPC) (collectively, the Agencies). Nothing in the Tern & Plover Plan prohibits Central from participating in habitat research efforts with the Agencies on Central’s land which could eventually lead to Central and the Agencies petitioning FERC to modify the Tern & Plover Plan.

**AGENCY REVIEW**

Annually, prior to each new nesting season, Central will consult with representatives of the USFWS and NGPC to evaluate the effectiveness of the management and monitoring activities utilized during the previous year. Based upon that evaluation and with the

concurrence of the Agencies, Central will develop an appropriate management and monitoring plan for the upcoming year.

## **HABITAT PROTECTION**

Central's LSMP and the Tern & Plover Plan seek to integrate the continuing widespread recreational use of Project lands and shorelines with protections for threatened piping plovers and endangered interior least terns (endangered species) that are seasonally present. As a primary protection tool, the LSMP identifies Resource Protection classification areas at Lake McConaughy that are known to have been used frequently in the past for nesting by piping plovers and least terns.

While it is understood that general recreational activities will continue as set forth in the LSMP, Central may, without notice to the public, restrict any or all activities on all or part of an area to protect threatened and endangered species or their habitat. If normally acceptable general recreational activities disturb the species in the area, Central will, after consultation with the appropriate Agencies, restrict access or activities as necessary to an area large enough to prevent disturbance.

Protection measures for the species and habitat along Central's shorelines are described below.

### **PRE-NESTING SEASON MEASURES**

Because the species do not use exactly the same place for nesting each year and because the width and the nature of the beaches at Lake McConaughy is quite ephemeral, it is neither prudent nor effective to initiate many protection measures until the species actually choose nest sites. However, there are areas where annual use by the species has been consistent and Central, after consultation with the Agencies, may fence out one or more larger areas (1 acre in size to 40 acres in size) in anticipation of species use.

Additionally, as described below, certain habitat measures may be undertaken under unusually high lake levels to provide alternative nesting habitat that would not otherwise be necessary. Under high water conditions, Central will maintain two or more restricted-access "beach" areas above elevation 3270 as potential nesting habitat.

Prior to the nesting season, access to these designated areas will be restricted using "psychological fencing" such as brightly colored twine or other identification and/or fencing materials agreed to by Central and the Agencies. Restricted areas will be posted with signs warning the public of endangered species use of the area and stating that access is prohibited.

## NEST SITE MANAGEMENT

### 1. Survey and Monitoring

Central personnel will survey the shore of Lake McConaughy on a weekly basis starting in mid-to late April and continue until all of the young least terns and piping plovers have fledged, typically around the first week in August. Least tern and piping plover nest sites will be identified, mapped, and then monitored on a regular schedule (frequency to be determined in consultation with the Agencies), until the chicks are fledged or are lost. This information will be provided to the Agencies as part of the annual monitoring report under Central's FERC license Article 423.

### 2. Nest-Site Protection

Variations in the levels and methods of protecting specific nest sites are expected in different locations and at different times because of the variable nature of the species nesting patterns and the wide variations in topography and recreational use in different areas of the Lake McConaughy shoreline. Central will apply the variations of the management strategy that are approved at the annual management planning meeting with the Agencies.

Access to identified nests and nesting areas will be restricted with "psychological fencing" or other types of identification and/or fencing materials agreed to by Central and the Agencies during the annual consultation process to identify the nest site to the public and/or to protect the site from intrusion. As necessary, buoys or other markers may be employed in the water to prevent boaters from entering an area frequented by the species. Typically, the area enclosed for an individual nest is expected to be approximately 200 square feet, but actual dimensions will be determined taking into account site characteristics, locations of neighboring nests, research requirements and experience. Restricted areas will be posted with signs warning the public of endangered species use of the area and stating that access is prohibited.

Various types of protective screens and/or cages, chemical deterrents, or other methods agreed upon by the Agencies during the annual consultation process may be used to protect eggs from predation.

Beyond the confines of the restricted-access area around nesting sites, beach areas adjacent to the restricted-access nesting areas will be signed to alert boaters and campers that endangered species may be in the area. Approaches to the beach in remote areas will be marked along the high banks and on fence posts to alert people that endangered species may be in the area or that use restrictions may be in force within the area. Additional or substitute warning signs and restrictions may be selected in consultation with the Agencies on a site-specific basis based on factors such as topography, accessibility, nesting patterns, anticipated recreational use of the area, the potential for human or animal disturbance, and experience.

In addition to protecting nest sites from access or disturbance, if the lake is rising, the elevation of each nest will be compared regularly to the projected maximum elevation of Lake McConaughy. If it appears the nest will be inundated by rising water levels prior to the projected hatching date of the eggs, the nest will be moved upslope to a higher elevation using the Knaggs-Britch Method<sup>1</sup>. Protective measures will be implemented to safeguard the nest in its new location.

## PUBLIC EDUCATION

Ultimately, the effectiveness of any plan to protect endangered species and their habitat depends upon public awareness and acceptance. To this end, Central will implement a number of educational programs to increase public awareness of piping plover and least tern use of Lake McConaughy.

**Signs:** Central will place large informational signs at boat ramps and beach access points explaining the natural history of the birds and showing pictures of both species. Additional signs will be used as described above to alert recreational users that endangered species may be present in an area, to warn people to keep out of an area, or to identify that certain activities are prohibited.

**Literature:** Central will publish fliers with information about both species and make those fliers available to the public free of charge. Fliers are distributed at the NGPC entrances to Lake McConaughy as well as at boat ramps and in boxes attached to the informational signs around the lake. The fliers include instructions on how to report the sighting of least terns and piping plovers, and how to report any disturbances or destruction of nests that the public may observe. The fliers also describe barriers (such as “psychological” fencing) and associated restrictions intended to protect the birds from human disturbance.

**Programs:** Central personnel familiar with the biology of the birds and the Tern & Plover Plan are available upon request to give public presentations. Additionally, Central may also periodically give programs at the Martin Bay nesting area.

## **REPORTING VIOLATIONS**

While the Tern & Plover Plan requires Central to take steps to provide warning and notice to the public, and to place restrictions on activities by members of the public where they could potentially harm the species, Central has no law enforcement jurisdiction to enforce these provisions of the Tern & Plover Plan. Duly authorized law enforcement agencies, including the Nebraska Game and Parks Commission that leases most of the beach area of Lake McConaughy where the piping plovers and least terns nest and the U.S. Fish and Wildlife Service, are relied upon to prosecute violations by the public of restrictions imposed under the Tern & Plover Plan to protect the species as part of their

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<sup>1</sup> Peyton, Mark M., A Method for Moving Piping Plover Nests on Reservoir Shorelines, Proceedings of the Platte River Basin Ecosystem Symposium, 28-30 (1997).

statutory obligations of the Endangered Species Act and/or the Nebraska Non-Game and Endangered Species Conservation Act. To facilitate such prosecution, Central's employees or its agents will take the following actions when they observe any violation of the restrictions imposed by the Tern & Plover Plan or any other action or activity they believe may be in violation of either the Endangered Species Act or the Nebraska Non-game and Endangered Species Conservation Act.

Central personnel will:

1. Attempt to get the license numbers and descriptions of vehicles or persons involved.
2. Notify the local Nebraska Game and Parks Commission Conservation Officer and the area Special Agent for the United States Fish and Wildlife Service as quickly as possible.
3. Notify Central's Kingsley Dam Foreman who in turn will notify Central's Senior District Biologist or Environmental Resources Manager or their designee who will notify, by phone, the U.S. Fish and Wildlife Office in Grand Island and the Nebraska Game and Parks Commission Office in Lincoln.
4. Document the incident and prepare a report.
5. Provide the Agencies with a copy of their report.
6. Cooperate with the Agencies in any action or proceeding which may result from Central's report.

Central will annually arrange a meeting with law enforcement representatives from USFWS and NGPC to discuss procedures related to enforcement actions.

## **REPORTING**

Every three years Central will prepare a summary report on activities under the Tern & Plover Plan pursuant to Article 421. This report will be prepared in consultation with the USFWS and NGPC.

As a practical matter, the Agency endangered species permitting processes require annual reporting to those agencies on permitted activities and any associated species monitoring. A copy of the annual endangered species report will be provided to FERC as attachments to the annual monitoring report required as part of Central's obligations under Article 423 of its FERC license.

The Central Nebraska Public Power and Irrigation District  
FERC Project No. 1417  
License Article 421

**MANAGEMENT PLAN  
FOR LEAST TERN AND PIPING PLOVER NESTING  
ON THE SHORE OF LAKE McCONAUGHY**

**AGENCY COMMENT LETTERS**

Central undertook consultations with both the U.S. Fish and Wildlife Service (USFWS) and the Nebraska Game and Parks Commission (NGPC) (collectively, the Agencies) throughout the review and update process of the Tern & Plover Plan. A December 29, 2009 Draft Tern & Plover Plan was provided to the Agencies for their formal review and comments. Copies of the USFWS February 1, 2010 and NGPC February 16, 2010 comment letters are attached. The NGPC comment letter did not recommend any changes to the Plan. The USFWS comment letter recommended a number of changes to improve the clarity of the Tern & Plover Plan, all of which were incorporated into the Tern & Plover Plan. Additionally, the USFWS comment letter raised concerns regarding the possibility of changes to the Tern & Plover Plan to allow ATV or OHV use on the beaches of Lake McConaughy. Consequently, no such changes to the Tern & Plover Plan were made.



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services  
Nebraska Field Office  
203 West Second Street  
Grand Island, Nebraska 68801

February 1, 2010

**FWS-NE: 2010-263**

Mr. Mike Drain  
Central Nebraska Public Power  
and Irrigation District  
415 Lincoln Street  
Holdrege, NE 68949-0740

**RE: Request for Comment on the December 29, 2009, Management Plan for Least Tern and Piping Plover Nesting on the Shore of Lake McConaughy (i.e., Appendix C, Land and Shoreline Management Plan)**

Dear Mr. Drain:

This responds to your email request to provide comments on the Management Plan for Least Tern and Piping Plover Nesting on the Shore of Lake McConaughy (Tern and Plover Plan) by February 1, 2010. Please note that the following comments apply to the subject document dated December 29, 2009, only. These comments are primarily editorial in scope, and we appreciate your agency's close coordination with the Service regarding annual needs of the least terns and piping plovers nesting at Lake McConaughy.

During 2009, Service representative(s) were present at more than one meeting (at various agencies) where the possibility of opening beaches at Lake McConaughy to off-road vehicular traffic (i.e., OHVs or ATVs) was discussed. The Service's position is, and always has been, that such ATV use is not compatible with tern and plover nesting. Section 9 of the Endangered Species Act (ESA) prohibits the harassment and harm to nesting terns and plovers ("take") that would likely result from ATV use on beaches where terns and plovers are nesting. In addition, an increased potential for take from ATVs is a factor that could trigger consultation with the Federal Energy Regulatory Commission (FERC) under the ESA's section 7. Therefore, if language in the Tern and Plover Plan changes to allow such ATV or OHV use, the Service will consult with you and, if appropriate, with FERC.

We have the following specific comments regarding the December 29, 2009 draft of the Tern and Plover Management Plan.

**Page 1, second paragraph:** The clarity of the last sentence of this paragraph can be improved by changing the text to "The Tern and Plover Plan identifies... to protect piping plovers and least terns (collectively, the species) nesting at Lake McConaughy." [Note: while measures are taken to protect nesting areas, the purpose of that protection is to reduce the potential for "take" which applies only at the level of individual birds].

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**Page 1, last paragraph:** Improve clarity of the first two sentences by changing to:

“The Tern and Plover Plan details the nature and scope of Central’s activities under its FERC license. Because conditions vary from year to year, Central retains the flexibility to choose among management activities that are appropriate for that year, as identified in consultation with and with the approval of the U.S. Fish and Wildlife Service (USFWS) and the Nebraska Game and Parks Commission (NGPC) (collectively, the Agencies).”

Also, the third sentence in this paragraph, beginning “Central also...” is redundant and should be removed.

**Page 2, first paragraph:** Consider splitting this sentence in two by placing a period after “...the previous year...”, followed by “Based upon that evaluation and with the concurrence of the Agencies, Central will develop an appropriate....”

**Page 2, second paragraph under “Pre-Nesting Season Measures”:** Blocking off a nesting area in the parking lot before nesting least terns or piping plovers are found there can be counter-productive to your public education efforts. Either remove the last sentence of this paragraph or, at minimum, remove the term “potential” and add “...if and when the species nest there...” to the end of the sentence.

**Page 3, Survey and Monitoring, second sentence:** Change to “Least tern and piping plover nest sites...on a regular schedule (frequency to be determined in consultation with the Agencies), until the chicks are fledged or lost.” [Note: chicks can’t be both fledged and lost].

**Page 3, Nest Site Protection, first paragraph:** The second sentence in this paragraph is redundant and should be removed.

**Page 3, Nest Site Protection, third paragraph:** Change the “and” in “and other methods” to “or”.

**Page 5, top paragraph:** The second “to prosecute violations” (see fourth line) is redundant and should be removed.

Thank you for the opportunity to comment on the subject Tern and Plover Plan. Again, we appreciate your close coordination with us, and commend you on your efforts to protect least terns and piping plovers on the beaches of Lake McConaughy.

Sincerely,



Nell McPhillips  
Acting Field Supervisor

cc: Mike Fritz, NGPC



## Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370

Phone: 402-471-0641/ Fax: 402-471-5528 / [www.OutdoorNebraska.org](http://www.OutdoorNebraska.org)

Michael A. Drain, P.E.  
Natural Resources Manager  
Central Nebraska Public Power & Irrigation District  
415 Lincoln Street  
Holdrege NE, 68949

February 16, 2010

RE: Comments on Central Nebraska Public Power and Irrigation District's Management Plan for Least Tern and Piping Plover Nesting on the Shore of Lake McConaughy, Appendix C of the Land and Shoreline Management Plan for the Kingsley Dam: FERC Project No. 1417

Dear Mr. Drain:

The Nebraska Game and Parks Commission (Commission) has reviewed Central Nebraska Public Power and Irrigation District's (Central) Management Plan for Least Tern and Piping Plover Nesting on the Shore of Lake McConaughy (Plan). The Management Plan for Least Tern and Piping Plover is being revised in conjunction with the 5-year review of the Land and Shoreline Management Plan (LSMP) for the Kingsley Dam. This is pursuant to the requirements of Central's Federal Energy Regulatory Commission (FERC) license for Project No. 1417 - Articles 421. The Management Plan for Least Tern and Piping Plover is Appendix C of the LSMP.

During the development of the Plan the Commission has communicated with Central concerning specific aspects of the Plan. The Commission has reviewed the final Plan and has no comments regarding changes to the Plan. We would like to comment regarding the design of the Plan.

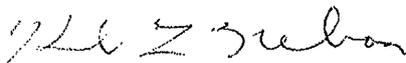
The Commission and the U.S. Fish and Wildlife Service (Service) work with Central on an annual basis to address least tern and piping plover nesting and recreational issues at Lake McConaughy. The focus of the annual coordination meetings and management activities is to protect least tern and piping plover nesting and brood rearing while still providing for recreational access to the shoreline.

An important approach of the previous Plan was a framework that identifies a range of management activities that can be applied during the multi-year period of the Plan. Within this framework, there are specific provisions that provide for an annual review and consultation process with the Commission and the Service, and the ability to tailor specific management actions based on prevailing and anticipated conditions. This flexibility is crucial to being able to

adapt management strategies to changing lake and shoreline conditions. It is significant that the new Plan has maintained the framework that allows for this adaptive management approach.

The Nebraska Game and Parks Commission appreciates the opportunity to review and comment on the Management Plan for Least Tern and Piping Plover Nesting on the Shore of Lake McConaughy. The NGPC looks forward to continuing to work with Central on the management of the endangered and threatened species through the provisions of the Plan. If you have questions concerning our comments or require additional information regarding our recommendations please feel free to contact myself at 402-471-5539 or Mike Fritz at 402-471-5419.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kirk Nelson".

Kirk Nelson  
Assistant Director  
Nebraska Game and Parks Commission

Cc: Martha Tacha, USFWS