

# 84 FERC ¶ 61,079

## UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
Vicky A. Bailey, William L. Massey,  
Linda Breathitt, and Curt Hébert, Jr.

Central Nebraska Public Power            )  
and Irrigation District                    )  
  )

Project No. 1417-001

### ORDER ISSUING NEW LICENSE

(Issued July 29, 1998)

On June 21, 1984, the Central Nebraska Public Power and Irrigation District (Central) filed an application under Part I of the Federal Power Act (FPA) for a new license to continue to operate and maintain the existing 105.9 megawatt (MW) Kingsley Dam Project, located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper Counties in south-central Nebraska. <sup>1/</sup> The original license for this project expired on June 30, 1987. Since that time, Central has operated the project under an annual license.

Concurrently with this order, we are issuing an Order Approving Offer of Settlement and Issuance of New Licenses (Master Order), which discusses issues common to this project and Nebraska Public Power District's Project No. 1835. That order is incorporated by reference herein. This order pertains to the Kingsley Dam Project.

#### PROJECT DESCRIPTION

Project No. 1417, the Kingsley Dam Project, consists of dams, reservoirs, canals, and powerplants. The 3-mile long Kingsley Dam, on the North Platte River, impounds Lake McConaughy, which has a surface area of 30,500 acres and a

<sup>1/</sup> The project is required to be licensed pursuant to Section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), because it is located on the North Platte and Platte Rivers, which are Commerce Clause streams tributary to the navigable Missouri River; it was constructed after 1935; and it affects the interests of interstate commerce because of its interconnection with the interstate electrical grid. The Commission originally licensed the project based on its potential to affect the navigable capacity of the Missouri River. See Federal Power Commission 18th Annual Report at 47-48 (1937).

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maximum allowable storage capacity of 1,790,000 acre-feet. Kingsley Hydro, a 51.9-MW single-turbine hydroelectric plant, abuts Kingsley Dam and discharges to Lake Ogallalla. The Central (or Tri-County) Diversion Dam, located 50 miles downstream of Kingsley Dam at the confluence of the North Platte and South Platte rivers, diverts Platte River flow into the 75-mile-long Supply Canal, which incorporates 27 dams and impoundments and three 18-MW hydroelectric powerplants (Jeffrey, Johnson No. 1, and Johnson No. 2).

The Kingsley Hydro Plant contains one 51,900-kW turbine and one 59,470-kW generator, with an installed capacity of 51,900 kW. The Jeffrey Hydro Plant contains two 9,750-kW turbines and two 9,000-kW generators, with a installed capacity of 18,000 kW. The Johnson No. 1 Hydro plant contains two 9,750-kW turbines and two 9,000-kW generators, with an installed capacity of 18,000 kW. The Johnson No. 2 Hydro plant contains one 18,750-kW turbine and one 18,000-kW generator, with an installed capacity of 18,000 kW. The total installed capacity of the project is 105,900 kW.

#### WATER QUALITY CERTIFICATION

The Nebraska Department of Environmental Conservation issued water quality certification for Project No. 1417 on August 30, 1988, with three conditions. Pursuant to Section 401(d) of the Clean Water Act, these conditions are included in the license.

#### RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

The U.S. Department of the Interior (Interior) and the Nebraska Game and Parks Commission submitted fish and wildlife recommendations pursuant to Section 10(j) of the FPA. As explained in the Master Order, these parties subsequently filed an Offer of Settlement that modified and effectively withdrew those recommendations. This license is in accordance with our approval of the Offer of Settlement.

#### ENDANGERED AND THREATENED SPECIES

As explained in the Master Order, the Offer of Settlement includes the reasonable and prudent alternative for protection of endangered and threatened species that the U.S. Fish and Wildlife Service specified in its Final Biological Opinion.

#### CULTURAL RESOURCES

The license requires Central to implement the provisions of the Programmatic Agreement, executed on July 17, 1998, by Central, the Commission, the Nebraska State Historic Preservation Officer, and the Advisory Council on Historic Preservation.

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## APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA, we have evaluated Central's record as a licensee with respect to the following: (1) consumption efficiency improvement program; (2) compliance history and ability to comply with the new license; (3) safe management, operation, and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6) transmission services; (7) cost effectiveness of plans; and (8) actions affecting the public.

## 1. Consumption Efficiency Improvement Program

Section 10(a)(2)(C) of the FPA 2/ requires the Commission to consider for license applicants primarily engaged in the generation or sale of electric power, an applicant's programs to improve the efficiency of electricity consumption. Central will sell all of the project power to Nebraska Public Power District for distribution to end-use customers. Since Central will not be responsible for distributing the project power in the retail market, its conservation efforts are not a consideration here.

## 2. Compliance History and Ability to Comply with a New License

We reviewed Central's license application and its record of compliance with the existing license. We find that Central has complied in good faith with all articles, terms, and conditions of its current license. As a result of our review, we believe Central can satisfy the conditions of a new license.

## 3. Safe Management, Operation, and Maintenance

Central has a comprehensive inspection and maintenance program to maintain safety and monitor the operation of project works. This program is reviewed periodically and adjusted when necessary to meet operational and safety needs.

A permanent crew is stationed at Kingsley Dam to operate and visually check Kingsley Dam hydraulic structures and perform minor repair work when necessary. The diversion dam of the Platte River and all sections of the supply canal with parallel roads are visually checked daily. Potential safety and operational concerns, including any observed settlement, seepage, erosion or cracking, are immediately reported. The Jeffrey Hydro, Johnson Nos. 1 and 2 turbine/generator units are inspected semi-annually, and all necessary maintenance is done as required.

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2/ 16 U.S.C. § 803(a)(2)(C).

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In addition to Central's own inspection and maintenance program, the project structures are inspected annually by the Commission's regional staff and inspected every five years by an independent consultant under the Commission's Part 12 inspection program.

We conclude that Central will be able to manage, operate, and maintain the project in a safe manner.

#### 4. Ability to Provide Efficient and Reliable Electric Service

We reviewed Central's plans and its ability to operate and maintain the project to provide efficient and reliable electric service.

Central has concluded that the Kingsley Project is developed to its optimal capacity. The project is reasonably developed and operated and fundamental changes or redevelopment are not economical. Central proposes no new construction of capacity or fundamental changes in operation, but will continue to consider the potential for improvements at the projects if appropriate or justified.

Central is proposing to make refinements to the operation of the project to protect and enhance the area's natural resources. Central continually upgrades, maintains and improves the project through various programs and refinements. These keep project operation reliable and efficient.

The project power is sold to Nebraska Public Power District to provide reliable, reasonably priced electricity to NPPD's customers.

We conclude that Central has been operating the project efficiently within the constraints of the existing license and will continue to provide efficient and reliable electric service in the future.

#### 5. Need for Power

Central sells all of the project power to Nebraska Public Power District. A full discussion of NPPD's loads and resource requirements is included in Section 1.4.3 of the Final Environmental Impact Statement. The Kingsley Project is operated in close coordination with Project No. 1835 to provide for NPPD's growing needs for generation resources. NPPD's need for energy is growing at a rate of 1.47 percent annually, while its needs for summer and winter peak generating capacity are growing, respectively, at 1.26 percent and 1.54 percent annually.

Considering the extended periods of time during which NPPD's customers have benefitted from the hydropower output of the

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Kingsley Project together with NPPD's growth rate projections, we conclude that the project will contribute to the short-term and long-term power needs of the region.

#### 6. Transmission Services

We find that licensing the project will have no significant effect on the existing or planned transmission system.

#### 7. Cost Effectiveness

Central has no plans for making other significant project changes, except those periodically required to ensure the project's safety. Based on the license application and past practice, we conclude that Central's plans for continued operation of the project will be achieved in a cost-effective manner.

#### COMPREHENSIVE DEVELOPMENT

Sections 4(e) and 10(a)(1) of the FPA require the Commission, in acting on applications for a license, to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgement will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

The Final EIS analyzed the effects associated with the issuance of a new license for the Kingsley Dam Project with the measures included in the Settlement Agreement which we adopt, as discussed in the Master Order. We conclude that the various measures adopted herein will provide the best overall balance of the multitude of developmental and environmental resources in the river basin, which are affected by the project.

In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for the beneficial public purposes pursuant to Section 10(a)(1) of the FPA, the Commission considers a number of public interest factors, including the economic benefits of the project power.

Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in Mead Corporation,

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Publishing Paper Division, 3/ the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power, with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. 4/ The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

In making its decision, the Commission has considered the project's power benefits as it was previously licensed and with the mitigation and enhancement measures set forth in the settlement agreement and proposed for the new license.

Under the terms and conditions of the original license, the project would cost about \$12,903,000 annually and would produce about 374.4 gigawatt-hours of energy annually, having a total power value of about 31 mills/kWh or about \$11,600,000 annually. Therefore, under the conditions of the original license, the project would cost about \$1,303,000 more or about 11.2 percent more than the current value of the power.

For the new license, the parties to the Settlement Agreement propose numerous operational changes and environmental enhancement measures, which we adopt. These operational changes and enhancement measures will increase the project's annual cost and reduce the annual value of the project's power by a combined total of about \$1,049,000 annually. Therefore, under the conditions we are including in this license, the project will cost about \$2,352,000 more or about 20 percent more than the current value of the power. 5/

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3/ 72 FERC ¶ 61,027 (1995).

4/ Future inflation is assumed to be zero, the annual cost of money and discount rate is assumed to be 8 percent, and the present value and levelized cost calculations are based on the first 30 years of license term.

5/ The value of the project's power output is based on a new combined-cycle combustion turbine powerplant fueled with natural gas, which represents the most economical type of new generating capacity that would be added in the region. The power values used in the analyses are \$109 per kilowatt per year for capacity and 16 mills per kilowatt-hour for energy. The project begins to be credited with capacity value in the year 2004, in keeping with the load/resource analysis provided by NPPD. Capacity impacts are limited to the Kingsley powerplant, where creditable capacity is

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The design of this project is consistent with engineering standards governing dam safety. The project will be safe if operated and maintained in accordance with the requirements of this license.

Based on our review of the agency and public comments and our evaluation of the environmental and economic effects of the proposed project and its alternatives, pursuant to Section 10(a)(1), we find that the Kingsley Dam Project, with the adopted protection and enhancement measures, will be best adapted to the comprehensive development of the Platte River for all beneficial public uses.

#### LICENSE TERM

Section 15 of the FPA specifies that any new license issued shall be for a term that we determine to be in the public interest, but not less than 30 years or more than 50 years. Our policy establishes 30-year terms for those projects that propose little or no redevelopment, new construction, new capacity or enhancement; 40-year terms for those projects that propose a moderate amount of redevelopment, new construction, new capacity or enhancement; and 50-year terms for those projects that propose extensive redevelopment, new construction, new capacity or enhancement. <sup>6/</sup>

Central Nebraska is not proposing redevelopment of the project. This license does require numerous environmental enhancements and operating restrictions, which have a combined cost equivalent to about 9 percent of the total current value of the project power. We feel this is a moderate level of environmental enhancement which warrants extending the license an additional 10 years. Therefore we are issuing this license for a term of 40 years.

#### The Commission orders:

(A) This license is issued to The Central Nebraska Public Power and Irrigation District (licensee) for a period of 40 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Kingsley Dam Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

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directly related to the lowest end-of-month Lake McConaughy content.

<sup>6/</sup> See Montana Power Company, 56 F.P.C. 2008 (1976).

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(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary as shown on Exhibit G:

Exhibit	FERC Drawing Number	Showing
G: 1	1417-123	Location Map and Sheet Listing
G: 2-41	1417-124 to 1417-163	Kingsley Dam and Lake McConaughy
G: 42-56	1417-164 to 1417-178	Supply Canal Plan Map - Jeffrey Section
G: 57-80	1417-179 to 1417-202	Supply Canal Plan Map - Johnson Section
G: 81-103	1417-203 to 1417-225	Supply Canal Section Plat's - Jeffrey Section
G: 104-14	1417-226 to 1417-264	Supply Canal Section Plats - Johnson Section

(2) Project works associated with three major elements: (a) a storage dam (Kingsley); (b) a diversion dam; and (c) a supply canal.

The Kingsley Dam consists of: (1) a 3-mile-long, 163-foot-high hydraulic earthfill dam and dike; (2) a 5,720 cfs capacity gated outlet tower; (3) a 54,000 cfs gated morning glory spillway; (4) a 475-foot-wide, 50,000 cfs capacity emergency spillway; (5) a 30,500-acre reservoir having a gross storage capacity of 1,790,000 acre-feet at normal maximum surface elevation of 3265.0 feet m.s.l.; (6) a 19-foot diameter, 685-foot-long reinforced concrete penstock; (7) a powerhouse (Kingsley Hydro) adjacent to the dam on the right abutment housing a vertical shaft turbine-generator unit with a rated nameplate capacity of 51.9 MW; (8) a 400-foot-long stilling basin; (9) all but the eastern arm of a 640-acre lake (Lake Ogallalla) immediately downstream of the dam formed as a result of materials excavation for dam construction; (10) a 4.1-mile-long, 115 kV overhead transmission line; and (11) appurtenant facilities.

The Diversion Dam consists of: (1) a 342-foot-long radial gate section; (2) a 371-foot-long reinforced concrete ogee section; (3) a 161-foot-long radial gate section; (4) a 3,738



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foot-long north dike; (5) a 10,700-foot-long south dike; and (6) appurtenant facilities.

The Supply Canal consists of two sections, the Jeffery Section and the Johnson Section. The Jeffery Section consists of: (1) a 195-foot-long headgate structure perpendicular to the Diversion Dam on the right abutment; (2) a 2,170 cfs capacity, 26.9-mile-long canal with (a) three reinforced concrete radial gate check structures, (b) nine compacted earth-fill dams and associated impoundments integral to the canal, and (c) four siphonic spillways at canyon areas subject to heavy runoff; (3) a 1,034-foot-long, 70-foot-high compacted earth-fill dam with an adjacent 226-foot-long, compacted earth-fill dike; (4) a 575-acre regulating reservoir having a gross storage capacity of 11,500 acre-feet at normal maximum surface elevation of 2758.0 feet m.s.l.; (5) a 700-foot-long concrete lined inlet canal; (6) two 12-foot diameter, 360-foot-long penstocks; (7) a powerhouse (Jeffery Hydro) containing two vertical shaft turbine-generator units with a combined nameplate capacity of 18 MW; (8) a double 13.5-foot by 30-foot radial gate structure; (9) a 8,691-foot-long return canal; and (10) appurtenant facilities.

The Johnson Section consists of: (1) a 37.6-mile-long, 2,170 cfs capacity canal with (a) five reinforced concrete radial gate structures, (b) twelve compacted earth-fill dams and associated impoundments integral to the canal; and (c) four siphonic spillways at canyon areas subject to heavy runoff; (2) a 4,985-foot-long, 47-foot-high compacted earth-fill dam with (a) an adjacent 3,350-foot-long west dike and (b) an adjacent 12,233-foot-long east dike; (3) a 2,500-acre regulating reservoir having a gross storage capacity of 52,200 acre-feet at normal maximum surface elevation of 2619.0 feet m.s.l.; (4) a 6,495-foot-long forebay canal; (5) two 12-foot diameter, 358-foot-long penstocks; (6) a powerhouse (Johnson No. 1 Hydro) containing two vertical shaft turbine-generator units with a combined nameplate capacity of 18 MW; (7) a 5.7-mile-long canal between Johnson No. 1 Hydro and Johnson No. 2 Hydro with four compacted earth-fill dams and associated impoundments integral to the canal; (8) a 1,054-foot-long, 14-foot-diameter steel penstock connecting to a 30-foot-diameter, 46-foot-high surge tank; (9) a powerhouse (Johnson No. 2 Hydro) containing a single vertical shaft turbine-generator unit with a combined nameplate capacity of 18 MW; (10) a 1,009-foot-long tailrace with a double 13.5 foot by 30-foot radial gate structure; (11) all electrical facilities necessary to transform and transmit all of the project power to the interconnected power system, including (a) for Kingsley Hydro, all transformation equipment and 4.1 miles of 115-kV overhead transmission line from Kingsley Powerhouse to an interconnection at the Nebraska Public Power District Substation; (b) for Jeffrey Hydro, all electrical equipment transforming the hydropower up to 66.4 kV and 115 kV for supplying the interconnected power system beginning at the 66.4-kV and 115-kV buses in the Jeffrey

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Substation; (c) for Johnson No. 1 Hydro, all electrical equipment transforming the hydropower up to 66.4 kV and 115 kV for supplying the interconnected power system beginning at the 66.4-kV and 115-kV buses in the Johnson No. 1 Substation; (d) for Johnson No. 2 Hydro, all electrical equipment transforming the hydropower up to 66.4 kV and 115 kV for supplying the interconnected power system beginning at the 66.4-kV and 115-kV buses in the Johnson No. 2 Substation; and (12) other appurtenant facilities.

The project works generally described above are more specifically described and shown in Exhibits A and F of the license application. These exhibits are described below:

Exhibit A: Pages 1-24 describing all of the project works and the existing mechanical, electrical and transmission equipment, filed June 28, 1984.

Exhibit F: Filed June 28, 1984, including drawings:

Drawing:	FERC Drawing Number	Showing
F: 1	1417-1	Location Map and Sheet Listing
F: 2-10	1417-2 to 1417-10	Kingsley Dam and Lake McConaughy
F: 11-21	1417-11 to 1417-21	Kingsley Hydroelectric Plant
F: 22-39	1417-22 to 1417-39	Diversion Dam
F: 40-73	1417-40 to 1417-73	General Design Drawings Supply Canal - Jeffrey Section
F: 74-122	1417-74 to 1417-122	General Design Drawings Supply Canal Johnson Section

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

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(C) Exhibits A, F and G of the license application, which have been found to substantially conform to our regulations, are hereby approved and made part of the license.

(D) Exhibit X, An Environmental Account for Storage Reservoirs on the Platte River System in Nebraska, dated July 1, 1997, is approved and made part of the license effective October 7, 1999. Revisions to Exhibit X filed by the Licensee with the approval of the licensee for Project No. 1835 and the Governance Committee for the Platte River Recovery Implementation Program or for the Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska shall be deemed accepted, and the license shall be so amended 30 days after filing, unless the Commission within that 30 days orders the opening of a proceeding on the revisions with the following parties: the licensee for Project No. 1835, the Department of the Interior, the Nebraska Game and Parks Commission, the State of Colorado, the State of Nebraska, the State of Wyoming, the Nebraska Water Users, Inc., the National Audubon Society, the Platte River Whooping Crane Critical Habitat Maintenance Trust, the Nebraska Wildlife Federation, the Sierra Club, and the American Rivers.

(E) License articles which refer to the "Cooperative Agreement," the "Program" or the "Governance Committee" mean respectively the "Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitat Along the Central Platte River, Nebraska," signed July 1, 1997, by the Secretary of the Interior and the Governors of Colorado, Nebraska and Wyoming; any Platte River Recovery Implementation Program developed under that agreement; and the governing board directing the implementation of either. These documents are not made part of this license.

(F) This license is subject to the articles set forth in Form L-3 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States" and the following additional articles:

Article 201. The Licensee shall pay the United States the following annual charge, effective as of the first day of the month in which this license is issued, for the purposes of reimbursing the United States for the costs of administering Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 105,900 kilowatts.

Article 202. Within 45 days of the issuance of this license, the licensee shall file an original set and two complete duplicate sets of aperture cards of the approved exhibit

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drawings. The set of originals must be reproduced on silver or gelatin 35 mm microfilm. The duplicate sets shall be copies of the originals made on diazo-type microfilm. All microfilm must be mounted on type D (3-1/4" x 7-3/8") aperture cards.

Prior to microfilming, the Commission Drawing Number shall be shown in the margin below the title block of the approved drawing. After mounting, the Commission Drawing Number must be typed on the upper right corner of each aperture card. Additionally, the Project Number, Commission Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of issuance of this license must be typed on the upper left corner of each aperture card.

The original and one duplicate set of aperture cards shall be filed with the Secretary of the Commission, ATTN: OHL/Division of Licensing and Compliance. The remaining duplicate set of aperture cards shall be filed with Commission's Chicago Regional Office.

Article 203. If the Licensee's project was directly benefitted by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this license.

## **SPECIFIC CONDITIONS**

### **WATER**

#### **Contributing and storing water in an Environmental Account**

Article 400. Effective October 1, 1999, and consistent with Exhibit X, at the end of each month from October through April, the Licensee shall contribute a volume of water equal to 10% of that month's Storable Natural Inflows into Lake McConaughy (as defined by section II.B of Exhibit X) to an Environmental Account, except in any year that Article 401 provides for contributing a different amount, with total contributions not to exceed 100,000 acre-feet in any October through April period. The Licensee shall store in Lake McConaughy the contribution described above, any Environmental Account contents carried over from a previous year, and any Environmental Account contributions made by Wyoming, Colorado, Nebraska or Conservation Activities as defined in Exhibit X and pursuant to Article 402, 403 and/or 415 below, up to a total quantity of water in the Environmental Account of 200,000 acre-feet, with the contents of the

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Environmental Account in Lake McConaughy to be adjusted up or down to 100,000 acre-feet upon reservoir fill to regulatory capacity, irrespective of the quantity of water released earlier in the water year or of the 100,000 acre-feet limit on the Licensee's contribution. The quantity of water provided or stored shall be subject to the adjustments, losses, limitations and conditions of section II of Exhibit X.

Article 401. In the event that the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement are not adequately completed and the situation cannot be remedied through the Cooperative Agreement's Governance Committee or by the Governors and Secretary of the Interior), for the first three full October 1 to September 30 water years after such event, the Licensee shall use the method below to determine the contribution of water to the Environmental Account in lieu of a contribution equal to 10% of monthly Storable Natural Inflows from October through April called for in Article 400. All other provisions of Article 400 remain in effect during the three water year period, and in subsequent water years, the Environmental Account contribution by the Licensee which is defined in Article 400 will again apply.

The Licensee, together with the licensee of Project No. 1835, shall, on or about the first October 1 of the three water year period, make a prediction, using the best available data, of what Lake McConaughy storage will be at the end of the following May. If the prediction is that such storage will be 1.2 million acre-feet (maf) or greater, at the end of each month from October through April of that water year the Licensee shall contribute a quantity of water equal to 8% of the monthly Storable Natural Inflows into Lake McConaughy to the Environmental Account. If the actual end-of-May Lake McConaughy storage is 1.2 maf or greater in that year, the Licensee shall continue to contribute a quantity of water equal to 8% of the Storable Natural Inflows from October through April for the remainder of the three water year period, and no further predictions or adjustments will be made pursuant to this article until the three water year period has expired. If the actual end-of-May Lake McConaughy storage is in fact less than 1.2 maf, the Licensee shall (1) retroactively adjust the contribution to the Environmental Account for that water year to a quantity of water equal to 10% of the Storable Natural Inflows to Lake McConaughy from October through April of such water year; (2) adjust assigned storage losses to reflect the adjustment in Environmental Account contents; and (3) on or about the subsequent October 1, shall repeat the process described in this paragraph for the subsequent water year in the three water year period.

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If the prediction is that end-of-May storage will be less than 1.2 maf, the Licensee shall contribute water to the Environmental Account in that water year as specified in Article 400. If the actual end-of-May storage is also less than 1.2 maf, the Licensee shall repeat the process described in the above paragraph for the subsequent water year in the three water year period. If the actual end-of-May Lake McConaughy storage is in fact 1.2 maf or greater, the Licensee shall: (1) retroactively adjust the contribution to the Environmental Account to a quantity of water equal to 8% of the Storable Natural Inflows to Lake McConaughy from October through April; (2) adjust assigned storage losses to reflect the adjustment in Environmental Account contents; and (3) continue to contribute quantities equal to 8% of the Storable Natural Inflows from October through April for the remainder of the three water year period. No further predictions or adjustments will be made pursuant to this article until the three water year period has expired. If the Environmental Account Manager has already used water in excess of the 8% contribution when retroactive adjustment occurs, the excess water used shall be deducted from the following water year's Environmental Account contribution.

Article 402. The Licensee, in coordination with the Governance Committee or its designees, shall develop methods to estimate the amount of any Net Controllable Conserved Water (as defined in the Cooperative Agreement) which is attributable to conservation projects counting toward fulfilling the Licensee's obligations under the National Wildlife Federation agreement in settlement of water rights disputes, filed with the Commission by Central on June 25, 1992, in Appendix 2 to the "Comments of the Central Nebraska Public Power and Irrigation District on the Draft Environmental Impact Statement for Project Nos. 1417 and 1835," Volume 1. Within twenty-four months of license issuance, the Licensee shall file a report identifying such conservation projects, describing its methodology and stating the results of its estimates of Net Controllable Conserved Water with the Commission. The Licensee shall allow a minimum of 30 days for the Governance Committee to comment and to make recommendations on the methodology and results before filing them with the Commission. The Licensee shall include with its filing documentation of such coordination including copies of the Governance Committee's comments and recommendations. Further, the Licensee shall identify in its filing how the comments or recommendations are accommodated. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes in methodology. Upon Commission approval, the Licensee shall use the estimates made according to the approved method or methods as described below. If, after a Program is implemented, the Licensee and Governance Committee agree to revisions in the

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methodology in use, the Licensee shall file the revised methodology and results with the Commission within 30 days and credit the Environmental Account with water consistent with the revised methodology. If the Commission initiates a proceeding to reopen the license based upon concerns of the adequacy of the Program's revised methodology, the following shall be parties: the Licensee, the licensee for Project No. 1835, the Department of the Interior, the Nebraska Game and Parks Commission, the State of Colorado, the State of Wyoming, the State of Nebraska, the Nebraska Water Users, Inc., the Platte River Critical Habitat Maintenance Trust, the National Audubon Society, the Sierra Club, American Rivers, and the Nebraska Wildlife Federation.

To the extent that some projects counting toward fulfilling the National Wildlife Federation settlement were partially funded by U.S. Bureau of Reclamation matching funds, on October 1 of each year after completing the estimate of the Net Controllable Conserved Water attributable to the U.S. Bureau of Reclamation funding, Central shall assign the quantity of Net Controllable Conserved Water attributable to such funding to the Environmental Account, and shall treat such water as a contribution from Conservation Activities as defined in and pursuant to section II.B.4 of Exhibit X. Pending development of such an estimate, effective the October 1, 1999, and each October 1 thereafter until the estimate is available, the Licensee shall assign to the Environmental Account 2,000 acre-feet of water, and shall treat such water as a contribution from Conservation Activities as defined in and pursuant to section II.B.4 of Exhibit X.

Upon implementation of a Program, the Licensee shall offer to the Program a quantity of water equal to the estimated Net Controllable Conserved Water achieved by conservation counted toward fulfilling the Licensee's obligations under the National Wildlife Federation agreement but not funded by the U.S. Bureau of Reclamation, and shall assign that quantity of water to the Environmental Account, provided that (1) the Program gives the Licensee credit toward any obligations it undertakes on behalf of Nebraska under the Program, or (2) the Program purchases the water at a price equal to the average cost in 1997 dollars accrued by the Licensee and/or its irrigation customers, as appropriate, in achieving that conservation. If the Program fails (terminates or expires, a signatory withdraws from the Program or Program activities are not adequately completed or milestones are not met and the Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), the Licensee will continue to assign to the Environmental Account a quantity of water equal to any estimated net controllable conserved water purchased by the Program or other Program participants.

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Article 403. Effective October 1, 1999, with the concurrence of the Nebraska Department of Water Resources as to the amount, the Licensee shall pass through or store water in the Environmental Account from upstream re-regulation projects or water conservation/supply projects approved by the Governance Committee as part of a Program, provided, however, that (1) if storage is sought in the Licensee's system, space is available in the Environmental Account for such water, and if such water is attributable to Colorado, storage procedures have been developed by the Licensee, Colorado, and the licensee for Project No. 1835 and approved by the Governance Committee; (2) such water is the result of management and operation of the upstream project, and is not included in the flow characteristics of the North Platte, South Platte or Platte Rivers which are available under conditions existing as of the signing of the Cooperative Agreement, as such characteristics are defined by the Governance Committee of the Cooperative Agreement; and (3) if such water is derived from a water conservation/supply project, it is net quantifiable conserved water and an operational agreement has been reached.

Consistent with Exhibit X, for so long as there is a Program, the Licensee shall store or pass through water pursuant to this article in quantities determined under accounting systems developed by the Governance Committee in cooperation with Nebraska Department of Water Resources and the State Engineer of Colorado or Wyoming as appropriate, provided, however, nothing in this provision shall preclude the Licensee from contesting that determination using dispute resolution proceedings developed as part of the Governance Committee's accounting system, and nothing in this provision shall be deemed as requiring the Licensee to violate state law or Nebraska Department of Water Resources regulations. The quantity of water stored shall be subject to the adjustments, losses, limitations and conditions of section II of Exhibit X. Storage and pass through of water shall be subject to section III.A.7 of Exhibit X permitting temporary suspension of operational rules if events occur which prevent operations in the manner prescribed.

If the Program fails (terminates or expires, a signatory withdraws from the Program or Program activities are not adequately completed or milestones are not met and the Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), the Licensee shall continue to pass through or store water in the Environmental Account from Program-approved upstream sources subject to the definitions and limitations described above, provided that they continue to be operated in the manner approved through the Program and, in the case of water to be stored in Lake McConaughy, that the entity providing the water modifies or enters into contracts as



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necessary for the Licensee to store the water and to receive a reasonable fee.

### **Managing the Environmental Account**

Article 404. By October 1, 1999, and consistent with Exhibit X and Article 408, the Licensee shall execute a contract with the U.S. Fish and Wildlife Service approved by the Commission as part of the Administrative Plan adopted pursuant to Article 408, and granting an Environmental Account Manager designated by the U.S. Fish and Wildlife Service the authority to request releases of water from the Environmental Account in Lake McConaughy. Within 30 days of execution the Licensee shall file a copy of that contract with the Commission. The Licensee shall notify the Commission in writing of the name, address, and phone number of the person designated as the Environmental Account Manager pursuant to Exhibit X within 30 days of his or her designation.

Effective October 1, 1999, consistent with Exhibit X, the Licensee shall release water from the Environmental Account upon a request of the Environmental Account Manager made according to the terms of his or her contract, including, to the extent reflected in Exhibit X, returning Environmental Account water to the river at the Jeffrey Return rather than transporting Environmental Account water through the canal system. Such releases shall be subject to the rules for Environmental Account operations, losses, limitations and conditions of section II of Exhibit X, including temporary reduction or suspension of releases if events occur which limit or prevent Environmental Account releases. The Licensee shall file with the Commission a copy of each annual operating plan for the Environmental Account developed by the Environmental Account Manager within 30 days of receipt of that plan from the Environmental Account Manager. If the Commission initiates a proceeding to reopen this license based upon concerns of the adequacy of the Environmental Account Manager's plans to achieve Endangered Species Act goals, the following shall be parties: the Licensee, the licensee for Project No. 1835, the Department of the Interior, the Nebraska Game and Parks Commission, the State of Colorado, the State of Nebraska, the State of Wyoming, the Nebraska Water Users Inc., the Platte River Critical Habitat Maintenance Trust, the National Audubon Society, Audubon Society, the Sierra Club, American Rivers, and the Nebraska Wildlife Federation.

### **Operating Rules**

Article 405. Effective October 1, 1999, the Licensee shall operate Project No. 1417 in accordance with, and otherwise comply with, the operating rules set forth in section III of Exhibit X, including passing through or releasing waters from Lake McConaughy as needed to supplement river flows and river gains to

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provide at least the lowest operational flows described in Exhibit X section III, without taking into account and in addition to any releases being made from the Environmental Account. Such actions shall be subject to the rules for project operations, limitations and conditions of section III of Exhibit X, including temporary suspension of operational rules if events occur which prevent operations in the manner prescribed. The Licensee shall not exercise its minimal system reregulating capacities to store operational diversions except as necessary to accommodate (1) system operational requirements; (2) normal reservoir refilling of Elwood Reservoir; (3) adjusting levels or draining and refilling for system maintenance; or (4) emergencies or contingencies.

The operational flow requirements of this article are defined by the compliance measurement provisions of section III.G of Exhibit X, as such parameters are determined in accordance with the Nebraska Department of Water Resources regulations and state law, and are subject to the other limitations and conditions of section III of Exhibit X.

Article 406. In the event that the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement are not adequately completed and the situation cannot be remedied through the Cooperative Agreement's Governance Committee or by the Governors and Secretary of the Interior), for the first three full October 1 to September 30 water years thereafter, the Licensee shall provide flows at Overton, Nebraska, during the months of June, July, August and September of 600 cubic-feet-per-second (cfs) if the previous end-of-month storage in Lake McConaughy is greater than or equal to 1.4 maf, and of 400 cfs if the previous end-of-month storage in Lake McConaughy is greater than or equal to 1.2 maf and less than 1.4 maf; provided, however, that Environmental Account water shall not be used to provide such base flows. The Licensee shall, to the extent feasible, transport water intended for such base flows through the project works of Project No. 1417 to the J-2 Return.

The Licensee will plan for relatively steady day-to-day flows throughout each month, but as variability is expected, these base flow requirements are on a monthly average basis based on measurements at Overton, Nebraska, using current gauge readings with no retroactive application for recalibrated measurements, and subject to section III.A.7. of Exhibit X permitting temporary suspension of operational rules if events occur which prevent operations in the manner prescribed.

Article 407. If the Licensee diverts Environmental Account water or water from upstream sources specified in Article 403 at its Central Diversion Dam, the Licensee shall return to the

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Platte River any such water diverted less the transportation losses the Nebraska Department of Water Resources estimates would have occurred had the water been routed through the river instead of through the Licensee's canal system. Unless requested by the Environmental Account Manager to do so, the Licensee shall not exercise its limited system reregulating capabilities to store Environmental Account releases. Any actual losses associated with transportation through the Licensee's canal system in excess of the Nebraska Department of Water Resources estimate of losses associated with transportation through the river shall be replaced and returned to the river by the Licensee out of its own water supply.

If the Licensee, the licensee of Project No. 1835, and the Department of the Interior, in consultation with the Nebraska Department of Water Resources, reach agreement on a methodology for calculating transportation losses for Project No. 1417 canal system, and calculated transportation losses are less than river losses calculated by the Nebraska Department of Water Resources, the Licensee shall return to the river the Environmental Account water and/or water from upstream sources of water in the quantity diverted less the calculated canal loss. The Licensee shall file with the Commission any agreement on a canal transportation loss calculation methodology within 30 days of reaching such agreement.

The requirement to return flows shall be defined consistent with Nebraska state law and regulation. Unless the Environmental Account Manager has requested reregulation in the canal system, the mean daily discharge at the Jeffrey and/or the Johnson Hydro No. 2 Return, as appropriate, shall at least equal the diverted Environmental Account or passed through flows (as calculated by the Nebraska Department of Water Resources), for whatever is the corresponding day (given the Nebraska Department of Water Resources's determination of travel time), less applicable losses for transportation to the point of discharge from the Licensee's system. The requirement to return flows pursuant to this article is subject to section III.A.7 of Exhibit X which provides for temporary suspension of operating rules if events occur which prevent operation in the manner prescribed.

Article 408. Within nine months of license issuance, the Licensee, in coordination with the licensee for Project No. 1835, the U.S. Fish and Wildlife Service and the Governance Committee, shall file an Administrative Plan for managing water commitments. The Plan shall include a communications protocol which includes: coordination of Licensee and Project No. 1835 operations with the Environmental Account Manager and upstream water projects through a Reservoir Coordination Committee and an Environmental Account Committee as required by Exhibit X; providing operations plans and predictions of reservoir fill and inflows as required by Exhibit X and Articles 410 and 411; communications of requests

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from the Environmental Account Manager for releases from the Environmental Account under Article 404, for Pulse Flow Shaping under Article 410, or for June flows under Article 411; a contract between the Licensee and the Environmental Account Manager which is consistent with these communications requirements; and provisions to add procedures for working with upstream Program reregulation projects and operating agreements with the owners of Program water conservation/water supply projects which are consistent with the communications protocol.

The Administrative Plan shall also include accounting and record-keeping procedures which shall confirm the Licensee has: assigned water to the Environmental Account pursuant to Articles 400, 401, 402, and 403 consistent with state law and Exhibit X; passed through water pursuant to Article 403 consistent with state law and Exhibit X; released water as requested by the Environmental Account Manager pursuant to Articles 404, 410 and 411 and consistent with the Administrative Plan's communications protocols; complied with the operating rules pursuant to Articles 405 and 406; returned environmental flows to the river consistent with Article 407; and complied with the Administrative Plan's communications protocol. The record-keeping procedures will identify which river gauges are monitored to verify compliance and records will include data from those gauges.

The Licensee shall allow a minimum of 30 days for the coordinating parties to comment and to make recommendations on the Administrative Plan before filing it with the Commission. The Licensee shall include with its filing documentation of such coordination including copies of the comments and recommendations. Further, the Licensee shall identify how the comments and recommendations are accommodated. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information.

The Commission reserves the right to make changes in the Administrative Plan. Upon Commission approval, the Licensee shall implement the Plan. Revisions to the Plan filed by the Licensee with the concurrence of the licensee for Project No. 1835, the U.S. Fish and Wildlife Service, and the Governance Committee shall be deemed accepted 30 days after filing unless the Commission orders otherwise.

### **Water Rights**

Article 409. The Licensee shall, within 30 days of the issuance date of this license, file an application with the Nebraska Department of Water Resources for storage use water rights to make releases for instream use for fish and wildlife purposes. The application shall be prepared in consultation with the licensee of Project No. 1835, the U.S. Fish and Wildlife Service, the Nebraska Game and Parks Commission, the State of

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Colorado, the State of Wyoming, the Nebraska Water Users, the Platte River Critical Habitat Maintenance Trust, the National Audubon Society, the Sierra Club, the American Rivers, and the Nebraska Wildlife Federation.

The Licensee will thereafter use its best efforts to secure approval of the application within a reasonable period of time and, when granted, maintain such storage use water rights. If the State of Nebraska issues the water rights sought to implement Exhibit X prior to September 1, 1999, the Licensee shall meet with the licensee for Project No. 1835 and the Environmental Account Manager to determine, with the advice of the Environmental Account Committee and Reservoir Coordinating Committee established as set forth in Exhibit X, what portions of Exhibit X can be implemented given the timing within the October 1 to September 30 water year.

Upon filing of the storage use water right application, the Licensee shall consult with the parties listed above to determine what additional water rights, if any, may be needed to protect the instream use of base flows provided pursuant to Article 406 in the event the Cooperative Agreement fails, and shall prepare a water rights application based on that consultation. Unless all of the consulted parties agree in writing that it is more appropriate to wait or that an application is not needed, the Licensee shall file the second water rights application with the Nebraska Department of Water Resources within 90 days of license issuance, and thereafter use its best efforts to secure approval of the application within a reasonable period of time and, when granted, maintain such water rights. If the Nebraska Department of Water Resources rejects such application, the Licensee shall meet with the consulted parties to determine what steps to take to secure any needed flow protection.

#### **Pulse Flow Enhancement**

Article 410. Effective October 1, 1998, and in every October 1 through September 30 water year thereafter except those when Article 411 is in effect, when reservoir fill and spill are predicted by the Licensee and the licensee for Project No. 1835, the Licensee shall not make or agree to any plans to release water from Lake McConaughy beyond the capacity of their canals and/or the canals of customers they serve to divert except in coordination with the Environmental Account Manager to provide for Pulse Flow Shaping as described below.

The Licensee, together with the licensee for Project No. 1835, shall review available data at least monthly from January to May to assess and, if appropriate, to revise their joint annual water plans as new information becomes available regarding existing and anticipated hydrologic conditions, including inflows into Lake McConaughy.

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When the Licensee and the licensee for Project No. 1835 predict that (i) reservoir fill (reaching or exceeding Commission regulatory capacity) will occur during a water year, or (ii) the reservoir will fill to 1.5 maf by March 31, the Licensee will notify the Environmental Account Manager, and will provide a representative to the Environmental Account and Reservoir Coordinating Committees to advise the Environmental Account Manager in preparing a Pulse Flow Shaping Plan to manage water that would otherwise be released in a controlled manner in excess of canal capacities. The Licensee shall file with the Commission a copy of any Pulse Flow Shaping Plan developed within 30 days of receipt of that plan from the Environmental Account Manager. The Flow Shaping Plan is based on prediction, and it is understood that an early prediction that the reservoir will fill may prove incorrect, in which case there is no spill or evacuation for the Environmental Account Manager to manage under the Pulse Flow Shaping Plan, or changing conditions may mean that the spill is larger or smaller than earlier predicted, and the Environmental Account Manager may adjust releases from those originally planned to utilize the available water so as better to achieve the goal of enhancing pulse flows. If the Commission initiates a proceeding to reopen this license because of concerns with the adequacy of these plans to achieve Endangered Species Act goals, the following shall be parties: the Licensee, the licensee for Project No. 1835, The Department of the Interior, the Nebraska Game and Parks Commission, the State of Colorado, the State of Nebraska, the State of Wyoming, the Nebraska Water Users, the Platte River Critical Habitat Maintenance Trust, the National Audubon Society, the Sierra Club, American Rivers, and the Nebraska Wildlife Federation.

The Licensee shall release water available for pulse flow shaping upon the request of the Environmental Account Manager, subject to the limitations that the Environmental Account Manager may not plan or call for (1) releases that would cause or exacerbate flows in the North Platte River or Platte River in excess of flood stages as defined by the National Weather Service or its successor; (2) releases or operational changes which would violate dam safety requirements or Commission constraints on lake level (unless temporarily suspended); or (3) releases or operational changes which are likely to proximately cause significant damage to system facilities or substantial liability to the Licensee or the licensee for Project No. 1835. The Licensee will apply for suspension of the Commission's dam operating constraints on lake level if requested to do so by the Environmental Account Manager in the Pulse Flow Shaping Plan, with the understanding that the Program (if any) will reimburse the Districts for any analysis or improvements solely necessary to obtain the approvals sought or to repair damage caused by operating at lake levels above Commission limits as a result of a request by the Environmental Account Manager to manage pulse shape.

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The Licensee shall not make or agree to any change in the joint annual operating plan with the licensee for Project No. 1835 to make releases in excess of their canal capacities that are inconsistent with the Environmental Account Manager's Pulse Flow Shaping Plan, except as agreed to by the Environmental Account Manager or as necessary to avoid the conditions listed in the above paragraph.

Article 411. In the event that the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement are not adequately completed and the situation cannot be remedied through the Cooperative Agreement's Governance Committee or by the Governors and Secretary of the Interior), for the first three full October 1 to September 30 water years thereafter, if end-of-May Lake McConaughy storage is 1.5 maf or greater, the Licensee shall assure that 50% of June inflows measured at the Lewellen gauge are released from Lake McConaughy if requested by the Environmental Account Manager as described below. In subsequent water years, the pulse flow shaping provisions of Article 410 will again apply.

On or about May 15 of each year in the three water year period, the Licensee and the licensee of Project No. 1835 shall, jointly predict, using the best available data, whether the end-of-month Lake McConaughy storage for that May will be 1.5 maf or greater. If the prediction is affirmative, the Licensee and the licensee of Project No. 1835 shall jointly provide the Environmental Account Manager with their estimate of June inflows to Lake McConaughy for that year, as measured at the Lewellen gauge, and their estimate of outflows from Lake McConaughy during that month, including releases to provide base flows during that June pursuant to Article 406. The difference between (1) 50% of the estimated June inflows to Lake McConaughy and (2) the outflows estimated above shall be made available to the Environmental Account Manager to schedule for release from Lake McConaughy during that June at his or her discretion; provided, however, that the difference estimated above shall be subject to a periodic true-up so that the total amount of water available to the Environmental Account Manager pursuant to this article shall be the difference between 50% of the actual June inflows and outflows. Water available to the Environmental Account Manager pursuant to this article which is not released during June shall not be carried over for use in any subsequent month.

The Licensee shall release water made available pursuant to this article upon request by the Environmental Account Manager, unless the water, if released, (i) would cause or exacerbate flows in excess of National Weather Service flood stages; (ii) would violate safety requirements; (iii) would likely proximately cause significant damage to the project works of Project No. 1417

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or Project No. 1835; (iv) would likely proximately create substantial liability to the Licensee and/or the licensee of Project No. 1835; (v) would exceed the capacity of the Kingsley Powerhouse; (vi) unless otherwise agreed by the Licensee, would increase flow in the North Platte River by more than 400 cfs over 24 hours; and (vii) would exceed total daily ramping constraints at the Keystone Diversion based on the constraint in (vi) above plus the ability to divert additional water into Project No. 1835's Keystone Canal.

In the event that the Licensee or the licensee for Project No. 1835 incurs costs as a direct result of water released at the direction of the Environmental Account Manager pursuant to this Article to repair (1) any least tern/piping plover habitat site managed and maintained by the Licensee pursuant to Article 420 or the licensee for Project No. 1835 pursuant to its license or (2) any sand dam or related protective structure at any intake to any irrigation canal owned or served by the Licensee or the licensee for Project No. 1835, the Licensee may, at its discretion, reduce any obligation it may have in the following year to implement conservation activities under Article 415 by the amount of such costs; provided, however, that the Licensee shall first provide the U.S. Fish and Wildlife Service and the Platte River Whooping Crane Critical Habitat Maintenance Trust with a 30-day notice of and a detailed written explanation of the basis of the proposed reduction. Within 30 days of such notice either the U.S. Fish and Wildlife Service or the Platte River Whooping Crane Habitat Maintenance Trust may request binding arbitration of the Licensee's claim by the Director of the Nebraska Department of Water Resources, or his or her designee.

#### **Flow Attenuation**

Article 412. Within twenty-four months of license issuance, the Licensee, in coordination with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission and with their concurrence, shall file for Commission approval an operational plan for the Licensee to use its best efforts to attenuate increased flows in the Platte River which might occur because of rejection of irrigation water due to regional or local weather conditions during the June 1 to August 15 nesting season of least terns and piping plovers. In developing the plan, the Licensee shall consider, among other things, modifying irrigation season operations to create limited temporary capacity in Johnson Lake, and increasing deliveries to Rainwater Basin wetlands which hold valid state water rights or which acquire them subsequent to the date of the plan, and which can be served by the Licensee. The plan shall include a communication protocol for coordination with the Environmental Account Manager. The plan shall not include any required level or frequency of flow attenuation, and shall not create any operational constraints on Johnson Lake in years when flows are provided pursuant to Article 406.



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The Commission reserves the right to make changes in the plan. The Licensee shall begin implementing the plan as approved by the Commission during the first June 1 to August 15 nesting season following Commission approval of the plan.

Article 413. The Licensee shall continue its contract with the U.S. Fish and Wildlife Service in existence on the date this license is issued to deliver flows to the U.S. Fish and Wildlife Service's Funk Lagoon to the extent authorized by the U.S. Fish and the Wildlife Service's water rights. The Licensee shall further enter into other contracts with the U.S. Fish and Wildlife Service upon reasonable terms for delivery of flows to the Rainwater Basin when and if appropriate water rights are obtained, provided, however, that such contracts shall not require the Licensee to contribute to construction of any physical facilities needed for such deliveries. The Licensee shall cooperate in any efforts under the auspices of a Program to bring water to Rainwater Basin wetlands with properly acquired water rights.

#### **Water Conservation and Use**

Article 414. The Licensee shall: (1) participate in and cooperate with any water conservation/supply studies sponsored by the Program or through the Cooperative Agreement, and with Program efforts to develop any conservation action plan or plans; (2) provide information on conservation and Program conservation activities to its irrigation customers; (3) coordinate Program conservation activities involving project facilities, other Licensee facilities, or lands served by the Licensee; (4) during the term of the Cooperative Agreement, administer, but not separately fund, any demonstration programs involving project facilities, other Licensee facilities or lands served by the Licensee; and (5) cooperate with, but not separately fund, any conservation programs and projects deemed appropriate by the Governance Committee of the Cooperative Agreement or Program for implementation on project facilities or other Licensee facilities, or involving irrigators served by the Licensee.

Article 415. In the event that the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement are not adequately completed and the situation cannot be remedied through the Cooperative Agreement's Governance Committee or by the Governors and Secretary of the Interior), the Licensee and the licensee of Project No. 1835 shall jointly assume responsibility for funding whatever component may remain of the Program's water conservation/supply study to identify and estimate the cost and feasibility of various water conservation or water supply opportunities, with a revised scope of work limiting the study to

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Project facilities and lands served by the Licensee and the licensee for Project No. 1835.

Within twelve months of completing such study, or if the Program fails (terminates or expires, a signatory withdraws from the Program or Program activities are not adequately completed or milestones are not met and the Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), within twelve months of such event, the Licensee shall develop in consultation with the U.S. Fish and Wildlife Service and the licensee for Project No. 1835, and file for Commission approval a water conservation/supply plan for its project works and lands served by the Licensee and the licensee for Project No. 1835. The plan shall include any Program conservation activities already implemented involving the project works or lands served by the Licensee, and shall require the Licensee to implement conservation activities costing the equivalent of \$300,000/year (1997 dollars) for ten years for all conservation activities, less any Program expenditures which were made for conservation activities involving the project works or lands served by the Licensee or the licensee for Project No. 1835. Within fourteen months of implementing the conservation plan, and annually thereafter on or about that date, the Licensee shall file a report with FERC describing conservation activities and associated costs in the twelve-month period which expired 60 days earlier.

The Licensee shall, in coordination with the U.S. Fish and Wildlife Service and the Nebraska Department of Water Resources, develop methods to estimate the amount of any Net Controllable Conserved Water which is attributable to projects implemented under the conservation plan. The licensee shall file such methodology and results with the Commission for approval within 90 days of implementing a conservation project or program under the plan. The Licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations on the methodology and results before filing them with the Commission. The Licensee shall include with its filings documentation of such coordination including copies of the agencies' comments and recommendations. Further, the Licensee shall identify in its filings how the comments or recommendations are accommodated. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on project-specific information.

The Commission reserves the right to make changes in the methodology. Upon Commission approval, the Licensee shall use the estimates made according to the approved method or methods to determine the timing and quantity of Net Controllable Conserved Water assigned to the Environmental Account.

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Article 416. Through the license term there shall be no increase in the volume of water delivered to the Licensee's irrigation customers. For purposes of this License Article, "no increase" is defined as:

(1) neither the Licensee nor its irrigation customers collectively increasing the water volume covered by irrigation storage use water right permits beyond the volume these irrigators have a right to as of the date of license issuance; provided, however, that, nothing herein shall be construed to limit the Licensee's ability (i) to transfer water rights among the areas served by the Licensee, (ii) where water rights for lands served by the Licensee are abandoned, adjudicated away, or otherwise terminated or reduced in quantity, to replace these former customers with customers with lands granted new water rights, up to the quantity of the water rights that were terminated; and

(2) the Licensee not in any year diverting more than 357,743 acre-feet of storage water for irrigation directly from the Supply Canal and into the E-65, E-67 and Phelps Canals, except as may be required by state law; provided, however, that notwithstanding the provisions hereof, the Licensee shall be entitled to provide irrigation service for other canals if such canals have water appropriations as of the date of issuance of this license which are assigned or otherwise transferred to the Licensee. In most years it is anticipated that diversions will be lower; actual diversions will vary, within similar ranges as they have historically, as they are affected by hydrologic conditions for the most part.

Nothing herein shall be construed to limit the ability of the Licensee to take advantage of any future Program component intended to permit new depletions while assuring that their effects are mitigated.

The Licensee shall not expand its irrigation service by taking advantage of water savings achieved by any conservation activities carried out under the Program except as agreed to within the Program. After the Program evaluates any Program conservation/water supply activities involving Project facilities or irrigated lands served by the E-65, E-67 or Phelps canals during the Program planning process and following implementation and determines that the water rights volume and delivery limitations described above have been affected, the definition of "no increase" shall be revised accordingly. In the event the Program fails (terminates or expires, a signatory withdraws from the Program or Program activities are not adequately completed or milestones are not met and The Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), in lieu of a Program evaluation of the effects of

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conservation/water supply activities, the Licensee shall consult with the U.S. Fish and Wildlife Service, the Nebraska Department of Water Resources and the licensee for Project No. 1835 to evaluate the impacts on the definitions in paragraphs (1) and (2) above of any continuing conservation/water supply activities which were funded by the Program, or any conservation activities undertaken pursuant to Article 415.

## LAND

### Between the Johnson Hydro No. 2 Return and Chapman, Nebraska

Article 417. The Licensee shall acquire from willing owners an interest in a parcel or parcels of land in and along the Platte River within the area designated as critical habitat for whooping cranes and below the Johnson Hydro No. 2 Return, with primary emphasis on acquiring control of land between the Johnson Hydro No. 2 Return and Kearney, Nebraska, to be protected and managed as habitat for least terns, piping plovers, whooping cranes, sandhill cranes, and other migratory waterfowl. The parcel of land to be acquired shall be identified through discussions among the Licensee, the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission. The U.S. Fish and Wildlife Service shall concur in the selection of land before acquisition. The goals in identifying potential land for acquisition shall be to acquire land in a block of approximately 1200 acres or more and to complete the acquisition within 18 months of license issuance, but the Licensee shall not be required to expend more than \$1.8 million (1997 dollars) acquiring the parcel and, because acquisition shall be on a willing seller/willing lessor basis, timing may be adjusted after coordination with the U.S. Fish and Wildlife Service. The Licensee shall notify the Commission of any change in timing agreed to with the U.S. Fish and Wildlife Service from the 18-month goal and shall include in that notification a copy of the U.S. Fish and Wildlife Service' written concurrence. The Licensee shall notify the Commission of the location and acreage of land acquired within 30 days of acquisition.

The interest acquired in the parcel may be in the form of purchase, lease or an appropriate conservation easement, such that channel areas may be enhanced and that to the extent current uses are maintained, haying and grazing is according to prescribed schedules, and additional drainage of wet meadows is prohibited, all in accordance with an approved management plan. The Licensee shall develop, in coordination with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission and working through the Governance Committee of the Cooperative Agreement or its designees, such a plan to enhance and maintain the parcel for wildlife use as habitat. Within 12 months of the land acquisition, such plan shall be finalized with the concurrence of the U.S. Fish and Wildlife Service and the

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Nebraska Game and Parks Commission, and filed for Commission approval.

The Licensee shall be required to spend no more than \$400/acre (1997 dollars) for initial development or rehabilitation of the land. Maintenance under the plan shall be performed only when and if required, and the Licensee shall not be required to spend more than \$10/acre/year in cash or in-kind contribution for maintenance measured on a three-year rolling average basis, or more than \$15/acre in any one year to implement the plan. The Commission reserves the right to make changes in the plan. The Licensee shall begin implementing the plan as approved by the Commission within six months of Commission approval.

It is anticipated that under a Program, if the U.S. Fish and Wildlife Service so requests, the Licensee will be reimbursed for the costs of acquiring and developing these lands, and that the Program will take over the future costs of maintaining the lands. At such time, the Licensee's obligation under this article to maintain this parcel as wildlife habitat shall be extinguished. To the extent such reimbursement takes place, the Licensee will apply the funds received to the acquisition and development of habitat in the North Platte, Nebraska to Johnson Hydro No. 2 Reach pursuant to Article 418. In the event reimbursement does not take place for any reason, including that the U.S. Fish and Wildlife Service does not request the Program to so reimburse the Licensee, the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement are not adequately completed and the situation cannot be remedied through the Cooperative Agreement's Governance Committee or by the Governors and Secretary of the Interior), or that the Program fails (terminates or expires, a signatory withdraws from the Program or Program activities are not adequately completed or milestones are not met and the Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), the Licensee shall continue to maintain this habitat in accordance with the approved plan as described above.

#### **Habitat between North Platte, Nebraska and the Johnson Hydro No. 2 Return**

Article 418. The Licensee shall acquire from willing owners interests in land in and along the Platte River in the reach between North Platte and the Johnson Hydro No. 2 Return, to be protected and managed as habitat for least terns, piping plovers, sandhill cranes, and other migratory waterfowl. The parcels of land to be acquired shall be identified through discussions among the Licensee, the U.S. Fish and Wildlife Service and the Nebraska

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Game and Parks Commission. The U.S. Fish and Wildlife Service shall concur in the selection of land before acquisition.

The goals in identifying potential land for acquisition shall be (1) to acquire up to 4,200 acres for four habitat areas, including the parcel acquired pursuant to Article 417 unless the cost of that acquisition was reimbursed through the Program; (2) to acquire a total of at least 2,200 acres within five years of license issuance, a total of at least 3,000 acres within nine years of license issuance, and up to 4,200 acres within 13 years of license issuance, or one year after the end of the first increment of the Program, whichever is later, if increments are included in the Program; (3) to acquire approximately 2,800 acres of the total in blocks of approximately 1,200 acres or more in the reach between Gothenburg and Lexington, Nebraska provided, however, in recognition of the limited opportunities available, other areas or alternative parcels may be in smaller blocks or at other locations in the Platte or North Platte rivers areas. The Licensee shall not be required to expend more than \$6.3 million (1997 dollars) in acquiring the parcels. Any amounts expended to acquire land between Johnson Hydro No. 2 Return and Chapman which are reimbursed shall not be counted toward that total.

Because acquisition shall be on a willing seller/willing lessor basis, timing of acquisitions may be adjusted after coordination with the U.S. Fish and Wildlife Service. Timing of acquisitions will also be adjusted as appropriate and as agreed upon between the Licensee and the U.S. Fish and Wildlife Service, based on the timing of any reimbursement for the land acquired between Johnson Hydro No. 2 and Chapman, Nebraska pursuant to Article 417, so that the Licensee may have a reasonable period of time to acquire replacement lands between North Platte, Nebraska and Johnson Hydro No. 2 with the funds reimbursed. The Licensee shall notify the Commission of any change in timing agreed to with the U.S. Fish and Wildlife Service and of the new schedule. The Licensee shall also notify the Commission of the location and acreage of land acquired within 30 days of acquisition.

Interests acquired in these parcels may be in the form of purchase, lease or an appropriate conservation easement, such that channel areas may be enhanced and that to the extent current uses are maintained, haying and grazing is according to prescribed schedules, and additional drainage of wet meadows is prohibited, all in accordance with an approved management plan. The Licensee shall, in coordination with the U.S. Fish and Wildlife Service and Nebraska Game and Parks Commission and working through the Governance Committee of the Cooperative Agreement or its designees, as appropriate, develop such a plan to enhance and maintain each parcel acquired for wildlife use as habitat. Within 12 months of the date of acquisition of a parcel, such plan shall be completed with the concurrence of the

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U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission, and filed for Commission approval.

The Licensee shall be required to spend no more than \$400/acre (1997 dollars) for Initial development or rehabilitation of the land. Maintenance under the plan shall be performed only when and if required, and the Licensee shall not be required to spend more than \$10/acre/year in cash or in-kind contribution for maintenance measured on a three-year rolling average basis, or more than \$15/acre in any one year to implement the plan. The Commission reserves the right to make changes in the plan. The Licensee shall begin implementing the plan as approved by the Commission within six months of Commission approval.

In the event that a the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement or not adequately completed and the situation cannot be remedied through the Cooperative Agreement's Governance Committee or by the Governors and Secretary of the Interior), or the Program fails, (terminates or expires, a signatory withdraws from the Program or Program activities are not adequately completed/milestones are not met and the Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), the Licensee, if requested by the U.S. Fish and Wildlife Service after consultation with the Nebraska Game and Parks Commission, shall (1) revise these acquisition goals to focus on the reach from below the Johnson Hydro No. 2 Return to Chapman; (2) sell some or all of their interests in land acquired pursuant to this article and use the proceeds to fund acquisition, development and maintenance of lands between Johnson Hydro No. 2 and Chapman in accordance with enhancement and maintenance plans developed and approved as described above, provided, however, that the Licensee must first offer the U.S. Fish and Wildlife Service (and if it declines, then the Nebraska Game and Parks Commission and then any foundation established under the Program to own land) a reasonable opportunity to match any other offer received. The Licensee shall report any revision in the acquisition goals, any sales of interests in land acquired pursuant to this article, and goals developed with the U.S. Fish and Wildlife Service for use of the proceeds of such sales to the Commission within 30 days.

#### **Habitat between Keystone and North Platte, Nebraska**

Article 419. The Licensee shall acquire from willing owners interests in at least 500 acres of wet meadow habitat land along the North Platte River in the reach between Keystone and North Platte, Nebraska to be protected and managed as habitat for sandhill cranes and other migratory waterfowl.

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These habitat lands will be existing wet meadows on privately owned land. In identifying potential land for acquisition, the Licensee shall focus on the river reach between Sutherland and North Platte, Nebraska. Habitat areas will include at least 100 contiguous acres and, to the extent possible, will be adjacent to lands managed by the Nebraska Game and Parks Commission or environmental groups. The Licensee shall acquire these interests in habitat lands within eighteen months of license issuance. Because acquisition shall be on a willing seller/willing lessor basis, timing of acquisitions may be adjusted after coordination with the U.S. Fish and Wildlife Service. The Licensee shall notify the Commission of any change in timing agreed to with the U.S. Fish and Wildlife Service and of the new schedule. The Licensee shall also notify the Commission of the location and acreage of land acquired within 30 days of acquisition.

Interests in the parcels or parcels may be in the form of purchase, lease or an appropriate conservation easement, such that channel areas may be enhanced and that to the extent current uses are maintained, haying and grazing is according to prescribed schedules, and additional drainage of wet meadows is prohibited, all in accordance with an approved management plan. The Licensee shall develop, in coordination with the U.S. Fish and Wildlife Service and the Nebraska Games and Parks Commission, a plan to enhance and maintain each parcel acquired as habitat. Within 12 months of the date of acquisition of a parcel, such plan shall be finalized with the concurrence of the U.S. Fish and Wildlife Service and the Nebraska Games and Parks Commission, and filed for Commission approval.

The Licensee shall be required to spend no more than \$50,000 (\$100/acre (1997 dollars)) for initial development or rehabilitation of these lands. Maintenance under the plan shall be performed only when and if required, and the Licensee shall not be required to spend more than \$10/acre/year in cash or in-kind contribution for maintenance measured on a three-year rolling average basis, or more than \$15/acre in any one year to implement the plan. The Commission reserves the right to make reasonable changes in the plan. The Licensee shall begin implementing the plan as approved by the Commission within six months of Commission approval.

#### **Tern and Plover Habitat Areas**

Article 420. The Licensee shall provide maintenance consistent with Program adaptive management of habitat areas created or protected by the Licensee for use by terns and plovers prior to license issuance, or of equivalent habitat areas. As of the date this license is issued, these habitat areas consist of: one sandpit located near Gothenburg, Nebraska; one sandpit located near Cozad, Nebraska; and habitat on Project lands near



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the Central Diversion Dam at the confluence of the North and South Platte Rivers.

The Licensee shall, in coordination with the U.S. Fish and Wildlife Service and Nebraska Game and Parks Commission and working through the Governance Committee of the Cooperative Agreement or its designees, develop a plan to maintain each parcel for as use as wildlife habitat. The plan shall contain documentation that the Licensee has acquired interests in these lands through purchase, lease or an appropriate conservation easement sufficient to carry out the plan and appropriate protection measures for threatened and endangered species using these areas, including public education measures. Such plan shall also include provisions for substituting equivalent habitat areas for those initially managed, if appropriate. Maintenance under the plan shall be performed only when and if required, and the Licensee shall be required to spend no more than \$26,667 (1997 dollars) in any one year to implement the plan. Within twelve months of license issuance, such plan shall be completed with the concurrence of the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission, and filed for Commission approval.

The Commission reserves the right to make changes in the plan. The Licensee shall begin implementing the plan as approved by the Commission within six months of Commission approval. Until the plan is approved by the Commission, the Licensee will manage and maintain these habitat areas consistent with its practices in effect on the issuance date of this license.

#### **Land and Shoreline Management Plan**

Article 421. Within twenty-four months of license issuance, the Licensee shall file for Commission approval a plan to manage the lands and shorelines of the project. The Land and Shoreline Management Plan shall identify project lands and shorelines that are and will be reserved for present and future wildlife, public recreation, residential, agricultural and other uses. Any proposed change in the use of project lands from uses in existence at the time of license issuance shall be identified. To the extent project lands may be included in the lands managed pursuant to Articles 417 through 420, their use and management shall not be governed by the Land and Shoreline Management Plan. Nothing in this article shall be construed to limit the Licensee from leasing lands and shorelines subject to management under the plan, provided, however, that the lessee's use of the land is consistent with the plan.

The Land and Shoreline Management Plan shall include a plan addressing use of project lands and shorelines designated for public recreational use under the Land and Shoreline Management Plan, and the recreational use of project waters. The

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recreational component of the Land and Shoreline Management Plan shall include designation of project lands and/or waters for campgrounds, recreational vehicles, fishing, hunting, boating and canoeing. The plan shall be consistent with wildlife protection measures required by this license.

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; (b) suitable protection of bald eagle perch and roost sites on project lands that were in existence at license issuance; (c) measures for controlling aquatic vegetation and sedimentation in project reservoirs, as appropriate.

The Licensee shall prepare the Land and Shoreline Management Plan after consultation with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission. The Licensee shall allow a minimum of 30 days for the consulted agencies to comment and make recommendations on the plans before filing them with the Commission. The Licensee shall include with its filings documentation of such consultation including copies of the comments and recommendations on the proposed plans during consultation. Further, the Licensee shall identify in its filings how the comments or recommendations are accommodated by the proposed plans. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information. The Commission reserves the right to require reasonable changes in the plans. Upon Commission approval, the Licensee shall implement the plans as approved by the Commission.

The Licensee shall file updated reports on the Lands and Shoreline Plan every five years after plan approval. Any change in the use of project lands and shorelines must be highlighted and summarized at the beginning of the update report.

The Licensee shall periodically reevaluate the tern and plover nest protection and bald eagle perch and roost site protection components of its plan in consultation with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission in the same manner as the initial consultation. A report on such reevaluation and consultation, and any resultant revisions shall be filed with the Commission every three years after initial plan approval. Any comments received from the consulted entities shall be documented and included with the filing.

Article 422. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant

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permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the Licensee may grant permission without prior Commission approval are:

- (1) landscape plantings;
- (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings;
- (3) embankments, bulkhead, retaining walls, or similar structures for erosion control to protect the existing shoreline; and
- (4) food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements.

Before granting permission for construction of bulkheads or retaining walls, the Licensee shall:

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- (1) inspect the site of the proposed construction;
- (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and
- (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for:

- (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained;
- (2) storm drains and water mains;
- (3) sewers that do not discharge into project waters;
- (4) minor access roads;
- (5) telephone, gas, and electric utility distribution lines;
- (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary;
- (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and
- (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the

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lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for:

- (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained;
- (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained;
- (3) other pipelines that cross project lands or waters but do not discharge into project waters;
- (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained;
- (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina;
- (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and
- (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d) (7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the Licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

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(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the Licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved exhibit R or approved report on recreational resources of an exhibit E; or, if the project does not have an approved exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised exhibit G or K drawings would be filed for approval for other purposes.

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**Habitat and Species Monitoring**

Article 423. Within six months of license issuance, the Licensee and the licensee for Project No. 1835, in coordination with the U.S. Fish and Wildlife Service and, the Nebraska Game and Parks Commission and working through the Governance Committee of the Cooperative Agreement, shall jointly develop and file with the Commission for approval a plan to fund or carry out monitoring activities, including monitoring of endangered species and their habitat, on lands acquired pursuant to Articles 417 through 420, until such time as there is a Program. The plan shall focus on collecting habitat baseline information on least terns and piping plovers, fish, vegetation and channel configuration changes, and whooping crane use of the habitat areas, and shall include provisions for reporting monitoring results to the U.S. Fish and Wildlife Service, the Nebraska Game and Parks Commission, the Governance Committee of the Cooperative Agreement, and the Commission. The Licensee and the licensee for Project No. 1835 shall be required to spend no more than \$100,000 (1997 dollars) annually in cash and in-kind services to implement the plan. The Commission reserves the right to make changes in the plan. The Licensee shall begin implementing the plan as approved by the Commission within six months of Commission approval.

Within six months of adoption of any Program, the Licensee and the licensee for Project No. 1835, after consultation with the U.S. Fish and Wildlife Service, the Nebraska Game and Parks Commission and the Governance Committee of that Program, shall jointly develop an amended plan to address integrating the Licensee's monitoring efforts into the Program, and shall file such amended plan with the Commission. The Licensee shall be required to spend no more than \$100,000 (1997 dollars) annually in cash and in-kind services to implement the plan, and such plan shall include provisions for reporting monitoring results to the U.S. Fish and Wildlife Service, the Nebraska Game and Parks Commission, the Governance Committee of the Program and the Commission. If the Commission initiates a proceeding with respect to the adequacy of the plan to achieve the Endangered Species Act requirements, the following shall be parties: the Licensee, the licensee for Project No. 1835, The Department of the Interior, the Nebraska Game and Parks Commission, the State of Colorado, the State of Nebraska, the State of Wyoming, the Nebraska Water Users, Inc., the Platte River Critical Habitat Maintenance Trust, the National Audubon Society, the Sierra Club, American Rivers, and the Nebraska Wildlife Federation. The Licensee and the licensee for Project No. 1835 may implement the plan after consultation with the U.S. Fish and Wildlife Service, the Nebraska Game and Parks Commission and the Governance Committee of the Program. Any such amendments shall be filed with the Commission within 30 days.

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In the event that the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement are not adequately completed and the situation cannot be remedied through the Cooperative Agreement's Governance Committee or by the Governors and Secretary of the Interior), or the Program fails (terminates or expires, a signatory withdraws from the Program or Program activities are not adequately completed/milestones are not met and The Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), within six months of such event, the Licensee in coordination with the U.S. Fish and Wildlife Service, the Nebraska Game and Parks Commission, and the licensee for Project No. 1835 shall jointly develop and file with the Commission for approval an amendment to the plan to fund or carry out monitoring activities to provide continuing information on the status of endangered and other species and their habitat on lands acquired pursuant to Articles 417 through 419. The plan shall include provisions for reporting monitoring results to the U.S. Fish and Wildlife Service, the Nebraska Game and Parks Commission and the Commission. The Licensee and the licensee for Project No. 1835 shall be required to spend no more than \$100,000 (1997 dollars) annually in cash and in-kind services to implement the plan. The Commission reserves the right to make reasonable changes in the plan. The Licensee shall begin implementing the plan as approved by the Commission within six months of Commission approval.

## MISCELLANEOUS

### Public Education Programs

Article 424. The Licensee shall make reasonable efforts to participate in public education programs such as eagle viewing. Beginning on or about May 1, 1999, and annually each year thereafter, the Licensee shall file with the Commission a report describing its activities under this article during the previous April 1 through March 31.

### Cultural Resources

Article 425. The Licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, And The Nebraska State Historic Preservation Officer For Managing Historic Properties That May Be Affected By A License Issuing To The Central Nebraska Public Power and Irrigation District For The Kingsley Dam Hydroelectric Power Project, Project No. 1417," executed on July 17, , 1998, including but not limited to the Cultural Resources Management Plan for the project. In the event that the Programmatic Agreement is terminated, the Licensee shall continue



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to implement the provisions of its approved Cultural Resources Management Plan. The Commission reserves the authority to require changes to the Cultural Resources Management Plan at any time during the term of the license. If the Programmatic Agreement is terminated, the Licensee shall obtain approvals from or make notifications of the Commission or State Historic Preservation Officer where the Cultural Resources Management Plan calls upon the licensee to do so.

### **Reservation of Authority**

Article 426. The Commission reserves the right, after prior notice and opportunity for hearing, to amend this license as necessary for the Commission to comply with its obligations under the Endangered Species Act including following reinitiation of Endangered Species Act section 7 consultation at the request of the U.S. Fish and Wildlife Service under the terms of the Cooperative Agreement or Program, with prior notice to include notification of the Licensee, the licensee for Project No. 1835, the Department of the Interior, the State of Colorado, the State of Nebraska, the State of Wyoming, the Nebraska Game and Parks Commission, the Nebraska Water Users, Inc., the Platte River Whooping Crane Critical Habitat Maintenance Trust, the National Audubon Society, the Sierra Club, American Rivers and the Nebraska Wildlife Federation. Nothing in this Article shall be construed to limit or restrict any party from seeking different or modified license conditions through Article 15.

### **Report on the Cooperative Agreement or Program**

Article 427. For so long as the Cooperative Agreement or a Program is in effect, on March 1 of each year the Licensee shall file a report on the status of activities under the Cooperative Agreement or Program during the prior calendar year consisting of the minutes of the Governance Committee meetings and copies of Cooperative Agreement or Program documents adopted during that year.

The Licensee shall file the Programmatic Environmental Impact Statement evaluating the Program proposed under the Cooperative Agreement and alternatives to that proposed Program within 30 days of issuance. If a Program is adopted, the Licensee shall file a copy of the Program and the agreement among the Department of the Interior and the States of Colorado, Nebraska and Wyoming adopting such Program within 30 days of its signing.

In the event the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted, or activities under the Cooperative Agreement are not adequately completed and the situation cannot be remedied through the Cooperative

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Agreements's Governance Committee or by the Governors of the States of Colorado, Nebraska and Wyoming and the Secretary of the Interior), or the Program fails (terminates or expires, a signatory withdraws from the Program, or Program activities are not adequately completed or milestones are not met and The Department of the Interior makes a final determination that the Program is not serving as the reasonable and prudent alternative under the Endangered Species Act), the License shall within 30 days report such failure to the Commission.

#### Future Filings

Article 428. The Licensee shall serve copies of any Commission filing required by this order on any entity specified to be consulted on matters related to that filing. In cases where the Licensee is required to consult with the Governance Committee, copies of any filings shall be filed on the three state signatories to the Cooperative Agreement. The Licensee shall serve all applications to amend this license on the Department of the Interior's attorney of record and on the Regional and Grand Island offices of the U.S. Fish and Wildlife Service. The Licensee shall serve notice of the substance of any applications to amend Exhibit X or Articles 400, 401, 402, 403, 404, 405, 406, 407, 408, 410, 411, 412, 415, 416, or 423 upon the Platte River Whooping Crane Critical Habitat Maintenance Trust. Proof of service as required by this article must accompany the filing/amendment application.

(G) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(H) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this license.

By the Commission.

( S E A L )

  
Linwood A. Watson, Jr.,  
Acting Secretary.

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## APPENDIX A

Water Quality Certification Conditions  
for the Kingsley Dam Project  
Issued August 30, 1988, by the  
Nebraska Department of Environmental Conservation

We have reviewed FERC Project No. 1417 for State Water Quality Certification in accordance with Section 401 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.). FERC Project No. 1417 is comprised of Central Nebraska Public Power and Irrigation District's (Central) hydroelectric facilities and appurtenant structures on the North Platte River in Garden and Keith Counties, and on and off streams of the Platte River in Lincoln, Dawson, and Gosper Counties. It is our determination that operation of this project will comply with State Water Quality Standards and the applicable provisions of the federal Clean Water Act subject to meeting the following conditions:

1. At all times, except for the force majeure conditions set forth in paragraph 2 below, the site-specific criteria for Lake Ogallalla defined in NDEC's Title 117 shall be maintained (i.e., Title 117, Chapter 4. 003.0111).
2. Any failure to comply with Title 117, Chapter 4. 003.0111 shall not be deemed noncompliance if such failure is a result of earthquake, flood, or other acts of God, fire, work stoppage, riot, or failure of materials or equipment to be delivered as promised, labor disturbances, equipment failure, strikes, civil disturbances, boycotts, acts of military authority, acts of local authorities, arrests, or other occurrences resulting in impossibility of compliance and such occurrence or noncompliance was beyond the party's control and was not due to a lack of good faith or diligence on the part of the party. Central shall advise NDEC in the event such an occurrence has prevented or may prevent Central from such compliance and shall specify the additional time it needs to bring the Kingsley Hydro back into compliance.
3. During the period of July 1 through October 15, Central shall conduct the following water quality monitoring when Kingsley Hydro is in operation and submit the results to NDEC on a monthly basis:
  - a) Monitor dissolved oxygen in Lake Ogallalla at the midpoint of the buoy line (1987 location at the outer edge of the stilling basin) at a 1 meter depth every 10 minutes.

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- b) Monitor dissolved oxygen at the Kingsley Hydro powerhouse every hour, and
- c) Monitor water temperature at the Kingsley Hydro powerhouse every hour.

However, we reserve the right to apply our appropriate regulatory authority to various elements of Central's system. Specifically, we will continue to regulate the discharge from Canaday Steam Plant under Section 402 of the Clean Water Act (NPDES permit number NE0000680). It is noted that a Corps of Engineers Section 404 permit for maintenance dredging activities at the North Platte Diversion Dam (NE 258 OXT 2 001311) was reissued on April 26, 1988, and will expire on April 30, 1989. We will apply the appropriate authority under Section 401 for a Section 404 permit or Section 402 for these elements of Central's system as needed to carry out our responsibilities. The same holds true for any future activities which are applicable under Sections 402 and 404 of the federal Clean Water Act or the Nebraska Environmental Protection Act.

We therefore, by this letter, provide Water Quality Certification for FERC Project 1417.

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