

STATE OF NEBRASKA

COPY

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Changing the Line and)
Return Flow Point of The Central Nebraska)
Public Power and Irrigation District Supply)
Canal)

Case _____

Water Division 1-A)

)
)
)
) **THE CENTRAL NEBRASKA PUBLIC**
) **POWER AND IRRIGATION**
) **DISTRICT'S PETITION TO CHANGE**
) **THE LINE OF A CANAL AND TO**
) **CHANGE ESTABLISHED RETURN**
) **FLOW POINT**
)
)

The Central Nebraska Public Power and Irrigation District ("Central"), by and through its attorneys Rembolt Ludtke LLP, for its Petition to Change the Line of a Canal and to Change Established Return Flow Point (the "Petition") pursuant to Neb. Rev. Stat. § 46-250, states as follows:

1. Central is a public power and irrigation district organized pursuant to Neb. Rev. Stat. §§ 70-601 et seq., and is a public corporation and political subdivision of the State of Nebraska, created for the primary purposes of providing water for irrigation and for generating hydroelectric power.

2. Central petitions the Department to change the line of its Supply Canal, and to change an established return flow point on its Supply Canal:

State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 3:58
O'clock P M. this 7th
day of MAY 20 14
S. Gower
\$ 10.00 FEE REC'D

- a. Central's System (as defined hereafter) includes, among other facilities, a primary storage reservoir, Lake McConaughy; the Supply Canal, including a series of regulating reservoirs; the E-65, E-67 and Phelps Canal irrigation systems; hydropower facilities, including the Johnson No. 2 Hydropower Plant (the "J-2 Hydro"); and a river return to the Platte River located below the J-2 Hydro (the "J-2 Return"). Maps previously filed with the Nebraska Department of Natural Resources (the "Department") show the System and its component parts (the "System"), including the line of Central's Supply Canal.
- b. Central seeks to change the line of its Supply Canal by extending it approximately 3.3 miles along the current line of the Phelps Canal and adding two regulating reservoirs along the north side of the extended canal (the "J-2 Reservoirs"), as shown on **Attachment "1"** (the "Project").
- c. Central seeks to change an established return flow point on the Supply Canal. When completed, two additional river returns constructed as part of the J-2 Reservoirs will be the primary return flow points to the Platte River from the Supply Canal. The J-2 Return will be maintained by Central, but will no longer be the primary return flow point after construction of the new returns.

3. Central is the holder of record of numerous appropriations from the Platte River and the North Platte River in Water Division 1-A that are, pursuant to such appropriations, conducted through Central's System.

4. Pursuant to its statutory authority including, but not limited to, Neb. Rev. Stat. §§ 70-601 et seq., Central uses its appropriations to provide water for purposes including irrigation and to generate hydroelectric power for its users and consumers. In

addition, Central has an appropriation to use water from Lake McConaughy for an Environmental Account established pursuant to requirements of Central's FERC License (as defined hereafter).

5. The J-2 Hydro, located on the Supply Canal above the J-2 Return, is one of Central's facilities on the System used to generate hydroelectric power. Central's other hydropower plants on the Supply Canal can be regulated through the use of existing regulating reservoirs on the Supply Canal to achieve generating efficiencies. No similar regulating capacity currently exists for the J-2 Hydro, resulting in generation inefficiencies.

6. Pursuant to Neb. Rev. Stat. §§ 70-630 and 70-655, Central is authorized and required to operate in a successful and profitable manner that inures to the benefit of Central and its users and consumers of its services.

7. In addition, as a hydroelectric generator using the navigable waters of the United States for hydroelectric power production, Central is subject to federal regulation and licensure by the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act, 16 U.S.C. § 791a et seq. (the "FPA" or "Act"), and operates pursuant to a license issued by FERC for its operations as federal Project No. 1417 (the "FERC License"). Central must comply with various conditions of the FERC License in order to generate hydroelectric power. Those conditions include requirements related to endangered and threatened species in and along the North Platte and Platte Rivers, which affect flow requirements for such purposes in the Platte River.

8. The addition of regulating capacity for the J-2 Hydro on Central's System will provide improved efficiencies in hydropower production and better control over return flows to the Platte River to meet various environmental goals related to Central's FERC License. The Supplemental Information Statement included with this Petition explains in further detail the purposes and operations of the Project.

9. Pursuant to Neb. Rev. Stat. § 46-250, Central petitions the Department for approval to change the line of its Supply Canal, and for approval to change the established return flow point, as described in this Petition and supporting materials.

10. Central's Petition seeks no new appropriations, no changes to appropriations, no changes to points of diversion, no transfers of appropriations, and no changes to priority dates of appropriations. It seeks only to change the line and return flow points of Central's Supply Canal as described herein and in the supporting materials, pursuant to Neb. Rev. Stat. § 46-250. Pursuant to discussions between Central and the Central Platte Natural Resources District ("CPNRD"), Central will provide a means of measuring or otherwise estimating the timing and quantity of water that will annually bypass a short portion of the upstream-most end of the river reach in which CPNRD has instream flow appropriations, due to the change in established return flow point.

11. Central intends that the design, construction, and operation of the Project will be subject to all other state and federal dam safety requirements, including, where applicable, the FPA and the Nebraska Safety of Dams and Reservoirs Act.

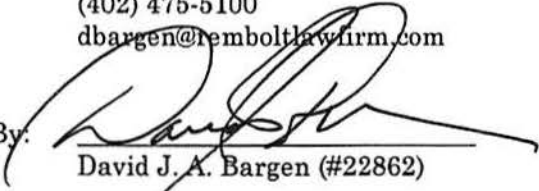
12. Upon completion of construction, Central will file with the Department updated maps showing the new line of the Supply Canal including the J-2 Reservoirs, as described in Paragraph 2 herein and in the supporting materials.

WHEREFORE, Central asks the Department to approve its Petition To Change The Line Of A Canal and To Change Established Return Flow Point as described herein and in the supporting materials, pursuant to Neb. Rev. Stat. § 46-250.

DATED: May 7, 2014

THE CENTRAL NEBRASKA PUBLIC
POWER AND IRRIGATION DISTRICT,
Petitioner.


By: REMBOLT LUDTKE LLP
1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
(402) 475-5100
dbargen@remboltlawfirm.com

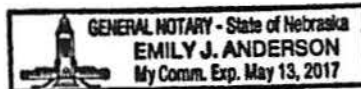
By: 
David J. A. Bargaen (#22862)

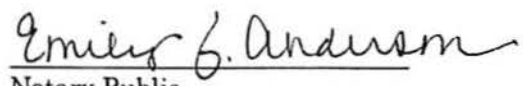
VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF PHELPS)

On May 7, 2014, Don Kraus, being first duly sworn, states that he has
read the foregoing Petition, and that the allegations of fact therein are true.

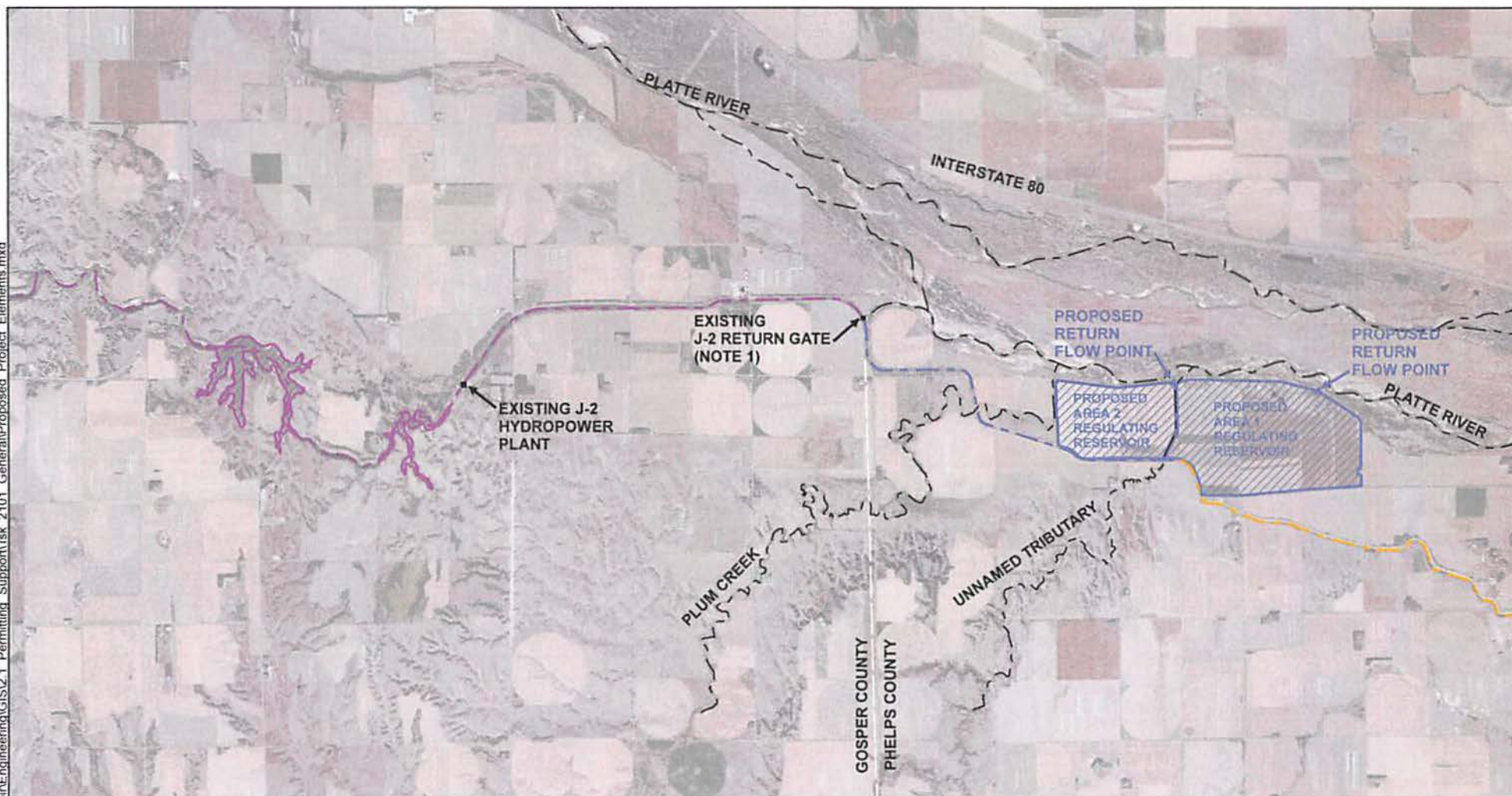

Don Kraus, General Manager
The Central Nebraska Public Power and
Irrigation District




Notary Public

My Commission Expires:

May 13, 2017



NOTE:

1. THE EXISTING J-2 RETURN WILL BE MAINTAINED BY CENTRAL, BUT WILL NO LONGER BE THE PRIMARY RETURN FLOW POINT FOLLOWING CONSTRUCTION OF THE PROJECT.

EXPLANATION

- Changed Line of Supply Canal (Proposed)
- Supply Canal
- Phelps Canal

0 2,000 4,000 8,000 Feet

THIS DRAWING MUST BE REPRODUCED IN COLOR.



Rembolt | Ludtke

J-2 REGULATING RESERVOIR
PROJECT
GOSPER AND PHELPS COUNTIES
NEBRASKA

PROPOSED
PROJECT ELEMENTS

PROJECT NUMBER 13130

April 2014 Attachment 1

Supplemental Information Statement

I. Overview

Pursuant to its statutory authority, The Central Nebraska Public Power and Irrigation District ("Central") operates an irrigation and hydropower production system consisting of several elements, including Lake McConaughy, a storage reservoir on the North Platte River impounded by the Kingsley Dam near Ogallala, Nebraska; a Supply Canal, diverting water downstream of the confluence of the North Platte and South Platte Rivers near North Platte, Nebraska, that is approximately 75 miles in length and includes several regulating reservoirs and structures; two river returns to the Platte River, one near Brady, Nebraska, and the other near Lexington, Nebraska; four hydropower plants, one at Kingsley Dam and three on the Supply Canal; and the E-65 (including Elwood Reservoir, a pumped-storage reservoir), E-67, and Phelps irrigation systems that take water from the Supply Canal. Central's facilities near the end of the Supply Canal include the Supply Canal between the Johnson No. 1 Hydropower Plant (the "J-1 Hydro") and the Johnson No. 2 Hydropower Plant (the "J-2 Hydro"); the Phillips, East Phillips, and Knapple regulating reservoirs; the J-2 Hydro, located at approximately milepost 71.8 on the Supply Canal; the Supply Canal below the J-2 Hydro extending to its terminus at approximately milepost 75.4; the Phelps Canal, diverting water from the Supply Canal at the Supply Canal's terminus; and the J-2 River Return (the "J-2 Return") that returns water to the Platte River from the Supply Canal at its terminus (collectively, the "System").

Central petitions to change the line of its Supply Canal, beginning at the J-2 Return and continuing approximately 3.3 miles downstream, by constructing two regulating reservoirs along the north side of the current Phelps Canal below the J-2 Return (the "J-2 Reservoirs"), extending the Supply Canal by increasing the capacity of the Phelps Canal from the J-2 Return to the inlets for the J-2 Reservoirs, constructing inlets for the J-2 Reservoirs, constructing a river outlet for each J-2 Reservoir, and constructing a check gate structure to control the elevation of water in the extended Supply Canal at the inlets to the J-2 Reservoirs and to control flows into the Phelps Canal below the J-2 Reservoirs, as shown on **Attachment "1"** (the "Project"). When constructed, the two river outlets for the J-2 Reservoirs will be the primary return flow points to the Platte River from the Supply Canal. The J-2 Return will be maintained by Central, but will no longer be the primary return flow point after construction of the new returns.

II. Purpose and Need

Regulating reservoirs enhance Central's ability to control the flow of water within its Supply Canal so that the water may be efficiently and beneficially used for irrigation and hydropower production. Unlike Central's other hydropower plants, the J-2 Hydro currently lacks a downstream regulating reservoir. Central proposes the Project to provide capacity to regulate outflows from the J-2 Hydro in the lower end of Central's Supply Canal. The Project would improve the ability for Central to effectively manage the water resource for hydropower generation, irrigation deliveries, and returning water to the Platte River at times and at volumes that are more beneficial to the environment. The addition of

regulating capacity for the J-2 Hydro will provide improved efficiencies in hydropower production and better control over return flows to the Platte River to meet various environmental goals related to Central's requirements pursuant to its license from the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act, 16 U.S.C. § 791a et seq. (the "FPA" or "Act") (the "FERC License"). Central must comply with various conditions of the FERC License in order to generate hydroelectric power. Those conditions include requirements related to endangered and threatened species in and along the North Platte and Platte Rivers, and impact flow requirements for such purposes in the Platte River

III. Project Description

The Project includes:

- Extending the Supply Canal about 3.3 miles by increasing the capacity of the existing Phelps Canal.
- Constructing two J-2 Reservoirs that will occupy up to about 1,200 surface acres south of the Platte River near the border of Gosper and Phelps Counties, Nebraska.
- Constructing two new returns to the Platte River.
- Relocating roads and drainages, and performing other minor site modifications related to the canal modifications and reservoir construction.

Portions of the existing Phelps Canal will be modified to extend the Supply Canal and enable conveyance of 1,700 cubic feet per second (cfs) downstream of the existing Phelps Canal headgate from a current capacity of approximately 1,400 cfs. Improvements to the Phelps Canal include: raising localized parts of the canal banks, increasing the capacity of the siphon underneath Plum Creek, modifying bridges that cross the Supply Canal, and raising the wall of the existing flume.

The two J-2 Reservoirs are designated as Area 1 and Area 2. The Area 1 Regulating Reservoir (the east reservoir) will occupy up to approximately 850 acres and have a regulating capacity of up to approximately 14,500 acre-feet (ac-ft). The Area 2 Regulating Reservoir (the west reservoir) will occupy up to approximately 350 acres and have a regulating capacity of approximately 3,500 ac-ft. The total regulating capacity in the two reservoirs will be up to approximately 18,000 ac-ft. The two reservoirs will receive outflow from the J-2 Hydro and both will return water to the Platte River.

The Area 1 Regulating Reservoir will have an inlet gate to convey water from the extended Supply Canal into Area 1, and a river return structure to discharge water to the Platte River. The Area 2 Regulating Reservoir will have a combined inlet/outlet structure to convey water back and forth between the extended Supply Canal and Area 2, and a river return structure to discharge water to the Platte River. A gate will be installed at the end of the extended Supply Canal, downstream of the Area 1 inlet, to regulate the elevation of the water in the Supply Canal at the Area 1 and Area 2 inlets and to maintain Central's ability to manage flows into the Phelps Canal.

A drainage channel will be maintained between the two J-2 Reservoirs to safely convey flows within an unnamed tributary to the Platte River. Plum Creek, which currently flows toward the west side of the Area 2 Regulating Reservoir, will be re-routed in a new channel to protect the western side of the Area 2 dam.

Upon completion of construction, Central will file with the DNR updated maps showing the new line of the Supply Canal including the J-2 Reservoirs as described herein and in the Petition.

IV. Anticipated Benefits

The proposed changes to the line of Central's Supply Canal will provide important regulating capacity that is currently unavailable in the downstream-most section of the Supply Canal below the J-2 Hydro. Because no regulating reservoirs presently exist between the J-2 Hydro and the end of the Supply Canal, flows released to the Platte River at the J-2 Return and/or diverted into the Phelps Canal must approximately match flows through the J-2 Hydro. Such operating constraints limit the ability to maximize the beneficial use of the water for hydropower generation at the J-2 Hydro while meeting downstream irrigation and environmental flow objectives.

A. Improved Efficiency, Generation, and Flexibility in J-2 Hydro Operations

The proposed changes to the line of the Supply Canal and addition of new return flow points will allow Central to improve the operational use of the J-2 Hydro for power production.

Hydropower plants preferably generate power at peak efficiency points (the point at which the most generation is produced per unit volume of water passed through the plant). When the flows passing through a hydropower plant do not allow for continuous operation at the peak efficiency point, the hydropower plant may be operated in a stop-and-start pattern, known as "hydrocycling". Hydrocycling may be used to operate a hydropower plant at its peak efficiency point, or to follow power demand.

Central typically utilizes hydrocycling when it can to maximize generation, but there are times when Central is not able to hydrocycle the J-2 Hydro. The J-2 Hydro currently lacks a downstream regulating reservoir, requiring water to be diverted into the Phelps Canal and/or returned to the Platte River immediately after being discharged from the J-2 Hydro. If the demand for water downstream does not match hydrocycling operations or the efficient flow point of the J-2 Hydro, efficient operation of the J-2 Hydro cannot occur. During the irrigation season, the J-2 Hydro often discharges only water needed by the Phelps Canal, which requires a relatively steady flow of water for irrigation operations that is less than what is necessary for the efficient operation of the J-2 Hydro. As a result of the need for steady flow of water for irrigation, hydrocycling is limited during the irrigation season, and the J-2 Hydro mostly operates at low efficiency around the clock to satisfy the Phelps Canal demands. In addition, a regulatory agreement between Central and the U.S. Fish and

Wildlife Service ("USFWS") (the "J-2 Hydrocycling Agreement") replaces typical hydrocycling operations with inefficient operation of the J-2 Hydro during the whooping crane spring and fall migration seasons because of USFWS concerns related to fluctuating river stage downstream of the J-2 Return.

The J-2 Reservoirs would provide the regulating capacity to allow hydrocycling of the J-2 Hydro during the irrigation season and the migration seasons while reducing or eliminating the concerns of fluctuating river stage.

B. Addressing Environmental Concerns Related to Central's Hydropower Operations and the J-2 Return

The change to the line of the Supply Canal and addition of new return flow points will allow Central to improve its hydropower operations with respect to downstream environmental concerns.

Portions of the central Platte River are considered to be important habitat for a number of wildlife species, including but not limited to the whooping crane (federally designated as an endangered species), the interior least tern (federally designated as an endangered species), and the piping plover (federally designated as a threatened species). The J-2 Return is located upstream of this habitat area, and the operation of Central's hydropower system has an effect on river flows in the habitat area downstream.

As a hydroelectric generator using the navigable waters of the United States for hydroelectric power production, Central is subject to federal regulation under the FPA, and operates pursuant to its FERC License as federal Project No. 1417. As part of this regulation, pursuant to both the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA"), Central is subject to requirements of consultations with resources agencies (for example, the USFWS and the Nebraska Game and Parks Commission ("NGPC")), and the consideration of environmental impacts from its operations, including impacts on flows in the central Platte River downstream from the return flow points.

Pursuant to Central's FERC License, Central has established an "Environmental Account" ("EA"), a storage use appropriation for instream flows for fish and wildlife that can be called on by the "EA Manager," a designee of the USFWS, to provide for environmental flow benefits in the Platte River. Also pursuant to the FERC License, Central may regulate EA water within the Supply Canal if requested to do so by the EA Manager. Such regulation of the EA currently must occur, to the extent possible, within other regulating reservoirs of the Supply Canal. The J-2 Reservoirs would improve the ability of Central to respond to requests for regulation of the EA water near the habitat area.

Also pursuant to Central's FERC License, Central is required to make efforts to attenuate increased J-2 Return flow releases during the nesting season for terns and plovers. Such attenuation currently occurs primarily in Central's Johnson Regulating Reservoir, which necessitates holding reservoir levels artificially low, at the expense of water levels more desirable for hydropower production. The J-2 Reservoirs would provide additional

regulating capacity for Central to provide attenuation of releases required by its FERC License.

As mentioned in Section IV.A. above, Central is subject to a J-2 Hydrocycling Agreement that imposes some restrictions on Central's hydropower operations. The J-2 Hydrocycling Agreement came about as the result of consultations that Central was required to undertake with the USFWS. However, the J-2 Hydrocycling Agreement only addresses some of the hydrocycling concerns raised by USFWS, leaving the potential that additional consultations and/or restrictions related to hydrocycling of the J-2 Hydro could be required in the future. The J-2 Reservoirs would allow continued hydrocycling of the J-2 Hydro outside of the period covered by the J-2 Hydrocycling Agreement while reducing or eliminating the concerns of fluctuating river stage downstream of the return flow points, thus also reducing or eliminating the risk of, or need for, additional future restrictions on hydrocycling because of downstream environmental concerns.

The states of Nebraska, Wyoming, and Colorado and the U.S. Department of the Interior have entered into the Platte River Recovery Implementation Program (the "Platte River Program"), a cooperative effort to provide defined benefits for certain Platte River threatened and endangered species and to provide ESA coverage for water related activities. Central's FERC License is predicated on the existence of the Platte River Program, thus Central has a regulatory interest in the success and continued existence of the Platte River Program. The Platte River Program has identified and selected the regulation of Central's hydropower return flows as one of its water projects necessary to meet its water objectives, as discussed further below in Section VI. Additionally, the State of Nebraska has reserved a portion of the Project for water management to satisfy part of Nebraska's obligations to offset "new depletions" under the Platte River Program (as well as similar obligations under the Nebraska Ground Water Management and Protection Act ("LB 962")). The J-2 Reservoirs would allow Central to regulate its hydropower operations in such a way as to support the success of the Platte River Program.

V. Appropriations

Central's Petition seeks no new appropriations, no changes to appropriations, no changes to points of diversion, no transfers of appropriations, and no changes to priority dates of appropriations. It seeks only to change the line and return flow points of Central's Supply Canal as described herein and in the supporting materials, pursuant to Neb. Rev. Stat. § 46-250.

Central seeks no new appropriations by this Petition. The water to be regulated by or otherwise pass through the changed facilities is water diverted by Central under existing appropriations, including but not limited to direct flow and storage use appropriations for irrigation, power production, and the EA. The changed facilities will not alter the amount of water diverted from the Platte River, returned to the Platte River, or diverted into the Phelps Canal.

The Petition does not seek to change the priority dates, permitted uses, or protections of flows of existing appropriations. To the extent that water is diverted into the Phelps Canal

and used for irrigation or other purposes, that would still be the case. To the extent that water is diverted for power production, and subsequently returned to the Platte River, thus terminating Central's use and right to the water upon return to the Platte River, that would still be the case. To the extent that EA water is diverted through Central's Supply Canal and returned to the Platte River, where it would retain its protection from interference by other uses as provided for in the appropriation, that would still be the case. Central cannot lawfully interfere with the rights of a senior appropriator. For example, Central may not use its facilities to regulate flows to the detriment of the downstream senior appropriation for Kearney Canal. This is true of both the existing facilities and the changed facilities sought by Central's Petition. The only change sought by Central's Petition is the ability to more efficiently regulate the flow of water through the J-2 Hydro as described herein. Likewise, the Petition does not seek to add new uses or protections for flows in Central's Supply Canal downstream from the Project.

There are junior instream flow appropriations held by the Central Platte Natural Resources District ("CPNRD") located in the Platte River between the J-2 Return and the location of the new returns. The change in location of the primary return flow point from the J-2 Return to the new river returns will result in a short bypass of what constitutes the upstream-most end of the river reach in which CPNRD has such instream flow appropriations. Central has consulted with CPNRD and agreed to, and does hereby, recommend to the Nebraska Department of Natural Resources ("DNR") that a means of daily measuring or estimating flows returned through the new returns be a part of the Project. Central also agrees that it will provide CPNRD with an annual report of the daily flow measurements or estimates. Correspondence between Central and CPNRD on the matter is attached as **Attachment "2"**.

There are no other appropriations for diversions in that portion of the Platte River.

VI. Project Support

Central has contracted with the Platte River Program through the Nebraska Community Foundation, and the State of Nebraska through DNR on the development and operation of the Project under a Water Service Agreement. The Platte River Program has paid the majority of the costs of the pre-feasibility and feasibility studies for the Project. These parties, in addition to the USFWS, have an interest in the ability of the Project to provide benefits in the form of regulating return flows to the Platte River to better meet environmental flow needs. The Water Service Agreement between Central, DNR, and the Platte River Program is attached as **Attachment "3"**.

The Platte River Program has a goal of reducing shortages to USFWS desired flows ("Target Flows") in the Platte River by an average of 130,000 to 150,000 acre-feet per year by 2020. The Platte River Program also has a milestone of producing short duration high flows ("SDHF") in the central Platte River, but capacity constraints in the river and canals upstream currently make it difficult or impossible to achieve the desired SDHFs without additional new infrastructure closer to the central Platte. The Platte River Program has identified the Project as a Water Action Plan project that could beneficially regulate the water returned from Central's Supply Canal. Shortages to Target Flows are estimated to be reduced by approximately 40,000 acre-feet per year, the majority of which would be

credited to the Platte River Program, with the remainder credited to the State of Nebraska. Additionally, the Platte River Program has identified the Project as being able to assist in achieving a SDHF goal of three days of flows between 6,000 and 8,000 cfs as measured at the Overton river gage.

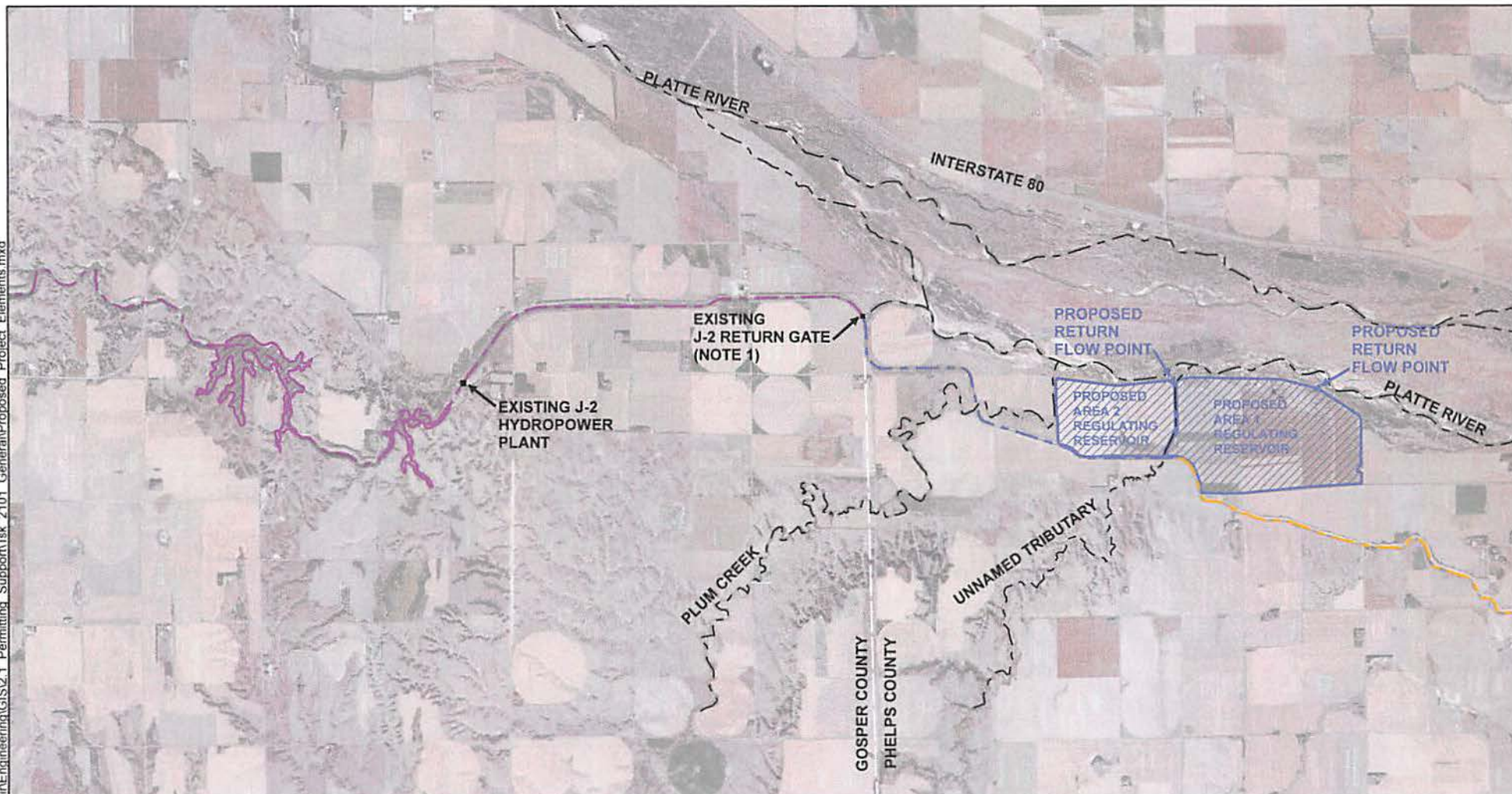
As discussed in Section IV.B., the USFWS has an interest in minimizing potential adverse environmental effects of short-term fluctuations in Platte River flows resulting from hydrocycling of the J-2 Hydro. The NGPC has also expressed similar concerns about such hydrocycling. Operations under the Hydrocycling Agreement result in hydropower inefficiencies, while only partially addressing such hydrocycling issues. USFWS has indicated support for the Project, which will address J-2 Hydro hydrocycling operations, including the Hydrocycling Agreement, by almost completely mitigating the effects of hydrocycling on the Platte River.

LB 962, adopted by the Nebraska Legislature in 2004, sets requirements for the management, conservation, and beneficial use of hydrologically connected ground water and surface water in the state. LB 962 requires the development of integrated management plans and offsets for streamflow depletions caused by post July 1, 1997 uses, with additional offsets that may be needed to return overappropriated river basins to fully appropriated conditions. Likewise, the Nebraska New Depletion Plan of the Platte River Program also requires offsets for streamflow depletions caused by post July 1, 1997 uses. As noted above in Section IV.B., as a partner in the Platte River Program, the State of Nebraska "reserved" portions of Water Action Plan Projects located in Nebraska, including the Project, for purposes of meeting its share of targets under the Platte Program. The Central Platte Natural Resources District, the Tri-Basin Natural Resources District, and the Twin-Platte Natural Resources District will be sharing in some of the State of Nebraska's costs, and receiving credit for some of the State of Nebraska's benefits, for use in meeting some of their district obligations under LB 962.

VII. Dam Safety

As noted above, Central operates its System under its License from FERC. The FPA gives FERC exclusive jurisdiction over dam safety issues for FERC Projects, and Project 1417 is subject to FERC Regulations, Part 12, Safety of Water Power Projects and Project Works. Similarly, the DNR regulates dam safety issues in accordance with the Nebraska Safety of Dams and Reservoirs Act and Title 458. As part of such Act, DNR may enter into agreements with owners of dams that are subject to federal dam safety programs and accept federal dam safety programs as satisfying the state requirements for dam safety. Central and DNR entered into such an agreement on August 3, 2010.

It is anticipated the Project will become a part of Project 1417 or otherwise fall within FERC jurisdiction, and thus the Project will be constructed, operated, and maintained in accordance with FERC's dam safety regulations.



NOTE:

1. THE EXISTING J-2 RETURN WILL BE MAINTAINED BY CENTRAL, BUT WILL NO LONGER BE THE PRIMARY RETURN FLOW POINT FOLLOWING CONSTRUCTION OF THE PROJECT.

0 2,000 4,000 8,000 Feet

THIS DRAWING MUST BE REPRODUCED IN COLOR.

EXPLANATION

- Changed Line of Supply Canal (Proposed)
- Supply Canal
- Phelps Canal



Rembolt | Ludtke

**J-2 REGULATING RESERVOIR
PROJECT
GOSPER AND PHELPS COUNTIES
NEBRASKA**

**PROPOSED
PROJECT ELEMENTS**

PROJECT NUMBER 13130

April 2014 **Attachment 1**

415 Lincoln St.
P.O. Box 740
Holdrege, NE 68949-0740



CENTRAL
Nebraska Public Power
and Irrigation District

Phone: (308) 995-8601
Fax: (308) 995-5705
Web: www.cnppid.com

Sent Electronically via E-mail

April 15, 2014

Lyndon Vogt
Central Platte Natural Resources District
215 N. Kaufman Avenue
Grand Island, NE 68803

Subject: J-2 Regulating Reservoirs Project

Mr. Vogt:

Thank you for you and your staff taking the time yesterday to discuss the *J-2 Regulating Reservoirs Project* (J-2 Project). The J-2 Project will provide benefits for Central Nebraska Public Power and Irrigation District (Central), the Platte River Recovery Implementation Program, and the State of Nebraska. Central understands that some of the benefits for the State of Nebraska may be used by the Central Platte Natural Resources District (CPNRD).

As was discussed, the J-2 Project will require a change in location of the primary return flow point from Central's Supply Canal to the Platte River, from the current location at the existing J-2 Return to two new river returns located approximately three-to-four miles downstream, resulting in a short bypass of the upstream-most end of the river reach in which CPNRD has instream flow appropriations.

Based on our discussions, Central understands that CPNRD believes it would be appropriate to provide a means of daily measuring or otherwise estimating the water which would bypass this reach of river as a result of the J-2 Project, and would like to be provided an annual report of those measurements or estimates. Central will recommend to the Nebraska Department of Natural Resources that a means of daily measuring or estimating flows returned through the new returns will be a part of the J-2 Project, and Central agrees that it will provide CPNRD with an annual report of the daily flow measurements or estimates. Please let me know whether these actions would be satisfactory to CPNRD.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Drain".

Michael A. Drain, P.E.
Natural Resources Manager

rdw

Attachment 2



**CENTRAL PLATTE
NATURAL RESOURCES DISTRICT**
215 Kaufman Avenue
Grand Island, Nebraska 68803
(308) 385-6282 FAX (308) 385-6285
www.cpnrd.org

April 25, 2014

Michael Drain
415 Lincoln St.
P.O. Box 740
Holdrege, NE 68949

Subject: J-2 Regulating Reservoirs Project

Mr. Drain:

The Central Platte Natural Resources District (CPNRD) received your letter dated April 15, 2014, acknowledging the potential change in location of the primary return flow point from the Central Nebraska Public Power and Irrigation District (Central) supply canal to the Platte River from the current J-2 Return location to two new river returns associated with the J-2 Regulating Reservoirs Project. CPNRD recognizes this will affect future flows in the upper three- to-four mile reach of the in-stream flow water rights we hold.

Based on your letter and recent discussions with Central and the Nebraska Department of Natural Resources (DNR), it is our understanding that Central will record daily measurements or estimates of the water which would bypass this reach of the river as a result of the J-2 Project. An annual report of such daily measurements or estimates will also be provided to CPNRD, by Central.

The aforementioned discharge location change and reporting actions are amenable to CPNRD as they may affect our instream flow appropriations. Please keep us apprised of any related communications on the matter you may have with DNR.

Sincerely,

Lyndon Vogt
General Manager

Cc: Duane Woodward
Mark Czaplewski

WATER SERVICE AGREEMENT

This WATER SERVICE AGREEMENT ("Agreement") is made as of the Effective Date (as defined in Section 2.2) by and among THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter "Central"); the STATE OF NEBRASKA, acting by and through the NEBRASKA DEPARTMENT OF NATURAL RESOURCES (hereinafter "NDNR"); and the NEBRASKA COMMUNITY FOUNDATION (representing the Platte River Recovery Implementation Program ("Program")), a Nebraska non-profit corporation (hereinafter "Foundation"). Central, NDNR, and Foundation may individually be referred to as a "Party" and shall collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Program's governing documents contain a Water Action Plan that describes a re-regulation reservoir project; and

WHEREAS, the Reservoir Project (as hereinafter defined) is a Water Action Plan Project, as described by the Program documents; and

WHEREAS, the Program and the United States Fish and Wildlife Service ("FWS") have agreed that the Reservoir Project will provide 40,800 acre-feet in average annual reduction to target flow shortages on the Platte River and the Program Governance Committee has determined to proceed with the Reservoir Project to achieve this goal; and

WHEREAS, Central has determined that the Reservoir Project will provide Hydrocycling mitigation of outflows from its J-2 Hydro and has determined to proceed with the Reservoir Project to achieve this goal; and

WHEREAS, the Parties desire that Central design, construct, own, operate and maintain the Reservoir Project and agree that the Reservoir Project serves a public purpose; and

WHEREAS, the Foundation has been selected by the Program Signatories (as hereinafter defined) as the financial management entity providing support to the Governance Committee and Executive Director established pursuant to the Program Cooperative Agreement; and

WHEREAS, the Foundation is only authorized to enter into contracts specifically

authorized by the Governance Committee; and

WHEREAS, the Foundation pays financial obligations of the Governance Committee under the contracts authorized by the Governance Committee in accordance with the terms of the contracts; and

WHEREAS, the Foundation serves as the Governance Committee's contracting agent through Memorandum of Agreement No. R12AG60019; and

WHEREAS, Memorandum of Agreement No. R12AG60019 and the Program documents require that all contracts of the Program are conditioned on the continuing availability of funds from the Program Signatories; and

WHEREAS, the Program Signatories provide funding to the Foundation for Program implementation, including the Reservoir Project, through separate financial assistance agreements; and

WHEREAS, the Foundation, by executing this Agreement, is acting as the contracting agent of the Governance Committee.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE I

DEFINITIONS, PURPOSES, OWNERSHIP AND TERM

Section 1. Definitions

The meanings for the capitalized terms used in this Agreement are set forth as follows or in the body of this Agreement:

1. "Business Day" means a day on which the Federal Reserve Member Banks in New York City are open for business; and a Business Day shall open at 8:00 A.M. and close at 5:00 P.M. local time in Omaha, Nebraska.

2. "Confidential Information" means information about the real, personal and intellectual properties, finances, operations, development strategies, business plans and other business information of each Party and any affiliates, which is designated as "Confidential" in accordance with Section 14. Confidential information, when disclosed in written, machine readable, or other tangible form by one Party to the other Party, shall be clearly marked as

"Confidential." Information which is disclosed orally and is promptly followed by a written summary of the oral disclosure which identifies the material as "Confidential" shall be treated as Confidential Information and used only according to the terms of Section 14.

3. "Day" means a calendar day.
4. "EA Manager" shall mean a representative from the FWS authorized to approve releases from the Lake McConaughy Environmental Account and perform the functions described in Sections 5.1, 5.2 and 5.3.
5. "Engineer" shall mean the person(s) or firm(s) hired by Central to perform engineering services in connection with the Reservoir Project.
6. "Excess Water" shall mean water that has been diverted by Central under its existing appropriations and has passed through the J-2 Hydro and is to be returned to the Platte River by Central at or near the J-2 River Return and is available for use by the Reservoir Project.
7. "Governmental Approval" means any authorization, consent, approval, license, water appropriation, ruling, permit, exemption, variance, order, judgment, decree, guidance, policies or declaration of or regulation by any Governmental Authority relating to the acquisition, development, ownership, occupation, construction, start-up, testing, operation, decommissioning or maintenance of the Reservoir Project, or the execution, delivery or performance of this Agreement.
8. "Governmental Authority" means any municipal, local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity of competent jurisdiction, but excluding any agency department, state or other entity acting in its capacity as a Party.
9. "Hydrocycling" shall mean the operation of the J-2 Hydro at peak efficiency or otherwise when generating electricity which may result in one or more start-stop cycles in each Day.
10. "J-2 Hydro" shall mean Central's Johnson No. 2 hydroelectric facility located in Gosper County, Nebraska.
11. "J-2 River Return" shall mean the river return located below the J-2 Hydro as shown on Exhibit "C".
12. "Law" means any law, code, statute, regulation, writ, decree, rule, ordinance, resolution, judgment, injunction, order or other legal or regulatory requirement of a Governmental Authority having jurisdiction over the matter in question, which is valid and applicable to the matter in question (i) at the time of the execution of this Agreement, as amended from time to time, or (ii) anytime thereafter during the term of this Agreement.
13. "Legal Proceeding" means any suit, proceeding, judgment, ruling or order by or before any Governmental Authority.

14. "Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority or other entity.

15. "Program Document" shall mean the *Platte River Recovery Implementation Program* document, as the same may be amended from time to time by the Program's Governance Committee during the Term of this Agreement.

16. "Program Signatories" shall mean the States of Nebraska, Wyoming, Colorado and the United States Department of the Interior.

17. "Project Accounts" shall mean one or more separate accounts opened by Central and designated solely for use by Central for the Reservoir Project. The Project Accounts shall include, but are not limited to, a Construction Phase Fund ("Construction Phase Fund"), a Construction Phase Reserve Fund ("Construction Phase Reserve Fund"), a Construction Phase Decommissioning Fund ("Construction Phase Decommissioning Fund"), an Operations Phase Cost of Water Services Reserve Fund ("Operations Phase Reserve Fund") and an Operations Phase Large Budget Items Reserve Fund ("Operations Phase Large Budget Items Reserve Fund"). The Project Accounts shall be established by Central for the purpose of depositing funds from the Parties to perform the services required of Central under this Agreement, including, but not limited to, pre-construction services, construction services, and operation of the Reservoir Project. The Construction Phase Fund shall be used to cover the Costs of Construction Services (as defined in Section 4.3). The Construction Phase Reserve Fund shall be used to cover unexpected events and cost increases that may occur during the Construction Phase. The Construction Phase Decommissioning Fund shall be used to cover the cost of decommissioning the Reservoir Project if such decommissioning is implemented prior to beginning of the Operations Phase. The Operations Phase Reserve Fund shall be used to provide one (1) or more years of the NDNR and Foundation share of projected operation and maintenance expenses of the Reservoir Project during the Operations Phase. The Operations Phase Large Budget Items Reserve Fund shall be used to address unanticipated Large Budget Items (as defined below) that may arise during operation of the Reservoir Project.

18. "Prudent Utility Practices" shall mean any of the practices, methods and acts at a particular time, which in the exercise of reasonable judgment in light of the facts, including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. In applying the standard of Prudent Utility Practices to any matter under this Agreement, equitable consideration should be given to the circumstances, requirements and obligations of each of the Parties hereto and there shall be taken into account the fact that Central is a political subdivision of the State of Nebraska with prescribed statutory and legal powers, duties and responsibilities. It is recognized that Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

19. "Reservoir Cost Percentages" means the following percentages:
- a) Central = 5%; provided, however, Central's share of the total Cost of Construction Services (as defined in Section 4.3) shall not exceed \$2,500,000;
 - b) Foundation = 75% of those costs not assigned to Central in a) above;
 - c) NDNR = 25% of those costs not assigned to Central in a) above.
20. "Reservoir Project" shall mean two new regulating reservoirs (Reservoir No. 1 and Reservoir No. 2, as generally shown on Exhibit "C") and related facilities, to be acquired, constructed and operated to regulate water in Central's system below the J-2 Hydro. The Reservoir Project shall also include necessary permits, access roads, inlet structures to the two reservoirs, outlet structures from the reservoirs, automation for control of the facilities, an enlargement of the Phelps Canal and installation of one or more check gates in the Phelps Canal for the purposes provided in Section 2 of the Agreement. Subject to termination in accordance with this Agreement, the Reservoir Project shall consist of two phases: Construction Phase and Operations Phase.
21. "Short Duration High Flows" shall mean flows of approximately three to five day duration with magnitudes approaching bank full capacity downstream of the Reservoir Project which may be scheduled by the Program.
22. "Target Flows" shall mean FWS-recommended flows in the Central Platte River which are included in Attachment 5, Section 11, Appendix E of the Program Document on the Effective Date of this Agreement and shown on Exhibit "B". Should target flows for the Program be changed in accordance with Section III.C.3 of the Program Document, then such changed flows shall become the Target Flows for purposes of this Agreement if agreed to in writing by the Parties.

Section 2. Ownership, Purposes and Term of Agreement

2.1. Ownership and Purposes of Reservoir Project. All property and permits, including water appropriations, acquired for the Reservoir Project shall be owned by Central.

The water service provided by Central for the Foundation and the NDNR pursuant to the terms of this Agreement is regulation of Excess Water for purposes of reducing shortages to Target Flows and creating or enhancing Short Duration High Flows as described in Sections 2.1 and Section 5 of this Agreement. The Foundation and NDNR agree that any environmental benefits, as determined or scored by the FWS and the Program, for reducing shortages to Target Flows and creating or enhancing Short Duration High Flows shall be allocated between NDNR

and the Foundation based on their Reservoir Cost Percentages (75% to the Foundation and 25% to NDNR) unless otherwise agreed to in writing by NDNR and the Foundation.

The Reservoir Project is to be designed, constructed, owned, and operated by Central for the following purposes:

a. Regulation for Target Flows. Excess Water will be regulated in Reservoir No. 1 and/or Reservoir No. 2 to reduce shortages to Target Flows. The Reservoir Project may not be operated for the purpose described in this Section 2.1a. in such a manner as to cause flows in the Platte River to exceed, or to increase the amount or duration by which they exceed, flood stage as determined by the National Weather Service. If, during the Term, the Parties have concerns that the construction or operation of the Reservoir Project by Central is not providing 40,800 acre feet of annual average reduction of shortages to Target Flows, then a meeting of the Parties shall be convened to discuss the concerns.

b. Regulation for Short Duration High Flows. Excess Water will be regulated in Reservoir No. 1 and/or Reservoir No. 2 to create or enhance Short Duration High Flows. It is understood that during Short Duration High Flows there may be little if any ability to accomplish the purposes set forth in Sections 2.1a. and 2.1c. The Reservoir Project may not be operated for the purpose set forth in this Section 2.1b. in such a manner as to cause flows in the Platte River to exceed, or to increase the amount or duration by which they exceed, flood stage as determined by the National Weather Service.

c. Mitigation of Hydrocycling. Central may regulate releases from the J-2 Hydro in Reservoir No. 1 and/or Reservoir No. 2 to mitigate fluctuations in flow in the Platte River and Central's Phelps Canal due to Hydrocycling. At Central's sole discretion, Reservoir No. 2 may be reserved at any time from June 15 through August 31 for Hydrocycling mitigation. If there is a conflict between the purposes set forth in this Section 2.1c and either Sections 2.1a or 2.1b, priority of operations will be given to the Hydrocycling mitigation purpose described in this Section 2.1c.

d. Low-head Hydropower Plants. Central may construct and operate one or more low-head hydropower plants located at the outlet or inlet works to Reservoir No. 1 or Reservoir

No. 2 at Central's expense, subject to a determination by the FWS that the construction and operation of such hydropower plants would not negatively impact the ability of the Reservoir Project to provide the water service described in Section 2.1a, 2.1b, and Section 5. These hydropower plants shall not be a part of the Reservoir Project.

e. Proposed Changes. Any Party may propose changes to the regulation of Excess Water from Reservoir No. 1 or Reservoir No. 2 for purposes of 2.1a or 2.1b. The proposed changes shall be subject to written agreement of the Parties and may be referred to the FWS to evaluate whether the proposed changes negatively impact the water service described in 2.1a or 2.1b.

f. Performance by Central. Central shall own, design, construct, operate, maintain, and replace the Reservoir Project during the Term of this Agreement in good faith and in accordance with Prudent Utility Practice for the purposes described above.

2.2. Term.

a. This Agreement shall become effective on the date the last signature is affixed hereto ("Effective Date") and shall remain in effect for fifty (50) years from the Effective Date ("Term"), unless terminated or extended as provided in this Agreement. In the event that the authority of the United States Department of Interior to participate in the Program is not extended beyond September 30, 2020, then the provisions of Section 8.2 or 9.3 shall apply. The Parties recognize that the said authority must be approved by the U.S. Congress, and the Parties may agree to postpone the implementation of Section 8.2 or Section 9.3 if the authorization process is delayed, but imminent.

b. No later than one (1) year prior to the end of the Term, Central shall complete a study of the projected annual cost for Central to continue to operate, maintain, and replace the Reservoir Project for an additional term of twenty (20) years. During the course of the study, Central shall request from each Party any information on changed conditions affecting the future cost of the Reservoir Project for the 20 year period. Central shall provide a copy of the study to each Party, and the cost of the study shall be paid as a Cost of Water Services (as defined in Section 5.4). Upon completion of the study, the Parties shall meet and discuss the possible extension of the Reservoir Project for an additional term of 20 years. If within one hundred

eighty (180) days of the commencement of discussions no agreement has been reached, then the discussions shall terminate without further obligation. The 180 day time limit may be extended by agreement of the Parties. Notwithstanding the foregoing, no Party shall be obligated to agree to an extension of the Reservoir Project.

c. In the event of a Party's withdrawal or any termination under this Agreement (including the end of the Term), such Party's obligations to pay for costs that are incurred or arise under this Agreement prior to withdrawal or termination shall survive. At the end of the Term (or any extension thereof by agreement of the Parties), and after payment of all costs for the Reservoir Project, the following shall occur: (i) Central shall return any funds remaining in the Project Accounts (including, but not limited to, any funds in the Operations Phase Reserve Fund and the Operations Phase Large Budget Items Reserve Fund) to the Parties in proportion to their relative contribution percentages to the Project Accounts; (ii) the obligations, rights and benefits of the Parties under this Agreement shall terminate (except as to any obligations incurred before the end of the Term that extend beyond the Term); and (iii) Central shall retain ownership of the Reservoir Project assets free and clear of this Agreement. Notwithstanding the foregoing sentence, early terminations during the Construction Phase, Operations Phase or due to default are addressed in Sections 4, 5 and 9, respectively.

Section 3. Approval Obligations of the Parties

Each Party shall use its best efforts to obtain all acceptances or approvals required in order to effect the agreement of the Parties hereunder in the most expeditious manner possible and the Parties shall act in good faith to implement this Agreement fully and expeditiously without modification or condition.

ARTICLE II

CONSTRUCTION SERVICES

Section 4. Pre-Construction and Construction Services for the Reservoir Project ("Construction Phase")

4.1. Commencement. Upon receipt of (i) a notice to proceed from the Foundation and NDNR as defined in Section 4.3.2 and (ii) the Initial Construction Payment (as defined in

Section 4.3.2), Central shall commence pre-construction services, including planning, design, permitting and land acquisition, for the Construction Phase. During the Construction Phase, Central will perform or obtain, by itself or through contractors, the planning, permitting, design, acquisition of land rights, construction, installation and start-up of the Reservoir Project.

4.2. Project Accounts. Central shall manage the funds in the Project Accounts in accordance with its financial management policies. Any funds in the Project Accounts shall be used for the Reservoir Project. Central shall provide the other Parties with a copy of its current financial management policies and provide reasonable advance notice of any change in its financial management policies during the Term of this Agreement.

4.3. Construction Services. Each Party shall be responsible and liable for its Reservoir Cost Percentage of the Costs of Construction Services for the Reservoir Project as hereafter defined. "Costs of Construction Services" shall mean the actual costs of planning, designing, engineering, financing, acquiring, permitting, constructing, and startup of the Reservoir Project hereafter paid or incurred by Central in accordance with this Agreement, including but not limited to costs for:

- (a) all Federal, state and local taxes and payments in lieu of taxes required to be paid in connection with the acquisition and construction of the Reservoir Project;

- (b) planning and development costs, engineering fees, legal fees (excluding legal fees incurred in connection with a dispute between the Parties), appraisal fees, construction management and oversight, contractors' fees, costs of obtaining governmental or regulatory permits, licenses and approvals, costs of real property, labor, materials, equipment, supplies, training and testing costs, premiums on insurance obtained in connection with the construction of the Reservoir Project, premiums for performance and payment bonds, work delay costs, and all other costs properly allocable to the acquisition of land and construction of the Reservoir Project and placing the same in commercial operation, except those which are reimbursed to Central by a non-Party;

- (c) all direct costs of Central personnel for construction of the Reservoir Project;

(d) a reasonable sum to be determined by Central after consultation with the other Parties and set aside in the Project Accounts as the Construction Phase Decommissioning Fund to cover the cost of decommissioning the Reservoir Project if such decommissioning is implemented prior to beginning of the Operations Phase; and

(e) a reasonable sum to be determined by Central after consultation with the other Parties and set aside in the Project Accounts as the Construction Phase Reserve Fund to cover unexpected events and cost increases that may occur during the Construction Phase.

Central shall apply to the payment of the Costs of Construction Services, all receipts, revenues and other moneys received by it or credited to it from insurance proceeds, awards, damages collected from contractors, subcontractors or others, all relating to the Reservoir Project.

4.3.1. Project Construction Fee. In addition to paying their respective Reservoir Cost Percentages of the Costs of Construction Services, the NDNR and Foundation each shall be responsible and liable for payment to Central of a fee (the "Project Construction Fee") in the amount of two and one half percent (2.5%) times their respective share of the Costs of Construction Services. The Project Construction Fee compensates Central for the administrative costs and overhead associated with the acquisition of land and construction of the Reservoir Project, and the receipt, management and disbursement of funds for the Reservoir Project.

4.3.2. Initial Construction Payment. The Parties understand and agree that the estimated Costs of Construction Services for the Reservoir Project, including funds for the Construction Phase Reserve Fund but excluding funds for the Construction Phase Decommissioning Fund, is \$75 Million. The Construction Phase shall consist of a pre-construction stage and a construction stage. The pre-construction stage shall commence on the Effective Date and conclude on the first Day of the General Contract Notice Period defined in Section 4.3.6. The initial payment for the Construction Phase shall be \$20,475,000 and includes funds for the Construction Phase Reserve Fund and Construction Phase Decommissioning Fund ("Initial Construction Payment").

Within sixty (60) Days of the Effective Date, NDNR and Foundation shall issue to Central a joint notice to proceed with the pre-construction stage of the Construction Phase ("Pre-Construction NTP"). If the Pre-Construction NTP is not issued within such period, then this Agreement shall terminate and the Parties shall have no further obligations hereunder (except for obligations incurred prior to termination). Within a reasonable time after receipt of the Pre-Construction NTP, Central shall issue invoices to NDNR and Foundation for the Initial Construction Payment and associated Project Construction Fee and NDNR and Foundation shall pay their respective Reservoir Cost Percentages of the Initial Construction Payment and the associated Project Construction Fee to Central in immediately available funds within sixty (60) Business Days of the receipt of such invoices. Within ten (10) Days of the payments by NDNR and Foundation, Central shall deposit each of the payments from NDNR and Foundation, along with its own Reservoir Cost Percentage of the Initial Construction Payment, into the Project Accounts, whereupon Central shall proceed with the pre-construction stage of the Construction Phase of the Reservoir Project. During the Construction Phase, Central shall transfer the Project Construction Fee paid by the other Parties from the Project Accounts to its own regular accounts as the Costs of Construction Services are incurred, at the rate of 2.5% multiplied by such Costs of Construction Services.

4.3.3. Non-payment of Initial and Subsequent Construction Payments; Termination During Pre-Construction Stage.

a. In the event that a Party other than Central does not pay the Initial Construction Payment amount as specified in Section 4.3.2, and provided that Central has paid its share of the Initial Construction Payment, Central shall submit a written notice to such Party(ies) requiring payment within twenty (20) Days, and Central may cease work on the Reservoir Project until the required payments are made. If payment is not made within such required period, then this Agreement shall terminate and, after payment of any costs for the Reservoir Project, Central shall return any funds remaining in the Project Accounts to the Parties (including itself) that have made the Initial Construction Payment, in proportion to each Party's relative contribution to the Project Accounts, the obligations, rights and benefits of the Parties under this Agreement shall terminate (except as to any obligations incurred prior to termination), and the Parties shall have no further obligations hereunder. In the event that Central does not pay the Initial Construction Payment amount as specified in Section 4.3.2, and provided that the

other Party(ies) has paid its share of the Initial Construction Payment, any other Party may submit a written notice to Central requiring payment within twenty (20) Days. If payment is not made within such required period, then the Foundation or NDNR may terminate this Agreement and Central shall return the Initial Construction Payment amount as specified in Section 4.3.2 to the Parties and the obligations, rights and benefits of the Parties under this Agreement shall terminate (except as to any obligations incurred prior to termination), and the Parties shall have no further obligations hereunder.

b. If, during the pre-construction stage of the Construction Phase, Central determines that the Initial Construction Payment will not cover the Costs of Construction Services for the pre-construction stage, Central shall issue one or more additional invoices to the Parties. The additional invoices shall include the applicable Project Construction Fee. Each Party, including Central, shall either (a) pay their Reservoir Cost Percentage of the additional invoices within thirty (30) Days or (b) submit a notice of termination of the Agreement to the other Parties, whereupon Central may cease work on the Reservoir Project. A termination under this provision shall be governed by the procedures of Section 4.3.7(i)-(vi).

c. In addition to the termination right set forth in Section 4.3.3b., any Party, including Central, may submit a notice of termination of the Agreement to the other Parties at any time and for any reason during the pre-construction stage of the Construction Phase, whereupon Central may cease work on the Reservoir Project. A termination under this provision shall be governed by the procedures of Section 4.3.7(i)-(vi).

4.3.4. Project Design Report and Estimate. Prior to initiation of construction bidding, the Engineer shall provide a report to Central specifying the design and final construction cost estimate, which shall include estimates for the Construction Phase Reserve Fund and for the Construction Phase Decommissioning Fund for the remainder of the Construction Phase ("Project Design Report and Estimate"). The Project Design and Construction Report shall include one or more options for construction of the Reservoir Project using subsystems which could be operated prior to completion of the Construction Phase ("Subsystem Method"). Central shall promptly deliver a copy of the Project Design Report and Estimate to the other Parties. Notwithstanding any other provision of this Agreement, if the Project Design Report and Estimate is not satisfactory to one or more of the Parties, then all Parties shall promptly meet to discuss and attempt to resolve the concerns. If the Reservoir

Project is to be constructed using a Subsystem Method, an amendment to this agreement will be executed to address the scope of the subsystems, subsystem payment schedule, coordination of the Construction and Operation Phases with respect to the subsystems, decommissioning, default provisions, and other agreement issues.

4.3.5. Payment for Remainder of Construction Phase. After the times specified in Section 4.3.4 have elapsed, Central shall prepare and submit to the other Parties a budget for the remainder of the Construction Phase (including any changes to the Construction Phase Reserve Fund and Construction Phase Decommissioning Fund) and a schedule for payments from the Parties. The payment schedule will require collection of all funds needed to complete the Reservoir Project prior to beginning construction; or in the case of implementing a Subsystem Method, will require collection of all funds needed to complete the Subsystem prior to beginning construction on the Subsystem.

Within a reasonable time following delivery of the budget and payment schedule, Central shall discuss with the NDNR and Foundation their funding capabilities for the remainder of the Construction Phase and, within a reasonable time after written notice from NDNR and Foundation that funding is in place, shall secure proposals from contractors for construction of the Reservoir Project. Central shall review the contractors' proposals, notify the NDNR and Foundation pursuant to Section 4.3.6 of the contractor or contractors with which Central intends to contract for the construction of the Reservoir Project, and submit to the NDNR and Foundation an invoice setting forth the payments owed for their respective Reservoir Cost Percentages of the remaining balance of the Costs of Construction Services after the Initial Construction Payment is subtracted, plus the applicable Project Construction Fee. Following expiration of the termination right set forth in Section 4.3.6, the NDNR and Foundation shall pay the invoice as specified herein and Central shall deposit the payments into the Project Accounts. Central shall pay its Reservoir Cost Percentage of the remaining cost of the Construction Phase, less its Initial Construction Payment, without any Project Construction Fee, to the Project Accounts within ten (10) Days of receipt of payments from NDNR and Foundation. Upon receipt of all payments pursuant to this Section 4.3.5 and the expiration of the termination right set forth in Section 4.3.6, the Parties shall proceed with the remainder of the Construction Phase in accordance with this Agreement.

4.3.6. Additional Early Termination Right. Central shall provide the NDNR and Foundation at least thirty (30) Days advance written notice of its intent to enter into a contract or contracts for construction of the Reservoir Project ("General Contract Notice Period"). Prior to the expiration of the General Contract Notice Period, any Party may terminate this Agreement by written notice to the other Parties, whereupon Central may cease work on the Reservoir Project. Unless the notice of termination is rescinded, the termination shall be effective thirty (30) Days from the date of notice. During the General Contract Notice Period, a Party other than Central terminating pursuant to this Section 4.3.6 may assign its rights and obligations hereunder to any other Party, with that Party's consent, or, with the consent of all Parties, to any other Person, whereupon the remaining Parties shall execute an amendment hereto accepting the assignment and specifying that the assignee(s) shall be bound by the terms of this Agreement and Central shall proceed with its work related to the Reservoir Project hereunder. If no such assignment is completed, then this Agreement shall terminate, whereupon the following shall occur: (i) Central shall use commercially reasonable means to sell land and equipment acquired for the Reservoir Project, decommission the Reservoir Project as hereinafter provided, and deposit any funds collected in the Project Accounts; (ii) Central may use funds in the Project Accounts to pay costs necessarily incurred in connection with decommissioning the Reservoir Project, including the cost of restoring Central's system to its pre-Reservoir Project condition, (iii) if the cost of decommissioning exceeds the funds remaining in the Project Accounts, after the sale of land and equipment, then the terminating Party shall be responsible for the payment of such costs, (iv) upon completion of the sale of land, equipment, decommissioning and payment of all Costs of Construction Services, Central shall return any funds remaining in the Project Accounts, first, in proportion to their relative contributions to the Project Accounts, to the non-terminating Parties, up to the limit of their respective payments for the Reservoir Project, and, then, if funds remain, to the terminating Party, up to the limit of its payment for the Reservoir Project, the intent being that the non-terminating Parties shall be reimbursed for payments made hereunder to the extent feasible before any reimbursement to the terminating Party, (v) if the funds remaining in the Project Accounts after the foregoing payments exceed the non-terminating Parties' payments for the Reservoir Project, then such remaining funds shall be distributed proportionally to the non-terminating Parties and (vi) the obligations, rights and

benefits of the Parties and any other Persons with respect to the Reservoir Project shall terminate and cease to exist.

If there is no notice of termination during the General Contract Notice Period, the Parties shall make their payments pursuant to Section 4.3.5, Central shall enter into the contract or contracts for construction of the Reservoir Project, and the Parties shall proceed with the construction stage of the Construction Phase in accordance with the Agreement.

4.3.7. Construction Increase Notice; Termination. If, during the construction stage of the Construction Phase, the Engineer informs Central that the remaining cost of construction is expected to exceed the entire construction budget, including any contingency amount in the Construction Phase Reserve Fund ("Construction Increase Notice"), then Central shall notify the other Parties of the Construction Increase Notice and the Parties promptly shall meet and, within thirty (30) Days of Central's notice, attempt to reach agreement to complete the Construction Phase and provide funding. If the Parties agree, then the Construction Phase Decommissioning Fund may be utilized, in whole or in part, to provide funding to complete the Construction Phase. If agreement is reached within such time period as to funding for and completion of the Construction Phase, then a request for payment for the increased cost plus the applicable Project Construction Fee (taking into account any agreement to utilize all or a portion of the Construction Phase Decommissioning Fund) ("Additional Payment Request") will be submitted by Central to the NDNR and Foundation. The NDNR and Foundation shall pay their respective Reservoir Cost Percentages of the Additional Payment Request within forty-five (45) Days of the date of the Additional Payment Request and Central shall deposit the payments into the Project Accounts. Central shall pay its Reservoir Cost Percentage of the Additional Payment Request, without any Project Construction Fee, to the Project Accounts within forty-five (45) Days of the date of the Additional Payment Request. If agreement is not reached within such thirty (30) Day time period as to funding for and completion of the Construction Phase, then this Agreement shall terminate, whereupon the following shall occur: (i) Central shall use commercially reasonable means to sell land and equipment acquired for the Reservoir, decommission the Reservoir Project as hereinafter provided, and deposit any funds collected in the Project Accounts; (ii) Central may use funds in the Project Accounts to pay costs necessarily incurred in connection with decommissioning the Reservoir, including the cost of restoring Central's system to its pre-Reservoir Project condition, (iii) if the cost of decommissioning

exceeds the funds remaining in the Project Accounts, after the sale of land and equipment, then the Parties shall be responsible for the payment of such costs in accordance with their respective Reservoir Cost Percentages, (iv) upon completion of the sale of land, equipment, decommissioning and payment of all Costs of Construction Services, Central shall return any funds remaining in the Project Accounts to the Parties in proportion to their relative contributions to the Project Accounts, (v) if the funds remaining in the Project Accounts after the foregoing payments exceed the Parties' payments for the Reservoir Project, then such remaining funds shall be distributed to the Parties in proportion to their relative contributions to the Project Accounts and (vi) the obligations, rights and benefits of the Parties and any other Persons with respect to the Reservoir Project shall terminate and cease to exist.

4.4. Construction Responsibilities. Central shall pay for the Costs of Construction Services from the Construction Phase Fund in the Project Accounts. Central shall be responsible for the hiring, payment and oversight of contractors during the Construction Phase of the Reservoir Project. The responsibilities of construction oversight shall include, but not be limited to: coordinating the work of the various contractors; coordinating with the Engineer on modifications to the plans, specifications and construction schedules; coordinating the construction activities at the site with Central's existing facilities and operations; supervising and approving construction surveys; addressing contractor compliance with plans, specifications and construction schedules; reviewing and, after recommendation by the Engineer, approving contractors' shop drawings and working drawings; coordinating delivery of materials and supplies; receiving and coordinating storage of materials and supplies; maintaining necessary records to support payments for work completed and charges for contract changes; issuing change orders; issuing orders to stop or resume work that are authorized by a construction contract; inspecting work tendered for final acceptance and accepting or rejecting such work; and preparing reports relating to construction activities. During the Construction Phase, Central shall provide quarterly reports on the progress of construction to the Parties.

4.5. Completion of Construction. In preparation for the transition to the Operations Phase of the Reservoir Project, Central shall provide written notice to the other Parties when Central estimates that the Construction Phase is within ninety (90) Days of completion ("Pre-Operations Payment Notice"). The completion of construction of the Reservoir Project shall be evidenced by a certificate or certificates signed by the Engineer and Central, stating (i) that the

construction of the Reservoir Project has been completed in accordance with the plans and specifications applicable thereto, (ii) the date construction was completed ("Construction Completion Date") and (iii) the amount, if any, required for the payment of any remaining part of the Costs of Construction Services. Each Party shall be responsible for its Reservoir Cost Percentage of such remaining payments including, as applicable, the Project Construction Fee within sixty (60) Days of receipt of invoice for such amount. Any funds remaining in the Project Accounts from the Construction Phase after the Construction Completion Date and payment of the remaining Costs of Construction Services (i) shall be credited for each Party in proportion to the Party's payment for the Construction Phase of the Reservoir Project, (ii) shall be applied to each Party's payment to the Operations Phase Large Budget Items Reserve Fund established pursuant to Section 4.6, which fund shall not initially exceed \$2,000,000 without prior written approval of the Parties, and (iii) the balance, if any, may be applied by Central to the Operations Phase Reserve Fund as a reserve fund for a Party's future Cost of Water Services (as defined in Section 5 of the Agreement), or, at the written request of the Party, refunded by Central within sixty (60) Days of the request.

4.6. Transition to Operations Phase; Initial Payment for Operations Phase; Operations Phase Large Budget Items Reserve Fund.

a. The Pre-Operations Payment Notice shall contain Central's statement of money due from each Party, in accordance with its Reservoir Cost Percentage, to establish the Operations Phase Large Budget Items Reserve Fund. The amount specified in the Pre-Operations Payment Notice for this Fund shall not exceed \$2,000,000 without written consent of all Parties, and shall take into account sums expected to be available for transfer from the Project Accounts to the Operations Phase Large Budget Items Reserve Fund pursuant to Section 4.5 upon conclusion of the Construction Phase. The Pre-Operations Payment Notice also shall contain Central's initial Annual Water Service Invoice (as defined in Section 5.4.2) for the Cost of Water Services (as described in Section 5.4).

b. Within sixty (60) Days of the date of the Pre-Operations Payment Notice, each Party, including Central, shall pay its Reservoir Cost Percentage of the Operations Phase Large Budget Items Reserve Fund amount for deposit into a separate account established and maintained by Central. After the Construction Completion Date and the payment by Central from the Project Accounts of the remaining sums owed to contractors for the Construction Phase,

Central shall issue a supplemental notice to the Parties confirming the transfer of funds from the Project Accounts to the Operations Phase Large Budget Items Reserve Fund pursuant to Section 4.5 and invoicing or crediting the Parties, as necessary, in accordance with their respective Reservoir Cost Percentages, to establish the Operations Phase Large Budget Items Reserve Fund amount specified by Central in the Pre-Operations Payment Notice.

ARTICLE III.

WATER SERVICES

Section 5. Operation of the Reservoir Project ("Operations Phase")

5.1. Operation of the Reservoir Project.

a. The Construction Phase concludes on the Construction Completion Date. The Operations Phase shall commence upon conclusion of the Construction Phase. During the Operations Phase, Central shall utilize Prudent Utility Practices in the operation, maintenance and replacement of the Reservoir Project to provide water service for the purposes of the Reservoir Project described in Section 2. Central shall operate according to Governmental Approval and Governmental Authority in providing water service pursuant to this Agreement.

b. Central will not modify the Reservoir Project facilities so as to reduce the water service provided under this Agreement. The Parties understand and agree that Central owns and operates other facilities within its water delivery and regulation system, located upstream and downstream of the Reservoir Project facilities, that are used for hydropower production, irrigation, and other purposes, and these facilities may in the future be modified or rebuilt, and Central may build other facilities within its water delivery and regulation system (all such current, modified, and future facilities hereinafter referred to as "Central's Other Facilities"). The Parties further understand and agree that the water to be regulated by the Reservoir Project is water that will pass through certain of Central's Other Facilities. Notwithstanding any other provision herein, this Agreement shall not create or establish, or be construed to create or establish, by implication or otherwise, any obligation, restriction, or limitation, now or in the future, with respect to Central's Other Facilities, or the operation of Central's Other Facilities, that are used or in the future may be used for delivery of water to or from the Reservoir Project. Without limiting the effect of the preceding sentence, and for the sake of clarity, the Parties understand and agree that Central shall not be in default of this Agreement if Central modifies

Central's Other Facilities or changes its operations in a way that affects the volume, rate, frequency, or timing of Excess Water available for regulation by the Reservoir Project.

c. Central makes no guarantees regarding the volume, rate, frequency, or timing of Excess Water available for regulation by the Reservoir Project, and it is understood and agreed that Central does not provide a guarantee to the Foundation or the NDNR or any other Person that 40,800 acre feet of annual average reduction of shortages to Target Flows will be supplied by the Reservoir Project. The provisions of this Agreement are subject to the rights and obligations of Central under its water appropriations, and the provisions of this Agreement shall not be construed as modifying, limiting or changing the rights and benefits of said water appropriations. Nothing in this Agreement shall interfere with or limit Central's rights to obtain new water appropriations or to amend existing water appropriations; provided, however, Central shall notify the other Parties within ten (10) Days after filing of any applications for (i) a new appropriation that would make use of Excess Water or (ii) a petition to amend an existing appropriation for power use on Central's Supply Canal.

5.2. Operations with Program. The EA Manager shall set priorities for the purposes set forth in Sections 2.1a. and 2.1b. and shall also specify the flow targets in the Platte River for those purposes except that Reservoir No. 2 may be reserved by Central for Hydrocycling mitigation during the time period of June 15 through August 31 as described in Section 2.1c. With the written consent of Central, the EA Manager also may set priorities for Hydrocycling, as described in Section 2.1c. Communications between the EA Manager and Central will be conducted in accordance with those relevant portions of Section 2.1.5 of Central's *Administrative Plan for Managing Water Commitments* (as amended from time to time) in the same manner as applied to Environmental Account operations under that provision.

5.3. Operations without Program. If the Program no longer exists, and if the Parties agree in writing, water operations for the Reservoir Project during the Operations Phase will continue to be managed by the EA Manager as described in Section 5.2, except that the Parties will perform the function of the Program's Governance Committee as described in Attachment 5, Section 1 of the Program Document.

If the Program no longer exists, and if the Parties do not agree that operations will continue to be managed by the EA Manager as described in Section 5.2, then the Parties will be convened by Central no less than twice per year for purposes of attempting to develop a

consensus for priorities for purposes as described in Section 2, and also for flow targets in the Platte River for the purposes set forth in Sections 2.1a. and 2.1b. Where consensus is reached, Central will operate in conformance with the consensus. If consensus is not reached, Central will continue to operate the Reservoir Project for the purposes set forth in Sections 2.1a. and 2.1c. only, and will use Target Flows for the flow target for the purpose set forth in Section 2.1a. Central shall prepare summary reports of any consensus items agreed to by the Parties and shall prepare an annual summary of Reservoir Project operations for the Parties.

5.4. Payment for Water Services. During the Operations Phase, the Parties shall be responsible for the payment of their respective Reservoir Cost Percentages of the Cost of Water Services, as hereafter defined. The "Cost of Water Services" shall mean all costs attributable to the Reservoir Project that are incurred by Central from the ownership, operation, maintenance, repair, renewal, and replacement, of the Reservoir Project, including but not limited to the following items:

(a) any amount which Central may be required to pay for the prevention or correction of any unusual loss or damage or for renewals, replacements, repairs, additions, betterments, improvements and modifications which are necessary to keep the Reservoir Project in good operating condition in accordance with Prudent Utility Practices or to meet governmental requirements;

(b) engineering fees, legal fees incurred in connection with the operation, maintenance and replacement of the Reservoir Project (excluding legal fees incurred in connection with a dispute between the Parties), project management costs, contractors' fees, costs of obtaining governmental or regulatory permits, licenses and approvals, costs of labor, materials, equipment, supplies, training and testing costs, premiums on insurance obtained in connection with operation of the Reservoir Project, premiums for performance and payment bonds, and work delay costs;

(c) the costs of operating and maintaining the Reservoir Project which are not included in the costs specified in (a) and (b) above and are properly chargeable to the Reservoir Project, including (i) 2.0 percent (2.0%) of the annual cost of operations, maintenance and replacement of Central's water storage and conveyance system, (ii) administrative and general expenses of Central allocable to the Reservoir Project in accordance with the then-current method used by

Central to allocate administrative and general expenses to its other divisions, and (iii) taxes or payments in lieu of taxes, as applicable.

5.4.1. The Cost of Water Services shall include expenses for third party liability claims related to the Reservoir Project and expenses incurred for material, equipment, and labor in connection with emergency maintenance, repair and replacement of the Reservoir Project. Central shall apply to the payment of the Cost of Water Services, all receipts, revenues and other moneys received by it or credited to it from insurance proceeds, sale of lands, damages collected from contractors, subcontractors or others, all relating to the Reservoir Project.

5.4.2.

a. During the Operations Phase, Central shall submit to the NDNR and Foundation a detailed annual invoice specifying each such Party's Reservoir Cost Percentage for the Cost of Water Services for the following year, less Central's Reservoir Cost Percentage for such costs ("Annual Water Service Invoice"). The Annual Water Service Invoice shall include sums payable by the Parties or credits due to the Parties as a result of adjustment of the Operations Phase Large Budget Items Reserve Fund as provided in Section 5.4.5a. The NDNR and Foundation shall pay to Central their respective Reservoir Cost Percentages of the Annual Water Service Invoice within thirty (30) Days. The payments for the Cost of Water Services may be deposited directly into Central's accounts as payment for water service. The payments made as a result of adjustment of the Operations Phase Large Budget Items Reserve Fund shall be deposited into such fund.

b. The Foundation and/or NDNR may, at their option, pay Central for deposit into the Operations Phase Reserve Fund for the future Cost of Water Services. Central shall deposit any such payments received from the Foundation and NDNR in the Operations Phase Reserve Fund to provide for a reserve for that Party's future Annual Water Service Invoices or Additional Payment Requests. Application of deposits from the Operations Phase Reserve Fund shall be accomplished in accordance with the procedures set forth in subsection c. below.

c. In the event a Party does not pay its respective Reservoir Cost Percentage of the Annual Water Service Invoice or Additional Payment Request within the time period set forth herein, and provided that such Party has deposited funds in the Operations Phase Reserve Fund,

then Central shall utilize the Party's funds available in the Operations Phase Reserve Fund to pay such Annual Water Service Invoice or Additional Payment Request and thereby avoid a Payment Default. If Central makes a payment from the Operations Phase Reserve Fund for an Annual Water Service Invoice or an Additional Payment Request, a written notice of the usage of the Operations Phase Reserve Fund shall be provided to the Parties.

d. Along with the Annual Water Service Invoice, Central shall provide an annual statement to each Party setting forth: (i) the total balance held in the Operations Phase Reserve Fund; (ii) the balance held in the Operations Phase Reserve Fund contributed by that Party; (iii) the amount of any deposits made to the Operations Phase Reserve Fund within the last year by the Party; and (iv) the amount applied from the Operations Phase Reserve Fund within the last year to pay for an Annual Water Service Invoice or Additional Payment Request.

e. If a Party's contribution to the Operations Phase Reserve Fund is entirely expended in accordance with the procedures set forth above, and such Party does not otherwise timely pay any then due balance of the Annual Water Service Invoice or Additional Payment Request as required herein, then such failure to pay shall be a Payment Default (as defined in Section 9.1).

5.4.3. Central shall make reasonable efforts to provide the NDNR and Foundation advance notice of anticipated capital cost items or significant operating expense items that exceed \$50,000 ("Large Budget Items"). The Large Budget Items threshold of \$50,000 shall be adjusted each year during the Term by the percentage change in the Consumer Price Index (CPI-U), U.S. City Average, all items, published by the Bureau of Labor Statistics of the United States Department of Labor, for the month of October each year. If the CPI-U is no longer available, Central shall select and implement a replacement index that reasonably approximates the CPI-U and shall notify the other Parties of the selection. If, within thirty (30) Days prior to issuance of the Annual Water Service Invoice, written agreement is reached with the NDNR and Foundation to provide advance funding for the Large Budget Items for purposes of leveling the Cost of Water Services, Central shall include the advance funding for the Large Budget Items in the Annual Water Service Invoice for the agreed upon number of years prior to the year(s) in which the costs for the Large Budget Items will be incurred by Central and shall accumulate such advance funding in a Project Account until the costs are incurred. If agreement on advance

funding for the Large Budget Items is not reached, then the costs for the Large Budget Items will either be invoiced the same as all other Cost of Water Services (i.e.- Large Budget Items shall be included in the Annual Water Service Invoice for the year in which the costs for the applicable Large Budget Items will be incurred by Central) or Central shall utilize funds available in the Operations Phase Large Budget Items Reserve Fund and such fund shall be replenished as set forth in Section 5.4.6 below.

5.4.4. If, during any calendar year of the Operations Phase, Central receives payments from the other Parties that exceed the actual Cost of Water Services except as provided in Section 5.4.3, then, upon approval of such Party, Central may apply such excess funds to the following year's costs in accordance with each Party's Reservoir Cost Percentage or if directed by the Party, Central may deposit the excess funds in the Operations Phase Reserve Fund. Notwithstanding any other provision of this Section 5, if the annual payments are not adequate for the Cost of Water Services, Central shall prepare an Additional Payment Request for payment of the excess costs. The NDNR and Foundation shall pay their respective Reservoir Cost Percentages of the Additional Payment Request within thirty (30) Days of the date of the Request and Central shall deposit the payments into the Project Accounts.

5.4.5.

a. Upon written approval of the Parties, which approval shall not unreasonably be withheld, Central may adjust the amount of the Operations Phase Large Budget Items Reserve Funds at five (5) year intervals during the Term in light of the experience gained operating the Reservoir Project during the Operations Phase. Central shall submit a written notice to the Parties specifying the amount of the revised Operations Phase Large Budget Items Reserve Fund, if any, and the amount of the payment or credit owed by or to each Party. If the Fund amount is increased, then, within six months of the date of the notice, each Party, including Central, shall pay its Reservoir Cost Percentage of the increased Operations Phase Large Budget Item Reserve Fund amount for deposit into the separate account maintained by Central. If the Fund amount is reduced, then, within sixty (60) Days of the date of the notice, Central shall refund to each Party its Reservoir Cost Percentage of the difference between the old and new Operations Phase Large Budget Items Reserve Fund amount or a Party may direct Central to deposit such refund in the Operations Phase Reserve Fund.

b. In addition to adjustments pursuant to Section 5.4.5a, the Operations Phase Large Budget Items Reserve Fund amount shall be adjusted and invoiced by Central each year during the Term by the percentage change in the CPI-U in accordance with the provisions set forth in Section 5.4.3 as set forth above.

5.4.6. If, during the Operations Phase, Central incurs or expects to incur costs for the Reservoir Project that qualify as a Cost of Water Services but must be paid immediately, then Central may pay such costs from the Operations Phase Large Budget Items Reserve Fund, but only if the advance funding for the Large Budget Items in the Annual Water Service Invoices previously paid by the Parties is not sufficient to pay such cost, whereupon:

a. If the Operations Phase Large Budget Items Reserve Fund is drawn down by less than \$500,000, Central shall issue an invoice to the Parties to replenish the fund as part of the next annual invoice for the Cost of Water Services.

b. If the Operations Phase Large Budget Items Reserve Fund is drawn down by more than \$500,000, but less than all monies in the Operations Phase Large Budget Items Reserve Fund, then Central shall issue an invoice to the Parties for 50% of the sum needed to replenish the required balance of the fund as part of the annual invoice for the Cost of Water Services in each of the next two years.

c. If the expenditures deplete all monies in the Operations Phase Large Budget Items Reserve Fund, then a funding plan to replenish the fund must be approved by the Parties within one year upon such terms as the Parties may reasonably agree. Provided, however, if no such plan is agreed to by the Parties within such time, then the Parties agree to replenish the required balance of the fund in no more than three (3) years through invoices to the Parties for one third (1/3) of the cost to replenish the required balance of the fund as part of the annual invoice for the Cost of Water Services in each of the next three years.

d. Notwithstanding the provisions of subsections a. b. or c. above, the Parties agree that if Central incurs or expects to incur additional costs that would qualify for payment out of the Operations Phase Large Budget Items Reserve Fund for the Reservoir Project and the balance of such fund is insufficient to pay the additional costs, then Central, after consultation with the Parties, may provide the Parties with written notice of the amount of

such additional costs and within sixty (60) Days of such notice, the Parties shall each pay to Central their respective Reservoir Cost Percentage of such amount or authorize Central to draw such amount from the Party's contributions to the Operations Phase Reserve Fund. Any failure to pay or authorize payment pursuant to this Section 5.4.6d. may be treated by Central as a Payment Default in accordance with Section 9.

5.4.7. The Foundation agrees that it will transmit to Central, for payment by Central to the applicable governmental entities, any funds that may be received by the Foundation from the Program or from Program Signatories pursuant to the Program's "good neighbor" policy. The "good neighbor" policy of the Program provides for payments to be made as a result of lost property tax revenue associated with the operations of the Program. The "good neighbor" policy is currently interpreted to include the Reservoir Project.

5.5. Termination During Operations Phase.

a. During the Operations Phase, NDNR or Foundation, or both, may terminate this Agreement by providing twelve (12) months written notice to the other Parties. Unless the notice of termination is rescinded, the termination shall be effective 12 months from the date of notice. Prior to the effective date of any such termination, a terminating Party shall perform its obligations hereunder, including payments for the Cost of Water Services and the Operations Phase Large Budget Items Reserve Fund. A Party terminating pursuant to this Section 5.5 shall offer to assign its rights and obligations hereunder to any other Party other than Central, with that Party's consent, or, with the consent of all Parties, to any other Person, whereupon the remaining Parties shall execute an amendment hereto accepting the assignment and specifying that the assignee(s) shall be bound by the terms of this Agreement. If no such assignment is completed, and the notice of termination is not rescinded within the 12 month period, then this Agreement shall terminate, whereupon the following shall occur: (i) Central shall apply or set aside funds from the Project Accounts to cover any part of the Cost of Water Services that are incurred or arise prior to termination (including but not limited to expenditures for Large Budget Items and third party liability claims) that have not been previously paid, (ii) within a reasonable time after such Cost of Water Services have been paid or covered, Central shall return any funds remaining in the Project Accounts, first, to the non-terminating Parties in proportion to their relative

contribution percentages to the Project Accounts; and, then, if funds remain, to the terminating Party, in proportion to its relative contribution percentages to the Project Accounts, the intent being that the non-terminating Parties shall be reimbursed for payments made hereunder to the extent feasible before any payment to the terminating Party, and (iii) the obligations, rights and benefits of the Parties and any other Persons with respect to the Reservoir Project shall terminate and cease to exist, except that Central shall continue to own the Reservoir Project assets (excluding any funds from other Parties remaining in the Project Accounts or funds dispersed in accordance with the foregoing provisions) and shall be entitled to use such assets for any lawful purpose free and clear of this Agreement.

Section 6. Annual Report and Review Rights

During the Term, Central shall provide an annual report to the Parties on the status of the Project Accounts and expenses incurred for the Reservoir Project ("Annual Project Report"). The Annual Project Report shall identify payments to contractors, direct charges for Central personnel, allocations of Central administrative and general expenses, and a five year forecast of Large Budget Items in connection with the Reservoir Project.

Upon at least ten (10) Days advance written notice to Central, the Foundation and NDNR (or their authorized agents) shall have the right during regular Central business hours to review contractor invoices, direct charges for Central personnel and the worksheets used for allocating Central administrative and general expenses to the Project Accounts. The Foundation and NDNR shall also have the right to conduct an annual review of all books, accounts, and other documents or records pertinent to the construction or operation of the Reservoir Project. No agent retained by a Party to perform any such review may be retained on a "contingency fee" basis. The Parties and their agents shall treat such review in accordance with Section 14 of this Agreement. The right of any Party to conduct a review as provided herein shall not be construed to limit, suspend, or abate any Party's obligation to make a payment otherwise required by this Agreement when due. Central shall credit any overpayment determined by the review and accepted by Central against the next payments due and owing under this Agreement. A Party shall pay any underpayment determined by the review and accepted by Central within thirty (30) Days of determination.

ARTICLE IV.

GENERAL PROVISIONS

Section 7. Dispute Resolution; Period for Billing Adjustments

7.1. Dispute Resolution. In the event of a dispute under this Agreement, the following shall occur:

7.1.1. All disputes with references thereto, arising out of the performance of this Agreement, or changes therein, or work in connection therewith, shall initially be submitted to Central for decision.

7.1.2. In the event that a Party disagrees with Central's decision, a senior executive of Central and a senior executive of such Party shall immediately confer, discuss and review Central's decision.

7.1.3. In the event that the meeting referred to in Section 7.1.2. fails to resolve the dispute, Central's decision shall be implemented, subject to the right of the Party to pursue available remedies, and shall remain in effect unless and until otherwise determined by a Governmental Authority. Each Party may pursue all remedies available at law or in equity, except that termination shall occur only as provided in this Agreement. Pending final decision of any dispute hereunder, the disputing Party shall proceed with its obligations and performance in accordance with the written decision of Central.

7.1.4. Central's power of initial decision is intended only as an agreed mechanism to keep the Reservoir Project moving forward in the event of a dispute and does not: (1) create any presumption in favor of Central's decisions, (2) alter the Parties' substantive obligations under this Agreement, or (3) change either the standard of review or standard of liability which would otherwise apply to this Agreement.

7.2. Limitation on Time Period for Billing Adjustments. Any claim for a billing adjustment shall be limited to expenditures incurred or revenues received in the twenty-four (24) months immediately preceding the date such claim or error is raised by such Party. Any claim for a billing adjustment not raised within such twenty-four (24) month period shall be deemed waived and shall be barred. All other claims shall be governed by the applicable provisions of Nebraska law unless superseded by federal law. The Parties shall retain records and accounts relating to this Agreement for a period of at least ten (10) years. Reservoir Project construction

and "as built" drawings shall not be destroyed.

Section 8. Assignment of a Party's Interest in Reservoir Project.

8.1. NDNR Transfer to Foundation. NDNR, with the written consent of the Foundation, may assign all or part of its contractual interest and obligations in the Reservoir Project to the Program through the Foundation.

8.1.1. If NDNR assigns all or part of its interest prior to completion of the Construction Phase, the Foundation shall reimburse NDNR for a percentage of NDNR's contributions to the total Cost of Construction commensurate with the percentage of interest assigned by NDNR.

8.1.2. If NDNR assigns all or part of its interest during the Operations Phase and the Foundation later receives proceeds from liquidation or decommissioning of the Reservoir Project, the Foundation shall pay NDNR a percentage of those proceeds commensurate with the interest retained by NDNR, but not to exceed NDNR's total contributions to the Cost of Construction.

8.1.3. For the purposes of this section, the percentage of interest assigned to the Foundation or retained by NDNR shall be calculated on the basis of the relative ratios of those Parties' total respective payments toward the Cost of Construction and Cost of Water Services as of the date of calculation.

8.1.4. Any assignment under this section shall state that the Foundation will assume all of NDNR's rights, liabilities and obligations under this Agreement and will pay the percentage of NDNR's Reservoir Cost Percentage commensurate with the amount of interest assigned. The Foundation will promptly notify Central of any assignment and inform Central of the amount of interest assigned.

8.2. Foundation Assignment to Program Signatories or Subgroup of Program Signatories. If the Program is dissolved for any reason or not renewed, the Foundation may assign its interest in the Reservoir Project to one or more Program Signatories, in which case the assignee(s) will assume the responsibilities of a Party.

8.3. Other Assignment. If the Foundation is no longer the financial management entity providing support to the Governance Committee of the Program for any reason, subject to written consent of the other Parties, which consent shall not be unreasonably withheld, the

Foundation, as the financial management entity representing the Program, may assign its responsibilities and interest under this Agreement to a successor financial management entity providing support to the Governance Committee of the Program, provided that the successor assumes all obligations of a Party under this Agreement. The Foundation shall provide written notice of any such assignment to the other Parties.

Except as provided in Sections 4, 5, and 8, neither this Agreement nor any Party's interest under this Agreement may be assigned by any Party, without the prior written consent of all Parties hereto.

Section 9. Default and Remedies

9.1. Default. A default shall occur under this Agreement if: (a) there is a material breach of this Agreement, including but not limited to a failure to make payments as required under this Agreement, that a Party fails to cure or to make acceptable arrangements to cure as hereinafter provided; or (b) either of the following occurs (i) a Party makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, or (ii) an involuntary petition in bankruptcy or other insolvency protection is filed against a Party and not dismissed within one-hundred twenty (120) days thereafter. For purposes of this Section 9, a "Payment Default" shall mean a failure to make payments when due under this Agreement including a failure to pay because of the cessation or unavailability of government funding. A "Performance Default" shall mean any material breach of this Agreement other than a Payment Default or a breach specified in subsection 9.1(b) above.

9.2. Remedies for Default. The following provisions shall apply in the event of any default:

9.2.1. Central Default. Central acknowledges that the NDNR and Foundation are relying upon Central's performance in executing this Agreement and in making payment of amounts due hereunder, and that there will not be an adequate remedy at law for non-performance by Central of its obligations under this Agreement. Therefore, for any Performance Default or Payment Default by Central that occurs after the expiration of the General Contract Notice Period (as defined in Section 4.3.6), and provided the NDNR and Foundation have paid their share of funds owed pursuant to the terms of this Agreement, then, in addition to any other

remedies that NDNR and Foundation may have at law or in equity, in the event of (i) a Payment Default by Central that is not cured within thirty (30) Days of written notice during the Construction Phase or one hundred twenty (120) Days during the Operations Phase or (ii) a Performance Default for which reasonable arrangements to cure are not commenced within ninety (90) Days, the other Parties shall have the right to a remedy of specific performance to require Central to perform its obligations as set forth herein. Without limiting its rights under any other provision of this Agreement, Central acknowledges that a court order requiring specific performance may direct Central to operate the Reservoir Project to achieve the purposes set forth in Section 2.1a. and 2.1b. Notwithstanding the foregoing, (i) in no event may any Person other than Central be allowed to operate the Reservoir Project facilities or any other Central facilities; and (ii) Central shall not be obligated to make payments required hereunder unless the other Parties also make the required payments. Subject to the limitation of liability provisions set forth in Section 13.4, and notwithstanding their right to seek a remedy of specific performance as set forth herein, the NDNR and Foundation shall have the right to seek monetary damages from Central in the event of a Payment or Performance Default.

9.2.2. NDNR or Foundation Default. NDNR and Foundation acknowledge that Central is relying on their performance in executing this Agreement and in making payment of amounts due hereunder. Therefore, provided Central has paid its share of funds owed pursuant to the terms of this Agreement, then, in addition to any other remedies that Central may have at law or in equity, and, subject to the provisions of Section 13.3, in the event of (i) a Payment Default by NDNR or Foundation that is not cured within thirty (30) Days of written notice during the Construction Phase or one hundred twenty (120) Days during the Operations Phase or (ii) a Performance Default by NDNR or Foundation for which reasonable arrangements to cure are not commenced within ninety (90) Days, Central may terminate this Agreement by written notice; provided, however, during the foregoing cure period, subject to all prior defaults being cured in full or adequate assurance thereof acceptable to Central, the NDNR and Foundation shall have the right to assign this Agreement, and their interests thereunder, to each other, or to any other Person accepted in writing by Central, whereupon Central and the remaining such Party or Person shall execute an amendment hereto accepting the assignment and specifying that the assignee shall be bound by the terms of this Agreement.

9.3. Effect of Termination Due to NDNR or Foundation Default

9.3.1. In the event of termination by Central due to a default by the NDNR or Foundation during the Construction Phase, the following shall occur: (i) Central shall use commercially reasonable means to sell land and equipment acquired for the Reservoir Project, decommission the Reservoir Project as hereinafter provided, and deposit any funds collected in the Project Accounts; (ii) Central may use funds in the Project Accounts to pay costs necessarily incurred in connection with decommissioning the Reservoir Project, including the cost of restoring Central's system to its pre-Reservoir Project condition, (iii) if the cost of decommissioning exceeds the funds remaining in the Project Accounts, after the sale of land and equipment, then the defaulting Party shall be responsible for the payment of such costs, (iv) upon completion of the sale of land, equipment, decommissioning and payment of all Costs of Construction Services, and any other costs incurred due to the Party's default, Central shall return any funds remaining in the Project Accounts, first, in proportion to their relative contributions to the Project Accounts, to the non-defaulting Parties, up to the limit of their respective payments for the Reservoir Project, and, then, if funds remain, to the defaulting Party, up to the limit of its payment for the Reservoir Project, the intent being that the non-defaulting Parties shall be reimbursed for payments made hereunder to the extent feasible before any reimbursement to the defaulting Party, (v) if the funds remaining in the Project Accounts after the foregoing payments exceed the non-defaulting Parties' payments for the Reservoir Project, then such remaining funds shall be distributed proportionally to the non-defaulting Parties and (vi) the obligations, rights and benefits of the Parties and any other Persons with respect to the Reservoir Project shall terminate and cease to exist

9.3.2. In the event of termination by Central due to a default by the NDNR or Foundation during the Operations Phase, the following shall occur: (i) Central shall apply or set aside funds from the Project Accounts to cover any part of the Cost of Water Services that are incurred or arise prior to termination (including but not limited to expenditures for Large Budget Items and third party liability claims) that have not been previously paid (ii) within a reasonable time after such Cost of Water Services have been paid or covered, Central shall return any funds remaining in the Project Accounts, first, in proportion to their relative contribution to the Project Accounts, to the non-defaulting Parties, up to the limit of their payments for the Reservoir Project and, then, if funds remain, to the defaulting Party, up to the limit of its payment for the Reservoir Project, the intent being that the non-defaulting Parties shall be reimbursed for payments made

hereunder to the extent feasible before any payment to the defaulting Party, and (iii) the obligations, rights and benefits of the Parties and any other Persons with respect to the Reservoir Project shall terminate and cease to exist, except that Central shall continue to own the Reservoir Project assets and shall be entitled to use such assets for any lawful purpose free and clear of this Agreement.

9.4. Late Payments.

If any Party fails to make any payment when due pursuant to this Agreement, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the sum of three percent (3%) per annum plus the prime lending rate as from time to time may be published in the Money Rates section of The Wall Street Journal (the "Interest Rate").

Section 10. Governmental Approvals and Availability of Appropriated Funds

The obligation of Central to perform under this Agreement shall be subject to Central obtaining and continuing to receive all necessary Governmental Approvals from the Government Authorities. The NDNR and Foundation have represented to Central, and Central hereby acknowledges, that the availability of funding for the Reservoir Project may be affected by the appropriation process of the United States Congress and the legislatures of the Program Signatories.

Section 11. Waivers

Any waiver at any time by any Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other default or matter.

Section 12. Notices

All notices given pursuant to this Agreement by any Party to another Party shall be in writing and either personally delivered, or sent by facsimile or electronic mail, or mailed by certified or registered mail, postage prepaid, or sent by nationally recognized overnight courier, and addressed as provided in Exhibit "A" or at such other address or addresses as any Party may designate by notice given to the other Party(ies). With respect to all notices so delivered, the same shall be deemed effective on the day sent.

Section 13. Contribution and Limitation of Liability

13.1. Right of Contribution. To the extent that a Party has made a payment on behalf of one or more other Party(s) under this Agreement, a Party shall have the right of contribution and reimbursement from such other Party.

13.2. No Consequential Damages. To the fullest extent permitted by Law and notwithstanding anything to the contrary herein, in no event shall any Party be liable for punitive, indirect, exemplary, consequential, or incidental damages including, without limitation, claims of third parties arising in connection with this Agreement.

13.3. NDNR and Foundation Limitation of Liability for Damages. The liability of the Foundation or NDNR to Central for money damages due to a Payment Default or a Performance Default, whether based on contract, tort, or any other legal theory, shall be limited to the funds available in the Project Accounts, plus any funds held by the Foundation and NDNR (or their successors) for the Reservoir Project but not yet paid into the Project Accounts, plus funds appropriated by Congress and the state legislatures of the Program Signatories for the Reservoir Project. The foregoing limitation of financial liability for the Foundation and NDNR shall not limit or affect in any way Central's right to terminate the Agreement as provided in Section 9.2.2 or the provisions set forth in Section 9.3 that follow such termination.

13.4. Central Limitation of Liability for Damages.

The Parties acknowledge that, in the event of a Performance Default by Central, the Foundation and NDNR shall have the remedies set forth in Section 9.2.1. However, the liability of Central to the NDNR and Foundation for money damages caused by a Performance Default that results in tort liability shall be the limits of liability established in the Nebraska Political Subdivisions Tort Claims Act, or its successor statutes, in effect at the time of the Performance Default and, for a Performance Default that results in liability under any other legal theory, shall not exceed Three Million Dollars (\$3,000,000.00), for any single Performance Default and, in the aggregate for all Performance Defaults during the Term, shall not exceed Six Million Dollars (\$6,000,000). Said limitation of liability for monetary damages amount shall be adjusted by the percentage change in the CPI-U in accordance with the provisions set forth in Section 5.4.3.

The foregoing limitation of liability shall not limit, or be construed to limit, the right of the Foundation and NDNR to pursue specific performance or other equitable remedies as provided

in Section 9.2.1, and shall not apply to monies in the Project Accounts, which shall be used for the Reservoir Project or otherwise disbursed only as provided in this Agreement.

Section 14. Confidential Information

14.1. Use of Confidential Information. During the term of this Agreement, the Parties may disclose to each other certain Confidential Information, by either oral or written communications. These disclosures will be made upon the basis of the confidential relationship among the Parties, and unless specifically authorized in writing by the other, the Parties will:

14.1.1. Use such Confidential Information solely for purposes contemplated by this Agreement; and

14.1.2. Promptly return to each other, upon request, any and all tangible material concerning such Confidential Information, including all copies and notes, or destroy the same and provide the other Party with a written statement that such destruction has occurred. Under no circumstances shall any Confidential Information or copy thereof be retained, except with the express written approval of the owner of such Confidential Information.

14.2. Nondisclosure.

14.2.1. Each Party agrees that it will use reasonable care to prevent unauthorized disclosure of Confidential Information. No Party will make any copies of Confidential Information that is in written or other tangible form except for use by authorized Persons with a need to know in connection with this Agreement, and all Persons having access to Confidential Information shall agree to comply with the terms of this Agreement.

14.2.2. Each Party agrees not to distribute, disclose or disseminate Confidential Information in any way to anyone, except Persons who have such need to know, or use Confidential Information for its own purpose. Each Party agrees that its disclosure of Confidential Information to a Person who has a need to know shall be limited to only so much of the Confidential Information as is necessary for that Person to perform his/her function in connection with the Confidential Information.

14.3. Exceptions. The obligations imposed in this Section shall not apply to Confidential Information:

14.3.1. Which becomes available to the public through no wrongful act of the receiving Party;

14.3.2. Which may be published or otherwise made available to the public prior to the date hereof;

14.3.3. Which is received from a third party without restriction known to the receiving Party and without breach of this Agreement;

14.3.4. Which is independently developed by the receiving Party; or

14.3.5. Which must be disclosed pursuant to any Law (including, but not limited to, the Nebraska Public Meetings Law and the Nebraska Public Records Act, Neb. Rev. Stat. § 84-712.01 et seq.). If disclosure is requested or demanded as to Confidential Information pursuant to any Law, the Party receiving the request or demand shall provide the owner of such Confidential Information with prompt notice to enable the owner to seek protective legal remedies, and the receiving Party shall reasonably cooperate in connection therewith.

Section 15. Force Majeure.

15.1. Definition of Force Majeure. The term "Force Majeure", as used in this Agreement, means causes or events beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, which by exercise of due diligence and reasonable foresight could not reasonably have been avoided, including, without limitation, acts of God, unusual or extreme actions of the elements such as floods, earthquakes, hurricanes, landslides, droughts or tornadoes; lightning; fire; ice storms; epidemics, quarantines, icing conditions in supply canal; sabotage; vandalism beyond that which could reasonably be prevented by the Party; terrorism; war; riots; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any license, permit, approval, rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions or failures to act prevent or delay performance; and inability,

despite due diligence, to obtain any licenses, permits or approvals required by any Governmental Authority. The term Force Majeure does not include (i) any acts or omissions of any third party (other than as identified in Section 15.1), including, without limitation, any vendor, material man, customer or supplier of a Party, unless such acts or omissions are themselves excused by reason of Force Majeure; or (ii) a Party's inability to pay amounts due under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

15.2. Applicability of Force Majeure.

15.2.1. No Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure; provided that:

- (i) the non-performing Party gives the other Parties prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform; and
- (iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

15.2.2. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their

obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

Section 16. Miscellaneous

16.1. Amendments. This Agreement may be amended only by written agreement between all of the Parties.

16.2. Entire Agreement/Order of Precedence. This Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter contemplated by this Agreement and supersedes all other prior agreements, whether oral or written.

16.3. Counterparts. This Agreement may be executed in multiple counterparts to be construed as one.

16.4. Severability. If any part, term or provision of this Agreement is held by a Governmental Authority to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be unenforceable, and a new provision shall be deemed to be substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties hereto as evidenced by the provision so severed.

16.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska and, as applicable, federal law, without regard to conflict of law principles.

16.6. Jurisdiction. The Parties agree that any Legal Proceeding in connection with or relating to this Agreement shall be filed in a state or federal court of competent jurisdiction and proper venue located within the State of Nebraska.

16.7. No Third Party Beneficiaries. The Parties agree that no other parties are an intended third-party beneficiary of this Agreement.

16.8. Independent Contractors. Nothing in this Agreement shall be construed as creating any agency relationship between the Parties, including any partnership or joint venture, other than that of independent contractors. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person not a

party to this Agreement. This Agreement shall not empower any Party to act as any other Party's agent or to represent to any third party that it has the ability to bind any other Party, without the express permission of the Party to be bound.

16.9. Rules of Construction.

16.9.1. The descriptive headings of the various articles, sections and subsections of this Agreement have been inserted for convenience of reference only and shall not be construed as to define, expand, or restrict the rights and obligations of the Parties.

16.9.2. Wherever the term "including" is used in this Agreement, such term shall not be construed as limiting the generality of any statement, clause, phrase or term.

16.9.3. The terms defined in this Agreement shall include the plural as well as the singular and the singular as well as the plural.

16.9.4. Whenever a statute, code, rule or regulation is used in this Agreement, such term shall also include all successor statutes, codes and regulations.

16.10. Foundation. The Foundation has represented to Central, and Central hereby acknowledges, that the Foundation is the financial management entity providing support to the Governance Committee of the Program and that the Foundation, by executing this Agreement, is acting as the contracting agent of the Governance Committee of the Program.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.


ATTEST:

THE CENTRAL NEBRASKA PUBLIC
POWER AND IRRIGATION DISTRICT

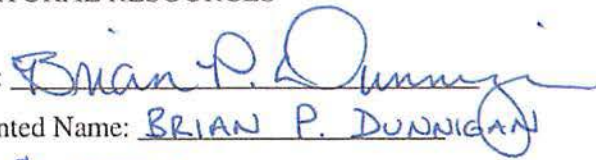
By: Emily J. Anderson
Printed Name: Emily J. Anderson
Its: Secretary
Date: 7-3-13

By: Don Kraus
Printed Name: Don Kraus
Its: General Manager
Date: 7/3/13

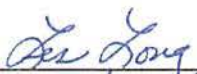
ATTEST:

By: 
Printed Name: LAURA M. PREGLIS
Its: OFFICE MANAGER
Date: 7-8-2013


NEBRASKA DEPARTMENT OF
NATURAL RESOURCES

By: 
Printed Name: BRIAN P. DUNNIGAN
Its: DIRECTOR
Date: 7-8-2013

ATTEST:

By: 
Printed Name: Lea Long
Its: Controller
Date: 7/9/2013

NEBRASKA COMMUNITY
FOUNDATION

By: 
Printed Name: Diane M. Wilson
Its: COO/CEO
Date: 7/09/2013

633199.25

EXHIBIT "A"

Notice Addresses

Diane M. Wilson
Chief Operating Officer / Chief Financial Officer
Nebraska Community Foundation, Inc.
3833 South 14th Street
P. O. Box 83107
Lincoln, NE 68501-3107

With a copy to:

Jerry F. Kenny, Ph.D.
Executive Director
Platte River Recovery Implementation Program
4111 4th Avenue, Suite 6
Kearney, NE 68845

Don D. Kraus, General Manager
The Central Nebraska Public Power and Irrigation District
415 Lincoln Street
PO Box 740
Holdrege, NE 68949

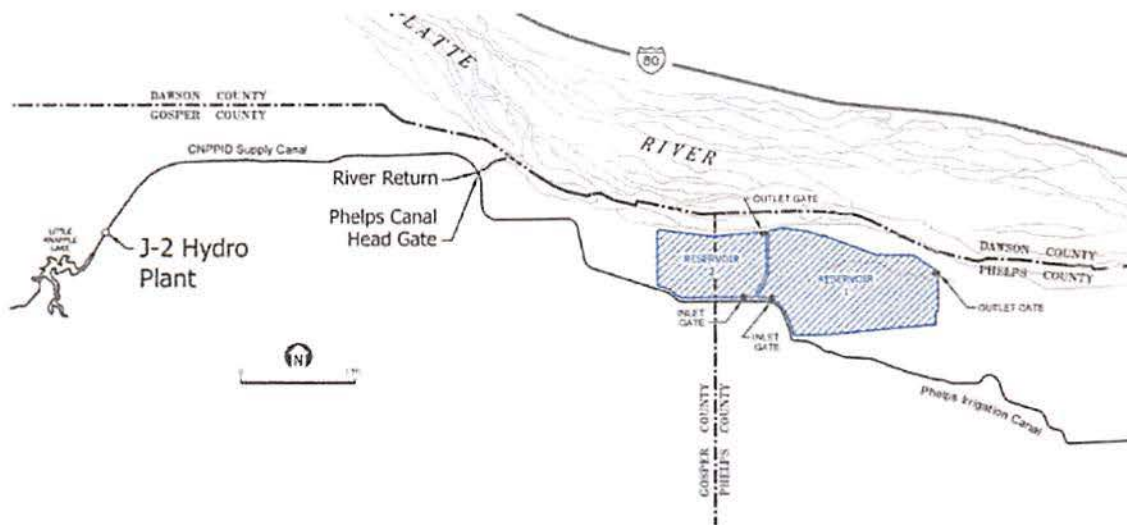
Brian P. Dunnigan, Director
Nebraska Department of Natural Resources
301 Centennial Mall South
Lincoln, NE 68509-4676

EXHIBIT "B"

<i>Time Period</i>	Target Flow (cfs)	
	<i>Wet and Normal Periods</i>	<i>Dry Periods</i>
Jan. 1 to Jan. 31	1,000	600
Feb. 1 to Feb. 14	1,800	1,200
Feb. 15 to March 15	3,350	2,250
March 16 to March 22	1,800	1,200
March 23 to May 10	2,400	1,700
May 11 to May 19	1,200	800
May 20 to June 20	3,700 (wet) 3,400 (normal)	800
June 21 to July 31	1,200	800
August 1 to Sept. 15	1,200	800
Sept. 16 to Sept. 30	1,000	600
October 1 to Nov. 15	2,400 (wet) 1,800 (normal)	1,300
Nov. 16 to Dec. 31	1,000	600

"Target Flows" for purposes of this Agreement shall mean FWS-recommended flows in the Central Platte River which are included in Attachment 5, Section 11, Appendix E of the Program Document on the Effective Date of this Agreement. Should target flows for the Program be changed in accordance with Section III.C.3 of the Program Document, then such changed flows shall become the Target Flows for purposes of this Agreement if agreed to in writing by the Parties.

EXHIBIT "C"



J-2 REGULATING RESERVOIRS
THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT

4852-7288-1172, v. 2-8323-6116, v. 1