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# Endangered Species, the Platte Cooperative Agreement, Environmental Assessment and Nebraska Water Rights

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# Cornhusker Economics

## Cooperative Extension

Institute of Agriculture & Natural Resources  
Department of Agricultural Economics  
University of Nebraska – Lincoln

### Endangered Species, the Platte Cooperative Agreement, Environmental Assessment and Nebraska Water Rights

Market Report	Yr Ago	4 Wks Ago	4/28/00
<b><u>Livestock and Products,</u></b>			
<b><u>Average Prices for Week Ending</u></b>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt. . . . .	\$65.78	\$72.03	\$74.37
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt. . . . .	77.01	94.37	95.64
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg. . . . .	82.93	100.63	101.92
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt. . . . .	100.39	111.95	117.38
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt. . . . .	36.75	46.25	50.75
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd. . . . .	*	62.57	61.50
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt. . . . .	103.60	116.28	126.50
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt. . . . .	75.00	83.75	86.50
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt. . . . .	160.00	170.00	185.00
<b><u>Crops,</u></b>			
<b><u>Cash Truck Prices for Date Shown</u></b>			
Wheat, No. 1, H.W. Omaha, bu. . . . .	2.73	2.85	2.76
Corn, No. 2, Yellow Omaha, bu. . . . .	2.00	2.09	2.04
Soybeans, No. 1, Yellow Omaha, bu. . . . .	4.55	5.15	5.10
Grain Sorghum, No. 2, Yellow Kansas City, cwt. . . . .	3.41	3.65	3.46
Oats, No. 2, Heavy Sioux City, IA, bu. . . . .	1.28	1.37	1.41
<b><u>Hay,</u></b>			
<b><u>First Day of Week Pile Prices</u></b>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton. . . . .	110.00	85.00	85.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton. . . . .	50.00	85.00	47.50
Prairie, Sm. Square, Good Northeast Nebraska, ton. . . . .	62.50	*	*
* No market.			

On July 1, 1997, the states of Nebraska, Colorado and Wyoming, and the U.S. Department of the Interior signed the "Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitat Along the Central Platte River, Nebraska," more commonly known as the Platte River Cooperative Agreement (PRCA). The PRCA is a proposed framework for cooperatively addressing Platte River endangered species issues. In order to implement the PRCA, the endangered species recovery program that the PRCA proposes must be reviewed and federally approved under the federal Endangered Species Act (ESA) and the federal National Environmental Policy Act (NEPA). One of NEPA's requirements is that federal agencies consider alternatives to the proposed action, in this case the PRCA endangered species recovery plan, including the "no-action" alternative. Recent newspaper accounts describe the rather severe water rights implications of implementing the no-action alternative, i.e., the implications of not implementing the PRCA. This article briefly discusses the PRCA, the NEPA and ESA review processes, water rights implications of the ESA, and policy challenges facing Nebraska in implementing the PRCA.

**Platte River Cooperative Agreement.** The ESA prohibits federal agencies from taking any action that harms endangered wildlife species or their identified critical habitat. The ESA also prohibits any individual from harming endangered species or habitat. Platte River ESA issues leading to the PRCA peaked in Nebraska when the Central Nebraska Public Power and Irrigation District (Holdrege), and the Nebraska Public Power District sought renewal of their joint 50-year federal water power license. ESA issues complicated the relicensing proceedings, as environmental interests and the U.S. Fish & Wildlife Service (FWS) sought increased streamflows to enhance endangered species habitat. The FWS contends that the basin-wide water deficit for endangered species is 417,000 acre-feet (KAF) per year, a figure strongly opposed by states and water users. Ultimately, additional ESA issues in Colorado and Wyoming led to negotiating the PRCA, which was signed July 1, 1997.

The PRCA establishes a proposed cooperative, a framework within which land and water uses that might otherwise violate the ESA would be allowed to occur so long as PRCA requirements are met. The PRCA establishes an initial goal of reducing the



water deficit by 130-150 KAF and providing 10,000 acres of land to enhance endangered species habitat. If the PRCA endangered species recovery program is approved in the NEPA/ESA review process and is ultimately implemented, the habitat land and water acquisition is expected to be completed by 2010-2013. If at the end of this period the recovery plan was considered unsuccessful and endangered species survival were still considered to be at risk, an additional agreement could be negotiated to obtain additional land and water for endangered species recovery.

The PRCA has not yet been federally approved, let alone implemented by the states and the FWS. If the PRCA were to be implemented, however, two provisions have important policy implications. First, any new surface or groundwater uses initiated after July 1, 1997 that deplete Platte streamflow would be required to replace any depletions if they occurred when the water was needed by endangered species. Second, the State of Nebraska would be required to prevent any surface or new groundwater diversions of PRCA water moving to storage or to the habitat area. Both represent significant water management and administration challenges in Nebraska.

**Environmental Assessment.** Before the PRCA can be implemented, the FWS must prepare what is called an environmental impact statement (EIS) under NEPA. NEPA requires an EIS for all major federal actions significantly affecting the quality of the human environment, which would include PRCA implementation. NEPA also requires that the EIS consider alternatives to the proposed federal action, including the no-action alternative, and that the public be involved in the decision process. Consequently the EIS (prepared by the FWS and the Bureau of Reclamation) must consider the environmental impact of implementing the PRCA, reasonable alternatives to the PRCA, and the likely impact of not implementing the PRCA (the no-action alternative). Alternatives to the PRCA being considered by the FWS include, for example, additional water storage reservoirs in all three PRCA states in order to provide more water for habitat.

The no-action alternative deals with what might be done by the FWS (under the ESA) to protect endangered species if the PRCA were not implemented: it describes what could happen but not necessarily what would happen. In one sense, the no-action alternative describes what the states and the FWS have been trying to avoid, which led to the many difficult compromises included in the PRCA. The no-action alternative essentially represents a worst-case scenario. If the PRCA were not implemented, the FWS could, under the ESA, require all federal reservoirs or water users with federal permits to provide their proportionate share of the 417 KAF amount of water the FWS believes is needed to protect endangered species. This would be instead of the 130-150 KAF amount negotiated under the PRCA. Any surface and groundwater irrigators (even those with uses predating the PRCA) receiving federal farm program payments could be similarly restricted, if their water uses reduced streamflows needed by endangered species. Finally, water users with no direct federal link, such as municipal and industrial water users, could have their uses curtailed to help restore the 417 KAF to endangered species if their water uses reduced streamflows needed by endangered species.

Public hearings will be held on the draft EIS this summer and fall. The FWS clearly hopes that the PRCA will be implemented, and that the FWS will not be faced with squeezing the

417 KAF shortfall out of Platte River water users upstream of the endangered species habitat. Water users in Colorado, Wyoming and Nebraska will all be better off with the PRCA than without it.

Can the FWS require water users to give up some or most of their water right if exercising the water right harms endangered species? Three federal courts have said yes; none have said no. So the FWS currently has broad discretion under the ESA to regulate water rights if using the water right harms endangered species. And this is regardless of whether the water rights are from a federal water project or have no federal connection at all (beyond the ESA).

**Nebraska Implementation Challenges.** Implementing the PRCA would benefit Nebraska Platte River water users in the long run, as they would be protected from meeting more severe ESA water right restrictions so long as PRCA requirements were met. Nonetheless, Nebraska faces two significant PRCA implementation challenges: water marketing and tributary groundwater regulations.

**Water Marketing.** Under water marketing, water rights can be bought, usually from irrigators (who account for over 90 percent of consumptive water use in Nebraska and the West) and then used for another purpose. Often cities buy irrigation water rights in states where unappropriated water for new water rights is not available. Nebraska is one of the few Western states that does not authorize water marketing. Water marketing would allow Nebraska to meet its PRCA water supply requirements at a significantly lower cost than if water marketing were not an option.

**Tributary Groundwater Regulations.** Groundwater regulations pose another complex problem. Little information currently exists regarding what Platte Valley wells affect Platte River stream flows, over what period of time (days, weeks, months or years) and in what amounts. If any "tributary" wells drilled after July 1, 1997 do withdraw PRCA water from the Platte, the PRCA water would need to be replaced. Nebraska law gives natural resource districts (NRDs) primary responsibility for groundwater management, including dealing with tributary groundwater disputes. While NRDs have little experience in this area, they need to quickly learn. If they don't, legal responsibility for interstate tributary groundwater regulation falls to the Nebraska Department of Water Resources. If NRDs don't accept responsibility for helping develop and implement tributary groundwater regulations, that failure significantly weakens the argument that NRDs are best suited for developing and implementing groundwater management policies in Nebraska. If NRDs want to retain that primary responsibility, NRDs must now demonstrate that they are worthy of that trust.

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