H.R. 1462, THE PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM AND PATHFINDER MODIFICATION AUTHORIZATION ACT

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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LEGISLATIVE HEARING ON "H.R. 1462, THE PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM AND PATHFINDER MODIFICATION AUTHORIZATION ACT"

Thursday, April 26, 2007
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:00 p.m. in Room 1324, Longworth House Office Building, Hon. Grace F. Napolitano [Chairwoman of the Subcommittee] presiding.

Present: Representatives Napolitano, McMorris Rodgers, Udall, Baca and Lamborn.

Mrs. NAPOLITANO. This meeting of the Subcommittee on Water and Power will come to order. My Ranking Member is on her way, so she will join us momentarily.

The purpose of this meeting of the Subcommittee is to hold a legislative hearing on H.R. 1462, the Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act introduced by my friend and member of the Subcommittee, Representative Mark Udall of Colorado's 2nd District.

I am also pleased to welcome my Members as they walk in and take their seats, our colleagues on the Subcommittee, and ask unanimous consent that Congressman Adrian Smith be allowed to sit with the Subcommittee this afternoon and to participate in the Subcommittee proceedings.

Mrs. NAPOLITANO. Without objection, so ordered.

I will begin the hearing with my brief statement, after which I will recognize my Ranking Member of the Subcommittee for any statement she may have. Any additional material may be submitted for the record, which will remain open for 10 days.

STATEMENT OF THE HONORABLE GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. The legislation before us today represents a decade of work reaching a cooperative agreement to restore habitat for a number of threatened and endangered species. Congratulations to all the parties for your hard work and for your determination that it could work for all involved.

The endangered species issues on the Central Platte River are in large part the result and due to almost a century of operation by the Bureau of Reclamation's Platte River Project in Wyoming, Colorado and Nebraska.

H.R. 1462 implements a proactive and sensible solution for three states, for the Federal government, for the water users and for the environmental groups, all of whom have worked together diligently to restore flows and habitat for these species. This legislation lends further credibility to the idea that irrigation and restoration can occur together.

I trust we have identified a solution that will allow continued agricultural production while enhancing and bringing new economic benefits arising from tourism to your restored river. This program has the potential to add new economic benefits to the local communities as a direct result of restoration.

A warm welcome to our witnesses. I look forward to your testimony.

And now I yield to my friend from Spokane, the Ranking Minority Member of the Subcommittee, Congresswoman Cathy McMorris Rodgers, for her statement.

[The prepared statement of Mrs. Napolitano follows:]

Statement of The Honorable Grace Napolitano, a Representative in Congress from the State of California

The legislation before us today represents a decade of work, reaching a cooperative agreement to restore habitat for a number of threatened and endangered species. I would like to congratulate the parties involved for their hard work on this.

The endangered species issues on the central Platte River are in large part the result of almost a century of operation by the Bureau of Reclamation's Platte River Project in Wyoming, Colorado, and Nebraska. H.R. 1462 will implement a proactive and sensible solution from three states, the Federal government, water users and environmental groups, all of whom have worked hard to restore flows and habitat for these species.

This legislation lends credibility to the idea that irrigation and restoration can occur together. I hope that we have found a solution that will allow continued agricultural production while enhancing and bringing new economic benefits arising from tourism to a restored river. This program has the potential to add countless tourism dollars to local economies as a direct result of restoration.

I welcome our witnesses this afternoon, and I look forward to the testimony.

STATEMENT OF THE HONORABLE CATHY MCMORRIS RODGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mrs. MCMORRIS RODGERS. Thank you, Madam Chairman. I thank you for having the hearing. It is great to be here today as we discuss a familiar topic in this Subcommittee, the Endangered Species Act, and how it impacts western water and power supplies.

As many of you know, my home region of the Pacific Northwest is full of ESA conflicts that create massive uncertainty for our farmers and ranchers, our communities and even the future of our fish populations.

As we have witnessed time and again in the west, the ESA has become the source of much litigation rather than actual species recovery. Because the ESA was so broadly drafted, the details have been filled in by the courts so often. I don't think that that was

anyone's intent in 1973, and that is why, in my opinion, the ESA needs to be improved.

Uncertainty is why we are here today. Communities in the Platte River Valley have experienced many jeopardy opinions, much legal wrangling and a 15-year dam relicensing nightmare, all of which has left a legacy of an uncertain future for a growing region. Meanwhile, actions to protect four endangered species have been piecemeal. Wyoming's Governor put it best. There are no good choices in this area.

To the credit of those involved, they recognize they couldn't let the perfect be the enemy of the good. They came together, and we have a product before us today. It is by no means the perfect solution, nor is it the worst, but it is a meaningful step based upon decades of negotiation.

This bill is an example of people talking and listening in good faith. Not every region has the ability to come together and work in a collaborative fashion like this, and the ESA often doesn't help. This law fosters conflict and stalemates instead of resolution and action, which is why I think it needs to be changed, but I commend everyone here today for working together to benefit your region in the face of a flawed law.

There are still many unanswered questions about the bill, and that is why we are having the hearing. I welcome everyone to the hearing and welcome the witnesses. Thank you for being here. I look forward to working with you on this bill.

[The prepared statement of Mrs. McMorris Rodgers follows:]

Statement of The Honorable Cathy McMorris Rodgers, Ranking Member, Subcommittee on Water and Power

Today, we will discuss a familiar topic in this Subcommittee: the Endangered Species Act and how it impacts western water and power supplies. As many of you know, my home region of the Pacific Northwest is full of ESA conflicts that create massive uncertainty for our farmers and ranchers, our communities and even the future of our fish populations. Nothing or nobody wins, but the lawyers.

As we have witnessed time and again in the West, the ESA has become the source of much litigation rather than actual species recovery. Because the ESA was so broadly drafted, the details have been filled in by the courts and the bureaucrats. I don't think that was anyone's intent in 1973 and that's why the overall ESA needs to be improved.

Uncertainty is why we are here today. Communities in the Platte River Valley have experienced many jeopardy opinions, much legal wrangling and a 15-year dam relicensing nightmare—all of which has left the legacy of an uncertain future for a growing region. Meanwhile, actions to protect four endangered species have been piecemeal. Wyoming's Governor put it best when he said "there are no good choices in this area."

To the credit of those involved, different factions came together and we have the product before us today. It is by no means the perfect solution nor is it the worst, but it's a meaningful step based upon decades of negotiation. This bill is an example of people talking and listening in good faith.

Not every region has the ability to come together and work in a collaborative fashion like this and the ESA doesn't help. This law fosters conflict and stalemates instead of bringing about resolution and action. That's why I want to change the underlying law—but I commend everyone here today for working together to benefit your region in the face of a flawed law.

There are still many unanswered questions about this bill and that's why we're having this hearing. I welcome Members of the Subcommittee and the witnesses for being here and look forward to working with you on this bill.

Mrs. NAPOLITANO. Thank you, ma'am.

For the record, to be introduced into the record rather, there will be letters from the Central Nebraska Public Power and Irrigation District, the City of Aurora, Colorado, Centennial Water and Sanitation District, from Denver Water, from the City of Lakewood, Colorado, from the City of Loveland, Colorado, and from the Nebraska Public Power District.

Without objection, so ordered.

NOTE: The information listed below has been retained in the Committee's official files:

- Centennial Water and Sanitation District, Centennial, Colorado, Letter submitted for the record
- Loveland Department of Water and Power, Loveland, Colorado, Letter submitted for the record
- Denver Water, Denver, Colorado, Letter submitted for the record
- City of Aurora, Colorado, Letter submitted for the record
- City of Lakewood, Colorado, Letter submitted for the record
- Kraus, Don, The Central Nebraska Public Power and Irrigation District, Statement submitted for the record
- Kowalski, Ted, Program Manager, Colorado Water Conservation Board, Denver, Colorado, Resolution submitted for the record
- Nebraska Public Power District, Letter submitted for the record

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Mrs. NAPOLITANO. Thank you. At this point I will start recognizing the Members as they have arrived, those who wish to make a statement may do so.

All Members who desire to be heard will be given an opportunity to be heard, and you have already been given the authority to do so. You are reminded that additional material may be submitted for the record.

We do have a full complement of witnesses, so we will ask Members to keep their remarks brief, and the five minute rule with our timer will be enforced. I don't think we are going to have that much of a problem today on that.

I would like to recognize Congressman Smith for any statement if you have one.

STATEMENT OF THE HONORABLE ADRIAN SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. SMITH. Thank you, Madam Chairwoman, for holding this hearing today and for allowing me to participate in the hearing on H.R. 1462, the Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act. This hearing will give us the opportunity to listen to those on the ground in Nebraska, Wyoming and Colorado regarding their collaborative effort.

It is encouraging to see this longstanding issue finally reach a settlement after years of study and review by the states, Federal government, water users, landowners and other interested parties. The time has come to resolve this matter once and for all.

I cosponsored this legislation as part of the consensus to recognize the reality of the challenges before us with collective decision

making and cooperation. However, this agreement does impact our farmers and ranchers, and we must continue to be cognizant of the impact of the Endangered Species Act.

As we move forward with the implementation of the program, positive and negative economic impacts must be assessed and considered in order to minimize adverse effects of the recovery efforts. This legislation is the first step of many to protect and recover species and provide long-term water use for our communities.

I especially want to thank Ann Bleed, Director of the Nebraska Department of Natural Resources, for coming here today to provide testimony regarding this bill. Director Bleed is respected for her very straightforward approach to the discussion of our water challenges. She has been a moderating voice on many policies impacting Nebraska agriculture and landowners, and I look forward to hearing from her.

I appreciate the Subcommittee for holding this hearing and examining this important legislation. Madam Chairwoman, I look forward to continuing to work with you, and I thank you for your time.

I yield back.

Mrs. NAPOLITANO. Thank you very much. Thank you. Since I have no other, do you wish to make a statement, Mr. Lamborn?

Mr. LAMBORN. No, but thank you, Madam Chairman.

Mrs. NAPOLITANO. You are very welcome.

We have the author of the bill. Would you like to make your statement, sir?

STATEMENT OF THE HONORABLE MARK UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. UDALL. Thank you, Madam Chairwoman. It has been one of those days here on the Hill, so thank you for your forbearance.

I want to thank the Chairwoman for holding this hearing on H.R. 1462, which is my bill dealing with management and use of water in the basin of the Platte River. The bill will authorize the Interior Department to carry out its responsibilities under an agreement between the Federal government and the States of Colorado, Wyoming and Nebraska.

The purpose of that agreement is to assist in the conservation and recovery of several endangered or threatened species—the whooping crane and two other birds, as well as the pallid sturgeon—in a way that will allow existing water-related activities to continue and some additional water-related activities to occur.

It is the result of 14 years of negotiations that culminated last year when the Governor of Colorado and the Governors of our two neighboring states of Wyoming and Nebraska joined Secretary Kempthorne in signing the agreement.

Since then, initial implementing steps have begun, and the President's budget for fiscal 2008 has requested the initial funding for the program. We will be hearing from witnesses who have the expertise to describe the program in great detail, and the expert staff of the Subcommittee has prepared an excellent background memo that is before each of us.

So I will not take the time of the Subcommittee by attempting to outline all the elements of the program. Instead, I want to note first that the program is modeled after a somewhat similar program for the recovery of several endangered species of fish in the upper basin of the Colorado River.

I have strongly supported that program because it has enabled us in Colorado and other participating states to meet the requirements of the Endangered Species Act while allowing continued development and use of water for other purposes as well.

Now, while such arrangements are not easy to work out, I think doing so is far better than alternative approaches that are more likely to be marked by conflicts or, of course, litigation.

So let me congratulate all concerned in the negotiation of this important agreement. I consider myself fortunate to have the honor of introducing the bill and to have as its cosponsors two of my Colorado colleagues, Representatives DeGette and Perlmutter, as well as the entire House delegations from Wyoming and Nebraska.

Thank you again, Madam Chairwoman, and I look forward to hearing from our witnesses.

[The prepared statement of Mr. Udall follows:]

Statement of The Honorable Mark Udall, a Representative in Congress from the State of Colorado

Thank you, Madam Chairwoman, and thank you for holding this hearing on H.R. 1462, my bill dealing with management and use of water in the basin of the Platte River.

The bill will authorize the Interior Department to carry out its responsibilities under an agreement between the federal government and the States of Colorado, Wyoming, and Nebraska.

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While such arrangements are not easy to work out, I think doing so is far better than alternative approaches that are more likely to be marked by conflicts or litigation.

So, I congratulate all concerned in the negotiation of this important agreement and consider myself fortunate to have the honor of introducing the bill and to have as its cosponsors two of my Colorado colleagues—Representatives DeGette and Perlmutter—as well as the entire House delegations from Wyoming and Nebraska.

Thank you again, Madam Chairwoman, and I look forward to hearing from our witnesses.

Mrs. NAPOLITANO. Thank you, sir.

We will proceed to hear from our witnesses who will be testifying on H.R. 1462. Our first and only witness in Panel I will be Mr. Jason Peltier, Deputy Assistant Secretary for Water and Science at the Bureau of Reclamation.

I would also like to recognize that he is being accompanied by Mr. Mike Ryan, the Great Plains Regional Director for the Bureau, and a representative from the Fish and Wildlife Service. Welcome.

Gentlemen, your statements will be entered into the record. Witnesses are asked to summarize the high points of your testimony and limit your total remarks to five minutes.

I will allow Mr. Peltier to present his full testimony prior to asking questions, and then once questioning is complete Members will proceed to direct questions at you.

Without further ado, Mr. Peltier, please.

STATEMENT OF JASON PELTIER, DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY MARK BUTLER, FISH AND WILDLIFE SERVICE; AND MIKE RYAN, GREAT PLAINS REGIONAL DIRECTOR, BUREAU OF RECLAMATION

Mr. PELTIER. Thank you. Thank you very much, Madam Chairwoman, members of the Subcommittee. I appreciate the opportunity to be here to testify on behalf of the Department of the Interior on H.R. 1462. The Department supports passage of the bill, and we are very encouraged by many of the comments we heard up from the dais this afternoon.

I will be brief because Panel II is really where the rubber hits the road folks, the folks who have invested so much time and effort into bringing this project or this process along and bringing us to this point.

The Platte River originates in the mountains of Wyoming and Colorado and, as it flows through Nebraska, provides important habitat for the whooping crane, piping plover, interior least tern and pallid sturgeon that are listed as threatened or endangered under the Endangered Species Act.

In 1997, the States of Colorado, Nebraska and Wyoming, along with the Department of the Interior, signed a cooperative agreement to develop a basin-wide program that would provide measures to assist in the recovery of these four species in the Platte River inside of Nebraska.

Last year the Platte River Recovery Implementation Program agreement was signed by the Governors of the three states and the Secretary allowing for program implementation to begin January 1 of this year. The program assists in the recovery of species and implements aspects of the recovery plans, thereby providing compliance under the Endangered Species Act for water-related activities and some new water-related activities.

Title I of H.R. 1462 provides authorization for the Secretary of the Interior, through the Bureau of Reclamation, to fully implement the program. It also provides Reclamation with authority to appropriate nonreimbursable funds for the program. Reclamation, in cooperation with the Governance Committee, will implement the

program in incremental stages with the first increment being a period of 13 years.

Pursuant to the program agreement, the Federal cost share for the first increment is $157 million. That is an indexed amount. The state cost share is the same amount, to be provided by the three state parties to the program agreement.

Pre-implementation activities such as forming the new Governance Committee and various administrative functions have already begun. Federal activities up to this point have been authorized under existing law encouraging the Department to work with the states to promote habitat protection.

Under the ESA, the program can initiate monitoring and research activities. However, actual water and land acquisitions cannot be initiated using Federal funds prior to the enactment of this legislation. It is critical that acquisitions begin early in the program to allow sufficient time to evaluate the biological response and effectiveness of the program's recovery measures.

Title II, as you have mentioned, authorizes Reclamation to modify Pathfinder Dam, together with the State of Wyoming. No Federal funds are required for this activity.

The Platte River Recovery Implementation Program is an example of a partnership combining Federal and nonFederal funding to recover endangered species while also meeting the water needs of local communities, irrigators and power generation. It is for these reasons that the Administration supports H.R. 1462.

Madam Chairwoman, that completes my statement, and I am happy to answer any questions you might have.

[The prepared statement of Mr. Peltier follows:]

Statement of Jason Peltier, Principal Deputy Assistant Secretary, U.S. Department of the Interior

Madam Chairwoman and members of the subcommittee, I am Jason Peltier, Principal Deputy Assistant Secretary for Water and Science at the Department of the Interior. I appreciate the opportunity to appear before you today to discuss H.R. 1462, the Platte River Recovery Implementation Program and the Pathfinder Modification Authorization Act. The Department supports passage of H.R. 1462.

The Platte River originates in the mountains of Wyoming and Colorado and, as it flows through Nebraska, provides important habitat for the whooping crane, piping plover, interior least tern, and pallid sturgeon (target species) that are listed as threatened or endangered under the Endangered Species Act (ESA). In 1997, the States of Colorado, Nebraska, and Wyoming and the Department of the Interior signed a Cooperative Agreement to develop a basin-wide program that would provide measures to assist in the recovery of these four target species in the Platte River in Nebraska. In late 2006, the Platte River Recovery Implementation Program (Program) Agreement was signed by the Governors of the three States and the Secretary of the Interior, allowing for Program implementation to begin January 1, 2007. The Program assists in the conservation and recovery of the target species in the Platte River basin and implements aspects of the recovery plans for these species, thereby providing compliance under the Endangered Species Act (ESA) for existing water related activities and certain new water-related activities in the Platte River Basin in Colorado, Wyoming, and Nebraska.

Title I of H.R. 1462 provides authorization for the Secretary of the Interior, through the Bureau of Reclamation, to fully implement the Program. It also provides Reclamation with authority to appropriate non-reimbursable funds for the Program. Reclamation, in cooperation with the Governance Committee, will implement the Program in incremental stages with the first increment being a period of 13 years. Pursuant to the Program Agreement, the Federal cost share for the first increment is $157 million (2005 dollars), plus indexing. The State cost-share is the same amount, to be provided from the three State Parties to the Program Agreement.

Pre-implementation activities, such as forming the new Governance Committee, initiating the selection of the Executive Director, and various administrative functions have already begun. Federal activities up to this point have been authorized under existing law encouraging the Department of the Interior to work with States to promote habitat protection and the protection of species. Under the ESA, the Program can initiate monitoring and research activities; however, actual water and land acquisitions cannot be initiated using Federal funds prior to enactment of this legislation. Upon enactment of this authorizing legislation, Program land and water acquisitions will begin. It is critical that acquisitions begin early in the Program to allow sufficient time to evaluate the biological response and effectiveness of the Program's recovery measures.

Title II authorizes the Secretary, through the Bureau of Reclamation, to modify Pathfinder Dam and Reservoir and enter into agreements with the State of Wyoming to implement this modification. No Federal funds are required for this activity.

In accordance with our commitment to cooperative conservation, the Department of the Interior seeks to encourage the efforts of States and local communities to play active roles in managing the resources they depend on for their livelihoods. The Platte River Recovery Implementation Program that would be authorized under this Act is an example of a partnership combining Federal and Non-Federal funding in an ongoing effort to recover endangered species while also meeting the water needs of local communities, irrigators, power generation, and the environment. Enactment of this legislation provides an opportunity not only to meet ESA requirements using a basin-wide, cooperative, and scientific approach, but to do so in a manner that protects existing water uses and allows for future water uses in the Platte River Basin. For these reasons, the Administration supports H.R. 1462.

Madam Chairwoman, this completes my statement. I am happy to answer any questions the Subcommittee may have.

Response to questions submitted for the record by Jason Peltier

Additional questions from Chairwoman Napolitano:

1. Exactly how does this bill resolve ESA issues? How does the record of decision make the ESA process easier or more efficient? Will implementation satisfy/fully comply with ESA in your opinion? What if that doesn't work?

Exactly how does this bill resolve ESA issues?

Answer: The Platte River Recovery Implementation Program (the Program) resolves ESA issues by providing regulatory certainty to water users during the first increment of 13 years, in a manner that is consistent with state water laws, compacts, and decrees. ESA compliance measures for many existing water-related activities subject to section 7 of the ESA are provided by the Program's actions to improve habitat and flow conditions. ESA compliance measures for new water related activities are provided by the three State's and Federal depletion plans.

How does the record of decision make the ESA process easier or more efficient?

Answer: The existence of the Program does not alter the legal requirement for federal agencies to consult with the Service if listed species may be affected by their actions, and to offset impacts to listed species and critical habitat occurring from such federal actions. The Program's actions are intended to provide ESA compliance measures that may be relied upon by federal nexus projects choosing to participate in the Program and using the Program's actions or Depletions Plans to offset impacts to target species and target species critical habitat occurring from federal actions.

With a Program in place, ESA section 7 consultations for federal-nexus projects and their effects to listed species will proceed in a streamlined manner, and tier off the programmatic EIS and programmatic biological opinion in subsequent NEPA analysis and biological opinions for the specific federal action. The streamlined process includes: a) a federal action agency determination that a project may affect listed species and the initiation of an ESA consultation with the Service, b) the effects to listed species in the Central and Lower Platte River have been analyzed in the programmatic biological opinion, and c) the Program's actions or Depletion Plans can be used as ESA compliance measures for that project's effects to the target species in the Platte River basin.

Will implementation satisfy/fully comply with ESA in your opinion?

Answer: Yes, implementation will fully comply with ESA requirements for the first increment of 13 years. Although the National Research Council of the National Academy of Sciences did not specifically review the proposed Program, they did review and strongly support the Service's habitat and flow recommendations and the Department's conclusions on the interrelationships of sediment, flow, vegetation, and channel morphology (Endangered and Threatened Species of the Platte River, National Research Council 2005). The Program's habitat and flow objectives during the first increment incorporate the Service's habitat and flow recommendations.

What if that doesn't work?

Answer: The Program provides a Governance Committee of 10 members representing the three States, water users, environmental groups, Bureau of Reclamation, and the Service. If Program Milestones are not being met, and the Service makes a preliminary determination that the Program is not providing ESA compliance, the Service will notify the Governance Committee in writing and request assistance in resolving the situation. If the Governance Committee is unable to restore the ability of the Program to provide ESA compliance, the Governance Committee shall refer the matter to an Oversight Committee comprised of the Secretary of the Interior and the three Governors to resolve the situation. We anticipate that most issues will be resolved at the Governance Committee level, before elevation to the Oversight Committee.

2. Have studies been done on how climate change might affect runoff in the basin and thus the success of the program? What effect might climate change have on ESA compliance?

Answer: Due to the unavailability of basin-specific data on climate change, this has not been studied specifically. However, Interior has undertaken a large scale effort to examine scientific, operational and legal (such as ESA implementation) issues in relation to climate change. As this work matures, and as more focused data is gathered, we expect the adaptive management nature of this program will be an effective tool to deal with possible future scenarios.

3. How confident are you that you can curtail speculation during land acquisition for this program? This has become a problem with the Everglades restoration, is it possible it could happen with the Platte program as well?

Answer: The price of land acquisition was addressed in Chapter 5 of the Environmental Impact Statement. Page 5-303 states: Given the general upward trend in prices, and given the Program must budget for land leasing or purchases several years in advance (in order to obtain funds through each state and Federal legislature), it seems unlikely that the Program will "lead" land prices.

4. Sec. 105(a)(1) of the bill refers to Reclamation law and repayment of project costs—can you explain what this means? What is intended by this?

Answer: The language provides assurance that the Districts will not be relieved of any existing repayment obligations, nor will they incur any new obligations through the Program.

5. How many species of birds currently utilize this portion of the Central Flyway?

Answer: The central Platte River provides critical migration habitat for the endangered whooping crane, spring staging habitat for 80 percent of the world's sandhill crane population, breeding habitat for the threatened piping plover and endangered least tern, and migrational and wintering habitat for millions of waterfowl. Over 300 species of migratory birds have been observed along the Platte River, and over 140 species are known to nest there. The Rainwater basin immediately to the south, in combination with the Platte River, provides for one of the world's greatest waterfowl migration spectacles. Approximately 7-9 million ducks, 2-3 million geese, and 500,000 sandhill cranes annually stop in the area.

6. What is being done, aside from the Platte River Restoration, to ensure the survival of these listed species along the Central Flyway?

Answer: Currently, States and energy producers are involved in the conservation of over 3000 acres along the Platte River to comply with prior consultations or for mitigation required as part of FERC re-licensing.

In addition to these conservation efforts, the Service and other Federal agencies including the Army Corps of Engineers are engaged in many activities to support

the recovery of the listed species utilizing the Central Flyway. Below is a summary of select activities.

Whooping Crane

The Service is working with a variety of partners and Canada to protect and enhance breeding, migration, and wintering habitat for the Aransas-Wood Buffalo population (AWBP) to allow the wild flock to grow and reach ecological and genetic stability. The AWBP migrates annually between the Aransas National Wildlife Refuge along the gulf coast of Texas and Wood Buffalo National Park in the Northern Territories, Canada.

Activities throughout the Central Flyway include:

1. Monitoring of population numbers, including annual recruitment and mortality.
2. Monitoring of spring and fall migrations through the Cooperative Whooping Crane Tracking Project.
3. Efforts to reduce mortality, including collisions with powerlines and fences.
4. Education programs to increase competency of the public (e.g., hunters) for identifying whooping cranes and understanding their protected status.
5. When necessary, discouraging whooping crane use of areas where waterfowl disease outbreaks are underway or have recently occurred. A Contingency Plan for Cooperative Protection of Whooping Cranes is directed by the Canadian Cooperative Wildlife Health Centre in Canada and the National Wildlife Health Center in the United States.
6. The Whooping Crane Health Advisory Team continues to provide advice and recommendations to the Recovery Team on all health issues.
7. Studies of migratory habitat availability are being conducted in several areas to maximize efficient habitat protection and monitor habitat changes.
8. The Service's Partners for Fish and Wildlife Program works via easements and management agreements with private landowners in the Central Flyway to restore wetland habitats beneficial to migrating cranes.

Efforts continue to reintroduce and establish two other self-sustaining wild populations which are geographically separate from the AWBP to ensure resilience of the species in case of catastrophic events. These include a non-migratory population in Florida and a migratory Wisconsin-Florida population. A captive breeding flock is also maintained to protect against extinction and aid reintroduction efforts.

Piping Plover and Interior Least Tern

Activities in support of survival and recovery include:

1. The Army Corps of Engineers' (Corps) operation of the Missouri River and Kansas River reservoir systems is a significant effort to manage, create and restore suitable riverine nesting habitat for piping plovers and interior least terns in the Missouri River in North Dakota, South Dakota and Nebraska.
2. Research studies of habitat requirements, species reproduction and survival, and foraging ecology are being conducted by the USGS and Virginia Polytechnic Institute. Information from these studies is being used in the creation and management of emergent sandbar nesting habitat in various reaches of the Missouri River.
3. The Corps has funded or conducted a monitoring program of least tern and piping plover populations, reproduction and causes of nest failure on various portions of the Missouri River since the late 1980's, and on the Kansas River for the last decade. This information continues to be valuable in the identification of appropriate management strategies.
4. The Tern and Plover Conservation Partnership (TPCP) (University of Nebraska, Nebraska Game and Parks Commission, the Nebraska Environmental Trust and the Service) cooperates with the sand and gravel mining industry to protect least terns and piping plovers that use nesting substrate on sand pits. TCPC conducts population surveys, monitors reproduction, erects predator fencing and works with the mining operators to maximize tern and plover reproduction and avoid conflicts with mining operations.
5. A coordinated, multi-agency, range-wide population survey for the northern Great Plains population of the piping plover has occurred every five years since 1991. The first range-wide, coordinated survey of the interior least tern population was conducted in 2005.
6. The Corps, Service, and various state, federal, and private partners have established an Interior Least Tern Working Group to serve as a clearing house for information and research on the interior least tern, as well as develop a range-wide monitoring program to more systematically track the status of the species.

7. State, federal and provincial wildlife agencies, and environmental organizations such as The Nature Conservancy are involved with recovery efforts for piping plovers using alkali lake breeding habitat in the northern Great Plains. Management efforts include population surveys, nest caging, predator removal and predator fencing, and habitat management. Management efforts significantly improve fledge rates on areas managed using these techniques.
8. The Service's Partners for Fish and Wildlife Program works with private landowners to manage and protect nesting habitat for both species.

7. The Bureau's NEPA Handbook is not on the website. Why is the handbook missing from the website, how long has it been missing, and why are there no previous versions there to provide some kind of guidance for the public?

Answer: The guiding regulations for NEPA are the CEQ regulations found at 40 CFR 1500 thru 1508. In addition, the NEPA process requirements for DOI agencies are found at Part 516 of the Departmental Manual, available at http://elips.doi.gov/app—dm/index.cfm?fuseaction=home. 516 DM 14 applies specifically to the Bureau of Reclamation.

The last Reclamation NEPA handbook is dated 1990. There was an effort in 2000 to update the handbook and the draft was posted on Reclamation's website in 2000 to seek comment. The 2000 draft is still being finalized.

We plan to post the revised NEPA Handbook once finalized.

8. The Record of Decision states that the program will provide a means to ensure that certain "new water uses" do not undermine ESA compliance, and the program's habitat and species benefits. What "new water uses" are contemplated? How will the program adapt to these new water uses?

Answer: The Water Plan of the Implementation Program anticipates the states may need to develop new water supplies to meet future demands. "New depletion plans" are included by each state in the program documents to outline plans for future storage. In addition, the States are responsible for mitigating water supply effects created by new storage projects.

9. Although there are guaranteed water quantities, how will water be prioritized during a period of drought?

Answer: The water quantities identified in the Program (130,000—150,000 AF for target species flows) are based on the annual average flows. Annual operations are determined by the Environmental Account manager with input by an Advisory Group and are dependent on water availability and the conditions present that year.

Additional questions from Ranking Member McMorris Rodgers:

10. Can an outside group not party to the Platte River Program (Program) referenced in the bill still file NEPA, ESA-related or other litigation on existing federal projects that are covered under the Program?

Answer: Implementation of the Program satisfies the federal projects Endangered Species Act requirements. Third party rights to file litigation are not impacted and they may file lawsuits.

11. A main element under this Program is to dedicate up to 150,000 acre feet to endangered species. Much of this water will be taken from farmers and communities. Please provide specific mitigation plans for these water losses?

Answer: During the first increment, as agreed to by all parties, the Program will provide 130,000—150,000 AF of flows to meet the needs of the target species. There are three projects that are contributed by the States that will provide 80,000 AF of the flows and any effects have been addressed by the States. The remaining 50,000—70,000 AF of flows are to be developed by the Program. The Program will evaluate the projects individually and effects identified will be addressed by the Program.

12. The first phase of this Program and this bill's authority will last 13 years. What quantifiable and numerical ESA recovery goals are in the Program?

Answer: To achieve the Program's primary goal of improving and maintaining migrational habitat for whooping cranes and reproductive habitat for terns and plovers in the central Platte River area, a combination of land and water actions will be implemented during the first increment. These individual management actions will be designed and implemented to gain the greatest understanding of the response of the target species and their habitats to the actions through monitoring

and research. Analysis of information provided by the Adaptive Management Plan may be used to change the initial characteristics of habitat and/or guidelines contained in the Land and Water Plans that were developed prior to Program implementation.

The ESA recovery goals are incorporated within ten Milestones that provide for flow improvement and habitat restoration using a scientific, adaptive management approach. The Milestones are also the measure of ESA compliance during the first increment. The ten Milestones are:

1. The Pathfinder Modification Project will be operational and physically and legally capable of providing water to the Program by no later than the end of year 4 of the first increment.
2. Colorado will complete construction of the Tamarack Phase I Project and commence full Phase I operations by the end of year 4 of the first increment.
3. Central Nebraska Public Power and Irrigation District and Nebraska Public Power District will implement an Environmental Account for Storage Reservoirs on the Platte System in Nebraska as provided in the licenses for FERC Project Nos. 1417 and 1835.
4. The Reconnaissance-Level Water Action Plan, as may be amended by the Governance Committee, will be implemented and capable of providing at least an average of 50,000 acre-feet per year of shortage reduction to target flows, or other Program purposes, by not later than the end of the first increment.
5. The Land Action Plan, as may be amended by the Governance Committee, will be implemented to protect and, where appropriate, restore 10,000 acres of habitat by no later than the end of the first increment.
6. The Integrated Monitoring and Research Plan, as may be amended by the Governance Committee, will be implemented beginning year 1 of the Program.
7. The Wyoming Future Depletions Plan, as may be amended by the Governance Committee, will be operated during the first increment of the Program.
8. The Colorado Future Depletions Plan, as may be amended by the Governance Committee, will be operated during the first increment of the Program.
9. The Nebraska Future Depletions Plan, as may be amended by the Governance Committee, will be operated during the first increment of the Program.
10. The Federal Future Depletions Plan, as may be amended by the Governance Committee, will be operated during the first increment of the Program.

Additionally, the Service prepared a "Species Recovery Objectives Report" that identifies recovery objectives and by which progress towards recovery of the species can be measured (Species Recovery Objectives for Four Target Species in the Central and Lower Platte River, June 2002).

13. How will the stakeholders define success or failure? How will specific successes or failures be reported to the Natural Resources Committee since the Program will need to be reauthorized at some point?

Answer: The Program defines success during the first increment using the Milestones discussed previously. At least annually, the Program's management activities, and the criteria that guide those Program activities, such as land and water acquisition and management criteria, as described in the Program Document and its attachments (e.g., Milestones Document, Land Plan, and Water Plan) will be evaluated by the Governance Committee. Opinions of the Independent Scientific Advisory Committee, and peer reviewers, if any, will be compiled and summarized as part of the evaluation process. Evaluations will:

1. Assess whether the Program activities and criteria being examined are working as originally envisioned;
2. Make modifications based on new information;
3. Determine whether there are other or better uses for the resources committed to the activity and criteria;
4. Consider available information, including any reviews from advisory groups, to assess whether success or failure could be determined by monitoring over the time period evaluated; and,
5. Develop alternative activities and criteria in accordance with adaptive management principles.

Additionally, the Program Document (pages 19-20) describes the evaluation of the first increment and development of any subsequent increment:

At least three years before the end of the first increment, the Governance Committee will develop a process and timeframe for evaluating the first increment. The evaluation process will take into account the need for FWS to carry out independent ESA assessments, NEPA compliance, and other statutory obligations for a second Program increment. These evaluations will include, but are not limited to the fol-

lowing: (1) consideration of information gained through the Integrated Monitoring and Research Plan and experience; (2) the judgment of habitat managers, field biologists, and independent experts; and (3) the results of peer review. The purpose of these evaluations is to weigh whether Program goals, objectives, activities, and criteria should be modified or should continue unchanged.

Before expiration of the first increment, the Governance Committee will identify goals, objectives, activities and criteria, and milestones or other measures for ESA compliance for a second Program increment. Any decision to enter into a second increment will be made by the signatories prior to expiration of the first increment.

14. Another Program element calls for 10,000 acres to be used for recovering the species. Have these lands been identified? How many are private? Is there a preliminary breakdown or plan of lands that will be acquired by outright purchase, easement or other means? What entity will own the lands that are purchased?

Answer: The Program has identified a 90 mile stretch along the Central Platte for potential habitat development, and these lands are primarily in private ownership. The specific parcels of land to be acquired and the ratio of outright purchase to lease/easement arrangements have not yet been determined.

The Program Document lays out a very detailed procedure for the acquisition of lands needed for habitat development using a willing seller/lessor approach. The Program Executive Director, working with the Land Committee and private landowner representatives, will be responsible for carrying out the acquisition of lands as described in the Program document. Once lands are acquired, the program will assume responsibility of operations and maintenance. Estimated costs associated with O&M on acquired lands were considered during project development and are part of the cost in the legislation.

The Program and the Governance Committee are not authorized, however, to enter into contracts for the purchase, lease or receipt of easements, or to acquire a land interest such as owning, leasing, or receipt of easements for real estate, nor can they act as third-party beneficiary of a trust, and it will be necessary to appoint a "Land Interest Holding Entity" for such purposes in order to implement the Land Component of the First Increment of the Program. A non-profit "Land Interest Holding Entity" will hold title in trust for the benefit of Nebraska, Wyoming, Colorado, and the Department of the Interior.

15. What assurances can you give that nearby rural communities won't experience negative impacts associated with federal land acquisition, land being taken out of production or increased land rents and values for young farmers?

Answer: The Program policy requires that all land and water obtained for the project will be from willing sellers or willing lessors. No land condemnation will be used in the first increment of the program (see Final EIS 5-277). In addition, the "Good Neighbor Policy" included in the plan provides that impacts on other land owners are addressed in the acquisition process.

16. Could ESA water needs under this Program trump the Modified North Platte Decree and State Water law?

Answer: The Program is structured such that providing water to meet ESA needs is done in a manner that complies with the Modified Decree and State Water law.

Mrs. NAPOLITANO. Thank you, sir.

Members, do you have questions? Yes, Mr. Smith?

Mr. SMITH. Thank you.

A main element under this program is to dedicate up to 150,000 acre feet to endangered species, and much of this water will be taken from farmers. What plans does the Department have to mitigate for these water losses?

Mr. PELTIER. You know, I could provide the information that is written in front of me, but the guys with the genetic understanding of it are sitting right next to me, and maybe it would be best if I turn to the Bureau and the Fish and Wildlife Service to discuss that.

Mrs. NAPOLITANO. Would you kindly identify yourself?

Mr. RYAN. Yes. Madam Chairwoman and members of the Subcommittee, my name is Mike Ryan. I am the Regional Director for the Great Plains Region of the Bureau of Reclamation.

The program envisions water acquisition activities from willing sellers, a willing buyer/willing seller concept. Some of the water projects will be taken in the various states. Reclamation's most direct involvement in that will be under Title II and modification along with the State of Wyoming of Pathfinder Dam.

Mr. SMITH. I mean, certainly conservation and land retirements are part of the solution. Any plans for new projects or looking at new storage opportunities?

Mr. RYAN. Congressman, there are several activities that have been identified that would be in some sense of the word a new water project; for instance, a modification of existing facilities or the development of groundwater programs.

Those are laid out in detail in our programmatic documents that accompanied the environmental documentation for the program.

Mr. SMITH. Groundwater projects or programs you said? Did I hear you correctly?

Mr. RYAN. Yes, sir.

Mr. SMITH. OK. Thank you. Thank you.

Mrs. NAPOLITANO. Yes, Mr. Udall?

Mr. UDALL. Madam Chair, just briefly I want to thank Mr. Peltier for his testimony and for his focus on this important concern.

I also want to add an additional comment to the record. I neglected to mention that Congressman Salazar was an original cosponsor, and, interestingly enough, his district contains the headwaters of the North Platte. You wouldn't think that to be the case initially when you looked at the map, but because of the circuitous route the Platte follows his district includes those headwaters. He joined me from the very beginning.

I did want to thank my colleague from western Nebraska, Mr. Smith, for joining us at the beginning of this important initiative. He has been a marvelous colleague just in the few months he has been here, and he has a very difficult set of shoes to fill because Congressman Tom Osborne was his predecessor.

It will be a delight when I talk to Tom, as I do periodically, to tell him we are moving ahead on this because Tom was a real stalwart advocate of getting this completed as well. Thank you, Congressman Smith.

I yield back.

Mrs. NAPOLITANO. Thank you, sir.

Mr. Baca?

Mr. BACA. Thank you very much. We are breaking in Mr. Smith on the basketball court. Madam Chair, thank you very much for having this hearing.

I have a question for Jason. To what extent will you be monitoring the actual release, as well as success of recovering species?

Mr. PELTIER. Let me take an initial shot, and then my colleagues can fill in.

Like many of the other large-scale ecosystem restoration programs across the west that we are in the process of constructing or implementing, the reality is there is uncertainty that we must

deal with, and central to dealing with that uncertainty is extensive monitoring, learning and responding and modifying our behavior based on what we learn, if needed.

It will be extensive, and a lot of time and energy has gone into recognizing the need for an effective monitoring program.

Mr. BACA. OK. The next question is will the expansion of the Pathfinder Dam back the full pull of the reservoir up north to the Platte River, which is question number one, and then, two, what will be the consequences of that, and does the Bureau already own the land that would be inundated?

Mr. PELTIER. Yes, the Bureau does either have title to or has flowage easements for all the ground that would be potentially inundated.

Mr. BACA. Thank you very much, Madam Chair. I yield back the balance of my time.

Mrs. NAPOLITANO. Thank you.

Mr. Peltier, how does the program define success, and how do you know whether the program is really working?

Mr. PELTIER. The first increment of success is peace I would say. We have achieved that, and we hope that will hold and that as the planning efforts and the implementation efforts go forward that it is in full partnership with everybody that is engaged.

That is a valuable, in and of itself, accomplishment because it is so much more constructive, productive. There is such a greater return on your effort when you are operating in that kind of an environment with partners rather than a regulatory process or litigation.

Of course, the ultimate measure of success will be years down the road when we have implemented. As we modify and continue to learn and improve habitat for species, the indicators are quite simple in my mind. It is health of the species and health of the economy, economies that are associated with and affected by the program.

Mrs. NAPOLITANO. And do you have any reasonable expectation that is going to happen within 5, 10, 15 years?

Mr. PELTIER. I think why doesn't somebody that is——

Mr. BUTLER. Madam Chairwoman, my name is Mark Butler. I am a staff level employee with the Fish and Wildlife Service and have been involved in this effort since its inception and primarily function as the lead contact with the Platte River Governance Committee.

As far as success, the program has identified 10 milestones or 10 major action areas that will define success not only in terms of the species' recovery, but in terms of Endangered Species Act compliance.

Of those 10 milestones, the first three address what we term the three initial program projects, the Pathfinder Modification Project being one of those, the other in Colorado, one in Nebraska at Lake McConaughy.

And then the provision through willing seller arrangements, willing lessor arrangements, to obtain additional water supplies for the program. That is the fourth milestone. The fifth milestone is working on the program's land action plan to obtain 10,000 acres of suitable habitat.

The sixth milestone Mr. Peltier mentioned in terms of the integrated monitoring and research plan and the adapted management plan, which is the vehicle where we monitor the reaction or the response of the species to these management actions and use that increased understanding to adjust and guide our further management actions.

The last four milestones have to do with the three states and the Federal government's efforts to address the effects of new water-related activities on the species and so those 10 milestones are pretty much the 10 fundamental portions of the program that provide Endangered Species Act compliance and also focus directly on the species.

In addition, this same question was asked of the Fish and Wildlife Service early on during the negotiations as to how will we know when is enough? How do we know when we have gotten there?

There are recovery plans that the Service has prepared for each species, and we specifically stepped those down or identified, based upon our understanding at this time, the desired distribution and number of species targeted for the Central Platte Region.

Mrs. NAPOLITANO. Thank you.

Section 102 of H.R. 1462 appears to make this program discretionary by stating that the Secretary may participate and carry out the program. What happens if the bill isn't implemented fully because the Secretary chooses not to implement it?

Mr. PELTIER. Well, I don't want to get into a semantical discussion, but in very practical terms the Secretary of the Department and the Administration have committed to the program and have signed the paper and made the pledge of going forward.

If the legislation is passed, the legislation will be followed and the program will be implemented. Who can predict the future though. Everybody has a way out one way or another in these things.

Mrs. NAPOLITANO. Well, the reason I ask that question is because I know one program that is in law and has been ignored. I am talking about water recycling. That kind of leads me to making sure that we are in line to make sure that it is going to happen, that we are fully participating.

Thank you. Any other questions?

[No response.]

Mrs. NAPOLITANO. If no other questions, I would like to ask, Mr. Peltier, if you would mind hanging around a little bit. There may be questions from the panel.

Mr. PELTIER. Yes. I intend to sit through the entire hearing.

Mrs. NAPOLITANO. Thank you very much.

We will proceed with the questioning of the second panel. Again, we will hear from them, including Alan Berryman of the Northern Colorado Water Conservancy District; Ann Bleed of the Nebraska Department of Natural Resources; Ted Kowalski of the Colorado Conservation Board; Dan Luecke, Platte River Issues Consultant to the National Wildlife Federation; and, finally, last but not least, Mike Purcell of the Wyoming Water Development Commission.

As soon as you are settled, gentlemen, Mr. Berryman, you may begin.

STATEMENT OF ALAN BERRYMAN, ASSISTANT GENERAL MANAGER, ENGINEERING DIVISION, NORTHERN COLORADO WATER CONSERVANCY DISTRICT

Mr. BERRYMAN. Thank you, Madam Chair and members of the Subcommittee. My name is Alan Berryman. I am the Assistant General Manager for the North Colorado Water Conservancy District in Berthoud, Colorado. Thank you for inviting me today to testify in front of the committee on House Bill 1462.

The Platte River Recovery Implementation Program is a cooperative, basin-wide solution created to resolve escalating conflicts between water use and endangered species protection. These conflicts arise during Federal permitting of both existing and planned irrigation and municipal water supply projects in the Platte River basin.

Such endangered species issues in the Central Platte River are of particular concern to Northern Water and other Colorado water users in the South Platte River basin. Resolution of these conflicts is of state interest and is important to all who live and work in Colorado's rapidly growing Front Range.

Northern Water is requesting your support of House Bill 1462 to authorize the Secretary of the Interior to participate in and provide funding toward the Platte River Recovery Implementation Program for threatened and endangered species in the Central and Lower Platte in Nebraska and to modify the Pathfinder Dam and Reservoir in Wyoming.

Northern Water is the contract beneficiary of water yielded from the Colorado-Big Thompson Project, which is the largest transmountain water diversion projection in Colorado. The C-BT Project annually delivers about 213,000 acre feet of water to northeastern Colorado as a supplemental water supply to 32 cities and towns and approximately 700,000 acres of irrigated farmland in northeastern Colorado.

To continue to meet the growing water demands along Colorado's Front Range, Northern Water is also involved in new regional water planning activities and projects, including the Northern Integrated Supply Project, sometimes called NISP, that is currently working through the Federal permitting process. That project is designed to develop 40,000 acre feet of water for 16 water providers located within Northern's boundaries.

Whether it is a reliable, time-proven water supply project like the C-BT Project or an anticipated new project like NISP, both must comply with Endangered Species Act requirements to continue to provide historically relied upon water supplies or to obtain the necessary Federal permits that allow the development of new water supply for Colorado's rapidly growing population.

Recent studies completed by the Colorado Water Conservation Board to assess future urban water supply needs in the state show that the population within Colorado's South Platte River basin is anticipated to grow by 65 percent from the year 2000 to the year 2030.

To meet the demands from that growth, water providers in the region will have to develop more than 400,000 acre feet of water in a basin that is already over appropriated. This will require significant additions to water infrastructure such as pipelines and res-

ervoirs, which in turn will require compliance with ESA to permit their construction.

Northern Water sincerely believes that the Platte River Recovery Implementation Program is the best available solution to address the species' needs under the ESA and also allow the continued use and development of water in the three states that share the Platte River basin.

Northern Water has been involved in the program since negotiations began in 1994 on behalf of itself and other Colorado water users. During the 12-year negotiation period, Northern Water was a member of the Platte River Project, which was a group of more than 25 water user and water supply organizations in the South Platte basin in Colorado that worked collaboratively with the State of Colorado to help craft the program.

Currently, Northern Water is a member of the board of directors of the South Platte Water Related Activities Program, sometimes called SPWRAP, a Colorado nonprofit corporation recently formed to replace the Platte River Program group and represent the interests of Colorado water users who will be participating in the program.

SPWRAP has signed a memorandum of understanding with the State of Colorado which commits SPWRAP to work with the State of Colorado in meeting Colorado's obligations under the program. SPWRAP membership is currently growing daily, and we expect the majority of municipalities and many ag entities will become members of SPWRAP.

Northern Water has also allowed me to serve as the Colorado water user representative on the program's Governance Committee as a commitment to continue to move the program forward for the benefit of the species and the water users.

Northern Water has been and remains committed to developing and implementing a cooperative, basin-wide solution that resolves conflicting water use and ESA issues. This program will provide the regulatory compliance under the ESA for both existing and prospective new water uses within the Platte River basin and will help protect and ensure the future for water users and the endangered species.

However, the program can only be successful if it is adequately funded. We respectfully request the support and the assistance of this Subcommittee to authorize and fund this vitally important program.

Again, thank you for allowing me to testify in front of the Subcommittee.

[The prepared statement of Mr. Berryman follows:]

Statement of Alan D. Berryman, Assistant General Manager, Northern Colorado Water Conservancy District

Madam Chair and Members of the Subcommittee:

My name is Alan Berryman. I am Assistant General Manager for the Northern Colorado Water Conservancy District ("Northern Water") in Berthoud, Colorado. Thank you for inviting me to testify before you in support of the Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act. The Platte River Recovery Implementation Program ("Program") is a cooperative, basin-wide solution created to resolve escalating conflicts between water use and endangered species protection. These conflicts arise during federal permitting of both existing and planned irrigation and municipal water supply projects in the Platte

River basin. Such endangered species issues in the central Platte River are of particular concern to Northern Water and other Colorado water users in the South Platte River basin. Resolution of these conflicts is of state interest and is important to all who live and work along Colorado's rapidly growing Front Range. Northern Water is requesting your support for H.R. 07-1462 to authorize the Secretary of the Interior to participate in and contribute funding toward the Platte River Recovery Implementation Program for Threatened and Endangered Species in the Central and Lower Platte River basin in Nebraska, and to modify the Pathfinder Dam and Reservoir in Wyoming.

Northern Water is the contract beneficiary of water yielded from the Colorado-Big Thompson ("C-BT") Project, which is the largest transmountain water diversion project in Colorado. The C-BT Project annually delivers about 213,000 acre-feet of water to northeastern Colorado as a supplemental water supply to 32 cities and towns and approximately 700,000 acres of irrigated farmland in northeastern Colorado. To continue to meet the growing water demands along Colorado's Front Range, Northern Water is also involved in new regional water planning activities and projects, including the Northern Integrated Supply Project ("NISP") that is currently working through the federal permitting process. That proposed project is designed to develop 40,000 acre-feet of water for 16 water providers located within Northern Water's boundaries.

Whether it is a reliable, time-proven water supply project like the C-BT Project or an anticipated new project like NISP, both must comply with the Endangered Species Act ("ESA") requirements to continue to provide historically relied-upon water supplies, or to obtain the necessary federal permits that allow the development of a new water supply for Colorado's rapidly growing population. Recent studies completed by the Colorado Water Conservation Board to assess future urban water supply needs in the state show that the population within Colorado's South Platte River basin is anticipated to grow by 65 percent from the year 2000 to the year 2030. To meet the demands from that growth, water providers in the region will have to develop more than 400,000 acre-feet of water in a basin that is already over-appropriated. This will require significant additions to water infrastructure such as pipelines and reservoirs which, in turn, will require compliance with ESA to permit their construction. Northern Water sincerely believes that the Platte River Recovery Implementation Program is the best available solution to address the species' needs under the ESA and also allow the continued use and development of water in the three states that share the Platte River basin.

Northern Water has been involved in Program negotiations since 1994 on behalf of itself and other Colorado water users. During the 12-year negotiation period, Northern Water was a member of the Platte River Project ("PRP"), a group of more than 25 water user and water supply organizations in the South Platte River basin in Colorado that worked collaboratively with the State of Colorado to help craft the Program. Currently, Northern Water is a member of the Board of Directors of the South Platte Water Related Activities Program, Inc. ("SPWRAP"), a Colorado nonprofit corporation recently formed to replace the PRP group and represent the interests of Colorado water users who will be participating in the Program. SPWRAP has signed a Memorandum of Understanding with the State of Colorado which commits SPWRAP to work with the State of Colorado in meeting Colorado's obligations under the Program. SPWRAP membership is currently growing daily, and we expect that the majority of municipalities and many agricultural entities will become members in SPWRAP. Northern Water has also allowed me to serve as the Colorado water user representative on the Program's Governance Committee as a commitment to continue to move the Program forward for the benefit of the species and the water users.

Northern Water has been, and remains, committed to developing and implementing a cooperative, basin-wide solution that resolves conflicting water use and ESA issues. This Program will provide the regulatory compliance under the ESA for both existing and prospective new water uses within the Platte River basin and will help protect and ensure the future for water users and the endangered species. However, the Program can only be successful if it is adequately funded. We respectfully request the support and assistance of this Subcommittee to authorize and fund this vitally important program. Again, thank you for allowing me to testify before this Subcommittee today.

Response to questions submitted for the record by Alan Berryman

Additional questions from Ranking Member McMorris Rodgers:

Can an outside group not party to the Platte River Program (Program) referenced in the bill still file NEPA, ESA-related or other litigation on existing federal projects that are covered under the Program?

Yes, outside groups that are not party to the Program could file a NEPA or ESA lawsuit, or file other litigation regarding existing federal projects that are covered under the Program.

A main element under this Program is to dedicate up to 150,000 acre feet to endangered species. Much of this water will be taken from farmers and communities. Please provide specific mitigation plans for these water losses?

The Program's overall Water Plan includes the original three state projects (the environmental account in Nebraska's Lake McConaughy, Pathfinder Reservoir in Wyoming, and the Tamarack Plan in Colorado) and additional individual water projects identified for possible future development under the Water Action Plan. Individual water projects developed under the Water Action Plan would provide water that would be leased by the Program or otherwise compensated for as in the case of power interference and would not take water from existing water users.

Colorado's state-sponsored water contribution under the Program (the Tamarack Plan) focuses upon retiming water legally available to Colorado that would otherwise exit the state unused by Colorado water users and at times of no shortage to species' target flows. This water would be diverted under the circumstances listed in the preceding sentence and, through artificial recharge operations, would return to the river at times when the target species are experiencing shortages to the FWS' target flows. (See Program Attachment 5, Section 3—Colorado's Initial Water Project). Most diversions would occur in the non-irrigation season and at locations below existing Colorado reservoirs that divert during that season.

Depending upon their needs, Colorado may also elect to lease additional water from farmers on a "willing lessor/lessee" basis. Leased water would meet the same criteria listed above, would provide farmers with a potential source of income, and no mitigation would be necessary.

The first phase of this Program and this bill's authority will last 13 years. What quantifiable and numerical ESA recovery goals are in the Program?

The Program does not have numerical recovery goals for species populations. The Program goals include: (1) improving and maintaining migrational habitat for whooping cranes and reproductive habitat for least terns and piping plovers; (2) reducing the likelihood of future listings of other species found in the area; and (3) testing the assumption that managing flow in the central Platte River also improves the pallid sturgeon's lower Platte River habitat. The specific habitat objective that is listed in the Program's milestones is to protect and, where appropriate, restore 10,000 acres of habitat by the end of the first increment of 13 years.

The Program provides for an adaptive management plan (AMP) to monitor habitat responses to the management of Program resources. Because there is disagreement on relationships between resource management and the expected outcomes, the AMP is designed to test specific hypotheses associated with these relationships to reduce the level of disagreement and to improve management of Program resources. The AMP includes the appropriate tests during the first increment to evaluate the results associated with goals 1 and 3 above.

How will the stakeholders define success or failure? How will specific successes or failures be reported to the Natural Resources Committee since the Program will need to be reauthorized at some point?

Interim successes and failures associated with the Program will be identified through implementation of the AMP as hypotheses are tested, through achievement of the Program milestones, and through continued regulatory certainty for water users during the first increment of the Program.

Another Program element calls for 10,000 acres to be used for recovering the species. Have these lands been identified? How many are private? Is there a preliminary breakdown or plan of lands that will be acquired by outright purchase, easement or other means? What entity will own the lands that are purchased?

Specific lands to be included in the Program are not identified. The vast majority of acres potentially useful to the Program are most likely privately owned. The

method to secure the habitat lands requires that lands must be acquired on a willing lessor/seller/grantor basis and that those interests may take the form of fee purchase, easement or long term leases, depending upon the available opportunities. The optimum Program scenario would be for the 10,000 acres to be included in 3 habitat complexes of about 3000 contiguous acres each and some other lands not within the 3 habitat complexes. That scenario will be extremely difficult to make happen given the available monetary resources and constraints on acquiring lands. A land interest holding entity is being created under the Program to hold the land interests of the Program.

What assurances can you give that nearby rural communities won't experience negative impacts associated with federal land acquisition, land being taken out of production or increased land rents and values for young farmers?

The interests in land for the Program will be held by the land interest holding entity, not by the federal government. Land interests will be acquired on a voluntary basis and the Program has committed to a "good neighbor policy" regarding Program lands, including payments in lieu of taxes.

Could ESA water needs under this Program trump the Modified North Platte Decree and State Water law?

The Program is designed to facilitate water uses consistent with entitlements under State Water Law, interstate compacts, the Modified North Platte Decree, and endangered species needs. The bigger question is, without the Program, could ESA implementation trump interstate compacts and decrees and the exercise of water rights decreed under state law. This question is difficult to answer and, ultimately, may only be answered by a specific lawsuit. There are some that believe that the ESA could require individual actions by water users to mitigate species' needs that may be perceived as "trumping" state water law or a water compact. It is an issue that water users in Colorado are concerned about. During negotiations, the Colorado contingency designed their water plan to avoid raising that question.

Mrs. NAPOLITANO. Thank you, Mr. Berryman.

We will move on to Ms. Bleed.

STATEMENT OF ANN BLEED, EXECUTIVE DIRECTOR, NEBRASKA DEPARTMENT OF NATURAL RESOURCES

Ms. BLEED. I want to thank the committee for inviting me to testify today. My name is Ann Bleed. I was appointed by Governor Heineman as the Director of the Department of Natural Resources in Nebraska.

I have submitted written testimony, but I would like to emphasize a few highlights of why this program is important to Nebraska.

We see this program as a way to provide habitat for endangered species, as well as a large number of other species that rely on the Platte River, including migratory waterfowl and sandhill cranes, and at the same time comply with the Endangered Species Act and provide regulatory certainty for all our water users in Nebraska, and finally, and importantly, to avoid costly litigation over endangered species issues.

The program establishes an organizational structure that will I believe ensure appropriate state, Federal and stakeholder involvement in the implementation of the program. The program uses an incremental approach to implementing the program that will rely on sound science developed through an adaptive management program.

An adaptive management program will test the hypotheses and the management activities that we are using and help ensure that the commitment of resources being made by everybody in the

Federal government, as well as the states and the stakeholders in the states, will in fact achieve the outcomes that we want out of the program.

The states and other interests in each of the states have committed substantial amounts of time, money, land and water resources to the program. They have done a lot to date, and the program will call for more commitments. In addition, the states have agreed to cut back existing uses to the 1997 level of consumptive use. This also will be a costly endeavor on our water users.

In sum, the negotiations to develop the program were long and arduous. The time, land, water and financial commitments by the states, the water and power districts in the states, environmental interests and the people of each basin were very substantial. There are lots of future challenges that the program must overcome.

However, when the Governors of each state signed onto the program they attested to the premise that this cooperative and collaborative program will provide a much higher likelihood of achieving protection for the habitat, as well as for providing regulatory certainty for our users than any other alternative.

For this reason, I urge you to enable the Federal government to be a partner in this collaborative effort. Thank you.

[The prepared statement of Ms. Bleed follows:]

Statement of Ann Bleed, Director of the Nebraska Department of Natural Resources

My name is Ann Bleed. I am the Director of the Nebraska Department of Natural Resources and am Nebraska Governor David Heineman's representative on the Governance Committee of the Platte River Recovery Program.

Thank you for this opportunity to provide testimony in support of Senate Bill 752 (House Resolution 1462) and its authorization of the Platte River Recovery Implementation Program.

The Platte River system arises in the mountains of Colorado and Wyoming, crosses the State of Nebraska, and empties into the Missouri River on Nebraska's eastern border. The Platte River and its tributaries irrigate millions of acres of farmland, provide water to cities such as Denver, Colorado, Casper, Wyoming, Lincoln and Omaha Nebraska, as well as numerous smaller cities and towns, and provide water for power plants that provide power throughout the western United States.

The Platte River in Nebraska also provides critical habitat to the endangered or threatened whooping crane, least tern, piping plover and pallid sturgeon, as well as habitat for numerous other species, and is a major staging area for migrating sandhill cranes. In the1990's the State of Nebraska granted instream flow permits to protect fish and wildlife habitat along the Platte and put a moratorium on the issuance of new surface water permits on the western two-thirds of the Platte River and its tributaries.

Nevertheless, the importance of this river for so many competing interests led to conflicts not only among these interests, but also among the three states through which it flows. Exacerbating these conflicts was the need to comply with the federal Endangered Species Act. In an attempt to avoid costly litigation in 1994 the three states and their constituents and the U.S. Department of Interior signed a Memorandum of Understanding that after thirteen years of intense negotiations developed and approved the Platte River Recovery Implementation Program.

The goal of the Program is to use a basin-wide cooperative approach to assist in the conservation and recovery of habitat for the Platte's endangered and threatened species and help prevent the need to list more basin associated species pursuant to the Endangered Species Act, while at the same time provide regulatory certainty to the people and industries that also rely on the flows of the river.

The Program has established an organizational structure that will ensure appropriate state and federal government and stakeholder involvement in the implementation of the Program. The Program will utilize an incremental approach to land and water management that places an appropriate and heavy reliance on the development of sound science through an adaptive management program. This adaptive

management program has developed extensive protocols for testing hypotheses and management techniques to insure that the efforts of program participants will produce the desired results.

The States and other interests in the basin have committed substantial resources to the success of this effort including $30 M, major land contributions and an average of 80,000 acre-feet of water. In addition each state has committed to reduce their consumptive use of water to 1997 levels and implement administrative procedures to hold water use at this limit.

Before closing I would like to address an amendment to Senate Bill 752 and House Resolution 1462 that has been proposed on behalf of the Upper North Platte Water Users in Wyoming relating to the Pathfinder Modification Project, which is part of the Platte River Recovery Implementation Program. The Bureau of Reclamation has a Wyoming water right to store 1,070,000 acre feet of water in Pathfinder Reservoir for the benefit of the North Platte Project, which includes irrigated land in Eastern Wyoming and Western Nebraska. Over the years, 53,493 acre feet of the storage capacity of the reservoir have been lost to sediment. The Pathfinder Modification Project would recapture this storage space.

The administration of the water rights for using this recaptured space was the subject of much negotiation among the United States and the States of Colorado, Nebraska, and Wyoming, all of whom were parties to the settlement of the Nebraska v. Wyoming law suit, which was approved by the U.S. Supreme Court in November, 2001. The results of these negotiations were codified in Appendix F to the Final Settlement Stipulation This appendix, which establishes the terms and conditions under which the Pathfinder Modification Project will be operated states in part:

> The recaptured storage space would store water under the existing 1904 storage right for Pathfinder Reservoir and would enjoy the same entitlements as other uses in the reservoir with the exception that the recaptured storage space could not place regulatory calls on the existing water rights upstream of Pathfinder Reservoir other than the rights pertaining to Seminoe Reservoir.

The proposed amendment suggests that the Bureau of Reclamation should be restricted from seeking water rights administration on behalf of Pathfinder Reservoir during the irrigation season. It is Nebraska's view that the restrictions on calls for regulation for Pathfinder Reservoir during the irrigation season in the proposed amendment would be in violation of the Modified North Platte River Decree.

In summary, the negotiations to develop this program were long and arduous. The time, land, water and financial commitments by the States, water and power districts, environmental interests and the people in the basin are very substantial. There are a lot of future challenges that the Program must overcome. However, when the Governor's of all three States signed the Program agreement, the States attested to the premise that cooperation and collaboration will provide a much higher likelihood of protecting habitat and providing regulatory certainty for all involved than any other alternative. For this reason I urge you to enable the federal government to be a partner in this collaborative effort.

Thank you again for this opportunity to provide testimony.

Response to questions submitted for the record by Ann Bleed

Additional questions from Chairwoman Napolitano:

1. What are the current Central Platte conditions? Are there any areas where the river is dry or almost dry? Where are those areas if they exist?

The Platte River above Columbus, Nebraska, upstream of the confluence of the Platte River and the Loup River in the eastern portion of the State, is characterized by highly variable flows, variable from year to year and from one season of the year to another. Before the construction of major reservoirs on the Platte system, the river would have high flows in March and April, and May and June due to the melting of the snow, first in Nebraska and then in the Rocky Mountains. During the summer it would often go dry. With the construction of reservoirs and the diversions of water for irrigation, the extreme high spring flows were decreased but the summer flows increased. As a result, except for dry years, the river rarely was dry, even during the summer. However, during the last six years of drought, the river was often dry between Kearney, Nebraska and Columbus Nebraska, upstream of the confluence with the Loup River.

Will there be flow surges that affect downstream users? Will the increase in flows increase the likelihood of flooding downstream?

I am assuming this question pertains to the release of water from the environmental account in Lake McConaughy to maintain habitat for the endangered and threatened species. The Program is designed to avoid flood flows that would result from Program activities. The Final Program Document states on page 16 that:

> Any such use of Program water is subject to limitations described in the document "An Environmental Account for Storage Reservoirs on the Platte River System in Nebraska" (EA Document) in the Program Water Plan (Attachment 5, Section 5) to prevent such releases from causing or exacerbating floods.

Page 47 of the Water Plan also states:

The EA Manager may not request releases from the EA when the Platte or North Platte River at Keystone, North Platte, Brady, Cozad, Kearney or Grand Island is at or above flood stage as defined for those locations by the National Weather Service ("NWS"). If the EA Manager requests a release of EA water that the Districts believe would cause the Platte or North Platte River to rise above flood stage, the request for release may be denied. However, the EA Manager may appeal the denial by requesting the National Weather Service (NWS) to make a determination as to whether or not the requested release would cause either of the rivers to rise above flood stage at any of the previously listed sites. If the NWS determines the requested release would cause either of the rivers to rise above flood stage, the denial would stand. If the NWS determines the requested release would not cause either of the rivers to rise above flood stage, the requested releases will be made.

Additional questions from Ranking Member McMorris Rodgers:

1. **Can an outside group not party to the Platte River Program (Program) referenced in the bill still file NEPA, ESA-related or other litigation on existing federal projects that are covered by the Program.**

Any person could file a lawsuit at any time. The question is what would the courts do with do with a lawsuit regarding issues covered by the Program? The Program has been deemed a reasonable and prudent alternative for complying with Section 7 of the Endangered Species Act (ESA). Thus, I would think that the court would give deference to the Program, but there are no guarantees.

2. **A main element under this Program is to dedicate up to 150,000 acre feet to endangered species. Much of this water will be taken from farmers and communities. Please provide specific mitigation plans for these water losses?**

The Program was developed to provide a reasonable and prudent alternative to protect endangered species and comply with Section 7 of the ESA while at the same time provide regulatory certainty for water users. According to the U.S. Fish and Wildlife Service, the shortage of water for maintaining habitat for the endangered species is over 417,000 acre feet a year on average. Under the Program we were able to agree to providing only 130,000 to 150,000 acre feet in the first 13-year increment, pending further information gathered through the adaptive management program. This is the main plan to mitigate impacts on farmers and communities.

Also, under the Program, the Nebraska public power districts are providing up to 200,000 acre feet of storage space and 10% of the storable inflows to the reservoir October through April for the environmental account in Lake McConaughy, Wyoming is providing 34,000 acre feet of storage space and 3.18% of inflows through the Pathfinder Modification Project, and Colorado is providing for the reregulation of water through the Tamarack Project that will store water excess of the target flows for later release when flows are below the target flows for the endangered species. Although these projects do have impacts on water users, the impacts on farmers and communities would be worse without these projects.

The State of Nebraska has also developed a Conservation and Reserve Program and an Environmental Quality Incentive Program with the federal government to, on a voluntary basis, lease water rights for 10 to 15 years or permanently retire water rights to reduce the consumptive use of water and provide habitat.

The State is also appropriating up to $ 80 million over 12 years for reducing consumptive use in overappropriated and fully appropriated basins with the Platte River Basin being one of the prime targets for the use of this money.

3. The first phase of this Program and this bill's authority will last 13 years. What quantifiable and numerical ESA recovery goals are in the Program?

The Program's progress will be monitored through an intensive adaptive management program. This adaptive management program is a collaborative initiative among many scientists involved in the Program. The purpose is to develop and test hypotheses regarding what habitat and management activities will in fact improve the continued survival of the endangered species.

The Programs has also established 10 milestones to monitor progress toward Program objectives for ESA compliance through the first increment of the Program. The milestones, which are explained more fully in Attachment A are:

1. The Pathfinder Modification Project will be operational and physically and legally capable of providing water to the Program by no later than the end of Year 4 of the First Increment.
2. Colorado will complete construction of the Tamarack I and commence full operations by the end of Year 4 of the First Increment.
3. CNPPID and NPPD will implement an Environmental Account for Storage Reservoirs on the Platte System in Nebraska as provided in FERC licenses 1417 and 1835.
4. The Reconnaissance-Level Water Action Plan, as may be amended by the Governance Committee, will be implemented and capable of providing at least an average of 50,000 acre-feet per year of shortage reduction to target flows, or for other Program purposes, by no later than the end of the First Increment.
5. The Land Plan, as may be amended by the Governance Committee, will be implemented to protect and, where appropriate, restore 10,000 acres of habitat by no later than the end of the First Increment.
6. The Integrated Monitoring and Research Plan, as may be amended by the Governance Committee, will be implemented beginning Year 1 of the Program.
7. The Wyoming Depletions Plan, as may be amended with the approval of the Governance Committee, will be operated during the First Increment of the Program.
8. The Colorado Depletions Plan, as may be amended with the approval of the Governance Committee, will be operated during the First Increment of the Program.
9. The Nebraska Depletions Plan, as may be amended with the approval of the Governance Committee, will be operated during the First Increment of the Program.
10. The Federal Depletions Plan, as may be amended with the approval of the Governance Committee, will be operated during the First Increment of the Program.

4. How will the stakeholders define success or failure? How will specific successes or failures be reported to the Natural Resources Committee since the Program will need to be reauthorized at some point?

The stakeholders, who have representatives on the Program Governance Committee, will be monitoring the Program and its impacts on them throughout the implementation of the Program. Unlike a compact or court decree, each state and the Department of Interior has the option of withdrawing from the Program at any time. Therefore if the stakeholders in any state do not believe the Program is a better alternative than complying with the Endangered Species Act without the Program, they can convince their Governor to withdraw from the Program.

5. Another Program element calls for 10,000 acres to be used for recovering the species. Have these lands been identified? How many are private? Is there a preliminary breakdown or plan of lands that will be acquired by outright purchases, easement or other means? What entity will own the lands that are purchased?

The Program has developed some basic criteria for lands that would be suitable for acquisition to meet Program goals, however, specific tracts of land have not yet been identified, nor has a preliminary breakdown of how these lands will be acquired been developed. Most of the land acquired will be private lands.

The Program is planning to appoint a land holding entity to act as a trustee to hold title to real estate and to receive conservation easements for real estate, or any other form of interest in real estate deemed beneficial to the purposes of the Program by the Program Governance Committee. Property shall be accepted in the name of trustee and shall be held by the trustee subject to all existing encum-

brances, easements, restrictions etc. The property shall be held in trust on behalf of Program until the property is conveyed, free of this Trust.

6. What assurances can you give that nearby rural communities won't experience negative impacts associated with federal land acquisition, land being taken out of production or increased land rents and values for young farmers?

There are no assurances that there won't be impacts on communities or young farmers due to land being taken out of production or increased land rents and values. However, the State believes that without the Program, the impact of complying with Section 7 of the Endangered Species Act would have an even greater adverse impact on farmers and communities.

7. Could ESA water needs under this Program trump the Modified North Platte Decree and State Water law?

In crafting the Program, the partners to the Program were very careful to do nothing that would violate the Modified North Platte Decree, the South Platte Compact or state water rights. However, there is a question of whether the ESA can trump an interstate decree or an interstate compact. I am not an attorney but as I understand the experience of others, Congress has enacted legislation that has ahd an impact on decisions of a federal district court or an appeals court. However, although the issue has been raised at least once regarding the Endangered Species Act and a Compact regarding the silvery minnow, the court chose not to address the issue. This question was raised discussed but not addressed during the Nebraska v. Wyoming litigation and settlement negotiations. To my knowledge, the question of whether the Endangered Species Act can trump an equitable apportionment case before the U.S. Supreme Court Decree remains unanswered.

Mrs. NAPOLITANO. Thank you.

Next, Ted Kowalski.

STATEMENT OF TED KOWALSKI, PROGRAM MANAGER, COLORADO WATER CONSERVATION BOARD

Mr. KOWALSKI. Good afternoon. Thank you, Madam Chairman and Members of the committee. I appreciate your focusing on this important issue here today.

My name is Ted Kowalski. I work for the Colorado Water Conservation Board, and the State of Colorado firmly supports this legislation, H.R. 1462. We would like to thank Representative Udall for his leadership in this regard and the other cosponsors who have signed onto this important legislation.

By way of background, and the North Platte and South Platte River basins both begin in Colorado, and I thought it was interesting as well that every single one of the Colorado's seven congressional districts touch in some portion the North or the South Platte basin. I think that just goes to show how important it is to the entire State of Colorado that we get this legislation to allow us to participate in this collaborative recovery effort.

As has been noted in the testimony previously, this has been a very long process to get to this program where we have an agreement between the three basin states, the Federal government, but we also have water users and environmental interests, other stakeholders who are firmly committed to this program, and I think it just is a testament to the people involved and to the energy and the persistence of both the people and the entities involved to get to the finish line.

We are not there yet. We need this legislation to authorize the Federal government to participate in the program. The program, as was noted before, is modeled after the very successful Upper

Colorado and San Juan River Recovery Programs, two other programs that Colorado is also supportive of and has been involved in for years.

I think we are starting to see some of the fruits of those efforts in the recovery of those species involved in each of those basins, and I think this is a similar worthwhile effort on the Platte River side.

It is incremental. It is expected the first increment will be 13 years. We are looking at basically four primary aspects of the program. There is the land aspect, the 10,000 acres within the first 13 years that will be acquired and restored for habitat. There is the water piece, which will provide up to 130,000 to 150,000 acre feet on average to target flows in the affected area.

There are established depletion plans by the states and the Federal government, and there is an integrated monitoring and research plan that will be effectuated through the adaptive management process.

I think really this process or this program is the first to go forward with an adaptive management plan this early in its inception, and we have really worked hard to understand what adaptive management means and make sure it is an integrated part of this program.

I echo the comments of everyone who has spoken before me about the importance of pursuing this on a programmatic, collaborative process. This is a lot more effective. It is a lot more efficient use of our resources.

I can't stress how important it is to the State of Colorado that we aren't having to seek ESA compliance on a project by project by project basis, but rather we will have a streamlined process whereby water users within the State of Colorado will be able to obtain ESA compliance in a very quick and inexpensive way compared to if they had to do this on a case by case by case basis.

I indicated that Colorado is dedicated to this program, and we put our money where our mouth is. We have dedicated $7 million already. Colorado has both water and cash obligations. $24 million is coming from the State of Colorado. To meet our water portion we have dedicated $2 million, and we are $5 million toward the cash contribution.

We also have pending legislation for an additional $3 million this year, so we will be a third of the way in the first six months of the program to meeting our cash obligation, but we have also identified how we will meet the rest of those financial obligations.

In addition, there is an MOU between the State of Colorado and the water users through the SPWRAP group where they will act as a backstop. Should the state be unable to fulfill is obligations, SPWRAP will step in and assist the state to the extent necessary.

It is important to note that the Colorado Water Conservation Board, a statewide policy board, has passed a resolution in support of this program. That has been submitted for the record.

Once again, I thank you for your consideration, and I hope that you will support this important legislation for Colorado.

[The prepared statement of Mr. Kowalski follows:]

Statement of Ted Kowalski, Colorado Water Conservation Board

Chairwoman Napolitano and Members of the Subcommittee:

My name is Ted Kowalski and I manage the Platte River Program for the State of Colorado. Thank you for inviting me to testify before you in support of the Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act. The State of Colorado appreciates this subcommittee's attention to these issues, and we are grateful to Representative Udall for his leadership in pursuing this important legislation.

By way of background, the North and South Platte Rivers start in Colorado. It is interesting to note that each of Colorado's seven congressional districts includes a portion of North or South Platte River basins within it. The South Platte River basin is Colorado's most populous basin, with more than 3 million residents. Like much of the western United States, the population in the South Platte basin is increasing dramatically. With the increases in population in Colorado comes additional water development.

For many years, the States of Colorado, Nebraska, Wyoming, and the Department of the Interior have been working with our stakeholders to establish the framework for an Endangered Species Act Recovery Program (Program) to recover the endangered whooping crane, interior least tern, and pallid sturgeon, and the threatened piping plover. Each of these species has designated habitat the State of Nebraska along the Platte River. That critical habitat is impacted by actions upstream of it in Wyoming and Colorado. I am pleased to testify that this hard work has paid off, and that the three States and the federal government signed a Program agreement in the fall of 2006. The Program, established by that agreement, began on January 1, 2007.

The Program is modeled after the very successful and longstanding Upper Colorado River Recovery and the San Juan River Recovery Programs. The State of Colorado has benefited from these programmatic approaches to recovering endangered species while allowing water development to continue within the States that participate in these types of recovery programs.

The Platte Program is incremental, and the first increment is expected to last thirteen years. Within the first thirteen years, the participants will: 1) acquire and restore 10,000 acres of habitat; 2) provide 130,000 to 150,000 acre-feet of water to meet certain target flows; 3) operate within state and federal laws and the depletion plans established under the Program; and, 4) provide integrated monitoring and research through a comprehensive adaptive management plan.

By pursuing recovery of these species on a programmatic basis, as opposed to pursuing recovery efforts on a case-by-case basis, we will use our resources more efficiently and effectively. Moreover, water users will benefit from streamlined consultations with the Fish and Wildlife Service as opposed to individualized consultations and negotiations.

Colorado is dedicated to the success of the Platte River Recovery Program. The State has already appropriated and authorized the expenditure of up to $7 million dollars to meet Colorado's cash and water obligations. In addition, there is legislation pending that immediately authorizes an additional expenditure of $3 million dollars on July 1, 2007 and sets forth a plan to fund the majority of Colorado's remaining obligations over the next several years. Water providers, environmental organizations, and the agricultural community have all expressed support for the State legislation.

Water providers, in particular, have been partners with the State since the beginning of the three states negotiations. Colorado water users have established an organization called the South Platte Water Related Activities Program (SPWRAP), which is a nonprofit organization. SPWRAP has the authority to assess annual assessments from its members, and to use that money to help the State of Colorado meet its obligations under the Program.

It is important to note that the Colorado Water Conservation Board, Colorado's statewide water policy board, unanimously passed a resolution in support of this federal legislation. A copy of this resolution is attached to this statement.

Once again, thank you for your consideration. We hope that you will support this legislation that is important to the Recovery of endangered species and the citizens of the United States and in particular the States of Colorado, Wyoming and Nebraska. I am available to answer any questions that you may have.

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May 8, 2007

Chairwoman Grace Napolitano
United States House of Representatives
Committee on Natural Resources
Subcommittee on Water and Power
1522 Longworth HOB
Washington, DC 20515

By email to: Emily.Knight@mail.house.gov

Dear Chairwoman Napolitano and Members of the Subcommittee,

Thank you for inviting my testimony before you in support of HR-1462, the Platte River Implementation Program Pathfinder Modification Authorization Act. I appreciated the opportunity to advise the subcommittee about the Platte River Implementation Program and the importance of this legislation.

This legislation is vital to the success of the Program. I am attaching your questions and answers (in bold following each question). I hope this is helpful to you and your subcommittee. Thank you for your attention to this important legislation.

Sincerely,

Ted Kowalski
Program Manager
Colorado Water Conservation Board

Response to questions submitted for the record by Ted Kowalski

Additional questions from Ranking Member McMorris Rodgers:

Can an outside group not party to the Platte River Program (Program) referenced in the bill still file NEPA, ESA-related or other litigation on existing federal projects that are covered under the Program?

Outside groups could file NEPA, ESA-related or other litigation on existing federal projects that are covered under the Program.

A main element under this Program is to dedicate up to 150,000 acre feet to endangered species. Much of this water will be taken from farmers and communities. Please provide specific mitigation plans for these water losses?

The water contributions to the Program include initial water projects that will dedicate up to 80,000 acre feet annually towards target flows, and an additional 50,000 to 70,000 acre-feet annually that will be met through the water action plan. Colorado's initial water project will not "take" water from farmers and communities, but rather will retime water (through the Tamarack Recharge Project and other similar projects) from times of excess to times of shortages. Should Colorado seek to purchase or lease additional recharge credits, this would be done on a "willing seller" basis. The water action plan is a reconnaissance-level plan and how the parties have not yet decided how we will meet these obligations. Any water that will be leased or purchased under this water action plan will also be on a "willing seller" basis and water rights holders will be justly compensated.

The first phase of this Program and this bill's authority will last 13 years. What quantifiable and numerical ESA recovery goals are in the Program?

The Program does not include identifiable goals for recovery of the species; however, the Biological Opinion and the Environmental Impact Statement include explicit recovery goals. The Program does include milestones for the water plan, the land plan, the adaptive management plan, and the individual depletion plans. These milestones must be met in order to benefit from the regulatory certainty that the Program affords the participants.

How will the stakeholders define success or failure? How will specific successes or failures be reported to the Natural Resources Committee since the Program will need to be reauthorized at some point?

Successes and failures will be evaluated and re-evaluated through the Adaptive Management Plan. The Adaptive Management Plan was developed so that it can test competing hypotheses, and readjust management actions based on the results of actions taken and habitat responses.

Another Program element calls for 10,000 acres to be used for recovering the species. Have these lands been identified? How many are private? Is there a preliminary breakdown or plan of lands that will be acquired by outright purchase, easement or other means? What entity will own the lands that are purchased?

The specific lands that will be purchased have not been identified. The Program operates on a "willing buyer/willing seller" basis. The Program does have a list of attributes that will make lands more desirable. The type of property rights obtained will be determined on a case by case basis, in consultation with the Land Advisory Committee. The Program is in the process of establishing a Land Interest Holding Entity that will hold title to the land interests.

What assurances can you give that nearby rural communities won't experience negative impacts associated with federal land acquisition, land being taken out of production or increased land rents and values for young farmers?

The rural communities should not be negatively impacted by the Program. The Program has an articulated "good neighbor" policy and the Program will acquire land on a "willing buyer/willing seller" policy.

Could ESA water needs under this Program trump the Modified North Platte Decree and State Water law?

No.

Mrs. NAPOLITANO. Thank you.

Next, Dan Luecke, National Wildlife Federation.

STATEMENT OF DAN LUECKE, PLATTE RIVER ISSUES CONSULTANT TO THE NATIONAL WILDLIFE FEDERATION

Mr. LUECKE. Thank you, Madam Chair and Members of the committee. I am here representing not only the National Wildlife Federation, but also the Whooping Crane Maintenance Trust, American Rivers, the Nebraska Wildlife Federation and the Colorado Environmental Caucus.

I should note as well, since it has been mentioned on more than one occasion as a model for the Platte program, that I represent the environmental community on the Upper Colorado Endangered Fish Recovery Program, a program that has been in existence since the late 1980s and has fostered both protection of species and continued use of water by those who hold entitlements.

A few years ago the National Research Council of the National Academy of Sciences completed a report on the Central Platte and found the habitat unique and an essential component of the habitat needs of the endangered species, and at one point in the report it noted that restoration of that habitat must begin with water management.

This program took seriously that advice and that admonition. It had water on its agenda already. It remained steadfast in negotiations among all the interested parties. Water and its management would be an essential component of the recovery program.

The program has as its goal the reduction in shortages of flows in the Central Platte of 130,000 to 150,000 acre feet and land pro-

tection of 10,000 acres. The water component is based to a large extent on retiming water, though some water will be purchased and converted to in-stream flows as the program progresses.

The recovery program is both flexible and comprehensive. Like the Upper Colorado program, it is a watershed scale program. It takes the entire basin as its management area, in my view the only way to accomplish the kind of recovery that we are hoping to achieve.

It is flexible because it is based upon willing seller/ willing buyer agreements for water and land. It is committed in the case where revenues are lost, for example, in association with land conversion that payments in lieu of taxes will be made. It is a program that recognizes not only the enormous economic value of the river, but its unique environmental value as well.

The accomplishment of the objectives of the recovery program depend upon the passage of this legislation, both for the authorization of Federal involvement and for Federal funding and also for the modification of an important project, Pathfinder, in the State of Wyoming.

I urge the committee to support this program through the passage of this bill. Thank you.

[The prepared statement of Mr. Luecke follows:]

Statement of Daniel Luecke, Consultant to The National Wildlife Federation

INTRODUCTION

The Platte River basin is one of the most important ecosystems and economic areas in the Rocky Mountain-High Plains region. With its watershed in Colorado, Wyoming, and Nebraska, the river has played an essential role in both defining the character of the region ecologically and in sustaining the economy. Unfortunately, the environmental value of the river has often been ignored in the pursuit of more narrowly defined economic goals. The challenge now, from both an environmental and economic perspective, is to begin the process of correcting the past imbalance in an equitable and efficient fashion. The river supports millions of ducks and geese and hundreds of thousands of sandhill cranes on their Central Flyway migration. But what makes the environmental challenge even more important and imperative is the role the river plays in supporting endangered species.

The Platte River Recovery Implementation Program (recovery program) and its approval under the Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act of 2007 will mark a significant step in correcting the disparity between the economic and environmental importance of the Platte. The recovery program identifies an initial set of flow and land protection measures that the U.S. Fish and Wildlife Service has determined to be a sound basis for the first stage in restoration of the structure and function of the Platte River ecosystem in central Nebraska. The ultimate goal is the reestablishment of a riverine/land habitat complex that can meet the needs of the endangered whooping crane, interior least tern, and piping plover and, farther east, the testing of actions and associated research activities that will provide a better understanding of the needs of the pallid sturgeon.

The states of Colorado, Wyoming, and Nebraska, their water users, and the environmental community have accepted these resource management goals and the associated research agenda as the basis for starting the process of restoration. An important feature of the structure of the recovery program is its incorporation of flexible provisions that allow the states' water users to continue to divert water to which they are entitled and, at the same time, providing them a substantial measure of regulatory certainty under the Endangered Species Act. This concept of flexibility is also incorporated in a land conservation plan that is based on willing seller/willing buyer agreements and in a research and monitoring protocol that incorporates a carefully constructed adaptive management program.

National Wildlife Federation's Support for the Recovery Program and H.R. 1462

The Platte River Recovery Implementation Program Cooperative Agreement, signed at the end of 2006 by the Secretary of Interior and the governors of the three states, is the product of several years of negotiations among the states, the Department, water users, and environmentalists (including National Wildlife Federation). It sets in motion the process of putting in place the detailed land and water program elements designed to reverse the long-term process of habitat deterioration in the Platte River.

In April 2004 the National Academy of Sciences (NAS) issued a report on the importance of the Platte River to the endangered species mentioned above (Endangered and Threatened Species of the Platte River) and the role of the recovery program in the Platte's restoration. The Academy committee that reviewed the Platte agreed unanimously that the habitat in central Nebraska is unique, that the U.S. Fish and Wildlife Service's proposal for habitat restoration measures that have been incorporated in the recovery program were sound, and that ultimately "...[s]uccessful, sustainable solutions of species issues "must begin with water management."

At the time the NAS report was released, the environmental community strongly supported its conclusions and we believe they remain applicable today. We believe that the report validates the data and science embodied in the recovery program, a set of sound water and land protection activities.

With the passage of H.R. 1462, we will have taken a major step in the authorization for a Platte River Program that is based on the following actions:

- A water program that includes modifying Pathfinder Dam in Wyoming, Lake McConaughy environmental storage in Nebraska, groundwater recharge and management in Colorado (at Tamarack State Wildlife refuge and elsewhere), and other water actions that will reduce flow shortages in the central Platte by at least 130,000 to 150,000 acre-feet.
- Channel improvements in the North Platte River near the town of North Platte that will increase capacity to 3,000 cubic feet/second (cfs) or such improvements that will increase the flood stage to six feet allowing the U.S. Fish and Wildlife Service to use its McConaughy environmental water to produce a flow of at least 5,000 cfs at Lexington, Nebraska for three days in the spring.
- A 10,000-acre land plan based on habitat complexes that will establish channel areas and other important habitat by means of purchase, permanent conservation easements, and long-term leases.
- A sediment management plan that will clear islands upstream of the central Platte habitat and that will be sufficient to ensure no further river habitat degradation downstream.
- A research and monitoring plan that will be sufficient to track the impacts of all changes to the habitat and their relationship to species.

CONCLUDING COMMENT

We believe that there is a clear need for an endangered species recovery program in the Platte River that is basinwide, comprehensive, and cooperative. Because we recognize the importance of constructing a program that is politically feasible, we support the program's key principles of protecting water entitlements, of willing seller/willing buyer land conservation arrangements, an incremental approach to habitat improvement and protection, and adaptive management. The recovery program honors all these key principles. For these reasons and because the Platte is a unique and vital habitat, the National Wildlife Federation supports the recovery program and urges this committee and the House to authorize the program by passing H.R. 1462.

Response to questions submitted for the record by Dan Luecke

Additional Questions from Chairwoman Napolitano:

How do you know that flows that benefit one species (for example, whooping cranes) will not have adverse effects on another species (for example, pallid sturgeon)? Could restoration activities have unintended consequences for these listed species?

The flows that have been identified by the U.S. Fish and Wildlife Service ("species flows," "pulse flows," and "peaking flows") are primarily for the bird species in the Big Bend reach of the Platte. Specific flows have yet to be identified for the pallid sturgeon, but there is an assumption that peak flows may be important.

How will the Platte River habitat restoration benefit specific species of concern? Will a "one size fits all" habitat restoration benefit all the threatened and endangered species?

The water and land components of the recovery plan have identified specific needs for each of the species.

What entity will own the land acquired with the implementation of the recovery program?

The land will be owned by a "land holding entity" whose only responsibility will be to retain deeds and leases. All management decisions regarding land (beginning with the decision to purchase or lease land) will be made by the governance committee based on recommendations that come from the land committee.

Where will the money for the acquisition of land come from?

The money from land acquisition will come from the state and federal contributions to the program budget.

Do landowners along the proposed channel improvements have problems with the increased flows as a result of the Recovery Program?

One of the fundamental commitments of the recovery program is a no flooding policy.

Will improved recreation opportunities be compatible with habitat restoration?

One of the responsibilities of the land committee will be to establish land use plans that will include opportunities for recreation that are compatible with the habitat complexes that are created.

Additional questions from Ranking Member McMorris Rodgers:

Can an outside group not party to the Platte River Program (Program) referenced in the bill still file NEPA, ESA-related or other litigation on existing federal projects that are covered under the Program?

The recovery program is designed to meet the requirements of ESA and NEPA and, if program milestones and other obligations are met, to provide program participants with ESA protection, but there is nothing that would prevent groups outside the program from filing ESA or NEPA law suits.

A main element under this Program is to dedicate up to 150,000 acre feet to endangered species. Much of this water will be taken from farmers and communities. Please provide specific mitigation plans for these water losses?

The two main parts of the recovery program's water management plan designed to reduce target flows shortages in the Platte are the states' projects and the water action plan. The states' projects are the Environmental Account (EA) in Lake McConaughy (Nebraska's contribution), the storage reclamation project in Pathfinder Reservoir (Wyoming's contribution), and the Tamarack groundwater management and recharge Program (Colorado's contribution). These three projects are expected to reduce shortages by an average of about 80,000AF/yr by retiming water. They do not take water out of current uses. The water action plan consists of a number of smaller projects and actions (e.g., expansion of Tamarack, groundwater management, offstream reservoir, water leasing, water management incentives, power interference, and so on), some of which retime water (e.g, Tamarack expansion, groundwater management, offstream storage) and some change water use (e.g., water leasing and possibly power interference). Leased water will be paid for and power interference will be compensated. All water action plan elements that involve a change of use will be compensated.

The first phase of this Program and this bill's authority will last 13 years. What quantifiable and numerical ESA recovery goals are in the Program?

The recovery program contains specific milestones on actions that must be taken to put in place the states' projects, the water action plan, the creation of land habitat complexes, future depletion plans, and associated research and monitoring protocols in the context of an adaptive management plan (AMP). The AMP contains explicit hypotheses on the relationship between management actions and expected outcomes. The recovery program does not contain numeric goals or targets for species numbers or minimum viable population sizes.

How will the stakeholders define success or failure? How will specific successes or failures be reported to the Natural Resources Committee since the Program will need to be reauthorized at some point?

Success will be measured against meeting milestones for program actions associated with implementing the water and land plans and measurements of habitat improvement base on data gathered under the research and monitoring program. I would anticipate that the report on program successes and failures that will be made to the Natural Resources Committee will be based actions, milestones, and habitat response.

Another Program element calls for 10,000 acres to be used for recovering the species. Have these lands been identified? How many are private? Is there a preliminary breakdown or plan of lands that will be acquired by outright purchase, easement or other means? What entity will own the lands that are purchased?

The lands have not been identified, but criteria have been developed and concept of land habitat complexes articulated. The plan is to establish three complexes of slightly over 3,000 acres each and identify other lands that would not be part of the complexes, but would allow for the testing of competing hypotheses on species needs (e.g., reclaimed sand pits as nesting areas). The lands that will be part of the complexes are very likely now private. There is not, at this moment, a specific mix of purchased, leased, and easement based land arrangements. A land holding entity is being created to hold the land interests (deeds, leases, etc.)

What assurances can you give that nearby rural communities won't experience negative impacts associated with federal land acquisition, land being taken out of production or increased land rents and values for young farmers?

The interests in land will not be held by a federal agency, but by the land holding entity. All land arrangements will be based on voluntary agreements, the recovery program is committed (in writing) to a good neighbor policy, and the program will make payments in lieu of taxes.

Could ESA water needs under this Program trump the Modified North Platte Decree and State Water law?

No.

Mrs. NAPOLITANO. Thank you very much.

Mike Purcell, Wyoming Water Development?

STATEMENT OF MIKE PURCELL, DIRECTOR, WYOMING WATER DEVELOPMENT COMMISSION AND CHAIRMAN OF THE GOVERNANCE COMMITTEE

Mr. PURCELL. Thank you, Madam Chair. I am Wyoming Governor Dave Freudenthal's representative on the Governance Committee of the Platte River Recovery Implementation Program, and presently I am serving as the chair of that committee.

I sincerely thank you for providing me the opportunity to provide testimony in support of H.R. 1462. My colleagues have done a good job explaining the benefits of the program. I would only add a couple things and emphasize that this program affords the states the opportunity to address ESA issues through cooperation rather than conflict.

Obviously you are aware we are seeking $157 million. I want to emphasize the fact that we, the three states, are working very hard to match your investment as well. To match the Federal funding, the three states are making $160 million in contributions. These contributions include $30 million in cash, approximately 3,000 acres of land and an average of 80,000 acre feet of water per year.

Program cash will be dedicated to additional land purchases, providing an additional 50,000 to 70,000 acre feet of water, and of

course the very important scientific adaptive management program. I am proud to report that Wyoming has appropriated its share of this $30 million and that we are ready to do business.

While it does not show up as a contribution to the match, it should not be overlooked that the states have also agreed to curtail their water use to 1997 levels. We are each doing that through different ways, but I want to assure you. Achieving these thresholds will be costly and will affect future water use and management decisions in all three states.

I would like to turn now to the Pathfinder Modification Project regarding the authorization for the Secretary of the Interior to modify Pathfinder Dam and Reservoir and to enter into agreements with the State of Wyoming for the implementation of the project.

The State of Wyoming is willing and ready to complete the necessary agreements and provide the funding for the project. The Wyoming legislature has approved an appropriation of $8.5 million to complete the project. There are no Federal funds involved.

The Bureau of Reclamation has a Wyoming water right to store 1,070,000 acre feet of water in Pathfinder Reservoir for the benefit of the North Platte Project, which includes irrigation lands in eastern Wyoming and western Nebraska. Over the years, approximately 54,000 acre feet of the storage space has been lost to sediment.

The project proposes to simply raise the height of the emergency spillway by 2.4 feet. That will allow us to recapture the full permitted capacity of 1,070,000 acre feet, thereby perfecting the Federal entitlement under Wyoming water law.

The operations of the project were carefully crafted during a little skirmish we call the Nebraska v. Wyoming lawsuit. The parties to that lawsuit were the United States, Nebraska, Colorado and Wyoming, which we were having little skirmishes in court at the same time we were cooperating in the development of this program. Again, the operations of the project were crafted in that settlement, which was ultimately approved by the U.S. Supreme Court in November 2001.

There are two accounts, two storage accounts in the Pathfinder Modification Project. The first, approximately 34,000 acre feet of the recaptured space, has been designated as the environmental account, which is Wyoming's water contribution to the program on behalf of its water users, including the Federal government and its major storage facilities on the Platte River basin in Wyoming.

The remaining 20,000 acre feet of storage space has been designated as the Wyoming account, which will be operated to provide a much needed supplemental municipal supply for communities along the North Platte River, as well as a water supply to meet certain specified obligations that Wyoming has taken on in the settlement of the Nebraska v. Wyoming lawsuit.

In return for the Wyoming account, the State of Wyoming is giving up permits and entitlements to what we had called the Deer Creek Dam and Reservoir Project that would have been a substitute. The Wyoming account is going to serve as a substitute for that previously proposed project.

In conclusion, Madam Chair, the Pathfinder Modification Project is essential for Wyoming in order to meet its obligations to the

Platte River Recovery Implementation Program and the Nebraska v. Wyoming settlement.

Again, thank you for the opportunity to meet with you today, and I would be happy to answer any questions you have.

[The prepared statement of Mr. Purcell follows:]

Statement of Mike Purcell, State of Wyoming

My name is Mike Purcell. I am Wyoming Governor Dave Freudenthal's representative on the Governance Committee of the Platte River Recovery Implementation Program. Presently, I am serving as Chairman of that Governance Committee. I would like to offer the following thoughts relating to the importance of H.R. 1462 to the Department of Interior, States of Colorado and Nebraska, and, in particular, the State of Wyoming.

The Platte River Recovery Implementation Program and Pathfinder Modification Project enjoy the support of water users in the Platte River Basin in Wyoming, including the irrigators that contract for federal storage water, several municipalities, and others.

I. Platte River Recovery Implementation Program (Program)

Issues related to the endangered birds and the critical habitat in the Central Platte River in Nebraska have affected water use and management in the States of Colorado, Nebraska, and Wyoming since the late 1970's. They have affected the relationships between the states and with the federal government. The Platte River Recovery Implementation Program affords the states the opportunity to address these issues through cooperation rather than conflict.

After 14 years, the negotiations have been completed. The Wyoming Legislature has approved the state's Program financial contribution of $6M and Governor Freudenthal and the other signatories have executed the necessary agreements. The Program commenced on January 1, 2007.

The Program will provide the states coverage under the Endangered Species Act (ESA) through simplified consultation processes for existing water related activities and certain specified new water related activities. The states and their water users will not be required to complete contentious ESA consultations on each water related activity requiring federal approvals. Without the Program, proponents of these activities would likely be required to provide funding and water to gain clearance under the ESA.

A. Key Components of the Program

1. A major Program objective is to provide 130,000-150,000 acre feet of water per year to reduce shortages to the Fish and Wildlife target flows in the Central Platte.

2. Another Program objective is to provide and maintain 10,000 acres of habitat in the Central Platte.

3. The monetary budget is approximately $187M for the first increment of the Program. The federal government will provide approximately $157M. To match the federal funding, the three states are making $160M in contributions. These contributions include: $30M in cash, approximately 3,000 acres of land, and an average of 80,000 acre feet of water per year. Program cash will be dedicated to additional land purchases and restoration, additional water (50,000-70,000 acre feet of water per year), and an adaptive management program.

4. While it does not show up as a contribution to match the federal funding, it should not be overlooked that the states have also agreed to curtail their water use to 1997 levels. Each state has developed a depletions plan which has been approved by the parties that outlines how that state will manage its water to meet this threshold. Implementing these depletions plans will be costly and will affect future water use and management decisions in all three states.

5. The first increment of the Program will be 13 years. Provisions in the Program call for additional increments if needed and if approved by the states and the Department of Interior.

6. An adaptive management scientific approach will be implemented to determine the water and habitat needs of the endangered birds (whooping crane, least tern, and piping plover) in the Central Platte River basin in Nebraska and the pallid sturgeon in the Lower Platte River basin in Nebraska. The states and their water users will have a seat at the table during the development of this information, which will become the best scientific information available for ESA purposes and will become the basis of future consultations.

7. The Program will be implemented by a Governance Committee in which the states and their water users will both have individual members. The Committee will operate on a consensus basis, which will ensure that all views must be addressed.

8. The Program will serve as the reasonable and prudent alternative under the Endangered Species Act for existing water related activities (depletions) that occurred prior to July 1, 1997, the date of the initiation of the Cooperative Agreement which led to the Program, and certain specified new water related activities.

B. Why?

Wyoming, Nebraska, and Colorado became interested in the Program when it became apparent that the ESA provided the U.S. Fish and Wildlife Service the authority to require the replacement of existing depletions until it achieved its water supply goal for the critical habitat in the Central Platte River in Nebraska. Therefore, the three states, the Department of Interior, affected water users, and environmental groups began seeking a cooperative solution in 1993.

Why did the states stay the course during 14 years of negotiations relating to the Program? The state representatives had several meetings and discussions relating to future life without a Program and came to the following conclusions:

1. The Fish and Wildlife Service would be obligated under ESA to undertake separate ESA consultations on the federal reservoirs and other major reservoirs in each state. The likely outcome would be that the operations of those reservoirs that are presently serving our water users would be reconfigured to provide 417,000 acre of feet water for the endangered species and their habitat. The loss of this water would "ripple" through each state's water right system impacting not only the users of the storage water but also all water users in our states.

2. Without the Program, ESA consultations required for future federal actions (permits, including renewals; funding; contracts; easements; and others) would require our water users (irrigators, municipalities, industries and others) to replace existing and proposed new depletions.

3. Prolonged and costly law suits would likely be initiated by each state, or by the states collectively, challenging the ESA and the Fish and Wildlife Service's interpretation of the ESA. Recent case history indicates that unless there is meaningful reform to ESA, investments in such litigation would likely be lost.

II. Pathfinder Modification Project

A. Description

The Pathfinder Modification Project is authorized by Appendix F to the Final Settlement Stipulation relating to the Nebraska v. Wyoming law suit, as approved by the U.S. Supreme Court. A copy of the Stipulation is attached to this written testimony. The Bureau of Reclamation (USBR) has a Wyoming water right to store 1,070,000 acre feet of water in Pathfinder Reservoir for the benefit of the North Platte Project, which includes irrigated land in Eastern Wyoming and Western Nebraska. Over the years, 53,493 acre feet of the storage capacity of the reservoir have been lost to sediment. The project would recapture this storage space. The recaptured space would be administered through two accounts, the "Environmental account" and the "Wyoming account." The operation of these accounts was carefully crafted during the negotiations that lead to the settlement of the Nebraska v. Wyoming law suit which has been approved by the U.S. Supreme Court in November, 2001. The United States and the States of Colorado, Nebraska, and Wyoming were parties to the negotiations.

An "Environmental account" consisting of 33,493 acre feet of the proposed 53,493 acre foot enlargement will be established and will be operated for the benefit of the endangered species and their habitat in Central Nebraska. The Environmental account is Wyoming's water contribution to the Platte River Recovery Implementation Program (Program) on behalf of all of its water users in the Platte River basin, including the federal government and its major storage facilities in our state and irrigators in Nebraska that rely on storage water from the federal dams in Wyoming.

The State of Wyoming has the exclusive right to contract with the USBR for the use of 20,000 acre feet of the enlargement capacity in a "Wyoming account." The USBR, under contract with Wyoming, will operate the 20,000 acre feet of storage to insure an annual firm yield of 9,600 acre feet. This is the same yield that was anticipated from the proposed Deer Creek Dam and Reservoir. Upon completion of the Pathfinder Modification Project, Wyoming will cancel existing water rights and federal permits pertaining to the Deer Creek Project.

The "Wyoming account" will serve as a much needed supplemental water supply for Wyoming's municipalities during times of water rights regulation. Many of the municipal water supplies along the North Platte River have junior water rights

which may be shut off or severely curtailed during water rights regulation. The account will also provide water to meet some of Wyoming's obligations specified in the Nebraska v. Wyoming settlement agreement and documented in the Modified North Platte Decree.

The modification would be accomplished by raising the elevation of the existing spillway by approximately 2.4 feet with the installation of an ogee crest. The recaptured storage space would store water under the existing 1904 storage right for Pathfinder Reservoir and would enjoy the same entitlements as other uses in the reservoir, with the exception that the recaptured storage space could not place regulatory calls on existing water rights upstream of Pathfinder Reservoir, other than the rights pertaining to Seminoe Reservoir.

The Pathfinder Modification Project is essential to Wyoming in order for the state to meet its obligations under the Program and the Modified North Platte Decree.

B. Status

State authorization to contract with the USBR was approved by the 2006 Wyoming Legislature. The Wyoming Legislature has approved an appropriation of $8.5M to implement the project.

The next critical step is securing Congressional authorization for the Secretary of the Interior to modify the Pathfinder Dam and Reservoir and enter into agreements with the State of Wyoming for the implementation of the project. Upon receipt of this authorization, the following work can be completed:

1. The USBR must obtain a partial change of use for its Wyoming water right for Pathfinder Reservoir from the Wyoming Board of Control for the 53,493 acre feet of Pathfinder storage water from irrigation use to the uses proposed by the Project. The funding approved by the Wyoming Legislature cannot be encumbered until the USBR obtains this partial change of use. This condition was placed on the funding to ensure that those with concerns about the project could express those concerns before a state tribunal before construction could begin.

2. The State of Wyoming and USBR must negotiate a contract to formalize the partnership between the parties.

3. While the final EIS for the Program will serve to address the regional effects of the project, a site-specific NEPA document will be required.

4. Under the PRRIP, Wyoming is obligated to have the Project operational in 2011. However, the WWDC would like to have the project completed as soon as possible as the water is needed to meet the state's obligations under the Modified North Platte Decree.

C. Proposed Amendment

An amendment to Senate Bill 752 and House Resolution 1462 has been proposed on behalf of the Upper North Platte Water Users. The proposed amendment suggests that the Bureau of Reclamation should be restricted from seeking water rights administration (calls for regulation) on behalf of Pathfinder Reservoir during the irrigation season. I would like to offer the following clarifications:

1. The Platte River Recovery Implementation Program (Program) and the Pathfinder Modification Project (Project) will not impact the issue of priority calls on water rights upstream of Pathfinder Reservoir during the irrigation season. This matter relates to interpretations of the Modified North Platte Decree and Wyoming water law.

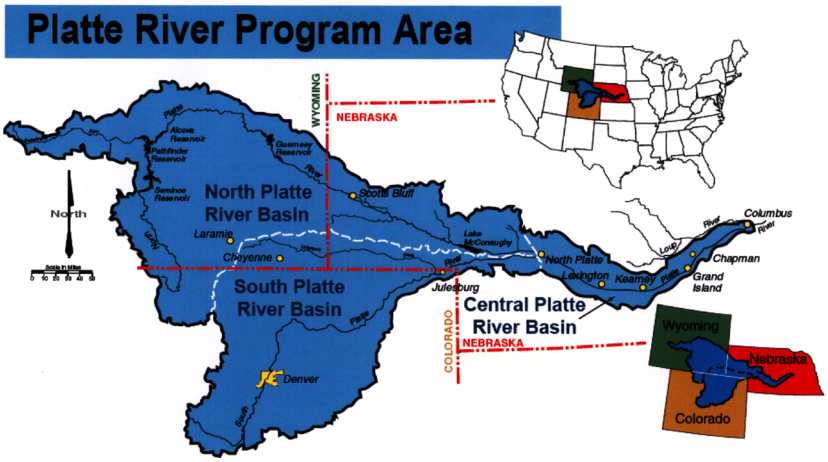
2. All calls for regulation must be deemed valid by the Wyoming State Engineer before any water rights administration can occur. The Wyoming State Engineer has advised that a very difficult standard must be overcome for such calls to be honored.

3. The Wyoming Attorney General, upon review of the Modified North Platte Decree, concluded that such calls should not be honored

4. The matter of the effects of the Project on Wyoming water users will be brought before the Wyoming Board of Control during its hearings on the Bureau of Reclamation's petitions for the partial change of use to the storage water right for Pathfinder Reservoir. The Upper North Platte Water Users will be afforded the opportunity to present their views and evidence to this state tribunal and state statutes ensure that the project cannot be constructed until the opportunities for any resulting appeals have been exhausted.

5. Please refer to Section 1 of the attached copy of Appendix F to the Final Settlement Stipulation which states in part: "The recaptured storage space would store water under the existing 1904 storage right for Pathfinder Reservoir and would enjoy the same entitlements as other uses in the reservoir with the exception that the recaptured storage space could not place regulatory calls on the existing water rights upstream of Pathfinder Reservoir other than the rights pertaining to Seminoe

Reservoir." (Emphases added.) The Upper North Platte Water Users are located upstream of Pathfinder Reservoir.



[NOTE: Appendix F has been retained in the Committee's official files.]

Response to questions submitted for the record by Mike Purcell, State of Wyoming

Additional questions from Ranking Member McMorris Rodgers:

Question: Can an outside group not party to the Platte River Program (Program) referenced in the bill still file NEPA, ESA-related or other litigation on existing federal projects that are covered under the Program?

Response: Yes

Question: A main element under this Program is to dedicate up to 150,000 acre feet to endangered species. Much of this water will be taken from farmers and communities. Please provide specific mitigation plans for these water losses?

Response: The State of Wyoming's water contribution to the Program consists of the Environmental Account in the Pathfinder Modification Project. The Pathfinder Modification Project is authorized by Appendix F to the Final Settlement Stipulation, which are crafted during the settlement of the Nebraska v. Wyoming law suit and approved by the U.S. Supreme Court. (A copy of Appendix F is attached to my written testimony.) The Bureau of Reclamation (USBR) has a Wyoming water right to store 1,070,000 acre feet of water in Pathfinder Reservoir for the benefit of the North Platte Project, which includes irrigated land in Eastern Wyoming and Western Nebraska. Over the years, 53,493 acre feet of the storage capacity of the reservoir have been lost to sediment. The project would recapture this storage space; thereby perfecting the USBR's Wyoming water right. The recaptured space would be administered through two accounts, the "Environmental account" and the "Wyoming account." The "Environmental account" consists of 33,493 acre feet of the recaptured space. The Environmental account is Wyoming's water contribution to the Platte River Recovery Implementation Program (Program) on behalf of all of its water users in the Platte River basin, including the federal government and its major storage facilities in our state and irrigators in Nebraska that rely on storage water from the federal dams in Wyoming.

The utilization of the 53,493 acre feet of storage space under the USBR's storage right for new purposes will affect other water users. However, the majority of the water users understand that the effects of the Platte River Recovery Implementation Program and the Pathfinder Modification Project are far less than the impacts of unbridled Section 7 consultations throughout Wyoming. In particular, the contractors for federal storage under the Kendrick Project, the North Platte Project, and the Glendo Unit are affected.

The above reference Appendix F, pages 115 and 116, describes mitigation plans in the form of funding for safety of dam issues for federal contractors and assistance with the resolution of selenium issues within the Kendrick Project (Seminoe Reservoir). In addition, there are provisions in Appendix F, page 110, that ensure the recaptured space could not place regulatory calls on existing water rights upstream of Pathfinder Reservoir other than the rights pertaining to Seminoe Reservoir.

Question: The first phase of this Program and this bill's authority will last 13 years. What quantifiable and numerical ESA recovery goals are in the Program?

Response: The Program does not include goals related to increased populations of the species, as the cranes, terns, plovers, and sturgeon have important habitat needs in other locations in the United States and Canada. The Program goal in the Central Platte relates to the restoration and maintenance of 10,000 acres of habitat in the Central Platte. In addition, the Program has milestones related to progress on water and land acquisition and the scientific aspects of the Program that must be met to maintain regulatory certainty under the ESA, which is very important to the states and water users.

Question: How will the stakeholders define success or failure? How will specific successes or failures be reported to the Natural Resources Committee since the Program will need to be reauthorized at some point?

Response: In addition to achieving the habitat and milestones discussed in the previous response, Program success can also be defined by the development of better science through the Adaptive Management Plan, which will better define the needs of the species and identify the most effective means to provide habitat.

Question: Another Program element calls for 10,000 acres to be used for recovering the species. Have these lands been identified? How many are private? Is there a preliminary breakdown or plan of lands that will be acquired by outright purchase, easement or other means? What entity will own the lands that are purchased?

Response: The lands have not been specifically identified, but a Land Action Plan has been developed which provides general descriptions of the lands the Program would like to acquire. It is likely that most, if not all, of the lands are presently held by private interests. There is no breakdown of lands that may be acquired by purchase, easements or other means. The Program is committed to acquiring interest in land through "willing buyer/willing seller" relationships. The negotiations with the land owners will establish the manner in which the Program acquires interests in land. A Land Interest Holding Entity will be retained that will hold the titles, leases, easements or other interests in land on behalf of the Department of Interior and the States of Colorado, Nebraska, and Wyoming.

Question: What assurances can you give that nearby rural communities won't experience negative impacts associated with federal land acquisition, land being taken out of production or increased land rents and values for young farmers?

Response: As previously noted, negotiations with land owners will be on the basis of "willing buyer/willing seller." In addition, the Program has adopted a Good Neighbor Policy and will pay property taxes. However, the Program cannot guarantee that it will not affect property values in the area. Land is going to be acquired for habitat with or without a Program. Without a Program, lands would be purchased by water users seeking mitigation to comply with individual consultations under the ESA. The only assurances we can provide is the Program's approach will be more systematic and goal oriented.

Question: Could ESA water needs under this Program trump the Modified North Platte Decree and State Water law?

Response: With a Program, no. Without a Program, yes. This is a major reason that the states support the Program.

Mrs. NAPOLITANO. Thank you, Mr. Purcell.

Thank you to all the witnesses. Now we will proceed with questions from our Members.

I have a couple I will start off with to any of you. Do any of the states have the endangered species laws? Are they more stringent or less stringent than the Federal ESA?

Ms. BLEED. Nebraska does have a state endangered species law. It parallels very closely to the Federal Endangered Species Act, and the law is administered by our Nebraska Game and Parks Commission.

Mrs. NAPOLITANO. Anybody else?

Mr. KOWALSKI. Colorado does have a similar law that is administered by the Division of Wildlife, but it is a lot less restrictive and the penalties are a lot less onerous. Therefore, it is so much less effectual than the Federal ESA.

Mr. PURCELL. Madam Chair, Wyoming has no endangered species law. Thank you.

Mrs. NAPOLITANO. Thank you. No comment.

How does the program define success? Again, I am going back to the success of what you are trying to do. How will you know whether the program is really working?

The authority to make the changes. The program is broad in Section 104. How does the flexibility relate to the ESA compliance, and what oversight will you have over this?

In your experience, which is more strenuous, the Federal ESA or the state ESA, and what constitutes consistency between the two?

Mr. KOWALSKI. I could just comment specifically. You heard about the milestones earlier in the testimony from Mr. Butler of the Fish and Wildlife Service. Regulatory compliance is assured as long as we are meeting those milestones. Milestones equals compliance for water users at least mainly within Colorado.

I already indicated that Colorado's Endangered Species Act law, if you will, is less stringent.

Would you like to comment about Nebraska's?

Ms. BLEED. I think the Nebraska law, which very closely monitors the Federal law, is probably roughly comparable to the Federal law.

The fact of the matter is that the Federal law is usually the law that people are concerned about, and as long as we are meeting the Federal Endangered Species Act, the state Endangered Species Act is met so that the two complement each other.

I would also just like to add to the how do we know when we succeed, again I think the adaptive management program, which sets out very detailed protocols and procedures of measuring success, will be very helpful in determining whether what we are doing is in fact succeeding.

Mrs. NAPOLITANO. OK. Mr. Purcell, in your testimony you stated the states have agreed to curtail their water use to 1997 levels.

What is the difference in water use in acre feet between now and 1997? How will that be implemented? Who will be most affected, and what is being done to sustain the people or environment affected?

Mr. PURCELL. Madam Chair, each state has developed what we call a depletions plan, and each state has their own way of maintaining this threshold. These depletion plans were submitted and reviewed by the entire negotiating teams and were adopted and approved as part of the program. We will annually report, in Wyoming's case in particular, our depletions for that year in measuring them against certain thresholds.

The program itself doesn't mean we are going to be stable in our use. It will be stable in the levels of our use, but we will be transferring water from one purpose to another under those thresholds, so that is how they in fact operate.

Again, there will be annual reports to the Governance Committee explaining what we have done in each particular year.

Mrs. NAPOLITANO. And if they are not able to meet that what will then happen?

Mr. PURCELL. Madam Chair, we will have to throw ourselves at the mercy of our peers and see what we can do to catch up or to maintain our promise that we are holding stable.

The understanding is on one side providing water for the habitat and then on the other side using more and more water, digging the hole deeper, if you will, did not make sense, so we are all committed to stabilizing a baseline of water use so that the water we are providing is in fact a benefit.

Mrs. NAPOLITANO. Thank you very much.

Mrs. McMorris Rodgers?

Mrs. MCMORRIS RODGERS. Thank you, Madam Chairman, and thank you, everyone, for your testimony. I have a question for whoever would like to answer.

The main element of the program allows for certain new water uses, and given the growing population needs in this area I wanted to ask if you would explain what certain new water uses means.

Mr. KOWALSKI. Thank you, Madam Chairwoman.

In Colorado, which has seen a tremendous amount of growth over the last few years, more population doesn't necessarily mean less water in the river because you have things such as transbasin diversions from the Colorado River, so it is actually a net accretion potentially to the river or introduction of nontributary water. You potentially are going to see more water in the river.

What happens as a result of this is there are periods of net accretion to the river and periods of net depletion to the river, so it is not that there is less water in the river. It is just coming at different times potentially.

Colorado's depletion plan largely looks at retiming water to times of need for the habitat. That is both true with its 10,000 acre foot water contribution, which we sometimes refer to as the Tamarack I obligation, and then Tamarack II is what we refer to as our new depletions obligation.

Again, it is not necessarily building more reservoirs to put more water in the river, but it is just retiming that water to when it meets the affected habitat.

Mrs. MCMORRIS RODGERS. So do you see new water uses? What kind of new water uses do you see in this plan?

Mr. KOWALSKI. Again, Madam Chairwoman, we are seeing development of additional domestic uses, but there are different ways to meet that supply. We are seeing some of it from transbasin diversion, some of it from new water uses or new water such as nontributary water. We also see it from ag to urban dry ups or interruptable supply agreements and the like.

So you are seeing people or communities have a lot of different tools in their toolbox to meet their water demands, and what the program does is it assures that the water is retimed or reworked

or reregulated so that it will meet the affected areas at the right time.

Mrs. MCMORRIS RODGERS. OK.

Mr. BERRYMAN. I might add to that just real quickly. I think Mr. Kowalski covered it fairly well.

Colorado has really developed their unappropriated water sources pretty much all the way. There is maybe still a little bit of that left over. Everything else is redoing what we have already done.

An example. In that study I mentioned that the Colorado Water Conservation Board did for the future, their estimate was that we may see a change of 130,000 to 200,000 acres of irrigated land to be retired to make water available for some of the growth.

Those are the kind of issues that we deal with, and that is where the water comes from; either that or sources that are not native to the basin.

Ms. BLEED. If I might add for Nebraska, in 1993 the State of Nebraska did provide permits for in-stream flows for fish and wildlife on the Platte River, and soon after we declared a moratorium on issuing new surface water permits saying that there was no longer any available water to appropriate to new permits, so we have already done a fair amount in terms of surface water in the Platte River in Nebraska.

In addition, in 2004, the state passed a fairly encompassing interrelated water management bill that has essentially said that the Platte River in the western two-thirds of the state is fully appropriated. We have shut down the new uses of water, the expansion of irrigated land and so that cannot occur.

However, you can have new uses of water by transferring water from an existing use to the new use, and right now the state is working with the natural resources districts in Nebraska to establish goals for how that transfer can occur, but we are committed to not allowing any new uses, as well as what we refer to as backing up the train on the Platte River to get back to the 1997 level of depletions.

Mrs. MCMORRIS RODGERS. OK. Thank you.

Mrs. NAPOLITANO. Yes, Mr. Udall?

Mr. UDALL. Thank you, Madam Chair.

I want to thank the two representatives of the States of Wyoming and Nebraska for being here today. It is a particular pleasure for me to have three Coloradans here, Mr. Berryman, Mr. Kowalski and of course my long-time friend, Mr. Luecke. Thank you for being here.

I don't want to suggest Mr. Luecke and I are getting long in the tooth, but I do remember when our children were toddlers and when we had different hair color.

Thank you, Dan, for your great work over all these years and finding some creative, collaborative approaches on these two very important river systems that originate in Colorado and are also depended on by people across the southwest and the high prairie terrain. It is great to see you here. Thank you.

I wanted to if I could, Mr. Kowalski, turn to you for a couple I think short questions that I am sure you would anticipate. Thanks for your testimony. You did an excellent job explaining the State

of Colorado's role in developing the recovery program and the importance of this legislation for this state, but I know it would be helpful for the Subcommittee and the public if you could expand on your statement by responding to our questions.

About a year ago the Colorado state engineer ordered more than 400 wells in the South Platte Valley to shut down. As you know, this triggered a crisis for many farmers in the affected area. My understanding is that this action was taken in order to implement a relatively new provision of Colorado water law. Is that correct?

Mr. KOWALSKI. Yes, it is. The Empire Lodge decision in the Colorado Supreme Court ordered that the state engineer did not have that authority to approve temporary substitute supply plans, so a new law was instituted that would allow temporary substitute supply plans for a certain number of years.

Last year was the last year where they could do that before they got court approval. They are currently pending as a temporary substitute supply plan before the water court that would allow uses to occur.

Mr. UDALL. So the answer is yes, it was to implement a relatively new——

Mr. KOWALSKI. That is correct, yes.

Mr. UDALL. Let me turn to the Endangered Species Act and any other Federal laws. Did the ESA or any other Federal law play a role in this shutdown we are discussing?

Mr. KOWALSKI. Absolutely not.

Mr. UDALL. This is the nub of what I am trying to get to. Implementing the recovery program as this bill would do would not affect the likelihood of further shutdowns in the future?

Mr. KOWALSKI. No.

Mr. UDALL. Again, thank you for being concise and to the point. I again want to acknowledge the panel coming a long way here to Washington, D.C. to help edify us and help us move this legislation forward.

Madam Chairwoman, thank you so much for holding this hearing. As you can tell, this is important to three states, and I would, without being presumptuous, suggest to the Ranking Member and the Chairwoman that our example maybe would hold with the great states of Washington, Oregon and California, who continue to work together in their own ways as well.

Thank you.

Mrs. NAPOLITANO. We are doing that, sir.

Mr. UDALL. I just wanted to give the Chairwoman and the Ranking Member a chance to brag about all the great things they are doing.

Mrs. NAPOLITANO. We still have a lot of work to do. Thank you, Mr. Udall.

I would like to submit my questions to you. We are running a little short of time and some people have to catch flights.

Mrs. McMorris Rodgers? I am sorry. Mr. Smith? Yes.

Mr. SMITH. Thank you. Very briefly, I just want to acknowledge my appreciation to the panel for I think reflecting the collaboration that has been very evident over the last several years—finally it is all coming together—and realizing that we have made a lot of progress in conservation with record high yields in agriculture and

record low amounts of irrigation in the process, so we have come a long way, but obviously we need to go a little further.

It is not that a lot of folks are fans of the Endangered Species Act across rural Nebraska, but they understand what is before us, and I appreciate their understanding.

That being said, Ann, I appreciate your participation here. Certainly you know that agriculture is at the center of Nebraska's economy, and retiring cropland from irrigation raises concerns in these rural communities economically primarily.

Can you maybe just share briefly about the long-term interest that we have in this situation for the sustainability of agriculture?

Ms. BLEED. I will try. We are very concerned about sustaining irrigated agriculture in the basin and in the state as a whole. It is the backbone of our economy.

One of the reasons that we passed the integrated management law that I mentioned previously was to provide for the sustainability of irrigated agriculture, as well as all the other economies in the state that pertain or rely on having water available.

It is for that reason that we are working to develop integrated management plans where the balance of supply and use can be maintained so that we know how much water we will have in the future to maintain irrigated agriculture, as well as a number of other uses, including uses for fish and wildlife.

Mr. SMITH. OK. Thank you. I do want to thank you for making this trip out here. I know that this isn't the only water issue Nebraska faces right now, as you can attest, so I appreciate your dedication to the issue.

Ms. BLEED. I might just add, Congressman, that the Governor did sign a massive water bill today that will provide $2.7 million to working on just projects such as you were talking about in terms of maintaining our water supplies.

Mr. SMITH. Thank you.

Ms. BLEED. $2.7 million a year that is.

Mr. SMITH. Very good. And I might also share with my colleagues here that I guess we kind of feel your pain on this issue because we are upstream on another issue, just like Colorado and Wyoming are in this situation, so thank you for your involvement and collaboration.

Thank you.

Mrs. NAPOLITANO. Thank you, Mr. Smith.

I certainly couldn't agree with you more that if we don't work collaboratively not only at that end, but at this end, we cannot help resolve our country's water issues. It is going to be critical, and more so in the future, as we face global warming and depletion of our aquifers and loss of precipitation, all those things. Unless we begin to understand what we are facing and work collaboratively, I am sure we face even worse challenges.

Thank you for your collaboration. Thank you, Mr. Peltier. Thank you for sticking around. There were no questions. Aren't you lucky, sir?

I certainly echo the sentiments of my colleagues. Thank you for traveling to Washington and sitting patiently to come before this committee and give your testimony.

Before we adjourn, I want to introduce my daughter for the day, Courtney Ashmon, who has been very patiently sitting in the back listening to things. She is a ninth grader. It is Take Your Daughter To Work Day, and my baby daughter is 46, so I don't think she would come. I adopted one for the day and just wanted to introduce her.

I certainly want to thank my Ranking Member and both staff who worked so very hard to ensure that testimony is brought to us and that we understand the issues.

With that, this meeting is adjourned. Wait a minute. Before that, under Committee Rule 4[h] additional material for the record should be submitted by Members or witnesses within 10 days after this hearing.

I greatly appreciate the cooperation of all of you in responding promptly to any questions that you may wish to submit in writing.

With that, the hearing is adjourned. Thank you very much.

[Whereupon, at 3:10 p.m. the Subcommittee was adjourned.]

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