
FERC PROJECT NO. 1417 LICENSE ARTICLES RELATING TO LAND AND SHORELINE MANAGEMENT

LAND USE - GENERAL REQUIREMENTS

Article 3. *The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.*

Article 5. *The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.*

Article 18. *So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.*

Article 21. *Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.*

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

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

The plan shall also include, at a minimum, an evaluation of the need for, and measures as appropriate to address: (a) protection of least tern and piping plover nesting sites at Lake McConaughy similar to programs existing at the time of license issuance, which include limited fencing to exclude livestock from nesting areas and public education efforts; (b) suitable protection of bald eagle perch and roost sites on project lands that were in existence at license issuance; (c) measures for controlling aquatic vegetation and sedimentation in project reservoirs, as appropriate.

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

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

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

Article 422. *(a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.*

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

(1) Landscape plantings;

(2) Non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings;

(3) Embankments, bulkhead, retaining walls, or similar structures for erosion control to protect the existing shoreline; and

(4) Food plots and other wildlife enhancement.

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

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

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

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

- (c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for:
 - (1) Replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained;
 - (2) Storm drains and water mains;
 - (3) Sewers that do not discharge into project waters;
 - (4) Minor access roads;
 - (5) Telephone, gas, and electric utility distribution lines;
 - (6) Non-project overhead electric transmission lines that do not require erection of support structures within the project boundary;
 - (7) Submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and
 - (8) Water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

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

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

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

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

- (1) *Before conveying the interest, the Licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.*
- (2) *Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved exhibit R or approved report on recreational resources of an exhibit E; or, if the project does not have an approved exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.*

- (3) *The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.*
- (4) *The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.*
- (f) *The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised exhibit G or K drawings would be filed for approval for other purposes.*

WILDLIFE PROTECTION MEASURES

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

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

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

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

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

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

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

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

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

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

In the event that a the Cooperative Agreement fails (a signatory withdraws from the Cooperative Agreement, the Cooperative Agreement terminates and a Program is not adopted,

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

Habitat between Keystone and North Platte, Nebraska

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

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

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

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

Habitat Management Conditions Tern and Plover Habitat Areas

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

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

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