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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
Nebraska Department of Roads)	
)	
and)	Docket No. CWA -07-2007-0041
)	
Hawkins Construction Company)	
)	
Respondents)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	

I. CONSENT AGREEMENT/FINAL ORDER

The United States Environmental Protection Agency, Region VII (“EPA”), the Nebraska Department of Roads and Hawkins Construction Company (“Respondents”) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) 64 Fed. Reg. 40181, 40183 (July 23, 1999).

This Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement/Final Order relating to Respondents’ discharge of fill material into a water of

the United States through construction activities in the Platte River without the permit required by law.

Respondent Nebraska Department of Roads is an agency of the State of Nebraska, engaged in the construction, maintenance and improvement of roads and highways throughout the State. Respondent Hawkins Construction Company is a corporation organized under the laws of Nebraska, engaged in the business of highway and bridge construction.

EPA and Respondents agree that settlement of this matter is in the best interest of all parties, and will eliminate the need for prolonged and complicated litigation between the parties.

II. ALLEGATIONS

A. Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C.

§ 1319(g)(2)(B) and in accordance with the Consolidated Rules.

2. This Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondents have violated Sections 301 and 404 of the CWA, 33 U.S.C. §§1311 and 1344, and the regulations promulgated thereunder.

3. Respondents are each a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

B. Statutory and Regulatory Framework of Section 404

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. § 1344.

5. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the discharge of dredged or fill material into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, occur in accordance with a permit issued under that Section.

6. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers, may issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, dredged spoil, rock, sand and cellar dirt.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “...the waters of the United States, including the territorial seas.”

10. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “...any discernible, confined and discrete conveyance...from which pollutants are or may be discharged.”

11. 40 C.F.R. §§ 232.2 and 33 C.F.R. Part 328 define waters of the United States, in part, as, "...lakes, rivers and streams, ...wetlands."

12. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include a State and a corporation.

13. Section 404 of the CWA requires a person to obtain a permit from the United States Army Corps of Engineers ("Corps") prior to any discharge of dredged or fill material into the navigable waters of the United States.

C. Factual Background

14. On or about February 2006, Respondents or ones acting on their behalf, by using earth-moving construction equipment, built a 154 foot causeway extension made of sand in the Platte River. This construction activity involving the discharge of sand, occurred along the west bank of the Platte River in Cass County, Nebraska, near the Northeast ¼ of Section 9, Township 12 North, Range 10 West.

15. On or about March 2006, Respondents or ones acting on their behalf, by using earth-moving construction equipment, built a 115 foot causeway made of sand in the Platte River. This construction activity involving the discharge of sand, occurred along the east bank of the Platte River in Sarpy County, Nebraska, near the Northeast ¼ of Section 9, Township 12 North, Range 10 West.

16. The construction equipment used by Respondents or ones acting on their behalf, acted as a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The sand that was discharged as described in Paragraphs 14 and 15 above in February and March 2006 is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The Platte River is a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and a water of the United States as defined by 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3.

19. The deposition of sand into waters of the United States constitutes the “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

20. Respondents did not obtain a 404 permit prior to conducting the activities described in Paragraphs 14 and 15 above.

D. Findings of Violation

21. The facts stated in Paragraphs 14 through 20 above are herein incorporated.

22. Respondents, or ones acting on their behalf, discharged pollutants into a water of the United States by using construction equipment without obtaining a Section 404 permit.

23. Respondents’ failure to obtain Section 404 permits prior to conducting activities described in Paragraphs 14 and 15 above are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

24. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region VII hereby proposes to issue a Final Order Assessing an Administrative Penalty against Respondents for the violation cited above, in the amount of \$73,237.50.

III. CONSENT AGREEMENT

25. Respondents and EPA agree to the terms of this Consent Agreement/Final Order and Respondents agree to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

26. Respondents admit the jurisdictional allegations of this Consent Agreement/Final Order and agree not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

27. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order. Nothing in this Consent Agreement/Final Order shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of Respondents.

28. Respondents waive their rights to a judicial or administrative hearing on any issue of fact or law set forth in this Consent Agreement/Final Order.

29. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondents' obligation to comply with applicable Federal, state and local environmental statutes and regulations and applicable permits.

30. Respondents agree, in settlement of the claim alleged in this Consent Agreement/Final Order, to a penalty amount of \$73,237.50; of that amount, Respondents shall pay \$18,309.38 as a cash penalty, and shall mitigate the remainder of that penalty

31. This Consent Agreement/Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309 of the Clean Water Act for the violation alleged herein. Nothing in this Consent Agreement/Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this Consent Agreement/Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.

A. SEP

32. The parties agree that performance of the SEP is intended to secure significant environmental restoration and protection. Respondents agree to perform the SEP in the same watershed as the site of the activities described in Paragraphs 14 and 15 herein. The SEP shall include the actions listed below.

a. Respondents shall enter into a Memorandum of Understanding (“MOU”) with the Nebraska Land Trust in substantially the form that is attached hereto and incorporated herein as Attachment 1, for the purpose of acquiring and maintaining permanent conservation easements (“the easements”) on property located in the lower Platte River Corridor near Schramm State Park (“Protected Property”), in Sarpy County or Cass County, Nebraska, identified on the map that is part of Attachment 1. The easements are to include, among other things, access provisions and restrictions listed on Attachment 2, attached hereto and incorporated herein.

b. Respondents shall arrange for recordation of the easements with the Sarpy or Cass County Register of Deeds, whichever is relevant.

33. Respondents agree that within 13 months of the Effective Date, they shall submit to EPA copies of the easements, file-stamped by the relevant county's Register of Deeds. Failure to submit file-stamped copies of conservation easements within 13 months of the Effective Date or failure to submit file-stamped copies of the easements that contain the provisions set forth in Attachment 2, shall be considered a violation of this Consent Agreement/Final Order. The submittals to EPA shall be sent to Delia Garcia, PhD., Compliance Officer, or her successor, at the following address:

Office of Water, Wetlands and Pesticides Division
EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

34. Respondents hereby certify that, as of the date of this Consent Agreement/Final Order, Respondents are not required to perform or develop the SEP referenced in Paragraph 32 herein, by any Federal, state or local law or regulation; nor are Respondents required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondents further certify that Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

35. Respondents shall provide access for EPA and its authorized representatives to the Protected Property that is the situs of the SEP, as described in Attachment 2. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

36. Any public statement, oral or written, made by Respondents making reference to the SEP, shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

37. At the same time of submittal by Respondents of file-stamped easements to EPA, Respondents shall submit to EPA an itemized accounting of the costs incurred in performance of the SEP. The itemization shall be submitted with the following statement, signed by each Respondent:

I certify that the information accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the United States, its agencies and departments, including the possibility of fine and imprisonment for knowing violations.

B. Stipulated Penalties

38. Respondents shall pay stipulated penalties in the following circumstances:

a. Except as provided in subparagraph (b) below, if the SEP has not been completed satisfactorily as determined by EPA, Respondents shall pay a stipulated penalty to the United States in the amount of \$109,856.24 (twice the estimated cost of the SEP). If Respondents disagree with EPA's determination that the SEP has not been satisfactorily completed, Respondents may request reconsideration of this determination by objecting in writing to Delia Garcia, PhD., at the address specified in Paragraph 33, within ten (10) days of receipt of notification by EPA of the unsatisfactory determination. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the written objection to reach agreement. If agreement cannot be reached on any such issue

within this thirty (30) day period, Respondents may request reconsideration by the Branch Chief of the Water Enforcement Branch of EPA-Region VII. The Branch Chief will provide a written statement of her decision to Respondents, which decision shall be final and binding upon Respondents for purposes of the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*

b. If the SEP is not completed satisfactorily, but Respondents made good faith and timely efforts to complete the project and certify, with supporting documentation, that at least \$ 49,435.31 (90% of the estimated SEP cost), was expended on the SEP, Respondents shall not pay any stipulated penalty.

c. If the SEP is satisfactorily completed, but Respondents spent less than \$ 49,435.31 (90% of the estimated SEP cost), Respondents shall pay a stipulated penalty equal to the difference between \$ 54,928.12, the amount of the estimated SEP cost, and the amount expended in implementing the SEP.

d. If the SEP is satisfactorily completed, and Respondents spent at least \$ 49,435.31 (90% of the estimated SEP cost), Respondents shall not pay any stipulated penalty.

39. Failure to pay the penalty of \$ 18,309.38 or any stipulated penalty assessed herein in accordance with the provisions of the Final Order set forth below may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of a stipulated penalty shall be made in accordance with the instructions set forth below in Paragraph 42 of the Final Order.

40. Payment of stipulated penalties shall be immediately due and payable upon notice by EPA, except that in the event Respondents disagree with EPA's determination that the SEP has not been satisfactorily completed and request reconsideration as provided by Paragraph 38, Respondents shall pay the penalties into an interest-bearing escrow account in a federally-insured bank duly chartered in the state of Nebraska and remit to that escrow account funds equivalent to the amount stated in EPA's notice. Respondents shall send to EPA, as provided in Paragraph 42, a copy of the transmittal letter and check paying the stipulated penalties and a copy of the correspondence that establishes and funds the escrow account including but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the disagreement, within five days of notice to Respondents of that decision, Respondents shall pay the sums due with interest that shall have accrued from the date of EPA's initial notice and shall be paid in the manner described in Paragraph 42 herein. If Respondents prevail, Respondents shall be disbursed the balance of the escrow account.

IV. FINAL ORDER

Pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319 (g)(2)(B), and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

41. Within thirty (30) days of the Effective Date of this Consent Agreement/Final Order (defined in Paragraph 51 herein), Respondents shall pay a civil penalty of \$18,309.38.

*In the Matter of Nebraska Department of Roads and Hawkins Construction Company
Docket No. CWA-07-2007-0041*

42. Payment of the penalty shall be by cashier or certified check made payable to “United States Treasury” and remitted to:

U.S. EPA Region VII
P.O. Box 371099M
Pittsburgh, PA 15251

Respondents shall reference the name of the case, In the Matter of the Nebraska Department of Roads and Hawkins Construction Company, Docket Number CWA 07-2007-0041, on the check. A copy of the check shall also be mailed to:

Audrey Asher, Esq.
Office of Regional Counsel
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Ms. Alice Morrison
EPA Accountant
U.S. EPA – Region VII
901 N. 5th Street
Kansas City, KS 66101

43. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

44. Respondents shall perform the SEP in accordance with Paragraphs 32 and 33 herein. If Respondents fail to implement the SEP in compliance with Paragraphs 32 and 33 herein, Respondents shall pay stipulated penalties as set forth in Paragraphs 38 and 40 herein. If stipulated penalties exceed \$25,000, payment shall be made by wire transfer as follows:

MELLON BANK
ABA 043000261
Account 9109125
EPA Region 7
Docket number, CWA-07-2007-0041

Documentation of the transaction shall be sent to Ms. Audrey Asher and Ms. Alice Morrison at the addresses set forth above in Paragraph 42.

45. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

46. This Consent Agreement/Final Order addresses all civil administrative claims for the CWA violation identified above. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement/Final Order.

47. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

48. This Final Order will terminate upon satisfactory completion of all requirements as determined by EPA. Whether Respondents have complied with the terms of this Consent Agreement/Final Order through performing the SEP shall be the sole determination of EPA.

49. This Final Order shall apply to and be binding upon Respondents and their agents, successors, and assigns.

50. The parties may modify this Consent Agreement/Final Order by mutual agreement. Such modifications shall be in writing.

51. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The Effective Date shall be the date this Final Order is signed by the Regional Judicial Officer.

For the United States Environmental Protection Agency – Region VII

6/28/2007
Date

Mary Sue Minipon
William A. Spratlin, Director
Water, Wetlands, and Pesticides Division
U. S. Environmental Protection Agency Region VII

June 25, 2007
Date

Audrey B. Asher
Audrey B. Asher
Senior Assistant Regional Counsel
U. S. Environmental Protection Agency Region VII

IT IS SO ORDERED.

August 23, 2007
Date

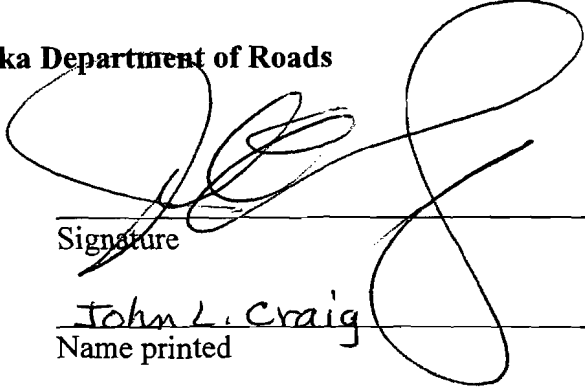
Robert L. Patrick
Robert L. Patrick, Esq.
Regional Judicial Officer

In the Matter of Nebraska Department of Roads and Hawkins Construction Company
Docket No. CWA-07-2007-0041

The undersigned representative of the Nebraska Department of Roads certifies that he or she is authorized to enter into this Consent Agreement/Final Order and to execute and legally bind the Nebraska Department of Roads to the terms and conditions of this Consent Agreement/Consent Order and meets the requirements for authorized signatory found in 40 C.F.R. § 122.22.

For Respondent Nebraska Department of Roads

6-14-07
Date


Signature

John L. Craig
Name printed

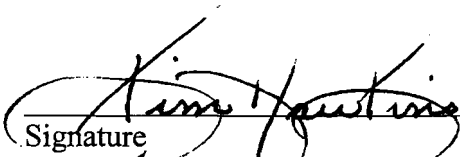
Director
Title printed

In the Matter of Nebraska Department of Roads and Hawkins Construction Company
Docket No. CWA-07-2007-0041

The undersigned representative of Hawkins Construction Company certifies that he or she is authorized to enter into this Consent Agreement/Final Order and to execute and legally bind Hawkins Construction Company to the terms and conditions of this Consent Agreement/Consent Order and meets the requirements for authorized signatory found in 40 C.F.R. § 122.22.

For Respondent Hawkins Construction Company

Date 6/13/07


Signature

Kim Hawkins
Name printed

President
Title printed

IN THE MATTER OF Nebraska Department of Roads and Hawkins Construction Company
Docket No. CWA-07-2007-0041

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Audrey B. Asher
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101


Copy by Certified Mail Return Receipt to:

Thomas R. Wilmoth, Esq.
Blackwell Sanders Peper Martin LLP
206 South 13th Street, Suite 1400
Lincoln, Nebraska 68508-2019

and

Jennifer A. Huxoll, Esq.
Attorney General Office - Road's Section
1500 Highway 2
P.O. Box 94759
Lincoln, Nebraska 68509-4759

Aug 23 2007
Dated


Kathy Robinson
Hearing Clerk, Region 7

MEMORANDUM OF UNDERSTANDING
by and among
THE NEBRASKA DEPARTMENT OF ROADS,
HAWKINS CONSTRUCTION COMPANY,
THE NEBRASKA LAND TRUST
and
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

This Memorandum of Understanding ("MOU") is entered into this ___ day of _____ 2007 by and among the entities listed above (collectively referred to herein as the "Parties").

PREFACE

WHEREAS: The Nebraska Department of Roads ("NDOR") is an agency of the State of Nebraska engaged in the construction, maintenance and improvement of roads and highways throughout the State, including Interstate-80; and

WHEREAS: Hawkins Construction Company ("Hawkins") is a corporation organized under the laws of the State of Nebraska engaged in the business of highway and bridge construction, including the construction of the Interstate-80 bridge over the Platte River under contract No. CN12312 with NDOR; and

WHEREAS: NDOR and Hawkins (collectively the "Defendants") have been accused by the United States Environmental Protection Agency ("EPA") of violating Section 404 of the Clean Water Act in connection with construction of the Interstate-80 bridge; and

WHEREAS: EPA and the Defendants have agreed to avoid litigation and defense of EPA's accusation based, in part, on the Defendants' implementation of a Supplemental Environment Project ("SEP") within the Lower Platte River Watershed having a value of \$54,928.12 and related mitigation project ("MP") within the Action Area identified on Exhibit A involving the acquisition of 10 additional acres of conservation easements for an amount not to exceed \$100,000.00; and

WHEREAS: The Nebraska Land Trust ("NLT") is a 501(c)(3) nonprofit organization organized under the laws of the State of Nebraska that has adopted Standards and Practices promulgated by the Land Trust Alliance and actively acquires or stewards conservation lands and conservation easements, with the goal of land conservation in Nebraska; and

WHEREAS: The Papio-Missouri River Natural Resources District ("NRD") is a natural resources district organized under the laws of the State of Nebraska with responsibilities and authority to undertake various conservation-related measures; and

WHEREAS: The NLT and the NRD desire to work with the Defendants and coordinate with the U.S. Fish & Wildlife Service ("FWS") and the Nebraska Game & Parks

Commission ("Commission") to select a potential project site, implement perpetual conservation easement(s), and develop habitat restoration plans that benefit endangered and threatened species, including the least tern, piping plover and pallid sturgeon, all in furtherance of the SEP and MP.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants expressed herein, the Parties agree as follows:

AGREEMENT

I. PURPOSE.

The purpose of this MOU is to set forth the terms and conditions upon which the Parties will work cooperatively to implement the SEP and MP and to maximize the conservation benefit of the SEP and MP for federal and state endangered and threatened species.

II. ROLES OF THE PARTIES.

A. Defendants.

The Defendants shall contribute, on the schedule set forth in Section III below, funds to implement the SEP and MP (the "Contributed Funds") for the purpose of acquisition and administration of perpetual conservation easements and habitat restoration, in part, for the benefit of endangered and threatened species using habitats along the lower Platte River. The Defendants shall have responsibility and authority to pre-approve execution by NLT of any conservation easement purchase agreement. The Defendants' pre-approval shall not be unreasonably withheld.

B. NLT.

The NLT shall receive and shall administer the Contributed Funds in consultation with FWS and the Commission, and with the assistance of the NRD, for the purpose of acquisition and administration of perpetual conservation easements and habitat restoration efforts. The NLT shall be responsible for the following:

- Identifying, in coordination with FWS and the Commission, and with the assistance of the NRD, potential sellers of perpetual conservation easements and negotiating the purchase of the perpetual conservation easements; *provided, however*, NLT shall place a priority on the acquisition of easements in proximity to the Platte River and, particularly, on lands containing features that are hydrologically or biologically connected to the Platte River and that would benefit the least tern, piping plover and /or pallid sturgeon.

- To implement the MP, acquiring and holding the legal interest in conservation easements within the Action Area identified in Exhibit A hereto.
- To implement the SEP, acquiring and holding the legal interest in conservation easements within the Lower Platte River Watershed.
- Managing the conservation easements acquired with Contributed Funds in perpetuity consistent with the Standards and Practices promulgated by the Land Trust Alliance and the limitations of Exhibit B hereto.

C. NRD.

The NRD shall provide technical assistance to the NLT as requested by the NLT in support of the purposes of this MOU, for which the NRD shall be entitled to compensation from the Contributed Funds.

The NRD may contribute supplemental funds in any amount to leverage the Contributed Funds and expand the scope or number of interests acquired by NLT with the Contributed Funds.

III. CONTRIBUTION AND MANAGEMENT OF FUNDS.

Upon successful negotiation between the NLT and a landowner regarding terms upon which a conservation easement may be acquired, NLT shall inform the Defendants of said terms and seek approval to execute a purchase agreement for a conservation easement with the landowner. The Defendants shall provide such approval or withhold such approval within 7 days. Upon receiving approval to execute a purchase agreement, the NLT may proceed to execute the purchase agreement. Upon execution of a purchase agreement, the NLT shall present a copy of the purchase agreement to the Defendants. Within 14 business days thereafter, the Defendants shall transfer an amount equivalent to that identified in the purchase agreement as Contributed Funds to the NLT. The NLT shall utilize the Contributed Funds to consummate the transaction contemplated in the purchase agreement. The NLT shall provide a receipt of such transfer to the Defendants within 7 business days. Upon acquiring the conservation easement (i.e. after closing), the NLT shall immediately record the conservation easement in the applicable County Recorder's Office and provide a copy of the recorded instrument to the Defendants.

The foregoing process shall be repeated until the SEP and MP are complete, at which time this MOU shall expire. The NLT shall complete its acquisition of conservation easements under the MP not later than eight (8) months from the "Effective Date" of that certain Order on Consent among EPA and the Defendants attached as Exhibit C. However, this term may be extended for up to one hundred twenty (120) days upon approval from EPA pursuant to the terms of that Order. The NLT shall complete its acquisition of conservation easements under the SEP not later than thirteen (13) months from the "Effective Date" of that certain Consent Agreement / Final Order among EPA and the Defendants attached as Exhibit D. The first ten (10) acres of conservation easements acquired under this MOU shall be deemed to be acquired under the MP and

shall be located within the Action Area identified in Exhibit A. All additional acres acquired shall be deemed to be acquired under the SEP and shall be located within the Lower Platte River Watershed.

The NLT may request that a portion of the Contributed Funds, not to exceed \$15,000.00, be provided to the NLT immediately to offset its preliminary "start-up" costs under this Agreement. Upon receiving such request, the Defendants shall transfer the requested amount to the NLT; *provided* that the requested amount shall be used by the NLT solely in furtherance of the acquisition of the conservation easements (e.g., for legal, appraisal, title insurance, stewardship endowment, and related costs). Any amount advanced to the NLT under this paragraph at the expiration of this MOU shall be placed into a stewardship endowment for the conservation easements acquired under this Agreement. The NLT shall, within 14 business days, provide an accounting of its expenditures of funds provided by Defendants under this paragraph upon request by the Defendants.

IV. ACKNOWLEDGEMENT.

All promotional materials (i.e., signage, brochures, articles, etc...) generated by the NLT or the NRD regarding conservation easements acquired with Contributed Funds shall contain the following statement acknowledging the source of the Contributed Funds and technical assistance: "These lands are being conserved thanks, in part, to funding and technical assistance made available in a partnership with the U.S. Fish and Wildlife Service, Nebraska Game & Parks Commission, the Pappio-Missouri Natural Resources District, the Nebraska Land Trust, the Nebraska Department of Roads and Hawkins Construction Company. This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

V. GENERAL PROVISIONS.

Limitations on Authorities: Nothing in this Memorandum should be construed as affecting the authorities of any party, or as binding them beyond their respective authorities, or to require any party to expend funds in excess of available appropriations.

Modification: Any party may propose changes during the term of this Memorandum. Such changes may be made upon written consent of all parties and EPA.

No Restriction on Similar Agreement: This instrument in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations or individuals. It is the express intent of the Parties that the Contributed Funds be leveraged to the maximum extent practicable by supplemental funding from any legally available source. Nothing herein is intended to preclude the NRD or any other entity, including the NLT, from paying a portion of the purchase price of any conservation easement not identified in the purchase contract as Contributed Funds.

No Admission: Neither this instrument, nor performance of any act contemplated under it, shall constitute an admission of guilt or liability in any context, administrative, civil or criminal, for the Clean Water Act violations alleged to have occurred or the consequences of those alleged violations.

Execution in Counterparts: This instrument may be executed in counterparts.

VI. CONTACTS

Notifications required hereunder may be sent by first class mail, postage pre-paid, or by properly addressed electronic mail to the following principal contacts:

Nebraska Department of Roads

Jennifer A. Huxoll
Attorney General's Office
Roads Section
1500 Highway 2
P.O. Box 94759
Lincoln, NE 68509-4759
(402) 479-4611
(402) 479-4375 (fax)
Jennifer.Huxoll@dor.state.ne.us

Hawkins Construction Company

Jim Gregory
Project Manager
P.O. Box 9008, Station C
Omaha, NE 68109
(402) 342-1607
(402) 342-3221 (fax)
jgregory@hawkins1.com

Nebraska Land Trust

David Sands
Executive Director
233 South 13th Street, Suite 1712
Lincoln, NE 68508
(402) 438-5263
dsands@nelandtrust.org

Papio-Missouri River NRD

John Winkler
General Manager
8901 S. 154th Street
Omaha, NE 68138-3621
(402) 444-6222
jwinkler@papionrd.org

VII. APPROVALS.

NEBRASKA DEPARTMENT OF ROADS

HAWKINS CONSTRUCTION
COMPANY

By: _____

By: _____

Its: _____

Its: _____

NEBRASKA LAND TRUST

PAPIO-MISSOURI RIVER NRD

By: David Lamb

By: _____

Its: Executive Director

Its: _____

VII. APPROVALS.

NEBRASKA DEPARTMENT OF ROADS

By:  _____

Its: Director _____

HAWKINS CONSTRUCTION
COMPANY

By: _____

Its: _____

NEBRASKA LAND TRUST

By: _____

Its: _____

PAPIO-MISSOURI RIVER NRD

By: _____

Its: _____

VII. APPROVALS.

NEBRASKA DEPARTMENT OF ROADS

HAWKINS CONSTRUCTION
COMPANY

By: _____

By: *Tom Hawkins*

Its: _____

Its: *President*

NEBRASKA LAND TRUST

PAPIO-MISSOURI RIVER NRD

By: _____

By: _____

Its: _____

Its: _____

ATTACHMENT 2

ACCESS

The easements shall provide access to inspect the Protected Property for the U. S. Environmental Protection Agency (EPA) and the U.S. Corps of Engineers (Corps), any successor agencies and departments of the EPA and the Corps, and their authorized representatives.

RESTRICTIONS ON PROTECTED PROPERTY

The easements shall include the following restrictions of use on the Protected Property:

1. No removal or destruction of native plant and animal species except for hunting and fishing subject to landowner permission and state law and control of weeds and pests consistent with normal conservation practices.
2. No development of the Protected Property for industrial, residential, or commercial purposes, including but not limited to, any buildings, billboards, telecommunications towers, motocross tracks, golf courses, wind turbines, power lines, mobile homes, feedlots or other commercial livestock feeding facilities.
3. No mining, oil, or gas development, including removal of sand and gravel.
4. No dumping of trash and refuse on the property, including, but not limited to, household garbage, chemical containers, liquid waste, appliances, scrap metal, concrete, construction waste and furniture.
5. No transport of water off the Protected Property.
6. No construction of new roads, no grading and permanent changes to topography and landscape of riverbed.
7. No lead shot to be used on the Protected Property.
8. No grazing or keeping of cattle, sheep, horses or other livestock on the Protected Property.
9. No expansion of production agriculture on the Protected Property except small food plots for wildlife purposes.

***In the Matter of the Nebraska Department of Roads and Hawkins Construction Company
Docket No. CWA-07-2007-0041***

10. Another organization or agency shall be assigned a Contingent Right to enforce the easement, in the even that the land trust fails to do so or ceases to do so.

11. No commercial logging or timber harvest unless a Forestry Management Plan is approved by the Nebraska Land Trust and the Respondents Nebraska Department of Roads and Hawkins Construction Company.