Executive Summary – Phase IA

To:	Sarpy County
From:	David Dechant – HDR
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Project:	Southern Sarpy County Wastewater Study – Phase IA
Subject:	Executive Summary – Phase IA
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Summary

Lack of sewer service is increasingly an impediment to development in southern Sarpy County. Preliminary planning for regional wastewater service was completed in 2006 and 2007, but not implemented. HDR was recently retained by Sarpy County to confirm key decisions and recommendations from the previous studies, build upon them to refine the solution and develop a plan and framework for regional sewer service, recognizing from the prior planning effort a regional approach is more economical.

Phase 1A of the Southern Sarpy County Wastewater Treatment Study has been completed as a critical first step. It confirms the potential to discharge high quality wastewater effluent from a regional wastewater treatment facility in southern Sarpy County to the Platte River, identifies the associated environmental and regulatory considerations, and identifies the process and timeline for permitting and approvals. Phase 1A also identifies the Joint Powers Agency Act and the Interlocal Cooperation Act as two existing statutory schemes that Sarpy County, municipalities, and other public agencies may use to form a governing body for wastewater treatment throughout the County. Finally, it provides a summary of common themes/topics included in existing regional agreements from elsewhere.

Background

The communities of Sarpy County, Nebraska have experienced explosive growth in recent years, specifically in areas where public water supplies and municipal sewerage systems are available. This growth has, and will continue, to create a demand for services, including water and wastewater utilities. The ability to provide these services in Sarpy County has been dependent on where the growth is occurring due to a hydrologic ridgeline that separates Sarpy County into a northern portion that drains to Papillion Creek and a southern portion which drains to the Platte River.

Wastewater from development in the northern portion of Sarpy County is collected and conveyed through the Papillion Creek watershed to the City of Omaha's Papillion Creek Wastewater Treatment Facility (WWTF), where it is treated and discharged to the Missouri River.

For areas in Sarpy County that are south of the hydrological ridgeline, providing wastewater services has been more challenging. Currently, the following wastewater treatment mechanisms are in place for areas south of the hydrologic ridgeline:

- Wastewater from the Gretna, Papillion, and Bellevue areas is collected and pumped over the ridgeline to the Papillion Creek watershed for conveyance to the City of Omaha Papillion Creek WWTF.
- Wastewater from the Nebraska Crossing Outlets (shopping mall) and related development in the southwest portion of the county is collected and conveyed to a package treatment plant east of the Nebraska Crossing Outlets where it is treated and discharged into an unnamed tributary of Buffalo Creek (and eventually to the Platte River).
- Treated wastewater from South Bend is presently discharged to Fountain Creek and subsequently the Platte River.
- Wastewater in the Springfield area is collected and conveyed through the Springfield Creek watershed to the Springfield Wastewater Treatment Plant where it is treated and discharged to Springfield Creek.
- Wastewater from single family developments throughout rural Sarpy County is treated and infiltrated through Septic systems.

Lack of sanitary sewer service south of the ridgeline is increasingly becoming an impediment to economic development and growth in Gretna, Springfield, Papillion, and Bellevue in particular, and Sarpy County, the Greater Omaha Metropolitan area, and the State of Nebraska in general. Continued development south of the ridgeline could be limited by the inability to collect and pump wastewater back over the ridgeline and/or by exceeding the capacity of Omaha's Papillion Creek WWTF's collection and treatment system. Continued development south of the ridgeline could also:

- Prompt expansion of the Springfield wastewater collection and treatment system
- Prompt expansion of the Nebraska Crossings Outlets wastewater collection and treatment system
- Result in the proliferation of large lot residential development with septic systems
- Prompt multiple, smaller, package-type collection and treatment facilities

These solutions may not be advantageous for Sarpy County's continued economic growth and development. HDR completed studies in 2006 and 2007 that conceptualized development of a regional system that would ultimately collect and convey wastewater from south of the ridgeline to a 10-12 mgd regional wastewater treatment facility that would discharge an average of 15 to 18 cfs of treated effluent to the Platte River. The most likely location for the facility would be south of Springfield and within one mile of the Platte River. As the prior studies were completed, the economy turned downward, development pressure subsided, and the regional wastewater system was not implemented.

There are considerable long-term benefits to implementing a regional wastewater system in Sarpy County, including the avoidance of significant water quality issues that could result in the absence of a regional plan, and taking advantage of the economies of scale to reduce the costs for current and anticipated future wastewater treatment needs. Additionally, a regional system would provide the capacity to increase the economic development and growth competitiveness of the County, metropolitan area and

State. Initial forecasts indicate that the associated growth in southern Sarpy County could generate additional revenues on the order of:

- $20 million per year sales tax revenue for Sarpy County cities
- $70 million per year sales tax revenue for the State of Nebraska
- $10 million per year property tax revenue for Sarpy County cities
- $10 million per year property tax revenue for Sarpy County government (including fire districts, educational service units, natural resource districts, community colleges and school districts)

Challenges to developing such a regional system also exist. For example, the ability to pump over the ridge is generally a less costly, short-term solution (on a case-by-case basis). Additionally, the traditional metro area model of targeting perimeter growth areas, sequentially extending interceptor sewers to those growth areas, and having developers follow suit, does not work in Sarpy County. Growth pressure is on the wrong end, the upstream end, and scattered across the watershed. The initial capital investment for a regional system to deliver flows for treatment at the south end of the watershed would be significant. Furthermore, Bellevue, Gretna, Papillion, and Springfield are all experiencing growth and it would be unlikely that they would circumvent that growth to focus growth in one area initially and then sequentially in additional areas as needed.

Another challenge to developing a regional system is that Sarpy County, itself, does not currently have the authority to provide domestic wastewater treatment. The Nebraska League of Municipalities opposed the County's prior efforts for legislative authority to provide residential wastewater treatment. Therefore, at the core of providing a long-term regional solution to the wastewater needs in Sarpy County is the need to establish some form of a regional authority or system. For any regionalization effort, key considerations include the administrative, legal, political and financial framework which would define the governance of such a system. A basic foundation of regionalization is that it provides an overall benefit to the regional stakeholders.

As development pressure makes wastewater service in Southern Sarpy County a priority again, Sarpy County has requested that HDR develop this Southern Sarpy County Wastewater Treatment Study ("Study") to confirm key decisions and recommendations from the previous studies, build upon them to refine the solution and develop a plan and framework for regional sewer service, recognizing that such a regional approach is likely more economical.

The Study is being completed in phases. The first phase of the Study, known as Phase IA, included an evaluation of the following key issues:

- **Environmental.** Reviewing key environmental issues associated with the development of a WWTF in the Platte River Basin.
- **Regulatory.** Reviewing potential NPDES permit requirements for a wastewater discharge to the Platte River.
- **Governance.** Reviewing opportunities under existing Nebraska legislation that enable joint governance for a regional wastewater utility.
- **Memorandum of Understanding (MOU).** Developing an MOU between the County and stakeholder communities summarizing the findings of Phase 1A, establishing a sequence for

future activities (Phase 1B) and identifying the commitment expected for each participating stakeholder community.

Phase IA also worked towards garnering support for a regional wastewater solution. Initial stakeholder meetings were held that focused on establishing interest and understanding key issues associated with developing a regional alliance for wastewater service.

Environmental

The Environmental Review conducted by HDR identified environmental considerations, necessary approvals, and potential constraints associated with construction of a regional WWTF, and accompanying treated effluent discharge to the Platte River. The HDR team consulted numerous desktop resources and on May 26, 2015, representatives of Sarpy County and HDR met with USFWS and NGPC to discuss the project.

Based on this desktop resource review and preliminary agency input, it has been determined that one to three years would be required to accommodate the multiple permits/approvals from varying parties/resource agencies. NPDES, Endangered Species Act (ESA), and Section 404 of Clean Water Act are anticipated to present the largest challenges. Federal funding (including that of the Clean Water State Revolving Fund) would trigger the need for NEPA compliance. Environmental considerations are as follows:

- Numerous threatened and endangered species are known to occur in Sarpy County and the lower Platte River.
- Impacts to terrestrial species (plants and mammals) could likely be avoided via species surveys, site selection, and/or phased construction to avoid seasonal lifecycles.
- No significant adverse impact on aquatic species was identified for a high quality wastewater effluent.
- Hormonally active compounds and detergents are a concern regarding fish reproduction, and advanced levels of treatment would likely be required to address discharge of potentially harmful compounds.
- Discharge of a high quality wastewater effluent to the Platte River would be preferred over discharge to the Missouri River (assuming that adequate disinfection occurs) from a hydrologic perspective.
- Conservation and park lands are avoidable through siting.
- Wetlands and waters of the United States may prompt the need for Clean Water Act Section 404 permitting.
- Wells and wellhead protection areas would be siting considerations relative to applicable setback requirements.
- A discharge diffuser may be warranted by water quality considerations and should consider the shifting river bed, recreational boating, and ice jam flooding.

Future environmental analysis should consider the development that the project would facilitate and resulting consumptive water uses. This would likely involve a hydraulic analysis that would:

- Compare the project discharge of 10-12 mgd against development-driven consumptive use
- Apply projected/future Platte River flows that would correspond with the actual date of facility implementation
- Determine impacts to groundwater driven wetland hydrology and associated species habitat

Table 1 presents a summary of environmental considerations, requirements and impacts to schedule.

Table 1. Summary of Environmental Considerations, Requirements and Impacts to Schedule

Environmental Consideration	Potential Requirements	Time to Obtain/Impact to Schedule
Threatened & Endangered Species	Consultation with USFWS under Section 7 of ESA: Prepare a Biological Assessment; Comply with Chapter 4 of Nebraska's Title 117 Water Quality Standards; Comply with NESCA	More than 6 months
American ginseng	Conduct species surveys prior to siting	
Interior lest tern; Piping plover	Conduct species/nesting surveys prior to construction	
Lake sturgeon; Pallid sturgeon; Sturgeon chub	Outfall construction may be required to occur at times of year determined to minimize impacts; additional water quality considerations and advanced treatment may be required for discharge	
Northern long-eared bat	Clear trees between Oct. 1 and March 31 or conduct habitat surveys prior to removal of large/dead trees	
River otter	Conduct den surveys prior to construction	
Western prairie fringed orchid	Conduct habitat/species surveys during the blooming season (mid-June to late July) prior to siting & construction	
Conservation Lands Schramm Park State Recreation Area & Louisville Boat Access Wildlife Management Area	No requirements if facility (and discharge) is located to avoid impacting conservation lands; If impacted, comply with National Park Service Land and Water Conservation Fund Act grant, Section 6(f)(3)	Would not impact schedule if facility is sited so that it does not impact conservation lands
Wetlands or Waters of the U.S.	Comply with Section 404 and 401 of the Clean Water Act; Obtain Nationwide Permit or Individual Permit, as required; Comply with Nebraska Title 117; Provide compensatory wetland mitigation, if needed	If individual permit required, may exceed 6 months; alternatives analysis could take 1-2 years
Wellhead Protection Areas	Comply with Safe Drinking Water Act; Nebraska Wellhead Protection Area Act; Comply with local ordinances and city codes; Comply with Department of Health and Human Services and City of Papillion 1,000 foot setback distances	Would not impact schedule if facility is sited in accordance with 1,000 setback from public water supply wells
National Historic Preservation Act Section 106 Consultation – SHPO	Coordinate with Nebraska SHPO and potentially perform historic structure and/or archeological survey.	3 months
Air Quality Construction Permit – NDEQ	Obtain minor source construction permit	4-8 months
Floodplain Development Permit – Sarpy County	Comply with floodplain regulations	1 month
Miscellaneous Local Permits – Sarpy County	Obtain planning, zoning and building permits	1 month
National Environmental Policy Act for State Revolving Fund	Environmental Assessment (EA) and potential Finding of No Significant Impact (FONSI)	Approximately 1 year for EA/FONSI completion

Regulatory

The Regulatory Review conducted by the HDR team developed a strategy and timeline to permit a regional WWTF discharge to the Platte River in southern Sarpy County. It included discussions with representatives of Sarpy County and the Nebraska Department of Environmental Quality on April 22, 2015. As part of the Study, HDR:

- Defined current water quality classifications for both Springfield Creek and the Platte River in southern Sarpy County.
- Assessed the implications for potential future designation of the Platte River as a "State Resource Water".
- Defined the requirements of NDEQ's antidegradation policy as it pertains to an expanded discharge to Springfield Creek and/or a new discharge to the Platte River.
- Defined existing water quality as it pertains to and expanded discharge to Springfield Creek and/or a new discharge to the Platte River based on available information, notably NDEQ's 2013 Water Quality Integrated Report and EPA's Water Quality Database.
- Defined currently applicable water quality criteria based on review of Nebraska code, current water quality impairments, and current NPDES discharge permits for the Cities of Springfield (Springfield Creek discharge) and Louisville (Platte River discharge).
- Reviewed potential future regulatory requirements contemplated by the NDEQ and United States Environmental Protection Agency (EPA), specifically more stringent ammonia standards and nutrient removal requirements.
- Reviewed available data on existing raw and treated wastewater quality in Sarpy County, specifically influent and effluent water quality data for the City of Springfield Wastewater Treatment Plant.
- Compared the anticipated requirements for a discharge to Springfield Creek to the anticipated requirements for a discharge to the Platte River.

The regulatory implications of obtaining a National Pollutant Discharge Elimination System (NPDES) permit for a regional WWTF discharge in southern Sarpy County were examined based on two potential discharge locations – Springfield Creek and the Platte River. No issues were identified that should preclude regulatory approval of a regional WWTF NDPES permit. The presence of threatened and endangered species and stakeholder interest in protecting the Platte River would likely necessitate higher levels of treatment and could extend the permitting process (1-3 years). Protecting municipal water supplies would also be a consideration. Additionally, should funding from the Clean Water State Revolving Fund (CWSRF) be pursued, this would trigger full National Environmental Protection Act (NEPA) clearances, requiring further agency involvement and potentially creating further delays.

As shown in Table 2, critical path items that would ultimately dictate permitting conditions include outfall location, antidegradation requirements, mixing allowance, and nutrient removal limitations. These items need to be determined early on in consultation with NDEQ, and potentially the USFWS, NGPC, and Lower Platte River Corridor Alliance (LPRCA).

Table 2. Critical Path Items that Will Dictate Permitting Conditions

Critical Path Item	Strategy
Outfall Location	• Determine primary outfall location early to facilitate permitting discussions with NDEQ, USFWS, NGPC, and LPRCA. • NDEQ has indicated a strong preference for a Platte River discharge over Springfield Creek due to potential hydromodification concerns. • A Platte River discharge potentially offers a significantly larger mixing allowance than Springfield Creek. Without dilution, a Platte River discharge could result in more stringent ammonia limits due to higher instream pH values. • A Springfield Creek discharge appears to be a less viable alternative based on NDEQ feedback and a lack of a mixing allowance.
Antidegradation Requirements	• Based on current state regulations and discussion with NDEQ, an antidegradation review commensurate with Class A or Class B State Resource Waters is not likely for a discharge to the Platte River. • NDEQ expressed that the Platte River does not constitute "unique habitat for federally designated endangered or threatened species." However, if this position were ever challenged, Class A protections could apply. • An antidegradation review could potentially be triggered by the proposed federal water quality standards rule, which effectively strengthens requirements for an alternatives analysis.
Mixing Allowance	• Mixing allowances for a Platte River discharge will need to be determined based on mixing modeling (e.g., CORMIX) and an assessment of channel braiding. • The mixing allowance will have a significant impact on permit limits. • The mixing zone allowance must ultimately be determined in consultation with NDEQ.
Nutrient Limitations	• NDEQ does not currently have a firmly established policy for issuing nutrient limits. Based on initial conversations, it appears NDEQ will at a minimum require nutrient limits commensurate with biological nutrient removal (BNR) (i.e., TN = 10 mg/L and TP = 1 mg/L). However, given the focus on protecting the Platte River and the potential influence of the USFWS and NGPC, lower nutrient limitations may be necessary (e.g., TN = 5 mg/L and TP = 0.5 mg/L).

Regional Governance

There are two existing statutory schemes Sarpy County, municipalities, and other public agencies may use to form a governing body for wastewater treatment throughout the County: the Joint Public Agency Act, Neb. Rev. Stat. §§ 13-2501 to 13-2550; and the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-807 to 13-827 (together, the "Acts"). These two Acts provide authority for public agencies to enter into an agreement to coordinate efforts to serve the needs and development of local communities. The two Acts are substantially similar, with the key exception being that the Joint Public Agency Act authorizes the creation of a new public agency, which the Interlocal Cooperation Act would require either no new agency or creation of a nonprofit corporation. The Interlocal Cooperation Act was enacted in 1963, and since that time has been used for projects which vary in size, scope and term. The Joint Public Agency Act was enacted in 1999 to allow public agencies to form a new joint public agency rather than a nonprofit corporation.

The intent of the legislature in creating joint public agencies was to provide for a more efficient vehicle for public agencies to cooperate in providing services to their communities. The express power to allocate taxing authority to the joint public agency and issue fees provides authority for ongoing funding of the wastewater project, and the requirement that public agencies appoint representatives to serve as board members who are entitled to vote at the meetings ensures the board will stay in the hands of the public agencies. Table 3 presents a summary explaining the differences between the entities, and an additional column in case no new entity is formed, but an agreement is made under the Interlocal Cooperation Act.

Table 3. Summary of Powers

Powers	Joint Public Agency	Nonprofit Corporation	No New Entity
"Public agencies" includes counties, cities, sanitary and improvement districts and others	Yes	Yes	Yes
Filed with Secretary of State	Yes	No	No
Board members from the public agencies	Yes	No (unless agreement states otherwise)	No board
Voting rights for members	Yes	No (unless agreement states otherwise)	No (unless agreement states otherwise)
Can use public agency's employees	Yes	Yes (by leasing)	Yes (individual public agency only)
Can use public agency's existing benefits structure	Yes	No	Yes (individual public agency only)
Can own property	Yes	Yes	Yes (individual public agency only)
Public agencies can allocate taxes to new entity	Yes	No	N/A
Can issue fees	Yes	No (unless agreement states otherwise)	No (individual public agency only)
Can issue bond	Yes (public vote may be required)	Yes	No (individual public agency only)
Liability protections through Political Subdivisions Tort Claim Act	Yes	No	No (individual public agency only)
Subject to Open Meetings Act	Yes	No	Yes (individual public agency only)
State Revolving Fund Eligible	Maybe	No	No (individual public agency only)

The HDR team also reviewed regional governance structures for other regional systems. A summary of common themes/topics included in these agreements is presented in Table 4.

Table 4. Common Topics in Regional Agreements for Water/Wastewater Service

1. Definitions, purpose and intent
    - Including definition of "regional" facilities – existing and new
    - Effective date and duration of agreement
2. Legal/administrative entities, such as creation of Board of Directors; organization and power of Board, including composition, voting, meetings, bylaws, etc.
3. Manner of financing; establishing and maintaining budget
    - Alternative financing during development and construction phase in the event of lack of availability of federal or state funds prior to completion of construction
    - Determination of each member's share of development and construction cost
    - Acquisition of existing facilities and transfer of assets
    - Reserve funds during operation, such as maintenance and repair fund, capital improvement fund, administrative fund, flow monitoring, pretreatment, debt service, insurance and operating reserve fund
    - Issuance of bonds
    - Construction of future improvements (core improvements, expansion improvements, other); If expansion required, how to handle fairly and equitably
4. Allocation of system capacity and proportionality - who pays for excess capacity and is there dedicated capacity
    - Adjustment of capacity in event of excess capacity
    - Excess usage/surcharges
5. Ownership of facilities – who owns and operates both existing and new facilities
6. Conditions of service – what wastewater is accepted, point of delivery
7. Development of "regional" infrastructure – responsibility to plan, finance, construct. Where does responsibility start and end for "regional" facilities
8. What responsibilities do others have for "local" facilities. Local rate making responsibilities and principles
9. Maintenance and repair responsibilities for major, minor and emergency repairs
10. Need for long term master planning
11. "Regional" rate making principles – how established and how revised
12. Dispute resolution clause – venue and jurisdiction if go to court
13. Regional system development charges/connection fees/impact fees per connection for expansion
14. Regional cooperation in emergency situations
15. Withdrawal or non-participation by participating communities; how to handle if community withdraws from agreement or does not pay share; Successors clause to cover when someone moves on local or regional level
16. Newly connecting communities, including admission of, voting rights, budget share allocations, capital contribution
17. Annexation
18. Consolidation or merger
19. Indemnification
20. Flow monitoring installation and maintenance
21. Enforcement authority for illicit discharge
22. NPDES permits and industrial pretreatment programs

Memorandum of Understanding

As part of this Study, the HDR team developed an MOU, or Interlocal Cooperation Act Agreement ("Agreement"), between Sarpy County and stakeholder communities that will facilitate the next step towards implementation of a regional wastewater system for southern Sarpy County. The purpose of the Agreement is to create a mechanism for the continuation of the next phase of the Study (Phase 1B). The Agreement:

- Summarizes the findings of the joint governance evaluation and regulatory and environmental analysis.
- Establishes a sequence of future activities, including Phase 1B and the detailed financial and technical analysis required for implementation.
- Identifies the commitment expected of each participating stakeholder community.

Environmental Review Technical Memorandum

To:	Sarpy County
From:	Alex Fischer – HDR Quinn Damgaard – HDR David Dechant - HDR
CC:	File
Project:	Southern Sarpy County Wastewater Study – Phase IA
Subject:	Environmental Review
Date:	Friday, April 10, 2015
Revised:	Wednesday, June 10, 2015 HDR Job Number: 246431

This Technical Memorandum serves as a preliminary review of environmental considerations potentially associated with a regional wastewater treatment facility (WWTF) that would discharge to the Platte River in southern Sarpy County, Nebraska. The following represent major headings contained herein:

- Objective
- Summary
- Background
- Threatened and Endangered Species
- Conservation Lands
- Wetlands and Waters of the U.S.
- Wellhead Protection Areas
- NDEQ and EPA Region 7 Permitting Requirements
- Other Permits and Resource Agency Approvals
- Early Agency Coordination
- References

The following Attachments provide supporting information:

Attachment A – USFWS IPAC Screening Results
Attachment B – Environmental Constraints Figure
Attachment C – ESA Section 7 Consultation Process Flow Chart

Objective

This Technical Memorandum is intended to identify environmental considerations, approvals, and potential constraints associated with construction of a regional WWTF, and accompanying treated effluent discharge to the Platte River in southern Sarpy County, Nebraska.

Summary

An area 24 miles in length and 1 mile in width was investigated along the north bank of the Platte River in southern Sarpy County (Study Area). As shown in Figure 1 in Attachment B, the Study Area termini consist of Interstate 80 on the west and the Missouri River the east. Numerous threatened and endangered species are known to occur in Sarpy County. Impact avoidance to the largely terrestrial species (plants and mammals) could be achieved via species surveys, site selection, and/or by phasing construction around the seasonal lifecycles of present species. Protected aquatic species, including the pallid sturgeon are also known to inhabit the study reach of the Platte River. Although no significant project-induced impacts to protected aquatic species have been identified, the lower Platte River is a highly regarded resource and is subject to heightened scrutiny from resource agencies. Early coordination with the U.S. Fish and Wildlife Service (USFWS), the Nebraska Game and Parks Commission (NGPC), and the Nebraska Department of Environmental Quality (NDEQ) will be necessary in determining agreeable treatment standards. Previous experience with these agencies suggests that they may request advanced secondary treatment for ammonia, some degree of biological nutrient removal, and that treatment methods other than chlorination be evaluated, potentially including ozone or UV light, for disinfection.

Conservation lands are concentrated in the west end of the Study Area and are avoidable. Wetlands and Waters of the U.S. may or may not be avoidable and the need for—or type/intensity of effort for —Clean Water Act Section 404 permit authorization is undetermined at this time. Much of the area along the Platte River contains designated wellhead protection areas. Identified setbacks will require that a WWTF be located no less than 1,000 feet from a public water supply system.

The project would require multiple permits/approvals from varying parties/resource agencies. For purposes of this Memo, permits are divided between those required of NDEQ and EPA Region 7, and those required of other parties/agencies. Required permits and approvals vary in complexity. It is anticipated that that the planning and approval process would take 1-3 years to complete and may be compounded if a Federal funding source were involved, including State Revolving Funds, which would trigger the need for National Environmental Policy Act (NEPA) compliance. National Pollutant Discharge Elimination System (NPDES) and Endangered Species Act (ESA) Section 7 are anticipated to present the largest challenges. Depending on the amount of permanent impacts to waters of the U.S., receipt of a CWA Section 404 permit may also be challenging.

Background

A ridgeline separates Sarpy County into a northern portion that drains to Papillion Creek and a southern portion which drains to the Platte River. Both Papillion Creek and the Platte River are Missouri River tributaries. Wastewater from development in the northern portion of Sarpy County is collected and conveyed through the Papillion Creek watershed to the City of Omaha Papillion Creek Wastewater Treatment Facility where it is treated and discharged to the Missouri River.

South of the ridgeline the following wastewater treatment mechanisms are currently in place:

- Wastewater from the Gretna, Papillion, and Bellevue areas is collected and pumped over the ridgeline to the Papillion Creek watershed for conveyance to the City of Omaha Papillion Creek Wastewater Treatment Facility.

- Wastewater from the Nebraska Crossing Outlets (shopping mall) and related development in the southwest portion of the county is collected and conveyed to a package treatment plant east of the Nebraska Crossing Outlets where it is treated and discharged into an unnamed tributary of Buffalo Creek (and eventually to the Platte River).
- Treated wastewater from South Bend is presently discharged to Fountain Creek and subsequently the Platte River.
- Treated wastewater from Louisville discharges directly to the Platte River.
- Wastewater in the Springfield area is collected and conveyed through the Springfield Creek watershed to the Springfield Wastewater Treatment Plant where it is treated and discharged to Springfield Creek.

Continued development south of the ridgeline could be limited by the inability to collect and pump wastewater back over the ridgeline and/or by exceeding the capacity of Omaha's Papillion Creek Wastewater collection and treatment system. Continued development south of the ridgeline could also:

- Prompt expansion of the Springfield wastewater collection and treatment system
- Prompt expansion of the Nebraska Crossings Outlets wastewater collection and treatment system
- Result in the proliferation of large lot residential development with septic systems
- Prompt multiple, smaller, package-type collection and treatment facilities

Alternatively, Sarpy County and stakeholders are considering a regional collection and treatment system to serve the southern portion of the County. The regional system would ultimately collect and convey flows from south of the ridgeline to a 10-12 mgd regional wastewater treatment facility that would discharge 15 to 18 cfs of treated effluent to the Platte River. The most likely location for the facility would be in a one mile strip along the north side of the Platte River, south of Springfield.

Threatened and Endangered Species

Threatened and endangered (T&E) species are protected under the Endangered Species Act of 1973, as amended (ESA) (16 USC 1531 et seq.). The ESA provides for the protection of animal and plant species determined to have a declining population and to be in jeopardy of becoming extinct. The USFWS has the authority of the Federal government to administer the protection of such species. Project-induced effects on a Federally-listed species or their habitat would require consultation with USFWS under Section 7 of the ESA. Section 7 requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of T&E species or result in the destruction or adverse modification of their critical habitat. Although EPA does not consider state NPDES permit authorization [by a state approved by EPA to administer its own NPDES program (including Nebraska)] a Federal action[1], it is anticipated that the project would involve one or more of the following ESA triggers:

- Chapter 4 of Nebraska's Title 117 Water Quality Standards does not allow human activities that cause water pollution which would significantly degrade the biological integrity of a body of water

[1] Because EPA does not consider NPDES permit authorization by NDEQ a Federal action, National Environmental Policy Act (NEPA) requirements do not apply (40 CFR 122.29).

or significantly impact "key species" that include endangered, threatened, sensitive, or recreationally-important aquatic species[2].

- NDEQ requires that applicants demonstrate compliance with ESA when applying for NPDES construction stormwater authorization.
- If facility construction were to require a Clean Water Act Section 404 permit (for the discharge of dredged or fill material to wetlands or waters of the U.S. – see subsequent section for more detailed discussion), this U.S. Army Corps of Engineers authorization would constitute a Federal action requiring ESA compliance.

The Nebraska Nongame and Endangered Species Conservation Act (NESCA) provides for the protection of normally occurring animal and plant species that NGPC determines to be threatened or endangered within the state. Similar to the above-stated ESA triggers, NDEQ requires that human activities avoid significant impacts to Title 117-specified "key species."

Based on information available from USFWS and NGPC, nine state- and Federally-listed T&E species are known to exist in Sarpy County (see Table 1). The potential occurrence of the species is dependent on the availability of suitable habitat in the Study Area. Suitable habitat is that which contains the physical or biological features necessary for the species to live. No designated critical habitat[3] occurs in the Study Area.

Table 1 – Threatened and Endangered Species in Sarpy County

Common Name	Scientific Name	Status[1]
American Ginseng	*Panax quinquefolium*	State Threatened
Interior Least Tern	*Sternula antillarum athalassos*	State & Federal Endangered
Lake Sturgeon[2]	*Acipenser fulvescens*	State Threatened
Northern Long-Eared Bat	*Myotis septentrionalis*	Federal Threatened
Pallid Sturgeon[2]	*Scaphirhynchus albus*	State & Federal Endangered
Piping Plover	*Charidrius melodus*	State & Federal Threatened
River Otter	*Lutra canadensis*	State Threatened
Sturgeon Chub[2]	*Macrhybopsis gelida*	State Endangered
Western Prairie Fringed Orchid	*Platanthera praeclara*	State & Federal Threatened

Note: [1] Only Federally-listed species are subject to the ESA. State-listed (only) species are not subject to the ESA, but are subject to NESCA.
[2] Species is designated as a "key species" in Chapter 4 of Nebraska Title 117.

In addition to the species noted in Table 1, Chapter 4 of Nebraska Title 117 (State Water Quality Standards) identifies the following recreationally important species as "key species" in lower Platte River Segment 10000 (Elkhorn River to Missouri River): blue catfish, channel catfish, flathead catfish, sauger,

[2] Title 117-identified "key species" for the lower Platte River (Segment 10000 – Elkhorn River to Missouri River) are: pallid sturgeon, sturgeon chub, lake sturgeon, blue catfish, channel catfish, flathead catfish, sauger, and walleye.
[3] Critical habitat is a specific geographic area which contains the physical or biological features necessary for the species to live and is essential to its conservation. Federal agencies are required to consult with USFWS to ensure that their actions do not destroy or adversely modify critical habitat.

and walleye. Title 117 provides these "key species" protection from human activities that may significantly impact them.

Species Information, Habitat Requirements, and Potential for Occurrence

The following provides information pertinent to listed species known to inhabit Sarpy County. It also states each species' potential for occurrence in the Study Area, based on high-level, desktop analysis. In order to more definitely determine the presence/absence of species and/or suitable habitat, surveys would be required by a qualified biologist.

American ginseng is a slow growing, long lived understory plant found within eastern deciduous forests of North America and is listed as a threatened species in Nebraska. It begins its lifecycle as a seedling with a single compound leaf, also known as a prong. As the plant ages, it typically forms more prongs. Juvenile plants tend to have two prongs while adult plants tend to have 3 to 4 prongs. Rarely, an adult ginseng plant can have 5 or more prongs. Ginseng generally takes 3 to 8 years to reach sexual maturity. Sexually mature plants produce a single cluster of flowers, also known as an umbel, in early spring. The flowers can either be self fertilized, or they can be cross pollinated with other plants. Following pollination, fertilized flowers develop into green berries which later turn red at maturity. Each berry contains 1 to 3 seeds, which germinate after 18 to 20 months (Maryland DNR).

Ginseng grows only in rich, cool, moist, possibly older-growth, deciduous forests such as those found along the Missouri River in eastern Nebraska. Within the Missouri River bluff forests, the plant is found especially on the mid and lower slopes. Overstory trees present within these forests include bur oak, basswood, hickories, and black walnut. Soils at the sites are typically loamy and formed in loess. The plant is typically associated with high quality, relatively undisturbed forest habitat. American ginseng populations in Nebraska are on the western edge of the species' range, and limited to the eastern half of Sarpy County (Maryland DNR; NGPC, May 2011). American ginseng may occur in forested riparian Platte River corridors in the eastern half of the Study Area. Potential impacts may be mitigated by selecting a site where no suitable habitat is present or by conducting species surveys prior to siting to determine the presence/absence of the species.

Interior least terns are the smallest members of the gull and tern family and are listed as state- and Federally-endangered. Approximately nine inches in length, the body of least terns is predominately gray and white, with black streaking on the head. Least terns have a forked tail and narrow pointed wings. Least terns less than a year old have less distinctive black streaking on the head and less of a forked tail (USFWS, March 2014).

Least terns nest in shallow depressions created on barren to sparsely vegetated sandbars along rivers, sand and gravel pits, lake and reservoir shorelines, and occasionally gravel rooftops. They hover over and dive into standing or flowing water to catch small fish. The interior least tern breeding season is April through August. Both parents incubate their eggs for about 24 days. Chicks leave the nest only a few days after hatching, but adults continue to care for them, leading them to shelter in nearby grasses and bringing them food (USFWS, March 2014).

In Nebraska, the interior least tern can be found along the Platte River on sand bars or exposed sand and gravel. It can also be found in and around sand and gravel mining operations or sand pit lakes where suitable nesting habitat is present (NGPC, May 2011). Direct construction impacts would be temporary in nature and would not adversely affect least terns. The approximate treated effluent discharge of 15-18 cfs

would not influence sediment transport (or associated channel morphology/nesting habitat) or nest inundation. Furthermore, treated effluent is not anticipated to adversely affect downstream fish populations (interior least tern forage). Species/nesting surveys may be required, prior to construction. The positive identification of least tern individuals or active nests could result in restrictions on when and where certain construction activities could occur.

Lake sturgeon is a large freshwater fish that was once common in most inland rivers and lakes of the U.S. and Canadian Midwest. It is listed as threatened in the state of Nebraska. Lake sturgeon have a scaleless body, which is protected by five lateral rows of bony plates or scutes. They have a robust elongated body with a flattened snout and slender tail. Their mouth is toothless and positioned under the snout for sucking small fishes and invertebrates from the lake or river bottom (Peterson et al., November 14, 2006).

The usual habitat of the lake sturgeon is the highly productive shoal area of larger lakes and rivers. They require swift currents and large rough substrates for spawning and embryo incubation. Diet varies according to food availability but mainly consists of invertebrates and in some areas, small fish. The species is mainly confined to the Great Lakes, but also occurs in the Mississippi River drainage from the upper Mississippi River and its major tributaries to the northern border of Arkansas. In Nebraska, its designated range is the Missouri River and the lower reaches of the Platte and Elkhorn River (CITES, November 2000; NGPC, May 2011). The lake sturgeon may occur within the study reach of the Platte River.

Potential project affects to aquatic habitat parameters are provided in the pallid sturgeon discussion of the Technical Memorandum. Because lake sturgeon and pallid sturgeon use similar habitat, the project affect discussions provided for pallid sturgeon also apply to lake sturgeon.

Northern long-eared bats are medium-sized bats with a wingspan of 9 to 10 inches. Its fur color can be medium to dark brown on the back and tawny to pale-brown on the underside. As its name suggests, the bat is distinguished by its long ears. Northern long-eared bats spend winter hibernating in caves and mines and roost underneath bark, in cavities, or in crevices of both live and dead trees in the summer. They may also roost in cooler places, like caves and mines and are opportunistic in selecting roosts. The bats emerge at dusk to fly through the understory of forested hillsides and ridges feeding on moths, flies, leafhoppers, caddisflies, and beetles, which they catch while in flight using echolocation. They also feed by gleaning motionless insects from vegetation and water surfaces (USFWS, April 2015).

Northern long-eared bat concentrations in Nebraska can be found in, but are not limited to, the northwest and southeast area of the state. Although the species is mostly found in forested areas, it can be found throughout the state in opportunistic roosts during its migration. They are known to use limestone mines near the town of Louisville on a year-round basis. The bats are also known to hibernate in mines along the Platte River southwest of Fontenelle Forest. The species is considered to be common in Fontenelle Forest where it is believed to hibernate. Use of buildings in the summer has been linked to an increase in the geographic range of the bat (USFWS, 2014). The northern long-eared bat could be found in the Study Area where suitable roosting habitat is present. Prior to the removal of any large or dead trees, habitat surveys may need to be conducted to determine presence/absence. Potential impacts may be avoided by performing necessary tree clearing between October 1st and March 31st or by performing species surveys, prior to tree clearing activities.

Pallid sturgeon are listed as state- and Federally-endangered. Pallid sturgeon have a flattened shovel-shaped snout and a long, slender, and armored body. The mouth is toothless and positioned under the head. Juvenile and adult diets are generally composed of fish and aquatic insect larvae with a trend toward fish prey as they increase in size. Pallid sturgeon are a bottom-oriented, large river obligate fish inhabiting the Missouri and Mississippi rivers and some tributaries from Montana to Louisiana. Pallid sturgeon have been documented over a variety of available substrates, but are often associated with sandy and fine bottom materials (USFWS, Species Profile). In Nebraska, pallid sturgeon are known to occur in the Missouri River and the lower reaches of the Platte and Elkhorn River, including the entire study reach of the Platte River (NGPC, May 2011). Specific to the lower Platte River, Peters and Parham (2008) state that the amount of suitable pallid sturgeon habitat increases with increased discharge and reaches a maximum of approximately 30 percent at discharges of 10,000 cfs and higher.

According to a 2011 U.S. Geological Survey report, several water quality parameters, including temperature and oxygen, may limit the recruitment of pallid sturgeon in the Lower Missouri River (including the reach of the Missouri River at the Platte River confluence)(Blevins, 2011):

> Water Temperature – Pallid sturgeon inhabit areas where water temperatures range from 0°C to 30°C (32°F to 86°F). Blevins concluded that temperatures in excess of 30°C (86°F) are likely stressful to pallid sturgeon, and that temperatures above 33°C (91.4°F) may be lethal. This determination is supported by NDEQ's 90°F water quality standard, which is intended to sustain warm water aquatic life, including threatened and endangered species (NDEQ, April 1, 2012). In the Platte River, temperature at the point of pallid sturgeon capture by trotline or net ranged from 9.9 to 24.9°C and averaged around 15°C (Peters and Parham, 2008). Snook (2001) found that temperatures at radio telemetry locations of hatchery-reared pallid sturgeon in the lower Platte River ranged between 11.4 to 33.7°C. Telemetry studies conducted by Peters and Parham (2008) and Swigle (2003) found pallid sturgeon located at temperatures ranging from 3.5 to 24.9°C.
>
> Oxygen – Blevins acknowledged the lack of research on the tolerances of pallid sturgeon to oxygen depletion, while using existing research for other similar sturgeon species to make assumptions for the pallid sturgeon. He concluded that oxygen levels less than 2 milligrams per liter (mg/L) would likely be lethal, while levels between 3 and 5 mg/L are tolerable, and oxygen levels greater than 5 mg/L are preferred.

Pallid sturgeon historically occupied turbid river systems. Erickson (1992) studied pallid sturgeon habitat preference in South Dakota and found turbidity levels where pallid sturgeon were collected in the range from 31.3 Nephelometric turbidity units (NTU) to 137.6 NTU. In a laboratory study (Allen et al., 2007), juvenile pallid sturgeon used dark and very dark conditions to a greater extent than expected while avoiding cover. Studies of the retina of pallid sturgeon indicate adaptation to a turbid environment (Sillman, 2005). During Platte River capture studies, suspended solids concentrations at the point of capture ranged from 110.5 to 336 milligrams per liter (mg/L) and averaged 171.5 mg/L (Peters and Parham, 2008). Total suspended solids concentrations at telemetry locations of pallid sturgeon ranged from 86 to 1,228 mg/L and averaged 385 mg/L (Peters and Parham, 2008; Swigle, 2003).

Project construction would likely avoid direct impacts to pallid sturgeon and its Platte River habitat; however, outfall construction may be required to occur at times of year determined to minimize potential impacts to pallid sturgeon spawning.

Indirect project effects to pallid sturgeon and its Platte River habitat may result from treated effluent discharge. Considering 1) the level of treatment likely necessary to comply with Nebraska's Water Quality Standards, 2) the resulting removal of lesser treatment alternatives from the Platte River basin, and 3) increased flow contributions that are cool in relative temperature: project implementation may result in a benefit to the aquatic ecosystem of the Platte River. Additional water quality considerations and details are as follows:

> Discharge – The project would treat and discharge 10-12 mgd (or 15-18 cfs) of treated effluent to the lower Platte River. Considering the overarching concern of Platte River depletions and the Peters and Parham findings that the amount of suitable pallid sturgeon habitat increases with increased discharge, project flow contributions may benefit Platte River habitat.
>
> Water Temperature – The temperature of the treated effluent would vary by season and range from 11-22°C (50 to 70°F). The cooler effluent may provide refuge for pallid sturgeon and other fish in the Platte River, when ambient conditions result in water temperature excursions of NDEQ's 90°F standard.
>
> Oxygen – The proposed facility would comply with the national effluent limitations of biological oxygen demand (BOD) and total suspended solids (TSS), as described in 40 CFR 437. Other nutrient sources, such as phosphorus, nitrogen, and/or chlorophyll could be assessed for limitations, as necessary. Considering these limitations, it is unlikely that the treated effluent would adversely affect the availability of food sources for the pallid sturgeon, including larval pallid sturgeon (believed to rely heavily on plankton as a food source).
>
> Turbidity – Following treatment, resulting effluent would have lower turbidity than that of the Platte River; however, the 10-12 mgd (or 15-18 cfs) discharge is not expected to alter overall turbidity levels, nor limit pallid sturgeon recruitment.
>
> Forage – The treated effluent is not anticipated to adversely affect downstream fish or aquatic macroinvertebrate populations (pallid sturgeon forage).

Piping plovers are a small, (approximately 6.7 to 7.1 inches in length) migratory member of the shorebird family. They are listed as state- and Federally-threatened. During the breeding season, adults have single black bands across both the forehead and breast, orange legs and bill, and pale tan upper parts and are white below. The adults lose the black bands and their bill becomes grayish-black during the winter. The plumage of juveniles is similar to that of wintering adults. Piping plovers feed on insects, spiders, and crustaceans (USFWS, August 2001).

In Nebraska, piping plovers are found in similar habitat as interior least tern. Sandbars along the Niobrara, Loup, and Platte rivers offer suitable nesting habitat for the plover. Like the interior least tern, plovers can be found nesting on sand and gravel mining spoil piles as well as sand pit lakes where suitable habitat is present (USFWS, June 2002, NGPC, May 2011). Direct construction impacts would be temporary in nature and would not adversely affect piping plovers. The approximate treated effluent discharge of 15-18 cfs would not influence sediment transport (or associated channel morphology/nesting habitat) or nest inundation. Furthermore, treated effluent is not anticipated to adversely affect downstream insect/invertebrate populations (piping plover forage). Species/nesting surveys may be

required, prior to construction. The positive identification of piping plover individuals or active nests could result in restrictions on when and where certain construction activities could occur.

River otters have short legs and an elongate body. They are similar in appearance to the weasel. The tail is long and tapered, and comprises about one-third of the total length of the animal. The fur is short, very dense, and lustrous, ranging from almost black to pale chestnut dorsally, and light brown to gray ventrally. The species occurs in streams, lakes and reservoirs, wetlands, and marine coasts. Fish form most of the river otter's diet along with crustaceans, mollusks, insects, and birds (Boyle, September 2, 2006).

River otters were historically common in all major waterways of Nebraska, but following unregulated trapping, they became extirpated after 1908. NGPC released at least 20 otters at each of seven sites between 1986 and 1991. The seven sites include the South Loup River (Custer County), Calamus River above Calamus Reservoir (Loup County), North Platte River above Lake McConaughy, Platte River near Kearney, Cedar River (Wheeler County), Elkhorn River (Antelope County), and the Niobrara River (Sheridan County). Viable populations are believed to have become established in several watersheds, with the highest quality and most extensive populations occurring in the Platte River and tributaries (Boyle, September 2, 2006; NGPC, May 2011). Due to the highly mobile nature of the species, and assuming treated effluent does not adversely affect downstream fish populations (otter forage), it is unlikely that the proposed project would have an adverse affect to river otters or their habitat. Den surveys may be required prior to construction to determine the presence/absence of dens on or near the construction site. Potential impacts would be temporary and limited to the construction phase of the project.

Sturgeon chubs are a small minnow (1.7 to 2.5 inches in length) with a slender, streamlined body and a small mouth with barbel at each corner. They are listed as endangered by the state of Nebraska. Adult sturgeon chubs are described as dusky or light brown dorsally with silvery sides and stomachs. Sturgeon chub are found primarily in large, muddy rivers, but are also known to inhabit upstream tributaries. Their diet consists primarily of aquatic insects (Rahel and Thel, August 31, 2004). Little is known of the breeding habits of the sturgeon chub, but they have been documented to hybridize with the speckled chub, which is known to reproduce in the deeper part of the stream current in waterways in which they are found (Rahel and Thel, 2004).

In Nebraska, sturgeon chubs are primarily found in the Missouri River and the lower reaches of the Platte and Elkhorn Rivers. Suitable habitat may also be found in tributaries of these waterways (NGPC, May 2011). Sturgeon chubs may occur throughout the study reach of the Platte River.

Potential project affects to aquatic habitat parameters are provided in the pallid sturgeon discussion of the Technical Memorandum. Because sturgeon chub and pallid sturgeon use similar habitat, the project affect discussions provided for the pallid sturgeon also apply to sturgeon chub.

Western prairie fringed orchid is a flowering plant which produces stalks up to 47 inches tall, each with up to 40 white flowers about an inch long. The plant flowers from mid-June to late July. The plant displays flowers for about 21 days, with individual flowers lasting up to 10 days. Flowers must be pollinated for seed production, with pollination accomplished only by hawkmoths (USFWS, December 2004).

The orchid occurs in moist tallgrass prairies and sedge meadows, but can also be found in old fields and roadside ditches. Their potential range encompasses all of southern Sarpy County (NGPC, May 2011). Prior to siting and construction, habitat/species surveys may need to be conducted during the blooming season to determine presence/absence. If the species is found, further consultation would be required with USFWS.

Conservation Lands

Existing conservation and recreation areas were identified to assess potential impacts. Six NGPC managed properties were identified along the corridor, two of which are located in the Study Area and detailed below:

> Schramm Park State Recreation Area is a 330-acre area located approximately 2 miles east of Interstate 80 in Sarpy County. The park contains nature trails, picnic areas, an aquarium and fish hatchery. Schramm Park has also received a National Park Service (NPS) Land and Water Conservation Fund (LWCF) Act grant (NPS, 2015). As such, any portion of the park that has been improved with these funds is subject to the legal protections described in Section 6(f)(3) of the LWCF Act and would be subject to the Section 6(f) conversion process.
>
> Louisville Boat Access Wildlife Management Area is an approximately 2-acre area located directly north of the community of Louisville on the north bank of the Platte River. The area features a single boat ramp and parking area, as well as access to the MoPac recreational trail.

Properties located in Cass County, adjacent to the Study Area are: Eugene T. Mahoney State Park, Platte River State Park, Louisville State Recreation Area (SRA), and Randall W. Schilling Wildlife Management Area (WMA) (NGPC, 2015). These properties are graphically located in Attachment B.

The Study Area encompasses an area along the Platte River approximately 24 miles in length; of those 24 miles roughly one half mile is bordered by NGPC conservation lands. It is likely that the proposed wastewater treatment facility and discharge could be located to avoid impacting conservation lands, and would not impact or convert any Section 6(f) resources in Schramm Park SRA or elsewhere along the Platte River.

Wetlands and Waters of the U.S.

Section 404 of the Clean Water Act established a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands (33 USC 1251 et seq.). Should any portion of the project necessitate the discharge of dredged or fill material into the Platte River or adjacent wetlands (including excavation backfill), Sarpy County would be required to obtain an associated permit from the U.S. Army Corps of Engineers. This would include temporary impacts associated with trenching, placement, and backfill of an outfall line. Permit authorization would be provided in one of two forms: 1) Nationwide Permit, or 2) Individual Permit. Nationwide permits are pre-authorized for specific activities that satisfy pre-determined impact thresholds. In this case, Nationwide Permit No. 39: Commercial and Institutional Developments would likely be applied if the 0.5 acre impact threshold (and other general permit conditions) could be met. Should project impacts exceed the 0.5 acre threshold, an Individual Permit would be required. In accordance with CWA Section 404(b)(1), Individual Permit authorization would be contingent upon Sarpy County demonstrating that the Applied-for-Project is the Least Environmentally Damaging Practicable Alternative (LEDPA). The LEDPA test requires detailed alternatives analysis that can require substantial time and effort.

The USFWS National Wetland Inventory (NWI) was utilized to identify wetlands within the Study Area (see Attachment B). Although the NWI does not always represent actual site conditions, it can be used as an initial screening tool to assess the potential impacts of a project. Over 1,000 acres of wetlands were identified in the Study Area, including riverine, freshwater ponds, emergent, scrub-shrub, and forested wetland types. Wetlands in the Study Area appear limited to the areas adjacent to the Platte River. Generally speaking, the highest concentration of NWI-mapped wetlands occur along the Platte River south of Springfield.

If unavoidable permanent impacts to waters of the U.S. exceed 0.10 acre, compensatory wetland mitigation would be required. Wetland impacts that are temporary in nature would not require traditional mitigation/replacement, but may require in-place/in-kind restoration.

Wellhead Protection Areas

Wellhead Protection is the management of the land surrounding a water supply well field to prevent contamination of the water supply. The Safe Drinking Water Act of 1974, as amended (SDWA), recommended that public water supply systems develop Wellhead Protection Plans (WHPPs). The SDWA defines a wellhead protection area as: "the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well fields." In response to this recommendation, Nebraska adopted the Nebraska Wellhead Protection Area Act in 1998, by Nebraska Legislature Bill (LB) 1161. This act's main goal is to minimize the amount of potentially polluting activities occurring on the designated lands that surround public water supply wells.

Wellhead protection is a voluntary program available to all Nebraska Public Water Supply Systems (PWSSs). Most WHPPs are written by a local community official or a technical advisor and include a detailed summary of the potential threats to the water supply well field and often include a summary of existing and recommended management strategies to protect the water supply. Management strategies presented in a WHPP can include: the identification of Best Management Practices (BMPs), the recommendation of zoning overlay districts, or the recommendation of a wellhead protection ordinance. WHPPs do not have statutory authority and only provide recommendations for management strategies

that can minimize the threat of contamination to a PWSS. The only enforceable regulations that can result from the development of a WHPP are local ordinances or city codes. These local ordinances are in addition to the existing Department of Health and Human Services (DHHS) setback distances for community and public water supply wells which are designed to protect potable water supplies.

To facilitate the development of WHPPs, NDEQ used groundwater modeling to identify Wellhead Protection Areas (WHPAs) for all PWSSs in the State. However, a WHPP has not been developed for all WHPAs, as this is a voluntary program.

NDEQ's Interactive Map was consulted to identify WHPAs in the Study Area: six overlap the Study Area. They are listed below from west to east and graphically depicted in Attachment B.

- City of Lincoln[4]
- Sarpy County SID #79 – Meadow Oaks
- City of Papillion
- Sarpy County SID #97 – Hawaiian Village
- Metropolitan Utilities District
- Sands Mobile Home Park[5]

Through communications with NDEQ, it was determined that only the Metropolitan Utilities District's Platte South and Platte West Well Fields have State-approved WHPPs (NDEQ, April 7, 2015).

The proposed wastewater treatment facility would be considered a potential contaminant source to groundwater. As such, the facility is subject to DHHS setback distances for community and public water supply wells. Setback distances around wastewater treatment facilities range up to 1,000 feet, depending on the type of treatment facility (Nebraska DHHS, April 4, 2010).

Any zoning restrictions or regulations that result from the development of a WHPP would add additional, local regulation that should be considered prior to locating the project. HDR reviewed local city and county ordinances and found a wellhead head protection code for the City of Papillion (Chapter 198 Water Wells and Wellhead Protection). The setback distance restrictions cited in the Papillion Wellhead Protection Code are consistent with the Nebraska DHHS. No other city or county ordinances were identified. Based on HDR's review of the DHHS and local WHP ordinances, the setback distance from a well field to the project would be 1,000 feet.

[4] The City of Lincoln WHPA is located at the western extreme of the Study Area and would likely be avoided by project development.
[5] The Sands Mobile Home Park WHPA is located at the eastern extreme of the Study Area and would likely be avoided by project development.

NDEQ and EPA Region 7 Permitting Requirements

There are three key permitting areas where NDEQ has primary environmental permitting authority that would pertain to the project:

1. NPDES Discharge Permit as a "new source" discharger – associated anti-degradation evaluation
2. Construction Permit for the intended wastewater treatment facility
3. Stormwater Permit that addresses surface runoff from the overall site

Authorization for these permitting processes is outlined under Title 119 of NDEQ's regulatory provisions. EPA Region 7 has secondary oversight and approval authority for all permits issued by NDEQ. However, EPA Region 7 has direct permitting authority over land application of biosolids that would be generated by a new wastewater treatment facility, as further discussed below.

NPDES Discharge Permitting In terms of basic permit scheduling, Chapter 4 of Title 119 requires that "a new source or new discharger wishing to discharge pollutants into waters of the state must file an NPDES application at the same time as application is made to NDEQ for a construction permit for a new source, not less than 180 days prior to commencement of discharge." However, given the high level of environmental scrutiny associated with the Platte River, this permitting time allotment would potentially extend over a considerably longer time period for the following reasons:

- During the upcoming decade, EPA Region 7 will eventually be forcing NDEQ to develop new nutrient stream water quality standards for Total Nitrogen and Total Phosphorus, similar to that being pursued by the other three states in the Region. The nutrient criteria implementation process has been very protracted to date.
- As detailed elsewhere in this Technical Memorandum, threatened and endangered species, including the pallid sturgeon, are known to inhabit Platte River Segment LP-10000. This consideration has affected the permitting of similar projects on the Platte River, and necessitates extensive review processes by USFWS and NGPC.
- Due to perceived environmental sensitivities, the anti-degradation (anti-deg) evaluation process, which must precede the issuance of an NPDES discharge permit, may become more involved than normal and subject to negotiations as to reasonableness for affordability. An anti-deg evaluation basically consists of a socio-economic study that identifies less degrading and non-degrading treatment alternatives in comparison to a proposed baseline alternative. In other words, if a proposed treatment alternative can be demonstrated to be reasonably affordable within established criteria, then there may be a need to plan for essentially "state of the art" type treatment processes. Representative affordability criteria are still being debated nationally.

Construction Permitting A separate division of NDEQ issues wastewater treatment construction permits. The typical approach would be to meet jointly with NDEQ staff well in advance of the construction permit application to discuss pre-design concepts, including anti-deg alternatives, NDPES permitting implications, and the preliminary project schedule. This would likely require multiple meetings, but would be beneficial toward efficiencies in design, budgeting, and other related work efforts.

Storm Water Permitting Assuming that construction activities would disturb greater than one acre of ground, a Storm Water Pollution Prevention Plan (SWPPP) would be prepared, in accordance with the

NPDES provisions of the Clean Water Act, and would include Best Management Practices to minimize erosion and sedimentation during construction activities. The SWPPP would be provided to NDEQ with Sarpy County's Notice of Intent (NOI). Formal permit authorization through a General Permit is generally granted from NDEQ within 1-2 weeks of NOI submittal.

However, in accordance with Chapter 10 of NDEQ's Title 119, NDEQ reserves the right to issue a separate individual stormwater permit if more complex drainage issues occur. This would require that a permit application be submitted to NDEQ at least 90 days before construction commencement. Such issues may involve areas of the facility that could be prone to pollutant spills, and perhaps the construction of a relatively large storm sewer outfall to the Platte River.

A parallel storm water permitting activity would involve the intended biosolids land application site(s), where site drainage control would need to be well defined, monitored, and managed, including clearances from water courses, nearby wells, residences, etc. Biosolids land application site(s) may occur at numerous, remote agricultural parcels through individual landowner contracts. NDEQ would not have direct jurisdictional authority over the actual biosolids applications and crop management. This consideration would fall under the authority of EPA Region 7, as detailed below.

EPA Region 7 Biosolids Permitting Due to an internal decision made many years ago, NDEQ opted out of the so-called 503 Sludge Regulations Program, which establishes limitations for agronomic uptake nutrient loadings and "ceiling limits" and life time mass loading limits of various heavy metals. However, as mentioned above, there would be some jurisdictional overlap with NDEQ for the storm water management for each land application site. A biosolids management plan would have to be submitted to EPA Region 7 well in advance of commencement of land application operations. This would include baseline soil sampling, drainage control, crop and soil tolerance details, and various clearance determinations from wells, residences, roadways, etc.

Overall NDEQ and EPA Region 7 Permitting Schedule Allowance Given all of the above-cited considerations for wastewater, storm water, biosolids and inherent threatened and endangered species issues, Sarpy County should allow 1 to 3 years to discuss, negotiate, and acquire needed permits ahead of final project planning, budgeting, and intended project design. A project of this nature could generate interest from outside environmental non-governmental organizations (NGOs) during the public notice and comment periods for the various permits. If significant public comments are received, NDEQ would be obligated to hold a public hearing and garner direct public testimony. In very rare instances, proceedings of this nature have resulted in revisions to the proposed fact sheets and draft permit(s) and corresponding delays for having to essentially repeat the permitting process.

Other Permits and Resource Agency Approvals

The following lists additional permits and resource agency approvals anticipated to be required of project implementation. Supporting discussion and an estimated timeframe for permit/approval authorization is also provided.

Endangered Species Act Section 7 Consultation – USFWS

T&E species are protected under the ESA, which provides for the protection of animal and plant species determined to have a declining population and to be in jeopardy of becoming extinct. USFWS has the authority of the Federal government to administer the protection of such species.

Because Federally-listed species are known to inhabit the study reach of the Platte River, and because the treatment facility would constitute "major construction," informal Section 7 consultation with USFWS would require that Sarpy County prepare a Biological Assessment (BA) to determine whether or not the treatment facility may affect Federally-listed species. If the BA determines that the facility is not likely to adversely affect Federally-listed species, and USFWS concurs: the process is complete. Alternatively, if the BA determines that the project may adversely affect Federally-listed species, or if USFWS does not agree with a BA finding of "not likely to adversely affect," formal Section 7 consultation is initiated. During formal consultation, USFWS would determine whether or not the project is likely to jeopardize the continued existence of listed species and/or their designated critical habitat. Formal consultation concludes with the USFWS preparation of a Biological Opinion. A process flow chart is provided as Attachment C and applicable timeframes are as follows:

- USFWS would have 30 days to review Sarpy County's Biological Assessment and determine concurrence or nonconcurrence
- USFWS would have 90 days to complete formal consultation
- USFWS would have 45 days to prepare a Biological Opinion

Nebraska Endangered Species Conservation Act – NGPC

The intent of NESCA is to conserve species of wildlife for human enjoyment, for scientific purposes and to insure their perpetuation as viable components of their ecosystems. According to Section 37-807(3), all other state agencies shall, in consultation with and with the assistance of NGPC, utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 37-806 and by taking such action necessary to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification (NGPC, April 3, 2015).

In order to initiate consultation, Sarpy County would provide a hard copy letter/package that includes: 1) detailed site description, 2) notation of the component needing a state permit, and 3) project location map and legal description. NGPC states that reviews are completed in the order they are received, that there is an approximate turnaround time of 30 days, and that there is no expedited review option (NGPC, April 3, 2015).

Clean Water Act Section 404 Permit – USACE

The CWA Section 404 permit process is outlined in the above Wetland and Waters of the U.S. heading. Regarding timeframes, USACE processing time is largely dependent on whether the project requires a Nationwide or Individual Permit. Nationwide Permit authorization is notably preferable and should be sought via impact avoidance (siting) measures. If Nationwide Permit authorization is applicable, USACE would likely process Sarpy County's Pre-Construction Notification (permit application) and authorize the project within 60 days of receipt. Individual Permit processing times often reach or exceed 6 months and include a 30 day public notice and comment period. As stated in the above Wetland and Waters of the U.S. heading, Individual Permit applications require detailed alternatives analysis in accordance with CWA Section 404(b)(1). Depending on the amount of impacts and the availability of alternative screening information, suitable alternatives analysis development can take months or years and would require extensive coordination with USACE, as well as compensatory mitigation planning.

Clean Water Act Section 401 Water Quality Certification – NDEQ

In accordance with CWA Section 401, NDEQ can review and approve, condition, or deny all Federal permits or licenses that might result in a discharge to State waters, including wetlands (33 USC 1251 et seq.). Approval is provided in the form of Water Quality Certification that must be obtained from NDEQ before any activity that may result in a pollution discharge to waters of the U.S. can be permitted by a Federal agency (including CWA Section 404 authorization from USACE). Wetland-prompted Water Quality Certification may be required if the project were to impact wetlands deemed by USACE to be non-jurisdictional under CWA Section 404. In this instance, NDEQ would issue a Letter of Opinion on whether or not impacts to these wetlands would degrade the water quality of Nebraska.

National Historic Preservation Act Section 106 Consultation – SHPO

Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and implementing regulations in 36 CFR 800 require Federal agencies to determine whether their undertakings would have adverse effects on historic properties (that is, any archaeological site, historic structure, or other property listed on or eligible for listing on the NRHP) and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment (16 USC 470f). This is generally accomplished through the Section 106 compliance process, which consists of the following steps:

- Identify and evaluate historic properties located within the Area of Potential Effect (APE) established for an undertaking
- Assess adverse effects on properties listed on, or eligible for listing on, the NRHP
- Consult with the Nebraska State Historic Preservation Office (Nebraska SHPO) and, as appropriate, ACHP and other interested parties to resolve adverse effects

It is assumed that facility siting could avoid standing structures listed—or eligible for listing—on the National Register of Historic Places. Of more significance to the project would be the potential occurrence of archeological sites, especially considering the proximity to the Platte River (archeological sites can be concentrated in proximity to major water courses). Section 106 affect determination from

Nebraska SHPO would require some intensity of archeological resource investigation, which may include existing file[6] research and/or pedestrian field survey.

Air Quality Construction Permit – NDEQ

The project may require the issuance of an air quality construction permit by NDEQ prior to the commencement of construction. The requirement for a permit is based on the amount of air emissions that are estimated from the facility. Emission estimates from each individual emission unit are included in a facility-wide total. The primary types of emission units anticipated for this project include biogas generation and combustion (anaerobic digestion), wet or dry chemical handling, and fuel combustion sources (e.g., boiler, back-up generator). Other types of emission units could include aerobic treatment vessels.

Construction permits are classified as either 'minor' source permits or 'major' source permits. If a permit is required, it would likely be a minor source permit, based on permitting experience with similar types of facilities. The anticipated timeframe for obtaining a minor source construction permit from NDEQ is 4-8 months, including approximately one month for preparation of the application and a mandatory 30-day public notice period.

The Omaha metropolitan area (including southern Sarpy County) is currently 'in attainment' with the National Ambient Air Quality Standards (NAAQS). However, EPA is considering a reduction in the NAAQS for ozone from the current standard of 75 parts per billion (ppb) to a standard of 60-70 ppb. Depending on the final standard, the Omaha metropolitan area could become non-attainment for ozone. If this were to occur, permitting of new projects could become more restrictive, particularly for significant sources of nitrogen oxides (NOx) and/or volatile organic compounds (VOC), both of which are pre-cursers to ozone formation.

Relative to the project, the quantities of NOx and VOC are not anticipated to be significant, depending on the amount of fuel combustion included with the project. Permitting of the project should be viable in the event of future non-attainment for ozone.

Floodplain Development Permit – Sarpy County, Nebraska

Dependent upon whether or not the facility is located within a FEMA-designated 100-year floodplain or floodway of the Platte River, the project would be required to comply with Sarpy County's own floodplain regulations.

Miscellaneous Local Permits – Sarpy County

To include planning, zoning, and building permits, as necessary.

National Environmental Policy Act and State Revolving Fund

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. NEPA compliance is only required of undertakings that use Federal funding or are subject to Federal action, including Federal permit

[6] Information relative to known archeological resources is not publicly available. As such, this information has not been reviewed in preparation of this Technical Memorandum. During advanced siting/planning, coordination with Nebraska SHPO could gain access to potentially existing information on known archeological resources.

authorization. If the project were to receive Federal funding, Sarpy County, in association with the lead Federal agency, would be required to comply with NEPA. This would include receipt of State Revolving Funds from NDEQ (that originate from the U.S. Environmental Protection Agency).

It is preliminarily anticipated that the project could comply with NEPA via an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). Completion of an EA/FONSI would be contingent upon several of the previously-listed resource agency approvals and public notice/comment. The EA would also necessitate alternatives analysis to potentially compare alternate facility locations and/or treatment methods. Sarpy County should allow approximately one year for EA/FONSI completion.

Early Agency Coordination

On May 26, 2015, representatives of USFWS, NGPC, Sarpy County, and HDR met and discussed the project, potential environmental considerations, and agency coordination processes moving forward. HDR and Sarpy County presented prepared slides. Open discussion followed. Meeting notes were prepared by HDR and distributed to all meeting attendees on June 3, 2015. The following represents a brief summary of meeting discussions.

In addition to the considerations listed previously in this document, HDR stated that Project scope is anticipated to include:

- Biological nutrient removal
- Nitrogen and Phosphorus to 10 and 1 ppm, respectively
- UV disinfection (not chlorination)
- Advanced treatment that results in low solids and oxygen demanding effluent
- Discharge directly to Platte River (not Springfield Creek)
- Possible application of a discharge diffuser across the channel

The Service noted that hormonally active compounds and detergents are likely a concern regarding fish reproduction, and that the advanced UV treatment and lack of chlorinated byproducts are positives in addressing potentially harmful compounds.

Future environmental analysis would need to consider development that the project would facilitate and potentially resulting consumptive water uses. This would likely involve a hydraulic analysis that, among other things would: 1) consider the planned project discharge of 10-12 mgd against development-driven consumptive use, and 2) apply projected/future Platte River flows that would correspond with the actual date of facility implementation. NGPC also noted that groundwater analysis may be required in order to determine indirect impacts to wetland hydrology and associated species habitat.

Both agencies preliminarily thought discharge to the Platte River would be preferred over discharge to the Missouri River (assuming that adequate disinfection occurs).

A discharge diffuser may be applied to spread effluent across the width of the Platte River channel. This is done via a larger diameter pipe under the channel and multiple outlets with duck bill check valves. The agencies stated that the shifting river bed, recreational boating, and ice jam flooding should be considered and analyzed prior to diffuser application.

Both agencies were appreciative of the early project engagement and found the discussion to be helpful in setting a baseline for future coordination. The Service noted that it is good to see proactive measures for projected growth, including advanced treatment methods. The Service also noted that despite the relatively small discharge, the temperature of the effluent should help avoid temperature excursions in the hot summer months.

References

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16 USC 1531 et seq. Endangered Species Act of 1973, as amended.

33 USC 1251 et seq. Clean Water Act.

36 CFR 800. Protection of Historic Properties.

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Attachment A – USFWS IPAC Screening Results

U.S. Fish and Wildlife Service

Trust Resources List

This resource list is to be used for planning purposes only — it is not an official species list.

Endangered Species Act species list information for your project is available online and listed below for the following FWS Field Offices:

Rock Island Ecological Services Field Office
ROCK ISLAND ECOLOGICAL SERVICES FIELD OFFICE
1511 47TH AVE
MOLINE, IL 61265
(309) 757-5800

Nebraska Ecological Services Field Office
FEDERAL BUILDING
203 WEST SECOND STREET
GRAND ISLAND, NE 68801
(308) 382-6468
http://www.fws.gov//nebraskaes

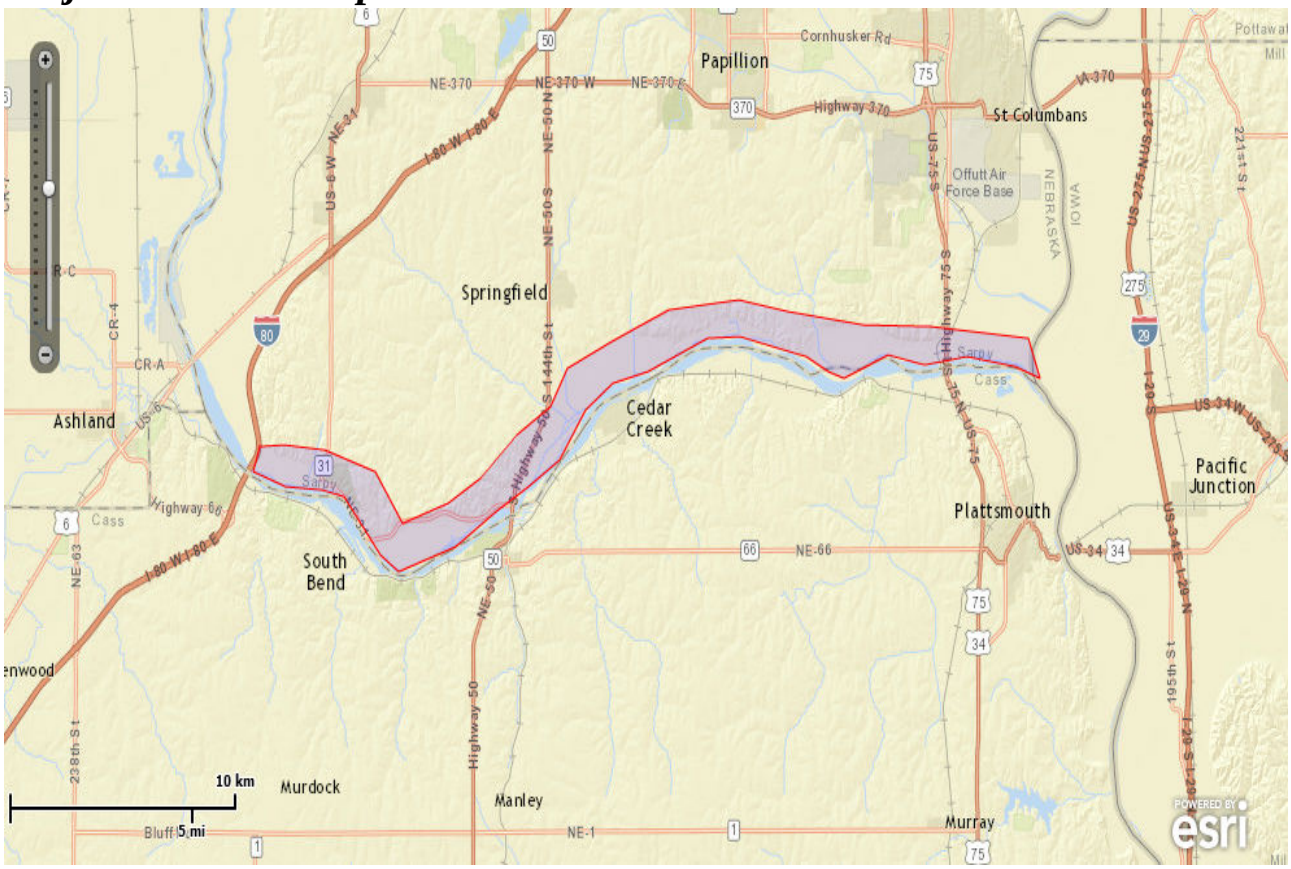
Project Name:

Southern Sarpy County WWTF

U.S. Fish and Wildlife Service

Trust Resources List

Project Location Map:



Project Counties:

Mills, IA | Cass, NE | Sarpy, NE

U.S. Fish and Wildlife Service

Trust Resources List

Geographic coordinates (Open Geospatial Consortium Well-Known Text, NAD83):

MULTIPOLYGON (((-96.2942227 41.0262218, -96.2908238 41.0339915, -96.2915104 41.0339915, -96.2777775 41.0345094, -96.2564915 41.0329556, -96.2297123 41.0262218, -96.2152928 41.0101614, -96.1912602 41.0163788, -96.1740941 41.0241497, -96.154868 41.037617, -96.1370152 41.0464211, -96.1280888 41.0583306, -96.1047429 41.0666143, -96.0745305 41.0764497, -96.0374516 41.0795553, -96.0113591 41.075958, -95.9715336 41.071791, -95.9358281 41.0712733, -95.8843296 41.0676496, -95.8781498 41.055224, -95.8911961 41.0588484, -95.916602 41.0619549, -95.9392613 41.0593662, -95.9584874 41.0624726, -95.9818333 41.055224, -95.9900731 41.0572951, -96.001746 41.0619549, -96.0223454 41.0655789, -96.0367649 41.0681673, -96.0539311 41.0676496, -96.0855168 41.0572951, -96.1040562 41.0536965, -96.1184758 41.0453854, -96.1322087 41.0298736, -96.1486882 41.0215595, -96.1658543 41.0137883, -96.1871403 41.0029071, -96.2173527 40.9951337, -96.2269658 41.0003161, -96.2461575 41.0184511, -96.2578305 41.0205234, -96.2770909 41.0215595, -96.2942227 41.0262218)))

Project Type:

Wastewater Facility

Endangered Species Act Species List (USFWS Endangered Species Program).

There are a total of **6** threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fishes may appear on the species list because a project could cause downstream effects on the species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section below for critical habitat that lies within your project area. Please contact the designated FWS office if you have questions.

Species that should be considered in an effects analysis for your project:

Birds	Status		Has Critical Habitat	Contact
Least tern (*Sterna antillarum*) Population: interior pop.	Endangered	species info		Nebraska Ecological Services Field Office
Piping Plover (*Charadrius melodus*) Population: except Great Lakes watershed	Threatened	species info	Final designated critical habitat Final designated critical habitat	Nebraska Ecological Services Field Office
Whooping crane (*Grus americana*) Population: except where EXPN	Endangered	species info	Final designated critical habitat	Nebraska Ecological Services Field Office

U.S. Fish and Wildlife Service

Trust Resources List

Fishes				
Pallid sturgeon (*Scaphirhynchus albus*) Population: Entire	Endangered	species info		Nebraska Ecological Services Field Office
Flowering Plants				
Western Prairie Fringed Orchid (*Platanthera praeclara*)	Threatened	species info		Rock Island Ecological Services Field Office, Nebraska Ecological Services Field Office
Mammals				
Northern long-eared Bat (*Myotis septentrionalis*) Population:	Threatened	species info		Rock Island Ecological Services Field Office

Critical habitats within your project area:

There are no critical habitats within your project area.

FWS National Wildlife Refuges (USFWS National Wildlife Refuges Program).

There are no refuges found within the vicinity of your project.

FWS Migratory Birds (USFWS Migratory Bird Program).

The protection of birds is regulated by the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA). Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. For more information regarding these Acts see: http://www.fws.gov/migratorybirds/RegulationsandPolicies.html.

All project proponents are responsible for complying with the appropriate regulations protecting birds when planning and developing a project. To meet these conservation obligations, proponents should identify potential or existing project-related impacts to migratory birds and their habitat and develop and implement conservation

measures that avoid, minimize, or compensate for these impacts. The Service's Birds of Conservation Concern (2008) report identifies species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become listed under the Endangered Species Act as amended (16 U.S.C 1531 et seq.).

For information about Birds of Conservation Concern, go to: http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BCC.html.

To search and view summaries of year-round bird occurrence data within your project area, go to the Avian Knowledge Network Histogram Tool links in the Bird Conservation Tools section at: http://www.fws.gov/migratorybirds/CCMB2.htm.

For information about conservation measures that help avoid or minimize impacts to birds, please visit: http://www.fws.gov/migratorybirds/CCMB2.htm.

Migratory birds of concern that may be affected by your project:
There are **24** birds on your Migratory birds of concern list. The underlying data layers used to generate the migratory bird list of concern will continue to be updated regularly as new and better information is obtained. User feedback is one method of identifying any needed improvements. Therefore, users are encouraged to submit comments about any questions regarding species ranges (e.g., a bird on the USFWS BCC list you know does not occur in the specified location appears on the list, or a BCC species that you know does occur there is not appearing on the list). Comments should be sent to the ECOS Help Desk.

Species Name	Bird of Conservation Concern (BCC)	Species Profile	Seasonal Occurrence in Project Area
Acadian Flycatcher (*Empidonax virescens*)	Yes	species info	Breeding
Bald eagle (*Haliaeetus leucocephalus*)	Yes	species info	Year-round
Bell's Vireo (*Vireo bellii*)	Yes	species info	Breeding
Black-billed Cuckoo (*Coccyzus erythropthalmus*)	Yes	species info	Breeding
Black-crowned Night-Heron (*Nycticorax nycticorax*)	Yes	species info	Breeding
cerulean warbler (*Dendroica cerulea*)	Yes	species info	Breeding
Dickcissel (*Spiza americana*)	Yes	species info	Breeding
Field Sparrow (*Spizella pusilla*)	Yes	species info	Breeding

Golden eagle (*Aquila chrysaetos*)	Yes	species info	Wintering
Grasshopper Sparrow (*Ammodramus savannarum*)	Yes	species info	Breeding
Harris's Sparrow (*Zonotrichia querula*)	Yes	species info	Wintering
Henslow's sparrow (*Ammodramus henslowii*)	Yes	species info	Breeding
Hudsonian Godwit (*Limosa haemastica*)	Yes	species info	Migrating
Kentucky Warbler (*Oporornis formosus*)	Yes	species info	Breeding
Least Bittern (*Ixobrychus exilis*)	Yes	species info	Breeding
Loggerhead Shrike (*Lanius ludovicianus*)	Yes	species info	Year-round
Northern Flicker (*Colaptes auratus*)	Yes	species info	Year-round
Pied-billed Grebe (*Podilymbus podiceps*)	Yes	species info	Breeding
Red-headed Woodpecker (*Melanerpes erythrocephalus*)	Yes	species info	Year-round, Breeding
Rusty Blackbird (*Euphagus carolinus*)	Yes	species info	Wintering
Short-eared Owl (*Asio flammeus*)	Yes	species info	Wintering
Swainson's hawk (*Buteo swainsoni*)	Yes	species info	Breeding
Upland Sandpiper (*Bartramia longicauda*)	Yes	species info	Breeding
Wood Thrush (*Hylocichla mustelina*)	Yes	species info	Breeding

NWI Wetlands (USFWS National Wetlands Inventory).

The U.S. Fish and Wildlife Service is the principal Federal agency that provides information on the extent and status of wetlands in the U.S., via the National Wetlands Inventory Program (NWI). In addition to impacts to

wetlands within your immediate project area, wetlands outside of your project area may need to be considered in any evaluation of project impacts, due to the hydrologic nature of wetlands (for example, project activities may affect local hydrology within, and outside of, your immediate project area). It may be helpful to refer to the USFWS National Wetland Inventory website. The designated FWS office can also assist you. Impacts to wetlands and other aquatic habitats from your project may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal Statutes. Project Proponents should discuss the relationship of these requirements to their project with the Regulatory Program of the appropriate U.S. Army Corps of Engineers District.

Data Limitations, Exclusions and Precautions

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery and/or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Exclusions - Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tuberficid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Precautions - Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

The following wetland types intersect your project area in one or more locations:

U.S. Fish and Wildlife Service

Trust Resources List

Wetland Types	NWI Classification Code	Total Acres
Freshwater Emergent Wetland	PEMF	2.2048
Freshwater Emergent Wetland	PEMA	48.3499
Freshwater Emergent Wetland	PEMC	53.1072
Freshwater Emergent Wetland	PEMCh	1.1471
Freshwater Forested/Shrub Wetland	PFOA	207.6256
Freshwater Forested/Shrub Wetland	PSSA	215.5024
Freshwater Forested/Shrub Wetland	PFO1A	46.369
Freshwater Pond	PUBGx	88.6106
Freshwater Pond	PUBFx	23.3071
Freshwater Pond	PUBHx	2.1697
Freshwater Pond	PUBF	0.1964
Freshwater Pond	PABFx	0.0982
Freshwater Pond	PUBFh	8.8525
Lake	L1UBHx	355.0653
Lake	L2USCx	2.1156
Other	PUSC	0.3399
Riverine	R2UBH	38616.6317
Riverine	R4USFx	6.9546
Riverine	R2USC	671.8236
Riverine	R2USA	84.2546

Attachment B – Environmental Constraints Figure

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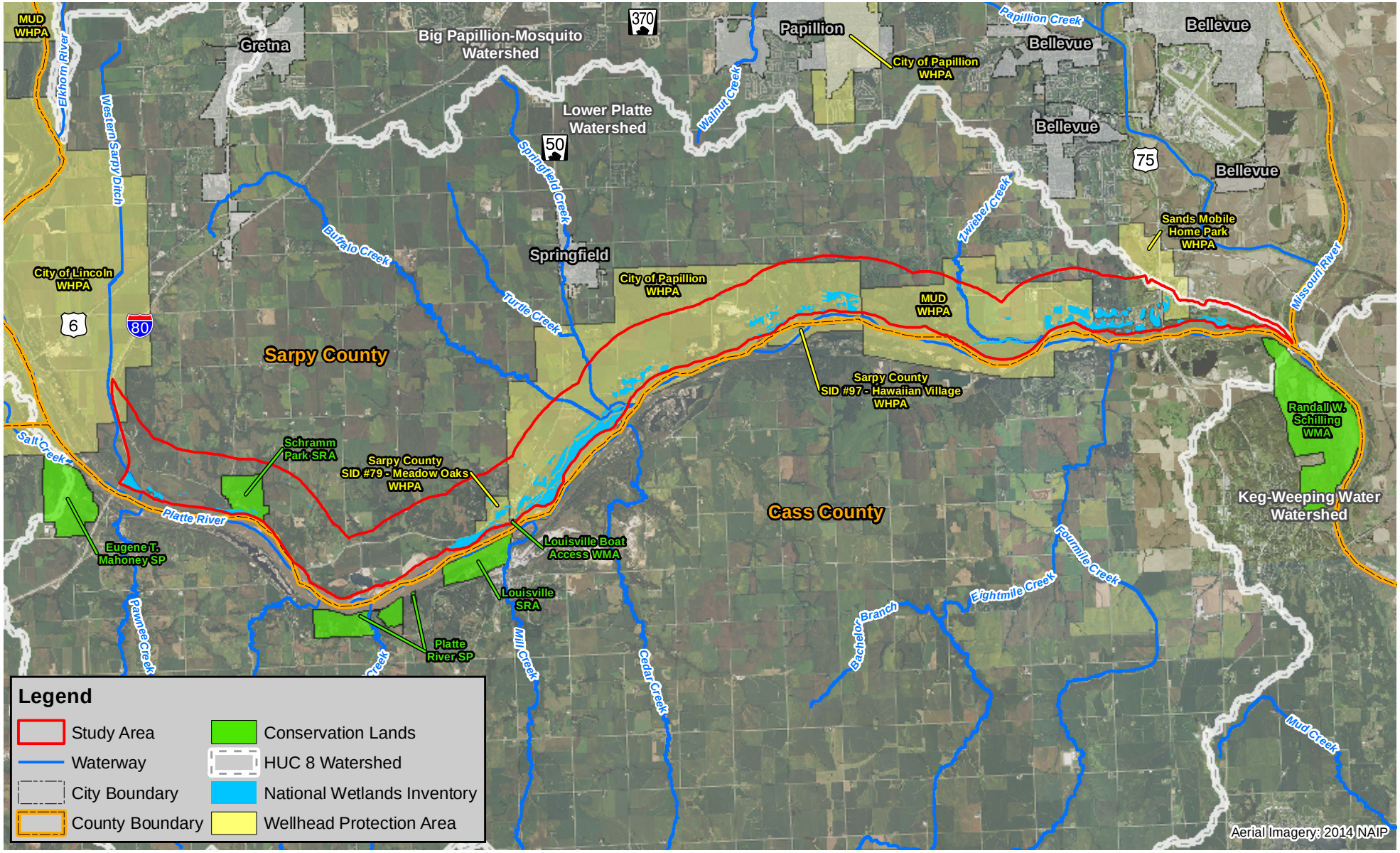


0 2.5
Miles

HDR

Environmental Constraints

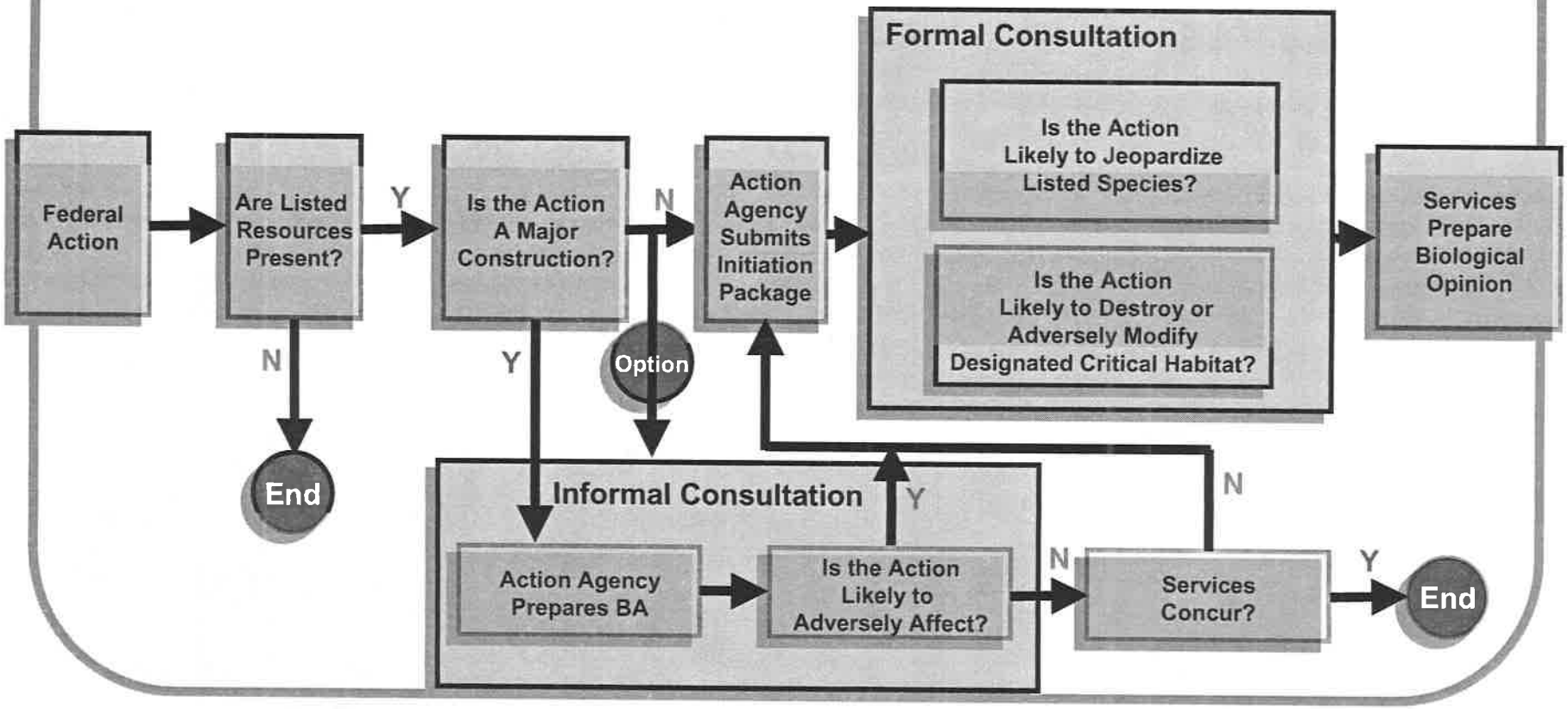
Sarpy County
Southern Sarpy County Wastewater Study - Phase 1A

DATE
March 2015

FIGURE
1

Attachment C – ESA Section 7 Consultation Process Flow Chart

Consultation Process



Regulatory Review Technical Memorandum

To:	Sarpy County
From:	John Christiansen – HDR Trent Stober - HDR David Dechant – HDR
CC:	File
Project:	Southern Sarpy County Wastewater Study – Phase IA
Subject:	Regulatory Review
Date:	Friday, May 22, 2015
Revised:	Wednesday, June 10, 2015 HDR Job Number: 246431

This Technical Memorandum serves as a preliminary regulatory review of potential National Pollutant Discharge Elimination System (NPDES) permit requirements for a wastewater treatment facility (WWTF) discharge to the Platte River system in southern Sarpy County. It is organized as follows:

- Objective
- Summary
- Background
- Water Quality Standards
- Existing Water Quality
- Existing Discharges
- Future Regulatory Requirements
- Mixing Zone Allowance
- Anticipated Effluent Limitations
- Permitting Strategy and Timeline
- References

The following Attachment provide supporting information:

- Attachment A – NPDES Regulatory Study Area
- Attachment B – Planning Flow Chart

Objective

This Technical Memorandum presents NPDES regulatory considerations for a regional WWTF discharge as it pertains to an expanded discharge to Springfield Creek and/or a new discharge to the Platte River in southern Sarpy County. The objective is to develop an approach to obtain an NPDES permit for a regional WWTF discharge to the Platte River, or tributary thereof, from the Nebraska Department of Environmental Quality (NDEQ).

Summary

The regulatory implications of obtaining a National Pollutant Discharge Elimination System (NPDES) permit for a regional wastewater treatment facility (WWTF) discharge in southern Sarpy County were examined based on two potential discharge locations – Springfield Creek and the Platte River. No issues were identified that should preclude regulatory approval of a regional WWTF NDPES permit, but the presence of threatened and endangered species and stakeholder interest in protecting the Platte River will likely necessitate advanced levels of treatment and could delay the permitting process.

Critical path items identified as part of this analysis that will determine permitting conditions include outfall location, mixing allowance, antidegradation review requirements, and nutrient removal limitations. From a permitting perspective, the Platte River is the preferred outfall location as the Nebraska Department of Environmental Quality (NDEQ) has significant hydromodification concerns with a significantly expanded discharge to Springfield Creek and due to increased available mixing in the Platte River. Mixing allowances for a Platte River discharge will need to be determined based on mixing modeling (e.g., CORMIX) and an analysis of the river's braiding characteristics. NDEQ has indicated that the proposed project will not trigger an antidegradation review and that biological nutrient removal (BNR) will be required for a Platte River discharge. However, antidegradation and nutrient removal requirements may ultimately be influenced by the stakeholder process. Therefore, organizations such as the U.S. Fish & Wildlife Service (USFWS), the Nebraska Game and Parks (NGPC), and the Lower Platte River Corridor Alliance (LPRCA) should be engaged early on in the permitting process. Additionally, should funding from the Clean Water State Revolving Fund (CWSRF) be pursued, this would trigger full National Environmental Protection Act (NEPA) clearances, requiring further agency involvement and potentially creating further delays.

Background

A ridgeline separates Sarpy County into a northern portion that drains to Papillion Creek, a tributary to the Missouri River, and a southern portion which drains to the Platte River, also a tributary to the Missouri River (**Attachment A**). Wastewater from developments in the northern portion of Sarpy County is collected and conveyed through Papillion Creek watersheds to the City of Omaha Papillion Creek Wastewater Treatment Facility (WWTF) where it is treated and discharged to the Missouri River.

South of the ridgeline, wastewater from development in the Gretna, Papillion, and Bellevue areas is collected and pumped back over the ridgeline to the Papillion Creek watershed for conveyance to the City of Omaha Papillion Creek WWTF. Wastewater from developments in the Springfield area is collected and conveyed through the Springfield Creek watershed to the Springfield WWTF where it is treated and discharged to Springfield Creek. Wastewater from the outlet mall and related development in the southwest portion of the County is collected and conveyed to the Nebraska Crossing Factory Stores WWTF (hereinafter referred to as the Nebraska Crossing WWTF). The Nebraska Crossing WWTF is an activated sludge package treatment system that discharges to an unnamed tributary of Buffalo Creek, which flows 6.5 miles to the Platte River.

Continued development south of the ridgeline could be limited by the inability to collect and pump wastewater back over the ridgeline and/or by exceeding the capacity of Omaha's Papillion Creek Wastewater collection and treatment system. To address this issue a regional WWTF discharge is being

considered for southern Sarpy County. Planning for a regional facility is in the preliminary stages but could consist of expansion of the Springfield WWTF or a new discharge to the Platte River. Regulatory implications of different potential discharge locations are discussed in this report.

Water Quality Standards

Water quality standards define the goals for a waterbody by designating its beneficial uses (e.g., recreation and warm water aquatic life), setting narrative and numeric criteria to protect those uses, and establishing and implementing an antidegradation policy. Waterbody specific goals help determine what controls are necessary for individual point sources of pollution (e.g., municipal wastewater treatment facilities) as established through the through NPDES permits. Water quality standards (i.e., beneficial uses, water quality criteria, and antidegradation policy) are described below for both the Platte River (segment LP1-10000) and Springfield Creek (segment LP1-10900) (see **Attachment A**). Either segment could serve as the receiving stream for a future Sarpy County Regional WWTF.

Beneficial Use Classifications

Assigned beneficial uses and other stream classifications are identified in Nebraska Department of Environmental Quality (NDEQ) Title 117, Chapter 5. Beneficial use is defined in Title 117 as "*any productive use of surface waters for which water quality is protected.*" Beneficial uses defined by NDEQ standards include:

- Primary Contact Recreation
- Aquatic Life
    - Coldwater (Class A and B)
    - Warmwater (Class A and B)
- Water Supply
    - Public Drinking Water
    - Agriculture
    - Industrial
- Aesthetics

Other stream classifications defined in Chapter 5 include State resource water designations and key species. State resource water designations define the required protection level for maintaining and protecting water quality per NDEQ's antidegradation policy. Key species are identified endangered, threatened, sensitive, or recreationally-important aquatic species. Per NDEQ's Continuing Planning Process (CPP), any activity causing water pollution which would cause a significant adverse impact to an identified "key species" is a violation of water quality standards.

Beneficial uses and other stream classifications provide for overall higher levels of protection for the Platte River than for Springfield Creek (**Table 1**). Unlike Springfield Creek, the Platte River includes multiple key species including two endangered species (Pallid sturgeon and Sturgeon chub) and one threatened species (Lake sturgeon). The Platte River is also assigned a higher aquatic life beneficial use (i.e., Warmwater Class A) and includes protections for recreational use and public drinking water.

Table 1 – Water Quality Classifications

STREAM SEGMENT	USE CLASSIFICATION								KEY SPECIES	COMMENTS
	STATE RESOURCE WATER	RECREATION	AQUATIC LIFE		WATER SUPPLY			AESTHETICS		
			COLDWATER	WARMWATER	PUBLIC DRINKING WATER	AGRICULTURE	INDUSTRIAL			
Platte River – Elkhorn River to Missouri River		●		A	●	●		●	Lake sturgeon, Pallid sturgeon, Sturgeon chub, Blue catfish, White bass, Flathead catfish, Sauger, Walleye	Threatened & Endangered Species
Springfield Creek				B		●		●		

Water Quality Criteria

Water quality criteria designed to protect assigned beneficial uses are identified in NDEQ Title 117, Chapter 4. Title 117 defines water quality criteria as ". . . *the elements of standards which are expressed as concentrations, levels, or narrative statements and represent the quality of water that is necessary to protect a beneficial use*." Existing water quality criteria specific to the Platte River and Springfield Creek are described below for dissolved oxygen (DO), ammonia, pH, *E. coli*, selenium, and atrazine. These parameters are considered likely to be included in a regional facility permit as numeric limits or monitoring requirements based upon water quality impairments and permit requirements for other facilities.

Dissolved Oxygen

Dissolved oxygen criteria vary by season but do not differ between the Platte River and Springfield Creek, which are designated for Class A and B warmwater aquatic life protections, respectively (**Table 2**).

Table 2 – Dissolved Oxygen Criteria

Averaging Period	Platte River (Class A - Warmwater)	Springfield Creek (Class B - Warmwater)
1-day Minimum (Apr - Sep)	≥5 mg/L	≥5 mg/L
1-day Minimum (Oct – Mar)	≥3 mg/L	≥3 mg/L
7-day Mean (Apr – Sep)	≥6 mg/L	≥6 mg/L
7-day Mean (Oct – Mar)	≥4 mg/L	≥4 mg/L
30-day mean (Oct – Mar)	≥5.5 mg/L	≥5.5 mg/L

Ammonia

Ammonia criteria at NDEQ Title 117, Chapter 4 were revised on December 13, 2014 to reflect the U.S. Environmental Protection Agency's (USEPA) 2013 Clean Water Act Section 304(a) ammonia criteria recommendations. USEPA's criteria recommendations for ammonia are based on new information about toxicity of ammonia to aquatic life, specifically freshwater unionid mussels. The revised ammonia criteria represent a significant reduction over NDEQ's previous acute and chronic criteria. Additionally, acute ammonia criteria no longer differ between designated for Class A (i.e., Platte River) and Class B (i.e., Springfield Creek) warmwater aquatic life use protections. Therefore, the revised ammonia criteria are the same for the Platte River and Springfield Creek. Based on a temperature of 22°C and a pH of 7.6 (i.e., summer assumptions used in the Springfield WWTF permit), the revised chronic and acute ammonia criteria would be 1.1 mg/L and 6.7 mg/L, respectively. A comparison of the old and new criteria is presented below as a function of temperature in **Figures 1-2** and as a function of pH in **Figures 3-4**.

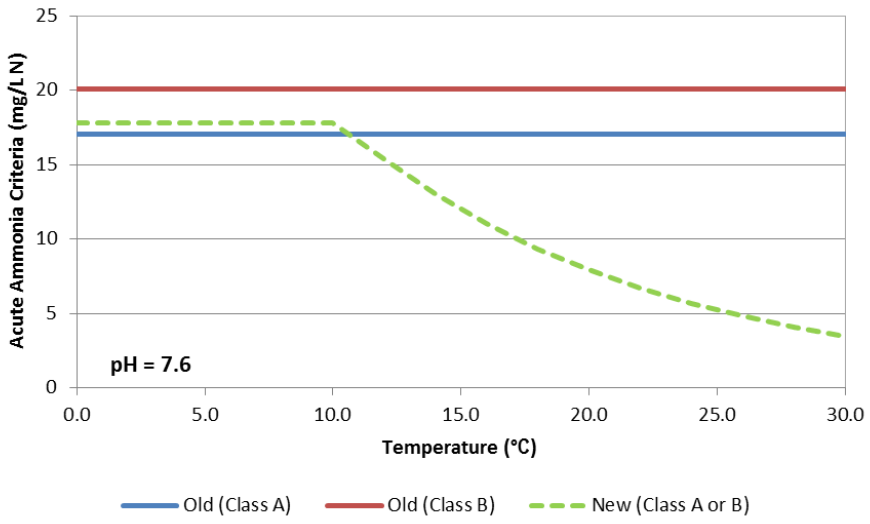


Figure 1. Old and New Acute Ammonia Criteria as a Function of Temperature

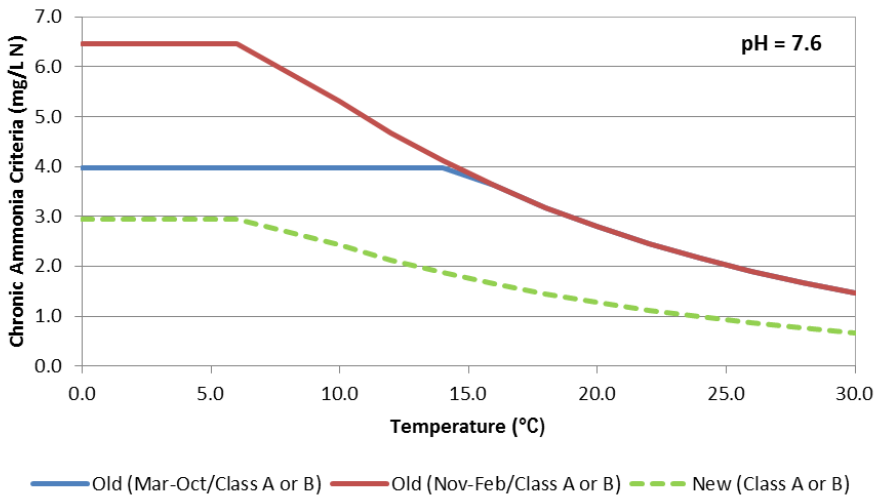


Figure 2. Old and New Chronic Ammonia Criteria as a Function of Temperature

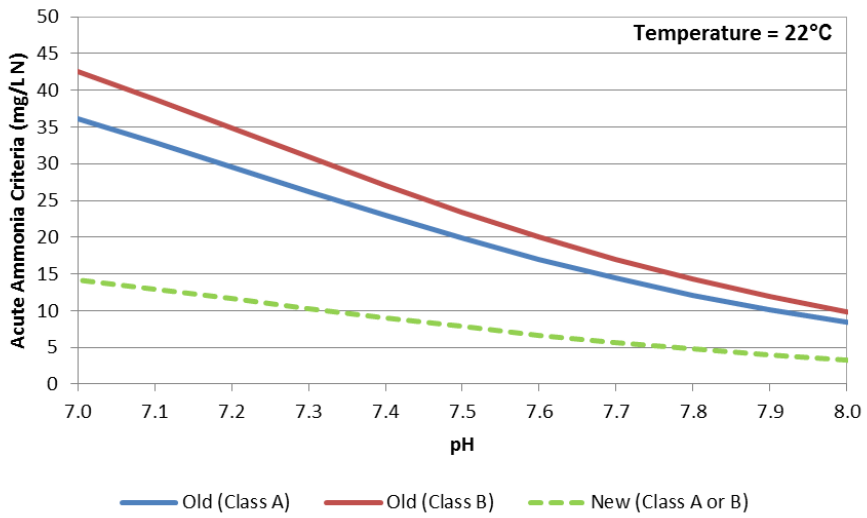


Figure 3. Old and New Acute Ammonia Criteria as a Function of pH

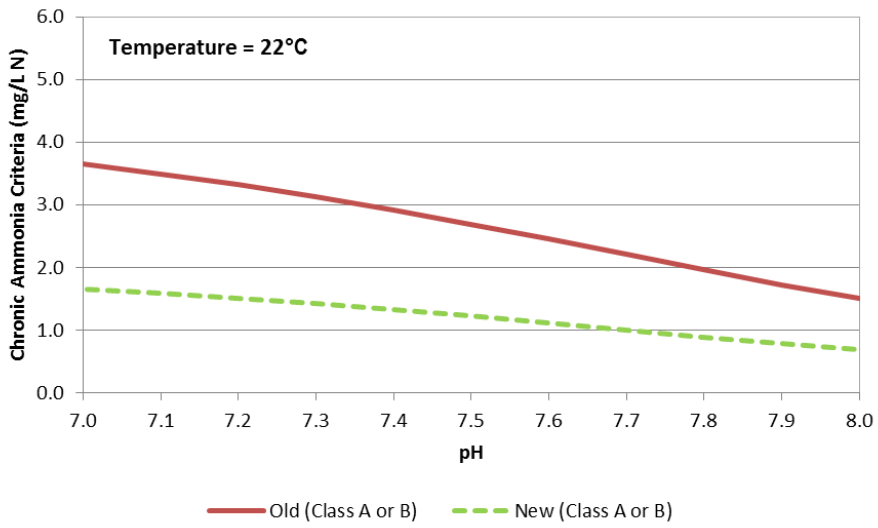


Figure 4. Old and New Chronic Ammonia Criteria as a Function of pH

pH

Hydrogen ion concentrations, expressed as pH, shall be maintained between 6.5 and 9.0; unless pH values outside this range are due to natural conditions. This criterion applies to all aquatic life use classes; therefore, applies to both the Platte River and Springfield Creek.

Escherichia coli

Escherichia coli (*E. coli*) bacteria shall not exceed a geometric mean of 126 cfu/100 mL during the recreational period of May 1 through September 30. This criterion applies to all waters which are used, or have a high potential to be used, for primary contact recreational activities, including the Platte River. The *E. coli* criterion does not apply to Springfield Creek, which is not assigned primary contact recreation use protections. However, it is NDEQ policy is to include disinfection requirements for any facility discharging to a stream segment within 30 stream miles of a recreational water.

Selenium

Selenium criteria apply to multiple beneficial uses including aquatic life, agriculture, and public drinking water. Selenium criteria specific the Platte River and Springfield Creek, and the respective uses are identified below in **Table 3**.

Table 3 – Selenium Criteria

Beneficial Use	Platte River	Springfield Creek
Aquatic Life	Chronic: 5 µg/L (4-day average) Acute: 20 µg/L (1-hour average)	Chronic: 5 µg/L (4-day average) Acute: 20 µg/L (1-hour average)
Agriculture	Not to exceed 20 µg/L	Not to exceed 20 µg/L
Public Drinking Water	Not to exceed 50 µg/L	Not applicable

Atrazine

Atrazine criteria apply to aquatic life and public drinking water. Atrazine criteria specific the Platte River and Springfield Creek, and the respective uses are identified below in **Table 4**.

Table 4 – Atrazine Criteria

Beneficial Use	Platte River	Springfield Creek
Aquatic Life	Chronic: 12 µg/L (4-day average) Acute: 330 µg/L (1-hour average)	Chronic: 12 µg/L (4-day average) Acute: 330 µg/L (1-hour average)
Public Drinking Water	Not to exceed 3 µg/L	Not applicable

Antidegradation

Nebraska's antidegradation policy is contained in NDEQ Title 117, Chapter 3 (Antidegradation Clause), which states:

> *001 The water quality of surface waters, consistent with uses applied in these Standards, shall be maintained and protected. Water quality degradation which would adversely affect existing uses will not be allowed.*
>
> *002 State Resource Waters – Class A – These are surface waters, whether or not they are designated in these Standards, which constitute an outstanding State or National resource, such as waters within national or state parks, national forests or wildlife refuges, and waters of exceptional recreational or ecological significance. Waters which provide a unique habitat for federally designated endangered or threatened species and rivers designated under the Wild and Scenic Rivers Act are also included. The existing quality of these surface waters shall be maintained and protected.*
>
> *003 State Resource Waters – Class B – These are surface waters, whether or not they are designated in these Standards, which possess an existing quality which exceeds levels necessary to maintain recreational and/or aquatic life uses. The existing water quality of these surface waters shall be maintained and protected. However, the State may choose, in accordance with Neb. Rev. Stat 81-1513, to allow lower water quality as a result of important and necessary economic or social development in the area. There shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. In cases where potential water quality impairment associated with a thermal discharge is involved, the method of implementation of this antidegradation policy shall be consistent with Section 316 of the Clean Water Act*.

Nebraska's antidegradation policy is consistent with USEPA's federal antidegradation policy, which provides three levels (tiers) of water quality protection. Paragraph 001 is aligned with USEPA's first tier (Tier 1), which protects water quality for existing uses. Paragraph 003 is aligned with USEPA's second tier (Tier 2), which protects high quality waters. Paragraph 002 is aligned with USEPA's third tier (Tier 3), which protects Outstanding State and National Resource Waters.

Neither the Platte River nor Springfield Creek are currently designated as a State Resource Water (Class A [Tier 3] or Class B [Tiers 2]) in NDEQ Title 117, Chapter 5. Additionally, per conversations with NDEQ,

the Platte River does not constitute "unique habitat for federally designated endangered or threatened species." Therefore, NDEQ does not consider the Platte River a Tier 3 water and antidegradation will not likely necessitate requirements beyond those commensurate with USEPA's first tier protections (i.e., demonstrate that existing uses are protected). Although it appears unlikely, given the presence of threatened and endangered species in the Platte River (e.g., pallid sturgeon) and stakeholder interest in protecting the Platte River, unforeseen circumstances could necessitate Class A or Class B antidegradation protections.

Should Class A or Class B antidegradation protections apply at some point in the future, gaining regulatory approval for a regional WWTF would still be likely. If Class A protections were to apply, which is highly unlikely, a case could potentially be made that a regional facility would be environmentally beneficial and would result in no degradation for pollutants of concern. Class B protections are less stringent and would only require a demonstration of necessity and importance. This is typically accomplished through an alternatives analysis and by documenting the social and economic importance of the project (e.g., to accommodate population growth).

Existing Water Quality

Existing water quality data are used in support of multiple Clean Water Act (CWA) programs, including Section 305(b) and 303(d) integrated reporting requirements, antidegradation, and the National Pollutant Discharge Elimination System (NPDES). Existing water quality as described in NDEQ's most recent Water Quality Integrated Report and as summarized by a review of readily available water quality data are described below for both Springfield Creek and the Platte River.

Water Quality Integrated Report

Section 305(b) of the CWA directs states to prepare a report every two years that describes the status and trends of existing water quality. Section 303(d) of the CWA also requires states to identify waterbodies where existing water quality does not support designated beneficial uses and a Total Maximum Daily Load (TMDL) is deemed necessary. Per the United States Environmental Protection Agency (USEPA) guidance, NDEQ combines the 305(b) and 303(d) reporting requirements into a single "Integrated Report", which is prepared every two (2) years.

Impairments

The 2014 Integrated Report lists the Platte River (LP1-10000) as Category 5 (i.e., impaired and requiring a TMDL) for aquatic life based on elevated levels of selenium and a fish consumption advisory (**Table 5**). The fish consumption advisory is based on fish tissue analyses, which identified a range of hazard index compounds including organics and metals. The 2014 Integrated Report also reports that a TMDL was approved for the Platte River in 2007 based on an *E. coli* standards violation. The TMDL requires discharges to the Platte River must meet an *E. coli* wasteload allocation (WLA) of 126 cfu/100 mL, expressed as a monthly geometric mean.

Impairments identified in the 2014 Integrated Report will not likely have a significant impact on permitting a regional WWTF in southern Sarpy County. Wastewater treatment plants are not considered significant sources of selenium or hazardous compounds responsible for the fish consumption advisory. Additionally, the *E. coli* TMDL should not result in requirements anymore stringent than what would otherwise be required to protect the *E. coli* criterion.

Table 5 – Summary of the 2014 Water Quality Integrated Report

STREAM SEGMENT	RECREATION	AQUATIC LIFE	PUBLIC DRINKING WATER	AGRICULTURE WATER SUPPLY	INDUSTRIAL WATER SUPPLY	AESTHETICS	OVERALL ASSESSMENT	2014 IR[1]	IMPAIRMENTS	POLLUTANTS OF CONCERN	COMMENTS
Platte River (LP1-10000)	S	I	S	S	--	S	I	5	Aquatic Life – Selenium, Fish Consumption Advisory	Selenium, Hazard Index compounds[2]	*E. coli* TMDL approved 9/07, Fish consumption assessment
Springfield Creek (LP1-10900)	--	NA	--	NA	--	NA	--	3	None	NA	NA

Notes: S = Supported Beneficial Use, I = Impaired Beneficial Use, NA = Not assessed. A blank ("--") cell indicates the beneficial use is not assigned to this waterbody in Title 117-Nebraska's Surface Water Quality Standards.
1. 2014 IR Category 3 – Waterbodies where there is insufficient data to determine in any beneficial uses are being met. 2014 IR Category 5 – Waterbodies where one or more beneficial uses are determined to be impaired by one or more pollutants and all of the TMDLs have not been developed.
2. Hazard index compounds – Aroclor-1254 (PCB-1254), Lindane (g-BHC), cis-chlordane, Chlordane, trans-chlordane, DDT, Dieldrin, Heptachlor, Heptachlor Epoxide, Hexachlorobenzene, cis-nonachlor, trans-nonachlor, Oxychlordane, Pentachloroanisole, Trifluralin, Mercury, Cadmium, Selenium.

Surface Water Quality Trends

For purposes of evaluating trends in stream water quality, NDEQ systematically monitors several streams across the state for three parameters: conductivity, atrazine, and ammonia. The results of this analysis can be: increasing trend observed, decreasing trend observed, and not significant (i.e., no increasing or decreasing trend observed). The Department considers a trend to be significant when the p-value is ≤0.05. Trend analysis results for the Platte River (Segment LP1-10000) reported in the 2014 Integrated Report indicate conductivity is increasing (p-value <0.001), atrazine is decreasing (p-value <0.001), and ammonia is not significant (p-value = 0.175). Increasing conductivity could be related to a number of factors (e.g., flow volume, agricultural diversions, wastewater influences), but will not likely impact permitting requirements for a regional WWTF in southern Sarpy County.

Water Quality Data Review

Readily available water quality data were obtained from the Water Quality Portal (WQP)[1] for the Platte River. No water quality data were available for Springfield Creek. The analysis was limited to data from USGS Gage Station 06805500 and NDEQ monitoring station SLP1PLATT150 (**Attachment A**). These stations were considered most representative of the Platte River in the vicinity of the potential future regional WWTF. The analysis was also limited to data collected within the past 10 years (i.e., since 2005). The data are summarized in **Table 6** and are discussed below.

[1] The WQP is a cooperative service sponsored by the United States Geological Survey (USGS), USEPA and the National Water Quality Monitoring Council (NWQMC) that integrates publicly available water quality data from the USGS National Water Information System (NWIS), the USEPA STOrage and RETrieval (STORET) Data Warehouse, and the USDA ARS Sustaining the Earth's Watersheds – Agricultural Research Database System (STEWARDS).

Results of the analysis are generally consistent with findings in the 2014 Integrated Report. The data confirm that the Platte River is currently impaired for selenium. The average selenium concentration is 6.6 µg/L, which exceeds the chronic criterion of 5.0 µg/L. The data also confirm that the Platte River is currently supporting its recreational use as reported in the 2014 Integrated Report. Although the *E. coli* has a recreational season geometric mean of 428 cfu/100 mL for the entire period of record, data collected since 2012 is below the criterion of 126 cfu/100 mL.

The water quality data also suggest the Platte River may be impaired for atrazine and pH. Atrazine and pH were both included as impairments in the 2012 Integrated Report, but were removed from the 2014 Integrated Report. The 2014 Integrated Report notes that "*[d]ata collected in 2012 determined aquatic life use support for pH and public drinking water supply use support for Atrazine*." It is unclear why NDEQ delisted the Platte River for pH as multiple exceedances of the pH criterion range were observed in 2012 and 2013. Similarly, atrazine concentrations exceeded the public drinking water supply criterion of 3 µg/L twice – once in 2010 and once in 2013.

The water quality data summarized in **Table 6** do not suggest any impairment issues for dissolved oxygen (DO), ammonia, or nutrients. DO and ammonia data are within criteria limits. Although nutrient criteria do not currently exist, the geometric means for total nitrogen (TN) and total phosphorus (TP) are not suggestive of any significant issues. The TN geometric mean of 3.1 mg/L is approximately equivalent to USEPA's recommended ecoregional value of 3.3 mg/L for Level III Ecoregion 47, which encompasses the Lower Platte River Basin (USEPA, 2000). The TP geometric mean of 0.6 mg/L exceeds the USEPA's recommended ecoregional value of 0.12, but will not likely impact permitting requirements until such time that NDEQ develops stream nutrient criteria (see Nutrient Section under Anticipated Regulatory Requirements).

Although the water quality data provide some evidence that the Platte River was, or is currently, impaired for selenium, *E. coli*, pH, and atrazine, this does not present any significant regulatory issues with regards to permitting a regional WWTF discharge in southern Sarpy County. Wastewater treatment facilities are not considered significant sources of selenium or atrazine. Additionally, *E. coli* and pH limits will not likely be impacted by instream levels. However, elevated pH levels in the Platte River could result in more stringent ammonia limitations, as ammonia criteria is inversely related to pH. For example, at 22° Celsius the difference between a pH of 7.6 and 8.4 (i.e., median pH in the Platte River) is a chronic criterion of 1.1 mg/L versus 0.36 mg/L.

Table 6 – Summary of Water Quality Data from the Platte River

Parameter	Units	Begin	End	Count	Min	Max	Average	Geomean
Dissolved Oxygen	mg/L	1/11/10	12/3/13	47	7.2	14.5	11.2	11.1
pH	SU	2/24/05	1/21/15	206	7.0	9.6	8.4	8.4**
Ammonia-N	mg/L	1/11/10	12/3/13	25	0.1	0.8	0.1	0.1
Total Nitrogen	mg/L	2/24/05	1/21/15	209	1.5	13	3.2	3.0
Total Phosphorus	mg/L	2/24/05	1/21/15	202	0.2	3.4	0.6	0.6
Atrazine	µg/L	4/7/10	9/6/13	20	0.1	4.8	1.0	0.4
Selenium	µg/L	1/11/10	10/8/13	8	5.0	11.4	6.6	6.4
*E. coli**	cfu/100 mL	6/13/07	9/29/14	55	6	20,000	2,777	428

Notes: Data were compiled from USGS Gage Station 06805500 and NDEQ monitoring station SLP1PLATT150, which have the same location in the Platte River. The data analysis was limited to data collected within the past 10 years (i.e., since 2005).

E. coli data are limited to samples collected within the recreational season (i.e., May 1 – September 30).
**8.4 represents the median value for pH.

Existing Discharges

Permit limits and effluent quality for the Nebraska Crossing, Springfield and Louisville WWTFs are characterized in this section. Characterization of these facilities provides insight regarding different potential permitting requirements as well as existing loading conditions. Characterization of the existing discharges also supports the identification of the appropriate antidegradation pathway, if ultimately applicable.

Permit Limits

Permit limits for the Nebraska Crossing, Springfield and Louisville WWTFs are based on a combination of secondary treatment standards and water quality-based effluent limits (WQBELs). Secondary treatment standards apply to all mechanical facilities regardless of the receiving water. WQBELs are waterbody specific and are based on factors, including, but not limited to, allowable dilution, beneficial uses, and stream conditions. Permit limits and monitoring requirements for these facilities are summarized in **Table 7**. The basis for these limits is provided in more detail below.

- **pH** – pH limits apply "end-of-pipe" at all three facilities, meaning limits are established without any consideration of dilution or receiving water conditions (i.e., limits equal criteria).

- **$CBOD_5$** – Secondary treatment standards apply at all three facilities (i.e., monthly average and daily maximum of 25 and 40 mg/L, respectively).

- **TSS** - Secondary treatment standards apply at all three facilities (i.e., monthly average and daily maximum of 30 and 45 mg/L, respectively).

- **Ammonia** – Water quality-based ammonia limits apply to all three facilities and are designed to protect the old (i.e., non-mussels-based) instream acute and chronic criteria. The calculation of these limits is based on stream design flows, receiving stream design parameters, effluent design flow parameters, and receiving stream information. However, the primary difference between the three facilities is the allowable mixing ratio (see Mixing Zone Allowance section). Based on the significant amount of available dilution available from the Platte River, the Louisville WWTF has no "reasonable potential" to exceed instream criteria; therefore, has monitoring only requirements. "Reasonable potential" is determined according to a statistical procedure described in the USEPA's 1991 "Technical Support Document for Water Quality-based Toxics Control" (TSD).

- ***E. coli*** – All three facilities have monthly geometric mean *E. coli* limit of 126 cfu/100 mL, based on protecting recreational uses in the Platte River. Although Buffalo Creek and Springfield Creek are not designated for recreational use, it is NDEQ's policy to include disinfection requirements for any facility discharging to a stream segment within 30 stream miles of a recreational water. The Nebraska Crossing and Springfield WWTFs also have a daily maximum *E. coli* limit of 298 cfu/100 mL. The daily maximum is included based on Best Professional Judgment that the single sample maximum advisory level for moderately used recreational waters should be upheld on any given sample for protection of human health where intimate contact with the water occurs.

Although the Louisville WWTF does not currently have a daily maximum *E. coli* limit, it potentially could receive one during the next permit renewal.

- **Selenium** – Although wastewater treatment facilities are not considered a significant source of selenium, selenium limits do apply to the Louisville WWTF. This is likely due to the fact that the Platte River is Section 303(d) impaired for selenium. It is unclear how the selenium limits were calculated, but they appear to be water quality-based and likely vary according to seasonal flow values in the Platte River. Selenium limits do not apply to the Nebraska Crossing or Springfield WWTFs.

Table 7 – Current NPDES Permits for the Nebraska Crossing, Springfield and Louisville WWTFs

	Nebraska Crossing WWTF	Springfield WWTF	Louisville WWTF
Effective Date	January 1, 2012	April 1, 2013	October 1, 2010
Design Flow	0.05 MGD	0.34 MGD	0.31 MGD
Receiving Stream	Unnamed Tributary of Buffalo Creek	Springfield Creek	Platte River
pH	6.5 min, 9 max	6.5 min, 9 max	6.5 min, 9 max
$CBOD_5$	• 25 mg/L monthly average • 40 mg/L weekly average	• 25 mg/L monthly average • 40 mg/L weekly average	• 25 mg/L monthly average • 40 mg/L weekly average
Total Suspended Solids	• 30 mg/L monthly average • 45 mg/L weekly average	• 30 mg/L monthly average • 45 mg/L weekly average	• 30 mg/L monthly average • 45 mg/L weekly average
Ammonia-N (Mar – May)	• 26.26 mg/L monthly average • 52.68 mg/L daily max	• 5.20 mg/L monthly average • 16.36 mg/L daily max	Monitoring only
Ammonia-N (Jun – Oct)	• 18.91 mg/L monthly average • 39.03 mg/L daily max	• 4.69 mg/L monthly average • 13.99 mg/L daily max	Monitoring only
Ammonia-N (Nov – Feb)	• 23.04 mg/L monthly average • 38.01 mg/L daily max	• 5.27 mg/L monthly average • 16.69 mg/L daily max	Monitoring only
E. coli	• 126 cfu/100 mL monthly geometric mean • 298 cfu/100 mL maximum	• 126 cfu/100 mL monthly geometric mean • 298 cfu/100 mL maximum	• 126 cfu/100 mL monthly geometric mean
Selenium (Mar – May)	NA	Monitoring only	• 1.15 mg/L monthly average • 2.31 mg/L daily max
Selenium (Jun – Oct)	NA	Monitoring only	• 0.29 mg/L monthly average • 0.58 mg/L daily max
Selenium (Nov - Feb)	NA	Monitoring only	• 0.58 mg/L monthly average • 1.17 mg/L daily max
Atrazine	NA	Monitoring only	Monitoring only
Other[1]	NA	Monitoring only	NA

Notes: $CBOD_5$ – carbonaceous biochemical oxygen demand (5-day).
[1]Other includes: Temperature, Total Nitrogen, Total Phosphorus, Dissolved Oxygen, Total PCB, Mercury, Oil & Grease, and Total Dissolved Solids.

Effluent Quality

Existing effluent quality was characterized for the Nebraska Crossing, Springfield, and Louisville WWTFs based on discharge monitoring report (DMR) data obtained from USEPA's Enforcement and Compliance History Online (ECHO) website for the years 2012 through 2014. DMR data summarized in **Table 8**

below indicate all three facilities produce relatively high effluent quality that generally exceeds permit requirements. The only apparent permit violation was an ammonia sample of 54.7 mg/L from the Nebraska Crossing WWTF. This violation appears to be anomalous as all but 2 of the 11 ammonia samples from the Nebraska Crossing WWTF were below 0.5 mg/L. Based on this analysis, there do not appear to be any issues regarding the regulatory approval of a new regional WWTF discharge in southern Sarpy County.

Table 8 – Discharge Monitoring Report Summary Statistics for the Springfield and Louisville WWTFs

Parameters	Units	Facility	n	ND[1]	Min	Max	Avg
pH	SU	Nebraska Crossing	11	--	7.2	7.6	7.5[2]
		Springfield	39	--	7.0	7.8	7.3[2]
		Louisville	39	--	6.9	8.2	7.3[2]
$CBOD_5$	mg/L	Nebraska Crossing	11	0	2.0	11.0	4.8
		Springfield	39	6	2.0	9.0	3.7
		Louisville	39	13	2.0	5.0	2.6
Total Suspended Solids	mg/L	Nebraska Crossing	11	5	4.0	19	7.3
		Springfield	39	24	4.0	19	5.4
		Louisville	39	22	4.0	8.0	4.5
Ammonia-N	mg/L	Nebraska Crossing	11	5	0.1	54.7	6.2
		Springfield	39	29	0.1	3.1	0.2
		Louisville	12	8	0.1	3.1	0.4
E. coli	#/100 mL	Nebraska Crossing	13	5	1	62	3[3]
		Springfield	10	6	1	6	2[3]
		Louisville	15	8	1	41	2[3]
Selenium	mg/L	Louisville	12	2	0.001	0.003	0.002

Notes: Abbreviations: $CBOD_5$ – carbonaceous biochemical oxygen demand (5-day).
[1] ND – Number of non-detects
[2] Median
[3] Geomean

Mixing Zone Allowance

The mixing zone allowance is potentially the most significant factor that will drive NPDES permit limits for a regional WWTF. USEPA's 1991 TSD document defines a mixing zone as follows:

> "*a mixing zone is an area where an effluent discharge undergoes initial dilution and is extended to cover the secondary mixing in the ambient waterbody. A mixing zone is an allocated impact zone where water quality criteria can be exceeded as long as acutely toxic conditions are prevented*."

Mixing zone allowances effectively decrease treatment requirements by authorizing an applicable criterion to be exceeded within a defined area of the waterbody where initial dilution of a discharge takes place (**Figure 5**). The applicability and size of the mixing zone is determined by the NDEQ and restrictions in Title 117, Chapter 2 (Application of Standards). However, all mixing zones are based on critical conditions of minimum dilution, which are determined by NDEQ as follows:

- The 7-day 10-year low flow (7Q10) shall be used for application of all criteria with the exception of acute and chronic ammonia criteria.
- The 30-day 5-year low flow (30Q5) of the receiving stream shall be used for application of thirty-day average ammonia criteria.
- The 1-day 10-year low flow (1Q10) of the receiving stream shall be used for application of acute criteria.

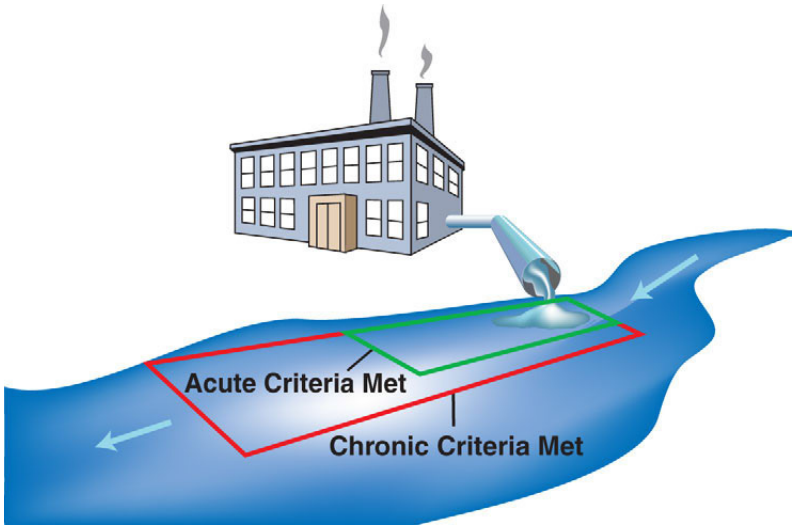


Figure 5. Regulatory Mixing Zones for Aquatic Life (Figure obtained from USEPA's NPDES Permit Writer's Manual)

Critical flows are significantly higher on the Platte River than Springfield Creek; therefore, a discharge to the Platte River could result in a significantly larger mixing zone allowance than to a smaller tributary such as Springfield Creek. Flows on the Platte River are highly regulated and ultimately need to be determined in consultation with NDEQ. However, based on critical flows assumed in the Louisville WWTF permit, the 1Q10 ranges from 844 to 2,945 cfs and the 30Q5 ranges from 2,136 to 5,649 cfs (**Table 9**). For smaller streams like Springfield Creek, NDEQ assumes default critical flow values (i.e., 1 cubic feet per second (cfs) for the 7Q10 and 30Q5 [applicable to chronic criteria], and 0.1 cfs for the 1Q10 [applicable to acute criteria]).

The allowable percent mixing with the critical flow values is also site specific and would need to be determined in consultation with NDEQ. For smaller streams with default flow values, NDEQ assumes 100 percent mixing with the 30Q5 and 7Q10, and 50 percent mixing with the 1Q10. For larger rivers such as the Platte, NDEQ has indicated that a CORMIX[2] mixing model will be required. Additionally, NDEQ has indicated that the braided channel characteristics of the Platte River in the vicinity of the outfall would need to be evaluated. Stream braiding effectively reduces the mixing zone allowance as it splits flow into different channels.

Mixing zone allowances are site-specific and ultimately must be based on results of a CORMIX model for a Platte River discharge and determined in consultation with NDEQ. Without additional analyses and

[2] CORMIX is a USEPA-supported mixing zone model and decision support system for environmental impact assessment of regulatory mixing zones resulting from continuous point source discharges.

consultation with NDEQ, it is unclear exactly what critical stream flows and percent mixing would apply for a new discharge to Springfield Creek or the Platte River. However, a review of allowable mixing allowances at other facilities in the vicinity suggests that mixing may be minimal (**Table 9**). While examples of small river discharges (e.g., Nebraska Crossing and Springfield WWTFs) indicate relatively large dilution factors, effluent from the proposed facility would dominate flow to Springfield Creek and effectively reduce mixing to zero. Dilution factors for the Louisville WWTF Platte River discharge are relatively high, but are not necessarily indicative of what a new regional facility would receive. Factors such as a larger effluent flow rate and considerations of stream braiding may reduce the available allowable dilution.

Table 9 – Mixing Zone Allowances

	Nebraska Crossing WWTF			Springfield WWTF			Louisville WWTF		
Receiving Stream	**Trib. to Buffalo Creek**			**Springfield Creek**			**Platte River**		
Season	**Sp**	**Su**	**Wi**	**Sp**	**Su**	**Wi**	**Sp**	**Su**	**Wi**
Effluent (cfs)	0.029	0.032	0.029	0.190	0.198	0.186	0.109	0.126	0.099
Critical Stream Flow									
1Q10 (cfs)	0.1	0.1	0.1	0.1	0.1	0.1	2,945	844	1,484
7Q10 (cfs)	1	1	1	1	1	1	3,500	1,049	1,903
30Q5 (cfs)	1	1	1	1	1	1	5,649	2,136	3,663
Percent Mixing									
1Q10	50%	50%	50%	50%	50%	50%	0.9%	0.9%	0.9%
7Q10	100%	100%	100%	100%	100%	100%	3.7%	3.9%	3.8%
30Q5	100%	100%	100%	100%	100%	100%	3.7%	3.9%	3.8%
Dilution Factor									
1Q10	1.7	1.6	1.7	0.3	0.3	0.3	243	60	135
7Q10	34	31	34	5.3	5.1	5.4	1,188	325	730
30Q5	34	31	34	5.3	5.1	5.4	1,918	661	1,406

Notes: NDEQ applied default critical stream flows and percent mixing values to the Nebraska Crossing and Springfield WWTF permits. Dilution factor equals allowable mixing flow divided by effluent flow.

Future Regulatory Requirements

The implications of potential changes to bacteria criteria, nutrient treatment requirements, and the federal standards rule are discussed below.

Bacteria

In 2012, USEPA updated the ambient water quality criteria recommendations for recreational waters. The revised recommendations continue to include an *E. coli* criterion of 126 cfu/100 mL, but added a statistical threshold value (STV) of 410 cfu/100 mL. The STV value effectively serves as a single sample maximum criterion value and has the potential to result in more recreational use impairments. However, should NDEQ adopt USEPA's 2012 recommendations, this would not likely have a significant impact for dischargers to the Platte River, which already has an *E. coli* TMDL.

A criticism of the USEPA's 2012 recommendations is that *E. coli* does not contribute to the majority of illnesses associated with primary contact recreation and does not correlate well with viruses. To address

these issues, USEPA is currently moving to develop virus (bacteriophage) criteria within the next five to seven years. Bacteriophages are viruses that infect bacteria and are considered a better surrogate of pathogenic organisms. Bacteriophage-based criteria could potentially have operational implications for wastewater treatment facilities as UV disinfection alone may not be sufficiently effective at typical dosage rates.

HDR inquired about NDEQ's views on USEPA's planned virus (bacteriophage) criteria that are currently under development. NDEQ indicated they do not foresee implementing virus limits in permits based on USEPA's development of virus criteria. NDEQ indicated that future virus criteria would most likely be for assessing streams if adopted and that implementation of these criteria into permit limits would be impracticable.

Nutrients

In 2007, a technical advisory committee (TAC) was formed to assist NDEQ with the development of nutrient criteria (e.g., nitrogen and phosphorus), but NDEQ has yet to adopt numeric nutrient criteria for streams. USEPA is continuing to encourage states to adopt nitrogen and phosphorus criteria and in 2011 issued a memorandum suggesting a framework for states to address nutrient pollution. At this time, it is not clear when NDEQ will adopt numeric nutrient criteria for streams, but NDEQ will likely require nutrient effluent limitations within the next one or two permit cycles.

Similar to Nebraska, no other state in USEPA Region 7 has adopted stream numeric nutrient criteria; however, other Region 7 states including Kansas and Iowa have developed nutrient reduction plans that require nutrient limits commensurate with biological nutrient reduction (BNR). The Kansas nutrient reduction plan requires facilities greater than 1 MGD to have total nitrogen (TN) and total phosphorus (TP) limits of 8 mg/L and 1.5 mg/L, respectively. Alternatively, the Kansas Department of Health and Environment has also been accepting TN and TP limits of 10 mg/L and 1 mg/L, respectively. The Iowa nutrient reduction plan also calls on major WWTPs to have a minimum TN and TP limit of 10 mg/L and 1 mg/L, respectively.

Based on conversations with NDEQ, the proposed regional facility will require BNR (nitrogen and phosphorus). BNR requirements would likely be commensurate with Kansas and Iowa requirements (i.e., TN and TP goals of 10 mg/L and 1 mg/L, respectively). However, given stakeholder interest in protecting the Platte River, unforeseen circumstances could ultimately necessitate lower nutrient limitations (.e.g., TN and TP limits of 5 mg/L and 0.5 mg/L, respectively).

Federal Water Quality Standards Rule

In September 2013, USEPA published proposed changes to the federal water quality standards (WQS) in the Federal Register (78 FR 54518-54546). The proposed rule addresses six WQS program areas including:

- administrator's determinations that new or revised WQS are necessary,
- designated uses for waterbodies,
- triennial reviews,
- antidegradation,
- variances to WQS, and
- compliance schedule authorizing provisions

Key with regards to constructing a new regional WWTF, the proposed rule could impact how NDEQ implements antidegradation. NDEQ does not currently apply Class A or Class B antidegradation protections to most waters of the state; therefore, does not require an alternatives analysis (i.e., demonstration of necessity) for most new or expanded discharges. The proposed rule could change this by clarifying that states ***must*** conduct an alternatives analysis in order to support state decision-making on whether to authorize limited degradation of high quality water. Effectively, the federal standards rule could force NDEQ to start applying their antidegradation policy to most all new or expanded WWTFs.

Although the federal water quality standards rule may result in more stringent antidegradation requirements (e.g., alternatives analysis), it should not prevent regulatory approval for a regional WWTF. As previously discussed, a case could potentially be made that the regional facility would be environmentally beneficial and would result in no degradation. Even with limited degradation, a new WWTF should receive regulatory approval provided an alternatives analysis has been completed and there is a demonstration of social and economic importance (e.g., to accommodate population growth).

Anticipated Effluent Limitations

Effluent limitations for a new regional WWTF in southern Sarpy County were estimated for two potential discharge locations – Springfield Creek and the Platte River. The estimated effluent limitations are based on an assumed design average flow of 11 MGD and are for planning level purposes only. Effluent limitations will ultimately be determined in consultation with NDEQ upon submittal of a permit application. Although final effluent limitations may differ from estimations presented here, it is apparent from initial conversations with NDEQ that a regional WWTF in southern Sarpy County will likely require advanced levels of treatment (e.g., BNR).

A range of estimated effluent limitations are presented in **Table 10** for both a Springfield Creek and Platte River discharge. Low-end estimates represent more conservative assumptions and in some instances may exceed both technology and water quality-based effluent limitations. Mixing zone allowances for a Platte River discharge were assumed to range from zero to percentages consistent with the Louisville permit presented in **Table 9**. Additional dilution may ultimately be justified through mixing modeling. Additional discussion regarding estimated effluent limitations is provided below for each parameter.

- **pH** – pH limits will likely apply "end-of-pipe" for either discharge location. Therefore, consistent with pH criteria, pH limits will likely be expressed as a range from 6.5 to 9.

- **$CBOD_5$** – Technology-based $CBOD_5$ limits will likely apply for either discharge location. The upper estimated limits are bound by secondary treatment standards (i.e., monthly average and daily maximum of 25 and 40 mg/L, respectively). The lower estimated limits are based on anticipated effluent quality commensurate with advanced levels of treatment (i.e., monthly average and daily maximum of 10 and 15 mg/L, respectively). Lower $CBOD_5$ limits could potentially apply if NDEQ requires a demonstration that effluent limitations are protective of DO criteria. Lower effluent limitations could also be required based on NDEQ's best professional judgment.

- **TSS** – Technology-based TSS limits will likely apply for either discharge location. The upper estimated limits are bound by secondary treatment standards (i.e., monthly average and daily maximum of 30 and 45 mg/L, respectively). The lower estimated limits are based on anticipated effluent quality commensurate with advanced levels of treatment (i.e., monthly

average and daily maximum of 15 and 20 mg/L, respectively). Lower effluent limitations could also be required based on NDEQ's best professional judgment.

- **Ammonia** – Water quality-based ammonia limits will likely be required for either discharge location. Ammonia limits are highly site-specific and are driven by multiple factors including allowable mixing allowance, background ammonia concentration, stream pH, stream temperature, and effluent variability as determined by the coefficient of variability (CV). Assumptions used for purposes of estimating effluent limits are discussed below:
    - *Mixing Allowance* – Default mixing consistent with the Springfield WWTF permit was assumed for a Springfield Creek discharge. Mixing assumptions for a Platte River discharge were assumed range from half up to the full allowable mixing found in the Louisville permit. Final mixing allowances could be higher or lower depending on results of a mixing model and assessment of braiding characteristics in the Platte River.
    - *Background ammonia* - Background ammonia levels were based on values used in the Springfield and Louisville permits. Background chronic ammonia levels ranged from 0.1 to 0.2 mg/L and 0.06 to 0.163 mg/L for the Springfield and Louisville permits, respectively. Background acute ammonia levels ranged from 0.55 to 1.108 mg/L and 0.13 to 0.35 mg/L for the Springfield and Louisville permits, respectively.
    - *pH* – The instream pH was assumed to range from 7.6 to 7.8 for the Springfield Creek discharge based on values used in the Springfield WWTF permit. The instream pH for the Platte River discharge was assumed to range from 7.6 (i.e., pH used for Louisville WWTF permit) to 8.4 based on actual stream data summarized in **Table 6**.
    - *Temperature* – Spring, summer, and winter stream temperatures of 15°C, 22°C, and 6°C, respectively, were assumed for both discharge locations based on assumptions used in the Springfield permit.
    - *CV* – A CV value of 0.6 was assumed for both discharge locations and for all seasons.

- **Total Nitrogen** –Based on conversations with NDEQ, limits commensurate with BNR will likely apply (i.e., 10 mg/L), but lower nitrogen limits (e.g., 5 mg/L) could be driven by water quality considerations (e.g., protection of threatened and endangered species).

- **Total Phosphorus** –Based on conversations with NDEQ, limits commensurate with BNR will likely apply (i.e., 1 mg/L), but lower phosphorus limits (e.g., 0.5 mg/L) could be driven by water quality considerations (e.g., protection of threatened and endangered species).

- ***E. coli*** – A monthly geometric mean and daily maximum *E. coli* limit of 126 and 298 cfu/100 mL, respectively, will likely apply for either discharge location.

- **Selenium** – Wastewater treatment facilities are not typically considered a significant source of selenium; therefore, selenium limits may not be necessary for either discharge location. However, selenium limits should be assumed for planning purposes for a Platte River discharge based on the Louisville permit. Potential selenium limits presented in Table 10 are based on mixing assumptions used in the Louisville permit.

Mixing zone allowances are site-specific and ultimately must be determined in consultation with NDEQ.

Table 10 – Estimated NPDES Permit Limits for a Regional Facility Discharge to Springfield Creek and the Platte River

Parameters	Units	Receiving Stream					
		Springfield Creek			Platte River		
		Monthly Avg	7-Day Avg	Daily Max	Monthly Avg	7-Day Avg	Daily Max
pH	SU	Range = 6.5-9.0			Range = 6.5-9.0		
$CBOD_5$	mg/L	10-25	15-40	--	10-25	15-40	--
Total Suspended Solids	mg/L	15-30	20-45	--	15-30	20-45	--
Ammonia-N (Mar – May)	mg/L	1.4-1.7		3.6-4.5	1.8-11.9		4.6-31.1
Ammonia-N (Jun – Oct)	mg/L	0.7-1.1		1.8-2.9	0.7-3.7		1.8-9.6
Ammonia-N (Nov – Feb)	mg/L	2.3-2.9		6.0-7.5	2.1-12.0		5.5-31.4
Total Nitrogen	mg/L	5-10	--	--	5-10	--	--
Total Phosphorus	mg/L	0.5-1	--	--	0.5-1	--	--
E. coli	#/100 mL	126[1]	--	298	126[1]	--	298
Selenium (Mar – May)	mg/L	Report			0.019	--	0.051
Selenium (Jun – Oct)	mg/L	Report			0.011	--	0.029
Selenium (Nov - Feb)	mg/L	Report			0.014	--	0.035

Notes: Abbreviations: $CBOD_5$ – carbonaceous biochemical oxygen demand (5-day).
[1] Monthly geometric mean

Permitting Strategy and Timeline

The likelihood of gaining regulatory approval and an NPDES permit for a regional WWTF in southern Sarpy County is high, but may take prolonged cooperation with the NDEQ and other stakeholder such as the U.S. Fish & Wildlife Service (USFWS),the Nebraska Game and Parks (NGPC), and the Lower Platte River Corridor Alliance (LPRCA). Whether a regional facility discharges to the Platte River or a tributary thereof, protecting aquatic life in the Platte River will likely be the primary objective of the NDEQ. The Platte River is home to multiple threatened and endangered species including the pallid sturgeon and as such is a conservation focus area. Increased attention on protecting the Platte River may result in NDEQ requiring advanced levels of treatment and a prolonged permitting process.

Potentially the most significant regulatory hurdle for permitting a regional WWTF discharge in southern Sarpy County is antidegradation. Although NDEQ indicated that antidegradation would not present a significant regulatory hurdle, stakeholder interest could necessitate more thorough demonstrations and additional water quality studies through the antidegradation process. Additionally, depending on the timing of the project, NDEQ could revise antidegradation requirements based on the federal water quality standards regulation, if adopted as proposed. Should a State Resource Water designation ultimately apply, antidegradation regulations would additionally require a demonstration of necessity and importance. A potential strategy for addressing these and other NPDES regulatory concerns is outlined below. An overall planning approach is provided as a flow chart in **Attachment B**.

Strategy

Several critical path items that will ultimately dictate permitting conditions need to be determined early on in consultation with NDEQ and potentially the USFWS,NGPC, and LPRCA as discussed below.

- **Outfall Location** – The final outfall location has significant implications with regards to regulatory acceptance and mixing zone allowances. NDEQ has indicated a strong preference for a Platte River discharge over Springfield Creek due to potential hydromodification concerns. Specifically, NDEQ is concerned that the Springfield Creek channel may enlarge due to the increased flow. Additionally, Springfield Creek offers no benefit with regard to mixing zone allowances. Potentially, the only significant advantage of a Springfield Creek discharge is in terms of pH. The Platte River has relatively high pH levels, which could necessitate more stringent ammonia limits. However, higher pH assumptions would likely be more than offset by increased mixing.

- **Antidegradation** - Based on current regulations and discussion with NDEQ, an antidegradation review commensurate with Class A or Class B State Resource Waters is not likely for a discharge to the Platte River. Therefore, antidegradation requirements beyond protecting designated beneficial uses, should not be necessary. However, should stakeholder involvement and unforeseen circumstances ultimately necessitate an antidegradation review, potential antidegradation pathways are discussed below.

- **Mixing Allowance** - The mixing allowance will have a significant impact on permit limits and is highly site-specific. NDEQ has indicated that a mixing allowance would be applicable for a Platte River discharge, but will require a mixing model and an assessment of channel braiding. The modeling and assessment should be coordinated with NDEQ and need to be completed before effluent limits can be determined.

- **Nutrient Limitations** – NDEQ does not currently have a firmly established policy for issuing nutrient limits. Based on initial conversations, NDEQ will likely require nutrient limits commensurate with BNR (i.e., TN = 10 mg/L and TP = 1 mg/L). However, given the focus on protecting the Platte River and the potential influence of the USFWS, NGPC, and LPRCA, lower nutrient limits may ultimately be required (e.g., TN = 5 mg/L and TP = 0.5 mg/L). As there is no clear regulatory requirement for nutrient limits at this time, nutrient limits should not be made more stringent that what is cost-effective or necessary to protect existing uses. An argument for avoiding unnecessary additional nutrient reductions is that it would not result in any meaningful environmental benefits in the near-field and that far-field (i.e., Gulf of Mexico) impacts are a non-point source issue.

Although antidegradation protections commensurate with Class A or Class B State Resource Waters are unnecessary based on current regulations, an antidegradation review may ultimately be required based on USEPA's standards rule or due to increased interest in applying special protections to the Platte River. Should it become necessary, potential strategies for addressing a Class A or Class B review are discussed below.

Class A – Tier 3 Antidegradation Review

Class A State Resource Waters are aligned with USEPA's third tier (i.e., Tier 3), which protects Outstanding State and National Resource Waters. Tier 3 waters are afforded the highest levels of protection, effectively prohibiting any degradation that is not temporary. The Platte River is not an Outstanding State or National Resource Water suggesting that it should not be afforded such protections. Additionally, NDEQ expressed that the Platte River does not constitute "*unique habitat for federally designated endangered or threatened species*." However, if this position were ever challenged, Tier 3 protections could apply.

In the unlikely event that a Tier 3 antidegradation review is necessary, no permanent degradation can be allowed and existing water quality must be maintained. It is unclear whether NDEQ would issue an NPDES permit for a new or expanded discharge in such a circumstance. However, a case could potentially be made that with a sufficiently advanced level of treatment that existing water quality would be maintained after mixing. The environmental benefits of regionalization could also be used as an argument to support regulatory approval. Without a regional facility, the inevitable growth in Sarpy County would likely be serviced by less effective package plants and septic systems. In addition, water quality trading to reduce nonpoint sources of pollution could be used to offset the new facility's loads.

Class B – Tier 2 Antidegradation Review

If an antidegradation review is required for regional WWTF in southern Sarpy County, it most likely would be a Tier 2. A Tier 2 antidegradation review requires a demonstration of necessity and importance unless the proposed discharge is *de minimis* (i.e., minimally degrading). A demonstration of necessity is made by conducting an alternatives analysis, which is a structured evaluation of less- and non-degrading alternatives to a new or expanded discharge. The least degrading alternative that is practicable and cost-effective is selected. A demonstration of importance is made by an evaluation of social and economic factors. Typically, demonstrating that a new or expanded facility is necessary to accommodate population growth is sufficient.

De minimis could potentially be demonstrated in lieu of, or in addition to, a demonstration of necessity and importance. *De minimis*, or minimal degradation, may be justified based on a sufficiently advanced level of treatment and mixing from the Platte River. *De minimis* would not likely apply to a direct discharge to Springfield Creek where there is little available dilution. The basis for *de minimis* would be that a regional WWTF effluent flow to the Platte River would likely comprise less than 2 percent of the critical 7Q10 summer flow conditions.

Timeline

Approximately 1 to 3 years lead time may be necessary for NDEQ to permit a regional WWTF discharge in southern Sarpy County. At a minimum, NDEQ recommends submitting an NPDES permit application at least 180 days prior to the date of the first discharge. NDEQ's NPDES website also notes the following:

> "*The 180-day period does not start until a complete application is received. If changes are made or additional information is submitted or is required, the 180-day period may start over. NPDES permits are public noticed for 30 days before being issued. If comments are received and a hearing is required, the Department would schedule a hearing and respond to any comments at the hearing. This may require an additional 60 to 90 days*."

While NDEQ guidance would suggest a year is sufficient, it is anticipated that a regional facility could garner significant interest from USFWS, NGPC, LPRCA and potentially other stakeholders owing to the importance of the Platte River. Therefore, extra time may be needed to address stakeholder comments, provide water quality demonstrations, and potentially conduct an antidegradation review. Assuming stakeholder comments are minimal and an antidegradation review is not required, one year should be sufficient to obtain an NPDES permit. However, up to 3 years or more may be required depending on the nature of stakeholder comments and antidegradation requirements.

Extra time is also needed to address critical path items (e.g., mixing allowance) with NDEQ before even initiating the permitting process. A relatively general planning report and design criteria (e.g., design dry and wet weather flows, organic loading, etc.) are required to initiate the permit process. A preliminary engineering report can serve this purpose in lieu of a more general planning document. However, preliminary design criteria cannot be determined until critical path items are addressed with NDEQ.

Other planning considerations include obtaining a construction permit and funding. The construction permit application takes approximately 2 months for NDEQ to process after submittal of plans and specifications. The application for the construction permit can be provided simultaneously with the operating permit application. If funding is pursued through the Nebraska Clean Water State Revolving Fund (CWSRF), this process can typically take up to approximately 6 months to complete. However, CWSRF funding would trigger full National Environmental Protection Act (NEPA) clearances as well as other study requirements by recent amendments to the Clean Water Act, which could create significant delays for the project given the presence of federally designated threatened and endangered species. The basic process begins with completing and submitting the annual Clean Water SRF Needs Survey to the state. Once the project is placed on the CWSRF priority list, it takes approximately 2 to 3 months for NDEQ to review and approve the project facility plan. Due to recent changes to Federal law, CWSRF applications must include a Cost Effectiveness Evaluation and a Fiscal Sustainability Plan. The basic steps of the facility plan approval process include the following:

- Receive and review facility plan
- Comments and revision requests to consultant
- Receive and review revisions or mitigation plans
- Facility plan acceptance
- Prepare and issue a Finding of No Significant Impact (FNS)I or categorical exclusion; 30 day public comment required
- Facility plan approved; proceed with design

Once the facility plan is approved an additional 1 to 3 months are typically required to gain approval of plans and specifications. The construction permit is issued during this phase.

References

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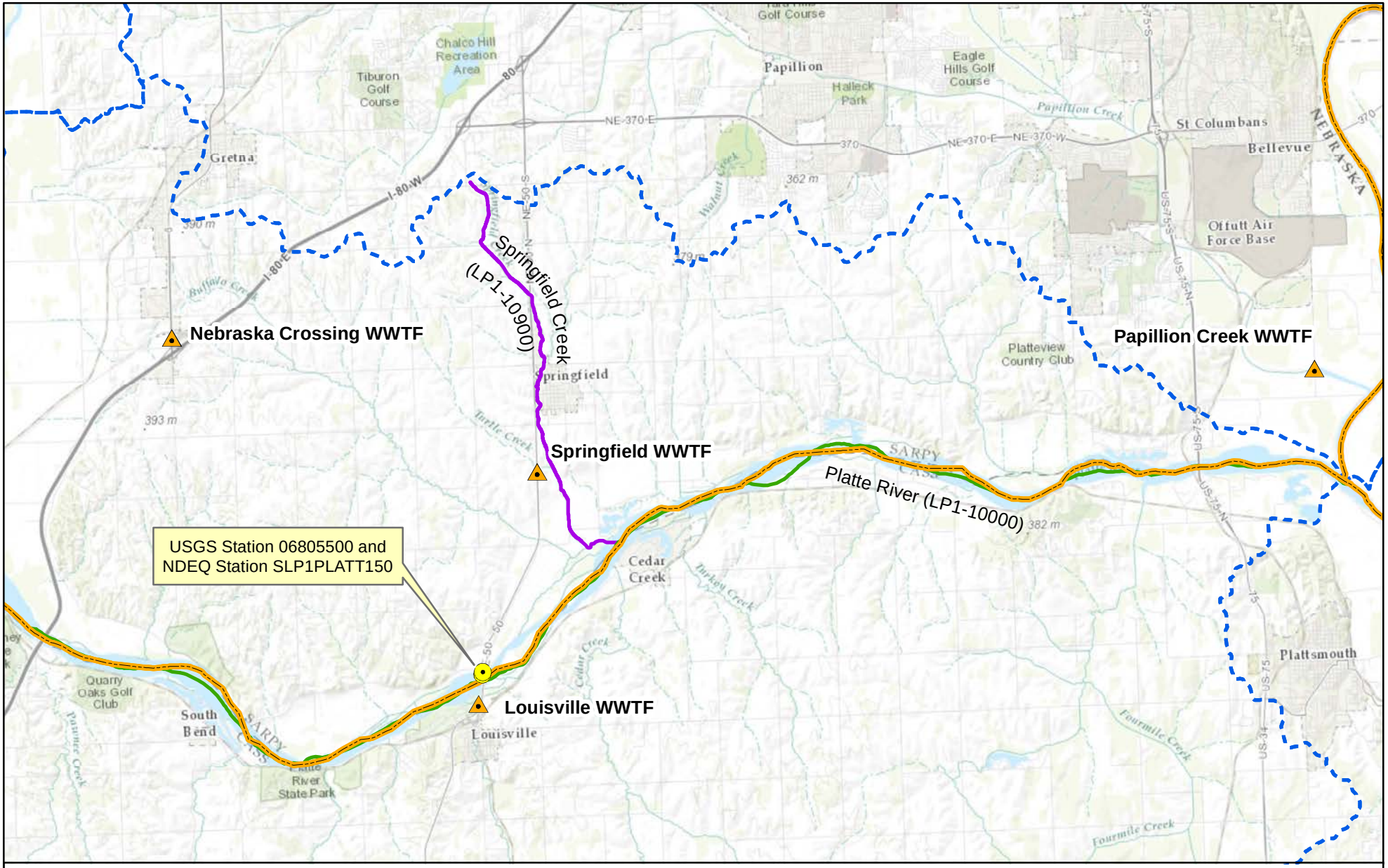
NDEQ, April 2014. *2014 Water Quality Integrated Report*, Nebraska Department of Environmental Quality, Water Quality Division.

USEPA, 2000. *Ambient Water Quality Criteria Recommendations – Information Supporting the Development of State and Tribal Nutrient Criteria – Rivers and Streams in Nutrient Ecoregion VI*, U.S. Environmental Protection Agency, Washington, DC, EPA 822-B-00-017.

USEPA, 1991. *Technical Support Document for Water Quality-based Toxics Control*, U.S. Environmental Protection Agency, Washington, DC, EPA-505-2-90-001.

Attachment A – NPDES Regulatory Study Area



Wastewater Treatment Facility

Water Quality Monitoring Station

Platte River (LP1-10000)

Springfield Creek (LP1-10900)

8-digit HUC Boundary

NPDES Regulatory Study Area
Sarpy County

N
W E
S

0 0.5 1 2 3 4 Miles

Attachment B – Planning Flow Chart

Southern Ridge Wastewater Treatment Study

Goal: To define a framework for Sarpy County Regional Sewer Service

Preliminary Planning
- Meet with NDEQ to discuss critical path items
- Solicit stakeholder feedback (e.g., USFWS, LPRCA, and NGPC)
- Work with stakeholders to address any potential concerns

Mixing Zone Analysis
- NDEQ (or consultant) conduct CORMIX mixing zone analysis
- NDEQ determines preliminary permit limits based on results

Anti-degradation
- Antidegradation report (if necessary)

Permit Application
- Prepare planning report and design criteria for submittal with permit application
- Submit permit application

Comment Period
- 30-day public notice period
- Hearing may be required

Permit Revisions
- NDEQ revises permit based on comments
- An additional comment period may apply

Final NPDES Permit
- NDEQ issues final NDPES permit

Regional Governance Technical Memorandum

To:	Sarpy County
From:	Mike Linder – Koley Jessen Meagan Deichert – Koley Jessen David Dechant – HDR
CC:	File
Project:	Southern Sarpy County Wastewater Study – Phase IA
Subject:	Regional Governance Analysis
Date:	Friday, April 10, 2015
Revised:	Wednesday, June 10, 2015 HDR Job Number: 246431

This Technical Memorandum reviews and summarizes the regional governance options available to Sarpy County and public agencies located within the County for the management and governance of a regional wastewater utility. It is organized as follows:

- Objective
- Summary
- Governance Structures
- Comparison of the Two Acts
- Conclusion

The following Attachments provide supporting information:

- Attachment A – Interlocal Cooperation Act
- Attachment B – Joint Public Agency Act

Objective

This Technical Memorandum presents a discussion of available regional governance structures for the governance of the southern Sarpy County wastewater system.

Summary

There are two existing statutory schemes Sarpy County, municipalities, and other public agencies may use to form a governing body for wastewater treatment throughout the County: the Joint Public Agency Act, Neb. Rev. Stat. §§ 13-2501 to 13-2550; and the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-807 to 13-827 (together, the "Acts"). These two Acts provide authority for public agencies to enter into an agreement to coordinate efforts to serve the needs and development of local communities. The two Acts are substantially similar, with the key exception being that the Joint Public Agency Act authorizes the creation of a new public agency, which the Interlocal Cooperation Act would require either no new agency or creation of a nonprofit corporation. The Interlocal Cooperation Act was enacted in 1963, and since that time has been used for projects which vary in size, scope and term. The Joint Public Agency Act was enacted in 1999 to allow public agencies to form a new joint public agency rather than a nonprofit corporation. As will be discussed in detail below, there are aspects to the public agency structure which may make governance of a regional entity more manageable than a nonprofit corporation formed under the Interlocal Cooperation Act. Since the Joint Public Agency Act it is still relatively new, it has not been used as frequently as the Interlocal Cooperation Act. There are currently six active Joint Public Agencies in Nebraska, which were primarily formed for the management of facilities, cooperation between law enforcement agencies, and community development, including the West Haymarket Joint Public Agency and the Boone County Development Agency.

Governance Structures

Interlocal Cooperation Act

The stated purpose of the Interlocal Cooperation Act is largely the same as the purpose of the Joint Public Agency Act, allowing local government units to use their taxing authority and other powers to provide services and facilities using forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. Neb. Rev. Stat. § 13-802.

The Interlocal Cooperation Act provides that a joint entity may be formed, or the public agencies may enter into a cooperative agreement without creating a joint entity. Neb. Rev. Stat. § 13-804. The Interlocal Cooperation Act does not require the use of a specific entity type, but in practice the nonprofit corporation is used. Some examples of nonprofit corporations formed in connection with an interlocal cooperation agreement include the Nebraska Utility Corporation, which was formed by the City of Lincoln and the Board of Regents of the University of Nebraska for energy, utility, and infrastructure facility and services and District Energy Corporation, which was formed by the City of Lincoln and Landcaster County for the construction and operation of energy facilties. Whether a joint entity is formed or not, the public agencies must enter into an interlocal cooperation agreement, and the agreement must include the following elements:

1. Duration of the agreement.

2. Organization, composition, and nature of any separate entity created together with the powers delegated to the entity.
3. Purpose of the agreement.
4. Manner of financing and establishing and maintaining a budget.
5. Manner of amending or terminating the agreement and disposing of property upon termination.
6. Manner of levying, collecting and accounting for tax.
7. Other necessary and proper matters.
8. If no joint entity is formed, the agreement must provide for an administrator or joint board to administer the undertaking in the agreement.
9. If no joint entity is formed, the agreement must provide for the manner of holding real and personal property.

Joint Public Agency Act

The stated purpose of the Joint Public Agency Act is largely the same as the purpose of the Interlocal Cooperation Act. Cities, villages, counties, and other public agencies have the authority under the Joint Public Agency Act to use their taxing authority and other powers to provide services and facilities using forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. Neb. Rev. Stat. § 13-2502.

The Joint Public Agency Act requires that a joint public agency be formed and registered with the Nebraska Secretary of State if the act is to be used. The public agencies must prepare a joint public agency agreement, and the agreement must include the following provisions:

1. Duration of the agreement.
2. Organization, composition, and nature of any separate entity created together with the powers delegated to the entity.
3. Purpose of the agreement.
4. Manner of financing and establishing and maintaining a budget.
5. Manner of amending or terminating the agreement and disposing of property upon termination.
6. Manner of levying, collecting and accounting for tax.
7. Other necessary and proper matters.

Note that these are the same elements as are required for an interlocal cooperation agreement, with the exception that the elements required if no entity is created are not included.

Important Elements for Regional Governance Structures

In analyzing the benefits of each of the Acts, several existing regional governance organizational documents were reviewed to determine common elements and requirements. Several topics/themes were common among many of the agreements. Throughout the organizational documents, the following items were determined to be key elements of the agreements:

1. Formation
    - Definitions, purpose and intent
    - Including definition of “regional” facilities – existing and new
    - Effective date and duration of agreement
    - Need for long term master planning
    - Development of “regional” infrastructure – responsibility to plan, finance, construct. Where does responsibility start and end for “regional” facilities
2. Governing Structure
    - Legal/administrative entities, such as creation of Board of Directors; organization and power of Board, including composition, voting, meetings, bylaws, etc.
    - Newly connecting communities, including admission of, voting rights, budget share allocations, capital contribution
    - Annexation
    - Consolidation or merger
    - Withdrawal or non-participation by participating communities; how to handle if community withdraws from agreement or does not pay share; successors
3. Employees and Benefits
    - Who is responsible for employees, retirement, insurance, etc.
4. Ownership and Operation of Property
    - Acquisition of existing facilities and transfer of assets
    - Responsibility for ownership and operation of facilities
    - Allocation of system capacity and proportionality - who pays for excess capacity and is there dedicated capacity, how to adjust capacity in the event of excess
    - Conditions of service – what wastewater is accepted, point of delivery
    - Responsibilities of others for local facilities
    - Maintenance and repair responsibilities for major, minor and emergency repairs
    - Flow monitoring installation and maintenance
    - NPDES permits and industrial pretreatment programs
    - Regional cooperation in emergency situations
    - Construction of future improvements (core improvements, expansion improvements, etc.)
5. Funding
    - Alternative financing during development and construction phase in the event of lack of availability of federal or state funds prior to completion of construction
    - Determination of each agency’s share of development and construction cost
    - Reserve funds during operation, such as maintenance and repair fund, capital improvement fund, administrative fund, flow monitoring, pretreatment, debt service, insurance and operating reserve fund
    - Issuance of bonds
    - “Regional” rate making principles – how established and how revised
    - Regional system development charges, connection fees, impact fees per connection for expansion, surcharges, excess usage rates
6. Liability
    - Enforcement authority for illicit discharge

- Indemnification
- Dispute resolution clause – venue and jurisdiction if go to court
- Liability of the entity

Comparison of the Two Acts

While the Interlocal Cooperation Act is more established and has been more widely used than the Joint Public Agency Act, the Joint Public Agency Act provides for a few expanded powers which will be discussed in detail below. The Joint Public Agency Act is also generally considered to be a more efficient vehicle for public agencies to form cooperative agencies. Additionally, the key difference between the joint public agency and an entity created under the Interlocal Cooperation Act is that the joint public agency is a public agency, while the interlocal entity is a nonprofit corporation. Below is a more detailed discussion of how the differences between the two acts impact the governing structure and operational abilities of the entities formed under them.

Formation

Interlocal Cooperation Agreement

Any two or more public agencies (including counties, cities, villages, agencies of the state government, and sanitary and improvement districts) may enter into an interlocal cooperation agreement and form a nonprofit corporation. The public agencies involved must authorize the participation in the interlocal cooperation agreement through ordinance, resolution or other act pursuant to law. Neb. Rev. Stat. § 13-804.

A nonprofit corporation must file with the Internal Revenue Service to obtain recognition of tax-exempt status. This process can be somewhat time consuming and may take up to nine months or more before tax-exempt status is recognized. While tax exempt status for an agency formed under the Interlocal Cooperation Act likely would not be difficult to obtain, the length of time to have the status recognized by the Internal Revenue Service may impact the timing of the project.

Joint Public Agency

Similarly, any two or more public agencies (including counties, cities, villages, agencies of the state government, and sanitary and improvement districts) may enter into an agreement and form a joint public agency. The public agencies involved must authorize the participation in the joint public agency through ordinance, resolution or other act pursuant to law. Neb. Rev. Stat. § 13-2504. The joint public agency must file with the Nebraska Secretary of State and obtain a certificate of formation.

Governing Structure

Interlocal Cooperation Agreement

The Interlocal Cooperation Act does not provide rules governing the representation of public agencies on the board or the number of votes provided to each member. A nonprofit corporation would be run by a

board of directors and may appoint officers. A set of bylaws describing the process for appointing board members and setting out voting requirements would be typical for a nonprofit entity.

A nonprofit corporation must file with the Internal Revenue Service to obtain recognition of tax-exempt status. This process can be somewhat time consuming and can take approximately nine months before tax-exempt status is recognized.

Joint Public Agency

Each public agency must appoint a representative to sit on the board of the joint public agency. The representatives must be members of the governing body of the participating public agency. Neb. Rev. Stat. § 13-2509. The terms of the representatives shall be specified in the joint public agency agreement, but shall not exceed four (4) years.

Each public agency shall have at least one (1) representative on the board who shall be entitled to at least one (1) vote, but the joint public agency agreement may permit any of the agencies to have more than one representative or to allow a representative to have more than one (1) vote. Neb. Rev. Stat. § 13-2515.

The board of the joint public agency shall elect a chairperson, vice-chairperson and secretary and may employ an executive director and additional officers and employees. The board may also create committees. Neb. Rev. Stat. § 13-2517.

Employees

Interlocal Cooperation Agreement

Any public agency included in the interlocal cooperation agreement would be permitted to sell or lease services and personnel to the nonprofit corporation. Neb. Rev. Stat. § 13-806. If the nonprofit corporation hired its own employees, it would need to arrange for its own payments and employee benefits.

If no new entity is formed, the interlocal cooperation agreement would need to clearly indicate responsibilities of each public agency for supplying employees and services.

Joint Public Agency

Any of the public agencies may transfer employees to the joint public agency. If any employees are transferred to the joint public agency, any vested employment rights will transfer with the employee. The joint public agency may provide that insurance, retirement, indemnification, and other benefits shall be provided by one or more of the member public agencies, so that the joint public agency would not need to set up its own benefits structure. Neb. Rev. Stat. § 13-2523.

Ownership and Operation of Property

Interlocal Cooperation Agreement

A nonprofit corporation formed under an interlocal cooperation agreement has the authority to own and operate property, and a public agency may transfer property to the nonprofit corporation. Such property, to the extent it is used for a public purpose, would be tax exempt. Neb. Rev. Stat. § 13-824. If no separate entity is formed, the parties to the interlocal cooperation agreement will be required to provide for a the manner in which property will be held.

Joint Public Agency

Any of the public agencies may transfer ownership of property to the joint public agency. The joint public agency has the authority to own and operate property.

Funding

Interlocal Cooperation Agreement

Nonprofit corporations formed under the Interlocal Cooperation Act do not have the authority to levy taxes, and the public agency members do not have the authority to allocate a portion of their levy to the nonprofit corporation. The Interlocal Cooperation Act also does not provide authority to collect fees for function, services, and facilities provided. The public agencies subject to an interlocal cooperation agreement may transfer funds to the nonprofit corporation.

The nonprofit corporation does have the authority to issue bonds for the construction of improvements and as necessary for the exercise of its powers. Neb. Rev. Stat. § 13-809. However, it likely would not be able to take advantage of the Nebraska State Revolving Fund.

Joint Public Agency

Joint public agencies have the authority to levy taxes. Neb. Rev. Stat. § 13-2507. The public agencies which are members of the joint public agency may allocate a portion of their levy to the joint public agency. No new taxing authority is created. Joint public agencies may also fix, maintain, revise and collect fees, rates, rents and charges for functions, services and facilities provided by the joint public agency. Neb. Rev. Stat. § 13-2521. The authority of the joint public agency is tied to the authority of the public agencies which are its member. Additional research would be required to determine whether utility and stormwater fees could be fixed by a joint public agency, as the analysis of this issue at the local level is not yet settled.

Joint public agencies have the authority to issue bonds for the construction of improvements and as necessary for the exercise of its powers. Additionally a joint public agency may be eligible to take advantage of the Nebraska State Revolving Fund, though no evidence was found that any joint public agencies have previously applied for such funds.

However, recently passed legislation will now require that some bonds be approved in an election. LB 132, which was adopted by the Legislature and approved by the Governor in May 2015, purports to “close a loophole” which allows joint public agencies to issue bonds without following the procedures which the

public agencies making up the joint public agency would have had to follow to issue bonds, potentially including elections. It appears the driver of this bill is the fact that the West Haymarket Joint Public Agency issued $300 million in bonds without an election, while the City of Lincoln held an election to approve a $25 million bond. There was concern that this "loophole" would encourage the creation of additional joint public agencies to skirt approval requirements which would normally be required for a public agency. The bill requires that an election be held prior to issuance of bonds and the pledge of property tax authority allocated to a joint public agency.

Liability

Interlocal Cooperation Agreement

A nonprofit corporation can sue and be sued. Its board members are generally protected from liability if they are conducting business in good faith.

Joint Public Agency

A joint public agency, as a political subdivision and a body corporate and politic of the State of Nebraska, is subject to the Political Subdivisions Tort Claims Act, Neb. Rev. Stat. §§ 13-901 et seq., which provides the exclusive remedy for persons who wish to sue a joint public agency and provides protections to the joint public agency against the torts of its officers, agents, or employees.

Public Perception and Transparency

Interlocal Cooperation Agreement

There has not been as much attention paid to the interlocal cooperation nonprofit corporations recently as there has for joint public agencies, perhaps due to the fact that the Interlocal Cooperation Act is more established.

However, nonprofit corporations formed under an interlocal cooperation agreement are not subject to the Nebraska Open Meetings Act, and the public does not have an opportunity to participate in the meetings. There is no restriction on who may serve on the board, and board members could be appointed who are not representatives of the public agencies subject to the interlocal cooperation agreement.

Joint Public Agency

Although there are only six joint public agencies currently in existence, there has been some increased public questions regarding joint public agencies, due in part to what a few have perceived as a lack of transparency with the West Haymarket Joint Public Agency.

However, joint public agencies are public bodies and are subject to the Nebraska Open Meetings Act. The public has an opportunity to attend and participate in meetings of a joint public agency. Additionally, a joint public agency created as a regional wastewater entity would have a limited purpose. Without a regional wastewater entity, the County and communities within the County would not have an efficient mechanism to coordinate and plan wastewater treatment.

Conclusion

While there have been some recent questions regarding the transparency and power of joint public agencies, the intent of the legislature in creating them was to provide for a more efficient vehicle for public agencies to cooperate in providing services to their communities. The express power to allocate taxing authority to the joint public agency and issue fees provides authority for ongoing funding of the wastewater project, and the requirement that public agencies appoint representatives to serve as board members who are entitled to vote at the meetings ensures the board will stay in the hands of the public agencies. Table 1 presents the differences between the entities, and an additional column in case no new entity is formed, but an agreement is made under the Interlocal Cooperation Act.

Table 1. Summary of Powers

Powers	Joint Public Agency	Nonprofit Corporation	No New Entity
"Public agencies" includes counties, cities, sanitary and improvement districts and others	Yes	Yes	Yes
Filed with Secretary of State	Yes	No	No
Board members from the public agencies	Yes	No (unless agreement states otherwise)	No board
Voting rights for members	Yes	No (unless agreement states otherwise)	No (unless agreement states otherwise)
Can use public agency's employees	Yes	Yes (by leasing)	Yes (individual public agency only)
Can use public agency's existing benefits structure	Yes	No	Yes (individual public agency only)
Can own property	Yes	Yes	Yes (individual public agency only)
Public agencies can allocate taxes to new entity	Yes	No	N/A
Can issue fees	Yes	No (unless agreement states otherwise)	No (individual public agency only)
Can issue bond	Yes	Yes	No (individual public agency only)
Liability protections through Political Subdivisions Tort Claim Act	Yes	No	No (individual public agency only)
Subject to Open Meetings Act	Yes	No	Yes (individual public agency only)
State Revolving Fund Eligible	Maybe	No	No (individual public agency only)

Attachment A – Interlocal Cooperation Act

13-801. Act, how cited.

Sections 13-801 to 13-827 shall be known and may be cited as the Interlocal Cooperation Act.

Source: Laws 1963, c. 333, § 2, p. 1071; R.S.1943, (1983), § 23-2202; Laws 1991, LB 731, § 1; Laws 2007, LB636, § 1.

13-802. Purpose of act.

It is the purpose of the Interlocal Cooperation Act to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Source: Laws 1963, c. 333, § 1, p. 1071; R.S.1943, (1983), § 23-2201; Laws 1991, LB 731, § 2; Laws 1996, LB 1177, § 14.

Annotations

- The city of Omaha was not authorized by the Interlocal Cooperation Act to divert part of Elmwood Park to the university for a parking lot. Gallagher v. City of Omaha, 189 Neb. 598, 204 N.W.2d 157 (1973).
- Interest in holding job with governmental agency not first amendment interest, but first amendment protections come into play when governmental employer makes decision to deprive public employee of benefit of government employment on a basis that infringes his interest in freedom of speech or association. Rose v. Eastern Neb. Human Serv. Agency, 510 F.Supp. 1343 (D. Neb. 1981).

13-803. Terms, defined.

For purposes of the Interlocal Cooperation Act:

(1) Joint entity shall mean an entity created by agreement pursuant to section 13-804;

(2) Public agency shall mean any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state;

(3) Public safety services shall mean public services for the protection of persons or property. Public safety services shall include law enforcement, fire protection, and emergency response services; and

(4) State shall mean a state of the United States and the District of Columbia.

Source: Laws 1963, c. 333, § 3, p. 1071; Laws 1971, LB 874, § 1; Laws 1975, LB 104, § 9; R.S.1943, (1983), § 23-2203; Laws 1991, LB 731, § 3; Laws 1996, LB 1177, § 15.

13-804. Public agencies; powers; agreements.

(1) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Interlocal Cooperation Act upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Interlocal Cooperation Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The general organization, composition, and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to the entity;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) The manner of levying, collecting, and accounting for any tax authorized under sections 13-318 to 13-326 or 13-2813 to 13-2816; and

(g) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, the public agencies party to the agreement shall be represented; and

(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(5) No agreement made pursuant to the Interlocal Cooperation Act shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint board or other legal or administrative entity created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.

(6) In the event that an agreement made pursuant to this section creates a joint entity, such

joint entity shall be subject to control by its members in accordance with the terms of the agreement; shall constitute a separate public body corporate and politic of this state, exercising public powers and acting on behalf of the public agencies which are parties to such agreement; and shall have power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with its necessity, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (d) from time to time, to make, amend, and repeal bylaws, rules, and regulations, not inconsistent with the Interlocal Cooperation Act and the agreement providing for its creation, to carry out and effectuate its powers and purposes.

(7) No entity created by local public agencies pursuant to the Interlocal Cooperation Act shall be considered a state agency, and no employee of such an entity shall be considered a state employee.

(8) Any governing body as defined in section 13-503 which is a party to an agreement made pursuant to the Interlocal Cooperation Act shall provide information to the Auditor of Public Accounts regarding such agreements as required in section 13-513.

Source: Laws 1963, c. 333, § 4, p. 1072; R.S.1943, (1983), § 23-2204; Laws 1991, LB 81, § 1; Laws 1991, LB 731, § 4; Laws 1996, LB 1177, § 16; Laws 1997, LB 269, § 12; Laws 2001, LB 142, § 26; Laws 2004, LB 939, § 3.

Annotations

- Under subsection (6) of this section, a joint entity created under the Interlocal Cooperation Act is subject to the control of its members in accordance with the agreement. City of Falls City v. Nebraska Mun. Power Pool, 279 Neb. 238, 777 N.W.2d 327 (2010).

13-805. Public agencies; submission of agreements for approval; when.

In the event that an agreement made pursuant to the Interlocal Cooperation Act deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the officer or agency as to all matters within the officer's or agency's jurisdiction.

Source: Laws 1963, c. 333, § 5, p. 1073; Laws 1975, LB 104, § 10; R.S.1943, (1983), § 23-2205; Laws 1991, LB 731, § 5.

13-806. Public agencies; appropriation of funds; supply personnel.

Any public agency entering into an agreement pursuant to the Interlocal Cooperation Act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board, joint entity, or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

Source: Laws 1963, c. 333, § 6, p. 1073; R.S.1943, (1983), § 23-2206; Laws 1991, LB 731, § 6.

13-807. Public agencies; contracts authorized; contents.

Any one or more public agencies may contract with any one or more other public agencies to

perform any governmental service, activity, or undertaking which at least one of the public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully as provided in the Interlocal Cooperation Act the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

Source: Laws 1963, c. 333, § 7, p. 1074; R.S.1943, (1983), § 23-2207; Laws 1991, LB 731, § 7; Laws 1997, LB 269, § 13.

13-808. Joint entity; issuance of bonds; powers; purposes.

(1) Any joint entity may issue such types of bonds as its governing body may determine subject only to any agreement with the holders of outstanding bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, bonds issued by any qualified public agency under the Public Facilities Construction and Finance Act, or leases made by the joint entity with any person, including any of those public agencies which are parties to the agreement creating the joint entity, or from its revenue generally or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the joint entity from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

(2) Any bonds issued by such joint entity shall be issued on behalf of those public agencies which are parties to the agreement creating such joint entity and shall be authorized to be issued for the specific purpose or purposes for which the joint entity has been created. Such specific purposes may include, but shall not be limited to, joint projects authorized by the Public Facilities Construction and Finance Act; solid waste collection, management, and disposal; waste recycling; sanitary sewage treatment and disposal; public safety communications; correctional facilities; water treatment plants and distribution systems; drainage systems; flood control projects; fire protection services; ground water quality management and control; river-flow enhancement; education and postsecondary education; hospital and other health care services; bridges, roads, and streets; and law enforcement.

(3) As an alternative to issuing bonds for financing public safety communication projects, any joint entity may enter into a financing agreement with the Nebraska Investment Finance Authority for such purpose.

(4) Any joint entity formed for purposes of providing or assisting with the provision of public safety communications may enter into an agreement with any other joint entity relating to (a) the operation, maintenance, or management of the property or facilities of such joint entity or (b) the operation, maintenance, or management of the property or facilities of such other joint entity.

Source: Laws 1991, LB 731, § 8; Laws 2002, LB 1211, § 1; Laws 2005, LB 217, § 9; Laws 2007, LB701, § 13.

Cross References

- **Public Facilities Construction and Finance Act,** see section 72-2301.

13-809. Joint entity; issuance of bonds; amounts; use.

Any joint entity may from time to time issue its bonds in such principal amounts as its governing body shall deem necessary to provide sufficient funds to carry out any of the joint entity's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the governing body may determine, and the payment of all other costs or expenses of the joint entity incident to and necessary or convenient to carry out its purposes and powers.

Source: Laws 1991, LB 731, § 9.

13-810. Issuance of bonds; immunity; limitations.

(1) Neither the members of a joint entity's governing body nor any person executing the bonds shall be liable personally on such bonds by reason of the issuance thereof.

(2) The bonds shall not be a debt of any political subdivision or of this state and neither this state nor any political subdivision shall be liable thereon. Bonds shall be payable only out of any funds or properties of the issuing joint entity. Such limitations shall be plainly stated upon the face of the bonds.

Source: Laws 1991, LB 731, § 10.

13-811. Issuance of bonds; authorization; terms; signature.

Bonds shall be authorized by resolution of the issuing joint entity's governing body and may be issued under a resolution or under a trust indenture or other security instrument in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture, or other security instrument may provide and without limitation by any other law limiting amounts, maturities, or interest rates. Any officer authorized or designated to sign, countersign, execute, or attest any bond or any coupon may utilize a facsimile signature in lieu of his or her manual signature.

Source: Laws 1991, LB 731, § 11.

13-812. Bonds and coupons; negotiability; sale; price.

(1) Except as the issuing joint entity's governing body may otherwise provide, any bond and any interest coupons thereto attached shall be fully negotiable within the meaning of and for all purposes of article 8, Uniform Commercial Code.

(2) The bonds may be sold at public or private sale as the issuing joint entity's governing body may provide and at such price or prices as such governing body shall determine.

Source: Laws 1991, LB 731, § 12.

13-813. Bonds and coupons; validity of signatures.

If any of the officers whose signatures appear on any bonds or coupons cease to be such officers before the delivery of such obligations, such signatures shall nevertheless be valid and sufficient for all purposes to the same extent as if such officers had remained in office until such delivery.

Source: Laws 1991, LB 731, § 13.

13-814. Issuance of bonds; joint entity; powers.

Any joint entity may in connection with the issuance of its bonds:

(1) Covenant as to the use of any or all of its property, real or personal;

(2) Redeem the bonds, covenant for their redemption, and provide the terms and conditions thereof;

(3) Covenant to charge or seek necessary approvals to charge rates, fees, and charges sufficient to meet operating and maintenance expenses of the agency, costs of renewals and replacements to a project, interest and principal payments, whether at maturity or upon sinking-fund redemption, on any outstanding bonds or other indebtedness of the joint entity, and creation and maintenance of any reasonable reserves therefor and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability or security of the bonds;

(4) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived, and as to the consequences of default and the remedies of bondholders;

(5) Covenant as to the mortgage or pledge of or the grant of any other security interest in any real or personal property and all or any part of the revenue from any project or projects or any revenue-producing contract or contracts made by the joint entity with any person to secure the payment of bonds, subject to such agreements with the holders of outstanding bonds as may then exist;

(6) Covenant as to the custody, collection, securing, investment, and payment of any revenue, assets, money, funds, or property with respect to which the joint entity may have any rights or interest;

(7) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied and the pledge of such proceeds to secure the payment of the bonds;

(8) Covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(9) Covenant as to the rank or priority of any bonds with respect to any lien or security;

(10) Covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(11) Covenant as to the custody, safekeeping, and insurance of any of its properties or investments and the use and disposition of insurance proceeds;

(12) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the joint entity may determine;

(13) Covenant as to the appointing and providing for the duties and obligations of a paying

agent or paying agents or other fiduciaries within or outside the state;

(14) Make all other covenants and do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds or in the absolute discretion of the joint entity tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section; and

(15) Execute all instruments necessary or convenient in the exercise of the powers in the Interlocal Cooperation Act granted or in the performance of covenants or duties, which instruments may contain such covenants and provisions as any purchaser of bonds may reasonably require.

Source: Laws 1991, LB 731, § 14.

13-815. Joint entity; refunding bonds; authorized.

Any joint entity may issue and sell refunding bonds for the purpose of paying or providing for the payment of any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at any time prior to or at the maturity or redemption of the refunded bonds as the joint entity's governing body deems appropriate. The refunding bonds may be issued in principal amount not exceeding an amount sufficient to pay or to provide for the payment of (1) the principal of the bonds being refunded, (2) any redemption premium thereon, (3) interest accrued or to accrue to the first or any subsequent redemption date or dates selected by the joint entity's governing body in its discretion or to the date or dates of maturity, whichever is determined to be most advantageous or convenient for the joint entity, (4) the expenses of issuing the refunding bonds, including bond discount, and redeeming the bonds being refunded, and (5) such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be deemed necessary or convenient by the governing body of the issuing joint entity. A determination by the governing body that any refinancing is advantageous or necessary to the joint entity, that any of the amounts provided in this section should be included in such refinancing, or that any of the bonds to be refinanced should be called for redemption on the first or any subsequent redemption date or permitted to remain outstanding until their respective dates of maturity shall be conclusive.

Source: Laws 1991, LB 731, § 15.

13-816. Refunding bonds; exchange.

Refunding bonds may be exchanged for and in payment and discharge of any of the outstanding obligations being refunded. The refunding bonds may be exchanged for a like, greater, or smaller principal amount of the bonds being refunded as the issuing joint entity's governing body may determine in its discretion. The holder or holders of the bonds being refunded need not pay accrued interest on the refunding bonds if and to the extent that interest is due or accrued and unpaid on the bonds being refunded and to be surrendered.

Source: Laws 1991, LB 731, § 16.

13-817. Refunding bonds; proceeds; use.

To the extent not required for the immediate payment and retirement of the obligations being refunded or for the payment of expenses incurred in connection with such refunding and subject to any agreement with the holders of any outstanding bonds, principal proceeds from the sale of any refunding bonds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded, payment of interest and any redemption premiums, and payment of any

expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any surplus, including, but not limited to, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds. Money in any such trust fund may be invested in direct obligations of or obligations the principal of and interest on which are guaranteed by the United States Government, in obligations of any agency or instrumentality of the United States Government, or in certificates of deposit issued by a bank, capital stock financial institution, qualifying mutual financial institution, or trust company if such certificates are secured by a pledge of any of such obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing in this section shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which have not matured and which are not presently redeemable or, if presently redeemable, have not been called for redemption. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1991, LB 731, § 17; Laws 2001, LB 362, § 7.

13-818. Refunding bonds; terms.

The issue of refunding bonds, the manner of sale, the maturities, interest rates, form, and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties, and obligations of the joint entity in respect of the same shall be governed by the provisions of the Interlocal Cooperation Act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Source: Laws 1991, LB 731, § 18.

13-819. Bond issuance; other consent not required.

Bonds may be issued under the Interlocal Cooperation Act without obtaining the consent of any department, division, commission, board, bureau, or instrumentality of this state and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required therefor by the Interlocal Cooperation Act, and the validity of and security for any bonds shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions, or things.

Source: Laws 1991, LB 731, § 19.

13-820. Joint entity; publication of resolution or other proceeding.

The governing body of the joint entity may provide for the publication of any resolution or other proceeding adopted by it pursuant to the Interlocal Cooperation Act in a newspaper of general circulation published in the political subdivision or county where the principal office or place of business of the joint agency is located or, if no newspaper is so published, in a newspaper qualified to carry legal notices having general circulation in the political subdivision or county.

Source: Laws 1991, LB 731, § 20.

13-821. Joint entity; notice of intention to issue bonds; contents.

In the case of a resolution or other proceeding providing for the issuance of bonds pursuant to the Interlocal Cooperation Act, the governing body of the joint entity may, either before or after the adoption of such resolution or other proceeding, in lieu of publishing the entire resolution or

other proceeding, publish a notice of intention to issue bonds under the act, titled as such, containing:

(1) The name of the joint entity;

(2) The purpose of the issue, including a brief description of the project and the name of the political subdivisions to be serviced by the project;

(3) The principal amount of bonds to be issued;

(4) The maturity date or dates and amount or amounts maturing on such dates;

(5) The maximum rate of interest payable on the bonds; and

(6) The times and place where a copy of the form of the resolution or other proceeding providing for the issuance of the bonds may be examined which shall be at an office of the joint entity, identified in the notice, during regular business hours of the joint entity as described in the notice and for a period of at least thirty days after the publication of the notice.

Source: Laws 1991, LB 731, § 21.

13-822. Resolution, proceeding, or bonds; right to contest.

For a period of thirty days after such publication, any interested person shall have the right to contest the legality of such resolution or proceeding or any bonds which may be authorized thereby, any provisions made for the security and payment of such bonds, or any contract of purchase, sale, or lease relating to the issuance of such bonds. After such time no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

Source: Laws 1991, LB 731, § 22.

13-823. Bonds; designated as securities; investment authorized.

Bonds issued pursuant to the Interlocal Cooperation Act shall be securities in which all public officers and instrumentalities of the state and all political subdivisions, insurance companies, trust companies, banks, savings and loan associations, investment companies, executors, administrators, personal representatives, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds shall be securities which may properly and legally be deposited with and received by any officer or instrumentality of this state or any political subdivision for any purpose for which the deposit of bonds or obligations of this state or any political subdivision thereof is now or may hereafter be authorized by law.

Source: Laws 1991, LB 731, § 23.

13-824. Joint entity; bonds and property; exempt from taxation; when.

(1) All bonds of a joint entity are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes.

(2) The property of a joint entity to the extent it is used for a public purpose, including any pro rata share of any property owned by a joint entity in conjunction with any other person, is declared to be public property of a governmental subdivision of the state. Such property and the

income of a joint entity shall be exempt from all taxes of the state or any political subdivision of the state and shall be exempt from all special assessments of any participating municipality if used for a public purpose.

Source: Laws 1991, LB 731, § 24; Laws 2001, LB 173, § 11.

13-824.01. Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

(1) A joint entity shall cause estimates of the costs to be made by some competent engineer or engineers before the joint entity enters into any contract for the construction, management, ownership, maintenance, or purchase of an electric generating facility and related facilities.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3)(a) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 relating to sealed bids shall not apply to contracts entered into by a joint entity in the exercise of its rights and powers relating to radioactive material or the energy therefrom, any technologically complex or unique equipment, equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or any maintenance or repair if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the governing body of the joint entity; and

(iii) The joint entity advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(b) Any contract for which the governing body has approved an engineer's certificate described in subdivision (a) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in facilities described in subsection (1) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The governing body of the joint entity determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the governing body of the joint entity. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the joint entity by the engineer or engineers certifying the purchase for the governing body's approval. After such certification, but not necessarily before the governing body's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located and published in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the governing body. A written statement containing such certification shall be submitted to the joint entity by the engineer for the governing body's approval.

Source: Laws 2007, LB636, § 2; Laws 2008, LB939, § 1; Laws 2011, LB155, § 1.

13-824.02. Advertisement for sealed bids; requirements.

Prior to advertisement for sealed bids, plans and specifications for the proposed work or materials shall be prepared and filed at the principal office or place of business of the joint entity. Such advertisement shall be made in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the governing body of the joint entity in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the work proposed to be done or materials proposed to be purchased, that the plans and specifications therefor may be inspected at the office of the joint entity, giving the location thereof, the time within which bids shall be filed, and the date, hour, and place the same shall be opened.

Source: Laws 2007, LB636, § 3.

13-824.03. Governing body; award of contract; considerations.

The governing body of the joint entity may let the contract for such work or materials to the responsible bidder who submits the lowest and best bid, or in the sole discretion of the governing body, all bids tendered may be rejected, and readvertisement for bids made, in the manner, form, and time as provided in section 13-824.02. In determining whether a bidder is responsible, the governing body may consider the bidder's financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance services, and ability to meet delivery or performance deadlines and whether the bid is in conformance with specifications. Consideration

may also be given by the governing body of the joint entity to the relative quality of supplies and services to be provided, the adaptability of machinery, apparatus, supplies, or services to be purchased to the particular uses required, the preservation of uniformity, and the coordination of machinery and equipment with other machinery and equipment already installed. No such contract shall be valid nor shall any money of the joint entity be expended thereunder unless advertisement and letting has been had as provided in sections 13-824.01 to 13-824.03.

Source: Laws 2007, LB636, § 4.

13-825. Act, how construed.

The provisions of the Interlocal Cooperation Act shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized by the act and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon political subdivisions, agencies, and others by law. Insofar as the provisions of the Interlocal Cooperation Act are inconsistent with the provisions of any general or special law, administrative order, or regulation, the provisions of the Interlocal Cooperation Act shall be controlling.

Source: Laws 1991, LB 731, § 25.

13-826. Pledge of state.

The State of Nebraska does hereby pledge to and agree with the holders of any bonds and with those persons who may enter into contracts with any joint entity or political subdivision under the Interlocal Cooperation Act that the state will not alter, impair, or limit the rights thereby vested until the bonds, together with applicable interest, are fully met and discharged and such contracts are fully performed. Nothing contained in the Interlocal Cooperation Act shall preclude such alteration, impairment, or limitation if and when adequate provisions are made by law for the protection of the holders of the bonds or persons entering into contracts with any joint entity or political subdivision. Each joint entity and political subdivision may include this pledge and undertaking for the state in such bonds or contracts.

Source: Laws 1991, LB 731, § 26.

13-827. Act, liberal construction.

The Interlocal Cooperation Act is necessary for the welfare of the state and its inhabitants and shall be construed liberally to effect its purposes.

Source: Laws 1991, LB 731, § 27.

Attachment B – Joint Public Agency Act

13-2501. Act, how cited.

Sections 13-2501 to 13-2550 shall be known and may be cited as the Joint Public Agency Act.

Source: Laws 1999, LB 87, § 1.

13-2502. Purpose of act.

It is the purpose of the Joint Public Agency Act to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Source: Laws 1999, LB 87, § 2.

13-2503. Terms, defined.

For purposes of the Joint Public Agency Act:

(1) Board means the board of representatives of a joint public agency;

(2) Governing body has the same meaning as in section 13-503 and, when referring to state agencies, includes the governing board of a state agency or the Governor and, when referring to federal agencies, includes the governing board of a federal agency or the President of the United States;

(3) Joint public agency means an entity created by agreement pursuant to the act;

(4) Person means a natural person, public authority, private corporation, association, firm, partnership, limited liability company, or business trust of any nature whatsoever organized and existing under the laws of this state or of the United States or any other state thereof. The term does not include a joint public agency;

(5) Public agency means any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state;

(6) Representative means a member of the board and includes an alternate representative; and

(7) State means a state of the United States and the District of Columbia.

Source: Laws 1999, LB 87, § 3.

13-2504. Agreements authorized; conditions; transfer of property and employees.

(1) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Joint Public Agency Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(2) Any such agreement shall specify the following:

(a) Its duration;

(b) The general organization, composition, and nature of any joint public agency created by the agreement together with the powers delegated to the entity;

(c) Its purpose or purposes;

(d) The manner of financing the joint undertaking and of establishing and maintaining a budget;

(e) The permissible method or methods to be employed in amending the agreement or accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination consistent with section 13-2518;

(f) The manner of levying, collecting, and accounting for any tax authorized under sections 13-318 to 13-326 or 13-2813 to 13-2816 and any allocation of tax authority under section 13-2507; and

(g) Any other necessary and proper matters.

(3) No agreement made pursuant to the Joint Public Agency Act shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint public agency created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.

(4) Participating public agencies may transfer property, other assets, and employees to a joint public agency as provided in the agreement. Notwithstanding other provisions of law, if employees are transferred any vested employment rights shall be transferred with the employee and the employee shall be vested with the joint public agency at the time of transfer.

(5) Any governing body as defined in section 13-503 which is a party to an agreement made pursuant to the Joint Public Agency Act shall provide information to the Auditor of Public Accounts regarding such agreements as required in section 13-513.

Source: Laws 1999, LB 87, § 4; Laws 2001, LB 142, § 29; Laws 2004, LB 939, § 4.

13-2505. Joint exercise of powers.

Notwithstanding any restrictions contained in a city charter, any power, privilege, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Joint Public Agency Act upon a public agency.

Source: Laws 1999, LB 87, § 5.

13-2506. Legislative power; limitation.

The Legislature may amend or repeal the Joint Public Agency Act or any law governing public agencies, and any agreement which creates a joint public agency is subject to the amendment or repeal of a law governing participating public agencies by subsequent acts of the

Legislature, the United States, or another state, except that no act of the Legislature may impair any contractual obligation of a joint public agency or any participant thereof, including a contract for bonded indebtedness.

Source: Laws 1999, LB 87, § 6.

13-2507. Power to tax.

(1) A joint public agency shall have only those powers of taxation as one or more of the participating public agencies has and only as specifically provided in the agreement proposing creation of the joint public agency, except that a joint public agency shall not levy a local option sales tax. Participating public agencies may agree to allow the joint public agency to levy a property tax rate not to exceed a limit as provided in the agreement if the agreement also limits the levy authority of the overlapping participating public agencies collectively to the same amount. The levy authority of a joint public agency shall be allocated by the city or county as provided in section 77-3443, and the agreement may require allocation of levy authority by the city or county.

(2) If one or more of the participating public agencies is a municipality, the agreement may allow any occupation or wheel tax to be extended over the area encompassed by the joint public agency at a rate uniform to that of the city or village for the purpose of providing revenue to finance the services to be provided by the joint public agency. The tax shall not be extended until the procedures governing enactment by the municipality are followed by the joint public agency, including any requirement for a public vote.

(3) If the agreement calls for the allocation of property tax levy authority to the joint public agency, the amount of the allocation to the joint public agency and from each participating public agency shall be reported to the Property Tax Administrator.

Source: Laws 1999, LB 87, § 7.

13-2508. Joint public agencies; creation authorized.

Any combination of two or more public agencies may create one or more joint public agencies to exercise the powers and authority prescribed by the Joint Public Agency Act.

Source: Laws 1999, LB 87, § 8.

13-2509. Creation; procedure; appointment of representatives.

(1) The governing body of each public agency participating in the creation of a joint public agency shall adopt a resolution determining that there is a need for a joint public agency and setting forth the names of the proposed participating public agencies. The resolution shall be published in three issues, not less than seven days between issues, of a legal newspaper for each proposed participating public agency or a newspaper having general circulation in the area served by a proposed participating public agency if no legal newspaper exists for the participating public agency and of one or more newspapers of general circulation in the area to be served by the joint public agency. Any such resolution shall not be adopted by a public agency prior to five days after the last publication by the proposed participating public agency. In the case of a state agency, the governing board shall adopt the resolution, or if there is no governing board, the Governor shall issue a proclamation without notice in lieu of a resolution. In the case of a federal agency, the governing board shall adopt the resolution or, if there is no governing board, the President of the United States shall issue a proclamation without notice in lieu of a resolution. The resolution may be adopted by a governing body on its own motion upon

determining, in its discretion, that a need exists for a joint public agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the public agency with respect to the materials, goods, property, and services which a joint public agency may utilize or provide, the adequacy, suitability, and availability of such materials, goods, property, and services to meet the needs of the participating public agency if no joint public agency is formed, and economic or other advantages or efficiencies which may be realized by cooperative action through a joint public agency.

(2) Upon issuance of a certificate of creation by the Secretary of State, the Governor in the case of a participating state agency which does not have a governing board, the President of the United States or federal agency head in the case of a federal agency, the mayor or city manager in the case of a city which has not elected to be governed as a village, or the chairperson of the governing body of each participating public agency shall appoint representatives as provided by the agreement for creation of the joint public agency. Representatives, other than representatives appointed by the Governor, the President of the United States, or a federal agency head, must be members of the governing body of the participating public agency which they are appointed to represent. Upon issuance of an amended certificate of creation pursuant to section 13-2513, a representative shall be appointed by each additional participating public agency as provided in this section. An alternate representative with the same qualifications may be appointed in the same manner as a representative and shall serve and exercise all powers of a representative in the absence of the representative for whom he or she is the alternate. The representatives shall constitute the board in which shall be vested all powers of the joint public agency.

Source: Laws 1999, LB 87, § 9.

13-2510. Creation; statement; contents.

Within thirty days after adoption of the resolutions for creation of a joint public agency by the proposed participating public agencies, the board shall file with the Secretary of State a statement signed by the representatives setting forth (1) the names of all the proposed participating public agencies, (2) a certified copy of each of the resolutions of the participating public agencies determining the need for such a joint public agency, (3) proof of publication as required in subsection (1) of section 13-2509, (4) a brief description of the nature of the joint public agency's activities, and (5) the name of the joint public agency.

Source: Laws 1999, LB 87, § 10.

13-2511. Creation; Secretary of State; duties; certificate of creation; issuance.

The Secretary of State shall examine the statement and, if he or she finds that the name proposed for the joint public agency is distinguishable from any other entity name registered or on file with the Secretary of State pursuant to Nebraska law and that the statement conforms to the requirements of the Joint Public Agency Act, the Secretary of State shall record it and issue and record a certificate of creation. The certificate shall state the name of the joint public agency, the fact and date of creation, and the names of the participating public agencies. Upon the issuance of the certificate, the existence of the joint public agency as a political subdivision and a body corporate and politic of this state shall commence. Notice of the issuance of the certificate shall be given to all of the proposed participating public agencies by the Secretary of State and shall be published in one issue of a legal newspaper for each proposed participating public agency or a newspaper having general circulation in the area served by a proposed participating public agency if no legal newspaper exists for the participating public agency and of one or more newspapers of general circulation in the area to be served by the joint public agency.

Source: Laws 1999, LB 87, § 11.

13-2512. Certificate of creation; proof of establishment.

In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the joint public agency, the joint public agency shall be conclusively deemed to have been established, except as against the state, in accordance with the Joint Public Agency Act upon proof of the filing of the certificate of creation by the Secretary of State. A copy of the certificate or amended certificate, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

Source: Laws 1999, LB 87, § 12.

13-2513. Participation by other public agencies; procedure.

After the creation of a joint public agency, any other public agency may become a participating public agency therein upon (1) the adoption of a resolution by the governing body of the public agency setting forth the determination prescribed in section 13-2509 and authorizing the public agency to become a participating public agency after notice as described in subsection (1) of section 13-2509, (2) application to the joint public agency, and (3) adoption by a majority vote of the representatives, unless the joint public agency's rules of governance require a greater percentage, of a resolution by the board admitting the public agency as a participating public agency. Thereupon the public agency shall become a participating public agency entitled to appoint a representative or representatives in the manner prescribed by sections 13-2509 and 13-2515 and to otherwise participate in the joint public agency to the same extent as if the public agency had participated in the creation of the joint public agency. Upon the filing with the Secretary of State of certified copies of the resolutions described in this section and proof of publication of notice, the Secretary of State shall issue an amended certificate of creation setting forth the names of the participating public agencies, the date of creation, and the name of the joint public agency. Notice shall be given as provided in section 13-2511.

Source: Laws 1999, LB 87, § 13.

13-2514. Representatives; terms; vacancy; expenses.

Each representative shall serve for a term specified in the agreement creating the joint public agency, not to exceed four years, or until his or her successor has been appointed and has qualified in the same manner as the original appointment. A representative shall be eligible for reappointment upon the expiration of his or her term. A certificate of the appointment or reappointment of any representative or alternate representative shall be issued by the governing body and shall be filed with the clerk or secretary of the public agency for which the representative acts and the joint public agency. The certificate shall be conclusive evidence of the due and proper appointment of the representative. A representative may be removed for any cause at any time by the governing body of the participating public agency for which the representative acts. A representative shall be removed if he or she is no longer a member of the governing body of the public agency which makes the appointment. A vacancy shall be filled for the balance of the unexpired term of a person who is no longer eligible to hold office in the same manner as the original appointment, until the term as representative expires, or until removed by the participating public agency which appointed him or her. A representative shall receive no compensation for his or her services but shall be entitled to actual and necessary expenses incurred in the discharge of his or her official duties, including mileage at the rate provided in section 81-1176.

Source: Laws 1999, LB 87, § 14.

13-2515. Representatives; number; voting; quorum; meetings.

(1) Each participating public agency shall at all times be entitled to appoint at least one representative. A joint public agency's rules of governance may allow any participating public agency to appoint additional representatives and shall specify the number of representatives to be appointed by each participating public agency. The number of representatives may be increased or decreased from time to time by an amendment to the rules of governance approved by each participating public agency as evidenced by a resolution of the governing body thereof unless the agreement provides for approval by less than all participating public agencies.

(2) Each representative shall be entitled to one vote. With the approval of each participating public agency as evidenced by a resolution of the governing body thereof unless the agreement provides for approval by less than all participating public agencies, a joint public agency's rules of governance may allow the representative of any participating public agency to cast more than one vote and shall specify the number of votes such representative may cast.

(3) A quorum of the board is required for conducting the business and exercising the powers of the joint public agency and for all other purposes. Unless the rules of governance require a larger quorum, the presence at the meeting of the number of representatives entitled to cast a majority of the total votes which may be cast by all of the representatives constitutes a quorum. Action may be taken upon a vote of a majority of the votes which the representatives present are entitled to cast unless the rules of governance require a larger vote.

(4) The manner of scheduling regular meetings and the method of calling special board meetings, including the giving or waiving of notice, shall be as provided in the rules of governance within the constraints of the Open Meetings Act.

Source: Laws 1999, LB 87, § 15; Laws 2004, LB 821, § 4.

Cross References

- **Open Meetings Act,** see section 84-1407.

13-2516. Board; officers; employees.

The board shall elect a chairperson and vice-chairperson from among its representatives. The joint public agency may employ an executive director. The board shall elect a secretary who shall either be from among the representatives or the executive director. The joint public agency may employ or obtain the services of legal counsel, technical experts, and such other officers, agents, and employees as it may require and shall determine their qualifications, duties, compensation, and term of office. The board may delegate to its officers, agents, or employees such powers and duties as the board deems proper.

Source: Laws 1999, LB 87, § 16.

13-2517. Committees; meetings.

(1) The board may create an executive committee the composition of which shall be set forth in the joint public agency's rules of governance. The executive committee shall have and exercise the power and authority of the board during intervals between the board's meetings in accordance with the rules of governance, motions, or resolutions creating the executive committee. The

terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the rules of governance.

(2) The board may also create one or more committees to which the board may delegate such powers and duties as the board shall specify. In no event shall any committee be empowered to authorize the issuance of bonds. The membership and voting requirements for action by a committee shall be specified by the board.

(3) The board shall be subject to the Open Meetings Act.

Source: Laws 1999, LB 87, § 17; Laws 2004, LB 821, § 5.

Cross References

- **Open Meetings Act,** see section 84-1407.

13-2518. Dissolution; withdrawal.

Unless the agreement provides for dissolution, a joint public agency shall be dissolved upon the adoption, by the governing bodies of at least one-half of the participating public agencies, of a resolution setting forth the determination that the need for the public agencies to act cooperatively through a joint public agency no longer exists. A joint public agency shall not be dissolved so long as the agency has bonds outstanding unless provision for full payment of the bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, indenture, or security instrument securing the bonds. If the governing bodies of one or more, but less than a majority, of the participating public agencies adopt such a resolution, such public agencies shall be permitted to withdraw from participation in the joint public agency, but withdrawal shall not affect the obligations of the withdrawing public agency pursuant to any contracts or other agreements with the joint public agency. Withdrawal shall not impair the payment of any outstanding bonds or interest thereon. In the event of the dissolution of a joint public agency, its board shall provide for the disposition, division, or distribution of the joint public agency's assets among the participating public agencies by such means as the board shall determine, in its sole discretion, to be fair and equitable or as provided in the agreement for creation of the joint public agency.

Source: Laws 1999, LB 87, § 18.

13-2519. Status as political subdivision.

A joint public agency shall constitute a political subdivision and a public body corporate and politic of this state exercising public powers separate from the participating public agencies. A joint public agency shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic exercising powers and acting on behalf of the participating public agencies.

Source: Laws 1999, LB 87, § 19.

13-2520. Applicability of Political Subdivisions Tort Claims Act.

A joint public agency may be sued subject to the Political Subdivisions Tort Claims Act.

Source: Laws 1999, LB 87, § 20.

Cross References

- **Political Subdivisions Tort Claims Act,** see section 13-901.

13-2521. Powers.

The powers of a joint public agency shall include the power:

(1) To sue;

(2) To have a seal and alter the same at pleasure or to dispense with the necessity thereof;

(3) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(4) From time to time, to make, amend, and repeal rules of governance not inconsistent with the Joint Public Agency Act or the terms of the agreement for its creation to carry out and effectuate its powers and purposes;

(5) To adopt and promulgate rules and regulations as authorized for at least one of the participating public agencies and as provided in the agreement;

(6) To acquire, own, hold, use, lease, as lessor or lessee, sell, or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity, product, or service or any interest therein or right thereto as provided by law;

(7) To incur debts, liabilities, or obligations, including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to the Joint Public Agency Act;

(8) To borrow money or accept contributions, grants, or other financial assistance from a public agency and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;

(9) To fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, or facilities provided by the joint public agency;

(10) Subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the board shall deem proper;

(11) To join and pay dues to organizations, membership in which is deemed by the board to be beneficial to the accomplishment of the joint public agency's purposes; and

(12) To exercise any other powers which are deemed necessary and convenient to carry out the Joint Public Agency Act.

A joint public agency may perform any governmental service, activity, or undertaking which at least one of the participating public agencies is authorized to perform. In exercising its powers under this section to perform any governmental service, activity, or undertaking, a joint public agency shall be subject to the same procedures, regulations, and restrictions as the participating public agency which is granted the power by law to perform the governmental service, activity,

or undertaking.

Source: Laws 1999, LB 87, § 21.

13-2522. Liability insurance coverage.

The board may provide its representatives, its officers, and agents and employees of the joint public agency and participating public agencies, either collectively or individually, with personal liability insurance coverage insuring against any liability and claim arising by reason of any act or omission in any manner relating to the performance, attempted performance, or failure of performance of official duties as a participating public agency, representative, officer, agent, or employee and may authorize the payment of the premium, cost, and expense of insurance from the general fund of the joint public agency. The agreement may provide that such coverage be the responsibility of one or more of the participating public agencies.

Source: Laws 1999, LB 87, § 22.

13-2523. Benefits.

The agreement creating a joint public agency may provide that insurance, retirement, indemnification, and other benefits be provided by one or more participating public agencies. If the agreement so provides, the insurance, retirement, indemnification, or other benefits applicable to the participating public agencies shall include the officers or employees of the joint public agency as provided in the agreement.

Source: Laws 1999, LB 87, § 23.

13-2524. Bankruptcy petition; authorized.

A joint public agency may file a petition in the United States Bankruptcy Court under 11 U.S.C. chapter 9 and any acts amendatory thereto and supplementary thereof and may incur and pay the expenses incident to the consummation of a plan of adjustment of debts as contemplated by the petition.

Source: Laws 1999, LB 87, § 24.

13-2525. Biennial report; fee.

(1) Commencing in 2001 and each odd-numbered year thereafter, each joint public agency shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(a) The name of the joint public agency;

(b) The street address of its principal office and the name of its manager or executive director, if any, at the office in this state;

(c) The names and business or residence addresses of its representatives and principal officers;

(d) A brief description of the nature of its activities; and

(e) The names of the participating public agencies.

(2) The information in the biennial report must be current on the date the biennial report is executed on behalf of the joint public agency.

(3) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which the joint public agency was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. The biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(4) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting joint public agency in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(5) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee of twenty dollars. The fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(6) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 1999, LB 87, § 25; Laws 2014, LB774, § 1.
Effective Date: July 18, 2014

13-2526. Bidding procedures.

If all participating public agencies are of the same type, the bidding procedures for that type of public agency apply to the joint public agency. If the participating public agencies are not all of the same type, the bidding requirements set out in the County Purchasing Act apply to the joint public agency.

Source: Laws 1999, LB 87, § 26.

Cross References

- **County Purchasing Act,** see section 23-3101.

13-2527. Expenditures; bond requirements.

(1) All money of the joint public agency shall be paid out or expended only by check, draft, warrant, or other instrument in writing, signed by the chairperson and the treasurer, assistant treasurer, or such other officer, employee, or agent of the joint public agency as is authorized by the treasurer to sign in his or her behalf. The authorization by the treasurer shall be in writing and filed with the secretary of the joint public agency.

(2) In the event that there is no treasurer's bond that expressly insures the joint public agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the joint public agency, together with the written authorization filed with the secretary, a surety bond, effective for protection against the loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two

officers of the joint public agency other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Source: Laws 1999, LB 87, § 27.

13-2528. Agreement; approval by state officer or agency; when required.

In the event that an agreement made pursuant to the Joint Public Agency Act deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the officer or agency as to all matters within the officer's or agency's jurisdiction.

Source: Laws 1999, LB 87, § 28.

13-2529. Public agencies; powers.

Any public agency entering into an agreement pursuant to the Joint Public Agency Act may appropriate funds and may sell, lease, give, or otherwise supply the board, joint public agency, or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as it may employ or contract to furnish.

Source: Laws 1999, LB 87, § 29.

13-2530. Revenue bonds authorized.

(1) Any joint public agency may issue such types of bonds as its board may determine subject only to any agreement with the holders of outstanding bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, bonds issued by any qualified public agency under the Public Facilities Construction and Finance Act, or leases made by the joint public agency with any person, including any of the public agencies which are parties to the agreement creating the joint public agency, or from its revenue generally or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the joint public agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

(2) Any bonds issued by such joint public agency shall be issued on behalf of the joint public agency solely for the specific purpose or purposes for which the joint public agency has been created. Such specific purposes may include, but shall not be limited to, joint projects authorized by the Public Facilities Construction and Finance Act; solid waste collection, management, and disposal; waste recycling; sanitary sewage treatment and disposal; public safety communications; correctional facilities; water treatment plants and distribution systems; drainage systems; flood control projects; fire protection services; ground water quality management and control; river-flow enhancement; education and postsecondary education; hospital and other health care services; bridges, roads, and streets; and law enforcement.

(3) As an alternative to issuing bonds for financing public safety communication projects, any joint public agency may enter into a financing agreement with the Nebraska Investment Finance Authority for such purpose.

(4) Any joint public agency formed for purposes of providing or assisting with the provision of public safety communications may enter into an agreement with any other joint public agency relating to (a) the operation, maintenance, or management of the property or facilities of such joint public agency or (b) the operation, maintenance, or management of the property or facilities of such other joint public agency.

Source: Laws 1999, LB 87, § 30; Laws 2002, LB 1211, § 2; Laws 2005, LB 217, § 10; Laws 2007, LB701, § 14.

Cross References

- **Public Facilities Construction and Finance Act,** see section 72-2301.

13-2531. General obligation bonds.

Any joint public agency may from time to time issue its bonds in such principal amounts as its board determines is necessary to provide sufficient funds to carry out any of the joint public agency's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the board may determine, and the payment of all other costs or expenses of the joint public agency incident to and necessary or convenient to carry out its purposes and powers. Except as provided in section 72-2304, bonds issued for purposes of the Public Facilities Construction and Finance Act may be issued with no requirement for a vote.

Source: Laws 1999, LB 87, § 31; Laws 2005, LB 217, § 11.

Cross References

- **Public Facilities Construction and Finance Act,** see section 72-2301.

13-2532. Bonds; treatment.

(1) The representatives or agents of the board and a person executing the bonds shall not be liable personally on such bonds by reason of the issuance thereof.

(2) The bonds shall not be a debt of any political subdivision other than the joint public agency or of this state, and neither this state nor any other political subdivision shall be liable thereon. Bonds shall be payable only out of any funds or properties of the issuing joint public agency. Such limitations shall be plainly stated upon the face of the bonds.

Source: Laws 1999, LB 87, § 32.

13-2533. Bond issuance; procedure.

Bonds shall be authorized by resolution of the board and may be issued under a resolution, indenture, or other security instrument in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, indenture, or other security instrument

may provide and without limitation by any other law limiting amounts, maturities, or interest rates. Any officer authorized or designated to sign, countersign, execute, or attest any bond or any coupon may utilize a facsimile signature.

Source: Laws 1999, LB 87, § 33.

13-2534. Bonds; negotiation; sale.

(1) Except as the board may otherwise provide, any bond and any interest coupons thereto attached shall be fully negotiable within the meaning of and for all purposes of article 8, Uniform Commercial Code.

(2) The bonds may be sold at public or private sale as the issuing board may provide and at such price or prices as such board shall determine.

Source: Laws 1999, LB 87, § 34.

13-2535. Bonds; signatures.

If any of the officers whose signatures appear on any bonds or coupons cease to be such officers before the delivery of such obligations, such signatures shall nevertheless be valid and sufficient for all purposes to the same extent as if such officers had remained in office until such delivery.

Source: Laws 1999, LB 87, § 35.

13-2536. Bond issuance; covenants.

Any joint public agency may in connection with the issuance of its bonds:

(1) Covenant as to the use of any or all of its property, real or personal;

(2) Redeem the bonds, covenant for their redemption, and provide the terms and conditions thereof;

(3) Covenant to charge or seek necessary approvals to charge rates, fees, and charges sufficient to meet operating and maintenance expenses of the joint public agency, costs of renewals and replacements to a project, interest and principal payments, whether at maturity or upon sinking-fund redemption, on any outstanding bonds or other indebtedness of the joint public agency, and creation and maintenance of any reasonable reserves therefor and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability or security of the bonds;

(4) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived, and as to the consequences of default and the remedies of bondholders;

(5) Covenant as to the mortgage or pledge of or the grant of any other security interest in any real or personal property and all or any part of the revenue from any project or projects or any revenue-producing contract or contracts made by the joint public agency with any person to secure the payment of bonds, subject to such agreements with the holders of outstanding bonds as may then exist;

(6) Covenant as to the custody, collection, securing, investment, and payment of any revenue,

assets, money, funds, or property with respect to which the joint public agency may have any rights or interest;

(7) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied and the pledge of such proceeds to secure the payment of the bonds;

(8) Covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(9) Covenant as to the rank or priority of any bonds with respect to any lien or security;

(10) Covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(11) Covenant as to the custody, safekeeping, and insurance of any of its properties or investments and the use and disposition of insurance proceeds;

(12) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the joint public agency may determine;

(13) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state;

(14) Make all other covenants and do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds or in the absolute discretion of the joint public agency tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section; and

(15) Execute all instruments necessary or convenient in the exercise of the powers in the Joint Public Agency Act granted or in the performance of covenants or duties, which instruments may contain such covenants and provisions as any purchaser of bonds may reasonably require.

Source: Laws 1999, LB 87, § 36.

13-2537. Refunding bonds authorized.

Any joint public agency may issue and sell refunding bonds for the purpose of paying or providing for the payment of any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at any time prior to or at the maturity or redemption of the refunded bonds as the board deems appropriate. The refunding bonds may be issued in principal amount not exceeding an amount sufficient to pay or to provide for the payment of (1) the principal of the bonds being refunded, (2) any redemption premium thereon, (3) interest accrued or to accrue to the first or any subsequent redemption date or dates selected by the board in its discretion or to the date or dates of maturity, whichever is determined to be most advantageous or convenient for the joint public agency, (4) the expenses of issuing the refunding bonds, including bond discount, and redeeming the bonds being refunded, and (5) such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be deemed necessary or convenient by the board. A determination by the board that any refinancing is advantageous or necessary to the joint public agency, that any of the amounts provided in this section should be included in such refinancing, or that any of the bonds to be refinanced should be called for redemption on the first or any subsequent redemption date or

permitted to remain outstanding until their respective dates of maturity shall be conclusive.

Source: Laws 1999, LB 87, § 37.

13-2538. Refunding bonds; proceeds.

To the extent not required for the immediate payment and retirement of the obligations being refunded or for the payment of expenses incurred in connection with such refunding and subject to any agreement with the holders of any outstanding bonds, principal proceeds from the sale of any refunding bonds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded, payment of interest and any redemption premiums, and payment of any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any surplus, including, but not limited to, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds. Money in any such trust fund may be invested in direct obligations of or obligations the principal of and interest on which are guaranteed by the United States Government, in obligations of any agency or instrumentality of the United States Government, or in certificates of deposit issued by a bank, capital stock financial institution, qualifying mutual financial institution, or trust company if such certificates are secured by a pledge of any of such obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing in this section shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which have not matured and which are not presently redeemable or, if presently redeemable, have not been called for redemption. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1999, LB 87, § 38; Laws 2001, LB 362, § 9.

13-2539. Refunding bonds; exchange for other bonds.

Refunding bonds may be exchanged for and in payment and discharge of any of the outstanding obligations being refunded. The refunding bonds may be exchanged for a like, greater, or smaller principal amount of the bonds being refunded as the board may determine in its discretion. The holder or holders of the bonds being refunded need not pay accrued interest on the refunding bonds if and to the extent that interest is due or accrued and unpaid on the bonds being refunded and to be surrendered.

Source: Laws 1999, LB 87, § 39.

13-2540. Other bond provisions applicable.

The issue of refunding bonds, the manner of sale, the maturities, interest rates, form, and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties, and obligations of the joint public agency in respect of the same shall be governed by the Joint Public Agency Act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Source: Laws 1999, LB 87, § 40.

13-2541. Bond issuance; consent not required.

Bonds may be issued under the Joint Public Agency Act without obtaining the consent of any department, division, commission, board, bureau, or instrumentality of this state and without any other proceedings or the happening of any other conditions or things than those proceedings,

conditions, or things which are specifically required therefor by the act, and the validity of and security for any bonds shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions, or things.

Source: Laws 1999, LB 87, § 41.

13-2542. Notice; proceeding.

The board may provide for the publication of any resolution or other proceeding adopted by it pursuant to the Joint Public Agency Act in a newspaper of general circulation published in the area served by the joint public agency or, if no newspaper is so published, in a newspaper qualified to carry legal notices having general circulation in the area served by the joint public agency.

Source: Laws 1999, LB 87, § 42.

13-2543. Issuance of bonds; notice.

In the case of a resolution or other proceeding providing for the issuance of bonds pursuant to the Joint Public Agency Act, the board may, either before or after the adoption of such resolution or other proceeding, in lieu of publishing the entire resolution or other proceeding, publish a notice of intention to issue bonds under the act, titled as such, containing:

(1) The name of the joint public agency;

(2) The purpose of the issue, including a brief description of the project and the name of the public agencies to be serviced by the project;

(3) The principal amount of bonds to be issued;

(4) The maturity date or dates and amount or amounts maturing on such dates;

(5) The maximum rate of interest payable on the bonds; and

(6) The times and place where a copy of the form of the resolution or other proceeding providing for the issuance of the bonds may be examined which shall be at an office of the joint public agency, identified in the notice, during regular business hours of the joint public agency as described in the notice and for a period of at least thirty days after the publication of the notice.

Source: Laws 1999, LB 87, § 43.

13-2544. Issuance of bonds; right to contest; procedure.

For a period of thirty days after such publication, any interested person shall have the right to contest the legality of such resolution or proceeding or any bonds which may be authorized thereby, any provisions made for the security and payment of such bonds, or any contract of purchase, sale, or lease relating to the issuance of such bonds. After such time no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

Source: Laws 1999, LB 87, § 44.

13-2545. Bonds; investment authorized.

Bonds issued pursuant to the Joint Public Agency Act shall be securities in which all public officers and instrumentalities of the state and all political subdivisions, insurance companies,

trust companies, banks, savings and loan associations, investment companies, executors, administrators, personal representatives, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds shall be securities which may properly and legally be deposited with and received by any officer or instrumentality of this state or any political subdivision for any purpose for which the deposit of bonds or obligations of this state or any political subdivision thereof is now or may hereafter be authorized by law.

Source: Laws 1999, LB 87, § 45.

13-2546. Bonds, property, and income; exempt from taxes; when.

(1) All bonds of a joint public agency are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes.

(2) The property of a joint public agency, including any pro rata share of any property owned by a joint public agency in conjunction with any other person, is declared to be public property of a governmental subdivision of the state. Such property and the income of a joint public agency shall be exempt from all taxes and assessments of the state or any political subdivision of the state if used for a public purpose.

Source: Laws 1999, LB 87, § 46; Laws 2001, LB 173, § 12.

13-2547. Act; how construed.

The provisions of the Joint Public Agency Act shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized by the act and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon political subdivisions, agencies, and others by law. Insofar as the provisions of the Joint Public Agency Act are inconsistent with the provisions of any general or special law, administrative order, or regulation, the provisions of the Joint Public Agency Act shall be controlling.

Source: Laws 1999, LB 87, § 47.

13-2548. Pledge of state.

The State of Nebraska does hereby pledge to and agree with the holders of any bonds and with those persons who may enter into contracts with any joint public agency under the Joint Public Agency Act that the state will not alter, impair, or limit the rights thereby vested until the bonds, together with applicable interest, are fully met and discharged and such contracts are fully performed. Nothing contained in the Joint Public Agency Act shall preclude such alteration, impairment, or limitation if and when adequate provisions are made by law for the protection of the holders of the bonds or persons entering into contracts with any joint public agency. Each joint public agency may include this pledge and undertaking for the state in such bonds or contracts.

Source: Laws 1999, LB 87, § 48.

13-2549. Joint public agency; status.

A joint public agency created by public agencies pursuant to the Joint Public Agency Act shall not be considered a state agency, and an employee of such an entity or agency shall not be considered a state employee.

Source: Laws 1999, LB 87, § 49.

13-2550. Liberal construction.

The Joint Public Agency Act is necessary for the welfare of the state and its inhabitants and shall be construed liberally to effect its purposes.

Source: Laws 1999, LB 87, § 50.

Review of Existing Regional Governance Agreements Technical Memorandum

To:	Sarpy County
From:	Ann Williams/HDR David Dechant/HDR
CC:	File
Project:	Southern Sarpy County Wastewater Study – Phase IA
Subject:	Review of Existing Regional Governance Agreements
Date:	Friday, April 10, 2015
Revised:	Wednesday, June 10, 2015 HDR Job Number: 246431

This Technical Memorandum serves as a preliminary review of regional governance agreements associated with several existing regional water or wastewater treatment facilities in the Midwest. The following represent major headings contained herein:

- Objective
- Summary

Objective

This Technical Memorandum is intended to summarize the key topics identified in several existing agreements between various entities for regional governance of water/wastewater treatment facilities. These key topics can be used as a basis when developing a regional governance agreement for Sarpy County and the stakeholder communities.

Summary

The following agreements were reviewed:

- Resolution No. 973-5-79, City of Marion and City of Cedar Rapids for Construction, Operation and Maintenance of Water Pollution Control Facility (1979)
- Joint Antelope Valley Authority Interlocal Cooperation Agreement Between University of Nebraska, City of Lincoln and Lower Platte South Natural Resources District (2000)
- Amended and Restated Agreement for the Des Moines Metropolitan Wastewater Reclamation Authority (2004)
- Amended and Restated Commitment Agreement By and Between Lewis and Clark Rural Water System, Inc. and City of Luverne, Minnesota (2005)
- Resolution No. 0329-04-07, City of Cedar Rapids, Iowa and City of Palo, Iowa for Provision of Sanitary Sewer Services (2007)

- Joint 28E Agreement - Cities of Cedar Rapids, Marion, Hiawatha, Robins and the County of Linn for Indian Creek and Dry Run Creek Sanitary Sewer System Program (2007)
- Joint 28E Agreement - Clinton/Camanche Wastewater Treatment District (2008)
- Joint 28E Agreement - Clinton/Low Moor Wastewater Treatment District (2009)
- Ordinance of the City of Sioux Falls, South Dakota Amending the Code of Ordinances of the City by Amending Certain Provisions of Chapters 50, 51 and 53 Relating to Wastewater Regionalization (2013)

Several topics/themes were common among many of the agreements. All are specific to particular situation, but there are commonalities, including the following:

- Definitions, purpose and intent
    - Including definition of "regional" facilities – existing and new
    - Effective date and duration of agreement
- Legal/administrative entities, such as creation of Board of Directors; organization and power of Board, including composition, voting, meetings, bylaws, etc.
- Manner of financing; establishing and maintaining budget
    - Alternative financing during development and construction phase in the event of lack of availability of federal or state funds prior to completion of construction
    - Determination of each member's share of development and construction cost
    - Acquisition of existing facilities and transfer of assets
    - Reserve funds during operation, such as maintenance and repair fund, capital improvement fund, administrative fund, flow monitoring, pretreatment, debt service, insurance and operating reserve fund
    - Issuance of bonds
    - Construction of future improvements (core improvements, expansion improvements, other); If expansion required, how to handle fairly and equitably
- Allocation of system capacity and proportionality - who pays for excess capacity and is there dedicated capacity
    - Adjustment of capacity in event of excess capacity
    - Excess usage/surcharges
- Ownership of facilities – who owns and operates both existing and new facilities
- Conditions of service – what wastewater is accepted, point of delivery
- Development of "regional" infrastructure – responsibility to plan, finance, construct. Where does responsibility start and end for "regional" facilities
- What responsibilities do others have for "local" facilities. Local rate making responsibilities and principles
- Maintenance and repair responsibilities for major, minor and emergency repairs
- Need for long term master planning
- "Regional" rate making principles – how established and how revised
- Dispute resolution clause – venue and jurisdiction if go to court
- Regional system development charges/connection fees/impact fees per connection for expansion
- Regional cooperation in emergency situations
- Withdrawal or non-participation by participating communities; how to handle if community withdraws from agreement or does not pay share; Successors clause to cover when someone moves on local or regional level

- Newly connecting communities, including admission of, voting rights, budget share allocations, capital contribution
- Annexation
- Consolidation or merger
- Indemnification
- Flow monitoring installation and maintenance
- Enforcement authority for illicit discharge
- NPDES permits and industrial pretreatment programs