

Omaha Lead Smelter RP/EA

RESTORATION PLAN
AND
ENVIRONMENTAL ASSESSMENT
FOR THE
OMAHA LEAD SMELTER RESTORATION

Prepared by:

U.S. Department of the Interior
Nebraska Ecological Services Field Office
U.S. Fish and Wildlife Service

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ACRONYMS AND ABBREVIATIONS

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
DOI	U.S. Department of the Interior
EA	Environmental Assessment
EPA	U.S. Environmental Protection Agency
FWS	U.S. Fish and Wildlife Service
NEPA	National Environmental Policy Act
NLT	Nebraska Land Trust
NRC	National Research Council
NRCS	Natural Resource Conservation Service
NRDA	Natural Resource Damage Assessment
NRDAR	Natural Resource Damage Assessment and Restoration
RP	Restoration Plan
RP/EA	Restoration Plan/Environmental Assessment
USC	United States Code

1.0 INTRODUCTION

This draft Restoration Plan and Environmental Assessment (RP/EA) presents and evaluates proposed actions to address natural resources and lost services and uses that may have been potentially injured or lost by the release of hazardous substances from the former Omaha Lead Smelter facility in Douglas County, Nebraska. The U.S. Environmental Protection Agency (EPA) placed the Omaha Lead Smelter site on the National Priorities (Superfund) List in 2003. In August 2011, the responsible parties, the United States, and the State of Nebraska reached a settlement agreement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended (42 USC 9601 *et seq.*). One provision of the settlement agreement required the responsible parties to pay natural resource damages to the Department of the Interior (DOI).

1. Purpose and Need

The purpose of this RP/EA is to evaluate and select restoration alternatives that will restore, rehabilitate, replace, or acquire natural resources roughly equivalent to the potential injuries caused by the hazardous substance release.

Authorities and Trustee Responsibilities

Section 107 of CERCLA authorizes Federal agencies who administer natural resources, states, and federally-recognized Indian tribes to be designated as trustees for natural resources under their statutory authorities and responsibilities. These designated natural resource trustees assess and recover damages for natural resource injury. The trustees also have the responsibility to restore, rehabilitate, replace, or acquire the equivalent natural resources.

The Region 6 Regional Director of the U.S. Fish and Wildlife Service (FWS) is designated to act on behalf of the Secretary as the Department of the Interior's (DOI) authorized natural resource trustee in the Omaha Lead Smelter case. As such, FWS is responsible for developing a restoration plan, and for implementing and overseeing activities that will restore the natural resources potentially injured by the Omaha Lead Smelter's release of hazardous substances. As a natural resource trustee, FWS is also responsible for administering the natural resource injury-related settlement funds and soliciting public input into the restoration process.

Under the National Environmental Policy Act (NEPA; 42 United States Code [USC] 4321 *et seq.*), FWS, as a federal agency, must also assess potential environmental impacts associated with this proposal. Therefore, requirements of a restoration plan and a NEPA environmental analysis are combined in this RP/EA document.

1.2 Summary of the Settlement

A Consent Decree was entered with the U.S. District Court for the District of Nebraska, by the United States, the State of Nebraska, and the responsible parties on August 9, 2011. The

Consent Decree requires the responsible parties to pay \$100,000 to DOI to compensate the public for the potential natural resources that may have been injured by the release of hazardous substances from the site. Under the Natural Resource Damage Assessment (NRDA) provisions of CERCLA, these funds will be used to restore, rehabilitate, replace, or acquire the equivalent natural resources.

1.3 Summary of Hazardous Substance Release and Injury

The former Omaha Lead Smelter facility is located on approximately 23 acres on the west bank of the Missouri River in downtown Omaha. This former lead refinery conducted lead refining operations from the early 1870s until 1997, processing lead bullion containing recoverable amounts of metals, including gold, silver, antimony, and bismuth. The refinery process involved the addition of metallic and non-metallic compounds to molten lead, separation of the lead from the other metals, and removal of impurities. Refined lead and specialty metal by-products such as antimony-rich lead, bismuth, dore (silver-rich material), and antimony oxide were produced at the facility. The fully refined lead was formed into 100-pound castings or 1-ton blocks which were shipped to various manufacturers.

During the operational period of the smelter, lead, cadmium, zinc, and arsenic were emitted into the atmosphere through smoke stacks. Early investigations at the Omaha Lead site found evidence of high lead concentrations in surface soils along the corridors of prevailing wind currents that pass through downtown Omaha. These and other investigations concluded that industrial emissions contamination, predominantly from prevailing wind currents from the site, was deposited outward and along the Missouri River (Black & Veatch Special Projects Corporation 2004). The proposed final boundary of the depositional area covers 17,291 acres or 27 square miles (EPA 2010).

1.4 Restoration Goals

The purpose of the proposed action is to restore, rehabilitate, replace, or acquire the equivalent of natural resources that may have been injured or destroyed by the hazardous substance releases, pursuant to the requirements of the Consent Decree and applicable federal and state laws and regulations.

The \$100,000 in recovery funds will be used to protect and/or restore terrestrial, riparian, and other habitats along the lower Platte River/Missouri River corridor with similar ecological attributes as those that may have been injured.

1.5 Compliance with Other Authorities

The following environmental laws, regulations, and executive orders were considered in the restoration planning process because they may impose limits or standards for completing the restoration.

1.5.1 Clean Water Act

The Clean Water Act 33 USC 1251, *et seq.*, is the principal law governing pollution control and water quality of the nation's waterways. Section 404 of the law authorizes the permit program that allows for the disposal of dredged or fill material into navigable waters. The U.S. Army Corps of Engineers administers this program. Restoration projects that move material into or out of waters or wetlands require individual Section 404 permits or may be addressed under nationwide permits.

1.5.2 Fish and Wildlife Conservation Act

The Fish and Wildlife Conservation Act, 16 USC 2901-2911, authorizes federal financial and technical assistance to the states to develop, revise, and implement conservation plans and programs for nongame fish and wildlife.

1.5.3 Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act, 16 USC 661, *et seq.*, states that wildlife conservation shall receive equal consideration with other features of water resource development. The Act requires federal permitting and licensing agencies to consult with the FWS and state wildlife agencies before permitting any activity that in any way modifies any body of water to minimize the adverse impacts of such actions on fish and wildlife resources and habitat.

1.5.4 Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA), 16 USC 715, *et seq.*, provides for the protection of migratory birds. The MBTA may be used to consider time of year restrictions for construction activities on sites where it is likely migratory birds may be nesting, and to stipulate maintenance schedules that would avoid disturbances during the nesting seasons of migratory birds.

1.5.5 National Environmental Policy Act

The National Environmental Policy Act established a national policy for the protecting the environment. NEPA applies to all federal agency actions that affect the human and natural environment. Federal agencies are obligated to comply with NEPA regulations issued by the Council on Environmental Quality. NEPA requires that for activities not categorically excluded, an analysis be conducted to determine whether proposed actions will have a significant effect on the quality of the human and natural environment. If an impact is considered significant, then an environmental impact statement is prepared and a record of decision is issued. If the impact is considered not significant, then an environmental assessment is prepared and a finding of no significant impact is issued.

1.6 Coordination and Scoping

This RP/EA has been developed in coordination with state and local governmental agencies, non-governmental organizations, and the public.

1.6.1 Public Notification

Under the CERCLA NRDA regulations (43 CFR Part 11) and NEPA, the natural resource trustee shall notify the public and any federal, state, and local government agencies that may have an interest in the activities analyzed in the RP/EA. A notice of the availability of this draft RP/EA will be published in the following local newspapers:

Springfield Monitor
604 Fort Crook Road N
Bellevue, NE 68005
402-339-3331

Copies of this draft RP/EA will be made available at the following locations:

U.S. Fish and Wildlife Service
Ecological Services
Nebraska Field Office
203 W. 2nd Street,
2nd Floor, Federal Building
Grand Island, NE 68801

An electronic version of this draft RP/EA is posted on the FWS Ecological Services, Nebraska Field Office's website at <http://www.fws.gov/nebraskaes/>

The public comment period will be for 30 days. Addresses where comments may be sent, and the due date for receipt of comments, will be published in the notice of availability of the Final RP/EA.

1.6.2 Public Meetings and Summary of Scoping

A public meeting will be scheduled if sufficient interest exists as determined by the public comments received on this draft RP/EA. If a public meeting is scheduled, notice will be provided to commenters and in the same newspaper listed in Section 1.6.1.

1.6.3 Responsible Party Involvement

The party responsible for the hazardous substance release at the Omaha Lead Smelter will not participate in restoration planning and implementation.

1.6.4 Administrative Record

The administrative record contains the official documents pertaining to the Omaha Lead Smelter case settlement, restoration planning, and restoration implementation. The administrative record for this case is housed at the FWS Ecological Services, Nebraska Field Office, 203 W. 2nd Street, 2nd Floor, Federal Building, Grand Island, NE 68801.

1.6.5 Climate Change

Consistent with goals and objectives outlined in FWS's *Strategic Plan for Responding to Accelerated Climate Change* (FWS 2010), the restoration alternative proposed in this RP/EA aligns with landscape level conservation efforts and involves collaboration with other stakeholder organizations and the public.

1.6.6 Regional Plans and Partnerships

Natural resource trustees may consider implementing projects described in existing regional restoration plans or other planning documents, when those projects pertain to the injured natural resource or to the geographic area where the injury occurred. Similarly, natural resource trustees may partner with other parties whose conservation goals overlap the restoration goals for the injured natural resources. Other parties, and the conservation and restoration priorities set forth by those parties, that were considered in the development of this RP/EA are discussed below.

Platte River Corridor, Schramm Bluffs Conservation

The lower Platte River flows between Lincoln and Omaha, the major population centers of eastern Nebraska. The Omaha metropolitan area is located in Douglas and Sarpy Counties, Nebraska. Sarpy County is currently experiencing the greatest population growth of any county in Nebraska, and by some estimates the county will eventually achieve full "build-out" if land is not protected. As such, development in and along the river floodplain, especially that on the Sarpy County side of the river, is a major concern to the health and well-being of DOI trust natural resources. Land use along the Platte River corridor has historically been intensive row-crop agriculture and sand and gravel mining. However, urban sprawl in eastern and western directions from Lincoln and Omaha, respectively, has elevated the demand for residential housing and other developments along the Platte River corridor.

Natural resource agencies have identified floodplain development and urban sprawl as having the potential to conflict with the relatively natural riverine system that characterizes the lower Platte River. As such, these impacts are likely to have a negative impact on the future availability of suitable habitat for the federally endangered least tern (*Sterna antillarum*) and pallid sturgeon (*Scaphirhynchus albus*) and federally threatened piping plover (*Charadrius melodus*) on the lower Platte River. Multi-agency stakeholder groups including the Platte River Corridor Alliance and Cumulative Impacts Working Group have formed to address these competing issues. In an effort to manage development pressure in the corridor, the Sarpy County Comprehensive Plan designated an 11,000-acre Schramm Conservation District, an area roughly 4 miles wide and 15 miles long and extending from Gretna to Springfield, Nebraska (Sarpy County 2005). In the Schramm Bluffs Conservation District, or Schramm Bluffs as it is locally known, conservation of river frontage, floodplain, and bluff areas are encouraged through conservation easements to preserve fragile soils and a sensitive ecosystem. The National Audubon Society has also identified the area as an Important Bird Area, as it provides habitat for

a diversity of nesting and migrating songbirds including warblers, woodpeckers, and other avian species.

The Nebraska Land Trust (NLT) (<http://nelandtrust.org/>) has made protection of Schramm Bluffs a priority due to its significant agricultural, historical, and natural resources in the state's fastest growing county (i.e., Sarpy County). In 2007, the NLT initiated a targeted conservation easement acquisition program along the lower Platte River corridor in the Schramm Bluffs area. The NLT has been instrumental in developing partnerships with other state and federal agencies, natural resources districts, and the Nebraska Environmental Trust. Through those efforts, NLT has successfully leveraged a substantial amount of funding for the acquisition of several perpetual conservation easements in the Schramm Bluffs area, preserving 484 acres to date. Through this proposal, we propose to contribute to the land preservation efforts within the Schramm Bluffs Conservation Area by the acquisition and designation of a perpetual conservation easement, thereby compensating the public for potential natural resource injury from the Omaha Lead Smelter.

2.0 PROPOSED ACTION/PREFERRED ALTERNATIVE

The purpose of this section is to describe the proposed actions, identify the preferred alternative, and describe the environmental effects of each alternative.

2.1 Criteria for Identifying and Selecting the Proposed Action/Preferred Alternative

The primary restoration goal is to restore, rehabilitate, replace, or acquire the equivalent natural resources that were potentially injured or lost due to the adverse affects of hazardous substances released from the Omaha Lead Smelter site.

Drawing upon the factors within the DOI NRDA regulations and DOI policy for selecting a restoration alternative, a preferred restoration alternative was selected based on relevant considerations, including general consideration of the following factors:

- Technical feasibility
- Relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, or acquisition of equivalent resources
- Cost-effectiveness
- Potential for additional injury resulting from the proposed actions, including long-term and indirect impacts to the injured resources or other resources
- Ability of the resources to recover with and/or without the alternative actions
- Potential effects of the action on human health and safety

- Consistency with relevant federal and state policies
- Compliance with applicable federal and state laws

The preferred alternative described in this RP/EA is based on conceptual plans for which some costs have been estimated. The size and design of specific restoration actions may change based on additional scientific findings or other factors. If, during implementation, it is determined that significant changes to the selected restoration alternative are needed, additional public review and comment will be sought, as appropriate. No restoration actions will be conducted that would incur ongoing expenses to the trustee agency in excess of those that can be funded by settlement monies.

2.2 Description of the Alternatives

The no action alternative and the proposed action/preferred alternative are described in this section.

2.2.1 No Action Alternative

A no action alternative is addressed to fulfill requirements under NEPA, and is consistent with the damage assessment process under the CERCLA NRDA regulations. Under this alternative, no action would be taken to restore potentially injured natural resources or to replace or acquire the equivalent of the resources lost. The underlying assumption of this alternative is that the resource will recover over time through enhanced habitat availability and natural attenuation of bioavailability of remaining environmental contaminants to below concentrations of ecotoxicological concern. This alternative has no cost.

2.2.2 Proposed Action/Preferred Alternative

The proposed action/preferred alternative involves acquisition and preservation of land situated along the lower Platte River corridor that has similar natural resource attributes as those potentially injured by the Omaha Lead Smelter hazardous substances releases.

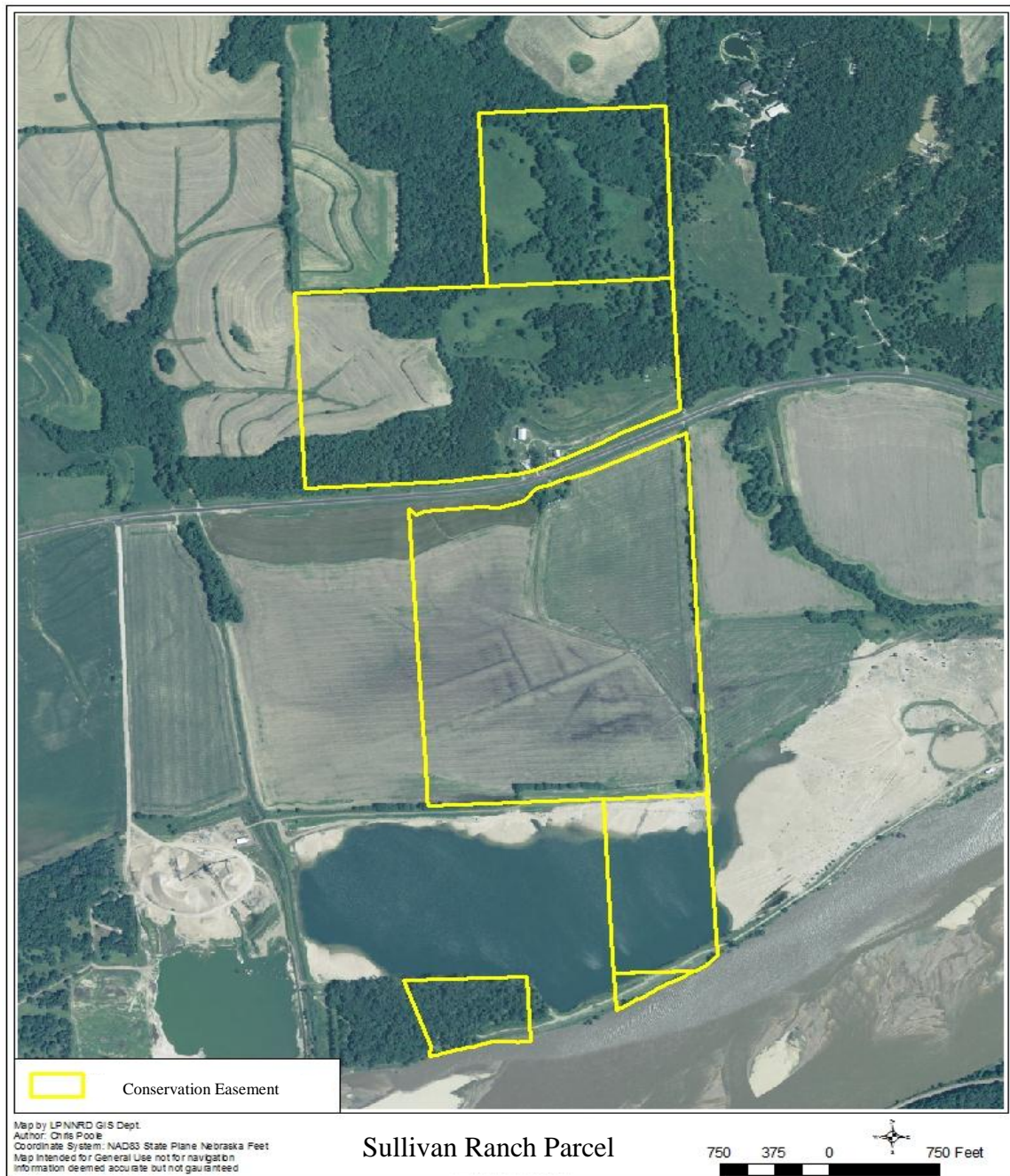
Sullivan Ranch Easement

In 2009, owners of a farm once known as the Sullivan Ranch in the targeted Schramm Bluffs area were contacted about their interest in placing an approximately 261.63-acre tract of their land into a perpetual conservation easement (Figure 1). The owners expressed interest in a conservation easement with a desire that the land remain in a natural setting to avoid risk of floodplain development in the future and that the entire parcel be included in a conservation easement.

The parcel is located along the lower Platte River in Sarpy County, Nebraska, approximately 20 air miles from the Omaha Lead Smelter. The parcel is typified by riparian corridor forest, row crops, and a forested bluff line that parallels the river. The river frontage component contains

suitable nesting habitat for the least tern and piping plover. Pallid sturgeon have been surveyed in the immediate area of the parcel and interchange freely between the Missouri and Platte rivers.

Figure 1



The bluff line is composed of mixed grass prairie and upland hardwoods. Very little of the bank line has been armored and there is no levee in place that may prohibit occasional flooding at the site and exchange of sediment and nutrients that are beneficial for riverine fish and wildlife species. Another important aspect of the parcel is that it protects a continuous wildlife corridor that extends from the river to the bluffs.

Benefits

Protection of the Sullivan Ranch Parcel via a perpetual conservation easement will prevent residential housing and other forms of development from occurring. An active sand and gravel operation is located just downstream of the Parcel. Once gravel mining is complete, it is expected that the area may be developed for residential housing. A portion of the Parcel has been mined for gravel, but the landowners have agreed that further mining will be prohibited by the terms of the easement.

Placing the 261.63-acre Sullivan Ranch Parcel under a perpetual conservation easement creates a sizable addition to lands already under protection and adds to the large habitat complex that includes a riparian corridor and river frontage areas. Conservation of this contiguous area would allow natural river processes to continue and benefit native plant and animal species. The Sullivan Ranch Parcel is located directly across from the Nebraska Game and Parks Commission's (Commission) Platte River State Park, and upstream and across the river from the Commission's Louisville State Recreation Area. The Commission's Schramm Bluffs State Recreation Area is located within 3 miles of the Parcel. The MO Pac Recreational Hike/Bike Trail, a popular recreational trail for hikers, bikers, and walkers crosses the Parcel.

2.3 Other Alternatives Considered

Other restoration alternatives were deemed infeasible because either they did not meet the restoration goals set forth in this RP/EA, or they could not be accomplished with the available settlement funds.

Partner Contributions

The landowners are procuring an appraisal on the property to determine the value of the conservation easement. However, based on comparable conservation easements in the area, it is estimated that the value of the Sullivan Ranch Conservation Easement could be approximately \$1.2 million. The NLT currently has available approximately \$200,000 in funds from the Natural Resources Conservation Service's (NRCS) Farm and Ranchland Protection Program (FRPP). When advised of the Sullivan Ranch Conservation Easement opportunity, the NRCS encouraged the NLT to submit a FRPP grant application for an additional \$399,917 in funding. The NLT also has programmed approximately \$220,000 of in-house privately donated funds for this acquisition. The addition of \$80,000 from the Omaha Lead Smelter settlement would provide the final critical source of funding to acquire this conservation easement. It is anticipated that the NLT would hold the easement with the backup easement holder being the NRCS. Additionally, \$15,000 in funds is already available for a stewardship fee to cover expenses such as yearly monitoring, an endowment for legal defense, and administrative costs.

Natural Resources Conservation Service (FRRP) (Applied)	\$399,917	
Natural Resources Conservation Service (FRRP) (in-hand)	\$200,000	
Nebraska Land Trust (In-House Donated Funds)	\$220,000	
Omaha Lead Smelter Settlement	\$80,000	
Landowner Donation (25% of appraised value)	\$300,000	
Total Funds	\$1,199,917	
Estimated Conservation Easement Value		\$1,199,835

3.0 AFFECTED ENVIRONMENT

The lower Platte River flows from the confluence of the Platte and Loup rivers near Columbus, Nebraska to the confluence of the Platte and Missouri rivers near Plattsmouth, Nebraska. The river is broad, shallow, and contains an abundance of sandbars, side channels, and forested islands. The Loup and Elkhorn tributary rivers allow the Platte River to retain much of its natural characteristics. Combined, these tributary rivers provide a tremendous amount of flow and sediment, which contribute to the preservation of natural riverine processes and functions, including cut and fill alluviation, a relatively natural hydrograph with spring pulses, floodplain connectivity, and ice formation leading to habitat scour and channel modification. These dynamic processes result in the creation and maintenance of suitable habitat complexes for federally listed species and numerous other riverine fish and wildlife species (NRC 2005).

4.0 ENVIRONMENTAL CONSEQUENCES OF THE ALTERNATIVES

This section evaluates environmental consequences of the no action alternative and the proposed action/preferred alternative.

4.1 Evaluation of the No Action Alternative

The no action alternative relies completely on natural recovery to restore the potentially injured resource and the services provided by that resource. This alternative would not restore the potentially injured natural resources or lost services and lost uses within the same time frame as the Proposed Action /Preferred Alternative and would not compensate the public for their losses.

4.2 Evaluation of the Proposed Action/Preferred Alternative

The proposed action/preferred alternative described in this RP/EA acquires the equivalent natural resources and supports their continued enhancement through implementing a perpetual conservation easement along the lower Platte River. The proposed restoration action will have an overall positive effect by significantly increasing fish and wildlife habitat acreage and connectivity along the lower Platte River. For example, protection of the Sullivan Ranch Parcel via a perpetual conservation easement will prevent residential housing and other forms of development from occurring in valuable and irreplaceable fish and wildlife habitats. These kinds of developments have proven to lead to armoring of the river bankline and replacement of the existing wildlife corridor with other forms of development. A portion of the Sullivan Ranch Parcel has been mined for gravel, which may result in the loss of habitat and wildlife corridors. However, the landowners have agreed that further mining will be prohibited by the terms of the easement. The location is juxtaposed with other conservation properties along the river.

Conservation of this contiguous area allows natural river processes to continue unabated and benefits native plant and animal species.

4.3 Cumulative Impacts

The proposed restoration action will increase the availability and quality of fish and wildlife habitat. The restoration action will be positive and is not expected to result in a cumulative negative impact to the natural and physical attributes of the river ecosystem.

5.0 MONITORING PROGRAM AND PERFORMANCE CRITERIA

A monitoring program will be specifically designed to evaluate the extent to which the restoration goals have been met. The proposed action/preferred alternative presented in this RP/EA is land acquisition and establishment of a perpetual conservation easement along the lower Platte River near Omaha. The monitoring program for this project will include provisions for project monitoring and reporting to ensure that specific project objectives and restoration actions are conducted as intended. Such provisions include performance standards and criteria for each restoration action, guidelines for implementing corrective actions, and a schedule for frequency and duration of monitoring.

6.0 BUDGET SUMMARY AND TIME TABLE

Settlement with the responsible party provided \$100,000 for restoration of the potentially injured natural resources. These funds are held in an interest-bearing account in DOI's Natural Resource Damage Assessment and Restoration (NRDAR) Fund, and are available to the trustee agency only for planning, implementation, and monitoring of actions necessary to restore, replace, or acquire the equivalent of the potentially injured natural resources. As outlined in Section 2.2.2, \$80,000 of the settlement funds will be contributed toward the Sullivan Ranch Conservation Easement. The remainder of the settlement funds will be used to meet administrative and processing expenses.

7.0 LIST OF PREPARERS

This RP/EA was prepared by the representative of the natural resource trustee agency listed below, in consultation with other partnering agencies and stakeholders.

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8.0 LIST OF AGENCIES, ORGANIZATIONS, AND PARTIES CONSULTED FOR INFORMATION

Platte River Corridor Alliance
Cumulative Impacts Working Group
Nebraska Land Trust
Private Landowners
U.S. Department of Agriculture, Natural Resource Conservation Service

9.0 PUBLIC COMMENTS AND TRUSTEE RESPONSES

In accordance with NEPA, this RP/EA has been prepared to analyze the impacts of the alternatives considered, select a preferred alternative, and determine whether the preferred alternative is expected to have a significant effect on the quality of the environment. If a significant effect is expected, an environmental impact statement must be prepared. If no significant effects are expected from the proposed alternative, the NEPA process concludes with the EA and issuance of a final finding of no significant impact.

In analyzing the potential significance of a proposed project, federal agencies must consider: (1) the nature of the impacts and whether they are beneficial or detrimental; (2) impacts on public health and safety; (3) unique characteristics of the geographic area of the project; (4) whether the project is likely to generate controversy; (5) whether the project involves uncertain impacts or unknown risks; (6) the type of precedent created by implementing the project; (7) cumulative impacts of the proposed action with known other future actions; (8) impacts on nationally significant cultural, scientific, or historic resources; (9) impacts on threatened or endangered species or their habitats; and (10) potential violations of federal, state, or local environmental protection laws.

The trustees welcome input from the public in evaluating the likely success of the proposed action in making the environment and the public whole for the potential losses suffered from the hazardous substance releases from the Omaha Lead Smelter. Information currently available suggests that the proposed restoration action will not have a significant effect on the quality of the human environment. If no new substantive information is received during the public comment period that would prompt a change in the evaluation of the restoration alternatives and the selection of the preferred alternative, then the NEPA process will conclude with the issuance of a final finding of no significant impact.

The final RP/EA and draft finding of no significant impact will be available for public review and comment for 30 days from the date of publication of the notice of availability.

9.1 Public Comments

Comments received during the 30-day public comment period for this draft document will be presented in this section of the final RP/EA.

9.2 Responses to Public Comments

Responses to public comments received will be presented in this section of the final RP/EA.

10.0 LITERATURE CITED

Black & Veatch Special Projects Corporation. 2004. Feasibility Study Residential Yard Soil, Omaha Lead Site, Omaha, Nebraska. Prepared for U.S. Environmental Protection Agency Region VII, Contract No. 68-W5-0004USEPA Work Assignment Number: 070-RICO-07ZYBVSPC Project No. 46130.

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(<http://www.fws.gov/home/climatechange/strategy.html>)