

## **PIPING PLOVER HABITAT DESIGNATION THROWN OUT**

Last month, Judge Lyle Strom, Senior Judge of the United States District Court of Nebraska, issued a ruling that was so welcomed and so important for the Central Platte Valley, and really, the state as a whole. The ruling involved the piping plover critical habitat designation in Nebraska made by the US Fish and Wildlife Service (FWS) in 2002. This designation included a 252-mile stretch of the Platte River from Lexington all the way to the Missouri River, and was opposed by most all farm groups, natural resources districts and counties in the designated area.

Back in July 2001, the FWS held a public hearing on their proposed critical habitat designation for the piping plover. We were able to get about 100 members there to protest the designation. Nebraskans First Executive Director Don Adams stressed that the designation was not based on sound science, and was just another attempt by the FWS to strengthen their hand in their push for adoption of the Cooperative Agreement program in the Central Platte. ~~Adams said that such critical habitat designations arm the FWS with regulatory firepower to control activities such as irrigation, dam maintenance, dredging, road construction, plowing, and off-road vehicle activities.~~

Much thanks to Judge Strom for throwing out this critical habitat designation in Nebraska. The judge looked at the facts and the evidence, and after doing so, his ruling was easy because the facts clearly showed that there was no plover nesting in the designated area in the entire decade of the 1990's, and therefore, the requirements of the Endangered Species Act were not met. Essentially, what he said was that the Fish and Wildlife Service violated the Endangered Species Act by designating this critical habitat. Judge Strom wrote, "the excuses put forth by the Fish and Wildlife Service do not absolve the Service from its responsibility to appropriately designate critical habitat in accordance with the applicable statutes and regulations."

Judge Strom then added that the Fish and Wildlife Service's economic analysis "understated the economic costs associated with the critical habitat designation

...and thus the economic assessment prepared by the Fish and Wildlife Service fails to meet the requirements of the Endangered Species Act."

Now that the plover critical habitat designation has been invalidated, and in the process revealed the dishonesty of the Fish and Wildlife Service, it is time Nebraska pull out of the Cooperative Agreement program. The three-legged stool propping up this program has been critical habitat designations for the plover, least tern and whooping crane.

The truth about the plover has now been exposed. The situation with the least tern is likewise suspect, and it is well documented that virtually no whooping cranes ever use their designated critical habitat. In fact, this year, there were no sightings of whoopers. The analysis of Judge Strom, which is now law, would surely invalidate the critical habitat designations of the least tern and the whooping crane.

Therefore, there is absolutely no reasonable basis to go forward with the Cooperative Agreement program, which will cost taxpayers upwards of 250 million dollars - just for the first phase of a three-phase program. Furthermore, if our governor signs off on the Cooperative Agreement, he will be handing over control of the entire Platte River to the Fish and Wildlife Service forever under what they call "adaptive management."

