

CHAPTER 3. MITIGATION PLAN

3.1 Mitigation Goals and Objectives

The overall goal of the mitigation plan is to restore a naturally self-sustaining riparian ecosystem within the MA that supports the best functional conditions that can be practicably established. The objectives of the mitigation plan will focus on the six main factors that are affecting functional conditions:

- Monitor to ensure adequate (sufficient to maintain the existing and enhanced areas) hydrologic conditions are maintained within the MA.
- Remove livestock grazing and the negative affects from livestock grazing.
- Reduce proliferation of undesirable (noxious weed) species and replace with desirable species.
- Protect or stabilize eroding streambanks as needed.
- Restore degraded floodplain within straightened, armored and leveed river reaches.
- Improve the condition of upland buffers adjoining riparian habitats.

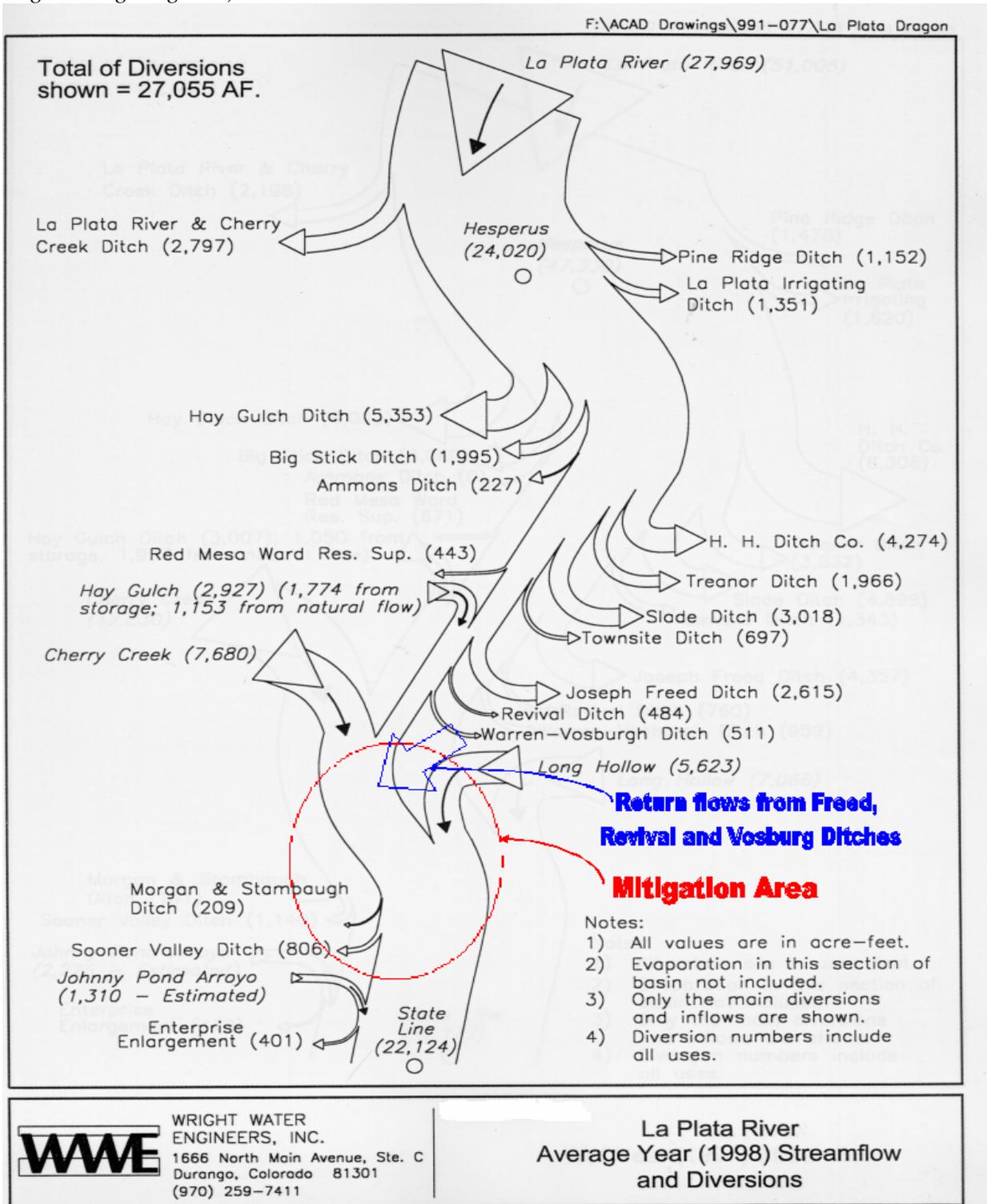
Reclamation will pursue the mitigation goals and objectives without hindering Colorado's use of its entitlement under the La Plata River Compact. If, in time, the MA needs additional water to maintain its functional state, Reclamation will be responsible to find and implement compensatory flow augmentation or to look elsewhere to meet the wetland/riparian mitigation obligation of the ALP Project. This mitigation plan is not to hinder future beneficial use of the water in the La Plata River in Colorado.

3.2 La Plata River

The La Plata River has the traits characteristic of both a snowmelt-fed, perennial stream and a flashy, ephemeral stream. The peak runoff period generally occurs from late April to early June, with flows decreasing until low summer flows are reached by late June.

During most years, large stretches of the La Plata River start going dry by late June, including areas just upstream from the MA. This is due to the snowmelt runoff pattern of the La Plata River system and upstream irrigation diversions. During these low flow periods, irrigation return flows and associated ground water springs typically produce sufficient water to cause a small perennial flow to occur in some areas of the MA. During low flow periods, Long Hollow typically adds flow to the La Plata River from irrigation return flows. Figure 6, below, shows the recorded 1998 flows into and out of the La Plata system. If numbers on Figure 6 are added, outflows will not equal inflows because the consumptive use by croplands and evapotranspiration occurring within the system are not shown. Hydrologic records (United States Geological Survey (USGS) records) from 1918 to 2000 for the La Plata River at the Hesperus gage and 1921 – 2000 for the La Plata River at the State Line were reviewed. The records show that at the Hesperus gage 56 of the 83 years had higher total yearly flows recorded

Figure 6. 1998 Flows Into and Out of the La Plata River System. (Modified Wright Water Engineering diagram.)



than were recorded for 1998. At the State line gage 42 out of 80 years had higher total yearly flows recorded than were recorded for 1998.

In order to understand why changes in flow occur, it is necessary to understand some of the conditions of the La Plata River Basin. The La Plata River is fully appropriated. As stated above, large segments of the river go dry during most years. The management of the system is complicated because the river is subject to the La Plata River Compact. The compact apportions La Plata River water between Colorado and New Mexico as follows:

- At all times between the first day of December and the fifteenth day of the succeeding February, each state shall have unrestricted right to use all the water which may flow within its boundaries.
- Between the fifteenth day of February and the first of December of each year, each state shall have unrestricted use of all waters within its boundaries when the flow at the State Line gage is 100 cfs or more, and on all other days the State of Colorado shall deliver half of the mean flow at the Hesperus gage for the preceding day, but not to exceed 100 cfs.

A summary and the complete text of the Compact are attached as Appendix C. Administrating the Compact on a daily basis is extremely difficult. The critical measuring point, the Hesperus Gage, is approximately 31 miles from the New Mexico State line. This is one of the reasons why entities in the La Plata River Basin are looking for ways to better administer the La Plata River Compact and manage the water of the La Plata River system.

The La Plata Water Conservancy District (LPWCD) is investigating a number of water management and development scenarios in the La Plata River Basin. It would be impossible to predict every event that could happen in the La Plata River Basin that could impact the MA. As planning continues, priorities and plans can and will be changed. The listed potential changes to water management in the La Plata River Basin include Red Mesa Ward Reservoir enlargement and operation, Long Hollow Reservoir development and operation, Johnny Pond Arroyo Reservoir development and operation, Soldier's Draw Reservoir development and operation, a domestic water supply from the Animas River Basin, and a domestic water supply from the La Plata River Basin. Other potential changes could include changes in points of diversion and use of water rights on the La Plata River or a net reduction in the amount of irrigated acres contributing irrigation return flows directly to the MA. In the event any of the envisioned water management or unforeseen changes occur, Reclamation will respond in the manner described in Section 3.12 of this document.

3.2.1 Utilization of Reclamation's Water Rights or Acquired Water Rights to Maintain Adequate Hydrologic Conditions in the MA

Changes in water management in the La Plata River Basin will occur over time. The following sections provide a brief discussion of measures that Reclamation can take, if needed, to remedy a

potentially degrading hydrologic situation that could affect the riparian vegetation in the MA. The measures are some of those most likely to have success in the lower La Plata River system. Reclamation is committed to the maintenance of adequate hydrologic conditions to support the functions and values in the riparian portions of the MA as long as Reclamation action does not result in the impairment of the ability of the La Plata Water users and the La Plata Water Conservancy District to make changes in water management as described in Section 3.12.

Reclamation will determine the potential need to increase the water available to maintain the MA through a monitoring process, where the projected loss of vegetation to support riparian functions and values will trigger the appropriate corrective action.

3.2.1.1 Use of Water Rights Acquired with the MA Purchase

Reclamation has acquired water rights with the purchase of the mitigation property in the La Plata drainage (See Appendix E for a tabulation of water rights purchased). There are several ways in which these rights can be utilized to provide a water supply for the MA. The simplest and easiest way is to irrigate the land in a manner similar to the historical use (simple turnouts for pasture/farmland irrigation). This would cause the return flows to drain back to the river in the upper portion of Tract III through natural drainages. This will ensure that the return flows from the MA will continue to contribute to the spring areas in the northern (furthest upstream) section of the MA. Because the La Plata River is such a losing stream between the point where the water is diverted and the MA, the existing irrigation canals could also be used to deliver the water to the MA because they would be much more efficient than deliveries via the river. If Reclamation determines that it would benefit the MA development process or in the future benefit the maintenance process, it will seek a change in use for these acquired water rights to include use for instream benefits in cooperation with the Colorado Water Conservation Board (CWCB). Currently the water rights are decreed for use as pasture/agricultural, stock and M&I water.

According to Wright Water Engineering (2000), the Red Mesa Ward Reservoir and Ditch Company (Ditch Company) diverts water primarily to serve three ditches that irrigate lands in the vicinity of Red Mesa. The return flows from these lands drain into the MA. The Ditch Company may acquire additional water in an enlarged Red Mesa Ward Reservoir. Reclamation, as a share holder, would share in the additional water from an enlarged reservoir. The additional quantity of water Reclamation would receive from the expansion cannot be quantified until details of the reservoir expansion are finalized.

The expansion of Red Mesa Ward Reservoir will change the availability of water to irrigated lands from an average of 50% of optimal water for the 1,140 acres of land served to an annual 89% supply. Currently the reservoir is able to provide 90%+ of optimal water supply only 1 year in 18. The 2001 operations study model for an expanded reservoir showed the ability to provide 90%+ in 16 of 18 years with the same available precipitation in the system.

3.2.1.2 Water Rights from Pine Ridge Ditch

Reclamation could donate or lease to the CWCB its water right from the Pine Ridge Ditch³, for an instream flow in the La Plata River through the MA. This right is detailed in Appendix D. Summarized, the right which amounts to 4.375 cfs is available for a period of 4 to 6 weeks during most years (which amounts to approximately 240 to 360 AF, and may extend up to 400-500 AF in wet years). This right, combined with the water rights from the MA purchase, would provide significant flow for the MA. A change in point of diversion and use would be needed to use these rights in the MA.

Changing the point of diversion of the water rights in the Pine Ridge ditch will take place only if they are needed in the MA and the enlargement of Red Mesa Ward Reservoir is completed. In order for the Pine Ridge Ditch water rights to be effective in the MA, the enlargement of Red Mesa Ward Reservoir must be completed so that Reclamation can store the Pine Ridge Ditch water for release downstream. Generally, during the time when water is being diverted into the Pine Ridge Ditch, there is sufficient water in the La Plata River to have flows occurring through the MA.

3.2.1.3 Use of Expanded Red Mesa –Ward Reservoir

The best benefit to be gained in the MA from Reclamation's water rights (both the Pine Ridge Ditch right and the rights purchased with the Huntington property) would be if Red Mesa Ward Reservoir were to be expanded and Reclamation were to change its water rights to store them in the Reservoir for delivery to the MA during the dryer parts of the year. These stored water rights could be donated or leased to the CWCB for an instream flow through the MA. Moving Reclamation's water rights into storage in the Red Mesa Ward Reservoir would require a change in the point of diversion and use under Colorado water law and may also require cost sharing in the construction of the reservoir expansion project, the cost of which has not been quantified to date.

In addition to reservoir releases to the three ditches contributing return flows to the MA (Joseph Freed Ditch, Revival Ditch and the Warren Vosburg Ditch), the enlargement of Red Mesa-Ward Reservoir could allow entities on the La Plata River to release some stored water to meet Colorado's obligation to New Mexico under the La Plata River Compact (Appendix C). Such releases of water from the Reservoir would provide flows through the MA during the growing season. Reclamation would support a CWCB instream flow to protect releases from Red Mesa Ward Reservoir of water to meet Colorado's Compact obligations to New Mexico.

By providing the water rights for instream flow protection, Reclamation could provide 'wet' water for the MA in perpetuity without potential harm to the other water users of the system.

³ The Pine Ridge Ditch diverts water from the La Plata River approximately one-half mile upstream of Hesperus, Colorado, and delivers that water into the Animas River drainage in the Ridges Basin Area.

3.2.1.4 Purchase Water in Long Hollow Reservoir

If the Long Hollow Reservoir is constructed, Reclamation will have the option of purchasing or exchanging water in Long Hollow Reservoir to be released as needed for the MA.

3.2.1.5 Acquiring Other Water Rights

There may be opportunities in the future to acquire (purchase) some of the more senior water rights on the La Plata River that could be used in the MA. Delivering this water would likely need to be through the ditch systems that currently feed the MA, as the river upstream of the MA is a losing section of river. This will help ensure delivery as needed in the drier seasons.

3.2.2 Native Vegetation and Water Conservation

Reclamation, in removing the non-native woody species from the MA and encouraging the native species, will effectively reduce evapotranspiration (water cycling to the air by heat and active transport by plants), thus leaving more water in the system, although Reclamation is not entitled to a water right based on this change. Non-native plant species (such as tamarisk) are known to transpire much more water than native plants (confirmed by King and Bawazir, 2000 in "Riparian Evapotranspiration Studies of the Middle Rio Grande"). Channel restoration would effectively narrow and deepen the river channel and would encourage overshadowing vegetation, thus also reducing evaporation.

3.2.3 Municipal and Industrial Water Development

In the longer term, LPWCD, SUIT, UMUT, and the Animas-La Plata Water Conservancy District have plans to develop a rural domestic water system with water from the ALP Project. This could help flows in the La Plata River in two ways. First, using ALP Project water for municipal purposes would reduce the need for water to be diverted from the La Plata River for domestic purposes. Second, using ALP Project water would bring more water into the basin causing increased flows to the La Plata River through ground water returns. If this happens, it may provide Reclamation an opportunity to partner in transporting water into the La Plata River basin.

3.2.4 Reclamation's Decision Not to Apply for an Adjudicated Instream Flow Right on the La Plata River through the MA

Reclamation considered requesting a new adjudicated instream flow right on the La Plata River to protect the existing low water flows through the MA. It was thought that this mechanism would allow for protection of the "status quo" to maintain current conditions through the MA. An adjudicated instream right on the La Plata River through the MA may be described as a waste-water right, which is entirely conditional upon the primary water uses (Ken Beegles, District 7 Water Engineer, personal communication) since the current late season flows through

the MA are supported almost solely by irrigation return flows. Reclamation realized that the instream flow protection would not guarantee flows because it cannot force agricultural practices on contributing tracts of land to remain the same, i.e. an irrigator could stop irrigating, change the water use practices, subdivide the property, etc.

Discussions with the Executive Director and Chairman of the CWCB resulted in Reclamation understanding that a new adjudicated instream flow on the La Plata River would not be approved because of the restrictions the instream flow right could potentially place on water management and development within the La Plata River drainage. However, utilizing Reclamation's existing water rights (Pine Ridge Ditch and MA rights), a CWCB instream flow right could be accomplished based on a donation agreement. This type of instream flow was discussed in Sections 3.2.1.1 - 3.2.1.3.

3.2.5 Failure to Augment or Maintain Adequate Hydrologic Conditions in the MA

Reclamation is committed to maintain the riparian habitat values in the MA for the life of the ALP Project. Should Reclamation find, despite the above described efforts, that functioning mitigation acres are shrinking, as defined in Section 4.1, Reclamation will develop mitigation acres in other areas (such as those discussed in the FSEIS) to compensate appropriately. Reclamation will be governed by the provisions of Section 3.12 herein in this regard.

3.3 Livestock Management (Fencing) Plan

Livestock grazing will be removed from the 1,134 acres of river valley bottomland within the riparian (Table 1) and the upland areas of the MA by the installation and maintenance of a functional external boundary fence. Thus, grazing will be removed from the river's zone-of-influence, the valley walls and the upland terraces that border the existing riparian area. The valley bottom will be regularly monitored to ensure livestock trespass is not occurring. Any trespass identified will be immediately rectified. The only possible future grazing in the MA will be under strict grazing management to promote specific land management objectives (such as weed control).

3.4 Weed Management Plan (Integrated Vegetation Management)

The MA was assessed for the presence of problem areas infested with undesirable weeds. The problem areas were delineated and mapped. Both the weed mapping and a description of the weed composition within these problems areas are provided in Appendix B. Reclamation will focus its initial efforts on the management of these problem areas to reduce the presence of undesirable weeds for the purposes of restoring native riparian plant assemblages.

The initial weed management efforts will be focused on the riparian-forested/scrub shrub area, riparian meadow habitats area and adjoining valley bottom upland habitats area that are in the worst condition. The initial weed management acres that will be treated are shown in Table 5. Figure 7 shows the relative density of known weed patches in the riparian area for both

herbaceous and woody species.

The initial weed management areas will be routinely treated until the presence of undesirable species has been substantially reduced. Initial treatments may include the cutting and mechanical removal of tamarisk and Russian olive trees. Cut trees will either be left in place or thrown into slash piles that will be burned. Tree stumps will be immediately treated with herbicides to prevent stump growth if cutting methods are employed.

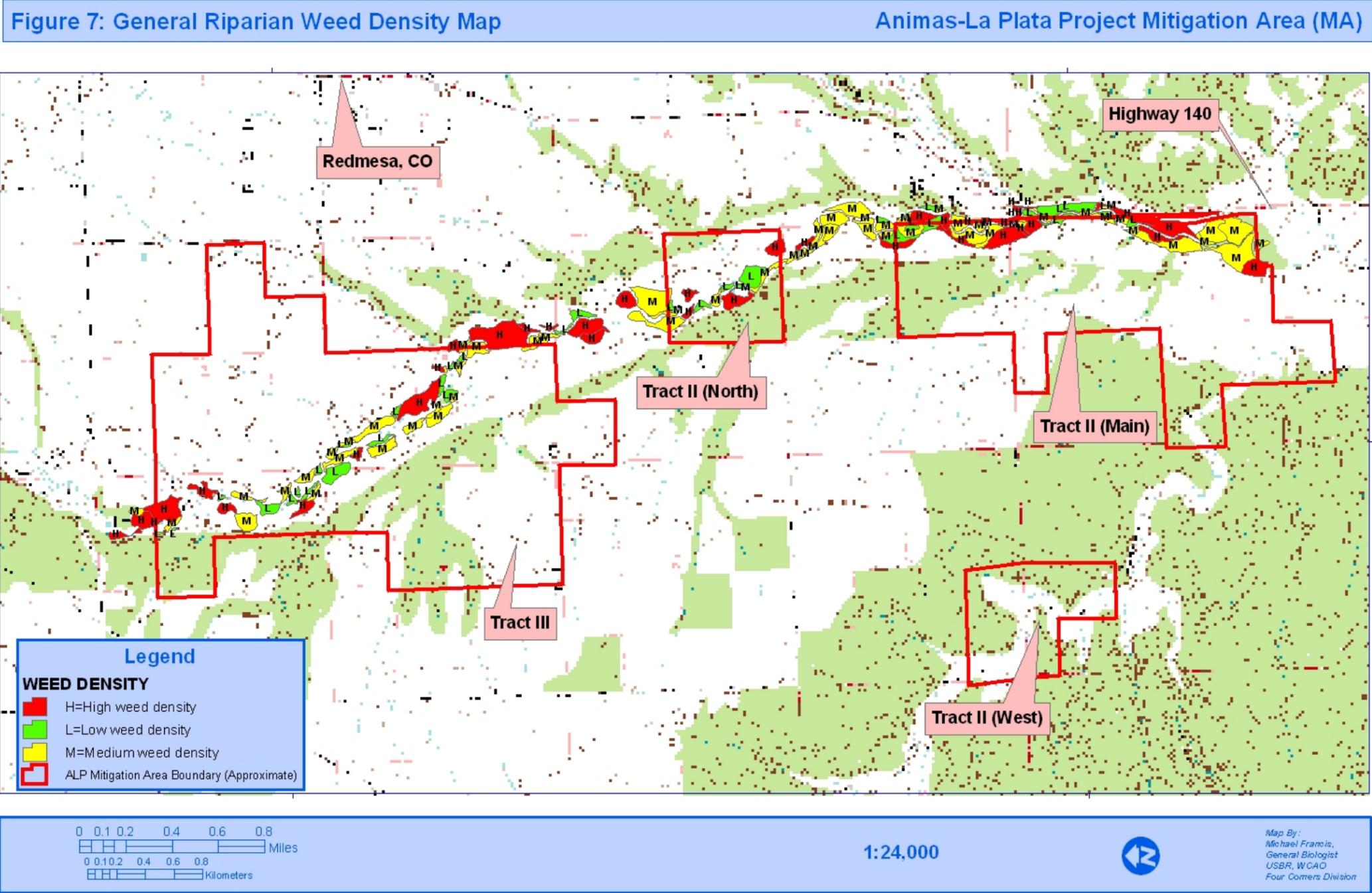
Table 5. Acreage of Initial Weed Management Areas in the Riparian Portion of the MA

Huntington Ranch	Parcel	Acres
Tract II	Main Parcel	55.8
	Northern Parcel	24.5
Tract III	Single Parcel	64.1
Total		144.2 acres

The total acres represented in Table 5 indicate only the total ground coverage by weeds and do not address the area affected. In total, about 234 acres are infested with weeds. Herbaceous weeds will be sprayed with a broadleaf herbicide or be controlled by other proven methods. Depending on location, herbicide will be applied by hand (e.g., backpack or ATV sprayers) or by broad application (e.g., tank truck). In the short-term, it may require several applications per growing season over the course of several years in order to get the problem areas under control. Treated areas will be seeded with native riparian grass/forb mixes to replace vegetative cover.

After a cover of desirable grasses is established, other native plants will be reintroduced to these areas with approved seeding propagation methods. The problem areas will be assessed during the initial monitoring period and treatments will be adjusted on an as-needed basis. In the long-term, weed management will be incorporated into the routine maintenance plan for the MA to ensure that undesirable weeds are kept in check.

Figure 7. General Riparian Weed Density Map.



3.5 Streambank Stabilization Plan

The extent and severity of eroding streambanks will be further evaluated through monitoring within the MA. Based on the results of the monitoring and evaluation, certain destabilized streambanks that are not correcting themselves naturally will be stabilized. Methods to accomplish this include reshaping the stream channel, installing natural revetment, and/or individual stream-side plantings to stabilize bank erosion and restore riparian habitat. Revetment will include tree logs, courier logs, boulders and/or similar materials if needed. Native tree and shrub species (primarily cottonwoods and willows) will be planted to re-establish stabilizing root-mass and instream habitat structure. Based on the 2001 studies completed by Frontier, a total of approximately 1,500 linear feet of streambank may need to be treated in seven different locations.

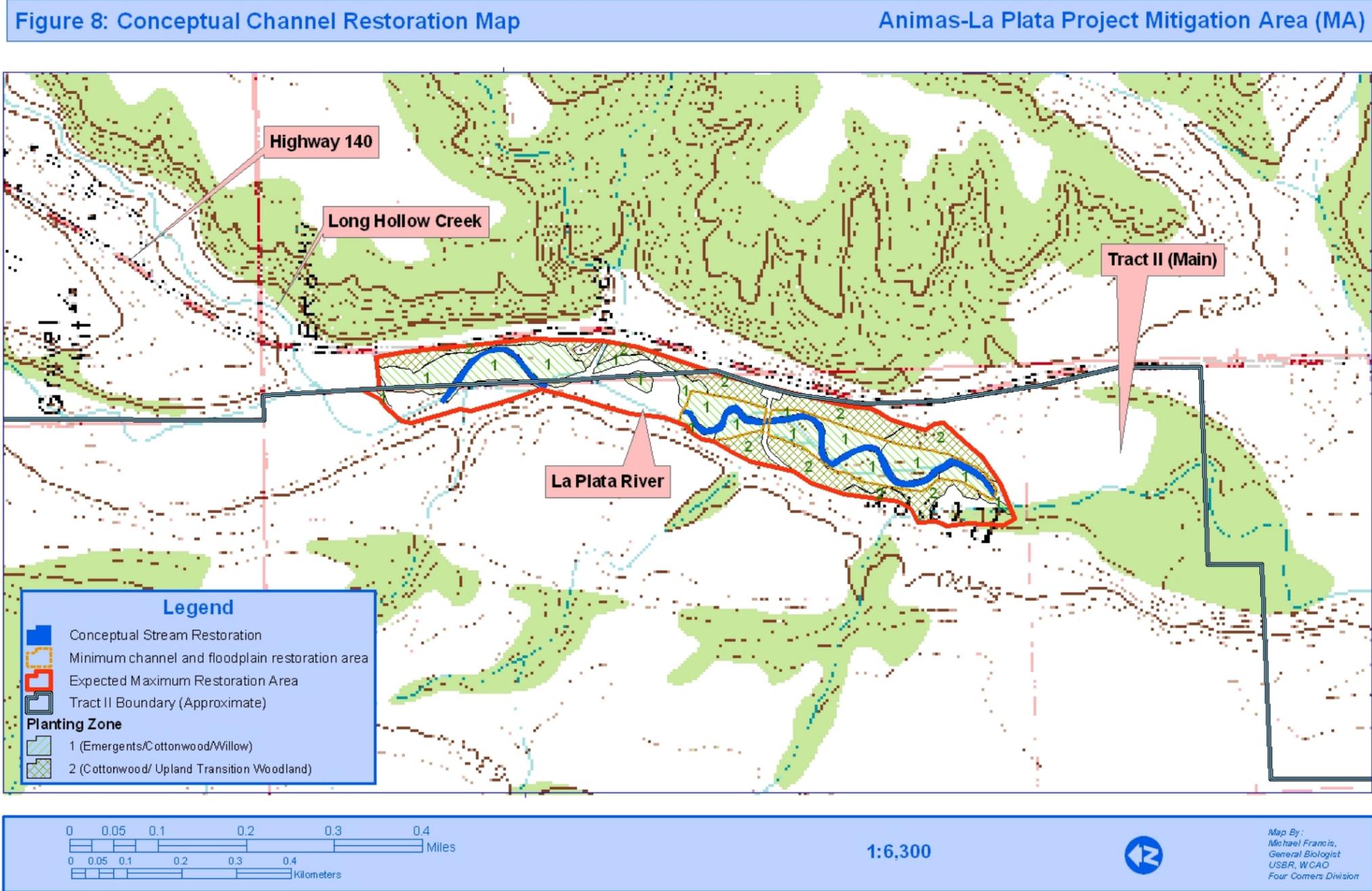
3.6 Stream Channel/Floodplain Restoration Plan

Part of Reclamation's riparian mitigation commitment in the FSEIS is to create and restore habitats along with their protection and enhancement. The La Plata River on the MA parcel downstream of Long Hollow (Tract II, main) has undergone significant changes due to human actions of channel straightening and relocation, bank modification, and levee construction. As a result of these river and floodplain modifications, a substantial area of riparian habitat has been either lost or significantly degraded within the southern parcel of the MA. However, because of these substantial changes, this part of the river corridor has the greatest potential for improvement in the overall condition of the riparian ecosystem through the implementation of river channel and floodplain restoration measures. The result of such measures will serve both to restore and create new functional riparian habitats. Figure 8 provides a visual description of minimum versus maximum potential channel restoration with associated planting zones.

A conceptual plan for stream channel/floodplain restoration work within the MA was developed by Reclamation in 1997. Based on additional studies completed in 2001 (by Frontier) for the southern parcel, it is anticipated that, at a minimum, approximately 2,700 feet of river channel and 20 acres of riparian habitat could be restored within the southern parcel of the MA. Reclamation is working with adjacent land owners to acquire easements or cooperative arrangements on a small amount of additional land. The additional acres, however, are not required for mitigation credits. The acres are being sought to make management of the MA easier, allowing access across private property for the protection, maintenance, and enhancement related to wetland/riparian habitat restoration and for other land management needs.

Restoration would entail eliminating the levees, re-establishing a sinuous river channel, and re-establishing river/floodplain interactions to restore the river's zone-of-influence. The channel would be integrated into a newly constructed floodplain, allowing overflow onto the floodplain to occur on a relatively frequent basis. Overbank discharge onto the floodplain would allow energy dissipation of high flows, thereby preventing channel degradation, and would also restore conditions for the recruitment and maintenance of native riparian plant communities.

Figure 8. Conceptual Channel Restoration Map.



Revegetation of this area with native species would be undertaken as part of the restoration process. Reclamation will review the channel restoration plans with participating agencies (the Service and EPA) prior to implementation.

3.7 Buffer Zone Management

Within the MA, a total of approximately 900 acres of upland habitats occur within the river valley bottomland (Table 1). As described previously, the condition of these habitats greatly affects the functional conditions of the riparian habitat they border. The removal of livestock grazing and the treatment of weed problem areas will greatly improve the condition of the upland buffers. In addition to the removal of livestock grazing, Reclamation will manage these upland habitats to restore vegetative coverage.

3.8 Planting Plan

Reclamation has committed to a certain level of native plant community establishment and enhancement within the MA relative to weed treatment and stream restoration vegetation or substrate disturbances. Section 4.1.2 below describes the planting densities and expected natural recovery rates for mitigation success. Below in Figures 9, 10 and 11 (from CH2MHILL), are typical planting descriptions for this type of project. These figures relate to the information presented in Figure 8 describing channel restoration. Zone 1 and 2 plantings areas in Figure 8 are the same as the Zone 1 and 2 plantings described in the following figures.

Figure 9: Cross-sectional Planting Zones.

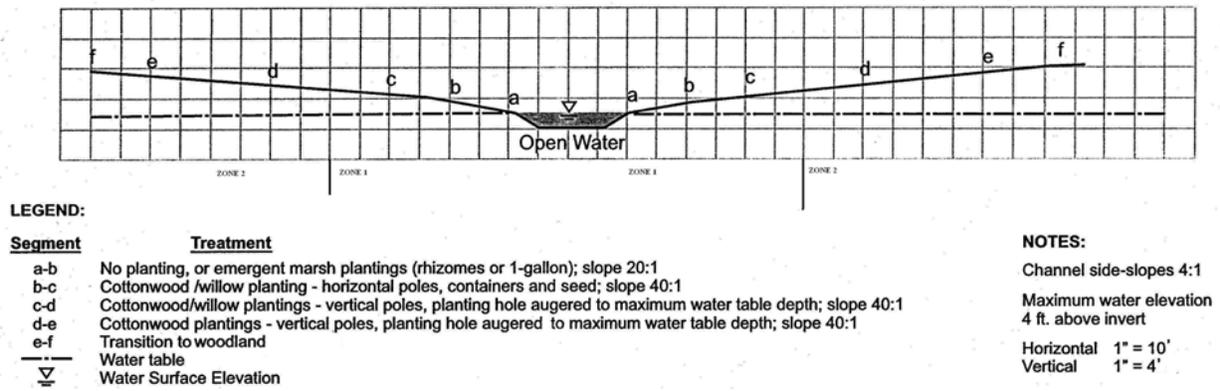


Figure 10. Cross-sectional Planting Relative to the Water Table.

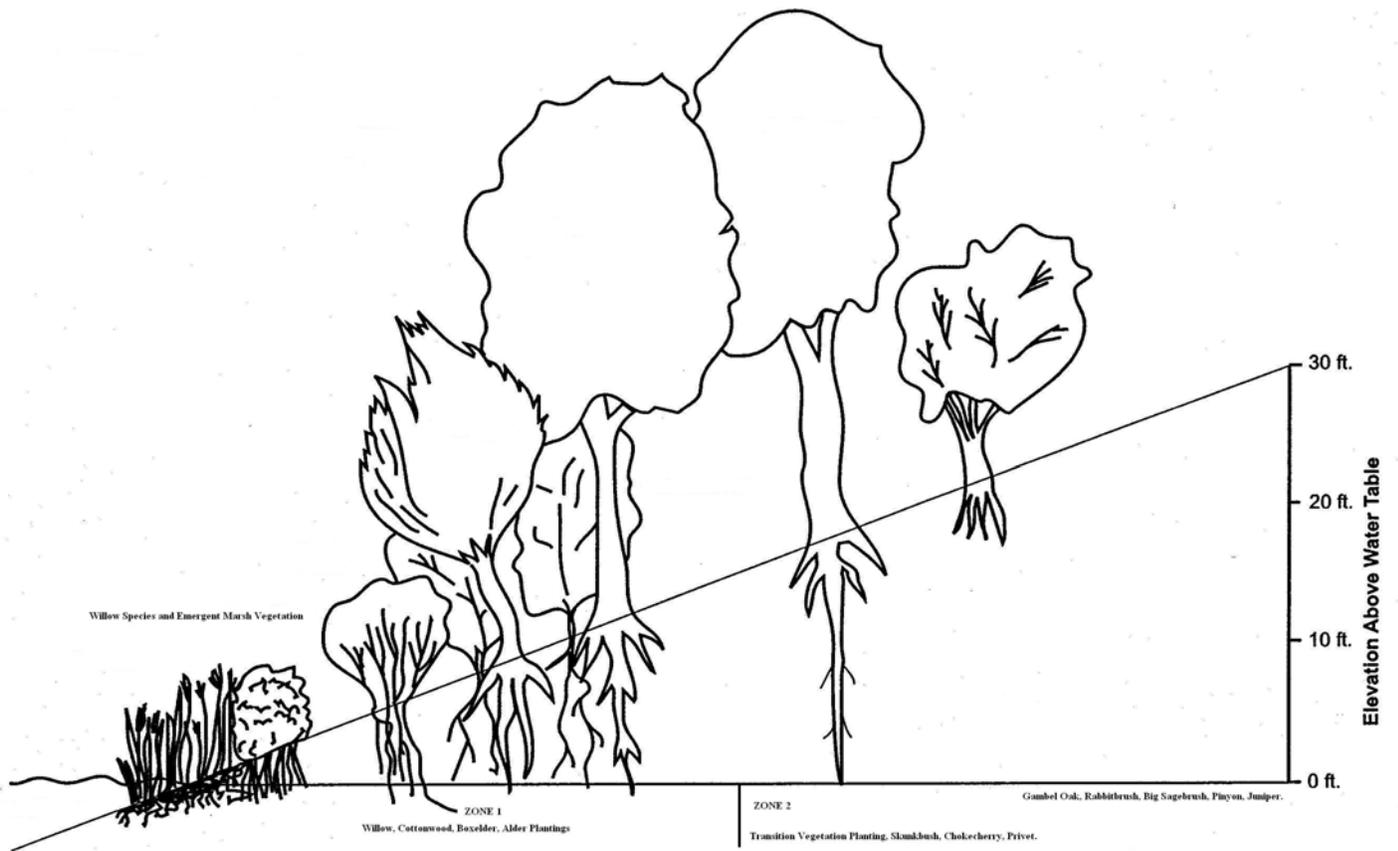
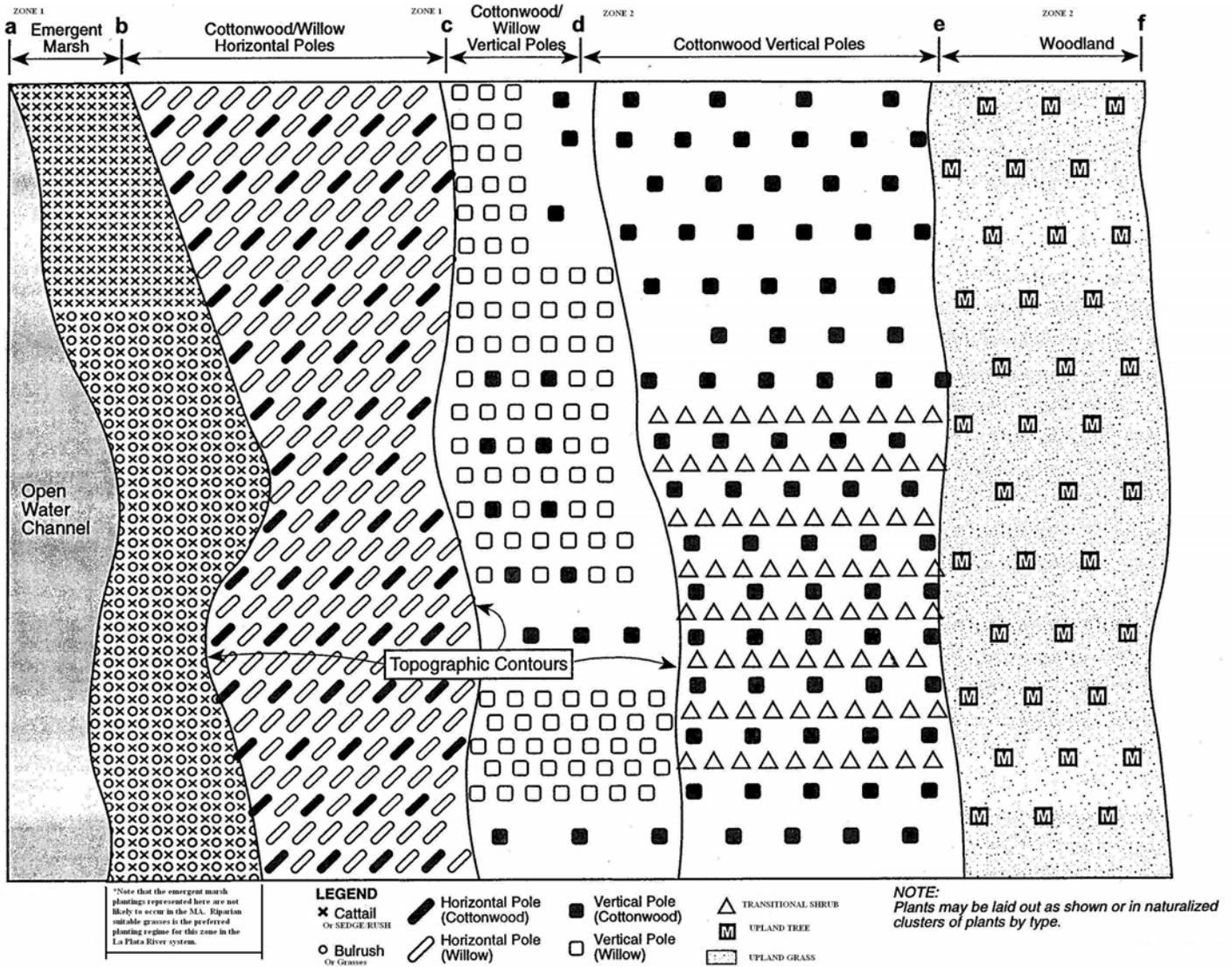


Figure 11. Conceptual Planting Design.



3.9 Mitigation Schedule

Subject to the availability of funding for the ALP Project, the anticipated schedule for the implementation of the mitigation measures is shown in Table 6.

Table 6. ALP Project Riparian Mitigation Schedule.⁴

Activity	Sub-activity	Summer 2002	Autumn 2002	Winter 2002	2003	2004	2005	2006
Land Acquisition		****	****					
Install Fencing					***			
Weed Management		*****	*****	*****	****	****	****	****
Buffer Zone Management		*****	*****	*****	****	****	****	****
Streambank Stabilization	monitor	*****	***		****			
	re-assess need to stabilize					****		
	select contractor						****	
	review & approve plans						**	
	construction							****
Stream Channel/ Floodplain Restoration	select contractor				**			
	review & approve plans				**			
	construction				****	**	**	**
	easements				**			

3.10 Responsible Parties

Reclamation will be the responsible party overseeing the implementation of all aspects of the mitigation measures described in this plan. Reclamation will continue to coordinate and consult

⁴ Mitigation measures to be implemented upon completion of all applicable NEPA, CWA, NHPA, and ESA regulatory compliance.

with the Service, EPA, CDOW, and the Colorado Ute Indian Tribes as the work progresses. Reclamation will assess each phase of work and determine if additional NEPA action is required, and in consultation with the Service, determine if additional Section 7 consultation on endangered species is needed

3.11 Estimated Cost of Mitigation Plan

Table 7 displays a general idea of costs associated with the mitigation actions to be performed in the MA on the La Plata River through 2007. While the estimates are general, they are based on contractor consultations and experience and should provide a basis from which to develop contracting.

Since the mitigation work is under development and may change significantly in the details of how the work is accomplished, Reclamation may have to adjust related expenditures. Integrated into the planning process is the concept of adaptive management, allowing for such shifts in activity should they prove needed as mitigation work proceeds.

Table 7. ALP Wetlands/Riparian and Wildlife Mitigation Program Cost Estimates⁵

BUDGET ITEM	FY-02	FY-03	FY-04	FY-05	FY-06	FY-07	SUB-TOTAL
FTEs-Mitigation Project	\$262,000	\$100,000	\$90,000	\$90,000	\$90,000	\$90,000	\$722,000
FTEs-Land Management	\$32,000	\$25,000	\$20,000	\$20,000	\$15,000	\$15,000	\$127,000
FTEs-Contractual	\$0	\$52,000	\$20,000	\$20,000	\$20,000	\$20,000	\$132,000
Weed and Brush Control	\$109,000	\$268,000	\$100,000	\$55,000	\$55,000	\$55,000	\$642,000
Channel Restoration/Revegetation	\$0	\$362,000	\$100,000	\$55,000	\$55,000	\$55,000	\$627,000
Seeding (grassland-meadow)	\$10,000	\$25,000	\$25,000	\$25,000	\$25,000	\$0	\$110,000
Surveying	\$20,000	\$20,000	\$0	\$0	\$0	\$0	\$40,000
Fencing	\$0	\$150,000	\$200,000	\$0	\$0	\$0	\$350,000
Signs-Access	\$0	\$10,000	\$10,000	\$0	\$0	\$0	\$20,000
NEPA and Supplemental Planning	\$40,000	\$25,000	\$10,000	\$10,000	\$0	\$0	\$85,000
ANNUAL TOTAL	\$433,000	\$1,052,000	\$590,000	\$275,000	\$270,000	\$235,000	\$2,855,000

⁵ This table represents costs that include features common to wetland/riparian mitigation and portions of the upland/wildlife mitigation. Land acquisition costs for the MA are not included.

3.12 Options if the Mitigation Area cannot be maintained

Reclamation will continue to monitor any water development projects within the La Plata River basin which could possibly impact the MA. Any new project concepts will be assessed for risk to the riparian habitat functions and values. Reclamation will coordinate with the project sponsor at the planning level, to attempt to eliminate or minimize impacts, recognizing that changes in the use of privately owned water rights are inevitable and that additional storage in the basin is desirable to permit more efficient use of available supplies and deliveries under the La Plata River Compact. Reclamation will not seek to limit development in the basin, but will work with LPWCD to develop water in a manner which does not imperil the mitigation effort.

If the required level of riparian vegetation within the MA cannot be maintained, as set forth in Section 4.1.2, by natural flows which benefit the MA, but to which Reclamation acknowledges it has no entitlement, and/or with Reclamation's current or acquired water rights, then Reclamation will, as a backup measure, develop in another area outside of the La Plata River Basin in and around the ALP Project area, additional mitigation acres to replace the wetland/riparian functions and values lost in Ridges Basin.

In order to evaluate the timing of, or necessity for, developing alternatives to the MA, the Animas-La Plata Water Conservancy District and the LPWCD have agreed to provide Reclamation with information as it is developed, on any new or modified LPWCD water resource development or management project that may impact Reclamation's ALP Project mitigation credits.

As stated above, Reclamation acknowledges that the occurrence of certain flow events, in excess of its water rights, provide indirect benefits to the MA. Reclamation acknowledges that this water, which is in excess to Reclamation's water rights, may be used or developed by others in the future in a manner which could decrease or preclude the continuation of these excess flows. Should an entity which has a water right to use water in the La Plata River require approval of a regulatory authority and such authority with jurisdiction over the matter limits seeks to limit, conditions or denies the proposed action due to the existence of the MA, then Reclamation shall either: (1) assume all obligations for performing any mitigation condition in the permit for the proposed project, if by doing so the regulatory agency shall issue the permit and Reclamation may maintain the MA; or (2) decommission the riparian portion of the MA and develop a new wetland mitigation site outside of the La Plata River Basin within a reasonable time so as to not negatively effect the issuance of the permit for the proposed development. Provided that: 1) Reclamation shall be provided notice of any proposed action and shall be afforded the opportunity to work with the developing entity to minimize the impacts of the development to the MA and, to the extent allowed under applicable law, meet with and consult with the prospective regulatory authority on the potential impacts of the proposed action prior to a decision by the regulatory authority, and 2) the LPWCD shall recognize that a regulatory agency may impose a condition or limitation on, or denial of, a proposed action to develop a water right, without regard to the MA and, in that instance, Reclamation will be under no obligation to develop new wetland mitigation sites outside the La Plata River Basin as discussed above.