

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

REVISED APPROVAL OF APPLICATION CWS-1699 FOR A PERMIT TO CONDUCT

STORAGE WATER FROM PATHFINDER RESERVOIR IN WYOMING

TO KINGSLEY RESERVOIR IN NEBRASKA

WATER DIVISION 1-A

Background

1. On July 7, 2009, Michael K. Purcell, Director, Wyoming Water Development Office (WWDO), on behalf of the State of Wyoming, filed application CWS-1699 in the Department of Natural Resources (Department) for a permit to conduct water stored in United States Bureau of Reclamation's (Reclamation) Pathfinder Reservoir located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, Township 29 North, Range 84 West of the 6th P.M. in Natrona County, Wyoming, in the North Platte River beginning at the Nebraska-Wyoming state line, and ending at the upper reach of Kingsley Reservoir (Lake McConaughy) located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 16 North, Range 42 West of the 6th P.M. in Garden County, Nebraska.
2. On February 25, 2011, the Department approved application CWG-1699. Subsequently, the Department received comments from the Wyoming Water Development Office and U.S. Bureau of Reclamation regarding requested revisions to the Order.
3. The revisions in this Order include a correction to the Wyoming Statute quoted in paragraph 2.B. on page 2, and the word "default" was removed from paragraph 8 on page 3. The remainder of the Order is the same, and this Order replaces the previous approval dated February 25, 2011.

Order

IT IS HEREBY ORDERED:

1. Application CWS-1699 is hereby APPROVED.
2. The source is water stored within Reclamation's Pathfinder Reservoir in Wyoming held in two accounts by contract between WWDO and Reclamation. The first account is an "Environmental Account". The second account is known as the "Wyoming Account" in the "Pathfinder Modification Project". The transfer of the water to Nebraska from both accounts was authorized by the Wyoming Legislature in 2009 pursuant to Wyoming Statutes, Title 41, Chapter 3, Article 1, § 41-3-115.
 - A. Pursuant to W.S. 41-3-115, the United States Bureau of Reclamation and the Wyoming Water Development Office are hereby authorized to transfer a maximum of thirty-three thousand four hundred ninety-three (33,493) acre-feet of storage water

per year from the environmental account in the Pathfinder Modification Project within Pathfinder Reservoir to the Wyoming-Nebraska state line for the purpose of providing regulatory certainty under the Endangered Species Act for the use of Wyoming water in the Platte River basin.

- B. Pursuant to W.S. 41-3-115, the Wyoming Water Development Office is hereby authorized to transfer a maximum of nine thousand six hundred (9,600) acre-feet of storage water per year from the Wyoming account in the Pathfinder Modification Project within Pathfinder reservoir to the Wyoming-Nebraska state line through annual temporary water use agreements with the Platte River Recovery Implementation Program (PRRIP) in any year the storage water in the Wyoming account is not needed by the state of Wyoming as a municipal water supply or a replacement water supply to meet the state of Wyoming's obligations in the *Nebraska v. Wyoming* settlement agreement and the Platte River Recovery Implementation Program.
3. Water stored in Pathfinder Reservoir will be released, at a maximum amount of 43,093 acre-feet per year, into the North Platte River at a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, Township 29 North, Range 84 West of the 6th P.M. in Natrona County, Wyoming.
 4. The delivery of the water less the appropriate conveyance losses, through the reservoir system on the North Platte River to the Nebraska-Wyoming state line, will be protected according to the authorizations by Wyoming Legislature and Wyoming Water Law.
 5. The Department will begin the protection of the water, less appropriate conveyance losses, in the North Platte River at the Nebraska-Wyoming state line and continue the protection until the water reaches the upper reach of Kingsley Reservoir in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 16 North, Range 42 West of the 6th P.M. in Garden County, Nebraska.
 6. The Wyoming Water Development Office, the Wyoming State Engineer's Office, or other party to whom the responsibility of the act of releasing water from Pathfinder Reservoir under this permit is given, must coordinate and cooperate with the Department's Bridgeport Field Office Supervisor prior to releasing any water protected by this permit. This includes, but is not limited to the timing, amount and duration of any release of water under this permit, CWS-1699, from Pathfinder Reservoir; including any retimed releases of this water from Glendo and/or Guernsey Reservoirs. Failure to coordinate releases with the Bridgeport Field Office Supervisor can cause this permit to be cancelled and/or suspended, and the water subject to this permit not being protected.
 7. This Order approves the act of conducting water. The storage of water conducted under CWS-1699 in Kingsley Reservoir (storage appropriation A-2374) is by agreement with Central Nebraska Public Power and Irrigation District (CNPPID). The use of CWS-1699 water stored in Kingsley Reservoir under appropriation A-17695 is also by agreement with the appropriator, CNPPID. Appropriation A-17695 provides for water releases, controlled by the Environmental Account Program Manager, from Kinglsey Reservoir for instream use to benefit fish and

wildlife extending to the Chapman Bridge located in Hamilton County, Nebraska.

8. The Department retains the right to make adjustments to the amount of loss in transit. The Department's procedure for River Carriage (conveyance) losses is based upon the North Platte Decree Committee Charter (NPDC), Exhibit 9, of the Final Settlement Stipulation, based upon the provisions of Article V of the 1945 Decree, as modified in 1953. This agreed upon calculation includes the months from May through September. Because of the possibility that water may be conducted after September, the Department has extrapolated the transit losses for the months not included using the method in the NPDC document, refer to Table 1. A copy of the NPDC document and the Department's extrapolation is available upon request. The Department's authority to calculate said conveyance losses is further defined in the Platte River Recovery Implementation Program, Water Plan, Attachment 5, Section 5, *An Environmental Account for Storage Reservoirs on the Platte River System in Nebraska, As included in the Project 1417 FERC License*, dated December 7, 2005. Paragraph II.B.2.c states, "Wyoming's contribution to the EA shall be the quantity delivered at the state line for MOA purposes, as defined in Paragraph II.B.2.b, less losses to the Lewellen gauge on the North Platte River as determined by the NEDWR".

Table 1: Carriage Losses in cubic feet per second for reaches in the North Platte River above Lake McConaughy (from DNR memo dated December 3, 2009).

River Reach Between Gages	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
State Line to Minatare Gage	4	3	4	8	8	12	13	11	6	6	4	4
Minatare Gage to Bridgeport Gage	3	3	3	7	8	11	12	10	7	6	3	3
Bridgeport Gage to Lisco Gage	5	5	5	10	12	16	18	14	10	8	5	5
Lisco Gage to Lewellen Gage	5	5	5	10	12	16	18	15	10	8	5	5
TOTAL (State Line to Lewellen)	17	16	17	35	40	55	61	50	33	28	17	17

9. A map prepared according to *Neb. Admin. Code 457 Chapter 10*, must be filed in the office of the Department by six months past the signing date of this approval.
10. A measuring device, approved by the Department, is required at the point at the state line at which this conduct water permit begins protection. The existing state line gage will serve as the measuring device. The Department retains the right to require a measuring device at any point after the state line, at the determination of the Bridgeport Field Office Supervisor, for water administration purposes.
11. According to *Neb. Rev. Stat. § 46-252(2)*, permit holders are liable for any damages resulting from the overflow of such stream or channel (North Platte River) when water conducted contributes to an overflow.

12. This permit may be cancelled if the permit holder fails to conduct water for more than five consecutive years.

DEPARTMENT OF NATURAL RESOURCES

June 29, 2011


Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* §§ 84-901 et. seq. RRS and the Department's *Rules of Practice and Procedure* 454 *Neb. Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (P.O. Box 94676, 301 Centennial Mall South, 4th Floor State Office Building, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of \$10.

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's Field Office in Bridgeport, Nebraska. A copy of this Order was mailed on June 29, 2011, to the following:

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Cheyenne, Wyoming 82002

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