

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES

ORDER ADOPTING UPPER BIG BLUE NATURAL RESOURCES DISTRICT  
INTEGRATED MANAGEMENT PLAN AND ASSOCIATED SURFACE WATER CONTROLS

Background

1. On April 21, 2006, the Department issued an order of final determination that the hydrologically connected ground water and surface water in a portion of the District was fully appropriated. The statutorily defined three year deadline was extended twice by mutual agreement of the Department and the District as provided in *Neb. Rev. Stat. § 46-715 (1)*.
2. The Department and the District consulted and collaborated on the development of the integrated management plan (IMP) with a group of stakeholders, and held a meeting soliciting input on March 24, 2010 in Phillips, NE. The stakeholder group consisted of the statutorily required entities and other entities which were identified by the District and the Department to be included in the group. Through this process of consultation and collaboration the Department and the District jointly developed an IMP in accordance with the Ground Water Management and Protection Act (the Act), particularly *Neb. Rev. Stat. §§ 46-715, 46-716, 46-717, 46-718, and 46-720*.
4. The District and the Department reached agreement on (a) the proposed goals and objectives of the IMP for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to the controls, (c) the surface water controls and the ground water controls, which are adopted and implemented by the UBBNRD through the UBBNRD Rules and Regulations.
5. On August 26, 2010, pursuant to notices duly published in accordance with *Neb. Rev. Stat. § 46-743*, the District and the Department jointly held a public hearing at the District Office in York on the proposed IMP.
6. Following the hearing on August 26, the Department and the District jointly considered hearing testimony and decided to adopt and implement the proposed IMP and the surface water controls, ground water controls, and incentive programs proposed in the IMP without modifications.
7. The Department consulted with the Nebraska Game and Parks Commission (Commission), in accordance with *Neb. Rev. Stat. § 37-807*. As stated in the Commission's response letter received on September 15, 2010, the Commission determined that the adoption of the proposed IMP would have no adverse effect on threatened and endangered species or their habitat.
8. After duly considering all testimony, on September 16, 2010, the Department sent a letter agreeing to implement the plan and to adopt and implement the controls and incentive programs noted in the plan without modifications.

Controls Adopted

The surface water controls included in the IMP are as follows:

1. Surface Water Moratorium - The Department will continue the moratorium on new surface water appropriations in the integrated management area, in accordance with Department rules and as authorized by *Neb. Rev. Stat.* §46-716.
2. Variances for New Surface Water Appropriations [See Nebraska Administrative Code Title 457, Chapter 23 (457 N.A.C. 23)]:
  - a. Any person wanting to apply for a new surface water appropriation within a moratorium area must file a petition requesting leave to file an application.
  - b. The Department will review petition and determine if there is sufficient information to indicate good cause for allowing further consideration.
  - c. The Department will issue a written decision either denying the petition and stating the reasons for the denial; or grant the petition and stating either: 1) petitioner may file the application and supporting documentation or 2) the Department will proceed to process the application filed with the petition.
  - d. The Director will issue a written order approving or denying the application.
  - e. An appeal of the decision may be requested within 15 days of the date of decision.
3. Transfers or changes of Existing Surface Water Appropriations (457 N.A.C. 9):
  - a. Any person wanting to transfer the location or a change in use of a surface water appropriation must file an application with the Department.
  - b. The total number of acres irrigated will not increase.
  - c. The transfer will not result in a change in the point of diversion.
  - d. The transfer will not diminish the water supply or adversely affect other water appropriators (457 N.A.C. 9.001.03).
  - e. The land irrigated before the transfer will not be irrigated and no appropriation may continue for it after transfer.
  - f. Associated incidental underground water storage appropriations are transferred and/or preserved.
  - g. The Director will issue a written order approving or denying the transfer application.
  - h. An appeal of the decision may be requested within 15 days of the date of decision.
4. Administration of Surface Water - The Department shall continue to administer surface water appropriations according to the provisions of the permit, statute, Department rules and regulations, and any applicable interstate compact decree or agreement.

- a. The Department shall continue to monitor the use of surface water to prevent unauthorized uses (46 N.A.C. 713).
  - b. If, at some point in the future, the Department changes the requirements for surface water appropriators relating to conservation measures, or creates other additional restrictions, such requirements or restrictions in surface water administrations will be implemented in accordance with Department rules and procedures for changing the integrated management plan as outlined in Chapter 7.
5. The Department may require surface water appropriators to apply or use conservation measures. If, in the future, the Department requires surface water appropriators to apply or use such conservation measures, in accordance with § 46-716(2), the surface water appropriators will be allowed a reasonable amount of time, not to exceed one hundred eighty (180) days unless extended by the Department, to identify conservation measures to be applied or used and to develop a schedule for such application and utilization.
  6. The Department may require any other reasonable restrictions on surface water use, as authorized in Nebraska statutes if the Department feels it is necessary in order to comply with this IMP, the Basin-Wide IMP or any state program, decree, compact or agreement. If, in the future, the Department requires other restrictions on surface water use, such restrictions must be consistent with the intent of § 46-715 and the requirements of § 46-231. If, in the future, the Department requires other restrictions on surface water use, in accordance with § 46-716(2), the surface water appropriators will be allowed a reasonable amount of time, not to exceed one hundred eighty (180) days unless extended by the Department, to comment on the proposed restrictions.

#### Order

It is therefore ORDERED that the integrated management plan for the Upper Big Blue Natural Resources District and the surface water controls in the plan are hereby adopted by the Department and will become effective on October 18, 2010.

DEPARTMENT OF NATURAL RESOURCES

September 16, 2010

  
Brian P. Dunnigan, P.E., Director

Any person with sufficient legal interest who has been or may be substantially affected by this Order may request a hearing in accordance with the Nebraska Administrative Procedures Act (Neb. Rev. Stat. §§ 84-901 et. seq.) and the Department's Rules of Practice and Procedure (454 N.A.C. Chapter 007). The request must be received by the Department at its Lincoln office (301 Centennial Mall South, 4<sup>th</sup> Floor State Office Building, Lincoln, NE 68509-4676) within 15 days of the date of this Order and be accompanied by a filing fee of \$10.

On September 16, 2010, a copy of this Order was posted on the Department's website and mailed to John Turnbull, General Manager, Upper Big Blue Natural Resources District, 105 North Lincoln Avenue, York, Nebraska 68467, and to the Department of Natural Resources field offices.