STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18777

WATER DIVISION 1-A

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in the Platte River Basin upstream of the confluence with the Loup River near Columbus, Nebraska. The moratorium included all tributary streams above the Loup River confluence including the North and South Platte Rivers and tributaries.

2. On January 1, 2007, work officially commenced on the Platte River Recovery and Implementation Program (PRRIP or Program). PRRIP's goals include reducing shortages to U.S. Fish and Wildlife Service target flows and providing additional land habitat for endangered species in the Lexington to Chapman reach of the Platte River. In order to meet these goals, each signatory to PRRIP has adopted depletions plans to address the mitigation of the adverse impacts of water-related activities on streamflows in the Platte River. In addition to a focus on new depletions, Nebraska's New Depletion Plan (NNDP) provides that the State of Nebraska will mitigate existing surface water and groundwater uses in order to return to a July 1, 1997, level of water-use development. Portions of the shortages to target flows are intended to be offset through water conservation and water supply projects identified by the PRRIP Governance Committee in the Water Action Plan, which provides guidance in implementing the water supply component of the Program. State partners integrally involved in the development of the Program include the Department of Natural Resources and the Nebraska Game and Parks Commission. The Program provides federal Endangered Species Act compliance for the following four endangered species: interior least tern, piping plover, whooping crane, and pallid sturgeon. The Program also serves as the reasonable and prudent alternative to offsetting the effects of existing, and certain new or expanded, water-related activities occurring in the Platte River Basin upstream of the Loup River confluence that may affect central or lower Platte River flow quantity or timing. A goal of the first thirteen-year increment of the Program is to attempt to retime and improve flows in the central Platte River so as to reduce shortages to target flows by an average of 130,000 to 150,000 acre-feet (AF) per year, as measured at Grand Island.

3. On August 13, 2009, integrated management plans (IMPs) were adopted by Order of the Department, pursuant to *Neb. Rev. Stat.* § 46-718(2) for the following Natural Resources Districts (NRDs): the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. As part of the surface water controls adopted by the Department pursuant to *Neb. Rev. Stat.* § 46-716(1)(b), the moratorium on issuing new surface water appropriations was continued.

4. On September 11, 2009, a Basin-Wide Integrated Management Plan (BWIMP) for the overappropriated area of the Platte River Basin was adopted by Order of the Department. The BWIMP was also adopted by the following NRDs: the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. These NRDs are collectively referred to in the BWIMP as the "Platte River Basin NRDs."

5. On March 28, 2011, Brian L. Barels, Water Resources Manager, Nebraska Public Power District, filed in the Department petition VAR-2071 for Leave to File an Application for a Permit to Appropriate Water within a Moratorium Area. The petition requested leave to file an application for a temporary permit to appropriate water for the purposes of flood control and groundwater recharge via the Kearney Canal.

6. On April 8, 2011, the Department granted leave to file application for a permit to appropriate water by approving petition VAR-2071.

7. On April 13, 2011, Brian L. Barels, Water Resources Manager, Nebraska Public Power District (NPPD), filed in the Department application A-18777 for a temporary permit to appropriate water for the purposes of flood control and groundwater recharge. The application proposes to divert excess flows on the Platte River at the headgate of the applicant's Kearney Canal located in Section 3, Township 8 North, Range 18 West of the 6th P.M. in Buffalo County.

8. For the purpose of this Order, "excess flows" will be those streamflows that are in excess of the U.S. Fish and Wildlife Service target flows and other State-protected appropriations that are in priority.

9. Temporary permits may not be granted for a term of more than one year.

FINDINGS OF FACT

1. Construction of the Kearney Canal has been completed.

2. The temporary diversion of excess flows sought in the application is part of a project that will be conducted in cooperation with integrated management and PRRIP partners and is in conformity with integrated management plan goals and potential conjunctive management projects. Information and data obtained from the proposed temporary project will be valuable in existing conjunctive management studies currently being undertaken in the Platte River Basin. Such data may be incorporated in the design of future projects intended to help the State of Nebraska meet its obligations under PRRIP. In addition, recharge from this project may assist NRDs in meeting their offset responsibilities under the BWIMP and individual NRD IMPs.

3. Only excess flows will be diverted under this project, and, therefore, the project will be utilizing unappropriated water.

4. The diversion of water for the purposes of flood control and groundwater recharge is beneficial.

5. There is a potential for flooding in the Platte River Basin during spring 2011, and the temporary diversion of these excess flows may mitigate some potential effects of flood flows.

6. This project is being implemented pursuant to PRRIP and will only divert water when target flows are exceeded as described in the NNDP. As a result, this project does not constitute a new depletion under PRRIP and does not require an offset. No water diversion infrastructure is being modified. Use of water under this project will assist the State of Nebraska in its efforts to achieve PRRIP goals. Approval of this application complies with the NNDP and has a purely hydrologic impact. In addition, in having consulted informally with the Nebraska Game and Parks Commission during the development of the NNDP and Program goals, the Department considers that the requirements of *Neb. Rev. Stat.* § 37-807(3) have been met.

7. For these reasons, the application is in the public interest and should be approved.

ORDER

IT IS HEREBY ORDERED that application A-18777 is APPROVED subject to the following limitations and conditions:

1. The source of water is the Platte River.

2. The water shall be used for the purposes of flood control and groundwater recharge.

3. The priority date is April 13, 2011.

4. When the specified conditions of this appropriation are met, water may be diverted, at a maximum rate of 50 cubic feet per second, into the Kearney Canal headgate located in Section 3, Township 8 North, Range 18 West of the 6th P.M. in Buffalo County.

5. The water under appropriation A-18777 may be diverted prior to or after the 2011 irrigation season, if all conditions of this Order are met. Appropriator must coordinate with Department personnel to determine the beginning and end of the irrigation season for the Kearney Canal system for the purpose of administering this permit.

6. If a relinquishment is not submitted first, then A-18777 will EXPIRE one year from the date of this Order, and appropriation A-18777 will be CANCELLED without further action by the Department as of that date.

7. No diversion of water under this permit may occur if the U.S. Fish and Wildlife Service-specified target flows are not being met at the time of diversion. Appropriator must continuously coordinate with the Department's field office in charge of water administration to confirm that this condition is met.

8. No diversion shall occur if the Department determines that, at the time of intended diversion, there are no excess flows available in the Platte River or if the appropriation is out of priority. Total diversion into the Kearney Canal during use of this permit will be limited to the permitted amount of A-18777.

9. The water diverted under A-18777 through the Kearney Canal and lateral system may not be used for direct irrigation by NPPD's customers. The water diverted under A-18777 will flow through the headgate, canal and lateral system. Any water diverted for the purpose authorized under this permit that does not seep into the groundwater aquifer will be returned to the river at established spills and drains.

10. Within six months after the final date of diversion under this temporary permit, the appropriator shall file a map that depicts where water was routed.

11. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:

    A. Notify the Department of any change in ownership or address.

    B. Notify the Department of the name and address of the person responsible for the use of the water appropriation (this may include farm managers, tenants, or relatives that actually apply the water to the approved use).

    C. Get approval from the Department prior to taking any action that changes the location of the point of diversion, the location of the place of use, the type of use or the type of appropriation.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any Orders issued by the Director of the Department of Natural Resources, or the provisions of this Approval may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations.

DEPARTMENT OF NATURAL RESOURCES

April 22, 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 (4th Floor Nebraska State Office Building, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the Approval 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 April 22, 2011, to the following:

Brian L. Barels
Nebraska Public Power District
PO Box 499
Columbus, Nebraska 68602