STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19400

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 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 Natural Resources Districts (NRD): 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." The individual integrated management plans referenced in the next paragraph are required to be in conformance with the goals and objectives of the BWIMP.

3. On August 13, 2009, the initial 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. There have been subsequent revisions to the IMPs. 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 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. The State of Nebraska, through the Department will utilize the integrated management process to achieve the goals of PRRIP (BWIMP and IMPs).

5. On September 28, 2015, The Central Nebraska Public Power and Irrigation District (CNPPID), filed petition VAR-5529 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area. The draft application attached to the petition is for a temporary permit to appropriate water from the Platte River for the purpose of groundwater recharge via the Phelps Canal and Funk Lagoon/Waterfowl Production Area.

6. On November 10, 2015, the Department granted leave to file an application for a permit to appropriate water by approving petition VAR-5529.

7. On November 23, 2015, CNPPID, filed in the Department application A-19400 for a temporary permit to appropriate water for the purpose of groundwater recharge through the Phelps Canal system and map number 19389. The application proposes to divert water from the Platte River at the headgate of the applicant's Tri-County Canal located in Section 08, Township 13 North, Range 29 West of the 6th P.M. in Lincoln County, which then connects to the Phelps Canal and Funk Lagoon/Waterfowl Production Area as shown on map number 19389.

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

9. For the purposes of this order "Desired Minimum Discharge" (DMD) describes the water parameter that will be used to determine whether, and to what extent diversion may occur for projects such as that proposed under A-19400. Table A (see attached) lists the DMD values for the Platte River, measured in cubic feet per second at the Grand Island streamgage, for specific time periods. The magnitude of these flows differs according to the PRRIP's designation of dry, normal or wet hydrologic conditions, derived from the USFWS's recommendations for species flows and annual pulse flows and found in the PRRIP Water Plan Reference Materials Attachment 5, Section 11, Appendix A-5. These flow values also include instream flow appropriations which must also be met in order for unappropriated water to be considered available for possible diversion.

CONCLUSIONS

1. Construction of the Phelps Canal and Funk Lagoon/Waterfowl Production Area have been completed.

2. Applicant has demonstrated there may be unappropriated water in the Platte River. It is anticipated there may be water available for diversion for some periods under this application in the future.

3. The purpose of this application is to recharge the groundwater aquifer in order to mitigate stream depletions from groundwater pumping and increase baseflow into local streams, which are goals of the BWIMP and IMPs. Accretions to streamflow that may occur as a result of recharge under this appropriation will be considered as beneficial if they are achieving the goals of the BWIMP and IMPs. Secondarily, the BWIMP and IMPs provide support for Nebraska's participation in the PRRIP. Nebraska is a party to the PRRIP and in part, Nebraska will achieve its commitments under the PRRIP through implementation of Water Action Plan projects. Diversions under A-19400 may be used for PRRIP purposes, if available water is not needed for other BWIMP and IMP purposes. Any diversions under this application must not be to the detriment of achieving the goals of the BWIMP and IMPs in the most effective manner as determined by the Department.

4. Diversions would occur under the proposed project during the non-irrigation season or under conditions such that no adverse impacts to existing water users are expected.

5. This diversion project is expected to be operated in accordance with the goals and objectives of the BWIMP and IMPs. As stated above, Nebraska has committed to achieve its obligations to the PRRIP. Therefore, under Nebraska's current commitment to the PRRIP the project shall only divert water when U.S. Fish and Wildlife Service target flows are exceeded or such requirement is waived by the Department. As such, this project will not require an offset for the purpose of ensuring that these target flows are met.

6. The diversion of water for aquifer recharge is beneficial, there may be unappropriated water available, and the application is in the public interest. Therefore it should be approved.

ORDER

IT IS HEREBY ORDERED that application A-19400 is APPROVED subject to the following conditions:

1. The source of water is the Platte River.

2. The water diverted under this temporary permit shall only be used for the purpose of groundwater recharge in support of the BWIMP and IMPs via the existing Phelps Canal and Funk Lagoon/Waterfowl Production Area.

3. If water is available according to the conditions of this Order and not required for use in achieving the goals of the BWIMP or IMPs, then the Department may allow diversion for groundwater recharge for PRRIP purposes.

4. The priority date is November 23, 2015.

5. When the specified conditions of this appropriation are met, water may be diverted, at a maximum rate of 600 cubic feet per second, into the headgate of the Tri-County Canal located in Section 08, Township 13 North, Range 29 West of the 6th P.M. in Lincoln County, and the same water less transit losses allowed to flow into and through the Parshall Flume at Milepost 1.6 located in Section 11, Township 08 North, Range 21 West of the 6th P.M. in Gosper County, on the Phelps Canal, and a portion of which may be supplied to Funk Lagoon/Waterfowl Production Area.

6. If a relinquishment is not submitted first, then A-19400 will EXPIRE one year from the date of this Order and appropriation A-19400 will be CANCELLED without further action by the Department as of that date.

7. The term "Desired Minimum Discharge" (DMD) is quantitatively defined in Table A and is attached to and hereby incorporated into the conditions of this Order. Only those flows in excess of the DMD shall be considered to be available to be diverted. These target flows are specified in **Table A** on page 6. The project will utilize only previously unappropriated available water.

8. In order to ensure compliance with the BWIMP and IMPs, the Department imposes the following hydrologic and administrative conditions, to determine whether, and in what quantity, water may be available for diversion:

   A. No diversion under this appropriation may occur unless the previous day's twenty-four-hour average flow of the Platte River, as measured at the Grand Island streamgage or other Department-specified gage, is in excess of the DMD. This requirement may be waived if written permission is granted by the Department.

   B. The current hydrologic condition of wet, normal or dry, as designated by PRRIP, shall determine the appropriate DMD value from Table A.

   C. If the amount of streamflow in excess of the designated DMD is less than the maximum diversion permitted under this appropriation, as described in condition 7 above, then only that amount of streamflow in excess of the DMD may be diverted unless waived by written permission of the Department.

9. Prior to diversion under appropriation A-19400, Appropriator must coordinate with the Department's field office in charge of water administration to confirm during regular business hours that conditions are met.

10. The Appropriator shall contact the Bridgeport field office during regular business hours a minimum of 24 hours prior to the anticipated change in purpose of diversions from irrigation under other appropriations to groundwater recharge under this appropriation, or from groundwater recharge under A-19400 to irrigation. When such change in purpose of diversions should occur, accurate measurement of diversions and duration of diversion shall be documented by the Appropriator.

11. The Department reserves the right to make adjustments to the amounts and measurement location(s) listed in Table A.

12. The water diverted under A-19400 through the Tri-County Canal and the Phelps Canal system **may not be used for direct irrigation** by The Central Nebraska Public Power and Irrigation District's customers. The water diverted under A-19400 may flow only 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 shall be returned to the river at established spills and drains.

13. Within six months after the final date of diversion under this temporary permit, the appropriator shall provide in-depth quantitative analysis to the Department of the recharge achieved by utilizing the Phelps Canal and Funk Lagoon/Waterfowl Production Area, including all data provided to the Program pursuant to a contractual arrangement between CNPPID and the Department.

14. The appropriator must comply with all relevant statutes.

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.

DEPARTMENT OF NATURAL RESOURCES

November 25, 2015

Gordon W. Fassett, 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 Title 454 Neb. Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (Nebraska State Office Building, 4th Floor, 301 Centennial Mall South, P.O. Box 94676, 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 approval was posted on the Department's website and provided to the Department's field offices in Bridgeport and North Platte, Nebraska. A copy of this approval was mailed on November 25, 2015, to the following:

Don Kraus, P.E., General Manager
Central Nebraska Public Power and
Irrigation District
P.O. Box 740
Holdrege, Nebraska 68949-0740

Table A - Desired Minimum Discharge of the Platte River in cfs

Measured at the Grand Island Stream Gage Relevant to Appropriation A-19400

Period	PRRIP Target Flows Grand Island		
	Wet*	**Normal***	**Dry***
January 1 - January 31	1,000	1,000	600
February 1 - February 14	1,800	1,800	1,200
February 15 - February 28	3,350	3,350	2,250
March 1 - March 15	3,350	3,350	2,250
March 16 - March 22	1,800	1,800	1,200
March 23 - March 31	2,400	2,400	1,700
April 1 - April 14	2,400	2,400	1,700
April 15 - May 3	2,400	2,400	1,700
May 4 - May 10	2,400	2,400	1,700
May 11- May 19	1,200	1,200	800
May 20 - May 31	3,700	3,400	800
June 1 - June 20	3,700	3,400	**1,000****
June 21 - June 23	1,200	1,200	**1,000****
June 24 - July 31	1,200	1,200	**1,000****
August 1 - August 22	1,200	1,200	800
August 23 - August 31	1,200	1,200	800
September 1 - September 15	1,200	1,200	800
September 16 - September 30	1,000	1,000	600
October 1 - October 11	2,400	1,800	**1,350****
October 12 - November 10	2,400	1,800	**1,500****
November 11 - November 15	2,400	1,800	1,300
November 16 - December 31	1,000	1,000	600

* The current Hydrologic Condition, (Wet Normal or Dry) determined by PRRIP can be found at: *http://platteriverprogram.org/PubsAndData/Pages/CurrentHydrologicCondition.aspx*

**Represents the minimum discharge required by instream flow appropriation, which is greater than PRRIP Target Flows, and senior to A-19400