STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO FILE AN APPLICATION FOR

A NEW SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A

MORATORIUM BY PETITION VAR-5349

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 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." 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 March 24, 2015, Brian L. Barels, P.E., Water Resources Manager, Nebraska Public Power District (Petitioner) filed petition VAR-5349 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area or Stay Area. The petition requests leave to file an application for a temporary permit to appropriate water for the purpose of groundwater recharge via the Dawson County Canal system.

6. When the flows are adequate to supply senior appropriations and satisfy the USFWS target flows, 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 VAR-5349. 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.

ANALYSIS

1. The formal moratorium issued by the Department in 2004 has been continued in the surface water controls included in the individual NRD IMPs adopted by the Platte River Basin NRDs and the Department.

   Because the Platte River Basin is currently undergoing integrated management for the purposes of reducing depletions to streamflow, any new consumptive use must be examined for its potential effects on extant surface and groundwater users and upon all matters of significant public interest and concern. This includes assessing both positive and negative impacts on the State's ability to comply with interstate agreements, programs, decrees and compacts, including PRRIP. Thus, any proposed project must be scrutinized to prevent conflict with (a) the goals and actions necessary to implement the IMPs adopted by the Platte River Basin NRDs and the Department and (b) the water needs of Water Action Plan projects that will be implemented under PRRIP. Applications for potential beneficial uses that are not clearly non-consumptive will be presumed to be at least partially consumptive. Therefore, an analysis of the effects of a proposed new diversion on these existing uses and responsibilities is required in order to determine whether sufficient good cause exists to grant a variance to apply for a new use.

2. Petitioner provided information that indicates the presence of unappropriated water throughout the Platte River Basin upstream of the confluence of the Loup and Platte Rivers. The information shows that U.S. Fish and Wildlife Service target flows and State-protected instream flow appropriations held by the Central Platte NRD and the Nebraska Game and Parks Commission are likely to be exceeded based on historical analysis and experience with temporary permits that were previously utilized. Petitioner acknowledges that protection of target flows must be maintained throughout the year, and Petitioner expects

such to be a condition of any permit approval, if a permit was allowed to be filed and was ultimately granted.

3. Petitioner requests a permit to divert water for the purpose of groundwater aquifer recharge to assist in optimizing water management.

4. Petitioner proposes to divert unappropriated water prior to the normal irrigation season and possibly after the irrigation season concludes, if river conditions are such that unappropriated water is available.

CONCLUSIONS

1. Petitioner has convincingly argued there is likely to be unappropriated water in the future on the Platte River prior to and possibly after some irrigation seasons because of flows in excess of appropriated water and Desired Minimum Discharge, as defined above.

2. The diversion project proposed on the attached draft application does not appear to be in conflict with integrated management plan goals and potential conjunctive management projects. In addition, recharge from this project should assist NRDs in meeting their offset responsibilities under the BWIMP and individual NRD IMPs.

3. The potential benefits of groundwater recharge that Petitioner expects to result from the proposed project outweigh the effects of any stream depletions from temporarily diverting the water during times described above.

4. For these reasons, Petitioner should be granted leave to file an application to divert flows in excess of appropriated water and Desired Minimum Discharge for the purpose of groundwater recharge.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-5349 meets the requirements of *Department of Natural Resources Rules of Surface Water, Title 457 Neb. Admin. Code* Chapter 23, § 001.03, has shown sufficient good cause, and is GRANTED.

2. This Order granting leave to file or consider an application for a new surface water appropriation within a moratorium or stay area pursuant to petition VAR-5349 shall be in effect for one year from the date this order is signed.

3. This decision shall not bind the Director to approve any application to which it relates, or in any way be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of such an application.

DEPARTMENT OF NATURAL RESOURCES

June 26, 2015

James C. Schneider, Ph.D.
Acting Director

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 26, 2015, to the following:

Brian L. Barels, Water Resources Manager
Nebraska Public Power District
P.O. Box 499
Columbus, Nebraska 68602-0499

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Nebraska Public Power District
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York, Nebraska 68647-0608

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

**Measured at the Grand Island Stream Gage Relevant to VAR-5349**

| 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.