STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19256

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 September 19, 2013, The Central Nebraska Public Power and Irrigation District, filed petition VAR-4829 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 E65 Canal, Elwood Reservoir, and Cottonwood Waterfowl Production Area.

6. On May 1, 2014, the Department granted leave to file an application for a permit to appropriate water by approving petition VAR-4829.

7. On May 19, 2014, The Central Nebraska Public Power and Irrigation District (CNPPID), filed in the Department application A-19256 for a temporary permit to appropriate water for the purpose of groundwater recharge through the E65 Canal, Elwood Reservoir, and Cottonwood Waterfowl Production Area. The application proposes to divert water from the Platte River at the headgate of the applicant's Tri-County Canal located in Section 8, Township 13 North, Range 29 West of the 6th P.M. in Lincoln County, which then connects to the E65 Canal, Elwood Reservoir, and Cottonwood Waterfowl Production Area.

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

CONCLUSIONS:

1. Construction of the E65 Canal, Elwood Reservoir, and Cottonwood Waterfowl Production Area have been completed.

2. Applicant has demonstrated there may be unappropriated water in the Platte River. It is anticipated there will be water available for diversion for a brief period under this application in the near future.

3. The purpose of this application is to recharge the groundwater aquifer in order to mitigate stream depletions from groundwater pumping and possibly increase base flow into local streams, which are goals of the BWIMP, IMPs and PRRIP. Potential accretions to streamflow that may occur as a result of recharge under this appropriation will be considered as beneficial depletion mitigation only when and to the extent that CNPPID is diverting water for recharge purposes to achieve, in order of precedence, the goals of the BWIMP, IMPs or PRRIP, in accordance with terms of contractual agreements.

4. The temporary diversion project proposed by application A-19256 as realized through contractual agreement with the Department, Tri-Basin NRD, and CNPPID will contribute to achieving the goals of the BWIMP and the IMPs.

5. Diversions would mostly likely occur under the proposed project during the non-irrigation season; therefore, no adverse impacts to existing water users are expected.

6. This temporary diversion project will be operated in order of precedence pursuant to the BWIMP, IMPs and the PRRIP and will divert water only when U.S. Fish and Wildlife Service target flows are exceeded. As such, this project will not require an offset for the purpose of ensuring that these target flows are met.

7. The success of BWIMP, IMPs and the PRRIP are in the public interest. The State of Nebraska, through the Department and the NRDs as integrated management partners, is responsible for ensuring the success of these plans and agreements. Projects that support these plans and agreements must take precedence over other potential projects that may be approved.

8. Projects such as this will facilitate increased baseflow to nearby streams, including the Platte River, through groundwater recharge. The benefits from this project may assist with achieving the goals of the BWIMP and IMPs that the Department and the Platte River Basin NRDs have adopted.

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

ORDER

IT IS HEREBY ORDERED that application A-19256 is APPROVED subject to the following limitations and 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 E65 Canal, Elwood Reservoir, and Cottonwood Waterfowl Production Area.

3. The priority date is May 19, 2014.

4. When the specified conditions of this appropriation are met, water may be diverted, at a maximum rate of 350 cubic feet per second, into the headgate of the Tri-County Canal located in Section 8, 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 E65 Canal, a portion of which may be supplied to Elwood Reservoir and Cottonwood Waterfowl Production Area.

5. To utilize the E65 canal system for recharge under this permit, the water under appropriation A-19256 may be diverted prior to the beginning of the 2014 irrigation season, after the end of the 2014 irrigation season and prior to the beginning of the 2015 irrigation season if applicable, if all conditions of this Order are met. Appropriator must coordinate with Department personnel to determine the end and the beginning of the irrigation season for the E65 Canal system for the purpose of administering this permit.

6. The water diverted under appropriation A-19256 may flow through the Applicant's canal system and may be used for groundwater recharge via the Elwood Reservoir and Cottonwood Waterfowl Production Area whenever the conditions of this permit allow.

7. This appropriation is subject to all regular water administration. No diversion shall occur if the Department determines that, at the time of intended diversion, there is no unappropriated water available in the Platte River or if the appropriation is out of priority.

8. If a relinquishment is not submitted first, then A-19256 will EXPIRE one year from the date of this Order, and appropriation A-19256 will be CANCELLED without further action by the Department as of that date.

9. No diversion of water under this permit may occur if the U.S. Fish and Wildlife Service-specified target flows are not being met, averaged on a daily basis, at the time of the intended diversion. These target flows are specified in **Table A** on page 6. Appropriator must coordinate with the Department's field office in charge of water administration to confirm that this condition is met.

10. The Department reserves the right to make adjustments to the amounts listed in Table A.

11. 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 E65 Canal during use of this permit will be limited to the permitted amount of A-19256 less transit losses.

12. The water diverted under A-19256 through the Tri-County Canal and the E65 Canal, Elwood Reservoir and Cottonwood Waterfowl Production Area **may not be used for direct irrigation** by The Central Nebraska Public Power and Irrigation District's customers. The water diverted under A-19256 may flow only through the E65 Canal and lateral system, Elwood Reservoir and Cottonwood Waterfowl Production Area. 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 file a map that depicts where the water was routed, and will provide in-depth quantitative analysis to the Department of the recharge achieved by utilizing the E65 Canal, Elwood Reservoir and Cottonwood Waterfowl Production Area, including all data provided to the Program pursuant to the "Water Service Agreement-Groundwater Recharge from Excess Flows between The Central Nebraska Public Power and Irrigation District, Nebraska Department of Natural Resources, and Tri-Basin Natural Resources District".

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.

DEPARTMENT OF NATURAL RESOURCES

June 9, 2014

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 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 June 9, 2014, 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-19256

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-19256