

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

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

Background

1. The Department of Natural Resources (DNR or Department) and the Upper Republican Natural Resources District (URNRD or District) jointly adopted an integrated management plan (IMP or Plan) in 2005 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.
2. In 2007, the Department and the District reviewed the Plan and decided that it needed to be changed to comply with changes in the Act and to better reflect current hydrologic conditions in the Republican Basin. As a part of their review, DNR and the URNRD duly considered the relevant scientific data and other information as required by the Department's rules and regulations, and also the results of consultation and public comment as required by Neb. Rev. Stat. § 46-717.
3. The URNRD and DNR reached agreement on (a) the proposed goals and objectives of the Plan for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to controls, (c) the surface water controls and the ground water controls, which are adopted and implemented by the URNRD through the URNRD Ground Water Management Area Rules and Regulations, (d) the incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach, and (e) compliance standards to assess the actions of the URNRD with respect to the State's ability to maintain compliance with the Final Settlement Stipulation and the Republican River Compact.
4. On November 1, 2007, pursuant to notices duly published pursuant to Neb. Rev. Stat. § 46-743, a public hearing on the proposed revisions to the Plan, the compliance standards, and associated controls was held.
5. After considering the comments made at the public hearing and other information and written comments received, the Department and the URNRD jointly determined to revise the Plan as proposed, including the compliance standards, and to adopt and implement the surface water controls, ground water controls, through the URNRD Ground Water Management Area Rules and Regulations, and incentive programs proposed in the Plan.
6. On February 12, 2008, the URNRD adopted the proposed Plan and affirmed continued use of the ground water controls necessary for meeting the compliance standard identified in the Plan.

Controls Adopted

1. The surface water controls included in the joint integrated management plan are:
 - A. The Department will administer surface water in the Republican Basin as required by the Settlement Agreement approved by the United States Supreme Court in *Kansas v. Nebraska*, No. 126 Original (the "Settlement") including:
 - (1) Regulate the natural flow between Harlan County Lake and Superior-Courtland Diversion Dam by recognizing a priority date of February 26, 1948, for Kansas Bostwick Irrigation District, the same priority date as the priority date held by the Nebraska Bostwick Irrigation District's Courtland Canal water right.
 - (2) Close junior natural flow surface water appropriations between Harlan County Lake and Guide Rock when water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre feet of storage available for use from Harlan County Lake. The Bureau of Reclamation will determine the amount of water supply using the methodology described in Harlan County Lake Operation Consensus Plan attached as Appendix K to the Settlement Agreement.
 - (3) Ensure that senior natural flow surface water appropriators are complying with the terms of their permits and all orders of the Department.
 - (4) Protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
 - (5) Take actions to minimize the bypass flows at Superior-Courtland Diversion Dam Nebraska, in concert with Kansas and in collaboration with the United States, and in the manner described in Appendix L to the Settlement Agreement.
 - B. The Department will continue to require all surface water appropriations to install flow meters at the point of diversion from the stream and keep the meters in good working order. For surface water canals that are not part of a Bureau of Reclamation project, farm turnouts will be required to install and maintain a Department approved measuring device. All measuring devices shall meet the Department standards for installation, accuracy and maintenance. All appropriators will be monitored to ensure that neither the rate of diversion nor the annual amount diverted exceeds that allowed by the applicable permit or by statute.

- C. The Department will continue the moratorium on the issuance of new surface water permits made formal by order of the Director dated July 14, 2004. Exceptions may be granted by the Department to the extent permitted by Neb. Rev. Stat. § 46-714(3) or to allow issuance of permits for existing reservoirs that currently do not now have permits. Only the reservoirs identified through the Settlement Agreement required inventory of reservoirs with over 15 acre-feet capacity will be granted a permit.
- D. The Department will carefully adhere to the criteria for surface water transfers found in Neb. Rev. Stat. §§ 46-290 to 46-294.04 and §§ 46-2,120 to 46-2,130 and related Department rules.
- E. The Department completed the adjudication process within the URNRD for the individual appropriators in the Republican River Basin in 2004. The results of that adjudication provided up-to-date records of the number and location of acres irrigated with surface water by such appropriators. Those records will be used by the Department to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The Department will also be proactive in initiating subsequent adjudications whenever information available to the Department indicates the need for adjudication as outlined by state statutes.
- F. At this time, due to the already limited availability of surface water supplies, the Department shall not require that surface water appropriators apply or utilize additional conservation measures or that they be subject to other new restrictions on surface water use. However, the Department may modify the Plan in the future to require such additional measures. If a modification is made, Neb. Rev. Stat. § 46-716(2) requires the Department to "allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty days, unless extended by the Department, to identify the conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions."

Order

It is therefore ORDERED that the Integrated Management Plan for the Upper Republican Natural Resources District adopted by the URNRD on February 12, 2008, and the surface water controls in the Plan are hereby adopted by the Department.

DEPARTMENT OF NATURAL RESOURCES

April 3, 2008



Brian P. Dunnigan, P.E., Acting Director

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 Nebraska Administrative Procedures Act (Neb. Rev. Stat., Sections 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, 4th Floor State Office Building, Lincoln, NE 68509-4676) within 15 days of the date of the Approval and be accompanied by a filing fee of \$10.

On April 3, 2008, a copy of this Order was posted on the Department's website and mailed to Jasper Fanning, General Manager Upper Republican Natural Resource District, 135 West 5th St., Imperial, Nebraska 689033 and the Department of Natural Resources field offices.