

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
APPROVAL OF APPLICATION A-19560
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 (BWP) for the over-appropriated area of the Platte River Basin was adopted by order of the Department. The BWP 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 BWP 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 BWP.
3. In the second half of 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. Goals of the BWP include achieving a fully appropriated condition and preventing reductions in streamflow that would cause non-compliance with any extant interstate agreements. Methods to achieve these goals include using periodic or intermittent unappropriated water (excess flows) to recharge underground aquifers or otherwise retiming excess flows to enhance stream flows at times when there are shortages to U.S. Fish and Wildlife Service (USFWS) designated target flows or state-protected flows. As part of the surface water controls contained in each IMP and adopted by the Department 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 USFWS's target flows and providing additional land habitat for threatened or 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 stream flows in the Platte River. The State of Nebraska, through the Department will utilize the integrated management process to achieve the goals of PRRIP (BWP and IMPs).

5. On August 21, 2017, The Central Nebraska Public Power and Irrigation District (CNPPID) filed Petition VAR-6282 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, Cottonwood Ranch Complex, Funk Lagoon Waterfowl Production Area (WPA) and Johnson WPA via pipeline.
6. On September 6, 2017, the Department granted leave to file an application for a permit to appropriate water by approving petition VAR-6282.
7. On September 13, 2017, CNPPID, filed in the Department application A-19560 for a temporary permit to appropriate water for the purpose of groundwater recharge and map number 20105. 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, Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA via pipeline.
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 one criterion that will be used to determine whether, and to what extent diversion may occur for projects such as that proposed under A-19560. Table A lists the DMD values for the Platte River, measured in cubic feet per second (cfs) at the Grand Island stream gage, for specific time periods. The magnitude of these flows differs according to the PRRIP's designation of wet, normal or dry 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. The flow values listed in Table A include instream flow appropriation values when they exceed the target flows. These instream flow appropriations must also be satisfied in order for unappropriated water to be considered available for possible diversion.

CONCLUSIONS

1. Construction of the Phelps Canal and Johnson WPA diversion works are complete. Diversion works to deliver water to Funk Lagoon WPA and Cottonwood Ranch Complex via pipelines are yet to be completed.
2. Applicant has demonstrated there may be periods when unappropriated water in the Platte River is available. 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 divert unappropriated excess flows, if available, for recharge of the groundwater aquifer in order to mitigate stream depletions from groundwater pumping and increase base flow into local streams, which supports key goals and objectives of the BWP and IMPs. Accretions to streamflow that may occur as a result of recharge under this appropriation are beneficial if they are achieving the goals of the BWP and IMPs. Additionally, the BWP 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; such as the Cottonwood Ranch Complex project. Diversions under A-19560 may be used for PRRIP purposes. Any diversions under this application must not be to the detriment of achieving the goals of the BWP and IMPs in the most effective manner, as determined by the Department.

4. This diversion project is expected to be operated in accordance with the goals and objectives of the BWP and IMPs. As stated above, Nebraska has also committed to achieve its obligations to the PRRIP. Therefore, under Nebraska's current commitment to the PRRIP the project shall only divert water when USFWS target flows are exceeded or when such requirement is waived by the Department. As such, this project will not require a depletion offset for the purpose of ensuring that these target flows are met.
5. The Department has and will continue to exercise prudence in determining the most effective beneficial use of what is frequently a limited and intermittent water supply in the fully and over-appropriated reaches of the Platte River system.
6. Certain conditions should be imposed on this appropriation to ensure the public interest is met for the near-term and long-term. Significant public investments have been and will continue to be made toward achieving the goals of the BWP and IMPs; including PRRIP commitments. The Department believes the limited water resources available in the fully and over-appropriated reaches of the Platte River system must be prioritized to serve these goals while continuing to meet the public interest. To ensure this outcome, this appropriation and existing or future appropriations of similar type should be adaptively managed and/or modified to continue achieving BWP and IMPs goals. This adaptive management should consider the order and prioritization in which appropriations are authorized to divert, the rate at which the appropriation is authorized to divert, and other factors deemed by the Department as necessary toward continuing to meet the public interest.
7. The diversion of water for aquifer recharge in furtherance of achieving the goals of the BWP, IMPs and the PRRIP is beneficial. There may be unappropriated water available at times during the next one-year period, and subject to the adaptive management principles outlined in (6) above, the application is deemed to be in the public interest. Therefore it should be approved with reasonable conditions to best facilitate achieving the aforementioned goals.

ORDER

IT IS HEREBY ORDERED that application A-19560 is APPROVED subject to the following conditions:

1. The source of water is the Platte River.
2. The priority date is September 13, 2017.
3. This appropriation is temporary and may not be used for more than one year from the approval date of this Order.

4. The water diverted under this temporary permit shall only be used for the purpose of groundwater recharge in support of the PRRIP, BWP and IMPs through and along the existing Phelps Canal to facilities served by the canal for recharge at the Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA.
5. This appropriation is a natural flow appropriation. The rate of recharge must essentially match the rate of delivery into each recharge area with only modest increases in head to provide for effective recharge of water to the groundwater aquifer. The Department may reduce the diversion rate if it determines that water is being stored above ground in addition to the recharge activity. The Appropriator has six months from the approval date of this order to consult with, develop and provide the Department with a document containing specific details for a plan to monitor and record how water deliveries are completed and also benefiting the recharge areas. The plan may include provisions for instrumentation and telemetry for real time monitoring of water deliveries and water elevations at the recharge sites.
6. The term "Desired Minimum Discharge" (DMD) is quantitatively defined in Table A attached to and hereby incorporated into the conditions of this Order. Only those flows in excess of the DMD, as defined in Table A, shall be considered to be available to be diverted. Appropriation A-19560 will utilize only periodically available unappropriated water.
7. The Department may reduce or deny diversion under this appropriation if there is not enough available unappropriated water to satisfy all appropriations and the Department determines that there are more beneficial uses for the limited water supply at other locations, and that doing so is in the public interest. An adaptive management approach to determining which potentially complimentary or competing temporary excess water recharge projects receive a portion of a limited water supply, will be applied consistently to best serve the stated goals while continuing to meet the public interest.
8. In order to ensure the public interest is best served relative to the purpose for which this appropriation is being granted, the Department imposes the following hydrologic and administrative conditions, to determine whether and in what quantity water may be available for diversion:
 - A. The Appropriator shall have measuring devices installed and operational at the diversion location and at the delivery locations for each recharge area designated in this approval order prior to commencing diversions under this appropriation. Accurate measurement of diversions and deliveries will be documented by the Appropriator and made available upon request by the Department.
 - B. Prior to initiating any diversion of water under appropriation A-19560, Appropriator must coordinate with the Department's Bridgeport field office in charge of water administration during regular business hours to confirm that conditions are met for diversion under this appropriation and that diversions may commence.

- C. Appropriator must receive written permission from the Department's Bridgeport field office to divert under this appropriation prior to diversion. This condition may be met by an acknowledged email exchange. This permission and approval to divert from the Department will specify the rate of diversion allowed according to conditions described below.
 - D. 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 stream gage or other Department-specified gage, is in excess of the DMD. This requirement may be waived if written permission is granted by the Department.
 - E. The current hydrologic condition of wet, normal or dry, as designated by PRRIP, shall determine the appropriate DMD value from Table A.
 - F. Once diversion under this appropriation has begun, the Appropriator shall notify the Bridgeport field office prior to cessation of diversion under this appropriation. If this falls on a holiday or weekend, then the notification must be received by the next business day. Once diversion has ceased for a period of twenty-four hours or more, permission must be obtained from the Department according to paragraphs B and C above before resuming diversion under this appropriation.
 - G. The Appropriator shall notify the Bridgeport field office within twenty-four hours of the final irrigation season delivery along each major segment of the Appropriator's supply and irrigation canal system. If this falls on a holiday or weekend, then the notification must be received by the next business day.
9. The Department reserves the right to make adjustments to the amounts and measurement location(s) listed in Table A.
10. The water diverted under A-19560 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-19560 may flow only through the headgate, canal, lateral and pipeline systems directly to the recharge areas. 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.
11. The Department acknowledges that water diverted under A-19560 may also be secondarily used to generate power, in accordance with existing appropriations, on route to the recharge areas designated under this approval, so long as the water is delivered to the recharge areas in the most expeditious manner using existing approved water infrastructure.

12. When the abovementioned specified conditions of this appropriation are met, water may be diverted at a rate specified by the Department up to a maximum rate of 600 cfs 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, for recharge on the Phelps Canal, and a portion of which may be supplied to Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA.
13. The Appropriator must comply with all relevant statutes.
14. If a relinquishment is not submitted first, then A-19560 will EXPIRE one year from the approval date of this Order and appropriation A-19560 will be CANCELLED without further action by the Department as of that date.
15. Within six months after the final date of diversion under this temporary permit, the Appropriator shall provide a report containing the following elements: Provide a table of water deliveries to each of the following recharge areas — The Phelps Canal, Cottonwood Ranch Complex, Funk Lagoon WPA and Johnson WPA. A copy of any other data or reports provided to the PRRIP Executive Director Office, or pursuant to any contractual arrangements between CNPPID and the Department. Maps or plans must be provided to the Department, which include a depiction of the areas used to recharge the groundwater aquifer and the infrastructure used to deliver the water, including the pipelines to be constructed at the Cottonwood Ranch Complex and Funk Lagoon WPA. Provide data gathered from any groundwater level measurements during and after water has been recharged under this appropriation that demonstrates an increase in the elevation of the local water table has occurred around these sites.

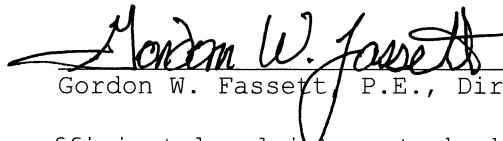
ADDITIONAL INFORMATION

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

December 1, 2017


Gordon W. Fasset, 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 December , 2017, to the following:

Don Kraus, P.E., General Manager
The 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-19560**

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:

<https://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-19560