

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
ORDER ADOPTING UPPER ELKHORN NATURAL RESOURCES DISTRICT
VOLUNTARY INTEGRATED MANAGEMENT PLAN
AND ASSOCIATED SURFACE WATER CONTROLS

Background

1. On June 8, 2015, the Upper Elkhorn Natural Resources District (District) submitted to the Nebraska Department of Natural Resources (Department) a letter of intent to develop a voluntary Integrated Management Plan (IMP).
2. The Department and the District consulted on the development of the voluntary IMP with a group of stakeholders. The stakeholder group consisted of the statutorily required and other entities that were identified by the Department and the District to be included in the group. In addition, on August 29, 2018, the Department and District jointly held a public meeting, to solicit public comments and opinions regarding the voluntary IMP. The meeting was publicly noticed in area newspapers and on the Department and District websites. The members of the stakeholder group were invited to attend the meeting. Through this process of consultation, the Department and the District jointly developed a voluntary IMP in accordance with the Ground Water Management and Protection Act (the Act), particularly, *Neb. Rev. Stat.* §§ 46-715, 46-716, 46-717, and 46-718.
3. On October 25, 2018, the Department and the District reached agreement on (a) the proposed goals and objectives of the voluntary IMP, (b) the proposed geographic area to be subject to the controls of the voluntary IMP, and (c) the surface water and groundwater controls that are proposed for adoption and implementation of the voluntary IMP.
4. On November 28, 2018, pursuant to notices duly published in accordance with *Neb. Rev. Stat.* § 46-743, the Department and the District jointly held a public hearing in O'Neill, Nebraska on the proposed voluntary IMP. There was no formal testimony to be considered from this hearing.
5. On December 17, 2018, the District's Board of Directors adopted the proposed IMP with minor editorial modifications and affirmed the use of groundwater controls necessary for implementing the voluntary IMP.
6. On December 17, 2018 the Department sent the District a letter agreeing to adopt the proposed voluntary IMP and surface water controls.

Surface Water Controls Adopted

The surface water controls included in the voluntary IMP are as follows:

1. Surface Water Control Area 1 (Lower Niobrara Basin)

- a. **Moratorium or restriction on addition of surface water irrigated acres:**
Should the District issue a moratorium on any increase in groundwater-irrigated acres, the Department will issue a similar moratorium to limit development of additional acres for surface water irrigation. Should the District allow development of groundwater-irrigated acres in this area, the Department will restrict development of additional acres for surface water irrigation to one-third of the amount the District will allow for additional groundwater-irrigated acres for any surface water applications filed after the effective date of this VIMP. The Department will use the District's number of additional groundwater acres as of January 1 of each year for determining the number of additional acres for surface water irrigation in each calendar year. The District will notify the Department in writing no later than December 31 of any groundwater irrigated acres that have been allowed to be developed within Surface Water Control Area 1 for the previous calendar year. Should the District fail to notify the Department by the December 31 deadline of the groundwater acres allowed to be developed, the Department is not bound to limit surface water development in the following calendar year in this area.

2. Surface Water Control Area 2 (Upper Missouri Tributaries Basin)

- a. **Education requirements:** The Department will continue to explore implementation of educational materials for new industrial and agricultural surface water permits.

3. Surface Water Control Area 3 (Lower Platte Basin)

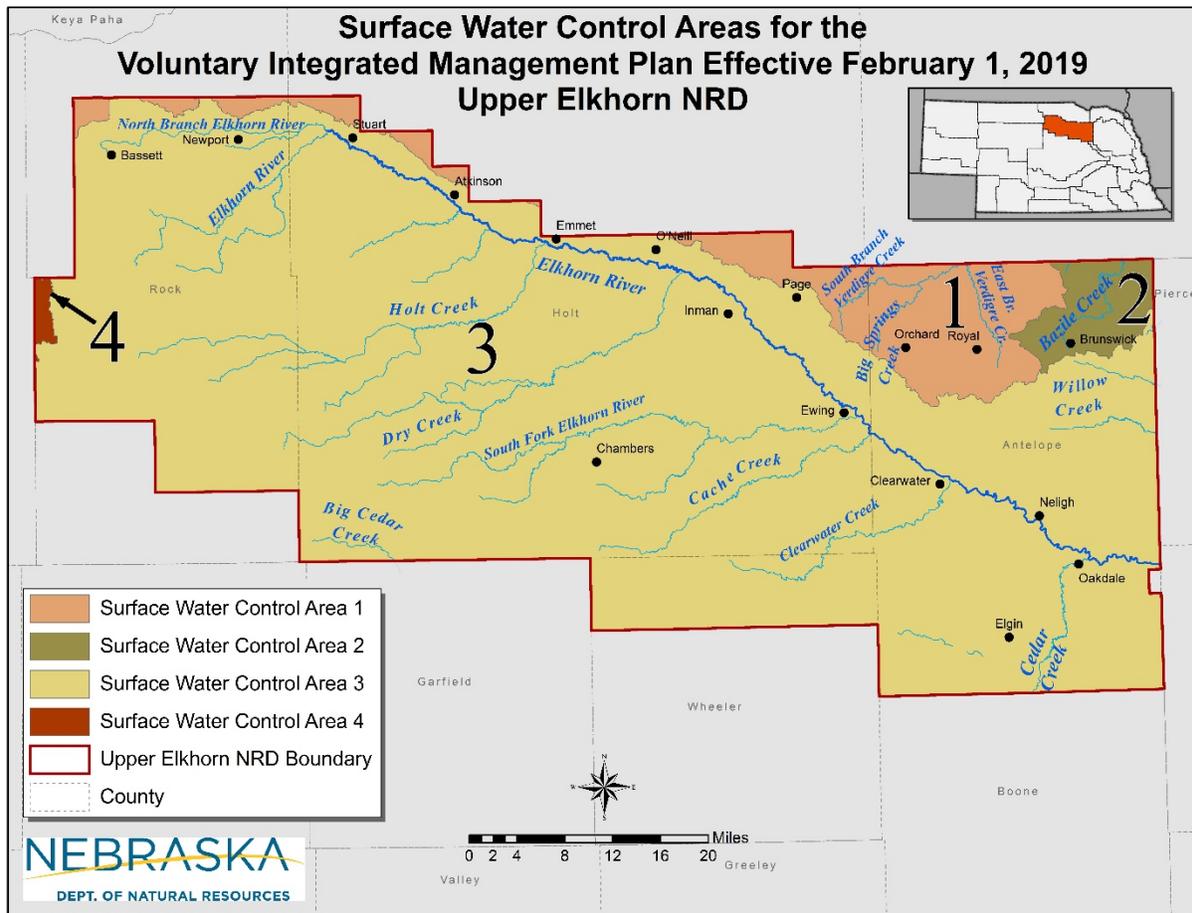
- a. **Limitation on expansion of surface water irrigation:** The Department will limit new surface water uses to 50 percent of the annually available stream depletion over the Basin Plan's first 5-year increment, which concludes on December 31, 2021. Depletions not used will be redistributed annually and shared equally between the District and the Department¹.

4. Surface Water Control Area 4 (Middle Niobrara Basin)

- a. **Temporary stay on development of surface water irrigation:** The Department will stay approval of new surface water irrigation acres. Exceptions to the stay include, but are not necessarily limited to:
 - i. Appropriations for new surface water uses to which a right or permit is transferred in accordance with State law, but the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use from which the right or permit is being transferred, and

¹ **Appendix D** contains an example calculation of the annual redistribution of depletions shared equally between the District and the Department.

- ii. New surface water natural flow appropriations that are necessary to alleviate an emergency situation involving the provision of water for human consumption, public health, or safety
- b. The stay shall run until the earlier of February 4, 2020, or such time that the surface water controls contained in the Middle Niobrara Integrated Management Plan have been implemented through an effective order of the Department.



Map by NeDNR bae 10/22/2018

Figure 1: Surface Water Control Areas

Order

It is therefore ORDERED that the voluntary integrated management plan for the Upper Elkhorn Natural Resources District and the surface water controls in the plan are HEREBY ADOPTED by the Department and will become effective on **February 1, 2019**.

DEPARTMENT OF NATURAL RESOURCES

December 17, 2018



Gordon W. Fassett, 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. §§ 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 30 days of the date of this Order and be accompanied by a filing fee of \$10.00.

On December 18, 2018, a copy of this Order was posted on the Department's website at <http://dnr.nebraska.gov/>; mailed to Dennis Schueth, General Manager, Upper Elkhorn Natural Resources District, 301 North Harrison St., O'Neill, NE 68763; and provided to the Department of Natural Resources field offices in Norfolk and Lincoln, Nebraska.