

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
STATE OF NEBRASKA

IN THE MATTER OF)	
THE PUBLIC HEARING RELATING TO)	
THE LOWER NIOBRARA NATURAL)	<u>TRANSCRIPT</u>
RESOURCES DISTRICT AND THE)	
NEBRASKA DEPARTMENT OF NATURAL)	VOLUME I of I
RESOURCES INTEGRATED MANAGEMENT)	(Pages 1 through 29)
PLAN.)	EXHIBITS 1-10
)	

Butte Community Center
520 Thayer Street
Butte, NE

Convened, pursuant to notice, at 1:00 p.m., on
January 15, 2014,

BEFORE:

RON THEIS, Hearing Officer.

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State of Nebraska
Department of
Natural Resources
Filed in the Department of
Natural Resources at 4:17
O'clock P M. this 6th
day of FEBRUARY 20 14
L. Sower

I N D E XEXHIBITS:

		<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
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1 PROCEEDINGS:

2 (Exhibits 1 through 3 were marked for
3 identification.)

4 THE HEARING OFFICER: Good afternoon. It's about
5 1:00 p.m., January 15, 2014, and we're located in Butte,
6 Nebraska, at the Butte Community Center. My name is Ron
7 Theis. I'm legal counsel for the Department of Natural
8 Resources, and I'll be the hearing officer for this hearing.
9 This hearing is a joint hearing of the Department of Natural
10 Resources and the Lower Niobrara Natural Resources District
11 on the proposed joint voluntary Integrated Management Plan
12 of the Department and the District.

13 With me today are Nathan Morris, Integrated
14 Management Coordinator for the Department, and Terry
15 Julesgard, General Manager for the Lower Niobrara. Wendy
16 Cutting is the court reporter, and she'll be making a
17 verbatim record of this hearing. If you haven't done so
18 already, please turn off your cell phone ringers for the
19 duration of the hearing.

20 And again, the purpose of this hearing is to take
21 testimony on the draft IMP. The authorities for this
22 hearing, the plan itself, and the decisions on the plan are
23 enumerated in the Groundwater Management and Protection Act,
24 specifically at Nebraska Revised Statutes 46-743 and 46-718.

25 This is a public hearing, not an evidentiary

1 hearing. Those testifying will not be required to be sworn
2 in, but if you haven't signed the sign-in sheet to record
3 your presence, I would ask you to do so. There's a separate
4 sign-in sheet identifying the persons wishing to testify and
5 it's located by Vivian at the door.

6 Also, as noted in the notice of this hearing,
7 testimony may be either oral or written. Written testimony
8 regarding the draft integrated management plan may be
9 submitted to the court reporter at this hearing or may be
10 mailed to the Department. It will be accepted by the
11 Department for inclusion into the record if received by
12 close of business, that's 5:00 p.m., January 17th, 2014, and
13 you state that you want it included in the record for the
14 IMP hearing. That's important, because we have two hearings
15 to make a record of.

16 At this point, I'd like to submit for the record a
17 copy of the notice of this hearing entitled the Notice of
18 Public Hearing Related to the Lower Niobrara Natural
19 Resources District and the Nebraska Department of Natural
20 Resources Integrated Management Plan. We'll mark that as
21 Exhibit 1.

22 I'd also like to submit the proof of publications,
23 pursuant to Nebraska Revised Statute 84-907, stating that
24 publication of the Department's public hearing notice for
25 this hearing occurred on three consecutive weeks in

1 newspapers of statewide circulation and in newspapers within
2 the basin. I think eight newspapers did the publication.
3 The bundle of proofs is presented as Exhibit 2. Exhibits 1
4 and 2 are received into the record.

5 (Exhibits 1 and 2 were received in evidence. See
6 Index.)

7 I'll also note for the record the Draft IMP as
8 published on the Lower Niobrara Natural Resources and
9 Department's websites. This material is the subject of the
10 hearing, which speaks for itself. And a copy of the draft
11 is hereby entered into the record as Exhibit 3.

12 (Exhibit 3 was received in evidence. See Index.)

13 And if you don't have a copy, I believe that there
14 are some copies of the draft back on the table there, if you
15 haven't -- if you want to refer to it.

16 For beginning testimony, I'd like to describe how
17 I want to proceed. When you came in, you were asked to kind
18 of identify, if you wanted to testify, whether you were a
19 proponent that is for the proposed plan, opponent against
20 the proposed plan, or neutral. We'll have the proponents go
21 first, the opponents second, and then neutral testimony.

22 Could I have a show of hands to see how many people want to
23 provide some oral testimony? One, two -- okay, well, it's
24 liable to be a fairly short hearing then. I don't -- with
25 two people wishing to testify, I see no reason to have a

1 time limit on the testimony.

2 But first we'll begin with the principal parties,
3 the makers of the draft agreement. And then, those who are
4 in favor of the draft IMP. So, when you come forward, and
5 that goes for you, Nathan and Terry, too, we need to get you
6 on the record so you'll need to go to the podium to speak
7 into that microphone. When you come forward, please state
8 your name and spell it for the court reporter, and tell who,
9 if anybody, you're representing, if you're representing
10 someone other than yourself. And if you wish to present an
11 exhibit for the record, please identify it and leave a copy
12 with the court reporter.

13 We'll begin testimony from Mr. Morris and then Mr.
14 Julesgard.

15 NATHAN MORRIS

16 My name is Nathan Morris, it's spelled
17 N-a-t-h-a-n, M-o-r-r-i-s, and I'm representing the
18 Department of Natural Resources. The Lower Niobrara Natural
19 Resources District Voluntary Integrated Management Plan
20 contains goals, objectives, and action items that serve as
21 an important first step towards the effective planning and
22 management of hydrologically connected surface water and
23 groundwater in the district. The IMP is structured to work
24 in concert with other actions of the District as set forth
25 in the District's groundwater management plan, the Bazile

1 Groundwater Management Area Plan, and other projects and
2 studies within district boundaries.

3 The IMP was developed according to Nebraska
4 Revised Statute §46-715 following a consultation and
5 collaboration process, and was developed voluntarily in
6 accordance with Nebraska Revised Statute §46-715(1)(b). The
7 Department of Natural Resources will work closely with the
8 District to implement and to monitor the goals and
9 objectives of this voluntary IMP. The IMP process utilizes
10 an adaptive management approach to accommodate changing
11 circumstances such as hydrology, economics, water demands
12 and supplies. In addition, the IMP will evolve in
13 incremental phases as elements of the plan are achieved and
14 additional elements of the IMP are sought by the District,
15 the stakeholders committee, and/or the Department. The IMP
16 will be reviewed annually, and changes may be made to the
17 goals and objectives for the following year keeping in mind
18 the purpose of the IMP.

19 In addition to collaborating with the District on
20 data collection and exchange, and on education programs, the
21 IMP contains the following surface water action items or
22 controls that will be implemented by the Department to
23 assist in achieving the goals and objectives: One, tracking
24 of surface water irrigated acres; two, potential for flow
25 metering and enhanced reporting of water use; three, a

1 moratorium or restriction on addition of surface water
2 irrigated acres; and four, reporting of newly permitted uses
3 and the collaborative process to notify the District of new
4 surface water applications.

5 The Department appreciates the efforts of the
6 stakeholders and district staff in taking this important
7 first step in managing hydrologically connected waters of
8 the district and looks forward to working in close
9 collaboration into the future.

10 At this time, I'd like to enter into evidence, two
11 items. The first is the IMP agreement from the Department
12 dated December 6th, 2013. It's entered as Exhibit 4.

13 THE HEARING OFFICER: So entered.

14 (Exhibit 4 was marked for identification and
15 received in evidence. See Index.)

16 MR. MORRIS: And then the second item is the
17 Nebraska Administrative Code, Title 454, Chapter 13,
18 Department of Natural Resources Rules of Practice and
19 Procedures, Integrated Management Plans, approved dated
20 August 13th, 2005. And that's entered as Exhibit 5.

21 THE HEARING OFFICER: So entered.

22 (Exhibit 5 was marked for identification and
23 received in evidence. See Index.)

24 MR. MORRIS: Those conclude my comments.

25 THE HEARING OFFICER: Thank you, Nathan.

1 Mr. Julesgard.

2 TERRY JULESGARD

3 My name is Terry Julesgard. I'm the General
4 Manager of the Lower Niobrara Natural Resource District, and
5 I'm speaking in favor of this Voluntary Integrated
6 Management Plan which has been developed jointly between the
7 Lower Niobrara NRD and the Department of Natural Resources.

8 The board of directors of the District has a long
9 recorded history of protecting the natural resources of the
10 area, and on September 30th, 2011, took the bold step to
11 move forward sending a letter of intent to the Department of
12 Natural Resources to begin the process of developing a
13 voluntary integrated management plan. The Department
14 instructed their staff to begin working with the District in
15 the development of a voluntary IMP. A stakeholders
16 committee of concerned residents from across the district
17 was formed and met during the summer of 2012 to develop
18 goals and objectives for the plan. The two agencies, along
19 with the stakeholders committee worked hard to develop goals
20 and objectives which are the first step to ensure the
21 residents of the district adequate water supplies into the
22 future.

23 The goals identified within the plan are:

24 Goal one, to develop and implement processes for the
25 adequate collection of hydrologic and other related data to

1 assess groundwater resources within the district. Goal two,
2 to develop systematic approaches for the development and
3 sustainability of water resources within the district. Goal
4 three, to prevent, resolve, and minimize water-related
5 conflicts among and between surface water and groundwater
6 users. Goal four, to develop and provide educational
7 opportunities and outreach materials about hydrologically
8 connected surface water and groundwater, water conservation,
9 and to keep the constituents of the district informed about
10 the integrated management plan as it's implemented.

11 Even though these goals appear broad, I wish to
12 remind all this is a work in progress and will need to be
13 reviewed and updated annually as more data is collected and
14 better science becomes available. To meet these goals and
15 objectives of the plan, action items and controls have been
16 developed by the board and the Department, which can be
17 found in the IMP under Section 7, Regulatory and
18 Non-Regulatory Action Items. Items for the district include
19 certification of irrigated acres, ranking processes for the
20 addition of new wells requiring flow meters, limiting or
21 temporary stays on the development of new acres.

22 I look forward to continuing the good working
23 relationship which has been developed between the
24 stakeholders committee, the Department, and the District in
25 refining the plan to meet the water resource needs of the

1 district's residents now and into the future. In this
2 spirit, the District would like to add the following three
3 paragraphs to Section 2, Purpose, for further clarification
4 of the plan's purpose. "Groundwater is owned by the public
5 and the only right held by the overlying landowners is in
6 the reasonable and beneficial use of the groundwater
7 underlying his or her land subject to the provisions of the
8 Act, Nebraska Revised Statutes 46-702, and the correlative
9 rights of other landowners when the groundwater is
10 insufficient to meet the reasonable needs of all users. The
11 District is responsible for the management of the
12 groundwater within the District. Nebraska Revised Statute
13 46-703(4).

14 "Preference in the use of groundwater shall be
15 given to those using the water for domestic purposes. They
16 shall have preference over those claiming it for any other
17 purpose. Those using the water for agricultural purposes
18 shall have preference over those using the same for
19 manufacturing or industrial purposes. As used in this rule:
20 a) Domestic use of groundwater shall mean all uses of
21 groundwater for human needs as it relates to health, fire
22 control, and sanitation and shall include the use of
23 groundwater for domestic livestock as related to normal farm
24 and ranch operations; and b) Agricultural purposes shall
25 include, but not be limited to, aquaculture purposes in

1 accordance with Nebraska Revised Statute 46-613.

2 "Nebraska Revised Statute 46-703 and 704(3)
3 provides the District significant legal authority to
4 regulate activities within its boundaries in a way to ensure
5 agriculture remains an important industry to the State of
6 Nebraska."

7 At this time, I would like to submit the following
8 documents to the hearing officer for the record.

9 I have a letter dated September 30th of 2011,
10 which is the letter of intent to begin the process for the
11 Integrated Management Plan.

12 THE HEARING OFFICER: That would be --

13 THE REPORTER: Six.

14 THE HEARING OFFICER: That'll be entered as
15 Exhibit 6.

16 (Exhibit 6 was marked for identification and
17 received in evidence. See Index.)

18 MR. JULESGARD: I have a letter dated December
19 2nd, 2013, which is the agreement letter the District sent
20 to the Department for the plan.

21 THE HEARING OFFICER: That'll be entered as
22 Exhibit 7.

23 (Exhibit 7 was marked for identification and
24 received in evidence. See Index.)

25 MR. JULESGARD: I have one more. And I have the

1 language which we would like to have added to Section 2,
2 Purpose, page 2 of 19 of the Integrated Management Plan.

3 THE HEARING OFFICER: That will be entered as
4 Exhibit 8.

5 (Exhibit 8 was marked for identification and
6 received in evidence. See Index.)

7 MR. JULESGARD: That's all I have at this time,
8 thank you.

9 THE HEARING OFFICER: Thank you.

10 We had two people, I think, or has anybody else
11 decided that you want to testify?

12 Please come forward if you want to provide
13 testimony, come to the podium and state your name and spell
14 it for the reporter, please.

15 No one wishes to come --

16 MR. CONNELL: Do you want to receive in-favor
17 testimony or --

18 THE HEARING OFFICER: Yes, I'm sorry. Proponents
19 will go first.

20 Without having any additional proponents, I'd like
21 to hear any testimony from any opponents of the management
22 plan.

23 KARL CONNELL

24 My name is Karl Connell, K-a-r-l, C-o-n-n-e-l-l.
25 I'm sitting on -- I'm a landowner down on Niobrara River on

1 the very west part of the district. Also I'm set on the NRD
2 Board as the director. And I am opposed to this IMP plan
3 here as it's kind of been written, because there are some
4 statements in here that need to be clarified a little bit
5 better in my opinion, and I think the people in the
6 district -- and I'm going to refer to in the IMP rules and
7 regulations the fact that on 1.2 here on probably the very
8 first page, it says, "Groundwater is owned by the public,"
9 and there is some clarification here. I asked at the board
10 meeting to clarify or distinguish what we're talking about.
11 We're talking about public. And in my opinion, the public
12 should be defined as the people of the Lower Niobrara
13 Natural Resource District should be taken care of first,
14 because I don't see any reason -- and Mr. Julesgard informed
15 me here a moment ago that we can't have that. It's got
16 to -- can't have the -- as clarified out that it belongs to
17 the people of the Lower Niobrara Natural Resource District
18 because supposedly it belongs to the State, and the meaning
19 of "public" belongs to the State of Nebraska.

20 So what that tells me is, in another comment I
21 made to Mr. Julesgard on the fact that who is the lead
22 agency in this IMP plan. It took me three meetings to
23 figure out that supposedly the NRD is in charge of this IMP
24 plan, because it's supposedly voluntary. Well, by the
25 statement that I was given here a moment ago, whatever, that

1 just nullifies the NRD being in charge of this IMP plan by
2 changing or keeping to the definition and not specifying who
3 the water is in control of the people of the Lower Niobrara,
4 should be in control of their own water in this district.
5 Is there going to be able to manage it and make sure the
6 domestic, the municipality, and then agriculture is taken
7 care of? Because there's nothing now stopping the cities of
8 Omaha and Lincoln coming up here into our district, whether
9 it's groundwater or surface water, and demanding that you
10 cannot irrigate or you cannot use that surface water,
11 whether it's groundwater or surface water, to irrigate your
12 crops. That's kind of an economic detriment to the people
13 here in the district by not clarifying that just a little
14 bit more, even though we go through there and supposedly
15 we're talking about the rights of the people in the district
16 here.

17 That's one of the main reasons I'm in opposition
18 of this, plus there's some other clarifications of this IMP
19 plan that it's not, in my opinion, not benefiting the people
20 here in the district. And that's all I have. I don't have
21 anything written.

22 THE HEARING OFFICER: Thank you, Mr. Connell.

23 MR. CONNELL: Thank you.

24 THE HEARING OFFICER: Is there anyone else in
25 opposition to the proposed plan? Step forward, please.

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REG GREEN

My name is Reg, R-e-g, Green, like the color, G-r-e-e-n. I'm a landowner in this district. I happen to live in an adjoining district, and I was on the Upper Elkhorn NRD Board at one time.

I don't have any problem with either your goals and your purpose. I think that is fine, but what I have trouble with this is in your controls. And the fact that you want to certify acres, this -- I believe what you're going -- the way you're going on this is that you'll use county assessor information for acres in large part. And in that case, that information is already available to you to analyze. All you have to do is ask the county assessors to punch a button. And I -- the fact that you're going to go through this process and reasons for going through it are not clearly identified in this document. And it's going to be costly and then, are you going to maintain these records and update them every year? I mean, this thing gets expensive. And this board up here has always been a very cost-conscious board. And so, I have a problem with that.

The second -- and this is all in the Controls section of this document. The second thing is the flow meters. I have problems with flow meters. I've had a flow meter. You've been requiring some flow meters. You've got

1 quite a few out. I guess my question is, how many is
2 enough? I've often said that you can figure out how much
3 water you're pumping if you use hour meter on your motor or
4 hour meter on your pivot. And yes, it's not exact.
5 Nobody's come up to me -- nobody can tell me exactly how
6 much air there is in that. There's even air in the flow
7 meter itself. It's going to be plus or minus so many
8 gallons. And my comment here is, you know, we're not trying
9 to bake a cake here. How close a tolerance do we need on
10 this? We're trying to manage a watershed. Can we be within
11 a million gallons or acre feet? I mean, what are we
12 actually trying to do? And what does it cost the producers,
13 the people to put these flow meters on? I mean, it's
14 considerable, and then they're supposed to keep them
15 working. Again, I don't know where we're going with this.
16 It's not spelled out in this document.

17 And last, we get to the acre limit, which I really
18 have problems with. You know, I agree, I understand that
19 the State owns the water, but I own my land. Or I feel like
20 I own my land. And if I want to take my garden hose out
21 behind my barn and raise an acre of watermelons, I've often
22 thought I've had the right to do that. But now I don't seem
23 to have that, because it's got to go in to the NRD and get
24 scored. You're only going to allow so many acres. It's not
25 specified. And it's going to be compared with acres all

1 over the district. And I really don't understand exactly
2 what problem you're targeting in this. There's a whole list
3 of things to be ranked. And I just -- I don't know where
4 you're going with this. I don't think it's right,
5 necessarily, to be in this document.

6 I guess I've always been -- I know some of you on
7 the board have been -- served our country, and you know what
8 freedom is. And I hadn't necessarily sat down and thought
9 about our freedoms too much, but after getting ready for
10 this hearing, I've been sitting around doing quite a bit of
11 thinking. And, you know, we've got land rights or freedom.
12 That's our land -- to use the land the way we see fit unless
13 it impacts somebody. And I don't think that these -- I
14 don't think you've done a job here of setting out why any of
15 us necessarily should be limited on this. Over in my area,
16 we're on the Verdigre Creek runs into the Niobrara, and it's
17 been part of the unappropriated area. And DNR has done
18 their yearly evaluation on it. I haven't looked to see if
19 they did it last year. Maybe you can tell me if they've
20 actually done it or not. But before that, it's been, like,
21 okay, so there's going to be no problem with the surface
22 water. There's no way you're going to be fully
23 appropriated.

24 And so, why do I have to -- why can't I plant my
25 watermelons? You know, it's taking my freedom away, right

1 to use my land. And you just -- this is done terribly, I
2 think, in this document, these controls, the reasons for
3 them.

4 And every day we look at our government, we talk
5 to each other. We talk about the -- we shake our head with
6 what goes on back in Washington. We had an incident just
7 here a little bit ago with OSHA, government agency, in Polk
8 County, and overstepping their bounds. And the only way to
9 bring that back, we had to get our elected officials in
10 charge to do it. And to undo this, I mean, our state agency
11 here, once you get this in, our state agency's not going to
12 do it. It's going to take you elected officials, NRD board,
13 to make some changes. And I just don't feel like the way
14 you've got this written up on this controls on these acres,
15 that it's -- I don't think it's constitutional what you're
16 doing on this, let alone, I don't think the evidence is
17 there. I just can't go along with it.

18 THE HEARING OFFICER: Anything else, Mr. Green?

19 MR. GREEN: And it's my feeling that if you
20 approve this, you're stepping all over our property rights
21 and it's a last day of freedom for the Lower Niobrara NRD.
22 Thank you.

23 THE HEARING OFFICER: Thank you, Mr. Green.

24 Any one else wish to speak in opposition to the
25 plan?

1 Come forward, please.

2 LANCE KNIGGE

3 My name is Lance Knigge from Verdigre, Nebraska.
4 Spell that L-a-n-c-e, K-n-i-g-g-e. And there's parts of
5 this integrated management plan that I am opposed to.

6 Both of the previous fellows brought up some very
7 good points, and I'd like to agree with some of their stuff.
8 Putting a limit on the number of acres, if there is
9 unappropriated water, I don't think is right. I think it
10 should be determined if there is water that is available and
11 unappropriated that they should be able to use this water
12 for their beneficial purpose.

13 I have --

14 THE HEARING OFFICER: Mr. Knigge?

15 MR. KNIGGE: Yep.

16 THE HEARING OFFICER: Just to clarify, are you
17 wishing to address the IMP itself or the surface water
18 portion of the --

19 MR. KNIGGE: I guess -- are they together now?
20 You said you're using hydrological data to determine the
21 surface water.

22 THE HEARING OFFICER: Well, the separate issue is
23 whether the surface water stay continues or is dropped. But
24 there are surface water controls as part of this IMP.

25 MR. KNIGGE: Yes, there is, and I'm --

1 THE HEARING OFFICER: That's what you're
2 addressing?

3 MR. KNIGGE: Well, I guess I'm addressing -- I
4 was told that there was going to be approximately 2,400
5 acres per year, I think, somewhere in that area, 2,400-2,500
6 acres. And then maybe 800 of it towards surface water,
7 when I had spoke to some people here that were on the
8 board. That is not an exact number. I don't have it in
9 front of me, of what I was told. If there is unappropriated
10 water, I think it should be available. It should be
11 determined, but available too, whether it's groundwater or
12 surface water, to have it -- the beneficial use of it,
13 instead of just saying, well, we're only going to do X
14 amount this year. We'll do X amount more next year. I
15 guess, in the order that it's reached to keep on doing the
16 job wherever you're at, to determine how many acres can get
17 done in a year, whether it's appropriated or unappropriated,
18 you know, that way, or at least unappropriated. If it is
19 appropriated, got no problem with it, and the answer would
20 be no.

21 THE HEARING OFFICER: I'm sorry I interrupted you.

22 MR. KNIGGE: Sure.

23 THE HEARING OFFICER: I just wanted to try and
24 make sure that we're talking about the same thing. And I
25 think we are to the extent you're addressing the surface

1 water control portion of the plan.

2 MR. KNIGGE: Yes, I am. I guess, when I look at
3 it, I see them as connected. I think that there's a great
4 deal of surface water that, you know, we all know it comes
5 out of the ground. If you drill a well in one spot, you
6 could lose water in another spot. I would think that it
7 would even happen on my own land where I do have surface
8 water. I do have permits pending for surface water. So,
9 that being said, if I went up above my hill, drilled a well,
10 I think it could affect what comes out of the ground
11 naturally from a higher point.

12 So, with the IMP, I would also hope that it is
13 looked at if it can affect somebody else under surface water
14 in the area, at least in the drainage basin of that
15 particular area that runs down to where the surface water
16 comes out. I would like to see that addressed by
17 the -- into the integrated management plan so that somebody
18 else can't be harmed. Like I said, drill a well over here,
19 lose a spring over there, and that would be a great concern
20 of mine. I guess that's all I have for now.

21 THE HEARING OFFICER: Thank you, Mr. Knigge.

22 MR. KNIGGE: Thank you.

23 THE HEARING OFFICER: Does anyone else wish to
24 speak in opposition to the proposed plan?

25 Step forward, please.

DAKOTA HOBEN

1
2 How we doing this afternoon? My name is Dakota
3 Hoben. Dakota spelled just like the states, and Hoben,
4 H-o-b-e-n. And I'm an employee of Summit Farms, and I'm
5 here representing Summit Farms as well as B-6 Farms Ag
6 Holdings, NSN Investments, and Terra Capital. And so they
7 are all landowners in Keya Paha County and also residing
8 within the Lower Niobrara NRD. And before I get started, I
9 do want to thank Reg and Lance for their comments. I can
10 echo a lot of what they had to say, so I will try to keep my
11 comments as brief as possible.

12 But after reading through the IMP, I think we have
13 a few concerns about the future governance of water in the
14 district. That starts a lot with, with the controls that
15 are outlined in this IMP. The IMP significantly hinders our
16 ability as landowners and producers to improve our farm,
17 both on a financial and economic basis.

18 The IMP also does not provide clear direction and
19 transparent procedures as directed by Nebraska statute to
20 track depletion of stream flows. I think overall, the IMP
21 is a very broad document, and the detail outlined in it is
22 lacking for sure from what Nebraska statute says should be
23 in this sort of document.

24 As landowners, we also disagree with the NRD's
25 baseless and arbitrary limiting of water rights for

1 producers in the district. And the IMP fails to detail why
2 these decisions were made and what methodology guides future
3 decisions on the restriction of water rights. It's been
4 brought up numerous times that the static water levels right
5 now are 10 feet above the baseline year of 1994, yet we're
6 being restricted and controlled as far as our access to the
7 water.

8 The IMP also outlines a number of great goals and
9 purposes for the District, which we strongly encourage. Our
10 biggest issue is the controls are coming before the tracking
11 and the data is available, and so I think most people would
12 agree before we start controlling and limiting something, we
13 need to track the progress and understand the problem
14 whether there is a problem. And in general, the regulatory
15 environment of the IMP is written in a manner that would
16 suggest the district is fully appropriated. And courts have
17 clearly decided that that's not the case and the district is
18 not fully appropriated. And the rules and regulations and
19 controls are too restrictive and do not accurately represent
20 the water situation in the district.

21 And so, those are our biggest concerns. And I'll
22 read back a goal -- the first goal of the draft IMP, is to
23 develop and implement processes for the adequate collection
24 of hydrologic and other related data to assess water
25 resources within the district. I think that's the part

1 that's lacking the most. We've been quick to control and
2 restrict and limit water, but we have not been quick to
3 accurately assess the water resources within the district.
4 And so, I hate that we put another goal above a priority as
5 far as tracking the water situation in the district, and so
6 I think that's a big concern.

7 In addition to my oral testimony today, we will
8 submit written testimony that will detail some of these
9 objections that we have to this IMP, and so we will submit
10 that following the hearing.

11 And last but not least, I guess I would like to
12 say going forward, I think there's significant room for
13 improvement between communication between the board and the
14 producers in the district. I think a lot could be said for
15 having a little bit open and more transparent processes
16 going forward and involving more people in decisions. I
17 mean, this is a public board and these directors are doing a
18 public service. And it's a great service, and I respect
19 that, and I respect this board. But I think going forward,
20 more could be done to have an open dialog with producers in
21 the district and those other stakeholders who are involved
22 in these decisions.

23 So, with that, I do thank you for your time and
24 appreciate what you guys do, so thank you.

25 THE HEARING OFFICER: Thank you, Mr. Hoben. Do

1 you have your -- are you going to mail your written
2 material?

3 MR. HOBEN: Yes, sir.

4 THE HEARING OFFICER: Thank you.

5 Does anyone else wish to speak in opposition to
6 the proposed plan?

7 (No response.)

8 Does anyone wish to speak, but in a neutral
9 capacity about the proposed plan?

10 (No response.)

11 I would ask at this time if there was any written
12 testimony presented to either the Department or the Natural
13 Resources District prior to convening the hearing.

14 MR. MORRIS: No.

15 MR. JULESGARD: No.

16 THE HEARING OFFICER: The answer is no.

17 Therefore, the testimony is complete at this point. We'll
18 close the hearing now. It's about 1:45 p.m., however, the
19 record will be held open through the close of business
20 January 17th for receipt of any additional written
21 testimony, which should be mailed to the Department and
22 identified as testimony for this hearing. Once the record
23 is closed, the Director of the Department and the Board of
24 the Lower Niobrara Natural Resources District will consider
25 the testimony and the exhibits presented at this hearing

1 prior to making their final determinations on whether to go
2 forward with the IMP as drafted.

3 Thank you all for coming, and our next hearing is
4 at 3:00 p.m.

5 (Whereupon, at 1:46 p.m. on January 15, 2014, the
6 proceedings were concluded.)

7 (Late-filed Exhibits 9 and 10 were marked for
8 identification and received in evidence.)

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EX
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NOTICE OF PUBLIC HEARING
RELATING TO THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT AND THE
NEBRASKA DEPARTMENT OF NATURAL RESOURCES INTEGRATED
MANAGEMENT PLAN

Pursuant to Neb. Rev. Stat. § 46-718, the Lower Niobrara Natural Resources District (District) and the Nebraska Department of Natural Resources (Department) hereby provide notice that the District and the Department shall hold a public hearing on January 15, 2014 at 1:00 p.m., at the Butte Community Center, 520 Thayer Street, Butte, NE 68722. As required by Neb. Rev. Stat. § 46-718(1), the purpose of the hearing is to take testimony on the proposed District/Department integrated management plan (IMP) and the proposed controls. The geographic area for the proposed IMP and proposed controls encompasses the entire land area that is within the District boundary. A general description of the contents of the sections of the proposed IMP is: 1) Authority, 2) Purpose, 3) Background, 4) Approach, 5) Maps, 6) Goals & Objectives, 7) Regulatory & Non-Regulatory Action Items, 8) Incentive Programs, 9) Monitoring Plan, 10) Information Considered in Preparing the IMP, and 11) Modifications to the IMP.

The proposed groundwater action items (controls) for the District are set forth in Section 7 of the IMP and consist of the following actions: (1) certification of groundwater irrigated acres, (2) ranking system for the addition of wells, (3) flow metering, and (4) restriction on addition of irrigated acres. The proposed surface water action items (controls) are also set forth in Section 7 and include: (1) tracking of surface water irrigated acres, (2) flow metering and reporting, (3) moratorium or restriction on addition of surface water irrigated acres, and (4) notice on surface water applications. Furthermore, Section 7 describes the non regulatory action items that the District and the Department will take to achieve the goals and objectives of the IMP and include:



(1) utilization of available groundwater models and hydrologic tools, (2) water use reporting and data exchange, and (3) information and education programs.

Any interested person may appear at the hearing and present written or oral testimony concerning the proposed IMP and proposed controls. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the District or the Department by January 10, 2014. Testimony or other evidence relevant to the purposes of the hearing may also be submitted in writing to Lower Niobrara Natural Resources District, 410 Walnut Street, P.O. Box 350, Butte, NE 68722 or to the Department of Natural Resources, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4676, or by electronic mail to the District at lnnrd@nntc.net or to the Department at nathan.morris@nebraska.gov by 5:00 p.m., January 17, 2014.

For further information regarding the proposed IMP and proposed controls or for the full text of the proposed IMP and proposed controls, refer to the District website at <http://www.lnnrd.org> or the Department's website at <http://dnr.ne.gov> or contact the District or the Department at the addresses listed above or contact the District at (402) 775-2343 or the Department at (402) 471-2363.

Following the public hearing on the proposed IMP and proposed controls, the District and the Department will make a joint decision within 60 days of whether to implement the proposed IMP with or without modifications and whether to adopt and implement the groundwater and surface water controls proposed in the IMP.

AFFIDAVIT OF PUBLICATION

JAN 03 2014

NOTICE OF PUBLIC HEARING RELATING TO THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT AND THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES INTEGRATED MANAGEMENT PLAN

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Any interested person may appear at the hearing and present written or oral testimony concerning the proposed IMP and proposed controls. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the District or the Department by January 10, 2014. Testimony or other evidence relevant to the purposes of the hearing may also be submitted in writing to Lower Niobrara Natural Resources District, 410 Walnut Street, P.O. Box 350, Butte, NE 68722 or to the Department of Natural Resources, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4676, or by electronic mail to the District at lnnrd@nntc.net or to the Department at nathan.morris@nebraska.gov by 5:00 p.m., January 17, 2014.

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Following the public hearing on the proposed IMP and proposed controls, the District and the Department will make a joint decision within 60 days of whether to implement the proposed IMP with or without modifications and whether to adopt and implement the groundwater and surface water controls proposed in the IMP.

Dec. 11, 18, 25 ZNEZ (2)

THE STATE OF NEBRASKA, County of Rock, ss.
Cathy Doke

being first duly sworn, on her oath says that she is the Publisher of the Rock County Leader, Inc., a legal newspaper under the Statutes of Nebraska, and printed and published weekly in Bassett, Rock County, Nebraska, and of general circulation in said county.

That said Rock County Leader, Inc., at all times herein stated has been printed in the English language and has a bona fide circulation of more than 300 copies weekly, and that said newspaper has been published within the County of Rock more than fifty-two successive weeks prior to the first publication of the annexed notice, and that said newspaper is printed wholly or in part in an office maintained by said Rock County Leader, Inc., at Bassett, Rock County, Nebraska. That the annexed notice was published for 3 successive weeks in the regular and entire issue of said newspaper and not in any supplement thereof.

The first publication of said notice being in the issue of the 11 day of Dec 2013; the last publication being in the issue of the 25 day of Dec 2013.

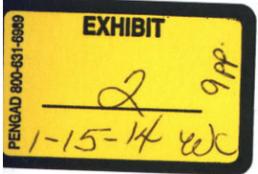
Cathy Doke
Publisher/Editor

Subscribed and sworn to before me, this 31 day of Dec 2013



Joyce Stahl
Rock County Clerk

Publication Fees \$ 132.06 Paid by



Publisher's Affidavit

JAN 14 2014

THE STATE OF NEBRASKA,
COUNTY OF KNOX, ss.

I Kevin Heuseler, being first duly sworn on oath, depose and say that I am the publisher of the Niobrara Tribune that said newspaper is and was at all times hereinafter referred to, a weekly newspaper printed and published in Niobrara in Knox County, Nebraska, and that said paper is printed in English language and has a bonafide circulation of more than three hundred copies weekly and has been published within the said county for more than fifty-two successive weeks last prior to the first publication of the attached notice and that said newspaper was printed in whole or in part in an office maintained in Niobrara, Knox County, Nebraska, that being the place of publication of said newspaper.

That the annexed notice was printed and published in said newspaper for three consecutive weeks in all issues of said newspaper proper and not in a supplement: that the first publication of said notice was on the 19th day of December, 2013, and the last publication was on the 2nd day of January, 2014.

Kevin Heuseler

Subscribed in my presence and sworn to before me this 13 day of January, 2014.
Theresa A Mueller

Notary Public
GENERAL NOTARY-State of Nebraska
THERESA A. MUELLER
My Comm. Exp. June 16, 2016

Publication Fees \$ _____

NOTICE OF PUBLIC HEARING RELATING TO THE TEMPORARY STAY ON NEW APPROPRIATIONS FOR NATURAL FLOW SURFACE WATER
Pursuant to Neb. Rev. Stat. § 2-32,115, the Nebraska Department of Natural Resources (Department) hereby provides notice that a hearing shall be held on January 15, 2014 at 3:00 p.m., at the Butte Community Center, 520 Thayer Street, Butte, NE 68722.
The Department has placed a temporary stay on the issuance of any new appropriation permits for natural flow surface water within the boundaries of the Lower Niobrara Natural Resources District. The temporary stay on surface water took effect on November 8, 2013 and will continue through January 31, 2014. The purpose of the hearing is to take testimony on (1) whether to exempt from the temporary stay the issuance of appropriations for which applications were pending prior to the declaration commencing the stay but for which the application was not approved prior to such date, (2) to continue the stay, or (3) to allow the issuance of new surface water appropriations.
Any interested person may appear at the hearing and present written or oral testimony concerning the surface water temporary stay. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the Department by January 10, 2014. Testimony or other evidence relevant to the purposes of the hearing may also be submitted in writing to the Department of Natural Resources, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4676, or by electronic mail to the Department at nathan.morris@nebraska.gov by 5:00 p.m., January 17, 2014.
The full text of the Order of Temporary Stay are available to the public on the Department's website www.dnr.ne.gov and at the Department's main office in Lincoln, NE at 301 Centennial Mall South, Fourth Floor or at the Department's field office locations. 41-43c

Crofton Journal / Niobrara Tribune are same paper. Billed through Crofton Journal

Proof of Publication

State of Nebraska }
County of Keya Paha } ss.

Amy Johnson, being first duly
(name)

sworn, deposes and says she is
the (he or she)

Editor of Springview Herald
(position) (name of publication)

a weekly legal newspaper having a bona
(weekly, daily, etc.)

fide circulation of more than 300 copies published in
Springview
(name of town)

Nebraska; and said newspaper has been pub-
lished for at least 52 consecutive weeks prior to
publication of attached notice; that said publica-
tion is of general circulation; that attached notice
was published 3 time(s) on

12/11, 12/18, 1/1
(dates)

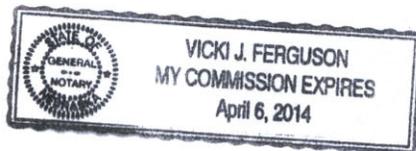
Amy Johnson
(signature)

Subscribed to in my presence

and sworn to before me this
10th day of 01 2014

Vicki J. Ferguson
Notary Public

Publication Fee \$ 90.72



**DEPARTMENT OF NATURAL
RESOURCES INTEGRATED
MANAGEMENT PLAN**

Pursuant to Neb. Rev. Stat. § 46-718, the Lower Niobrara Natural Resources District (District) and the Nebraska Department of Natural Resources (Department) hereby provide notice that the District and the Department shall hold a public hearing on January 15, 2014 at 1:00 p.m., at the Butte Community Center, 520 Thayer Street, Butte, NE 68722. As required by Neb. Rev. Stat. § 46-718(1), the purpose of the hearing is to take testimony on the proposed District/Department integrated management plan (IMP) and the proposed controls. The geographic area for the proposed IMP and proposed controls encompasses the entire land area that is within the District boundary. A general description of the contents of the sections of the proposed IMP is: 1) Authority, 2) Purpose, 3) Background, 4) Approach, 5) Maps, 6) Goals & Objectives, 7) Regulatory & Non-Regulatory Action Items, 8) Incentive Programs, 9) Monitoring Plan, 10) Information Considered in Preparing the IMP, and 11) Modifications to the IMP.

The proposed groundwater action items (controls) for the District are set forth in Section 7 of the IMP and consist of the following actions: (1) certification of groundwater irrigated acres, (2) ranking system for the addition of wells, (3) flow metering, and (4) restriction on addition of irrigated acres. The proposed surface water action items (controls) are also set forth in Section 7 and include: (1)

tracking of surface water irrigated acres, (2) flow metering and reporting, (3) moratorium or restriction on addition of surface water irrigated acres, and (4) notice on surface water applications. Furthermore, Section 7 describes the non regulatory action items that the District and the Department will take to achieve the goals and objectives of the IMP and include: (1) utilization of available groundwater models and hydrologic tools, (2) water use reporting and data exchange, and (3) information and education programs.

Any interested person may appear at the hearing and present written or oral testimony concerning the proposed IMP and proposed controls. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the District or the Department by January 10, 2014. Testimony or other evidence relevant to the purposes of the hearing may also be submitted in writing to Lower Niobrara Natural Resources District, 410 Walnut Street, P.O. Box 350, Butte, NE 68722 or to the Department of Natural Resources, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4676, or by electronic mail to the District at lnnrd@nntc.net or to the Department at nathan.morris@nebraska.gov by 5:00 p.m., January 17, 2014.

For further information regarding the proposed IMP and proposed controls or for the full text of the proposed IMP and proposed controls, refer to the District website at <http://www.lnnrd.org> or the Department's website at [\[dnr.ne.gov\]\(http://dnr.ne.gov\) or contact the District or the Department at the addresses listed above or contact the District at \(402\) 775-2343 or the Department at \(402\) 471-2363.](http://</p></div><div data-bbox=)

Following the public hearing on the proposed IMP and proposed controls, the District and the Department will make a joint decision within 60 days of whether to implement the proposed IMP with or without modifications and whether to adopt and implement the groundwater and surface water controls proposed in the IMP.

ZNEZ

**PUBLIC
NOTICE**
**NOTICE OF
PUBLIC HEARING**
**RELATING TO THE LOWER
NIOBRARA NATURAL
RESOURCES DISTRICT AND
THE NEBRASKA**

The Atkinson Graphic Publisher's Affidavit

STATE OF NEBRASKA } ss
COUNTY OF HOLT

Brook D. Curtiss, being duly sworn upon his oath, deposes and says that he is the publisher of The Atkinson Graphic, a legal newspaper under the Statutes of Nebraska and printed and published weekly in Atkinson, Holt County, Nebraska, and of general circulation of said county.

That said Atkinson Graphic at all times herein stated has been printed in the English language and has a bona fide circulation of more than 300 copies weekly, and that said newspaper has been published within the County of Holt for more than fifty-two weeks prior to the first publication of the annexed notice, and that said newspaper is printed in part in an office maintained by said Atkinson Graphic at Atkinson, Holt County, Nebraska.

That the annexed notice was published in said newspaper for 3 consecutive weeks in all issues of said newspaper proper and not in a supplement; that the first publication of said notice was on the 12th day of December, 20 13, and the last publication was on the 26th day of December, 20 13.



Subscribed in my presence and sworn to before me this 9th day of January, 20 14.

Patsy L. Alexander
Notary Public

Publication Fee:

\$ 112.85 Proofs \$ —; Total \$ 112.85

NOTICE OF PUBLIC HEARING RELATING TO THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT AND THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES INTEGRATED MANAGEMENT PLAN

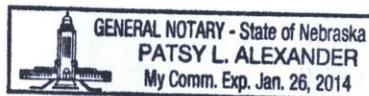
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Following the public hearing on the proposed IMP and proposed controls, the District and the Department will make a joint decision within 60 days of whether to implement the proposed IMP with or without modifications and whether to adopt and implement the groundwater and surface water controls proposed in the IMP.

Published Dec. 12, Dec. 19, and Dec. 26, 2013



AFFIDAVIT OF PUBLICATION

THE STATE OF NEBRASKA, Holt County, ss:

James T. Miles being first duly sworn upon his oath deposes and says that he is the Editor of the Holt County Independent, a legal newspaper under the Statutes of Nebraska and printed and published weekly in O'Neill, Holt County, Nebraska, and of general circulation in said county. That the said Holt County Independent at all times herein stated has been printed in the English language and has a bona fide circulation of more than 300 copies weekly, and that said newspaper has been published within the County of Holt for more than fifty-two weeks prior to the first publication of the annexed notice, and that said newspaper is printed wholly or in part in an office maintained by said Holt County Independent, at O'Neill, Holt County, Nebraska. That the annexed notice was published in said newspaper for 3 successive weeks in the regular and entire issue of said newspaper and not in any supplement thereof, the first publication of said notice being in the issue of the 12th day of December, 2013, the last publication being in the issue of the 26th day of December, 2013.

And further affiant saith not.

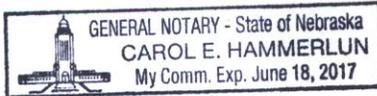
James T. Miles

Subscribed and sworn to before me this 26th day of December, 2013.

Carol Hammerlun

Notary Public

Lines 108 @ Rate \$1.08046 Publisher's Fees \$116.69.



NOTICE OF PUBLIC HEARING RELATING TO THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT AND THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES INTEGRATED MANAGEMENT PLAN

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AFFIDAVIT OF PUBLICATION

CASE NO. _____

Boyd County }
State of Nebraska } ss.
ss.

I, **John Wells**, being first duly sworn
depose and say that I am the publisher of

THE BUTTE GAZETTE
BOX 6
BUTTE, NE 68722

a legal newspaper under the statutes of
Nebraska, printed and published weekly
in Boyd County, Nebraska, and of general
circulation in said county; that said
newspaper at all times herein stated has
been printed in the English language, and
that said newspaper is printed wholly or in
part in offices maintained in Butte and
Spencer in said county; that the annexed
notice which is made a part of this affidavit
was published in said newspaper for

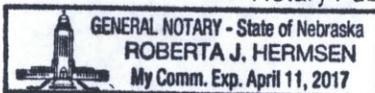
3 successive weeks in the
regular and entire issues of said
newspaper and not in any supplement
thereof, the first publication of said notice

being made in the issue of the 12
day of December 2013 and the
last publication being made in the issue of
the 26 day of December
2013.

John Wells
Publisher

Subscribed and sworn to before me this
27 day of December
A.D., 2013.

Robert J. Hermesen
Notary Public



Publication Fee \$ 116.64

**NOTICE OF PUBLIC
HEARING
RELATING TO THE LOWER
NIOBRARA NATURAL
RESOURCES DISTRICT
AND THE NEBRASKA
DEPARTMENT OF NATURAL
RESOURCES INTEGRATED
MANAGEMENT PLAN**

Pursuant to Neb. Rev. Stat. §
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Resources District (District) and the
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provide notice that the District and
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controls. The geographic area for the
proposed IMP and proposed controls
encompasses the entire land area that
is within the District boundary. A
general description of the contents of
the sections of the proposed IMP is:
1) Authority, 2) Purpose, 3) Back-
ground, 4) Approach, 5) Maps, 6)
Goals & Objectives, 7) Regulatory
& Non-Regulatory Action Items, 8)
Incentive Programs, 9) Monitoring
Plan, 10) Information Considered in
Preparing the IMP, and 11) Modifica-
tions to the IMP.

The proposed groundwater ac-
tion items (controls) for the District
are set forth in Section 7 of the IMP
and consist of the following actions:
(1) certification of groundwater ir-
rigated acres, (2) ranking system for
the addition of wells, (3) flow meter-
ing, and (4) restriction on addition of
irrigated acres. The proposed surface
water action items (controls) are also
set forth in Section 7 and include: (1)
tracking of surface water irrigated
acres, (2) flow metering and report-
ing, (3) moratorium or restriction on
addition of surface water irrigated
acres, and (4) notice on surface water
applications. Furthermore, Section
7 describes the non regulatory ac-

Department will take to achieve the
goals and objectives of the IMP and
include: (1) utilization of available
groundwater models and hydrologic
tools, (2) water use reporting and data
exchange, and (3) information and
education programs.

Any interested person may ap-
pear at the hearing and present writ-
ten or oral testimony concerning the
proposed IMP and proposed controls.
Individuals with disabilities may
request auxiliary aids and service
necessary for participation by con-
tacting the District or the Department
by January 10, 2014. Testimony
or other evidence relevant to the
purposes of the hearing may also be
submitted in writing to Lower Ni-
obrara Natural Resources District, 410
Walnut Street, P.O. Box 350, Butte,
NE 68722 or to the Department of
Natural Resources, 301 Centennial
Mall South, P.O. Box 94676, Lincoln,
NE 68509-4676, or by electronic mail
to the District at lnnrd@nntc.net or to
the Department at nathan.morris@nebraska.gov by 5:00 p.m., January
17, 2014.

For further information regard-
ing the proposed IMP and proposed
controls or for the full text of the
proposed IMP and proposed controls,
refer to the District website at <http://www.lnnrd.org> or the Department's
website at <http://dnr.ne.gov> or contact
the District or the Department at the
addresses listed above or contact
the District at (402) 775-2343 or the
Department at (402) 471-2363.

Following the public hearing on
the proposed IMP and proposed con-
trols, the District and the Department
will make a joint decision within
60 days of whether to implement
the proposed IMP with or without
modifications and whether to adopt
and implement the groundwater and
surface water controls proposed in
the IMP.

Pub. Dec. 12, 19, 26, 2013.

NOTICE OF PUBLIC HEARING RELATING TO THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT AND THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES INTEGRATED MANAGEMENT PLAN

Pursuant to Neb. Rev. Stat. § 46-718, the Lower Niobrara Natural Resources District (District) and the Nebraska Department of Natural Resources (Department) hereby provide notice that the District and the Department shall hold a public hearing on January 15, 2014, at 1:00 p.m., at the Butte Community Center, 520 Thayer Street, Butte, NE 68722. As required by Neb. Rev. Stat. § 46-718(1), the purpose of

**THE STATE OF NEBRASKA } ss
KNOX COUNTY**

Joan M. Wright, being first duly sworn on oath, says that she is the publisher of the Creighton News, a weekly and legal newspaper of general circulation in said county; that the annexed notice, which is part of this proof of publication, was published each week at Creighton, Knox County, Nebraska, for ...1... successive weeks, the first publication being on the ...11... day of December.....A.D., 20 13, and the last publication being on the ...11... day of December.....A.D., 20 13; that said newspaper was published in Creighton, within said county for more than fifty-two consecutive weeks immediately prior to the commencement of the publication of said notice and every week consecutively since that time; that during all of said times said newspaper had a bona fide circulation of more than 300 copies weekly and was printed in the English language and in an office maintained by the publisher at said place of publication. I have personal knowledge of the facts herein.

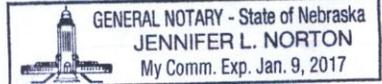
Any interested person may appear at the hearing and present written or oral testimony concerning the proposed IMP and proposed controls. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the District or the Department by January 10, 2014. Testimony or

Subscribed and sworn to before me this 26 day of December A.D., 2013.

Joan M. Wright
.....
Joan M. Wright

Publication fee is \$ 44.00

Jennifer L. Norton
.....
Notary Public



other evidence relevant to the purposes of the hearing may also be submitted in writing to Lower Niobrara Natural Resources District, 410 Walnut Street, P.O. Box 350, Butte, NE 68722 or to the Department of Natural Resources, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4676, or by electronic mail to the District at lnnrd@nntc.net or to the Department at nathan.morris@nebraska.gov by 5:00 p.m., January 17, 2014.

For further information regarding the proposed IMP and proposed controls or for the full text of the proposed IMP and proposed controls, refer to the District website at <http://www.lnnrd.org> or the Department's website at <http://dnr.ne.gov> or contact the District or the Department at the addresses listed above or contact the District at (402) 775-2343 or the Department at (402) 471-2363.

Following the public hearing on the proposed IMP and proposed controls, the District and the Department will make a joint decision within 60 days of whether to implement the proposed IMP with or without modifications and whether to adopt and implement the groundwater and surface water controls proposed in the IMP.
Publish Dec. 11, 2013.
ZNEZ

the hearing is to take testimony on the proposed District/Department integrated management plan (IMP) and the proposed controls. The geographic area for the proposed IMP and proposed controls encompasses the entire land area that is within the District boundary. A general description of the contents of the sections of the proposed IMP is: 1) Authority, 2) Purpose, 3) Background, 4) Approach, 5) Maps, 6) Goals & Objectives, 7) Regulatory & Non-Regulatory Action Items, 8) Incentive Programs, 9) Monitoring Plan, 10) Information Considered in Preparing the IMP, and 11) Modifications to the IMP.

The proposed groundwater action items (controls) for the District are set forth in Section 7 of the IMP and consist of the following actions: (1) certification of groundwater irrigated acres, (2) ranking system for the addition of wells, (3) flow metering, and (4) restriction on addition of irrigated acres. The proposed surface water action items (controls) are also set forth in Section 7 and include: (1) tracking of surface water irrigated acres, (2) flow metering and reporting, (3) moratorium or restriction on addition of surface water irrigated acres, and (4) notice on surface water applications. Furthermore, Section 7 describes the non-regulatory action items that the District and the Department will take to achieve the goals and objectives of the IMP and include: (1) utilization of available groundwater models and hydrologic tools, (2) water use reporting and data exchange, and (3) information and education programs

Publisher's Affidavit

STATE OF NEBRASKA }
COUNTY OF KNOX } SS.

Lisa M. Wessendorf, being duly sworn, deposes and says she is the Publisher of THE VERDIGRE EAGLE, a weekly legal newspaper having a bona fide circulation of more than three hundred copies weekly and has been published within said county for more than fifty-two successive weeks last prior to the first published of the attached notice, and that said newspaper was printed in whole or in part in an office maintained in Verdigre, Knox County, Nebraska, that being the place of publication of said newspaper.

That the annexed notice was printed and published in said newspaper three times in all issues of said newspaper and not in a supplement on December 12, 19 and 26, 2013.

Lisa M. Wessendorf

Subscribed in my presence and sworn to before me

this 26th day of December, 2013.

Jodi J. Wiese



Notary Public

Fed. Identification Number: 45-4014661

Publication Fees.....\$ _____

Affidavit Fee\$ 2.00

TOTAL.....\$ _____

NOTICE OF PUBLIC HEARING RELATING TO THE LOWER NIOBRARA NATURAL RESOURCES DISTRICT AND THE NEBRASKA DEPARTMENT OF NATURAL RESOURCES INTEGRATED MANAGEMENT PLAN

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Any interested person may appear at the hearing and present written or oral testimony concerning the proposed IMP and proposed controls. Individuals with disabilities may request auxiliary aids and service necessary for participation by contacting the District or the Department by January 10, 2014. Testimony or other evidence relevant to the purposes of the hearing may also be submitted in writing to Lower

Niobrara Natural Resources District, 410 Walnut Street, P.O. Box 350, Butte, NE 68722 or to the Department of Natural Resources, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4676, or by electronic mail to the District at lnnrd@nntc.net or to the Department at nathan.morris@nebraska.gov by 5:00 p.m., January 17, 2014.

For further information regarding the proposed IMP and proposed controls or for the full text of the proposed IMP and proposed controls, refer to the District website at <http://www.lnnrd.org> or the Department's website at <http://dnr.ne.gov> or contact the District or the Department at the addresses listed above or contact the District at (402) 775-2343 or the Department at (402) 471-2363.

Following the public hearing on the proposed IMP and proposed controls, the District and the Department will make a joint decision within 60 days of whether to implement the proposed IMP with or without modifications and whether to adopt and implement the groundwater and surface water controls proposed in the IMP.

Publish: December 12, 19 and 26, 2013

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INTEGRATED MANAGEMENT PLAN

**Lower Niobrara Natural Resources District
410 Walnut Street
P.O. Box 350
Butte, NE 68722**

**Telephone: 402-775-2343
www.lnnrd.org**

**The Department of Natural Resources
301 Centennial Mall South, 4th Floor
P.O. Box 94676
Lincoln, NE 68509**

**Telephone: 402-471-2363
www.dnr.ne.gov**

**Approved by the Lower Niobrara
Natural Resources District Board of Directors: XX XX, 2013**

Approved by the Department of Natural Resources: XX XX, 2013



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INTEGRATED MANAGEMENT PLAN **Jointly Developed by the** **LOWER NIOBRARA NATURAL RESOURCES DISTRICT** **and the** **DEPARTMENT OF NATURAL RESOURCES**

1. AUTHORITY

This Integrated Management Plan (IMP) was prepared voluntarily by the Board of Directors of the Lower Niobrara Natural Resources District (District) and the Nebraska Department of Natural Resources (Department) in consultation with the Lower Niobrara Stakeholders Committee and in accordance with *Neb. Rev. Stat.* §§ 46-715, 46-716, 46-717, and 46-720.

2. PURPOSE

The Lower Niobrara Natural Resources District, in collaboration with the Nebraska Department of Natural Resources, will implement this voluntary IMP to attain and/or maintain a desired balance between water uses and water supplies of both surface water and groundwater sources so that economic viability, as well as social and environmental health, safety, and welfare, can be achieved and maintained in the District for both the near-term and long-term, while also considering effects on existing surface water appropriators and groundwater users. Should the Department subsequently determine an affected river basin, subbasin, or reach within the District to be fully appropriated, the Department and the District may amend this IMP.

3. BACKGROUND

The 1960's and 1970's, saw a sizeable increase in the number of wells being drilled and the rate at which groundwater was being pumped. In 1972, a law passed by the Nebraska Legislature became effective, which combined 154 special purpose entities into what are now 23 Natural Resources Districts (NRDs). The boundaries of the NRDs generally follow major river basins, enabling local Districts to respond best to local needs. The Lower Niobrara NRD contains all or portions of the Burton Creek Basin, Keya Paha Creek Basin, Ponca Creek Basin, Eagle Creek Basin, Blackbird and Redbird Creek Basins, Verdigre Creek Basin, and Niobrara River Basin.

Unique to Nebraska, NRDs are local government entities, governed by an elected board of directors, with broad responsibilities to protect Nebraska's natural resources. NRDs are charged with 12 areas of responsibility, including: (1) development, management, use, and conservation of groundwater and surface water; (2) soil conservation; (3) erosion prevention and control; (4) flood prevention and control; (5) pollution control; (6) water supply for any beneficial uses; (7) prevention of damages from flood water and sediment; (8) development and management of recreational and park facilities; (9) forestry and

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range management; (10) development and management of fish and wildlife habitat; (11) drainage improvement; and (12) solid waste management. In particular, NRDs are responsible for the planning, monitoring, and regulation of groundwater in the District, while the Department, a state entity, manages and regulates surface waters within the state.

The beneficial use of groundwater and surface water in the state of Nebraska is governed by two separate, distinct, and very different laws: (1) the common law concept of correlative rights for groundwater, and (2) the prior appropriation doctrine for surface water. The correlative rights rule allows owners to drill wells and extract groundwater from an underlying aquifer for beneficial purposes, subject to management by the public. To execute this right, land owners must first obtain a permit to drill a well from their local NRD. If approved, the well permit allows the land owner to drill and extract as much groundwater as needed, as long as the use is deemed beneficial. When construction is completed, the well permit is registered with the Department, which places the information in a statewide database. The correlative groundwater rights rule is essentially a “share and share alike” system. Under the prior appropriation doctrine, surface waters of the state are allowed to be diverted based upon the date that the water right was obtained. Surface water rights entitle land owners or organizations to remove a set amount of water from a specific location. During periods when the overall water supply is insufficient to meet all appropriated water rights, this system protects those who received their water rights first. Thus, the water right with the earliest date is entitled to their full appropriation before a later priority date water right receives any water.

The passage of LB 962 in July of 2004 allows the Department and the NRDs to work together to manage groundwater and surface water as a single resource, replacing the previous system that treated them as two separate and un-related resources. Further, LB 962 called for a proactive and integrated approach to management of the state’s hydrologically connected groundwater and surface water. With the increasing demand on water resources, it is necessary to recognize the importance of hydrologically connected groundwater and surface water and the difficulties entailed in the management thereof, because of their properties, distribution, and the interconnection between surface water and the underlying groundwater aquifers.

Under LB 962, an IMP must be developed if the Department determines that a river basin, subbasin, or reach is fully appropriated. A river basin, subbasin, or reach is deemed fully appropriated if the Department determines that current uses of hydrologically connected surface water and groundwater in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause: (a) the surface water supply to be insufficient to sustain over the long-term the beneficial or useful purposes for which existing natural flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long-term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause

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noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws *Neb. Rev. Stat. § 46-713(3)*.

Furthermore, under LB 962, in the absence of a fully or overappropriated designation by the Department, a NRD may still enter into an IMP voluntarily under *Neb. Rev. Stat. § 46-715(1)(b)*. The process is initiated when the District notifies the Department of its intention to develop a voluntary IMP. The objective of a voluntary IMP is to manage the river basins, subbasins, or reaches within the District to attain and/or sustain a desired balance between water uses and water supplies for the long-term, while protecting existing users. If a District develops a voluntary IMP and the Department subsequently determines the affected river basin, subbasin, or reach to be fully appropriated, the Department and the affected NRD may amend the IMP.

On October 17, 2007, the Department made a preliminary determination that a portion of the Lower Niobrara River Basin, below Mirage Flats and above the Spencer Hydropower facility, was fully appropriated. This preliminary determination included lands within the District, in Boyd, Holt, Keya Paha, and Rock counties, which had not previously been determined to be fully appropriated. As a result of this preliminary determination, temporary stays on the issuance of water well construction permits and additional groundwater irrigated acres went into effect in this portion of the District. Stays also went into effect on the issuance of new surface water appropriations and on the increase of surface water irrigated acres.

On January 25, 2008, the Department made a final determination that the area preliminarily determined to be fully appropriated in Boyd, Holt, Keya Paha, and Rock counties was fully appropriated. On February 8, 2008 the Middle Niobrara, Lower Niobrara, Upper Loup, and Upper Elkhorn NRDs filed a contested case challenging the final fully appropriated determination. On December 17, 2009, the Director of the Department upheld the determination. On December 31, 2009, the Middle Niobrara, Lower Niobrara, Upper Loup, and Upper Elkhorn NRDs filed a notice of appeal with the Department. In an opinion dated June 3, 2011, the Nebraska Supreme Court held the Department's 2008 fully appropriated determination invalid and reversed the December 17, 2009, Order. On June 16, 2011, the Department received the mandate from the Clerk of the Supreme Court.

On December 16, 2008, the Department made a preliminary determination that the Lower Platte River Basin was fully appropriated. This preliminary determination included lands within the District, in Holt and Rock counties, which had not previously been determined to be fully appropriated. As a result of this preliminary determination, temporary stays on the issuance of water well construction permits and additional groundwater irrigated acres went into effect in this portion of the District. Stays also went into effect on the issuance of new surface water appropriations and on the increase of surface water irrigated acres. On March 13, 2009, the Department made a final determination that the area preliminarily determined to be fully appropriated in Holt and Rock counties was not fully appropriated.

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On April 6, 2009, *Neb. Rev. Stat. § 46-714(12)* (LB 483) became effective, allowing for the development of a limited number of total new irrigated acres annually, over a four-year period. Rules and Regulations for implementation of LB 483, in accord with *Neb. Rev. Stat. §§ 46-714(12)* and *46-707(1)* for lands within the District, were adopted on September 3, 2009, to allow up to 10,000 acres to be developed in the Lower Platte Basin, which overlaps the District in Holt county: an area that was previously designated as fully appropriated. Furthermore, Rules and Regulations for implementation of LB 483 in accordance with *Neb. Rev. Stat. §§ 46-714(12)* and *46-707(1)* were adopted on September 12, 2011, for lands within the Lower Niobrara Basin, which was declared fully appropriated in 2008, but revised in the spring of 2011.

Based on the Department's determination that no river basin, subbasin, or reach within the District was overappropriated nor determined to be fully appropriated, and in accordance with *Neb. Rev. Stat. § 46-715(1)(b)*, the District decided to prepare a voluntary IMP. On September 30, 2011, the District submitted a letter of intent to develop a voluntary IMP to the Department. In the summer of 2012, the District, the Department, and the Stakeholders Committee began meeting to develop the IMP. Stakeholder meetings were held on August 21, 2012; October 16, 2012; December 11, 2012; February 5, 2013; and March 26, 2013 to develop the goals and objectives of the plan. Community meetings were held throughout the District on March 26-27, 2013. The development of this voluntary IMP progressed collaboratively between the District, the Department, and the Stakeholders Committee. The Stakeholders Committee is comprised of individuals within the District who represent a variety of interests, such as agricultural, municipal, commercial, environmental, and recreational.

4. APPROACH

The IMP planning process utilizes an adaptive management approach. Thus, it is a work in progress for either attaining or maintaining the desired balance of the hydrologic system. As an affected area or subarea of the District changes and more data becomes available, the IMP goals and objectives will be reassessed and changes will be made, as necessary, to accommodate changing circumstances such as hydrology, economics, water demands, and supplies. The IMP will evolve in incremental phases as elements of the plan are achieved and additional elements to the IMP are sought by the District, its Stakeholders Committee, and/or the Department. The IMP will be reviewed annually and changes may be made to the goals and objectives for the next year, keeping in mind the purpose of the IMP. The Department will seek to ensure that in the first phase of the voluntary IMP, the goals and objectives incorporate the following elements: hydrologic models, data, and analyses on water supplies, uses, availability, and shortages. Additional elements to the IMP may be incorporated by the District.

This voluntary IMP will focus on hydrologically connected surface water and groundwater, but may also incorporate many aspects that mutually benefit other actions of the District, as set forth in the District's Ground Water Management Plan, the Bazile Groundwater Management Area Plan, and findings from other District projects and studies. The integrated management planning process will allow for: (1) a more complete

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inventory of all water supplies and water uses; (2) increased collaboration between the entities that manage water resources; (3) increased public awareness of water resources issues; and (4) increased opportunities to provide input on short and long-term management of the District's water resources.

Data, analyses, models, and the best available science are the tools that will provide the information critical for implementing water management activities and meeting IMP goals. Among other things, these tools will be used to assess water supplies, water uses, water availability, water shortages for existing water users, and to identify future water needs at the basin and subbasin level within the District. The District and the Department will seek to ensure that agreed upon methodologies for data collection and analyses, and processes for greater transparency in all decision-making activities, are used.

In accordance with the Nebraska Ground Water Management and Protection Act, an IMP shall provide a process for economic development opportunities and economic sustainability/maintenance within a river basin, subbasin, or reach, and shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes in water uses. The procedures shall: (a) utilize generally accepted methodologies based on the best available information, data, and science; (b) include a generally accepted methodology to estimate depletions and gains to streamflows—including data on location, time, and amount—regarding gains to streamflows as offsets to new water uses; (c) identify a means to minimize the impacts new water users will have upon existing surface and groundwater users; (d) identify procedures the District and the Department will use to report, consult, and otherwise share information on new water uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach; (e) identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement; (f) after consultation with, and an opportunity to provide input from irrigation districts, public power districts, reclamation districts, municipalities, other political subdivisions, and other water users; develop, to the extent feasible, an outline of plans to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and (g) clearly identify procedures that applicants for new uses shall follow to apply for approval of a new water use and corresponding offset. As this is a voluntary IMP, no designation of fully appropriated or overappropriated has been made and a requirement for the offset of all new uses is not mandated. Therefore, there is not currently a need to identify the water available to mitigate new uses or develop a plan for the availability of offset water; however, the adaptive nature of the IMP means this need, and others as specified in *Neb. Rev. Stat. § 46-715(3)*, will be addressed if they arise.

Pursuant to *Neb. Rev. Stat. § 46-715*, the IMP shall include the following: (a) clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so the economic viability, social and environmental health, safety and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near-term and long-term; (b) a map clearly delineating the geographic area subject to the IMP; (c)

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one or more of the groundwater controls authorized for adoption by NRDs pursuant to *Neb. Rev. Stat. § 46-739*; (d) one or more of the surface water controls authorized for adoption by the Department pursuant to *Neb. Rev. Stat. § 46-716*; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement *Neb. Rev. Stat. §§ 46-715 to 46-717*, increase understanding of the surface water and hydrologically connected groundwater system, and test the validity of the conclusions and information upon which the IMP is based. The plan may also provide for utilization of any applicable incentive program authorized by law.

The groundwater and surface water controls proposed for adoption in the IMP shall: (a) be consistent with the goals and objectives of the plan; (b) be sufficient to ensure the state will remain in compliance with applicable state and federal laws, any applicable interstate water compact or decree, or other formal state contract or agreement pertaining to surface water or groundwater use or supplies; and (c) protect the groundwater users whose water wells are dependent on recharge from the river or stream involved, and the surface water appropriators on such river or stream, from streamflow depletion caused by surface water uses and groundwater uses begun, in the case of a river basin, subbasin, or reach designated as overappropriated or preliminarily determined to be fully appropriated in accordance with *Neb. Rev. Stat. §46-713*, after the date of such designation or preliminary determination. To accomplish the economic development objectives set forth in *Neb. Rev. Stat. §46-715(3)*, this plan provides a process that allows for utilization of the best available science to estimate impacts of new uses and explore the potential for new water uses, as it currently does not place any limitation on new development.

5. MAPS

See Appendix I for the following maps: (1) Lower Niobrara Natural Resources District Integrated Management Plan Management Area; (2) Lower Niobrara Natural Resources District Phase II Groundwater Management Area; (3) Lower Niobrara Natural Resources District Previously Designated Fully Appropriated Area of the Lower Niobrara River Basin; (4) Lower Niobrara Natural Resources District Previously Designated Fully Appropriated Area of the Lower Platte River Basin; (5) Lower Niobrara Natural Resources District Bazile Groundwater Management Area; (6) Lower Niobrara Natural Resources District Detail View of Bazile Groundwater Management Area.

6. GOALS & OBJECTIVES

For the District, the ultimate goal of the integrated management process is to protect existing investments and interests while facilitating economic growth and well-being across the District. For the first phase/increment of the integrated planning process for the District's voluntary IMP, the goals and objectives will focus on developing the utilization of hydrologic models to determine the interconnectivity of surface and groundwater within the boundaries of the District, and an understanding of: (1) water supplies and uses; (2) water availability and shortages; and (3) hydrologic characteristics of the District's groundwater basins, subbasins, and reaches. These fundamental elements of water management planning will allow for refinement of the goals and objectives in

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the following phases of the IMP process, and provide the framework for water management decisions going forward. The District, its stakeholders, and the Department identified many more long-term goals and objectives that will be reviewed annually and added in subsequent phases of the IMP process if the data and analysis support them.

A goal is a desired outcome of actions taken in support of achieving the overall purpose of the IMP. An objective is an achievable and measurable action taken to attain the desired end result stated in the goal it supports. Goals provide a broad picture of intentions, whereas objectives define more specific ways to achieve these goals. The objectives are then supported by detailed action items that will get the necessary work accomplished. The action items may be regulatory or non-regulatory in nature. Regulatory action items (controls) are legal mandates, whereas non-regulatory action items are voluntary actions on the part of the groundwater user or surface water appropriator. In order to implement the regulatory action items (controls), they must be written as explicit procedures for implementing the control(s), approved by the Board, and then recorded in the District's Rules and Regulations. Rules and Regulations can be changed with only Board approval and a public hearing. In order to make changes in the IMP, the Department and the Board are required to hold a joint public hearing.

The IMP goals and their supporting objectives and action items will be accomplished sequentially, in that Goal 2 requires input of data and analyses from the completion of Goal 1. Goal 3 will begin upon completion of Goal 2. Goal 4, related to education and outreach, will necessarily be ongoing from beginning to completion of this phase of the IMP. However, it may also be helpful at times to work on all four goals together as their respective objectives and action items support each other, and considered together, may improve data collection, analyses, and decision-making going forward.

The District and the Department agree on and adopt the following goals, objectives, action items, and controls for the first generation of this IMP.

Goal 1

1. To develop and implement processes for the adequate collection of hydrologic and other related data to assess water resources within the District.

Goal 1 Objectives

- 1.1. To conduct data collection and analyses of water supplies and demands, utilizing the best available information, data, and science.
- 1.2. To conduct studies to identify hydrologically distinct sub-areas within the District for the purposes of integrated management.
- 1.3. To monitor changes in water uses within the District.

Goal 2

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2. To develop systematic approaches for the development and sustainability of water resources within the District.

Goal 2 Objectives

- 2.1. To assess the potential impact of new surface water and groundwater uses on existing surface water and groundwater users within the District
- 2.2. To determine allowable levels of water development for the District, and by subbasin when designated.

Goal 3

3. To prevent, resolve, and minimize water related conflicts among and between surface water and groundwater users.

Goal 3 Objectives

- 3.1. To establish procedures for securing water for sustained future growth of domestic, municipal, agricultural, commercial, and industrial water users within the District.
- 3.2. To establish rules and regulations regarding transfers, variances, water banking, water leasing, or other actions of water management within the District, if necessary, to enhance equitable water use management, mitigate new uses, or to avoid conflicts.

Goal 4

4. To develop and provide educational opportunities and outreach materials about hydrologically connected surface water and groundwater, water conservation, and to keep the constituents of the District informed about the IMP as it is implemented.

Goal 4 Objectives

- 4.1. To develop and disseminate water conservation guidelines for individuals to achieve sustainable water use.
- 4.2. To identify cost-share opportunities that may include collaborating with other agencies and other NRDs to implement plan objectives.
- 4.3. To encourage participation in information sharing with other organizations and agencies to conserve resources and prevent duplication of work.

7. REGULATORY & NON-REGULATORY ACTION ITEMS

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This voluntary IMP includes both regulatory and non-regulatory action items. The regulatory actions are mandatory. The non-regulatory actions are encouraged to be implemented voluntarily by water users. The groundwater controls authorized for adoption by the District are set forth in *Neb. Rev. Stat.* §§ 46-715 and 46-739; the surface water controls authorized for adoption by the Department are in *Neb. Rev. Stat.* §46-716 of the Ground Water Management and Protection Act.

A. Non-regulatory Action Items to Achieve Goals & Objectives

1. The District and the Department will utilize available groundwater models and hydrologic tools to achieve the following:
 - (a) To assist in identifying critical hydrologic areas in the District;
 - (b) Collaborate with municipalities, water suppliers, and other entities to identify current water uses and future water demands;
 - (c) Determine subbasins or sub-regions for the purposes of water management through the development of hydrogeological maps of the District;
 - (d) Assess potential impacts to existing users consistent with Nebraska Administrative Code Title 457, Chapter 24;
 - (e) Assess potential impacts to users by subbasins or sub-regions, once additional data and tools become available;
 - (f) Identify regions where additional data may be needed;
 - (g) Locate and confirm irrigated acres through the use of infrared photography of the District;
 - (h) Measure additional surface water flows during periods of water shortages through the implementation of streamgages.

2. Water Use Reporting and Data Exchange
 - (a) Irrigation water use reporting. The District will implement a voluntary program on all high capacity wells to annually report the total quantity pumped, rate of pumping, and acres irrigated, in accordance with a system and format developed by the District. In addition, the Department will implement a voluntary reporting program for surface water irrigation permit holders in the District to identify the quantity of water pumped, the acres irrigated, and the type of irrigation system (e.g., gravity, pivot, etc.) used.
 - (b) Municipal, commercial, and industrial water usage reporting. The District will implement a voluntary program for all municipal, industrial, and commercial establishments with high capacity wells to report annually their water use characteristics and well pumping data to the District, in accordance with a system and format implemented by the District. Once a database of water usage is collected and the water usage characteristics are known, the reporting requirements may change.

-DRAFT-

- (c) Data exchange. The District and the Department will develop a system to exchange water related information and share with other agencies if warranted.

3. Information and Education Programs

- (a) The District and the Department will provide educational materials, such as pamphlets or website pages, or carry out educational activities, such as public meetings. This information may include topics such as hydrologically connected waters, integrated management plans, the planning process, or best management practices.
- (b) Contingent on budget and staff resources, the District and the Department will jointly pursue opportunities for public outreach efforts, such as news releases, in order to support water education or programs.
- (c) The District and the Department will jointly identify and study opportunities for the development of transfers, variances, water banking, water leasing, and other actions of water management to potentially be used in the District.

B. Groundwater Action Items (Controls) to Achieve Goals & Objectives

The District's Rules and Regulations will contain procedural details for the controls listed in this IMP. Persons desiring to apply for a new groundwater use or to alter an existing use should contact the District.

- 1. Certification of groundwater irrigated acres. The District will certify all irrigated acres within the District boundaries within two years (time will begin when the IMP is approved and goes into effect). The District is in the process of certifying all groundwater irrigated acres utilizing a GIS-based data system in conjunction with County Assessors and aerial photographs of historically irrigated acres.
- 2. Ranking system for the addition of wells. The District will develop controls for well permit ranking for the addition of new and/or helper irrigation wells on new and/or existing irrigated acres. In order for a well permit to be approved, the District will set a minimum score that all wells must meet before a permit will be approved. The purpose of the ranking system is to be able to continue to allow high capacity well development without creating negative impacts, conflicts, or interferences with neighboring water users. A maximum number of wells per system will be established using the following criteria: (1) thickness of primary aquifer formation; (2) calculated transmissivity; (3) irrigation well density; (4) public water supply well density; (5) domestic, livestock, and other well densities; (6) irrigation best management practice and stream depletion factors; and (7) certification by a hydrologist and/or a professional engineer the existing well has failed and a new well is necessary to continue pumping an adequate volume of irrigation water to the existing irrigated acres.
- 3. Flow metering. The District will require the mandatory installation of water flow meters on all new high capacity wells and/or modified irrigation wells and/or irrigation systems, commercial, industrial, or municipal water supply systems.

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This includes installation of a water flow meter prior to the addition of a helper well/s. The District will encourage the voluntary installation of water flow meters on all existing high capacity well systems.

4. Restriction on addition of irrigated acres. The District will establish a set number of new irrigated acres which can be applied for on an annual basis. The new acres will meet a minimum score set by the Board. The following criteria will be used: (1) irrigation type; (2) land capability class rating using USDA Natural Resources Conservation Service Web Soil Survey; (3) stream depletion factors; (4) groundwater quantity; (5) groundwater quality (nitrates) and compliance with the Nitrogen Certification Guidelines in the District's Ground Water Management Plan; and (6) irrigation concentration (well spacing requirements). These restrictions will be made mandatory throughout the entire District.

It is the intent of the District to utilize qualified projects described in *Neb. Rev. Stat. § 2-3226.04* to provide river-flow enhancement in order to achieve the goals and objectives of the District, and to achieve the goals and objectives of the Department under the Ground Water Management and Protection Act. The District may pay for such projects by using the occupation tax provided in *Neb. Rev. Stat. § 2-3226.05*, funds granted to the District by the state or federal government, or the levy authority authorized by *Neb. Rev. Stat. § 2-3225*.

C. Surface Water Action Items (Controls) to Achieve Goals & Objectives

The Department's Rules and Regulations contain procedural details for these controls. Persons desiring to develop a new surface water project or to alter an existing project should contact the Department to determine which controls, rules, and regulations may apply to their project.

1. Tracking of surface water irrigated acres. The Department will continue to map and track irrigated acres and require that project maps be submitted and approved for the purposes of obtaining a surface water permit.
2. Flow metering and reporting. The Department will continue to evaluate the necessity for mandatory installation of water flow meters and/or reporting on all surface water pumps for irrigation, commercial, industrial, and municipal uses.
3. 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 issue a restriction on the number of additional acres irrigated from groundwater, the Department will issue a similar restriction on the development of additional acres for surface water irrigation per year to 1/3 of the amount the District will allow for additional groundwater irrigated acres. The Department will utilize the District's number of additional groundwater acres as of January 1st of each year for determining the number of additional acres for surface water irrigation in each calendar year.
4. Notice on surface water applications. The Department will continue to post notices in the local newspaper and on the Department website of all new surface

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water appropriation applications within the borders of the District, with the exception of small domestic withdrawals, in order to allow the District the opportunity to review and provide comment on the applications pursuant to option one of the Department's "Opportunities for Participation in the Permitting Process" document.

9. INCENTIVE PROGRAMS

The District will explore grant programs to supplement the annual budgeting process for funding of action items and to implement cost-share incentives for encouraging voluntary installation of flow meters on all high capacity wells for irrigation systems, municipal, commercial, and/or industrial applications. Cost share programs may include water conservation devices such as soil probes, rain interrupters, and moisture sensors. Educational training, programs, and brochures are expected to be promoted with cost sharing and grant funding sources.

10. MONITORING PLAN

The overall objective of the monitoring plan is to gather and evaluate data, information, and methodologies that could be used to accomplish the purpose of this IMP in accordance with *Neb. Rev. Stat.* §§ 46-715 to 46-717 of the Ground Water Management and Protection Act. The District and the Department have agreed to complete the following actions set forth in this monitoring plan as required by *Neb. Rev. Stat.* § 46-715(2)(e): (1) annually track and report water use activities within the District; (2) increase understanding of the hydrologically connected surface and groundwater within the District; and (3) test the validity of the information and conclusions upon which this IMP is based.

A. Track and Report Water Uses

To the extent feasible, the District will be responsible for collecting, tracking, evaluating, and reporting on the number, location, amount, and timing of the following water use activities within the District on an annual basis: (1) groundwater level measurements; (2) certification of groundwater uses and any changes to these certifications; (3) municipal, commercial, and industrial annual water uses; (4) irrigation water use data required mandatorily or voluntarily by the District, such as metered high capacity well flow data; (5) water well construction permits issued; (6) the number of well permits denied; (7) variances granted by the District and/or the Department that allow an action contrary to an existing rule or regulation, including the purpose, the location, any required offset, the length of time for which the variance is applicable, and the reasoning behind approval of the variance; (8) transfer permits granted by the District and/or the Department allowing the point of withdrawal, location of use, type of use, addition of a type of use, or location of certified irrigated acres to be altered, including all information provided with the application and used in the approval of the transfer; (9) offsets granted and quantity of water used to compensate for groundwater that has been either withdrawn or consumptively used for any new or expanded use; and (10) water banking transactions

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completed by the District (should the District decide to establish a water bank) for tracking reductions in, and additions to, consumptive water use within the District. The water bank could allow the District to acquire irrigated acres for permanent retirements as offsets.

The Department will be responsible for collecting, tracking, evaluating, and reporting the following activities within the District on an annual basis: (1) streamgauge measurements; (2) any surface water permits issued and/or denied, (3) surface water usage data, such as voluntary water use reports, flow meter data, crops irrigated, and acreage irrigated; (4) any groundwater transfers approved; and (5) any offsets provided for depletions resulting from increased consumptive use related to any of the above listed items.

The District and the Department will jointly evaluate the data and information gathered for accuracy, identify anomalies therein and probable causes for them, and flag data and information that may require closer inspection and review. In addition, the District and the Department will compare annual water use data to historically reported water usage data and information, and perform analyses to determine the impacts of new water users on existing water users within the District. To the extent feasible, such an evaluation of the data and information will help identify potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement. Furthermore, after consultation with, and an opportunity to provide input from irrigation districts, public power districts, reclamation districts, municipalities, other political subdivisions, and other water users; such an evaluation, to the extent feasible, will allow for an outline of plans to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach.

Through a review by the District and the Department of the data and information described above, an annual report will be developed to evaluate the progress being made toward achieving the goals and objectives of this IMP. This information will be shared between the District and the Department and will be presented at a District-wide annual meeting. These reports should be made available at least four (4) weeks prior to the annual meeting. The format of the reports will be standardized as agreed by the District and the Department. At the end of the first five year increment of this IMP, the District and Department will prepare a summary of all data analyzed from the annual reports and provide an interpretation that will guide the development of future IMP increments.

B. Increase Understanding of Hydrologically Connected Surface and Groundwater

The groundwater and surface water data generated annually and contained in the annual reports prepared by the District and the Department, as well as historical data of the same parameters, will be used in groundwater computer models that are based upon the best available science and may be developed by the Department and/or other entities. Computer modeling of the groundwater aquifer characteristics is essentially the only means of detecting and documenting the hydrological interconnectivity of the surface water and underlying groundwater. The groundwater model(s) used will be calibrated to

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baseflows and groundwater static water levels for the river basins, subbasins, and reaches in the District with sufficient temporal variability to assess the depletions and gains to baseflow annually. The models will be updated periodically to simulate the management practices that have been implemented to date. The Department will be responsible for updating and using the model(s). However, the District will work with the Department to determine when the District should consider adding a groundwater model analyst to its staff who can be actively and meaningfully engaged in running the models, interpreting the forecasts, and improving the input data for the model(s).

Another key focus of the computer generated analyses will be to determine the impact of new water users on existing water users. The District and the Department will work with other NRDs, other agencies, and interested parties with expertise in modeling to identify data gaps in the analyses and determine whether studies should be undertaken to address these gaps.

The Department, in conjunction with several of the Platte Basin NRDs, has developed a methodology to quantitatively assess hydrologically connected water supplies and water uses. The process and methodologies developed over the course of this four-year study will be utilized to monitor the near-term and long-term balance of water supplies within the District. The District and the Department will collaborate to ensure that the best available science is utilized in conducting this assessment.

C. Test the Validity of the Information and Conclusions upon which the IMP is Based

In addition to the annual review, reporting, modeling and interpretation of results, a more robust review of the progress being made toward achieving the goals and objectives of the IMP will be accomplished after the first 10 years of implementing the IMP. The District and Department will establish computer model runs which will be conducted for the ten year review.

11. INFORMATION CONSIDERED IN PREPARING THIS IMP

Information used in the preparation of this IMP and to be used in the subsequent implementation of this IMP, can be found in the following: Nebraska Ground Water Management and Protection Act; the Order of Final Determination that a Portion of the Lower Niobrara River Basin is Fully Appropriated; the report on Hydrologically Connected Groundwater and Surface Water in the Upper Niobrara White Natural Resources District; the Upper Niobrara White NRD Groundwater Management Plan; Central Platte NRD Groundwater Management Plan and Integrated Management Plan; the Department's Annual Fully Appropriated Basin Reports; the District's Ground Water Management Plan; the District's Crop Protection Planner; UNL Cooperative Extension EC 98-786-S Managing Irrigation and Nitrogen to Protect Water Quality; and G1850 Irrigation Management for Corn; as well as additional data acquired by either the Department or the District and additional data on file with the District and Department.

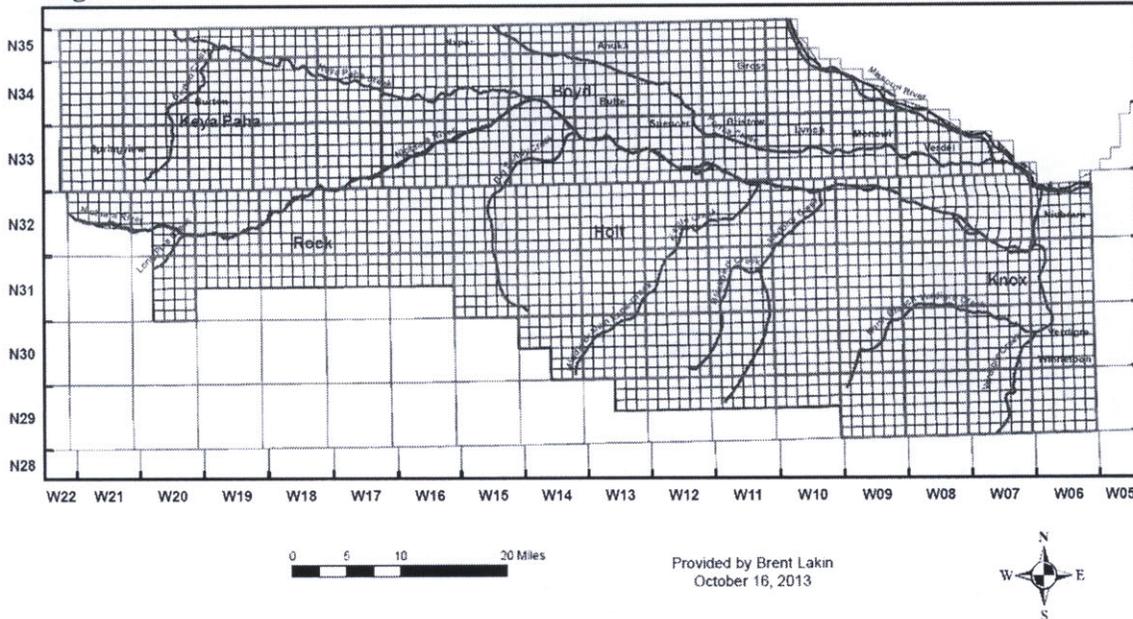
12. MODIFICATIONS TO THE INTEGRATED MANAGEMENT PLAN

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The District and the Department will jointly determine whether amendments to this plan are necessary. Modifications to this IMP will require an agreement by both the District and the Department as to the proposed changes. Upon agreement of changes, both parties are subsequently required to hold a joint hearing and issue pertinent orders to formally adopt the revised IMP.

APPENDIX I: MAPS

Figure 1: Lower Niobrara Natural Resources District Integrated Management Plan Management Area



Note: This area also includes the Department of Natural Resources surface water limitation area.

Figure 2: Lower Niobrara Natural Resources District Phase II Groundwater Management Area

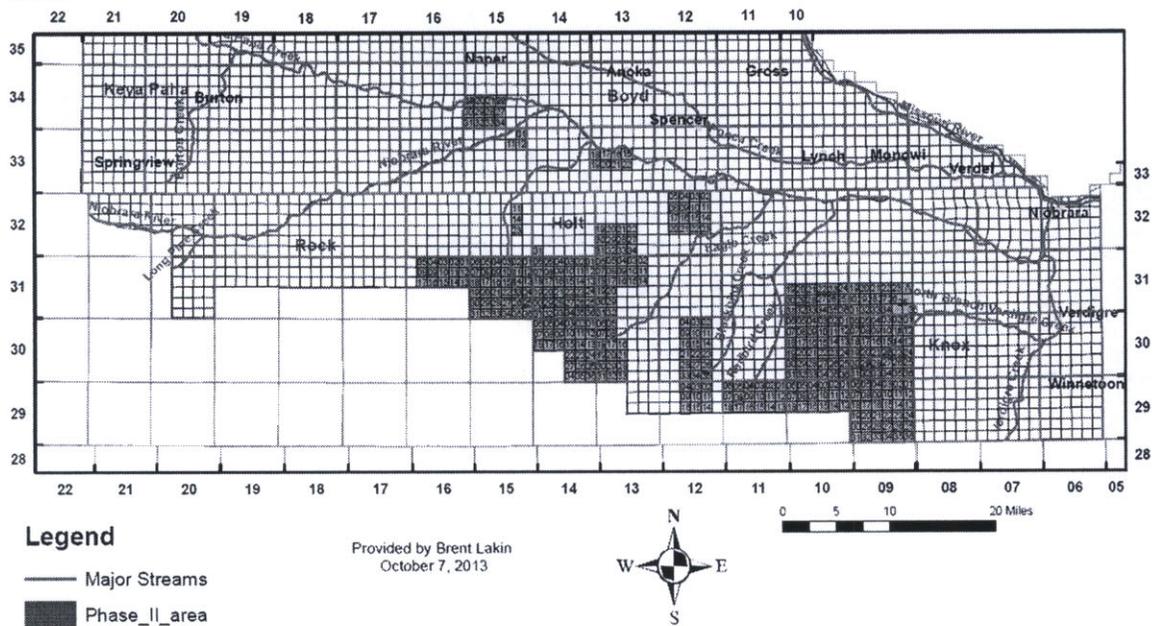


Figure 3: Lower Niobrara Natural Resources District Previously Designated Fully Appropriated Area of the Lower Niobrara River Basin

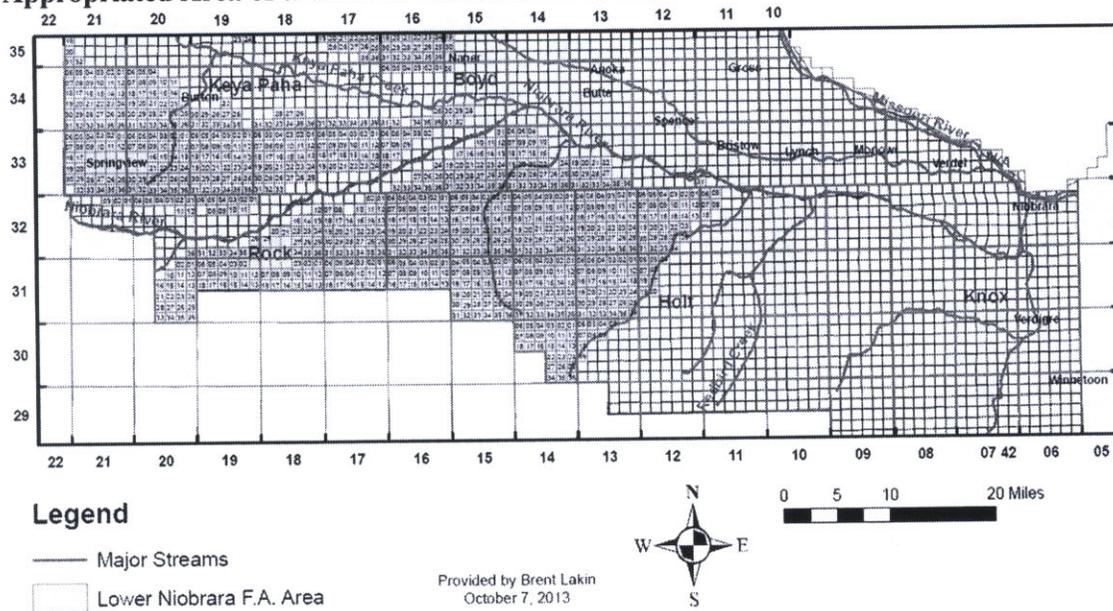
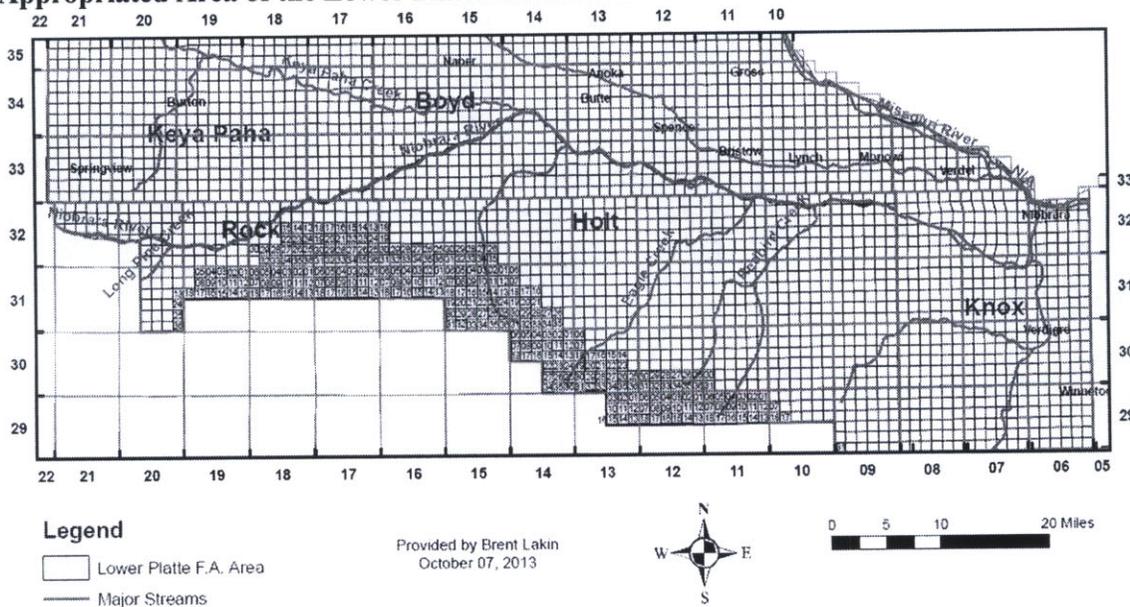


Figure 4: Lower Niobrara Natural Resources District Previously Designated Fully Appropriated Area of the Lower Platte River Basin



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Figure 5: Lower Niobrara Natural Resources District Bazile Groundwater Management Area

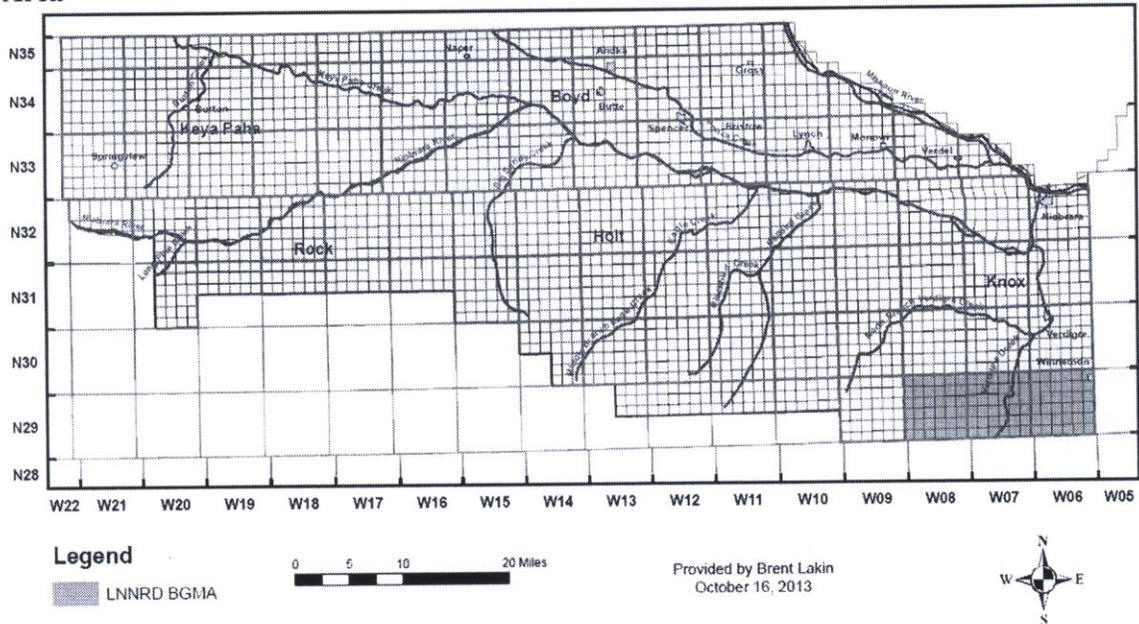
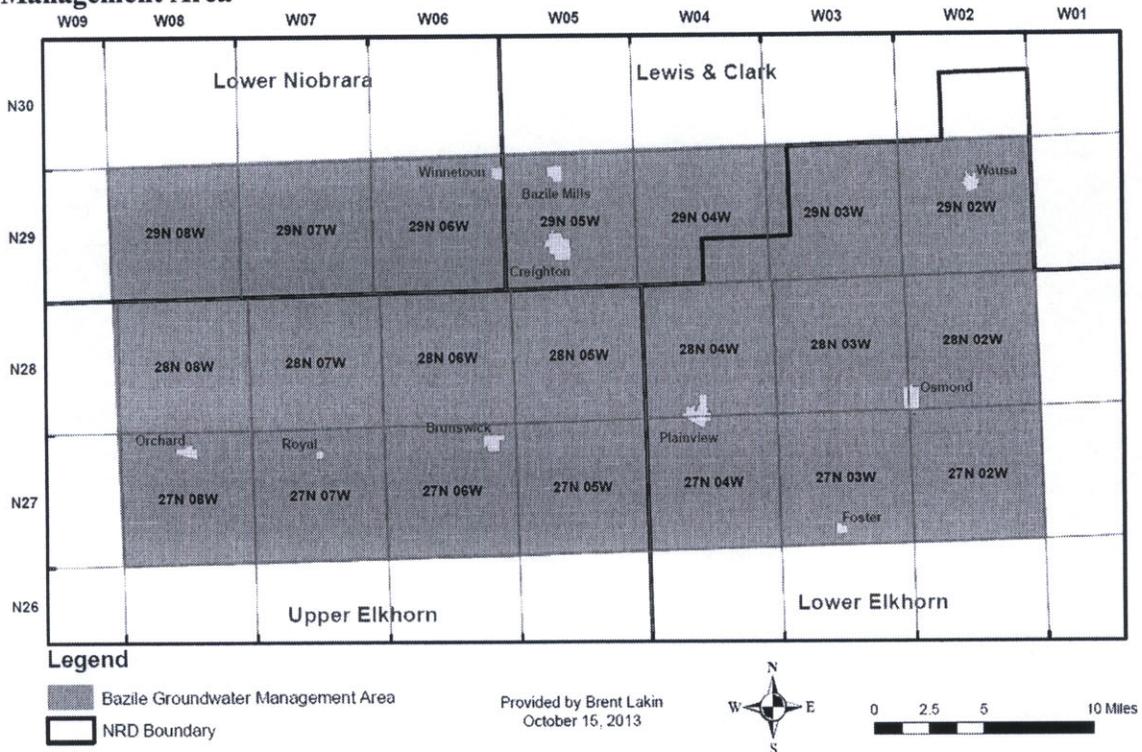


Figure 6: Lower Niobrara Natural Resources District Detail View of Bazile Groundwater Management Area





Dave Heineman
Governor

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
Brian P. Dunnigan, P.E.
Director

December 6, 2013

IN REPLY TO:

Larry Baumeister, Chairman
Lower Niobrara Natural Resources District
410 Walnut Street
PO Box 350
Butte, NE 68722

Dear Mr. Baumeister:

On December 5, 2013, the Department received your letter stating that an agreement regarding the voluntary integrated management plan (IMP) between the Lower Niobrara Natural Resources District (District) and the Department of Natural Resources (Department) has been reached. This agreement includes the:

- 1) proposed goals and objectives of the voluntary IMP,
- 2) proposed geographic area to be subject to controls of the voluntary IMP, and
- 3) surface water and groundwater controls that are proposed in the voluntary IMP for adoption and implementation.

Enclosed please find a copy of the agreed-upon IMP. The Department mutually agrees with the District and will work with you in scheduling the necessary public hearing within forty-five days of your receipt of this letter.

The Department appreciates the time taken by the District's Board of Directors, staff, and stakeholders throughout the IMP development process. We also look forward to a continued working relationship that ensures the goals and objectives of the voluntary IMP are reached.

Sincerely,

Brian P. Dunnigan, P.E.
Director

Enclosure



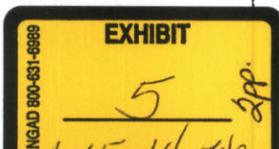
NEBRASKA ADMINISTRATIVE CODE

Title 454 - DEPARTMENT OF NATURAL RESOURCES
RULES OF PRACTICE AND PROCEDURE

Chapter 13 - INTEGRATED MANAGEMENT PLANS

001 TYPES DATA CONSIDERED. The following types of scientific data and other information will be considered in the adoption of a plan for the integrated management of hydrologically connected surface and groundwater pursuant to Neb. Rev. Stat. § 46-717, Reissue 2004, as amended.

- 001.01 Historical data on stream flows within the proposed integrated management plan area.
- 001.02 Past, present and potential future surface water use within the proposed integrated management plan area.
- 001.03 Groundwater supplies within the proposed integrated management plan area including hydraulic conductivity, saturated thickness, and other ground water reservoir information, and/or ground water models if available.
- 001.04 Local recharge characteristics and rates from any sources, if available.
- 001.05 Precipitation and the variations including trends within the proposed integrated management plan area.
- 001.06 Crop water needs within the proposed integrated management plan area.
- 001.07 Water data collection programs.
- 001.08 Past, present, and potential ground water uses within the proposed integrated management plan area.
- 001.09 Proposed water conservation and supply augmentation programs within the proposed integrated management plan area.
- 001.10 The availability of supplemental water supplies, including the opportunity for groundwater recharge within the proposed integrated management plan area.
- 001.11 Surface and ground water quality concerns within the proposed integrated management plan area.
- 001.12 Opportunities to integrate and coordinate the use of water from different sources of supply within the proposed integrated management plan area.
- 001.13 Existing and potential subirrigation uses within the proposed integrated management plan area.



001.14 The relative economic value of different uses of surface and ground water proposed or existing within the proposed integrated management plan area.

001.15 Rules and regulations for ground water management developed by the natural resources district(s) affected by the integrated management plan.



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

September 30, 2011

Brian Dunnigan, Director
NE Department of Natural Resources
301 Centennial Mall South
Lincoln, NE 68509-4676

Dear Brian

The Lower Niobrara Natural Resources District Board of Directors at their meeting on September 12, 2011 unanimously approved a motion to develop a district wide Integrated Management Plan. A copy of the minutes is attached. This will be a voluntary plan as provided for in Section 46-715 (1) (b). The District continues to be proactive in its groundwater management responsibilities and views this as an appropriate and logical next step.

This letter is the District's notification to the Department of Natural Resources of the intent to develop a district wide Integrated Management Plan in accordance with Sections 46-715 through 46-717 and Subsections (1) and (2) of Section 46-718. The District requests the assistance of the Department in the development of the Plan.

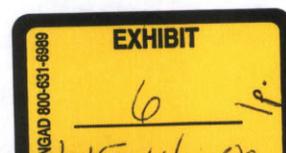
Please advise as to what person in the Department will be our contact to initiate the planning process.

Thank You,

Sincerely

Terry Julesgard
General Manager

cc: Larry Baumeister, Chairman





LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

December, 2, 2013

Brian Dunnigan, Director
Nebraska Department of Natural Resources
P.O. Box 94676
Lincoln, NE 68509-4676

Dear Mr. Dunnigan

At the Monday December 2, 2013 regular Board meeting the Lower Niobrara Natural Resources District (LNNRD) Board of Directors reached consensus on the opinion agreement between the LNNRD and the Department regarding 1) proposed goals and objectives of the voluntary Integrated Management Plan (IMP) for the LNNRD, 2) the proposed geographic area to be subject to controls, 3) the surface water and groundwater controls which are proposed in the voluntary IMP for adoption and implementation. We recommend the LNNRD and the Department schedule a joint hearing on the proposed voluntary IMP and proposed controls within forty-five days of mutual agreement by the Department and the LNNRD on items 1 through 3 listed above. Please confirm this agreement in writing.

The LNNRD Board of Directors recognizes and appreciates the Departments contribution in facilitating the voluntary IMP Stakeholder's Group process. We also appreciate the man hours several of the staff members have spent over the last year and a half working with our staff to draft the voluntary IMP. The LNNRD has enjoyed the good working relationship with the Department and hopes to continue in the future as we implement and amend the voluntary IMP.

Sincerely

Terry Julesgard
General Manager



Proposed Additional Language to Section 2 Purpose page 2 of 19 of Integrated Management Plan.

Groundwater is owned by the public and the only right held by an overlying landowner is in the reasonable and beneficial use of the groundwater underlying his or her land subject to the provisions of the Act, Neb. Rev. Stat. §46-702, and the correlative rights of other landowners when the groundwater is insufficient to meet the reasonable needs of all users. The District is responsible for the management of the groundwater within the District, Neb. Rev. Stat. §46-703 (4).

Preference in the use of groundwater shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have preference over those using the same for manufacturing or industrial purposes. As used in this rule; a.) Domestic use of groundwater shall mean all uses of groundwater for human needs as it relates to health, fire control, and sanitation and shall include the use of groundwater for domestic livestock as related to normal farm and ranch operations; and b.) Agricultural purposes shall include, but not be limited to, aquaculture purposes in accordance with Neb. Rev. Stat. §46-613.

Neb. Rev. Stat §§46-703 and 704(3) provides the District significant legal authority to regulate activities within its boundaries in a way that ensures agriculture remains an important industry to the State of Nebraska.





United States Department of the Interior

NATIONAL PARK SERVICE
Missouri National Recreational River
508 E. 2nd Street
Yankton, South Dakota 57078

IN REPLY REFER TO:
I.A.1 (MNRR)

January 17, 2014

Department of Natural Resources
301 Centennial Mall South
Lincoln, NE 68509-4676

Re: Lower Niobrara NRD and Nebraska DNR Integrated Management Plan

Dear Sirs:

Portions of two National Park Service (NPS) units, the Niobrara National Scenic River (Niobrara NSR) and the Missouri National Recreational River (Missouri NRR), are located within the Lower Niobrara Natural Resources District (District) in Nebraska. Authority to manage the Niobrara River where it flows through these two NPS units, including the reach that flows through the Missouri NRR and its tributary Verdigre Creek, was established under the Niobrara National Scenic River Designation Act of 1991(105 Stat. 254).

The NPS mandate, established under the Wild and Scenic Rivers Act, is to protect and preserve the free-flowing condition and outstandingly remarkable values for the benefit of present and future generations.

Because of its responsibility to manage portions of the Niobrara River, the NPS is very interested in the integrated management planning process initiated by the District. NPS appreciates the opportunity to provide comments on the recently released Draft Integrated Management Plan (Draft IMP). The Draft IMP released in December represents a good beginning for the integrated management planning effort. We commend the District for their focus on the use of best scientific practices to evaluate long term water supplies and uses. However, NPS does have some concerns regarding the Draft IMP as noted in the following comments:

- Section 2, Purpose, page 2: The Draft IMP states that the purpose of the IMP is to attain a balance between water uses and water supplies so that economic viability and social and environmental health, safety and welfare can be achieved and maintained. NPS suggests that in addition to attaining a balance between use and supply, the purpose statement should acknowledge the District's responsibility to conserve and protect groundwater resources and groundwater quality, as stated in LB 46-702.



- Section 3, Background, page 2-5: Section 3 of the Draft IMP contains a very detailed legal history of Nebraska statutes and relevant state decisions related to recent events that have prompted the District to begin its voluntary integrated management planning process. However, there is no information or description of the water resources that exist within the District, no description of the hydrology or hydrogeology of the area, and no discussion of existing uses. A description of the water resources and land uses within the District would be very helpful. NPS suggests that this kind of basic information is a necessary part of the planning process and should be included within the Draft IMP.
- Section 6, Goals and Objectives, page 7: This section of the Draft IMP identifies the goals and objectives of the District. NPS is concerned that Goal 1 and its associated Objectives, as written, do not fully express the District's intent and believe some clarification is necessary. It is likely that the intent was to emphasize the importance of collecting meaningful and accurate data based on sound scientific practices. However, this is not clear from the existing text. Additionally, the introductory paragraph for Section 6, Goals and Objectives, states that "...the goals and objectives will focus on developing the utilization of hydrologic models...", but there is no mention of such models within the goals and objectives statements. Please include more information on the development and use of hydrologic models and how they will contribute to the achievement of specific tasks described in the goal and objectives statements.
- Section 7, Regulatory and Non-Regulatory Action Items, page 10: The Draft IMP describes three Non-Regulatory actions that will be implemented to achieve the Goals and Objectives. It is not clear how these actions correspond to the Goals and Objectives, when they might be initiated relative to each other, and when they might be expected to be completed.
- Section 7, Item 2, Water Use Reporting, page 10: The Draft IMP recommends water users of existing high capacity wells to report the total quantity of water pumped on an annual basis and the rate of pumping. NPS suggests that the timing of irrigation, such as when irrigation began and ended for a particular well or field, would also be useful. Alternatively, monthly pumping volumes could be reported. The same recommendation for reporting of surface water diversions would also be useful. This information is important for understanding the timing of groundwater depletions and recovery, and the interaction between groundwater and surface water on a seasonal basis. In addition, this information is useful in understanding how water supplies and availability change during the year.
- Section 9, Monitoring Plan, Part B, page 14: The Draft IMP states that groundwater and surface water data will be used in computer models that are based upon the best available science and may be developed by the Department and/or other entities. This statement suggests that the computer models have not yet been developed. Perhaps this could be clarified by identifying the specific models and tools that are anticipated to be used as part of the integrated management planning process.
- Section 9, Monitoring Plan, Part B, page 14: The Draft IMP states that "Computer modeling of the groundwater aquifer characteristics is essentially the only means of detecting and documenting the hydrologic interconnectivity of the surface water and

underlying groundwater.” Computer models may be used to investigate hydrologic interconnectivity, but they do not detect or document interconnectivity in an aquifer system. In addition, there are other methods available to investigate hydrologic interconnectivity between groundwater and surface water, such as geochemical analyses. This statement should be removed or revised.

NPS appreciates the opportunity to comment on this Draft IMP. We look forward to working with the District and the Department of Natural Resources to manage and protect the water dependent resources and values found within the District and associated with the Niobrara River. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard A. Clark', written in a cursive style.

Richard A. Clark
Superintendent

CC: Thede, Niobrara NSR
Hansen, WRD
Gheleta, SOL
Lower Niobrara Natural Resource District

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January 17, 2014

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Lower Niobrara Natural Resources District
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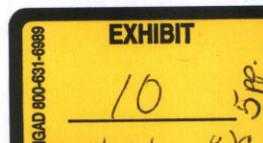
Re: *Objection to Draft Integrated Management Plan for the Nebraska Department of Natural Resources and Lower Niobrara Natural Resources District*

Dear Department of Natural Resources and Lower Niobrara Natural Resources District:

This firm represents Summit Farms, LLC, which owns property in Keya Paha County, Nebraska.¹ The purpose of this letter is to object to the Draft Integrated Management Plan (IMP) for the Lower Niobrara Natural Resources District (LNNRD) and Nebraska Department of Natural Resources (DNR). The public hearing for this matter took place Wednesday, January 15, 2014 at 1:00 p.m. in Butte, Nebraska. Dakota Hoben of Summit Farms LLC ("Summit Farms") provided testimony for Summit Farms opposing the IMP. According to the press release listed on the LNNRD's website, and an announcement at the public hearing, all testimony or other evidence relevant to the purposes of the hearing must be made at the hearing or submitted by e-mail or fax in writing by 5:00 p.m., January 17, 2014.

The IMP notes that "no river basin, subbasin, or reach within the [LNNRD] was overappropriated [or] determined to be fully appropriated. (IMP pg. 5). Nebraska law requires an integrated management plan to be drafted and enacted only in the event the DNR issues a finding of overappropriation or full appropriation in a natural resources district encompassing a river basin, subbasin, or reach. Given the DNR has made no valid finding of overappropriation or full appropriation in the LNNRD, the IMP is being prepared voluntarily by the board of Directors of the LNNRD and the DNR. (IMP pg. 2; see Neb. Rev. Stat. § 46-715(b)).

¹ This firm also represents Keya Paha County, Nebraska landowners AG Holdings LLC and B6 Farms LLC and wishes the entirety of the contents of this objection letter to be considered as made on behalf of AG Holdings LLC and B6 Farms LLC as well.



Summit Farms generally objects to the IMP as presented because it is incomplete and because it fails to present proper goals and objectives for the IMP as required by Nebraska law. Further, the IMP is written as if the LNNRD and the DNR have already concluded that restrictions on new water appropriations are required. The IMP also does not provide clear and transparent procedures to track depletions and gains to streamflows as required by Nebraska law. Additionally, IMP does not outline any generally accepted methodology that the LNNRD or DNR used to determine restriction on water allocations is necessary, or to determine how water allocations will be made in the future. The monitoring plan in the IMP is overreaching and the methodology to be utilized to implement the IMP has not been fully outlined and explained. Indeed, it appears the IMP is simply an effort by the DNR to find another way to significantly restrict water use in the LNNRD after its previous action in finding full appropriation was found to be arbitrary and invalid by the Nebraska Supreme Court.

Summit Farms further makes the following specific objections regarding various aspects of the IMP.

A. The IMP Fails to Include Clear and Transparent Procedures as Required by Neb. Rev. Stat § 46-715

Pursuant to Neb. Rev. Stat. § 46-715, the IMP is required to “include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes to uses within the river basin, subbasin or reach.” Nebraska statute states that such “procedures shall:”

- (a) Utilize general accepted methodologies based on the best available information, data, and science;
- (b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;
- (c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;
- (d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

* * *

(Neb. Rev. Stat. 46-715(3)).

Nebraska statute requires the IMP to comply with the requirements of Neb. Rev. Stat. § 46-715(3). The IMP as written does not include “clear and transparent procedures” to track depletions and gains to streamflows. The IMP further does not include “a generally accepted methodology to be utilized to estimate depletions and gains to streamflows”, or fulfill other requirements of Neb. Rev. Stat. § 46-715. The IMP therefore does not fulfill the requirements of Nebraska law.

B. The IMP Fails to Identify Procedures that Applicants for New Water Uses Shall Take to Apply for Approval

Neb. Rev. Stat. § 46-715(3)(g) further requires that the IMP “shall include clear and transparent procedures” that “(g) [c]learly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.”

The IMP states that the LNNRD “will develop controls for well permit ranking for the addition of new and/or helper irrigation wells.” (IMP, pg. 11). The IMP also states that the LNNRD will at some point develop a “ranking system for the additional of wells.”

The IMP notes that the LNNRD intends to later develop controls and specifically outline a ranking system for new wells. Such controls are not part of the IMP as required by law. Although landowners may have some idea what the ranking system might look like based on prior experience with the LNNRD, the IMP, as written, does not contain the specificity required. The IMP does not provide users sufficient information to assess such ranking system. Further, the fact that the IMP requires a ranking system illustrates a finding in the IMP that additional irrigated acres will be limited, and such a finding in the IMP is not allowed under applicable law under the present circumstances.

C. The IMP Calls for Restrictions on Additional Irrigated Acres

The IMP specifically calls for a “restriction on addition of irrigated acres” and states that the LNNRD “will establish a set number of new irrigated acres which can be applied for on an annual basis” that must meet a “minimum score set by the [LNNRD] Board.”

As noted by the IMP, the LNNRD and DNR are seeking to enter into a voluntary IMP. (IMP pg. 2). The Nebraska Supreme Court previously rejected the prior finding of full appropriation for certain parts of the LNNRD in the case styled *Middle Niobrara Natural Resources District et al. v. Department of Natural Resources*, 799 N.W.2d 305, 321 (Neb. 2011), where the Court concluded the DNR’s actions of finding of full appropriation was “arbitrary and invalid.” Subsequent to such case, there has been no finding of full appropriation in the LNNRD.

Despite the fact that there has been no finding of full appropriation in the LNNRD, the IMP calls for restrictions on the addition of irrigated acres. The IMP specifically states that the LNNRD will restrict new acres without outlining any analysis, data, proof, or evaluation that any restrictions are warranted. The statement in the IMP that the LNNRD will restrict the addition of irrigated acres to a “set number of new irrigated acres which can be applied for an annual basis” is not permitted by Nebraska law under the present circumstances. The DNR and LNNRD cannot through voluntary IMP decide to restrict the addition of irrigated acres without a clear and detailed explanation, including description of use of accepted scientific methodologies, justifying such conclusion and action.

Additionally, the statement in the IMP that a set number of new irrigated acres will only be able to be applied for by landowners after a “minimum score” is attained is vague and not allowed under Nebraska law. The IMP does not state specifically the “minimum score” required, or how points are awarded to attain a minimum score. The IMP does not outline “clear and

transparent procedures” regarding how a landowner will apply and seek approval of new water uses. Even if the LNNRD and DNR plan to address this issue in subsequent rules, this is not sufficient given the applicable statute’s specific requirement that such criteria be outlined in the IMP.

Previously, the LNNRD has limited applications for new irrigation development to a certain number of acres for each landowner during each application period. To the extent the IMP will be relied upon to support such continued practice of limiting landowners to a certain number of new acres during each application period, Summit Farms objects to this practice. Nebraska law does not allow the LNNRD and DNR to limit acres of new development based on land ownership. If a landowner happens to have a large number of acres best suited for development, then such a landowner should be allowed to make an application for all such acres and all such acres should be considered. Nebraska statutes are clear that new irrigation development should be favored for those parcels which are best suited for irrigation development, regardless of ownership of the land and without regard to a limitation that a landowner can only apply for development and receive approval for a limited number of acres each year.

D. The IMP Monitoring Plan is Overreaching

In the IMP, the LNNRD is charged with being responsible for “collecting, tracking, evaluating and reporting” on a large number of water use activities within the LNNRD. Upon collection of a large amount of information, the LNNRD and DNR are charged in the IMP with “compar[ing] annual water use data and information, and perform[ing] analyses to determine the impacts of new water users on existing water users within the District.” (IMP pg. 14). The IMP further notes the need to “mitigate new uses”:

To the extent feasible, such an evaluation of the data and information will help identify potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement.

(IMP pg. 14).

The IMP further states that water data collected “will be used in groundwater computer models that are based upon the best available science and may be developed by the [DNR] and/or other entities.” (IMP pg. 14).

The procedures for obtaining data in the IMP are overreaching and violate the rights of landowners. The proposed actions of the LNNRD which require access to real property by the LNNRD in order for the landowner to exercise his or her right to water resources are overreaching and objectionable.

The statement in the IMP that data will be utilized to “identify potential water available to mitigate new uses” further constitutes a finding of full appropriation without fulfilling the requirements under Nebraska law to justify such a finding. There is no reason to “mitigate new uses” where there is no finding of water shortage based upon generally accepted scientific methodologies. The IMP makes the conclusion—that water rights need to be restricted—without

proper prior evaluation and study. The IMP therefore is not drafted in accordance with Nebraska law.

Further, the IMP is supposed to “include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows. . . .” Neb. Rev. Stat. § 46-715(3)(b). The statement that data will be used in vaguely described “computer models” that “may be developed” does not constitute a description of a “generally accepted methodology to be utilized.” Indeed, it is not possible to know what models will be used and the contents of the models bases upon the description in the IMP.

E. Conclusion

Summit Farms appreciates the opportunity to submit this written objection. Summit Farms remains willing and interested in continuing to participate and comment in the process the LNNRD is utilizing for new water use. Please do not hesitate to contact the undersigned or Summit Farms representative Dakota Hoben if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. C. Buescher', with a long horizontal flourish extending to the right.

Brian C. Buescher