

State of Nebraska
Department of Natural Resources

Amended Order for Temporary Stay on Surface Water Appropriations in the
Middle Niobrara Natural Resources District

Because of an internal inconsistency with the original Order in this matter, this Amended Order is being entered by the Department of Natural Resources (Department).

In a letter dated January 21, 2015, the Middle Niobrara Natural Resources District (MNNRD) informed the Department that it wished to explore the voluntary integrated management planning process with the Department. In a letter dated February 4, 2015, the Department acknowledged receipt of the request and expressed a willingness to proceed with the planning effort.

On June 29, 2015, the Middle Niobrara Natural Resource District, pursuant to *Neb. Rev. Stat. § 46-707(2)*, placed an immediate 180-day temporary stay on the addition of irrigated groundwater acres. The temporary stay applied to the areas contained within the boundaries of the MNNRD.

By letter dated June 9, 2015, the MNNRD requested the Department to place an immediate temporary stay on the issuance of new surface water appropriations during the same time period.

Neb. Rev. Stat. § 2-32,115 authorizes the Department to place an immediate temporary stay without prior written notice or hearing on the issuance of new surface water natural flow appropriations for up to 180 days in any areas included in a temporary stay determined necessary by a natural resources district in accordance with *Neb. Rev. Stat. § 46-707(2)*. On June 26, 2015, the Department issued an Order for a temporary stay on the new surface water appropriations for irrigation effective June 29, 2015, through December 25, 2015.

As required pursuant to *Neb. Rev. Stat. § 2-32,115(2)*, the Department held a public hearing in Valentine, Nebraska, on November 9, 2015, to take testimony regarding the temporary stay. Notice of hearing was given per the requirements of *Neb. Rev. Stat. § 46-743*.

Upon reviewing the testimony from the public hearing, the Department determined, pursuant to *Neb. Rev. Stat. § 2-32,115(3)*, to issue the temporary stay. On February 2, 2017, the Director of the Department signed an order continuing the temporary stay until the earlier of (1) such time that an order is issued and effective to implement the surface water controls contained in an Integrated Management Plan (IMP) between the MNNRD and the Department, which is currently in development, or (2) until the end of the day on February 4, 2018, three years after the Department acknowledged the MNNRD's request for IMP planning.

The Department has reviewed the testimony from the public hearing, along with a request from the MNNRD dated January 8, 2018 to extend the stay, and determined, pursuant to *Neb. Rev. Stat. § 2-32,115(3)*, to continue the stay until the earlier of (1) such time that an order is issued and effective to implement the surface water controls contained in an Integrated Management Plan

(IMP) between the MNNRD and the Department, which is currently in development, or (2) until the end of the day on February 4, 2020, five years after the Department acknowledged the MNNRD's request for IMP planning.

It is therefore ORDERED:

1. Effective December 26, 2015, the temporary stay currently in place on the issuance of any new surface water irrigation acres in areas contained within the boundaries of the MNNRD is continued. Exceptions to the stay include, but are not necessarily limited to:
 - A. Appropriations for new surface water uses to which a right or permit is transferred in accordance with State law, but the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use from which the right or permit is being transferred, and
 - B. New surface water natural flow appropriations that are necessary to alleviate an emergency situation involving the provision of water for human consumption, public health, or safety.
2. The stay shall run until the earlier of February 4, 2020, or such time that the surface water controls contained in the Middle Niobrara IMP have been implemented through an effective order of the Department.

DEPARTMENT OF NATURAL RESOURCES

February 2, 2018


Gordon W. Fassett, P.E., Director

Any person with sufficient legal interest who has been or may be substantially affected by this Order may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* (*Neb. Rev. Stat. §§ 84-901 et. seq*) and the Department's *Rules of Practice and Procedure 454 Admin. Code Chapter 7*. The request must be received by the Department at its Lincoln office (Nebraska State Office Building, 4th Floor, 301 Centennial Mall South, P.O. Box 97676, Lincoln, Nebraska, 68509-4676) within 30 days of the date of this Order and be accompanied by a filing fee of \$10.

On February 5, 2018, a copy of this Order was posted on the Department's website; mailed to Dean Jochem, Chairman, Board of Directors, MNNRD, 303 East Highway 20, Valentine, Nebraska, 69201, and the Department of Natural Resources field offices; and electronically mailed to Mike Murphy, General Manager, MNNRD.