

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

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

Background

1. On November 3, 2004, the Nebraska Department of Natural Resources issued an order of final determination that the hydrologically connected ground water and surface water within the following portions of the Upper Niobrara White Natural Resources District (District) were fully appropriated: the Hat Creek Basin, the White River Basin, the portion of the Niobrara River Basin above the Mirage Flats Diversion Dam, the Box Butte Creek Subbasin, and the Snake Creek Subbasin.
2. On January 25, 2008, the Department issued an order of final determination that the hydrologically connected ground water and surface water within the Lower Niobrara Basin below the Mirage Flats Diversion Dam was fully appropriated. This determination included lands within the District, in Box Butte, Dawes, and Sheridan counties, which had not previously been determined to be fully appropriated in 2004.
3. The Department and the District consulted and collaborated on the development of the integrated management plan (IMP) with the District's Citizen Advisory Committee. Through this process of consultation and collaboration, the Department and the District jointly developed an IMP in accordance with the Groundwater Management and Protection Act (the Act), particularly Neb. Rev. Stat. §§ 46-715, 46-716, 46-717, 46-718, and 46-720.
4. The Department consulted with the Nebraska Game and Parks Commission (Commission), in accordance with Neb. Rev. Stat. § 37-807. As stated in the Commission's response letter received on August 27, 2008, the Commission determined that the adoption of the proposed IMP would have no adverse effect on threatened and endangered species or their habitat.
5. The Department and the District reached agreement on (a) the proposed goals and objectives of the IMP, (b) the proposed geographic area to be subject to controls, and (c) the surface water and ground water controls and incentive programs that are proposed for adoption and implementation.
6. On March 18, 2009, pursuant to notices duly published in accordance with Neb. Rev. Stat. § 46-743, the District and the Department jointly held a public hearing on the proposed IMP and associated controls.
7. After considering the comments made at the March 18, 2009, public hearing and the written comments and other information received, the Department and the District jointly determined to adopt and implement the proposed IMP and the surface water controls, ground water controls, and incentive programs proposed in the IMP.

## Controls Adopted

1. The surface water controls included in the IMP are as follows:
  - A. The Department's moratorium on the issuance of new surface water permits on the Niobrara River upstream of the head gate of the Mirage Flats Canal, made formal by Order of the Director dated November 30, 1990, will be continued.
  - B. The Department's moratorium on the issuance of new surface water permits on the Niobrara River downstream of the head gate of the Mirage Flats Canal to the border between the District and the Middle Niobrara Natural Resources District, made formal by an Order of the Director which became effective on July 6, 2007, will be continued.
  - C. The Department has investigated the appropriations in the portion of the Niobrara River between the Cherry County/Sheridan County border and the Mirage Flats Irrigation District and in the White River Basin and the Hat Creek Basin to determine up-to-date records of the number and location of acres irrigated with surface water appropriations and to cancel appropriations that were not being used. The Department will use these updated records to monitor surface water use and to recognize when unauthorized use is occurring. The Department will also be proactive in initiating subsequent investigations whenever information available to the Department indicates that water rights are not being used and for which no known sufficient cause for such non-use exists.
  - D. All proposed transfers of surface water rights shall be subject to the criteria for such transfers found in Neb. Rev. Stat. §§ 46-290 to 46-294.04 and related Department rules or the criteria found in Neb. Rev. Stat. §§ 46-2,120 to 46-2,130 and related Department rules.
  - E. The Department will continue to administer surface water rights according to state law and monitor use of surface water to make sure that unauthorized irrigation is not occurring.
  - F. At this time, the Department shall not require that surface water appropriators apply or utilize additional conservation measures or that they be subject to other new restrictions on surface water use. The Department reserves the right to request, in the future, that the IMP be modified to require any such additional measures. In the event that such a request is made, the Department shall "allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty (180) days, unless extended by the Department, to identify the conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions" [Neb. Rev. Stat. § 46-716(2)].
  - G. Transfers of individual surface water appropriations off of land that is also served by ground water will not be permitted if such

transfer will result in an increase in consumptive use and/or irrigated acres, unless the ground water certified irrigated acres are decertified with the District, an offset is provided for the new acres to be irrigated, or the ground water use is also transferred to the same land to which the surface water appropriation is being transferred.

- H. The Department will encourage surface water appropriators to keep stream channels clear of vegetation, debris, and other material that may impede streamflow in those channels. The Department will investigate possible incentive programs to assist surface water users in this effort.

#### Order

It is therefore ORDERED that the integrated management plan for the Upper Niobrara White Natural Resources District and the surface water controls in the IMP are hereby adopted by the Department and will become effective on June 17, 2009.

DEPARTMENT OF NATURAL RESOURCES

May 14, 2009

  
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Brian P. Dunnigan, 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 Nebraska Administrative Procedures Act (Neb. Rev. Stat. §§ 84-901 et. seq.) and the Department's Rules of Practice and Procedure (454 N.A.C. Chapter 007). The request must be received by the Department at its Lincoln office (301 Centennial Mall South, 4<sup>th</sup> Floor State Office Building, Lincoln, NE 68509-4676) within 30 days of the date of this Order and be accompanied by a filing fee of \$10.

On May 14, 2009, a copy of this Order was posted on the Department's website and mailed to Lyndon Vogt, General Manager, Upper Niobrara White Natural Resources District, 430 East Second Street, Chadron, Nebraska 69337, and to the Department of Natural Resources field offices.