

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the	)	ORDER
Lower Republican Natural	)	ADOPTING INTEGRATED
Resources District Integrated	)	MANAGEMENT PLAN AND
Management Plan.	)	ASSOCIATED SURFACE WATER CONTROLS

This matter came on for consideration before the Director of the Department of Natural Resources (the "Department") pursuant to Neb. Rev. Stat. §§ 46-715, 46-716, 46-717, 46-718, and 46-720 (Reissue 2004), which require the affected natural resources district and the Department to jointly develop an integrated management plan for a fully appropriated river basin, subbasin, or reach, and associated controls.

The Director FINDS:

1. On July 16, 2004, the Department published a Notice that the Lower Republican Natural Resources District (the "LRNRD") was fully appropriated (the "Notice.")
2. As a consequence of the Notice, the Department and the LRNRD were required to jointly develop an integrated management plan for the fully appropriated river basin, subbasin, or reach. The Department and the LRNRD duly considered the relevant scientific data and other information as set forth in Department and LRNRD rules and regulations, and also the results of consultation and public comment as required by Neb. Rev. Stat. § 46-717 (Reissue 2004).
3. The LRNRD and the Department engaged in joint development of the integrated management plan, and reached agreement on (a) the proposed goals and objectives of the plan for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to controls, and (c) the surface water and ground water controls and any incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach.
4. On April 7, 2005 and on May 19, 2005, pursuant to notices duly published pursuant to Neb. Rev. Stat. § 46-743 (Reissue 2004), public hearings on the proposed integrated management plan and associated controls were held.
5. Subsequent to the public hearings, the Department and the LRNRD jointly determined to implement the integrated management plan, and to adopt and implement the surface water and ground water controls and incentive programs proposed in the integrated management plan.

6. The surface water controls included in the joint integrated management plan are as follows:
  - A. The Department will do the following additional surface water administration as required by the Settlement Agreement approved by the United States Supreme Court in *Kansas v. Nebraska*, No. 126 Original (the "Settlement"):
    1. To provide for regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam, Nebraska will recognize a priority date of February 26, 1948 for Kansas Bostwick Irrigation District, the same priority date as the priority date held by the Nebraska Bostwick Irrigation District's Courtland Canal water right.
    2. When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in Harlan County Lake Operation Consensus Plan attached as Appendix K to the Settlement Agreement, Nebraska will close junior, and require compliance with senior, natural flow diversions of surface water between Harlan County Lake and Guide Rock.
    3. Nebraska will protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
    4. Nebraska, in concert with Kansas and in collaboration with the United States, and in the manner described in Appendix L to the Settlement Agreement, will take actions to minimize the bypass flows at Superior-Courtland Diversion Dam.
  - B. Metering of all surface water diversions at the point of diversion from the stream will continue to be required. For surface water canals that are not part of a Bureau of Reclamation project, farm turnouts will be required to install and maintain a Department approved measuring device by the start of the 2005 irrigation season. All measuring devices shall meet the Department standards for installation, accuracy and maintenance. All appropriators will be monitored to ensure that neither the rate of diversion nor the annual amount diverted exceeds that allowed by the applicable permit or by statute.

- C. The Department's moratorium on the issuance of new surface water permits was made formal by order of the Director dated July 14, 2004. Exceptions may be granted by the Department to the extent permitted by Neb. Rev. Stat. § 46-714(3) (Reissue 2004) or to allow issuance of permits for existing reservoirs that currently do not now have such permits. Such reservoirs are limited to those identified through the Settlement Agreement required inventory of reservoirs with over 15 acre-feet capacity.
  - D. All proposed transfers of surface water rights shall be subject to the criteria for such transfers as found in Neb. Rev. Stat. §§ 46-290 to 46-294.04 (Reissue 2004) and related Department rules or the criteria found in Neb. Rev. Stat. §§ 46-2,120 to 46-2,130 (Reissue 2004) and related Department rules.
  - E. The Department completed the adjudication process within the LRNRD upstream of Guide Rock for the individual appropriators in the Republican River Basin in 2004. The results of that adjudication provided up-to-date records of the number and location of acres irrigated with surface water by such appropriators. Those records will be used by the Department to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The Department shall also be proactive in initiating subsequent adjudications whenever information available to the Department indicates the need for adjudication as outlined by state statutes.
  - F. At this time, due to the already limited availability of surface water supplies, 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. However, the Department reserves the right to request, in the future, that this integrated management plan be modified to require any such additional measures. In the event 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 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) (Reissue 2004)).
7. On May 19, 2005, the LRNRD adopted the Integrated Management Plan including the ground water rules and regulations contained therein.

It is therefore CONCLUDED that the Department of Natural Resources should adopt the integrated management plan and associated surface water controls included in the integrated management plan.

It is therefore ORDERED that the integrated management plan for the Lower Republican Natural Resources District, and associated surface water controls included therein, as adopted by the Lower Republican Natural Resources District on May 19, 2005, are hereby adopted by the Department.

This Order shall become effective on June 24, 2005, pursuant to Neb. Rev. Stat. § 46-744 (Reissue 2004).

DEPARTMENT OF NATURAL RESOURCES

May 23, 2005

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Roger K. Patterson, Director