

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the)	ORDER
Middle 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 Middle Republican Natural Resources District (the "MRNRD") was fully appropriated (the "Notice.")
2. As a consequence of the Notice, the Department and the MRNRD were required to jointly develop an integrated management plan for the fully appropriated river basin, subbasin, or reach. The Department and the MRNRD duly considered the relevant scientific data and other information as set forth in Department and MRNRD rules and regulations, and also the results of consultation and public comment as required by Neb. Rev. Stat. § 46-717 (Reissue 2004).
3. The MRNRD 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 October 6, 2004, pursuant to a notice duly published pursuant to Neb. Rev. Stat. § 46-743 (Reissue 2004), a public hearing on the proposed integrated management plan and associated controls was held.
5. Subsequent to the public hearing, the Department and the MRNRD jointly determined to implement the integrated management plan, with modifications, 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 also will be required to be metered by the start of the 2005 irrigation season. All meters shall have a totalizer and shall meet Department standards for installation, accuracy and maintenance. All appropriators will be monitored closely 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 15, 2004 and will be continued. Exceptions may be granted 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 may be identified through the Settlement required inventory of over 15 acre-feet reservoirs or otherwise.
 - D. All proposed transfers of surface water rights shall be subject to the revised criteria for such transfers as found in Neb. Rev. Stat. § 46-290 to 46-294.04 (Reissue 2004) or the criteria found in Neb. Rev. Stat. § 46-2,120 to 46-2,130 (Reissue 2004).
 - E. Within the MRNRD the Department completed the adjudication process for the individual appropriators in the Republican River Basin in 2004. The results of that adjudication provide 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 also will be proactive in initiating subsequent adjudications whenever information available to the Department indicates that there are water rights that are not being used and for which no known sufficient cause for such non-use exists.
 - F. At this time, due to the already limited availability of surface water supplies, the Department will 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 will "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 November 9, 2004, the MRNRD issued an Order adopting the integrated management plan and the ground water related controls included in the plan (the "MRNRD Order"). The MRNRD Order included a geographic and stratigraphic definition of the designated integrated management subarea,

and included the integrated management plan as an attachment.

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 Middle Republican Natural Resources District, and associated surface water controls included therein, as adopted by the Middle Republican Natural Resources District on November 9, 2004, are hereby adopted by the Department.

This Order shall become effective on January 18, 2005, pursuant to Neb. Rev. Stat. § 46-744 (Reissue 2004).

DEPARTMENT OF NATURAL RESOURCES

December 16, 2004

Roger K. Patterson, Director