

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER ADOPTING SOUTH PLATTE NATURAL RESOURCES DISTRICT INTEGRATED MANAGEMENT
PLAN AND ASSOCIATED SURFACE WATER CONTROLS

Background

1. On September 15, 2004, the Nebraska Department of Natural Resources (Department) designated a portion of the South Platte Natural Resources District (District) as overappropriated.
2. On September 30, 2004, the Department issued an order of final determination that the hydrologically connected ground water and surface water within the entire geographic area of the District was fully appropriated.
3. The Department and the District consulted and collaborated on the development of the integrated management plan (IMP) with a group of stakeholders. The stakeholder group consisted of the statutorily required entities and other entities which were identified by the District and the Department to be included in the group. Through this process of consultation and collaboration the Department and the District jointly developed an IMP in accordance with the Ground Water Management and Protection Act (the Act), particularly Neb. Rev. Stat. §§ 46-715, 46-716, 46-717, 46-718, and 46-720.
4. The District and the Department reached agreement on (a) the proposed goals and the objectives of the IMP, (b) the proposed geographic area to be subject to the controls, and (c) the surface water and ground water controls and incentive programs that are proposed for adoption and implementation.
5. After considering the comments made at the March 13, 2008, public hearing and other information and written comments received, the Department and the District jointly determined to amend the proposed IMP. The nature of the proposed amendments required that a second public hearing be held on the proposed amendments to the proposed IMP.
6. On June 10, 2008, 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 amendments to the proposed IMP.
7. Following the hearing on June 10, 2008, the Department and the District jointly decided to adopt and implement the proposed IMP and the surface water controls, ground water controls, and incentive programs proposed in the IMP.
8. The basin-wide plan has now been completed and agreed upon by all Platte River Natural Resources Districts in the overappropriated area. The IMP is required to be consistent with this basin-wide plan. The

agreed upon basin-wide plan has necessitated changes to Rule 9 of the IMP.

10. On June 16, 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 amendments to the proposed IMP.
11. 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 11, 2009, the Commission determined that the adoption of the proposed IMP would have no adverse effect on threatened and endangered species or their habitat.
12. Following the hearing on June 16, 2009, the Department and the District jointly decided to adopt and implement the Amended Rule 9 of the IMP and the surface water controls, ground water controls, and incentive programs proposed in the Amended Rule 9 of the IMP without modifications.

Controls Adopted

1. The surface water controls included in Rule 9 of the IMP are as follows:
 - A. The Department's moratorium on the issuance of new surface water permits on the South Platte River and the Lodgepole Creek, made formal by Order of the Director dated July 14, 2004, will be continued.
 - B. 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. §§ 46-2,2120 to 46-2,130 and related Department rules.
 - C. The Department will continue to administer surface water rights according to state law, monitor use of surface water, and make sure that unauthorized irrigation is not occurring.
 - D. Measurement of all surface water diversions at the point of diversion from the stream will be required. By the start of the 2010 irrigation season, all farm turnouts on surface water canals will be required to have a Department-approved measuring device. All measuring devices shall be installed and maintained to meet 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.
 - E. At this time, the Department shall not require that surface water appropriators apply or use 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, however, 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 and 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, as stated in Neb. Rev. Stat. § 46-716(2).

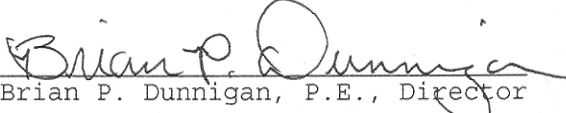
- F. The Department shall notify the District of any transfer or order of cancellation of an appropriation issued pursuant to Neb. Rev. Stat. § 46-229.04(5) or of any assignment of the right to use that portion of an appropriation which was relinquished to other land within an irrigation district pursuant to Neb. Rev. Stat. § 46-229.04(5).

Order

It is therefore ORDERED that the integrated management plan for the South Platte Natural Resources District and the surface water controls in the plan are hereby adopted by the Department and will become effective on September 14, 2009.

DEPARTMENT OF NATURAL RESOURCES

August 13, 2009


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, 4th Floor State Office Building, Lincoln, NE 68509-4676) within 15 days of the date of this Order and be accompanied by a filing fee of \$10.00.

On August 13, 2009, a copy of this Order was posted on the Department's website and mailed to Rod Horn, General Manager, South Platte Natural Resources District, 551 Parkland Drive, P.O. Box 294, Sidney, Nebraska 69162-0294, and to the Department of Natural Resources field offices.