

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the) ORDER
Upper 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 Upper Republican Natural Resources District (the "URNRD") was fully appropriated (the "Notice.")
2. As a consequence of the Notice, the Department and the URNRD were required to jointly develop an integrated management plan for the fully appropriated river basin, subbasin, or reach. The Department and the URNRD duly considered the relevant scientific data and other information as set forth in Department and URNRD rules and regulations, and also the results of consultation and public comment as required by Neb. Rev. Stat. § 46-717 (Reissue 2004).
3. The URNRD 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 March 3, 2005 and on April 28, 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 URNRD 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 may be 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 for the individual appropriators in the Republican River Basin upstream of Guide Rock 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 will 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 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 May 3, 2005, the URNRD 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 Upper Republican Natural Resources District, and associated surface water controls included therein, as adopted by the Upper Republican Natural Resources District on May 3, 2005, are hereby adopted by the Department.

This Order shall become effective on June 2, 2005, pursuant to Neb. Rev. Stat. § 46-744 (Reissue 2004).

DEPARTMENT OF NATURAL RESOURCES

May 9, 2005

Roger K. Patterson, Director

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

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

Background

1. The Department of Natural Resources (DNR or Department) and the Upper Republican Natural Resources District (URNRD or District) jointly adopted an integrated management plan (IMP or Plan) in 2005 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.
2. In 2007, the Department and the District reviewed the Plan and decided that it needed to be changed to comply with changes in the Act and to better reflect current hydrologic conditions in the Republican Basin. As a part of their review, DNR and the URNRD duly considered the relevant scientific data and other information as required by the Department's rules and regulations, and also the results of consultation and public comment as required by Neb. Rev. Stat. § 46-717.
3. The URNRD and DNR 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, (c) the surface water controls and the ground water controls, which are adopted and implemented by the URNRD through the URNRD Ground Water Management Area Rules and Regulations, (d) the incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach, and (e) compliance standards to assess the actions of the URNRD with respect to the State's ability to maintain compliance with the Final Settlement Stipulation and the Republican River Compact.
4. On November 1, 2007, pursuant to notices duly published pursuant to Neb. Rev. Stat. § 46-743, a public hearing on the proposed revisions to the Plan, the compliance standards, and associated controls was held.
5. After considering the comments made at the public hearing and other information and written comments received, the Department and the URNRD jointly determined to revise the Plan as proposed, including the compliance standards, and to adopt and implement the surface water controls, ground water controls, through the URNRD Ground Water Management Area Rules and Regulations, and incentive programs proposed in the Plan.
6. On February 12, 2008, the URNRD adopted the proposed Plan and affirmed continued use of the ground water controls necessary for meeting the compliance standard identified in the Plan.

Controls Adopted

1. The surface water controls included in the joint integrated management plan are:
 - A. The Department will administer surface water in the Republican Basin as required by the Settlement Agreement approved by the United States Supreme Court in *Kansas v. Nebraska*, No. 126 Original (the "Settlement") including:
 - (1) Regulate the natural flow between Harlan County Lake and Superior-Courtland Diversion Dam by recognizing 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) Close junior natural flow surface water appropriations between Harlan County Lake and Guide Rock 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. The Bureau of Reclamation will determine the amount of water supply using the methodology described in Harlan County Lake Operation Consensus Plan attached as Appendix K to the Settlement Agreement.
 - (3) Ensure that senior natural flow surface water appropriators are complying with the terms of their permits and all orders of the Department.
 - (4) Protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
 - (5) Take actions to minimize the bypass flows at Superior-Courtland Diversion Dam Nebraska, in concert with Kansas and in collaboration with the United States, and in the manner described in Appendix L to the Settlement Agreement.
 - B. The Department will continue to require all surface water appropriations to install flow meters at the point of diversion from the stream and keep the meters in good working order. 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. 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.

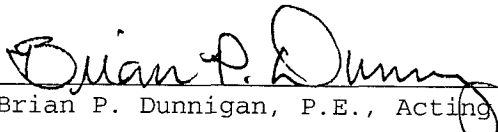
- C. The Department will continue the moratorium on the issuance of new surface water permits made formal by order of the Director dated July 14, 2004. Exceptions may be granted by the Department to the extent permitted by Neb. Rev. Stat. § 46-714(3) or to allow issuance of permits for existing reservoirs that currently do not now have permits. Only the reservoirs identified through the Settlement Agreement required inventory of reservoirs with over 15 acre-feet capacity will be granted a permit.
- D. The Department will carefully adhere to the criteria for surface water transfers found in Neb. Rev. Stat. §§ 46-290 to 46-294.04 and §§ 46-2,120 to 46-2,130 and related Department rules.
- E. The Department completed the adjudication process within the URNRD 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 will 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 may modify the Plan in the future to require such additional measures. If a modification is made, Neb. Rev. Stat. § 46-716(2) requires the Department to "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."

Order

It is therefore ORDERED that the Integrated Management Plan for the Upper Republican Natural Resources District adopted by the URNRD on February 12, 2008, and the surface water controls in the Plan are hereby adopted by the Department.

DEPARTMENT OF NATURAL RESOURCES

April 3, 2008



Brian P. Dunnigan, P.E., Acting 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., Sections 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 the Approval and be accompanied by a filing fee of \$10.

On April 3, 2008, a copy of this Order was posted on the Department's website and mailed to Jasper Fanning, General Manager Upper Republican Natural Resource District, 135 West 5th St., Imperial, Nebraska 689033 and the Department of Natural Resources field offices.

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER ADOPTING LOWER REPUBLICAN NATURAL RESOURCES DISTRICT
INTEGRATED MANAGEMENT PLAN AND ASSOCIATED SURFACE WATER
CONTROLS

Background

1. The Department of Natural Resources (DNR or Department) and the Lower Republican Natural Resources District (LRNRD or District) jointly adopted an integrated management plan (IMP) in 2005 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.
2. In 2008, the Department and the District reviewed the IMP and modified it to comply with changes in the Act and to better reflect current hydrologic conditions in the Republican River Basin. As a part of their modifications, DNR and the LRNRD duly considered the relevant scientific data and other information as required by the Department's rules and regulations, and also the results of consultation and public comment in accordance with the Act, particularly *Neb. Rev. Stat.* § 46-717.
3. In 2009, the Department and the District reviewed the IMP and decided that it needed to be updated to reflect concerns raised during the 2008 Arbitration among the states of Nebraska, Colorado and Kansas. As a part of their review, DNR and the LRNRD duly considered the relevant scientific data and other information as required by the Department's rules and regulations, and also the results of consultation and public comment in accordance with the Act, particularly *Neb. Rev. Stat.* § 46-717.
4. On May 20, 2011, the LRNRD and DNR reached agreement on (a) the proposed goals and objectives of the IMP for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to the controls, (c) the surface water controls which are adopted and implemented by the Department and the ground water controls, which are adopted and implemented by the LRNRD through the LRNRD Ground Water Management Area Rules and Regulations, (d) the incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach, and (e) compliance standards to assess the actions of the LRNRD with respect to the state's ability to maintain compliance with the Final Settlement Stipulation and the Republican River Compact.
5. Pursuant to *Neb. Rev. Stat.* § 46-743, the LRNRD and DNR published joint notice of hearing for the agreed upon proposed revisions to the IMP.
6. On June 16, 2011, a public hearing was held on the proposed revisions to the IMP, the compliance standards, associated controls, and management areas.

7. After considering the comments made at the public hearing and other information and written comments received, the Department and the LRNRD jointly determined to implement the proposed revisions, with modifications, including the compliance standards, and to adopt and implement the surface water controls as proposed by the Department prior to the hearings and the ground water controls, through the LRNRD Ground Water Management Act Rules and Regulations, and incentive programs proposed in the IMP.
8. On August 11, 2011, the LRNRD adopted the proposed IMP and affirmed continued use of the ground water controls necessary for meeting the compliance standard identified in the IMP.
9. On August 15, 2011, the Department sent the LRNRD a letter agreeing to adopt the proposed IMP and surface water controls.
10. 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 24, 2011, the Commission determined that the adoption of the proposed IMP would have no adverse effect on threatened and endangered species or their habitat.

Controls Adopted

The following controls will remain effective within the LRNRD Integrated Management Plan:

- A. The DNR will do the following additional surface water administration as required by the Settlement Agreement:
 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 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, will take actions to minimize the bypass flows at Superior-Courtland Diversion Dam in concert with Kansas and in collaboration with the United States, and in the manner described in Appendix L to the Settlement Agreement.
- 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 have been required to install and maintain a DNR approved measuring device by the start of the 2005 irrigation season. All measuring devices shall meet the DNR 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 DNR'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 DNR to the extent permitted by *Neb. Rev. Stat.* § 46-714(3) 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 and related DNR rules or the criteria found in *Neb. Rev. Stat.* §§ 46-2,120 to 46-2,130 and related DNR rules.
 - E. The DNR completed adjudication of individual appropriators in the Republican River Basin upstream of Guide Rock 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 shall be used by the DNR to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The DNR will also be proactive in initiating subsequent adjudications whenever information available to the DNR indicates the need for adjudication as outlined by state statutes.

Additionally, the new surface water controls included in the joint IMP are:

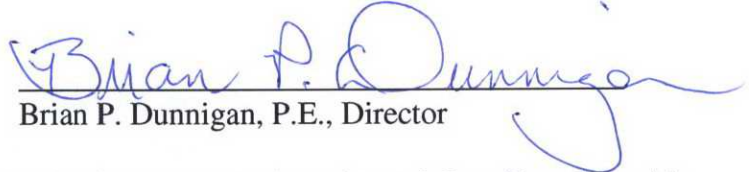
- F. During Compact Call Years, as determined from the procedures and analysis set forth in Section IX of the LRNRD Integrated Management Plan, DNR will regulate and administer surface water in the basin as necessary to ensure Compact compliance. During Compact Call Years, DNR will issue a "Compact Call" on the Republican River at Hardy or Guide Rock to carry out administration for the Compact in a manner consistent with the doctrine of prior appropriation. A "Compact Call" will result in DNR issuing closing notices on all natural flow and storage permits in the basin until such time as DNR, in consultation with the LRNRD and other basin NRDs, determines that yearly administration is no longer needed to ensure Compact compliance, pursuant to Section IX of the LRNRD Integrated Management Plan.

Order

It is therefore ORDERED that the Integrated Management Plan for the Lower Republican Natural Resources District jointly adopted by the LRNRD, and the surface water controls contained in the Integrated Management Plan of the Lower Republican Natural Resources District are hereby adopted by the Department and will become effective on October 1, 2011.

DEPARTMENT OF NATURAL RESOURCES

August 25, 2011


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 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, PO Box 94676, Lincoln, NE 68509-4676) within 15 days of the date of the Approval and be accompanied by a filing fee of \$10.

On August 25, 2011, a copy of this Order was posted on the Department's website and mailed to Mike Clements, General Manager, Lower Republican Natural Resources District, 30 N. John Street, PO Box 618, Alma, Nebraska 68920, and the Department of Natural Resources field offices.