

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

THE STATE OF NEBRASKA, ex rel.	)	Case No. _____
FRENCHMAN CAMBRIDGE IRRIGATION	)	
IRRIGATION DISTRICT,	)	
BOSTWICK IRRIGATION DISTRICT,	)	
FRENCHMAN VALLEY	)	
IRRIGATION DISTRICT	)	
H&RW IRRIGATION DISTRICT,	)	
PIONEER IRRIGATION DISTRICT,	)	
	)	
Relators,	)	
	)	
vs.	)	<b>MOTION FOR WRIT OF MANDAMUS</b>
	)	
NEBRASKA DEPARTMENT OF	)	
NATURAL RESOURCES,	)	
	)	
Respondents.	)	

COMES NOW the Relators, Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District, and by and through its attorneys alleges:

1. Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District and Pioneer Irrigation District are irrigations districts organized and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128
2. Under Neb. Rev. Stat. § 61-206, the Department of Natural Resources (DNR) "is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. . . . It may have hearings on complaints, petitions, or applications in connection with any of such matters."

No. 126, Orig.  
Ex. K73

KS002540

3. On or about September 20, 2010, the DNR issued orders adopting the Upper Republican Natural Resources District Integrated Management Plan ("Upper Republican IMP") and Associated Surface Water Controls, and the Middle Republican Natural Resources District Integrated Management Plan ("Middle Republican IMP") and Associated Surface Water Controls.
4. On October 18, 2010, pursuant to the DNR's September 20, 2010 Order, Realtors filed a Petition with the DNR in which they requested a hearing in front of the DNR for a determination on the statutory authority of the DNR to administer the surface water controls adopted in its September 20, 2010 Orders, in the case captioned, *In the Matter of the September 20, 2010 Orders of the Department Adopting Surface Water Controls*, Before the Nebraska Department of Natural Resources, Case No. 008-10CC (hereinafter "First Petition").
5. On November 24, 2010, the Middle Republican Natural Resources District ("MRNRD") and the Upper Republican Natural Resources District ("URNRD") filed Petitions for Intervention requesting that they be allowed to intervene in the proceeding and be aligned with the DNR.
6. On December 17, 2010, the DNR filed a Motion to Dismiss Realtor's Petition.
7. On March 15, 2011, the United States Department of the Interior, Bureau of Reclamations, filed a Petition for Intervention requesting that it be allowed to intervene in the proceeding.
8. On August 9, 2011, Realtors filed a Motion to Amend their First Petition.

9. On or about August 25, 2011, the DNR issued an order adopting the Lower Republican Natural Resources District Integrated Management Plan ("Lower Republican IMP") and Associated Surface Water Controls.
10. On September 7, 2011, pursuant to the DNR's August 25, 2011 Order, Realtors filed a Petition with the DNR in which they requested a hearing in front of the DNR for a determination on the statutory authority of the DNR to administer the surface water controls adopted in its August 25, 2011 Orders (hereinafter "Second Petition").
11. On October 7, 2011, Realtors and the DNR had a hearing in front of the DNR on Realtors' Motion to Amend their First Petition. Present at the hearing were Ron Theis, the DNR Hearing Officer assigned to the case, and Thomas O'Connor, attorney for the DNR.
12. After the October 7, 2011 hearing, Realtors amended their First and Second Petitions and both Petitions were filed with the DNR on October 28, 2011. On the same day, Relators also filed a Motion to Consolidate the two cases.
13. Since no action had been taken by the DNR since the October 7, 2011 hearing, on January 12, 2012, Relators filed a Motion Requesting a Telephonic Status Conference within 30 days of the Motion.
14. In response to the Motion, on or about February 8, 2012, the attorney for the Relators received a telephone call from the hearing officer, Ron Theis, in which he stated that he and the Director of the DNR was working on an Order and it would be out shortly.
15. As of the date of this Petition, the Realtors have received no decisions or orders from the DNR on the Realtors' Petitions, on any of the pending Motions to Intervene, or on the DNR's Motion to Dismiss.

16. Realtors' First Petition has been on file with the Court for over a year and half and their Second Petition for nine months without any action being taken by the DNR.
17. Realtors request that this Court order the DNR to address the Relators' Petitions in a reasonable and timely manner. Realtors are not requesting that this Court issue any order on the merits of their Petitions, only that the DNR be ordered to complete the ministerial duty of timely managing Petitioners cases that are currently pending before DNR.
18. Other than the relief sought herein, Relators have no adequate remedy available to them in the ordinary course of law.
19. In support of its Motion, Relators offer the affidavit of their attorney Katherine S. Vogel who is the attorney of records for the Relators in the above-mentioned cases and has filed or received the above-mentioned pleadings on behalf of the Relators a copy of which is attached hereto as Exhibit A.

WHEREFORE,

1. Relators pray that the Court issue a peremptory writ of mandamus commanding Respondent, the Nebraska Department of Natural Resources, to immediately manage and resolve cases pending before the agency in a timely manner, and that it then and there return the writ with it certification that it has complied therewith;

IN THE ALTERNATIVE,

2. Relators pray that the Court issue an alternative writ of mandamus commanding Respondent to perform such duties immediately upon receipt of the writ or show cause before the court at a specified time and place why they have not done so.

RELATOR FURTHER MOVES THE COURT FOR AN ORDER AS FOLLOWS:

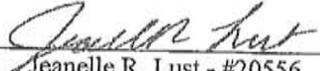
3. Awarding Relator its costs and attorney's fees pursuant to Neb. Rev. Stat. § 25-2165; and
4. For such other and further and different relief as justice and equity may require.

Dated this 8 day of June, 2012.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District,

Relators.

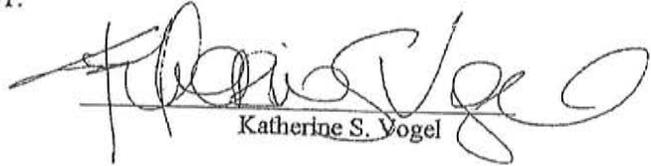
By:   
Jeanelle R. Lust - #20556  
Katherine S. Vogel - #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502  
(402) 475-7011



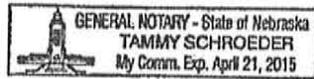
- Republican Natural Resources District Integrated Management Plan ("Middle Republican IMP") and Associated Surface Water Controls.
4. On October 18, 2010, she filed the Realtors' Petition with the DNR in which they requested a hearing in front of the DNR for a determination on the statutory authority of the DNR to administer the surface water controls adopted in its September 20, 2010 Orders, in the case captioned, *In the Matter of the September 20, 2010 Orders of the Department Adopting Surface Water Controls*, Before the Nebraska Department of Natural Resources, Case No. 008-10CC (hereinafter "First Petition").
  5. On November 24, 2010, the Middle Republican Natural Resources District ("MRNRD") and the Upper Republican Natural Resources District ("URNRD") filed Petitions for Intervention requesting that they be allowed to intervene in the proceeding and be aligned with the DNR.
  6. On December 17, 2010, the DNR filed a Motion to Dismiss Realtor's Petition.
  7. On March 15, 2011, the United States Department of the Interior, Bureau of Reclamations, filed a Petition for Intervention requesting that it be allowed to intervene in the proceeding.
  8. On August 9, 2011, she filed with the DNR the Realtors' Motion to Amend their First Petition.
  9. On or about August 25, 2011, the DNR issued an order adopting the Lower Republican Natural Resources District Integrated Management Plan ("Lower Republican IMP") and Associated Surface Water Controls.

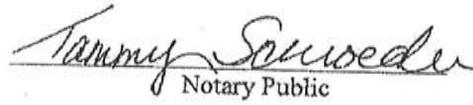
10. On September 7, 2011, pursuant to the DNR's August 25, 2011 Order, she filed the Realtors Petition with the DNR in which they requested a hearing in front of the DNR for a determination on the statutory authority of the DNR to administer the surface water controls adopted in its August 25, 2011 Orders (hereinafter "Second Petition").
11. On October 7, 2011, she attended a hearing on behalf of the Realtors on Realtors' Motion to Amend their First Petition. Present at the hearing were Ron Theis, the DNR Hearing Officer assigned to the case, and Thomas O'Connor, attorney for the DNR.
12. After the October 7, 2011 hearing, she filed amended Petitions for the Realtors and both Amended Petitions were filed with the DNR on October 28, 2011. On the same day, she also filed a Motion to Consolidate the two cases on behalf of the Realtors.
13. Since no action had been taken by the DNR since the October 7, 2011 hearing, on January 12, 2012, on behalf of the Relators, she filed a Motion Requesting a Telephonic Status Conference within 30 days of the Motion.
14. In response to the Motion, on or about February 8, 2012, she received a telephone call from the hearing officer, Ron Theis, in which he stated that he and the Director of the DNR was working on an Order and it would be out shortly, therefore, a status conference hearing was unnecessary.
15. As of the date of this affidavit, she has not received any decisions or orders from the DNR on the Realtors' Petitions, on any of the pending Motions to Intervene, or on the DNR's Motion to Dismiss.

FURTHER AFFIANT SAYETH NOT.

  
Katherine S. Vogel

SUBSCRIBED AND SWORN to before me this 8 day of June, 2012.



  
Notary Public



IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

THE STATE OF NEBRASKA, ex rel. )  
FRENCHMAN CAMBRIDGE IRRIGATION )  
IRRIGATION DISTRICT, )  
BOSTWICK IRRIGATION DISTRICT, )  
FRENCHMAN VALLEY )  
IRRIGATION DISTRICT )  
H&RW IRRIGATION DISTRICT, )  
PIONEER IRRIGATION DISTRICT, )  
Relators, )  
vs. )  
NEBRASKA DEPARTMENT OF )  
NATURAL RESOURCES, )  
Respondents. )

Case No. \_\_\_\_\_

**PETITION FOR MANDAMUS  
AND PRAECIPE**

COMES NOW the Relators, Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District, and by and through its attorneys alleges:

1. Frenchman Cambridge Irrigation District is an irrigation district organized on April 18, 1946, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Cambridge, Nebraska.
2. Bostwick Irrigation District is an irrigation district organized on April 12, 1948, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Red Cloud, Nebraska.
3. Frenchman Valley Irrigation District is an irrigation district organized on February 26, 1912, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.

4. H&RW Irrigation District is an irrigation district organized on November 1, 1955, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.
5. Pioneer Irrigation District is an irrigation district organized and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Haigler, Nebraska.
6. The Department of Natural Resources (DNR) is the official state agency for water resources regulation and development, with general authority over all matters pertaining to water rights. Under Neb. Rev. Stat. § 61-206, the DNR "is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. . . . It may have hearings on complaints, petitions, or applications in connection with any of such matters."
7. On or about September 20, 2010, the DNR issued orders adopting the Upper Republican Natural Resources District Integrated Management Plan ("Upper Republican IMP") and Associated Surface Water Controls, and the Middle Republican Natural Resources District Integrated Management Plan ("Middle Republican IMP") and Associated Surface Water Controls.
8. On October 18, 2010, pursuant to the DNR's September 20, 2010 Order, Realtors filed a Petition with the DNR in which they requested a hearing in front of the DNR for a determination on the statutory authority of the DNR to administer the surface water controls adopted in its September 20, 2010 Orders, in the case captioned, *In the Matter of the September 20, 2010 Orders of the Department Adopting Surface Water Controls*,

Before the Nebraska Department of Natural Resources, Case No. 008-10CC (hereinafter "First Petition").

9. On November 24, 2010, the Middle Republican Natural Resources District ("MRNRD") and the Upper Republican Natural Resources District ("URNRD") filed Petitions for Intervention requesting that they be allowed to intervene in the proceeding and be aligned with the DNR.
10. On December 17, 2010, the DNR filed a Motion to Dismiss Realtor's Petition.
11. On March 15, 2011, the United States Department of the Interior, Bureau of Reclamations, filed a Petition for Intervention requesting that it be allowed to intervene in the proceeding.
12. On August 9, 2011, Realtors filed a Motion to Amend their First Petition.
13. On or about August 25, 2011, the DNR issued an order adopting the Lower Republican Natural Resources District Integrated Management Plan ("Lower Republican IMP") and Associated Surface Water Controls.
14. On September 7, 2011, pursuant to the DNR's August 25, 2011 Order, Realtors filed a Petition with the DNR in which they requested a hearing in front of the DNR for a determination on the statutory authority of the DNR to administer the surface water controls adopted in its August 25, 2011 Orders (hereinafter "Second Petition").
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16. After the October 7, 2011 hearing, Realtors amended their First and Second Petitions and both Petitions were filed with the DNR on October 28, 2011. On the same day, Relators also filed a Motion to Consolidate the two cases.
17. Since no action had been taken by the DNR since the October 7, 2011 hearing, on January 12, 2012, Relators filed a Motion Requesting a Telephonic Status Conference within 30 days of the Motion.
18. In response to the Motion, on or about February 8, 2012, the attorney for the Relators received a telephone call from the hearing officer, Ron Theis, in which he stated that he and the Director of the DNR was working on an Order and it would be out shortly.
19. As of the date of this Petition, the Realtors have received no decisions or orders from the DNR on the Realtors' Petitions, on any of the pending Motions to Intervene, or on the DNR's Motion to Dismiss.
20. Realtors' First Petition has been on file with the Court for over a year and half and their Second Petition for nine months without any action being taken by the DNR.
21. Realtors request that this Court order the DNR to address the Relators' Petitions in a reasonable and timely manner. Realtors are not requesting that this Court issue any order on the merits of their Petitions, only that the DNR be ordered to complete the ministerial duty of timely managing Petitioners cases that are currently pending before DNR.
22. Other than the relief sought herein, Relators have no adequate remedy available to them in the ordinary course of law.

WHEREFORE,

1. Relators pray that the Court issue a peremptory writ of mandamus commanding Respondent, the Nebraska Department of Natural Resources, to immediately manage and resolve cases pending before the agency in a timely manner, and that it then and there return the writ with it certification that it has complied therewith;

IN THE ALTERNATIVE,

2. Relators pray that the Court issue an alternative writ of mandamus commanding Respondent to perform such duties immediately upon receipt of the writ or show cause before the court at a specified time and place why they have not done so.

RELATOR FURTHER MOVES THE COURT FOR AN ORDER AS FOLLOWS:

3. Awarding Relator its costs and attorney's fees pursuant to Neb. Rev. Stat. § 25-2165; and
4. For such other and further and different relief as justice and equity may require.

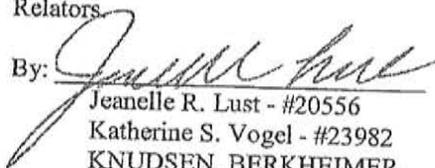
Dated this 8 day of June, 2012.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District,

Relators

By:

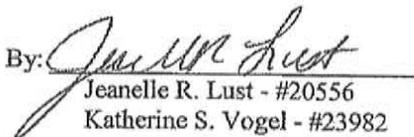
  
Jeanelle R. Lust - #20556  
Katherine S. Vogel - #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502  
(402) 475-7011

**PRAECIPE**

TO THE CLERK OF SAID COURT:

Please issue summons in the above-captioned cause for service by certified mail upon the Defendant, whose address is as follows, and forward said summon to the undersigned counsel for Relator for certified mailing as aforesaid.

Department of Natural Resources  
301 Centennial Mall South  
4<sup>th</sup> Floor State Office Building  
Lincoln, Nebraska 68509-4676

By:   
Jeanelle R. Lust - #20556  
Katherine S. Vogel - #23982



3. On November 24, 2010, the URNRD filed its Petition in Intervention, pursuant to 454 *Neb. Admin. Code*, Chapter 7, §004, and in response to the Department's November 8, 2010 Notice of Petition, in which the Department noted that any interested person wishing to become a party to this proceeding may file a Request to Intervene with the Department.

4. On December 17, 2010, Respondent DNR filed a Motion to Dismiss in this matter.

5. On December 20, 2010, the URNRD filed a Motion/Request for Prior Determination of Intervention Petition, requesting that the Department rule on its Petition for Intervention prior to ruling on DNR's Motion to Dismiss.

6. On January 4, 2011, DNR file a Motion in Support of MRNRD and URNRD Request for Prior Determination of Intervention Petition, in which DNR affirmed its Motion to Dismiss, and supported the URNRD's request that the Department rule on the URNRD's Petition for Intervention prior to ruling on DNR's Motion to Dismiss.

7. The URNRD's Petition in Intervention has not been ruled upon, and remains pending before the Department.

8. At some point in the pleading process after March 2011, the URNRD was dropped from certificates of service on subsequent pleadings in the case. Nonetheless, the URNRD understands that subsequent pleadings were filed by Petitioners and DNR, such that the status of the case presently is that Petitioners have filed an Amended Petition—Request for Declaratory Order in this case on or about October 28, 2011; an Amended Petition—Request for Declaratory Order in a new matter entitled "In the Matter of the August 25, 2011, Orders of the Department Adopting Associated Surface Controls" regarding the Lower Republican Natural Resources District's Integrated Management Plan, filed on or about October 28, 2011; Motions

) )  
to Consolidate in both cases, filed on or about October 28, 2011; a Motion to Dismiss Contested Case filed by DNR on or about November 9, 2011; and a Motion Requesting a Telephonic Status Conference filed by Petitioners on or about January 12, 2012.

9. In its Motion to Dismiss Contested Case, DNR asserts that the contested case hearing requested by Petitioners on October 18, 2010 is still pending with the Department, that Petitioners' action in filing their Amended Petition—Request for Declaratory Order constitutes filing for a declaratory order while a contested case hearing is still pending before the Department, and that the contested case hearing should be dismissed before a declaratory order can be issued. Petitioners counter, in their Response to DNR's Motion to Dismiss Contested Case, that they have not filed a separate declaratory order case, but are requesting their original filing to be treated as a request for declaratory order, and that "[t]here is only one petition and one proceeding" pending.

10. The URNRD's Petition in Intervention remains pending in this matter before the Department.

11. Because of the uncertainty as to the status of the case presently, as a contested case, as a declaratory order proceeding, or as a conversion of a contested case to a declaratory order proceeding, the URNRD hereby renews its Petition for Intervention, filed on or about November 24, 2010, in Case No. 008-10CC, still pending before the Department.

12. In the alternative or in addition, pursuant to 454 *Neb. Admin. Code*, Chapter 6 § 006, the URNRD petitions in this case for intervention in a declaratory order proceeding:

- a. Petitioners challenge the Department's legal authority to administer the surface water controls adopted in the DNR-URNRD Order, a copy of which is attached as Exhibit 2 to Petitioners' Amended Petition—Request for a

) )  
Declaratory Order in this case. It is this DNR-URNRD Order, and the associated IMP, that are included in the statutes, regulations, rules, or orders that apply to or affect the URNRD and the matters at issue in this case.

b. The URNRD shows that its legal rights, duties, privileges, immunities, and/or other legal interests may be substantially affected by the proceeding initiated by Petitioners, and that the URNRD has an interest in the matter in this proceeding, and in particular the success of the Department in resisting the claims of Petitioners. A statement of facts in support of this, as well as to show the URNRD's interest in this matter, include the following:

- i. Pursuant to the Nebraska Ground Water Management and Protection Act (the "Act"), the URNRD and DNR jointly adopted the IMP, which first became effective in 2005.
- ii. In 2008, the URNRD and DNR jointly reviewed and modified the IMP based on relevant hydrologic conditions in the Republican River Basin.
- iii. In 2009, the URNRD and DNR jointly reviewed and determined that the IMP needed to be updated in light of issues raised during arbitration between Nebraska, Kansas, and Colorado as part of litigation under the Republican River Compact.
- iv. On May 4, 2010, the URNRD and DNR reached an agreement on factors regarding revisions to the IMP as required by the Act. Following required joint notices and joint hearings on the revised IMP, the URNRD and DNR jointly determined to implement the proposed

- IMP revisions, with modifications, and to adopt associated surface and ground water controls.
- v. On August 3, 2010, the URNRD adopted the proposed IMP and affirmed continued use of the ground water controls necessary for meeting the compliance standard identified in the IMP.
  - vi. On September 20, 2010, DNR adopted the IMP along with surface water controls contained in the IMP.
  - vii. The Act requires that the URNRD and DNR jointly develop, review, revise, adopt, and administer the IMP, and the URNRD and DNR have so jointly acted in adopting the revised IMP.
  - viii. Petitioners' claims are directed at fundamental controls adopted in the IMP. The outcome of this proceeding will unavoidably have a bearing on how successful the IMP is in reaching the goals and objectives jointly adopted by DNR and the URNRD for the IMP, and will thus bear on the way both DNR and the URNRD administer the IMP. The IMP contains regulatory controls and non-regulatory tools that are designed to work together to achieve the jointly developed goals and objectives. For example, the IMP contains plans for implementation of both surface water and groundwater controls. A successful challenge to one type of control may have an impact on the effectiveness of the other.
  - ix. Thus, the URNRD's legal rights, duties, privileges, immunities and/or other legal interests may be substantially affected by this proceeding,

) )

and the URNRD has a real interest in the outcome of this proceeding. The URNRD has an interest in the success of DNR in resisting Petitioners' claims. The URNRD and DNR acted jointly in creating the revised IMP, and the revised IMP represents the final decisions made by the URNRD and DNR.

13. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention of the URNRD. The proceeding remains in the pleading phase and remains at the point of determining the nature of the proceeding before moving on to its merits. The URNRD's request to intervene will not impair the interests of justice or the prompt conduct of the proceedings. The interests of justice are served by allowing the URNRD to intervene given the nature of Petitioners' claims.

14. The URNRD's contentions include the following:

- a. Petitioners lack standing, for all the reasons argued heretofore in this matter by DNR, which positions the URNRD adopts and incorporates herein
- b. Petitioners fail to present a justiciable controversy
- c. DNR has the legal authority to administer the surface water controls adopted in the DNR-URNRD Order and the IMP
- d. The relief the URNRD requests is that Petitioners' petitions related to a contested case hearing or request for declaratory order in this case be dismissed, or in the alternative the Department find that DNR has the legal authority to administer the surface water controls adopted in the DNR-URNRD Order and the IMP, and affirm the DNR-URNRD Order and IMP in their entirety

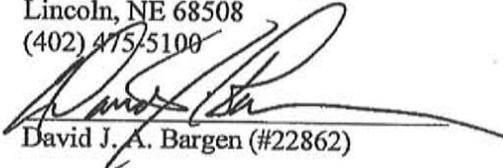
15. The URNRD is a necessary party in this proceeding because it has a specific interest in the applicability of the DNR-URNRD Order and the IMP, as distinguished from a general interest such as may be the concern of the public at large. The URNRD would be adversely affected in a legally cognizable way depending on the outcome of this proceeding for reasons including those noted above.

WHEREFORE, the URNRD asks that its request to intervene be granted in this proceeding pursuant to 454 *Neb. Admin. Code*, Chapter 7 § 004 as a contested case, or, in the alternative or in addition, be granted in the proceeding pursuant to 454 *Neb. Admin. Code*, Chapter 6 § 006 as a declaratory order proceeding, aligned with DNR as a Respondent. To the extent this case is consolidated with another, the URNRD's request is the same in reference to that consolidated case. In addition, the URNRD requests it be part of any Telephonic Status Conference requested in Petitioner's motion of January 12, 2012 for the same. The URNRD also requests that its undersigned counsel be added again to certificates of service for all pleadings in this case (as is or consolidated), consistent with said counsel's continuing appearance in this case since November 24, 2010.

DATED: January 18, 2012

UPPER REPUBLICAN NATURAL  
RESOURCES DISTRICT, Petitioner for  
Intervention.

By: REMBOLT LUDTKE LLP  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508  
(402) 475-5100

By:   
David J. A. Barga (#22862)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that I caused a true and correct copy of the foregoing to be sent by ordinary United States mail, first class postage prepaid, on this 18th day of January, 2012, addressed as shown below, to the following:

Jeanelle R. Lust  
Katherine S. Vogel  
Knudsen, Berkheimer, Richardson & Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, NE 68502

Thomas O'Connor  
Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4678

John Chaffin  
Office of the Field Solicitor  
P.O. Box 31394  
Billings, MT 59101

Daniel L. Lindstrom  
David H. Kalisek  
Jacobsen, Orr, Nelson, Lindstrom & Holbrook, P.C., L.L.O.  
322 West 39<sup>th</sup> Street  
P.O. Box 1060  
Kearney, NE 68848-1060



David J. A. Barga



petition will be subject to review by the DNR), there is no violation of 454 Neb. Admin. Code § 6-009.01D.

Dated this 10th day of November, 2011.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District,

Petitioners.

By: 

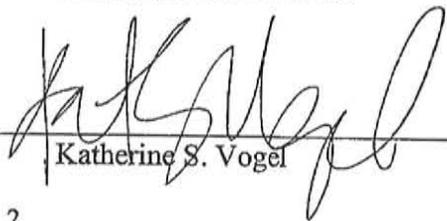
Jeanelle R. Lust - #20356  
Katherine S. Vogel - #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502  
(402) 475-7011

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **Petitioners' Response to DNR's Motion to Dismiss Contested Case** to be delivered via U.S. Mail, First Class, postage prepaid, on this 10th day of November 2011, upon the following:

Thomas O'Connor  
Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, Nebraska 68509-4678

John Chaffin  
Office of the Field Solicitor  
P.O. Box 31394  
Billings, Montana 59101

  
Katherine S. Vogel

STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010, ) Case No. 008-10CC  
Orders of the Department Adopting )  
Associated Surface Controls ) Motion to Dismiss Contested Case  
)  
Water Division 1-B )

The Department of Natural Resources (DNR) pursuant to 454 Neb. Admin. Code §7-005.04 responds to the Motion to Consolidate and the Amended Petition – Request for Declaratory Order by Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District (Petitioners) dated October 28, 2011, as follows.

A declaratory order may not be issued if there is a pending contested case before the agency on substantially similar issues.

“Circumstances Under Which Agency will not Issue Declaratory Orders....An investigation for purposes of a formal adjudication, *a contested case*, or a petition to issue, amend, or repeal regulations is *pending before the agency involving the petitioner on substantially the same or similar facts or issues raised in the petition.*” 454 Neb. Admin. Code §6-009.01D (emphasis added).

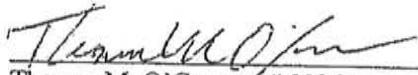
The contested case hearing requested by the Petitioners on October 18, 2010 is still pending. The Petitioners in the requests for a contested case and declaratory order are identical. Additionally, the pleadings in both petitions involve substantially similar facts and issues. As a result, a declaratory order cannot be issued without first dismissing the pending contested case.

The Administrative Procedures Act (APA) states that an agency shall not issue a declaratory order if it “would be contrary to a rule or regulation adopted in accordance with” the rules of the APA. Neb. Rev. Stat. §84-912.01. Therefore, because issuing a declaratory order while a contested case is still pending would be a violation of Title 454, it would also be a direct violation of the APA.

Since Petitioners have filed for a declaratory order while a contested case hearing is still before the Agency, the Petitioner’s contested case hearing should be dismissed before a declaratory order can be issued.

NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES, Respondent

By Their Attorney,



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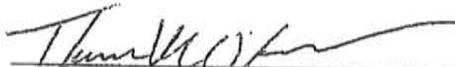
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was hand delivered to the Department of Natural Resources, 4th Floor State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, and sent via U.S. Mail, First Class, postage prepaid, on November 9, 2011 to the following:

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Thomas M. O'Connor, #22361

STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010,	)	Case No. 008-10CC
Orders of the Department Adopting	)	
Associated Surface Controls	)	<b>Amended Petition -</b>
	)	<b>Request for a Declaratory Order</b>
Water Division 1-B	)	

COMES NOW Petitioners, Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District, and for their amended petition, request that the Department of Natural Resources issue a declaratory order on the legal authority of the Department of Natural Resources to administer the surface water controls adopted in its September 20, 2010 Orders of the Department Adopting Associated Surface Controls.

1. Frenchman Cambridge Irrigation District is an irrigation district organized on April 18, 1946, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Cambridge, Nebraska.
2. Frenchman Cambridge Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation.
3. Bostwick Irrigation District is an irrigation district organized on April 12, 1948, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Red Cloud, Nebraska.
4. Bostwick Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and

) )

receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation and the Corps of Engineers.

5. Frenchman Valley Irrigation District is an irrigation district organized on February 26, 1912, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.
6. Frenchman Valley Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation.
7. H&RW Irrigation District is an irrigation district organized on November 1, 1955, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.
8. H&RW Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation.
9. Pioneer Irrigation District is an irrigation district organized and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Haigler, Nebraska.
10. Pioneer Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska.

11. The Department of Natural Resources (DNR) is the official state agency in connection with water resources regulation and development, with general authority over all matters pertaining to water rights.
12. The Bureau of Reclamation is authorized to construct, operate and maintain irrigation facilities in the Republican River Basin pursuant to the 1944 Flood Control Act, 58 Stat. 891. Pursuant to the Flood Control Act, Reclamation obtained the irrigation storage water rights for four reservoirs, constructed four dams and reservoirs and has since operated those facilities. The United States Army Corps of Engineers constructed and operates Harlan County Lake, however, Reclamation holds the irrigation storage water right for the facility. Nebraska law requires that the United States hold the storage water right for its Republican River Basin reservoirs. Neb. Rev. Stat. § 46-241 (2010).
13. The Upper Republican Natural Resources District is one of the local entities charged with regulating ground water usage in the Republican River Basin. The DNR and Upper Republican Natural Resources District jointly adopted the Upper Republican Natural Resources District Integrated Management Plan.
14. The Middle Republican Natural Resources District is one of the local entities charged with regulating ground water usage in the Republican River Basin. The DNR and the Middle Republican Natural Resources District jointly adopted the Middle Republican Natural Resources District Integrated Management Plan.
15. The Lower Republican Natural Resources District is one of the local entities charged with regulating ground water usage in the Republican River Basin.
16. Individual surface water appropriators, while holding an individual right to appropriate surface water within the Republican River Basin, receive their surface water from their

- respective irrigation district. Therefore, any reductions in the amount of surface water available for delivery to their members will directly affect the amount of water the members of the irrigation district receive. A list of those individuals who are members of the five petitioning irrigation districts is attached hereto as exhibit 1.
17. On or about September 20, 2010, the Nebraska Department of Natural Resources issued orders adopting the Upper Republican Natural Resources District Integrated Management Plan ("Upper Republican IMP") and Associated Surface Water Controls, and the Middle Republican Natural Resources District Integrated Management Plan ("Middle Republican IMP") and Associated Surface Water Controls. A true and accurate copy of both Orders and IMPs are attached hereto as exhibit 2 and exhibit 3, respectively.
  18. The Upper Republican IMP and the Middle Republican IMP contain identical surface water controls that will be administered by the DNR.
  19. The surface water controls provide that Nebraska will recognize a priority date of February 26, 1948, for Kansas Bostwick Irrigation District for the regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam.
  20. The Republican River Compact divides the "virgin water supply" between Nebraska, Kansas and Colorado and is based on each state consuming their share and only their share of the Basin's water supply.
  21. The surface water controls create a "Compact Call." In "Compact Call" years, the DNR will regulate and administer surface water in the basin as necessary to ensure Nebraska's compliance with the Republican River Compact. The "Compact Call" will result in DNR issuing closing notices on all natural flow and storage permits in the basin until such time

as DNR . . . determines that yearly administration is no longer needed to ensure Compact compliance.”

22. The surface water controls require that the DNR “forecast” whether there will be sufficient surface water to meet Nebraska’s obligations under the Republican River Compact. If it is estimated that there is insufficient water to meet all the demands for the water, the DNR will issue closing notices on all natural flow and storage permits.
23. The DNR’s authority to regulate surface water appropriation rights is based upon the doctrine of prior appropriations under which the surface water appropriation rights are regulated according to priority and the type of use. If water is insufficient for all uses, junior appropriation rights are shut down for the benefit of senior appropriation rights. However, just compensation is due for such shut downs. The DNR’s surface water controls which relate to forecasting and the “Compact Call” are inconsistent with and contrary to Nebraska law, the doctrine of prior appropriations and the DNR’s procedure for regulating and monitoring surface water appropriation rights. See, specifically, Neb. Rev. Stat. §§ 46-231, 46-233.307, and Neb. Const. art. XV, § 6.
24. The surface water controls and integrated management plans do not reach or meet long term sustainability goals as required in Neb. Rev. Stat. § 46-715(2).
25. A “Compact Call” is not authorized by Nebraska law. Neb. Rev. Stat. §§ 46-715 and 46-716.
26. A “Compact Call” is not authorized in the Republican River Compact or the 2002 Final Settlement Stipulation.
27. The total shut down of surface water direct irrigation uses in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.

28. The total shut down of storage appropriations in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.
29. The Petitioners hold appropriation rights and deliver water held under those rights to members of their irrigation districts. The Petitioners charge and collect fees to members for delivering water thereby generating revenue based upon the amount of water each district can deliver. Due to a reduction in the amount of water available for delivery, the Petitioners have reduced the amount of water delivered to members and have therefore incurred a loss in revenue.
30. The Petitioners make operation and maintenance payments to the Bureau of Reclamation for the use and maintenance of the Bureau's Reservoir facilities. The Petitioners are currently unable to make their full payments to the Bureau because there is insufficient water to be delivered to users which in turns has reduced the Petitioners' revenue.
31. In its pleadings before the United States Supreme Court, the State of Nebraska has stated that "[a]ny regulatory action taken by Nebraska 'potentially has a significant impact on the [Bureau of Reclamation irrigation facilities]' because such action may dictate the extent to which water for irrigation is available from [them]." *Kansas v. Nebraska*, No. 126 Original, *State of Nebraska's Objection in Part to United States' Statement of Participation*, p. 4.
32. The current surface water levels in the Republican River Basin are insufficient to sustain existing surface water appropriations over the long term and the proposed IMPs will continue to result in a depletion of surface water supplies within the Basin causing continued reductions in revenues for the Petitioners and a continued inability to meet

both payment obligations to the Bureau of Reclamation and contractual obligations to maintain Reclamation's canal systems, bridges and drainage ditches.

WHEREFORE the Petitioners respectfully request that the DNR declare that it lacks statutory authority to administer the surface water controls adopted in its September 20, 2010 Orders.

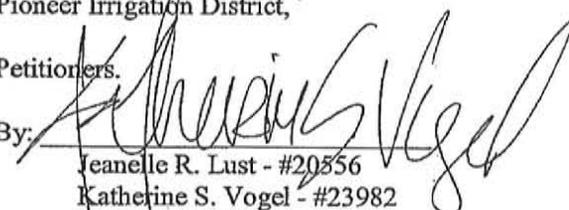
Dated this 28th day of October, 2011.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District,

Petitioners.

By:



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Katharine S. Vogel - #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
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(402) 475-7011

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **Amended Petition – Request for Declaratory Order** to be served by U.S. Mail, sufficient postage prepaid, on this 28<sup>th</sup> day of October, 2011, upon the following:

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Middle Republican NRD  
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Curtis, NE 69025

Upper Republican NRD  
Attn: Jasper Fanning  
511 East 5th St.  
P.O. Box 1140  
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Katherine S. Vogel

VERIFICATION

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF Turner    )

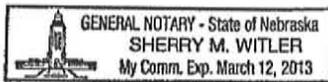
Brad Edgerton, being first duly sworn, states that he is the Manager for Frenchman Cambridge Irrigation District; that he has read the foregoing Amended Petition – Request for Declaratory Order; and that the allegations of fact therein are true.

Dated: October 21, 2011.

Brad Edgerton  
Brad Edgerton  
P.O. Box 116  
Cambridge NE 69022

Subscribed and sworn to before me by Brad Edgerton this 21st day of October, 2011

Sherry M. Witler  
Notary Public



VERIFICATION

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF H. T. Hooper )

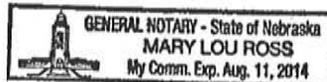
Don Felker, being first duly sworn, states that he is the Manager for Frenchman Valley Irrigation District and H&RW Irrigation District; that he has read the foregoing Amended Petition – Request for Declaratory Order; and that the allegations of fact therein are true.

Dated: October 21, 2011.

Don Felker  
Don Felker  
P.O. Box 297  
Culbertson, NE 69024

Subscribed and sworn to before me by Don Felker this 21 day of October, 2011

Mary Lou Ross  
Notary Public



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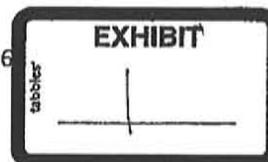
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Dallas Mues 40361 Road 720 Bartley, NE 69020-	Murdoch Enterprises P.O. Box 796 Orleans, NE 68966-	Murdoch Family LTD P.O. Box 796 Orleans, NE 68966-
Murdoch Ranch & Farm P.O. Box 796 Orlenas, NE 68966-	Jerry Mustion 71861 Road 376 Culbertson, NE 69024-	Neiman & Solomon 6054 Dolphin Road Oriental, NC 28571-
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Shirley Nisley 8025 Russian Olive North Platte, NE 69001-	Garrett Nokes 38430 Rd 712 McCook, NE 69001-	Andy O'Dea 31906 Road 718 McCook, NE 69001-
Darrell Ohrman 71406 Road 370 Culbertson, NE 69024-	Stephen Olmsted 72250 Road 428 Arapahoe, NE 68922-	Donald D. Olson R.Schlager - 38176 Drive 717 McCook, NE 69001-
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Toby ten Bensel 41832 Hwy 6 & 34 Holbrook, NE 68948-	Larry ten Bensel 42754 Rd 722 Arapahoe, NE 68922-	Mike Thomas 71402 Highway 83 McCook, NE 69001-
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Caleb Trail 71206 Drive 382 McCook, NE 69001-	John Trail P.O. Box 254 Aniak, AK 99557-	Virginia Trail 38283 Road 721 McCook, NE 69001-
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Robert F Brown 1936 Birch Road Superior, NE 68978  
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Bruns, Zack C 2774 140th Road Burr Oak, KS 66936  
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Ryan Bush 755 RD 300 Riverton, NE 68972-5110  
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Danny & Pamela Corman 4352 Road D Hardy, NE 68943

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Kerry Corman & Donna Corman c/o Kerry Corman 449 Road 4400 Hardy, NE 68978  
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Loy & Goldean Drake 251 25 Road Franklin, NE 68939  
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Harrison Farms, Inc. 253 E Road Naponee, NE 68960  
Harrison, Harrison & Son Ltd Ptn Matt Harrison 253 E Road Naponee, NE 6896  
Matt & Lisa Harrison 253 E Road Naponee, NE 68960  
Hasemeyer 5 Ranch 2950 Hiway 14 Superior, NE 68978-5000  
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George L Landgren Triple L Ranch LLC 1220 Country Club Drive Hastings,  
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Leland R Lipp 1934 Hwy 136 Franklin, NE 68939-5164  
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Vera Losey 21 Pioneer Drive Republican City, NE 68971  
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Blaine Lyne Trust Marjorie Stickelman 927 Iowa York, NE 68467  
Jeff, Michelle & Kyle Mans 830 N Cherry St Red Cloud, NE 68970  
Joseph McDole 443 N Webster Red Cloud, NE 68970  
Jessie McDole Estate Jerry McDole 443 N Webster Street Red Cloud, NE 68970  
Mertens Land & Cattle 1070 Road 2800 Superior, NE 68978  
Andrew Meyer & Mark Chapman 164 Road 3650 Superior, NE 68978  
Andrew and Peggy Meyer 164 Road 3650 Superior, NE 68978  
Riverview Farm Cece Meyer 10667 San Vercelli Ct. Las Vegas, NV 89141  
Jerome Meyer, etal Central National Bank PO Box 268 Superior, NE 68978  
Ron & Lynn Meyer 30 Lillian Lane Doniphan, NE 68832  
Stanley & Carolyn Meyer 3725 Rd C Superior, NE 68978-7106  
Fredrick & Nancy Meyers 4248 Hwy 8 Hardy, NE 68943

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James & Donna Miller 1015 E 10th Superior, NE 68978

Randall Miller 15431 Firth Road Adams, NE 68301

Colleene C Minnick 905 N Franklin Red Cloud, NE 68970

Gerald & Winifred Minnick 256 RD H Inavale, NE 68952-5107

Rick Minnick 239 RD J Inavale, NE 68952-5101

Minnick, Robert 782 Hiway 136 Red Cloud, NE 68970

Scott Minnick 615 40 Rd Riverton, NE 68972

Kynn & Kim Molzahn 529 F Road Naponee, NE 68960

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Howard Ohmstede 2037 Rd C Guide Rock, NE 68942

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Ward Ohmstede 441 Rd 2100 Guide Rock, NE 68942

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Mike Overleese 2104 Hiway 136 Riverton, NE 68972-5117

Robert & Darlene Overleese 2034 Hiway 136 Riverton, NE 68972-5116

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Brooks Rasser c/o Ronald Rasser 632 Rd H Red Cloud, NE 68970

Cal Rasser 1643 Hiway 136 Red Cloud, NE 68970

Clayton E Rasser Trustee 1617 Hwy 136 Red Cloud, NE 68970

Gary & Laura Rasser 1492 Hwy 136 Red Cloud, NE 68970

Gary & Lonnie Rasser 1492 Hwy 136 Red Cloud, NE 68970

Norma Rasser LE Gary Rasser 1492 Hwy 136 Red Cloud, NE 68970

Roger & Barbara Rasser 1288 Hwy 136 Red Cloud, NE 68970

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Gene & Ruth Robb 535 E State Guide Rock, NE 68942-9760  
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Shirley S Robinett 1710 F Road Riverton, NE 68972  
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Nicholas Omaha, NE 68134-8016  
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David Schnuerle 638 E Road Franklin, NE 68939  
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James & Jacqueline Shipman 517 Road 2100 Guide Rock, NE 68942  
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Richard, John & Stephen Siel Richard Siel 1708 L Street Franklin, NE 68939  
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Milton Tupper 242 W 3rd Ave. Red Cloud, NE 68970  
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Tom & Carol Yelken 1216 G Road Franklin, NE 68939-5100  
Bowen & Zalman Inc. Dean Zalman 430 281 Hiway Red Cloud, NE 68970  
Vince & Lisa Zarndt 12152 Brookhaven Park Garden Grove, CA 92840  
Ziegler Farm Inc. Jay Ziegler 2422 HWY 136 Riverton, NE 68972-5170

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Dennis Fahrenbruch 72071 Rd 373 Culbertson, NE 69024	Richard Walker 2715 Alkire Golden, CO 80401	
	Don Olson Jr 71807 RD 382 McCook, NE 69001	Merle Dack P.O. Box 98 Culbertson, NE 69024
Doug Holtmeir 7901 Dougan Drive Lincoln, NE 68516		Elaine Peterson P.O. Box 64 Palsade, NE 69040
PALMER, BRYAN G & STANLEY J & VIRGINIA S 8971 WESTHILL RD LAKESIDE CA 92040		
	Steve Cappel 37885 US HWY 6 Culbertson, NE 69024	John Miller 72157 RD 375 Culbertson, NE 69024
Clint Schafer 72244 RD 373 Culbertson, NE 69024		Claude Cappel P.O. Box 647 McCook, NE 69001
Rick Cook 37187 RD 722 Culbertson, NE 69024		

Jerry Kotschwar 72156 Road 368 Culbertson, NE 69024	Kenneth Kolbet 306 Cristi Ave Culbertson, NE 69024	
Kenneth Albert 37036 Drive 719 Culbertson, NE 69024	Merlin Messinger #3 Parkview Addition McCook, NE 69001	James Ruggles 72645 Rd 389 McCook, NE 69001
Clarence Jankovits Jr 37727 Road 718 Culbertson, NE 69024		Norman O' Grady 38273 Rd 717 McCook, NE 69001
Lonnie Wood 111 East M McCook, NE 69001		Craig Reiners P.O. Box 231 McCook, NE 69001
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Ty Wagner 71901 Rd 374 Culbertson, NE 69024	Robert Bobinmyer 1510 Parkway Dr McCook, NE 69001	John Walters 71853 Rd 373 Culbertson, NE 69024
Robert Eisenach 402 Henton Rd McCook, NE 69001		
	Arlan Rathe 71805 Road 380 Culbertson, NE 69024	Janeice Jumps 72081 Road 374 Culbertson, NE 69024
Steve Fries 36626 US Hwy 6 Culbertson, NE 69024		
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Robert Uerling 39289 Road 716 Indianola, NE 69034	James Ruff 72044 Road 379 Culbertson, NE 69024	Wayne Schow P.O. Box 31486 Laughlin, NV 89028-1486
Andy Ruppert 71903 Road 378 Culbertson, NE 69024	St. John Commandery P.O. Box 962 McCook, NE 69001	

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Roger Sleck 29581 Av 218 Martin, SD 57551	Mark Moorhous 202 Wyoming Str. Culbertson, NE 69024	Ed Geler 37006 Dr. 719 Culbertson, NE 69024
Ron Hoyt 37079 Rd 723 Culbertson, NE 69024	Shane Rippen P.O. Box 161 Culbertson, NE 69024	Harold Hartzler 71854 Rd 374 Culbertson, NE 69024
Bob Bauer 37226 Rd 710 Culbertson, NE 69024	Jon Anderjaska 36065 Rd 726 Palisade, NE 69040	Ron Bauer P.O. Box 302 Ord, NE 68862
Mike Langan 2114 W 3 <sup>rd</sup> Str. McCook, NE 69001	Dave Unger 37231 Rd 720 Culbertson, NE 69024	Roger Golti 38543 Dr 713 McCook, NE 69001
Riley Morthole 37123 US HWY 34 Culbertson, NE 69024	Virgil Doetker 72687 Hwy 25A Palisade, NE 69040	Ted Rippen 71640 Rd 713 Culbertson, NE 69024
Paul Nichols 71588 Drive 369 Culbertson, NE 69024	Brian Schafer 72503 Rd 372 Culbertson, NE 69024	
	James Uerling 39226 Rd 716 Indianola, NE 69034	
		Robert Romine 72450 Road 363 Palisade, NE 69040

Terry Bauer 37502 US Hwy 34 Culbertson, NE 69024		Craig Jumps 37160 Old HWY 17 Culbertson, NE 69024
William Steinke 37383 Road 721 Culbertson, NE 69024	Bill McConville 37650 Road 721 Culbertson, NE 69024	Arlyn Minary 72616 RD 387 McCook, NE 69001
Mary Friehe 7107 South 17 3 <sup>rd</sup> St. Omaha, NE 68136	Bernard Koetter 1101 E 2 <sup>nd</sup> Str. McCook, NE 69001	Korf Investments Ltd 311 Elizabeth Lane McCook, NE 69001
Aaron Bishop 2114 Dow Jones Rd Alma, AR 72991	Bud Kehler 715 Perry St. Culbertson, NE 69024	Bruce Hampton 71788 US HY 83 McCook, NE 69001
Francis Friehe 37681 Road 719 Culbertson, NE 69024	Art koetter 718 W 5 <sup>th</sup> Str. McCook, NE 69001	Willard Messinger 71396 US HY 83 McCook, NE 69001
Mr. Don Klein 603 West H McCook, NE 69001	Dale Friehe 409 West M Str. McCook, NE 69001	Perry Case 1225 East Warner Rd Tempe, AZ 85284
Richard Cappel 38083 Road 717 McCook, NE 69001	Board of Educational Lands & Funds 555 N Cotner Blvd. Lincoln, NE 68505	Travis Gesselman 37457 US Hwy 34 Culbertson, NE 69024

Jim Phinney 71805 Rd 386 McCook, NE 69001	Donald Berger 72160 Rd 377 Culbertson, NE 69024	Dwight Gallatin 38425 Rd 719 McCook, NE 69001
George Pearson 14415 W Whitewood Dr. Sun City, AZ 85375-5939	John Palic 38272 Finch Trail McCook, NE 69001	Pietro Giorgione PO Box 756 McCook, NE 69001
Don Roberts 38144 Rd 720 McCook, NE 69001	Richard Koetter 71792 Rd 385 McCook, NE 69001	Julia Sloggett 71872 Road 388 McCook, NE 69001
Don Olson Sr. 38195 Rd 716 McCook, NE 69001	Korf Investments Ltd. 311 Elizabeth Lane McCook, NE 69001	SHEPHERD, JOEL A 1803 SAVANNA DR PAPILLION, NE 68133
Carol Hauxwell 71790 Road 376 Culbertson, NE 69024	Neiman - Solomon Inc C/O Debra Khouri 6054 Dolphin Rd Oriental, NC 28571	Douglas D Koetter 72002 Rd 385 McCook, NE 69001
Jim Boblmyer 36865 US HWY 6 Culbertson, NE 69024	Glen Berndt 37472 Rd 720 Culbertson, NE 69024	Perry & Vicky Case 1311 WEST I MCCOOK NE 69001-0000
Steve Barger 102 Cheyenne Road McCook, NE 69001	Mark Uerling 71831 Rd 388 McCook, NE 69001	Rod Cappel 38564 Road 719 McCook, NE 69001
Kris & Jeannie Kressin 36646 Road 732 Hayes Center, NE 69032		Rick Johnson 71754 Rd 37B Culbertson, NE 69024

D.E. Redfield  
36479 Rd 723  
Palisade, NE 69040

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) 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 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 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 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 in accordance with the Act, particularly *Neb. Rev. Stat.* § 46-717.
4. On May 4, 2010, the URNRD 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 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.
5. Pursuant to *Neb. Rev. Stat.* § 46-743, the URNRD and DNR published joint notice of hearing for the agreed upon proposed revisions to the IMP.
6. On June 10, 2010 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 URNRD 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 URNRD Ground Water Management Act Rules and Regulations, and incentive programs proposed in the IMP.
8. On August 3, 2010, the URNRD 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 3, 2010, the Department provided a letter to the URNRD 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 September 14, 2010, 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 URNRD 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, 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 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:

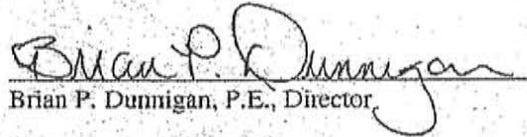
- F. During Compact Call Years, as determined from the procedures and analysis set forth in Section IX of the URNRD Integrated Management Plan, DNR will regulate and administer surface water in the basin as necessary to ensure Compact compliance. During Compact Call Years, DNR will issue a "Compact Call" 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 URNRD and other basin NRDs, determines that yearly administration is no longer needed to ensure Compact compliance, pursuant to Section IX of the URNRD Integrated Management Plan.

Order

It is therefore ORDERED that the Integrated Management Plan for the Upper Republican Natural Resources District jointly adopted by the URNRD, and the surface water controls contained in the Integrated Management Plan of the Upper Republican Natural Resources District are hereby adopted by the Department and will become effective on November 1, 2010.

DEPARTMENT OF NATURAL RESOURCES

September 20, 2010

  
Brian P. Dummigan, 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, 4<sup>th</sup> Floor State Office Building, Lincoln, NE 68509-4676) within 30 days of the date of the Approval and be accompanied by a filing fee of \$10.

On September 20, 2010, a copy of this Order was posted on the Department's website and mailed to Jasper Fanning, General Manager Upper Republican Natural Resources District, 511 East 5<sup>th</sup> St., Imperial, Nebraska 69033 and the Department of Natural Resources field offices.

Effective  
November 1, 2010

Upper Republican NRD

INTEGRATED MANAGEMENT PLAN  
Jointly Developed by the  
DEPARTMENT OF NATURAL RESOURCES  
and the  
UPPER REPUBLICAN NATURAL RESOURCES DISTRICT

**I. Authority**

This Integrated Management Plan (IMP) was prepared by the Board of Directors for the Upper Republican Natural Resources District (URNRD) and the Nebraska Department of Natural Resources (DNR) in accordance with the Nebraska Ground water Management and Protection Act, *Neb. Rev. Stat. §§ 46-701 to 46-754 (Cum. Supp. 2008)*.

**II. Background**

Commencing in 1978, the URNRD has adopted and enforced rules and regulations for the purpose of managing the ground water resources within the URNRD. On April 11, 2003, effective May 8, 2003, the URNRD, pursuant to applicable statutory rulemaking procedures and *Neb. Rev. Stat. § 46-739 (Cum. Supp. 2008)*, adopted the *State of Nebraska Upper Republican Natural Resources District Amendments to Rules and Regulations for Ground water Control – Order No. 26* and the *Upper Republican Natural Resources District Technical Manual of Policies and Procedures TM-26* (the “URNRD rules” or “the rules”). In the regular meeting, on July 6, 2004, the URNRD voted to extend Order No. 26 until September 1, 2005. Rule 9A of the Rules provides for a basic allocation of ground water to certified irrigated acres within the URNRD of 72.5 acre-inches for the five (5) year period between January 1, 2003 and December 31, 2007, an annualized allocation of 14.5 acre-inches. Since their adoption, the Rules have prohibited additional allocations for ground water use and additional well permits, except under limited circumstances. In addition, among other things, the rules continued and recodified the URNRD’s practice of allowing ground water users to carryforward the unused portion of their allocation, together with any remaining unused portions of allocations from previous years, into succeeding allocation periods and permitted the URNRD to approve pooling contracts, both in accordance with the URNRD rules.

In 1943 the States of Colorado, Kansas and Nebraska entered into the Republican River Compact (the “Compact”) with the approval of the United States Congress. The Compact provides for the allocation of the “virgin water supply” of the Republican River Basin (the “basin”) between the three states. Following several years of dispute about Nebraska’s consumptive use of water within the basin, Kansas filed an original action in the United States Supreme Court against the States of Nebraska and Colorado in 1998, seeking, among other things, to include ground water in the calculation of the virgin water supply and consumptive use. The United States Supreme Court appointed a Special Master who recommended that the depletions to stream flow from the use of ground water must be included in the virgin water supply and be part of the calculation of each state’s beneficial consumptive use. The United States Supreme Court adopted the Special Master’s recommendation. Subsequent to this determination, the states entered into a Settlement

Effective  
November 1, 2010

Upper Republican NRD

Agreement resolving the remaining issues in the case. The Settlement Agreement was approved by the United States Supreme Court on May 19, 2003.

Both prior and subsequent to the approval of the Settlement Agreement, the DNR conducted and participated in several meetings with the URNRD, including several public meetings. During the course of those meetings the DNR explained, in order for the State of Nebraska to achieve and maintain compliance with the terms of the Settlement Agreement, it would be necessary to (1) continue the moratorium on new surface water appropriations and new ground water wells, (2) reduce all ground water pumpage from historic levels across the entire basin and (3) further reduce ground water pumping needed to comply with the Compact in water short years, to be accomplished to the extent possible through the use of incentive programs to reduce consumptive use of water. Ground water within the basin is regulated by four Natural Resource Districts: the URNRD, the Middle Republican Natural Resources District (MRNRD) and the Lower Republican Natural Resources District (LRNRD) and the Tri-Basin Natural Resources District (TBNRD) (collectively hereinafter the NRDs). Similar discussions were held between the DNR and each of the NRDs regarding the need (1) to accurately measure actual ground water pumpage and surface water diversions throughout the basin and within each NRD, (2) for the TBNRD to maintain, at sufficient levels to offset depletions to the Republican River caused by ground water pumping within the Republican River Compact area within the TBNRD, the Compact Imported Water Supply that Nebraska receives because of discharges from the "ground water mound"; and, 3) for each of the NRDs other than the TBNRD to reduce its ground water pumping from their 1998-2002 baseline pumping volumes, as defined below.

Since 1978, with adoption of its Order #1, the URNRD has required the metering, data collection and reporting of ground water use, resulting in actual pumping and use data, and has imposed allocations and regulation on ground water users within the URNRD, while the use of wells in the MRNRD and LRNRD were neither reported nor regulated during the same period. In order to estimate pumping in the MRNRD and LRNRD, other methods based on hours of operation using electrical power information and individual pumping rates were used. The DNR has determined the following pumping volumes for the period 1998-2002: 531,763 acre-feet for the URNRD, 309,479 acre-feet for the MRNRD and 242,289 acre-feet for the LRNRD. These pumping volumes are used throughout this IMP and are referenced as the "1998-2002 baseline pumping volumes." DNR, through the use of the Republican River Compact Administration Ground water Model, has also determined each NRD's depletions to stream flow for the period 1998-2002 ("1998-2002 baseline depletion"): 74,161 acre-feet for the URNRD, 52,168 acre-feet for the MRNRD and 43,954 acre-feet for the LRNRD. Those depletion numbers have resulted in the following depletion proportions: 44% for the URNRD, 30% for the MRNRD and 26% for the LRNRD. These depletion proportions are used throughout this IMP and are referenced as the "1998-2002 baseline depletion proportions." The percentage of allowable ground water depletions for each Republican River NRD were based on the proportion of the average ground water depletions caused by ground water pumping within each district that occurred during the base-line period from 1998-2002 as determined by model runs of the Republican River Compact Administration Groundwater Model with ground water pumping in each district alternated, turned off and then turned on.

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The URNRD and the DNR adopted an IMP on May 3<sup>rd</sup>, 2005, that contained ground water rules and regulations for the 2005-2007 period. The IMP provided for a ground water allocation of 13.5 inches per certified acre, continued the pooling of allocations, and the carryforward of unused allocations, among other things. The goal of the 2005 IMP was to reduce water use by 5% from the 1998-2002 baseline. The IMP was updated and revised for 2007 – 2012, with a goal of reducing water use by twenty percent (20%) from the 1998-2002 baseline.

Since that time, efforts have been taken to implement or conduct incentive programs, studies, and research to further our understanding and ability to comply with the Republican River Compact and Settlement. Although the URNRD's allowable depletions to stream flow are limited to 44% of Nebraska's allowable depletions, there were no details in the plan to describe how this would be accomplished. In 2008 Colorado, Kansas, and Nebraska entered into dispute resolution regarding a number of issues, including future compliance. In June 2009 the arbitrator issued a finding that the URNRD IMP may be adequate during years with average and above-average precipitation, but since water-short year measures were not specifically identified, the plan may not be adequate during multiple dry years, an issue addressed in this IMP

The URNRD and the DNR wish to adopt and implement a revised IMP for the regulation of water resources within the district as required by the laws of the State of Nebraska.

The URNRD has agreed to meet its responsibility under *Neb. Rev. Stat. §46-715*, including meeting the obligations under the Settlement Agreement, by adopting revised rules to implement the IMP with regulations and other augmentation programs sufficient to reduce the URNRD's depletions to stream flow to meet the district's proportional share of the requirements of the Republican River Settlement Agreement. To ensure each NRD within the Republican River Basin will be treated equitably, the DNR has agreed not to approve any plan, unless the plan would restrict the use of water by each NRD to within the allocation granted to it as determined by the 1998-2002 baseline pumping volumes and that each NRD shall be assigned its proportionate share of stream flow depletion as calculated by the 1998-2002 baseline depletion percentages.

The URNRD and the DNR agree that the IMP for the District shall keep the NRD's depletions including credits for stream flow augmentation, as determined by the Republican River Compact Administration (RRCA) ground water model (GWM) and in accordance with the RRCA Accounting Procedures to an amount within 44% of the allowable ground water depletions. Based upon its calculations, the DNR believes that at the time this IMP became effective, a 20% reduction in pumping from the 98-02 baseline would be sufficient without additional stream flow augmentation to keep the District's net depletions within the URNRD's 44% share of the allowable ground water depletions during periods of average precipitation throughout the basin. As described in sections below, during periods of low water supply additional reductions from the 98-02 pumping volume may be necessary.

### III. Definitions

**A. Allowable Ground water Depletions** - the maximum level of depletions to stream flow from ground water pumping within the Nebraska portion of the Republican River Compact area that can be allowed without exceeding the Compact allocation, in any one year.

**B. Allowable Ground water Depletions for the URNRD** - the depletions to stream flow from ground water pumping in the URNRD that are no greater than 44% of the total allowable ground water depletions.

**C. Allowable Stream flow Depletions** – the maximum amount of stream flow depletion in the Republican River Basin that can be allowed without violating the Compact.

**D. Baseline Depletion Percentages** – the annual mean depletions to stream flow in the Republican River Basin caused by surface water and ground water use in the years 1998-2002 inclusive. The baseline depletions are 74,161 acre feet for the URNRD, 52,168 acre feet for the MRNRD, and 43,954 acre feet for the LRNRD. The percentage depletions assigned to the NRDs are: URNRD, 44%; MRNRD, 30%; and LRNRD, 26%.

**E. Baseline Pumping Volumes** – the annual mean ground water pumping from the period 1998 to 2002. The baseline pumping volumes are 531,763 acre-feet for the URNRD, 309,479 acre-feet for the MRNRD and 242,289 acre-feet for the LRNRD.

**F. Compliance Standard** – the criteria and controls that will be used to determine whether URNRD's rules, regulations, and other programs are sufficient to meet the goals and objectives of this IMP pertaining to pumping volumes and depletions.

**G. Net Depletions** – an NRD's ground water depletions less any reduction in stream flow depletions or increase in allocation resulting from stream flow augmentation projects, including surface water leases as determined by the RRCA ground water model and in accordance with the RRCA Accounting Procedures.

**H. Compact Call Year** – A year in which the Department's forecast procedures outlined in Section X.B.2.b of this IMP indicate the potential for non-compliance if sufficient surface water and ground water controls and/or management actions are not taken. Compact Call Year streamflow administration will be conducted by the Department in a manner consistent with Section X.B.2.d of this IMP. Pursuant to Article VI of the Republican River Compact, diversions into the Courtland Canal for beneficial use in the State of Kansas will not be subject to the Compact Call.

#### IV. Goals and Objectives

Pursuant to *Neb. Rev. Stat. § 46-715* (Cum. Supp. 2008) the goals and objectives of this IMP must have as a purpose "sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin ... can be achieved and maintained for both the near term and the long term." The following goals and objectives are also adopted by the URNRD and the DNR to meet the additional requirements of *Neb. Rev. Stat. §46-715*.

##### A. Goals:

1. In cooperation with the State of Nebraska and the other NRDs, maintain compliance with the Compact as adopted in 1943 and as implemented in accordance with the Settlement Agreement approved by the United States Supreme Court on May 19, 2003;
2. Ensure that water users within the URNRD assume their share, but only their share, of the responsibility to maintain compliance with the Compact;
3. Provide the URNRD's share of compliance responsibility and impact be apportioned within the URNRD in an equitable manner and to the extent possible, minimize the adverse economic, social and environmental consequences arising from compliance activities;
4. Protect ground water users whose water wells are dependent on recharge from the river or stream and the surface water appropriators on such river or stream from stream flow depletions caused by surface water uses and ground water uses begun after the date the river basin was designated as fully appropriated; and
5. Reserve any stream flow available from regulation, incentive programs, and purchased or leased surface water and ground water required to maintain Compact compliance from any use that would negate the benefit of such regulations or programs, to the extent allowed by statute and the surface water controls of this IMP.

##### B. Objectives:

1. Prevent the initiation of new or expanded uses of water, with limited exceptions, that increase Nebraska's computed beneficial consumptive use of water within the URNRD, as required for Compact compliance and by Nebraska law;
2. Ensure administration of surface water appropriations in the Basin is in accordance with the Compact and Nebraska law and the surface water controls of this IMP;
3. Reduce existing ground water use within the URNRD by 20% from the 1998-2002 baseline pumping volumes under average precipitation conditions so that, when combined with stream flow augmentation and incentive programs, the URNRD's ground water depletions are maintained within 44% of Nebraska's allowable ground water depletions as computed through use of the Republican River Compact Administration Ground water Model;

4. Make such additional reductions in ground water use in Compact Call Years as are necessary, after taking into account any reduction in beneficial consumptive use achieved through basin-wide incentive and stream flow augmentation programs, to achieve a reduction in beneficial consumptive use in the URNRD to 44% of Nebraska's the allowable ground water depletions to stream flow above Guide Rock . Compact Call Years will be determined through the procedures outlined in Section IX of this IMP;
5. Cause the reductions in water use required for Compact compliance to be achieved through a combination of regulatory, incentive, and augmentation programs designed to reduce consumptive use. To the extent funds are available, incentive programs will be made available through targeted incentive programs;
6. Cooperate with the DNR to investigate and explore methods to manage the impact of vegetative growth on stream flow: and
7. Develop a program to provide offsets for new consumptive uses of water so that economic development in the district may continue without producing an overall increase in ground water depletions as a result of new uses.

#### **V. Map**

The area subject to this IMP is the geographic area within the boundaries of the URNRD, (see Map 1). The Rapid Response Region is shown as a sub-area within the boundaries of the URNRD, (see Map 2).

#### **VI. Ground water Controls**

The URNRD will utilize the ground water controls as provided by *NEB.REV.STAT.* §§ 46-715, 46-739 and 46-740 to form the Ground water Controls component of this IMP. The controls that the DNR and URNRD agree are necessary and shall be continued are: 1) ground water allocations and 2) a moratorium on new water wells and irrigated acres as are required by the Final Settlement Stipulation (FSS). In order to provide the URNRD flexibility in addressing compliance, the URNRD may implement a reduction in irrigated acres and incentive programs targeting acres with a higher stream flow depletion factor as alternatives to URNRD-wide reductions in allocation or irrigated acres. The rules shall be set forth in detail and implemented through the URNRD's Rules and Regulations and the provisions of the URNRD's Rules and Regulations shall be sufficient so as to meet the Compliance Standards and Controls set forth below.

In addition to satisfying the compliance standards, the rules and regulations adopted by the URNRD shall contain provisions that adequately ensure that no new ground water uses initiated after July 14, 2004, will adversely impact surface water appropriators or ground water users whose water wells are dependent upon recharge from the stream or river. If the Compliance Standards are met, the URNRD may amend or modify its rules and regulations without the approval of DNR, except for the rules and regulations

pertaining to the satisfaction of the requirements of *NEB.REV.STAT.* §46-715(4)(b) and 46-715(4)(c).

**A. Compliance Standards**

**1. Purpose.**

These Compliance Standards are established by DNR and URNRD to assess whether the course of action taken by the URNRD, with the intention of providing their proportionate share of assistance to the State in order for the State to maintain compliance with the FSS and Compact, are sufficient. The action taken by the URNRD shall be evaluated in connection with the action taken by the other NRDs in the Republican River Basin and any other relevant considerations, including the information and data provided by DNR and past action by the NRD.

**2. Duration**

These Compliance Standards shall be used to assess the action taken by the URNRD. On an annual basis the DNR and URNRD shall reexamine the sufficiency and effectiveness of the Compliance Standards to determine if amendments or modifications are necessary to ensure the State's compliance with the FSS and Compact. Nothing contained herein shall prohibit or preclude any amendment or revision, at anytime, by the DNR and URNRD, when such action is necessary. Further, nothing contained in this subsection shall be construed as eliminating the review of the provisions of this IMP as required by *NEB.REV.STAT.* §46-715.

**3. Standards**

The URNRD shall adopt and implement rules and regulations which shall ensure that the following standards are met. The standards shall be effected through the procedure described in Section IX - Monitoring and Studies. Section IX specifies a forecast and resulting actions needed at the Guide Rock compliance point (during Water short years) and at the Hardy compliance point. The procedures for determining whether the compliance standards are met will be based on the RRCA Accounting Procedures, the baseline ground water pumping volumes, and the annual forecast as outlined in Section IX. The standards are:

a. Provide for a minimum of twenty percent (20%) reduction in pumping from the 98-02 pumping volume using a combination of regulation and supplemental programs so that the average ground water pumping volume is no greater than 425,000 acre-feet over the long term. If precipitation is lower than average for any given year, the ground water pumping volume for that year may be above 425,000 acre-feet.

b. An additional reduction in 98-02 pumping volumes of five percent (5%) during the next five year period shall be accomplished primarily through voluntary incentive programs and other means as determined by the URNRD. The necessity for continuing this annual reduction shall be reevaluated by DNR and the URNRD in 2015.

c. The URNRD's net depletions to stream flow shall be no greater than 44% of the allowable ground water depletions determined in accordance with RRCA Accounting Procedures using the RRCA GWM. The average shall be computed using the annual allowable ground water depletion for the same years as are used to determine the averages for Nebraska's compliance with the FSS.

**B. Other Controls and Management Activities**

The URNRD and the DNR recognize that the required reductions in water consumption could be accomplished by means other than those adopted in this IMP. The IMP and associated controls may need to be amended in the future to implement any such revisions.

1. During Compact Call Years, the URNRD will seek to implement management actions, including but not limited to, surface water leasing, ground water leasing, augmentation, etc., to ensure compliance with this IMP. These management actions will be implemented through the authorities granted by the Nebraska Ground water Management and Protection Act, *Neb. Rev. Stat.* §§ 46-701 to 46-753. Details of such management actions will be provided to DNR by January 31 of each year for evaluation. If such management actions are insufficient to ensure compliance with this IMP, the URNRD will implement additional ground water controls and regulations to make up for any expected shortfall as identified in the annual forecast and described in Section IX of this IMP. Such additional control will include curtailment of ground water pumping within the Rapid Response Region of the URNRD.
2. When necessary to ensure Compact compliance or during Compact Call Years, the URNRD may set a one year pumping allocation within the District. Such allocation will set the maximum pumping level in that year within any region or sub region.
3. Maintain requirement for metering of all ground water uses according to URNRD standards.
4. Provide for transfers according to URNRD and statutory standards.

**VII. Surface Water Controls - Department of Natural Resources**

The authority for the surface water component of this IMP is *Neb. Rev. Stat.* §§ 46-715 and 46-716 (Reissue 2004). The surface water controls that will be continued and/or begun by the DNR are as follows:

- A. The DNR will do the following additional surface water administration as required by the Settlement Agreement:

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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 are 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) (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 DNR rules or the criteria found in *Neb. Rev. Stat.* §§ 46-2,120 to 46-2,130 (Reissue 2004) 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.

F. During Compact Call Years, as determined from the procedures and analysis set forth in Section IX below, 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 URNRD and other basin NRDs, determines that yearly administration is no longer needed to ensure Compact compliance, pursuant to Section IX.

#### **VIII. Augmentation and Incentive Programs**

The URNRD and the DNR intend to establish and implement financial, incentive, and qualified projects as described in *Neb. Rev. Stat. §§ 2-3226.04, LB 862 (2010), Neb. Rev. Stat. §§ 2-3252* or other incentive programs to reduce beneficial consumptive use of water within the URNRD. These projects include, but are not limited to (1) acquisition by purchase or lease of surface water or ground water rights, including storage water rights with respect to a river or any of its tributaries, (2) acquisition by purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries, (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries, and (4) the augmentation of river flows. As a condition for participation in an incentive program, water users, landowners or the URNRD may be required to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established. Such incentive programs may include, but shall not be limited to, any program authorized by state law and/or federal programs operated by the United States Department of Agriculture.

Any water savings generated through conservation programs, including acreage retirement or other conservation incentive programs undertaken through programs available throughout the Republican River Basin with the use of funds distributed by the State of Nebraska or the United States Government will not accrue to any specific NRD, regardless of the location or other conditions of the acreage included in the program or of the location of the effect of such water savings on the river system. Any water savings resulting from any such basin-wide programs shall be considered in the calculation of each NRD's depletions allocated to each of the NRDs based upon the 1998-2002 baseline depletion proportions.

However, should any NRD establish, fund, and implement its own such conservation program within its NRD's boundaries, the accounting of credit for the resulting water savings shall be given exclusively to that NRD. Any credit resulting from an inter-district conservation program shall be credited as agreed to by the NRDs involved. Also, if multiple NRDs cooperate in a stream flow augmentation project, the benefits shall be provided to each NRD based upon their share of the cost of the program.

To the extent possible, it is the intent of the URNRD to provide compensation to water users that are required to forgo water use to allow the URNRD and the State to comply with the compact. This may be in addition to or as part of any other URNRD incentive or retirement program developed to facilitate compact compliance.

**IX. Monitoring and Studies**

The overarching purpose of the Monitoring and Studies Section is to ensure that, in cooperation with the other Republican River Basin NRDs, the DNR and URNRD maintain compliance with the Republican River Compact as adopted in 1943 and as implemented in accordance with the FSS approved by the United States Supreme Court on May 19, 2003. The objective of the Monitoring and Studies Section of this IMP is to gather and evaluate data, information, and methodologies that could be used to increase understanding of the surface water and hydrologically connected ground water system; to test the validity of the conclusions and information upon which this IMP is based; and to assist decision makers in properly managing the water resources within the URNRD and the Republican River Basin as a whole.

On an annual basis the results of monitoring and studies will typically be discussed in a basin-wide meeting which will take place prior to October 31 each year. The purpose of the meeting will be to discuss the preliminary accounting for the current year, the forecast of allowable stream flow depletions for the coming year, and potential management actions as necessary. Table 1 outlines important dates and objectives related to section IX.

Table 1. Important Dates and Objectives

Date	Objective
Prior to February 1	URNRD will provide DNR with meter reading database and GIS coverage maps to be used for the RRCA annual model update.
Prior to RRCA Annual Meeting	DNR will provide URNRD with their determination of whether the URNRD was in compliance with the compliance standards based on each previous year's annual Compact accounting.
September - October	Obtain power records and other estimates to determine pumping for T=0 ground water model run.
Prior to October 31	Discuss results of monitoring and studies, preliminary accounting for current year, and early forecast of allowable stream flow depletions.
Prior to November 15	DNR will provide correspondence to URNRD notifying them of potential Compact Call Year determination for the coming year (T+1).
November 15 - January 1	URNRD and DNR will discuss potential management alternatives in the situation that the coming year (T+1) will be a Compact Call Year.
Prior to January 1	Provide final forecast of allowable stream flow depletions and determination of Compact Call Years.
Prior to January 31	URNRD will provide DNR with details regarding existing management alternatives in lieu of additional ground water regulations or controls to make up for the expected shortfall.

**A. Plan to Gather and Evaluate Data, Information and Methodologies**

As outlined in *Neb. Rev. Stat. §§ 46-715(2)(e)* ongoing programs and new studies or other projects may become a source of information that is used to evaluate the effectiveness of controls

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adopted by the by the URNRD and the DNR. The DNR and the URNRD will jointly pursue and/or evaluate studies, contingent upon budget and staff resources, to evaluate their potential effectiveness in achieving the goals and objectives of this IMP.

The following potential studies have been identified by the DNR and the URNRD: (1) crop rotation; (2) vegetation management; (3) irrigation scheduling; (4) a survey of the type and location of irrigation systems throughout the URNRD; (5) tillage practices; and (6) conjunctive management.

**B. Monitoring**

Part One of the Monitoring Section describes the tracking and reporting of water use activities within fully appropriated areas of the district by the URNRD and the DNR. Part Two of the Monitoring Section describes the analyses that will be utilized to annually forecast the projected depletions in each subsequent year. This accounting and the forecast in accordance with *Neb. Rev. Stat. § 46-715(6)* will serve to increase the understanding and test the validity of the conclusions and information upon which this plan is based.

Compact accounting and data exchanges among the states shall be done annually in accordance with the FSS, dated December 15, 2002, including the Republican River Compact Administration (RRCA) Accounting Procedures and Reporting Requirements which are contained in Appendix C thereof. An annual report of the RRCA is published each year. The accounting procedures, reporting requirements, and annual report of the RRCA are independent of this monitoring plan, and therefore not restated within the Monitoring Section of this plan.

**1. Part One: Tracking and Reporting of Water Use Activities**

The URNRD and the DNR will make all documents, reports, records, computer runs or other calculations or material necessary to determine compliance with the Compact available to each other, regardless of whether such documents are available under the Nebraska Public Records Act or otherwise, unless such materials are identified as confidential under Nebraska statutes or by a ruling of a court of competent jurisdiction. Specifically, and without limitation, the URNRD agrees to annually provide GIS coverage maps of all lands irrigated and to meter, record and provide to the DNR its ground water usage records and irrigation system details. The URNRD shall make copies of district actions taken on variances, offsets, and similar actions available to DNR.

The DNR agrees to make available to the URNRD all reports and records of the other NRDs necessary to determine their compliance with reductions, as well as all documentation and reports utilized by the DNR to determine the basin's virgin water supplies and Nebraska's compliance with the Compact.

In the event any materials are withheld by either DNR or URNRD under a claim of statutory confidentiality, the party withholding such materials shall describe the contents of the materials and reasons for the denial in accordance with *Neb. Rev. Stat. § 84-712.04*.

## **2. Part Two: Forecast Procedures**

Each year in compliance with *Neb. Rev. Stat. § 46-715(6)* the DNR in consultation with the Republican River NRDs shall forecast the maximum amount of water that may be available from stream flow for beneficial use in the short term and long term to comply with the Compact. This forecast will be used to assist the DNR and the NRDs in ensuring compliance with the Compact. DNR in conjunction with the NRDs will annually evaluate the forecast procedures and make changes as deemed necessary to reflect management actions being taken in the basin.

In order to complete the forecast, the DNR and URNRD in conjunction with the other NRDs will review available information and determine if additional controls must be implemented within any district for Compact Call Year compliance. The forecast will be completed prior to January 1 of each year, and will detail the expected shortfall within each district in the event that the coming year is a Compact Call Year. By the following January 31, if necessary, the URNRD will provide DNR with details regarding existing management alternatives (such as execution of existing surface water leases) in lieu of additional ground water regulations or controls to make up for the expected shortfall.

The procedures developed to complete the forecast will be reviewed annually by the DNR to determine if modifications are necessary. The forecast will project the next year's balance (projected Nebraska allocation plus projected Imported Water Supply less the projected Computed Beneficial Consumptive Use, or CBCU), and the projected water short year and normal year accounting balances. These balances will be utilized in conjunction with other information to determine if a Compact Call Year exists.

The DNR's calculation of allowable ground water depletions for the URNRD and determination of the necessity for additional controls will utilize additional ground water model information, estimated end-of-year information for reservoir volumes, and estimated stream flow to determine on an annual basis whether additional NRD-specific controls must be implemented.

### **a. Determination of Available Stream Flow**

The forecast will typically determine the forecast values for both Guide Rock (water short year accounting point) and Hardy (normal year accounting point). The DNR's forecast values for Guide Rock will include: 1) the one-year balance (projected allocation less the projected CBCU plus the imported water supply); two-year average, and three-year average. The DNR's forecast values for Hardy will include: 1) the one-year balance (projected allocation less the projected CBCU plus the imported water supply); and 2) the five-year average. These forecasted values will be used in conjunction with sections IX.B.2.b, IX.B.2.c, IX.B.2.d and IX.B.2.e to determine when management actions or controls must be implemented. The DNR will calculate forecast values for the next year using the variables in table 2:

Table 2. Information Used for 2010 Forecast of Allowable Depletions.

Year	Item	Information Source
T-3		Draft; current Accounting Procedures (v. 2005)
T-2		Draft; current Accounting Procedures (v. 2005)
T-1		Draft; current Accounting Procedures (v. 2005)
Provisional Data for T=0 (Current Year or Immediate Past Irrigation Season)	Pumping	Power records estimate
	Surface Water Use	Estimated from preliminary data and previous years values
	Stream Flow	Available provisional records end of year estimated
	Evaporation	T-1 records
Forecast Year T+1 (Coming Irrigation Season)	Ground water Consumptive Use and Imported Water Supply Credit	Average values for T=0 and T-1
	Surface Water Consumptive Use	Colorado: Average of T-1 and T-2 use Kansas: + (.1858 x HCL content) + 9,575 Nebraska: - (4x10 <sup>7</sup> ) x (NE lake volume) <sup>2</sup> + (0.52) x (NE lake volume) - 42,000
	Stream Flow	+ (5-year average of state line flows) x 0.41 + 0.23 x HCL content - 27,450

In accordance with *Neb. Rev. Stat. § 46-703(6)*, DNR, NRDs, and surface water project sponsors shall meet prior to the final forecast of allowable stream flow depletions and determination of Compact Call Years. At this meeting the involved parties will discuss the forecasted streamflow and surface water consumptive use. From these discussions, surface water project sponsors may present a plan to DNR to achieve a consumptive use that is less than forecasted consumptive use. Such a plan could allow surface water project sponsors to avoid a potential Compact Call Year. This plan must be completed and provided to the Department no later than December 1 of the current year (T=0).

The following equations will be utilized to determine the one year balance for the forecast year.

$$\begin{aligned} \text{CWS} = & + \text{SwCBCU}_{\text{NE}} + \text{SwCBCU}_{\text{KS}} + \text{SwCBCU}_{\text{CO}} \\ & + \text{GwCBCU}_{\text{NE}} + \text{GwCBCU}_{\text{KS}} + \text{GwCBCU}_{\text{CO}} \\ & + \text{Stateline Stream flow} \end{aligned}$$

$$\text{Nebraska Allocation} = \text{CWS} * 0.5$$

$$\text{CBCU}_{\text{NE}} = \text{SwCBCU}_{\text{NE}} + \text{GwCBCU}_{\text{NE}}$$

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IWS = Imported Water Supply Credit

Hardy One Year Balance = Nebraska Allocation + IWS – CBCU<sub>NE</sub>

Guide Rock One Year Balance = Hardy One Year Balance \* 0.89 – 9040

Where:

T-3 = Three years ago from the current year

T-2 = Two years ago from the current year

T-1 = One year ago from the current year

T=0 = The current year

T+1 = The upcoming year that is being forecasted

CWS = Computed Water Supply

GW CBCU<sub>NE, KS, CO</sub> = Ground water Computed Beneficial Consumptive Use for each respective state

SW CBCU<sub>NE, KS, CO</sub> = Surface Water Computed Beneficial Consumptive Use for each respective state

Nebraska Allocation = CWS x 0.5: The amount of water the State of Nebraska is allowed to use over one year

Balance = The sum of Nebraska's Allocation, plus the Nebraska Imported Water Supply, less Nebraska's Computed Beneficial Consumptive Use

The one year balance for normal year accounting (Hardy One Year Balance) and water short year accounting (Guide Rock One Year Balance) will be utilized to project the two-year and three-year average balances above Guide Rock and the five-year average balance above Hardy.

**b. Compact Call Year Evaluation**

This section of the monitoring plan specifies the process that will be completed by the DNR to determine the Compact Call Years, as detailed in Attachment 1, Republican River Water Supply Evaluation and Required Actions Flowchart. This evaluation takes into account reservoir content and recent balances above Guide Rock and Hardy and the annual forecast as described above in Section IX.B.2.a. This process will be completed and provided to the URNRD by DNR prior to January 1 of each year.

**Checklist A. Water short year Test**

- 1) Is the forecast projection for the coming year's irrigation supply less than 119 kAF?
  - a. Yes. Proceed to Checklist B.
  - b. No. Proceed to Checklist C.

**Checklist B. Water short year**

- 1) Is the current year's balance ( $T = 0$ ) above Guide Rock sufficient to offset the dry year forecast for next year's balance above Guide Rock minus 10 kAF<sup>1</sup>?
  - a. Yes. Proceed to Checklist D.
  - b. No. COMPACT CALL YEAR: The DNR will determine each NRD's share of any potential overuse and propose adjustments in accordance to Section IX.B.2.c. of this IMP.

Note: If it is beneficial to utilize the alternative water short year provisions from the FSS (the previous two years have a greater balance than last year alone), and an alternative water short year plan has been approved by the RRCA, then the two-year balance (for  $T = 0$ , the current year, and the prior year,  $T - 1$ ) will be substituted for the current year's balance in Checklist B.

**Checklist C. Early Warning System for Water short year Compliance**

- 1) When Harlan County Lake declines from one year to the next, the December end-of-month (EOM) content is generally about 84% of what it was last year. A December EOM of 246 kAF provides a high level of confidence that the coming year ( $T+1$ ) will not be water short. Based on the current year's ( $T=0$ ) Harlan County Lake December EOM content, compute a dry-year projection for next year ( $T+1$ ) based on this relationship. Is the value greater than 246 kAF?
  - a. Yes. Proceed to Checklist D.
  - b. No. Advance to question 2.
- 2) Is the dry year forecast for next year's ( $T+1$ ) balance above Guide Rock greater than zero?
  - a. Yes. Proceed to Checklist D.
  - b. No. Advance to question 3.
- 3) Is the current year's balance ( $T = 0$ ) above Guide Rock sufficient to offset the dry year forecast for next year's balance ( $T + 1$ ) above Guide Rock minus 10 kAF<sup>2</sup>?
  - a. Yes. Proceed to Checklist D.

<sup>1</sup> In the event it is the second consecutive Compact Call Year, this value will be reduced to 5kAF. For any remaining consecutive Compact Call Years, it will be reduced to zero.

<sup>2</sup> In the event it is the second consecutive Compact Call Year, this value will be reduced to 5kAF. For any remaining consecutive Compact Call Years, it will be reduced to zero.

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- b. No. COMPACT CALL YEAR: The DNR will determine each NRD's share of any potential overuse and propose adjustments in accordance to Section IX.B.2.c. of this IMP.

**Checklist D. Normal Year Administration**

- 1) Will the forecast for next year (T + 1) result in a 5-year balance at Hardy that is greater than 50 kAF?
- a. Yes. Analyze long term trends and additional adjustments in accordance to Section IX.B.2.e
  - b. No. Advance to question 2.
- 2) Will both the forecast for next year result in a 5 year balance at Hardy (T - 3, T - 2, T - 1, T = 0, and T + 1) that is greater than zero and the balance at Hardy of the most recent four years (T - 2, T - 1, T = 0, and T + 1) be greater than zero?
- a. Yes. Analyze long term trends and additional adjustments in accordance to Section IX.B.2.e
  - b. No. COMPACT CALL YEAR: The DNR will determine each NRD's share of any potential overuse and propose adjustments in accordance to Section IX.B.2.c. of this IMP.

**c. Calculation of Allowable Ground water Depletions for the URNRD and Determining the necessity of Additional Controls**

This section of the monitoring plan specifies the calculations which will be completed by the DNR to determine the allowable ground water depletions for the URNRD in any Compact Call Year. These procedures will be utilized to indicate when additional controls must be implemented by the URNRD and DNR to ensure compliance with this IMP in the event that the DNR's forecast, provided prior to January 1 of each year, indicates a Compact Call Year. These procedures will incorporate information provided by the URNRD (contracts for water leasing, augmentation, etc.) to the DNR by January 31 of each year following a forecast that indicates a Compact Call Year. When such Compact Call Year is indicated, the DNR will implement additional surface water controls (Section VII.F of this IMP). The procedures for determining the allowable ground water depletion for the URNRD are as follows.

The Allowable ground water depletion for the URNRD =  
(Nebraska Allocation + IWS - SWCBCU<sub>NE</sub> - Other NRD CBCU) \* 0.44

Where:

Nebraska Allocation = Nebraska available water supply under the Compact

IWS = Imported Water Supply credit

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$SWCBCU_{NE}$  = The surface water consumptive use by Nebraska, includes net evaporative losses

Other NRD CBCU = The  $GWBCU_{NE}$  calculated for the South Platte NRD, Twin Platte NRD, Tri-Basin NRD, Central Platte NRD, and Little Blue NRD

The DNR will utilize information provided by the URNRD by January 31, to evaluate the following.

Step 1. URNRD Estimated Ground water Depletions

Ground water depletions for the URNRD will be based on the previous 2-year average (as described in Table 2 above), unless such plan provided by the URNRD indicates that additional restrictions on groundwater pumping will be imposed. If the additional restrictions would limit the pumping to be less than the previous two year average then the lower estimate will be used. In cases where that year's allocation will be less the URNRD will provide the DNR a map indicating the geographic area subject to the allocation for that year and the maximum allocation available. The DNR will utilize the information provided by the URNRD and represent such information in the RRCA GWM.

Step 2. Potential yield from URNRD surface water leases/agreements, augmentation, etc.

The DNR will determine the potential yield from any surface water lease/agreement, augmentation, etc. entered into or provided by the URNRD. In the event that augmentation is utilized, procedures for determining the project yield must have been approved by the RRCA. This potential yield will be incorporated as NRD management actions in section IX.B.2.d.

If a Compact Call Year is reached as a result of checklist B1 or C3 the final step to determine if additional ground water and surface water controls (refer to Section VI.B.1. and VII.F of this IMP) must be implemented is as follows.

Allowable ground water depletions for URNRD (as determined above) - Forecasted URNRD's portion of  $GWBCU_{NE}$  (Step 1) + Potential yield from URNRD surface water leases/agreements, augmentation, etc. (Step 2) + Current Year's Balance (T = 0) - 3333<sup>3</sup>.

If the resulting balance is greater than or equal to negative one hundred (-100) ac-ft, no additional ground water and surface water controls will be implemented.

<sup>3</sup> In the event it is the second consecutive Compact Call Year, this value will be reduced to 1667. For any remaining consecutive Compact Call Years, it will be reduced to zero.

If the resulting balance is less than negative one hundred (-100) ac-ft, the additional ground water and surface water controls (refer to Section VI.B.1. and VII.F of this IMP) must be implemented. This potential yield will be incorporated as NRD management actions in section IX.B.2.d.

Note: If it is beneficial to utilize the alternative water short year provisions from the FSS (the previous two years have a greater balance than last year alone), and an alternative water short year plan has been approved by the RRCA, then the two-year balance (for  $T = 0$ , the current year, and the prior year,  $T - 1$ ) will be substituted for the current year's balance in Checklist B.

If a Compact Call Year is reached as a result of checklist D2 the final step to determine if additional ground water and surface water controls (refer to Section VI.B.1. and VII.F of this IMP) must be implemented is as follows.

Allowable ground water depletions for URNRD (as determined above) - Forecasted URNRD's portion of GWCBCU<sub>NE</sub> (Step 1) + Potential yield from URNRD surface water leases/agreements, augmentation, etc. (Step 2) + Previous Years Balances ( $T = -3$ ,  $T = -2$ ,  $T = -1$ ,  $T = 0$  or if applicable +  $T = -2$ ,  $T = -1$ ,  $T = 0$ ).

If the resulting balance is greater than or equal to negative one hundred (-100) ac-ft, no additional ground water and surface water controls will be implemented.

If the resulting balance is less than negative one hundred (-100) ac-ft, the additional ground water and surface water controls (refer to Section VI.B.1. and VII.F of this IMP) must be implemented. This potential yield will be incorporated as NRD management actions in section IX.B.2.d.

#### **d. Calculation of Compact Call Stream flow Volume**

This section of the monitoring plan specifies the calculation which will be completed by the DNR to determine the stream flow volume necessary to ensure Compact compliance in any Compact Call Year. These procedures will be utilized to indicate when additional controls must be implemented by the URNRD and DNR to ensure compliance with this IMP in the event that the DNR's forecast, provided prior to January 1 of each year, indicates a Compact Call Year. These procedures will incorporate information provided by the URNRD (contracts for water leasing, augmentation, etc.) to the DNR by January 31 of each year following a forecast that indicates a Compact Call Year. When such Compact Call Year is indicated, the DNR will implement additional surface water controls (Section VII.F of this IMP). Criteria that will be used to determine when administration for the "Compact Call" is no longer necessary will be based on ensuring sufficient stream flow volumes have been achieved at the compliance point. Determination of sufficient stream flow volumes to ensure Compact compliance will be determined through the following procedures.

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Compact Call Stream flow Volume = Forecasted Stream flow + NRD Management Actions + Surface Water Curtailment Benefit

Where:

Forecasted Stream flow = Stream flow for T+1; (5-year average of state line flows) x 0.41 + 0.23 x HCL content - 27,450.

NRD Management Actions = Actions taken by the URNRD and/or other basin NRDs to enhance stream flow. These actions may include surface water or ground water leases, augmentation, or curtailment.

Surface Water Curtailment Benefit = Actions taken by DNR to ensure compact compliance in the event that Basin NRD Management Actions are not sufficient to overcome the projected negative balance.

**e. Additional adjustments related to long-term trends**

The DNR and URNRD in conjunction with the other basin NRDs will annually meet to consult to determine if additional reductions from the 98-02 pumping volumes may be warranted. Through this consultation, the DNR and URNRD will review expected long term (5-20 years) increases in depletions to stream flow and discuss potential mitigation measures that may be necessary.

**f. Harlan County Lake Operations**

In the event that operations of Harlan County Lake are not in accordance with Appendix K of the Final Settlement Stipulation, the DNR will work in consultation with the NRDs to modify Sections VI, VII, and IX of this IMP until normal operations resume.

**X. INFORMATION CONSIDERED**

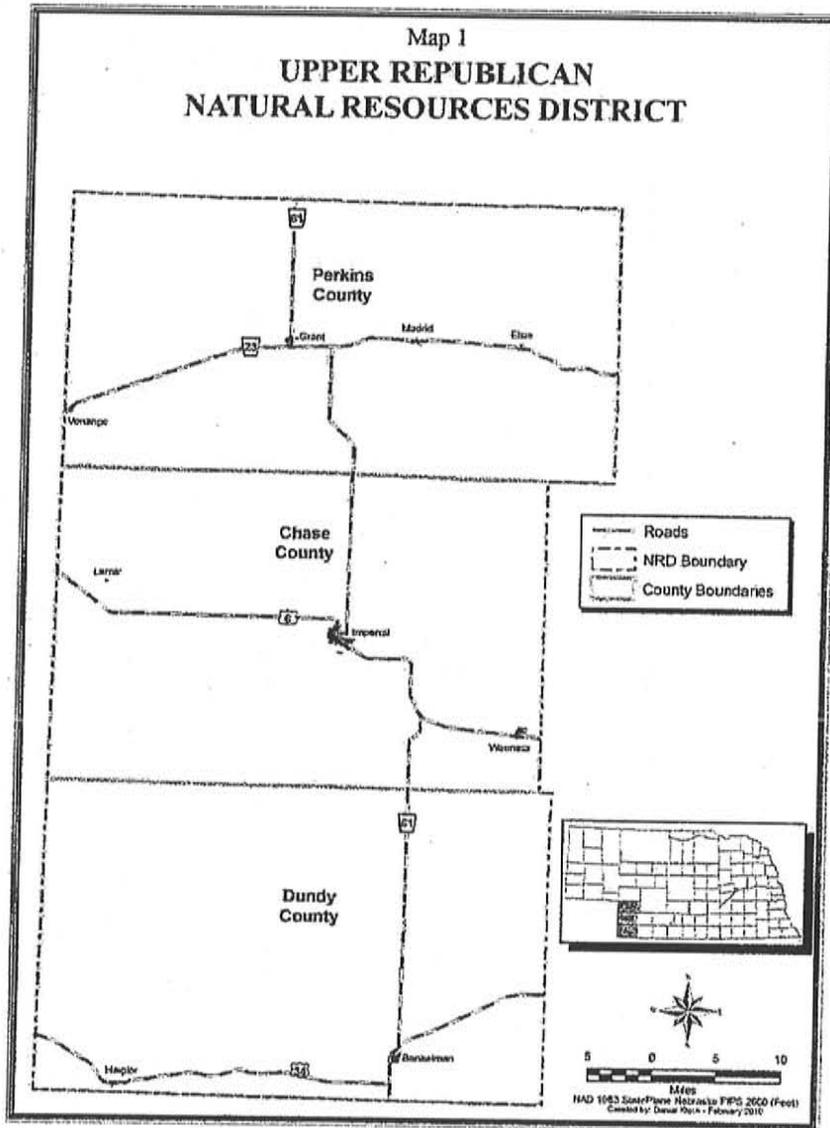
Information used in the preparation and to be used in the implementation of this IMP can be found in:

- Simulation runs of the Republican River Compact Administration Ground water Model,
- The formulae and data compliance tables of the Final Settlement Stipulation for the Compact,
- The URNRD's Rules,
- The URNRD's Ground water Management Plan,
- Arbitrator's Final Decision, Karl Dreher, June 30, 2009, and
- Additional data on file with the URNRD and the DNR.
- Nebraska statutes and case law.

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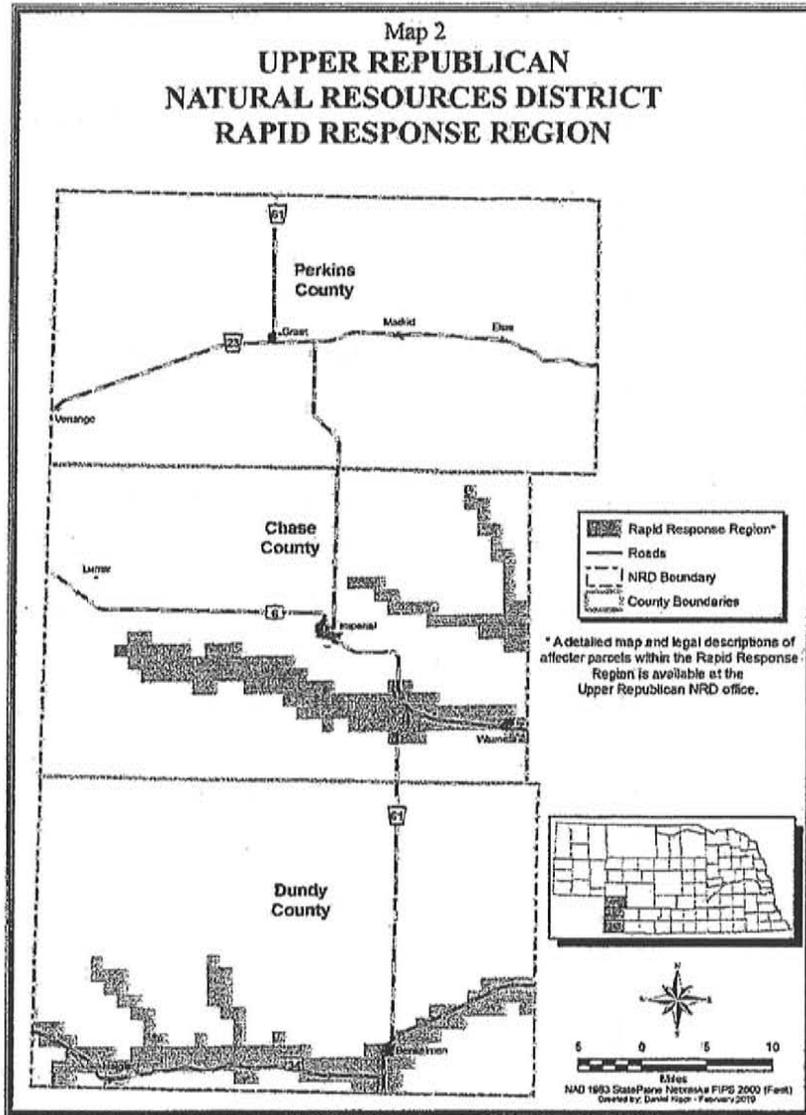
MAP I. Upper Republican Natural Resource District



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MAP 2. Upper Republican Natural Resource District Rapid Response Region







STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES

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

Background

1. The Department of Natural Resources (DNR or Department) and the Middle Republican Natural Resources District (MRNRD 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 MRNRD 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 MRNRD 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 11, 2010, the MRNRD 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 MRNRD through the MRNRD 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 MRNRD 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 MRNRD and DNR published joint notice of hearing for the agreed upon proposed revisions to the IMP.
6. On June 8, 2010, 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 MRNRD 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 MRNRD Ground Water Management Act Rules and Regulations, and incentive programs proposed in the IMP.
8. On August 2, 2010, the MRNRD 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 4, 2010, the Department sent the MRNRD 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 September 15, 2010, 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 MRNRD 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:

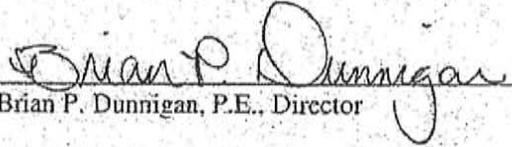
- F. During Compact Call Years, as determined from the procedures and analysis set forth in Section X of the MRNRD Integrated Management Plan, DNR will regulate and administer surface water in the basin as necessary to ensure Compact compliance. During Compact Call Years, DNR will issue a "Compact Call" 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 MRNRD and other basin NRDs, determines that yearly administration is no longer needed to ensure Compact compliance, pursuant to Section X of the MRNRD Integrated Management Plan.

Order

It is therefore ORDERED that the Integrated Management Plan for the Middle Republican Natural Resources District jointly adopted by the MRNRD, and the surface water controls contained in the Integrated Management Plan of the Middle Republican Natural Resources District are hereby adopted by the Department and will become effective on November 1, 2010.

DEPARTMENT OF NATURAL RESOURCES

September 20, 2010

  
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, 4<sup>th</sup> Floor State Office Building, Lincoln, NE 68509-4676) within 30 days of the date of the Approval and be accompanied by a filing fee of \$10.

On September 20, 2010, a copy of this Order was posted on the Department's website and mailed to Dan Smith, General Manager Middle Republican Natural Resources District, 220 Center P.O. Box 81, Curtis, Nebraska 69025 and the Department of Natural Resources field offices.

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Middle Republican NRD

INTEGRATED MANAGEMENT PLAN  
Jointly Developed by the  
DEPARTMENT OF NATURAL RESOURCES  
and the  
MIDDLE REPUBLICAN NATURAL RESOURCES DISTRICT

**I. Authority**

This integrated management plan (IMP) was prepared by the Board of Directors of the Middle Republican Natural Resources District (MRNRD) and the Nebraska Department of Natural Resources (DNR) in accordance with the Nebraska Ground Water Management and Protection Act, *Neb. Rev. Stat. §§ 46-701 to 46-753* (Reissue 2004).

**II. Background**

In 1943 the States of Colorado, Kansas and Nebraska entered into the Republican River Compact (Compact) with the approval of Congress. The Compact provides for the equitable apportionment of the "virgin water supply" of the Republican River Basin. Following several years of dispute about Nebraska's consumptive use of water within the basin, Kansas filed an original action in the United States Supreme Court (Court) against the states of Nebraska and Colorado in 1998. After several rulings by the Court and its Special Master and several months of negotiation, all three states entered into a comprehensive agreement known as the Final Settlement Stipulation (FSS). The FSS was approved by the Court on May 19, 2003, and the Special Master's final report approving the Joint Ground Water Model developed by all three states for use in computing stream flow depletions resulting from ground water use and for computing the imported mound credit was submitted to the Court on September 17, 2003.

In July, 1996, the MRNRD and the other three natural resources districts (NRDs) in the Republican River Basin, pursuant to then Section 46-656.28 of the Nebraska statutes, initiated a joint action planning process with the Department of Water Resources (DWR), the predecessor agency to DNR. In accordance with that process, DWR first made a preliminary determination in 1996 that "there was reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over the Republican River Compact." When the studies required by Section 46-656.28 had been completed, DNR issued its conclusions on May 20, 2003, in the form of a report entitled: "Republican River Basin, Report of Preliminary Findings." Those conclusions included the following determination:

Pursuant to Section 46-656.28 and the preliminary findings in this report, the Department determined that present and future Compact disputes arising out of the use of hydrologically connected ground water and surface water

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resources in the Republican River Basin could be eliminated or reduced through the adoption of a joint action plan.

Following four hearings on that report, DNR made final the preliminary conclusions in the report and the four basin NRDs were so informed. The MRNRD and the other three NRDs each then adopted orders to proceed with developing a joint action plan for integrated management of hydrologically connected surface water and ground water resources in the Basin; preparation of a joint action plan for the MRNRD began soon thereafter.

The Nebraska Legislature adopted LB962 in April of 2004 and it was signed by Governor Johanns on April 15, 2004, and became operative on July 16, 2004. That bill repealed Section 46-656.28 and replaced it with legislation providing for a revised process for addressing hydrologically connected surface water and ground water resources. In order to avoid the need to begin anew the integrated management planning processes that had been commenced but not completed under Section 46-656.28, LB962 provided for the transition of those ongoing planning processes into the newly enacted process now codified as Sections 46-713 to 46-719. The MRNRD and DNR agreed that preparation of a joint action plan had not been completed prior to July 16, 2004; therefore, subsection (3) of what is codified as Section 46-720, governs that transition. Completion of this plan proceeded under the new process and this plan was adopted in accordance with Section 46-718.

The MRNRD and the DNR adopted an IMP effective January 1, 2005, that contained ground water rules and regulations for the 2005-2007 period. That IMP established an average ground water allocation of thirteen (13) inches per certified acre, certified all uses and included several other controls. A goal of the 2005 IMP was to reduce water use by five percent (5%) from the 1998-2002 baseline. The IMP was updated and revised for 2008 – 2012, with a goal of reducing water use by twenty percent (20%) from the 1998-2002 baseline.

Although the MRNRD's allowable depletions to stream flow are limited to 30% of Nebraska's allowable depletions, there were no details in the plan to describe how this would be accomplished. In 2008 Colorado, Kansas, and Nebraska entered into dispute resolution regarding a number of issues, including future compliance. In June 2009 the arbitrator issued a finding that the MRNRD IMP may be adequate during years with average and above-average precipitation, but since water-short year measures were not specifically identified, the plan may not be adequate during multiple dry years, an issue addressed in this IMP

Since that time, efforts have been taken to implement or conduct incentive programs, studies, and research to further our understanding and ability to comply with the Republican River Compact and the FSS.

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**III. Agreements**

The MRNRD and the DNR wish to adopt and implement a revised IMP for the regulation of water resources within the district as required by the laws of the State of Nebraska. The MRNRD and the DNR agree that the IMP for the district shall keep the district's average net depletions to an amount within thirty percent (30%) of the State's average allowable ground water depletions. Based upon its calculations the DNR believes that at the time this IMP became effective, a twenty percent (20%) reduction from the 98-02 pumping volume would be sufficient, without additional stream flow augmentation, to keep the district's average net depletions within the MRNRD's thirty percent (30%) share of the State's allowable ground water depletions. As described in sections below, during periods of low water supply additional reductions from the 98-02 pumping volume may be necessary.

The DNR has determined pumping volumes, depletion volumes, and depletion percentages for the period 1998-2002 defined as "1998-2002 Baselines". The pumping volumes are used throughout this IMP and are referenced as the "98-02 pumping volume". DNR, through the use of the Republican River Compact Administration Ground Water Model, has also determined each District's impact on stream flow for the baseline period and those impacts are defined as "98-02 depletion volume". Those depletion volumes have resulted in depletion percentages used throughout this IMP and defined as "98-02 depletion percentages."

The failure of any District to adopt, implement, or enforce an IMP adequate to meet their proportionate share of the responsibility to achieve and maintain Nebraska's compliance with the Compact shall not by itself require any additional action by the other Districts. Neither the MRNRD nor DNR will require the IMP to be amended solely for the purpose of changing the responsibility of water users within the MRNRD based on the failure of the other Basin NRDs to implement or enforce an IMP to meet their share of the responsibility to keep Nebraska in compliance with the Republican River Compact.

**IV. Definitions**

- A. 1998-2002 Baselines** - The depletions to stream flow, in the Nebraska portion of the Republican River Basin, as a result of ground water uses in the years 1998-2002 inclusive.

98-02 Pumping Volume:

URNRD-531,763 AF, MRNRD-309,479 AF, LRNRD-242,289 AF

98-02 Depletion Volume:

URNRD-74,161 AF, MRNRD-52,168 AF, LRNRD-43,954 AF

98-02 Depletion Percentage:

URNRD-44%, MRNRD-30%, LRNRD-26%

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- B. Allowable Stream flow Depletions** - the maximum amount of stream flow depletion in the Republican River Basin that can occur in a given year without Nebraska exceeding its allocation. Allowable stream flow depletions are the sum of the allowable ground water depletions and the allowable surface water depletions.
- C. Allowable Ground Water Depletions** - the maximum level of depletions to stream flow that may occur as a result of ground water pumping of wells within the Republican River Basin that can occur in a given year without Nebraska exceeding its allocation.
- D. Allowable Ground Water Depletion for the MRNRD** - the annual mean depletions to stream flow resulting from the impact of ground water pumping in the MRNRD. These depletions shall average no greater than 30% of the allowable ground water depletion. The average shall be computed using the allowable annual ground water depletion for the same years as are used to determine the averages for Nebraska's compliance with the FSS.
- E. Supplemental Programs** – as used in this plan, refers to, but is not limited to; surface water or ground water augmentation projects, river flow enhancement projects, incentive programs, riparian management projects and other projects that may reduce the District's net depletions to stream flow.
- F. Compliance Standard** - the criteria that will be used to determine whether the controls of this IMP and the MRNRD's rules, regulations, and other programs are sufficient to meet the goals and objectives of this IMP pertaining to pumping volumes and depletions
- G. Net Depletion** – the actual ground water depletion for the MRNRD less any reduction in stream flow depletions or increase in accretions to the stream resulting from supplemental projects as determined by the RRCA ground water model and in accordance with the RRCA Accounting Procedures.
- H. Compact Call Year** –A year in which the Department's forecast procedures outlined in Section X.B.2.b of this IMP indicate the potential for non-compliance if sufficient surface water and ground water controls and/or management actions are not taken. Compact Call Year streamflow administration will be conducted by the Department in a manner consistent with Section X.B.2.d of this IMP. Pursuant to Article VI of the Republican River Compact, diversions into the Courtland Canal for beneficial use in the State of Kansas will not be subject to the Compact Call.

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## **V. Goals and Objectives**

Pursuant to *Neb. Rev. Stat. § 46-715* (Reissue 2004), the goals and objectives of this IMP must have a purpose of "sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin... can be achieved and maintained for both the near term and the long term." The MRNRD will meet its responsibility under *Neb. Rev. Stat. § 46-715*, including meeting the obligations under the FSS, by adopting revised rules to implement the IMP with regulations and other supplemental programs.

The following goals and objectives are adopted by the MRNRD and the DNR to achieve the purpose stated above:

### **A. Goals:**

1. In cooperation with the other basin NRDs and the Nebraska Department of Natural Resources, maintain compliance with the Compact as adopted in 1943 and as implemented in accordance with the FSS approved by the United States Supreme Court on May 19, 2003.
2. Ensure that ground water and surface water users within the MRNRD assume their share, but only their share, of the responsibility to keep Nebraska in compliance with the Compact.
3. Provide that MRNRD's share of compliance responsibility and impacts to stream flow be apportioned within the MRNRD in an equitable manner and by minimizing, to the extent possible, adverse economic, social, and environmental consequences.
4. Reserve and protect any increases to stream flow available from regulation or supplemental programs, enacted or implemented to maintain Compact compliance, from any use that would negate the benefit of such regulation or programs, to the extent allowed by statute and the surface water controls of this IMP.
5. Protect ground water users whose water wells are dependent on recharge from the river or stream and the surface water appropriators on such river or stream from stream flow depletions caused by surface water uses and ground water uses begun after the date the river basin was designated as fully appropriated.

### **B. Objectives:**

1. With limited exceptions, prevent the initiation of new or expanded uses of water that increase Nebraska's computed beneficial consumptive use of water within the MRNRD.

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2. Ensure that administration of surface water appropriations in the basin is in accordance with the Compact and in full compliance with Nebraska law and the surface water controls of this IMP.
3. Achieve, on average, a twenty percent (20%) reduction in 98-02 pumping volume under average precipitation conditions.
4. Maintain, on average, the MRNRD net depletions at or below thirty percent (30%) of the allowable ground water depletion.
5. After taking into account any reduction in beneficial consumptive use achieved through district or basin-wide supplemental projects and other projects developed at the basin or district level with the expressed purpose or result of reducing consumptive use or increasing stream flow, make such additional reductions in ground water use in Compact Call Years as are necessary to achieve a reduction in beneficial consumptive use in the MRNRD to 30% of Nebraska's allowable ground water depletions to stream flow in such years. Compact Call Years will be determined through the procedures outlined in Section X of this IMP.
6. Achieve the required reductions in water use through a combination of regulatory and supplemental programs designed to reduce beneficial consumptive use. To the extent funds are available, incentive programs will be made available to as many MRNRD water users as possible.
7. The MRNRD and the DNR will investigate or explore methods to manage the impact of vegetative growth on stream flow.
8. Develop a procedure to provide offsets for new consumptive uses of water so that economic development in the MRNRD may continue without producing an overall increase in ground water depletions as a result of new uses.

**VI. Map**

The area subject to this IMP is the geographic area within the boundaries of the MRNRD (see Map 1). The Rapid Response Region is shown as a sub-area within the boundaries of the MRNRD, (see Map 2). The Quick Response region is shown as a sub-area within the boundaries of the MRNRD, (see map 3).

**VII. Ground Water Controls**

In accordance with *Neb. Rev. Stat. § 46-715*, one or more of the ground water controls authorized by *Neb. Rev. Stat. § 46-739* and *Neb. Rev. Stat. § 46-740* shall be adopted for the purpose of implementing this plan. Other authorities, provided for in the Ground Water Management and Protection Act, may be used to supplement

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these controls. These controls, along with any applicable supplemental programs, shall be consistent with the goals and objectives of this plan and be sufficient to meet the compliance standards set forth below, ensure that the state will remain in compliance with the Compact, and protect the ground water users whose water wells are dependent on recharge from the river or stream and the surface water appropriators on such river or stream from stream flow depletion caused by surface and ground water uses begun after July 16, 2004, the date the river basin was designated as fully appropriated, in accordance with *Neb. Rev. Stat.* §§ 46-720 and 46-713-46-715,

*The Rules and Regulations – Ground Water Management Area in the Middle Republican Natural Resources District* contains the rules for implementation of controls required by the FSS and other controls needed for the effective administration of a ground water management subarea for integrated management. The actions proposed by the FSS were rules and regulations for transfers, meters, and certification of acres. In addition, a well drilling moratorium and a ban on the increase of irrigated acres were also implemented. The compliance standard and management activities listed below will be or have been implemented to achieve and maintain Compact compliance.

Amendments to the MRNRD rules and regulations dealing with the requirements of *Neb. Rev. Stat.* §46-715(4)(b), and §46-715(4)(c) shall have the concurrence of DNR. The MRNRD may otherwise amend those regulations without the approval of the DNR so long as the compliance standards listed below are met.

The Determination of whether the MRNRD is in compliance with the compliance standards shall be made prior to the regular annual meeting of the RRCA and shall be based on each year's annual Compact accounting.

**A. Compliance Standards**

1. Purpose

These Compliance Standards are established by DNR and MRNRD to assess whether the course of action taken by the MRNRD, with the intention of providing a proportionate share of assistance to the State, is sufficient for the State to maintain compliance with the FSS and the Compact. The action taken by the MRNRD shall be evaluated in connection with the action taken by the other NRDs in the Republican River Basin and any other relevant considerations, including the information and data provided by DNR and past action by the district.

2. Duration

On an annual basis the DNR and MRNRD shall examine the sufficiency and effectiveness of the Compliance Standards to determine if amendments or

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revisions to this IMP are necessary to ensure the State's compliance with the FSS and the Compact. Nothing contained herein shall prohibit or preclude any amendment or revision, at anytime, by the DNR and MRNRD, when such action is necessary. Further, nothing contained in this subsection shall be construed as eliminating the review of the provisions of this IMP as allowed by *Neb. Rev. Stat. §46-715*.

**3. Standards**

The MRNRD shall adopt and implement rules and regulations which shall ensure that the following standards are met. The standards shall be affected through the procedure described in Section X - Monitoring and Studies. Section X specifies a forecast and resulting actions needed at the Guide Rock compliance point (during water short years) and at the Hardy compliance point. The procedures for determining whether the compliance standards are met will be based on the RRCA Accounting Procedures, the baseline ground water depletion percentage, and the annual forecast as outlined in Section X. The standards are

- a. A minimum of twenty percent (20%) reduction in pumping from the 98-02 pumping volume using a combination of regulation and supplemental programs so that the average ground water pumping volume is no greater than 247,580 acre-feet over the long term. The ground water pumping volume for any single year may be above 247,580 acre-feet.
- b. An additional reduction in 98-02 pumping volumes of five percent (5%) during the next five year period shall be accomplished primarily through voluntary incentive programs and other means as determined by the MRNRD. The necessity for continuing this annual reduction shall be reevaluated by DNR and the MRNRD in 2015.
- c. The district's net depletions to stream flow shall average no greater than thirty percent (30%) of the State of Nebraska's allowable ground water depletions as computed using the RRCAGWM. The average shall be computed using the annual allowable ground water depletion for the same years as are used to determine the averages for Nebraska's compliance with the FSS.

**B. Other Controls and Management Activities**

The MRNRD and the DNR recognize that the required reductions in water consumption could be accomplished by means other than those adopted in this IMP. The IMP and associated controls may need to be amended in the future to implement any such revisions.

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1. During Compact Call Years, the MRNRD will seek to implement management actions (such as surface water leasing, ground water leasing, augmentation, etc.) to ensure compliance with this IMP. These management actions will be implemented through the authorities granted by the Nebraska Ground Water Management and Protection Act, *Neb. Rev. Stat. §§ 46-701 to 46-753*. Details of such management actions will be provided to DNR by January 31 of each year for evaluation. If such management actions are insufficient to ensure compliance with this IMP, the MRNRD will in the alternative to management actions, implement additional ground water controls and regulations to make up for its proportionate share of any expected shortfall as identified in the annual forecast and described in Section X of this IMP. Such additional control will include but not be limited to, restriction or curtailment of ground water pumping within the Rapid Response Region of the MRNRD and restrictions on ground water pumping in all other sub areas of the district.
2. When necessary to ensure compliance with this IMP during Compact Call Years, the MRNRD may set a one year pumping allocation within the district. Such allocation will set the maximum pumping level in that year within any region or sub-region.
3. Maintain a moratorium on new uses with the exceptions noted in the FSS.
4. Limit or prevent the expansion of irrigation uses.
5. Maintain requirement for metering of all ground water uses according to MRNRD standards.
6. Provide for transfers according to NRD standards.
7. The MRNRD shall make available to DNR copies of NRD actions taken on variances and consult with DNR to minimize or eliminate any impact, relating to Compact compliance, that may arise as a result of a variance granted by the district.
8. DNR will consult with the MRNRD when considering applications for permits under the Municipal and Rural Domestic Ground Water Transfers Permit Act, the Industrial Ground Water Regulatory Act or other such permitting actions by the DNR that will have an impact on water supplies of the Republican River Basin.
9. The MRNRD will work with DNR to achieve the maximum amount of benefit in the accounting of leased or purchased water, augmentation projects or in similar projects.

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### **VIII Surface Water Controls - Department of Natural Resources**

The authority for the surface water component of this IMP is *Neb. Rev. Stat. §46-715* and *§46-716*. The surface water controls that will be continued and/or begun by the DNR are as follows:

- A. DNR will do the following additional surface water administration as required by the FSS:
  - 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 FSS, 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 FSS.
- 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. All meters shall have a totalizer and shall meet DNR 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 DNR's moratorium on the issuance of new surface water permits was made formal by Order of the Director dated July 14, 2004, and will be continued. Exceptions may be granted to the extent permitted by statute 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 FSS required inventory of over fifteen (15) acre-feet capacity reservoirs.

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- 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 the adjudication process for 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 DNR to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The DNR also will be proactive in initiating subsequent adjudications whenever information available to the DNR indicates the need for adjudication as outlined by state statutes.
- F. During Compact Call Years, as determined from the procedures and analysis set forth in Section X below, 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 MRNRD and other basin NRDs, determines that yearly administration is no longer needed to ensure Compact compliance, pursuant to Section X.

**IX. Augmentation and Incentive Programs**

The MRNRD and DNR, alone or in cooperation with other parties, intend to establish and implement financial, incentive, and qualified projects as described in *Neb. Rev. Stat.* §§ 2-3226.04 to reduce beneficial consumptive use of water within the MRNRD. These projects include, but are not limited to (1) acquisition by purchase or lease of surface water or ground water rights, including storage water rights with respect to a river or any of its tributaries, (2) acquisition by purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries, (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries, and (4) the augmentation of river flows. As a condition for participation in an incentive program, water users or landowners may be required to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established.

Such incentive programs may include any program authorized by state law and/or federal programs such as the Conservation Reserve Enhancement Program (CREP) and Environmental Quality Incentives Program (EQIP) operated by the U.S. Department of Agriculture.

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Projects that have a net effect of reducing consumptive use or increasing stream flow can originate from many sources. The MRNRD will initiate these types of projects when possible and participate in projects sponsored by other groups within their capabilities.

The MRNRD, through the Republican River Basin Coalition, intends to establish and implement river flow enhancement projects.

The MRNRD, alone, and/or through the Republican River Basin Coalition, may use any or all available funding authorities to establish and implement river flow enhancement projects or any other projects that result in an increase to streamflow or a decrease in ground water depletions.

Any reductions in depletions to stream flow generated through supplemental programs, funded entirely by the State of Nebraska and / or the United States Government, including acreage retirement or other incentive programs undertaken through programs available throughout the Republican River Basin will not accrue to any specific NRD, regardless of the location or other conditions of the acreage included in the program or of the location of the effect of such water savings on the river system. Any reductions in depletions to stream flow resulting from any such basin-wide programs shall be considered, in the calculation of each NRD's compliance with the 98-02 depletion percentages. This calculation is outlined in Section X.B.2.c of this IMP.

However, should any NRD establish, fund partially or in total, and implement its own such conservation program, available only for acreage within such district, the accounting of credit for the resulting water savings shall be given exclusively to that NRD.

With agreement of the NRDs involved, the benefits from a supplemental program may be allocated to each NRD based upon their share of the cost of the program.

To the extent possible, it is the intent of the MRNRD to provide compensation to water users that are required to forgo water use to allow the MRNRD and the State to comply with the compact. This may be in addition to or as part of any other MRNRD incentive or retirement program developed to facilitate compact compliance.

#### **X. Monitoring and Studies**

The overarching purpose of the Monitoring and Studies Section is to ensure that, in cooperation with the other Republican River Basin NRDs, the DNR and MRNRD maintain compliance with the Republican River Compact as adopted in 1943 and as implemented in accordance with the FSS approved by the United States Supreme Court on May 19, 2003. The objective of the Monitoring and Studies Section of this IMP is to gather and evaluate data, information, and methodologies that could be used to increase understanding of the surface water and hydrologically connected

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ground water system; to test the validity of the conclusions and information upon which this IMP is based; and to assist decision makers in properly managing the water resources within the MRNRD and the Republican River Basin as a whole.

On an annual basis the results of monitoring and studies will typically be discussed in a basin-wide meeting which will take place prior to October 31 each year. The purpose of the meeting will be to discuss the preliminary accounting for the current year, the forecast of allowable stream flow depletions for the coming year, and potential management actions as necessary. Table 1 outlines important dates and objectives related to section X.

Table 1. Important Dates and Objectives

Date	Objective
Prior to February 1	MRNRD will provide DNR with meter reading database and GIS coverage maps to be used for the RRCA annual model update.
Prior to RRCA Annual Meeting	DNR will provide MRNRD with their determination of whether the MRNRD was in compliance with the compliance standards based on each previous year's annual Compact accounting.
September - October	Obtain power records and other estimates to determine pumping for T=0 ground water model run
Prior to October 31	Discuss results of monitoring and studies, preliminary accounting for current year, and early forecast of allowable stream flow depletions
Prior to November 15	DNR will provide correspondence to MRNRD notifying them of potential Compact call determination for the coming year (T+1).
November 15 - January 1	MRNRD and DNR will discuss potential management alternatives in the situation that the coming year (T+1) will be a Compact Call Year.
Prior to December 1	Surface water project sponsors may present a plan to DNR to achieve a consumptive use that is less than forecasted consumptive use.
Prior to January 1	Provide final forecast of allowable stream flow depletions and determination of Compact Call Years.
Prior to January 31	MRNRD will provide DNR with details regarding existing management alternatives in lieu of additional ground water regulations or controls to make up for the expected shortfall.

**A. Plan to Gather and Evaluate Data, Information and Methodologies**

As outlined in *Neb. Rev. Stat. §§ 46-715(2)(e)* ongoing programs and new studies or other projects may become a source of information that is used to evaluate the effectiveness of controls adopted by the by the MRNRD and the DNR. The DNR and the MRNRD will jointly pursue and/or evaluate studies, contingent upon budget and

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staff resources, to evaluate their potential effectiveness in achieving the goals and objectives of this IMP.

The following potential studies have been identified by the DNR and the MRNRD: (1) crop rotation; (2) vegetation management; (3) irrigation scheduling; (4) a survey of the type and location of irrigation systems throughout the MRNRD; (5) tillage practices; and (6) conjunctive management.

**B. Monitoring**

Part One of the Monitoring Section describes the tracking and reporting of water use activities within fully appropriated areas of the district by the MRNRD and the DNR. Part Two of the Monitoring Section describes the analyses that will be utilized to annually forecast the projected depletions in each subsequent year. This accounting and the forecast in accordance with *Neb. Rev. Stat. § 46-715(6)* will serve to increase the understanding and test the validity of the conclusions and information upon which this plan is based.

Compact accounting and data exchanges among the states shall be done annually in accordance with the FSS, dated December 15, 2002, including the Republican River Compact Administration (RRCA) Accounting Procedures and Reporting Requirements which are contained in Appendix C thereof. An annual report of the RRCA is published each year. The accounting procedures, reporting requirements, and annual report of the RRCA are independent of this monitoring plan, and therefore not restated within the Monitoring Section of this plan.

**1. Part One: Tracking and Reporting of Water Use Activities**

The MRNRD and the DNR will make all documents, reports, records, computer runs or other calculations or material necessary to determine compliance with the Compact available to each other, regardless of whether such documents are available under the Nebraska Public Records Act or otherwise, unless such materials are identified as confidential under Nebraska statutes or by a ruling of a court of competent jurisdiction. Specifically, and without limitation, the MRNRD agrees to annually provide GIS coverage maps of all lands irrigated and to meter, record and provide to the DNR its ground water usage records and irrigation system details. The MRNRD shall make copies of district actions taken on variances, offsets, and similar actions available to DNR.

The DNR agrees to make available to the MRNRD all reports and records of the other NRDs necessary to determine their compliance with reductions, as well as all documentation and reports utilized by the DNR to determine the basin's virgin water supplies and Nebraska's compliance with the Compact.

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In the event any materials are withheld by either DNR or MRNRD under a claim of statutory confidentiality, the party withholding such materials shall describe the contents of the materials and reasons for the denial in accordance with *Neb. Rev. Stat. § 84-712.04*.

## **2. Part Two: Forecast Procedures**

Each year in compliance with *Neb. Rev. Stat. § 46-715(6)* the DNR in consultation with the Republican River NRDs shall forecast the maximum amount of water that may be available from stream flow for beneficial use in the short term and long term to comply with the Compact. This forecast will be used to assist the DNR and the NRDs in ensuring compliance with the Compact. DNR in conjunction with the NRDs will annually evaluate the forecast procedures and make changes as deemed necessary to reflect management actions being taken in the basin.

In order to complete the forecast, the DNR and MRNRD in conjunction with the other NRDs will review available information and determine if additional controls must be implemented within any district for Compact Call Year compliance. The forecast will be completed prior to January 1 of each year, and will detail the expected shortfall within each district in the event that the coming year is a Compact Call Year. By the following January 31, if necessary, the MRNRD will provide DNR with details regarding existing management alternatives (such as execution of existing surface water leases) in lieu of additional ground water regulations or controls to make up for the expected shortfall.

The procedures developed to complete the forecast will be reviewed annually by the DNR to determine if modifications are necessary. The forecast will project the next year's balance (projected Nebraska allocation plus projected Imported Water Supply less the projected Computed Beneficial Consumptive Use, or CBCU), and the projected water short year and normal year accounting balances. These balances will be utilized in conjunction with other information to determine if a Compact Call Year exists.

The DNR's calculation of allowable ground water depletions for the MRNRD and determination of the necessity for additional controls will utilize additional ground water model information, estimated end-of-year information for reservoir volumes, and estimated stream flow to determine on an annual basis whether additional NRD-specific controls must be implemented.

### **a. Determination of Available Stream flow**

The forecast will typically determine the forecast values for both Guide Rock (water short year accounting point) and Hardy (normal year accounting point). The DNR's forecast values for Guide Rock will include: 1) the one-year balance (projected allocation less the projected CBCU plus the imported water supply); two-year average, and three-year average. The DNR's forecast

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values for Hardy will include: 1) the one-year balance (projected allocation less the projected CBCU plus the imported water supply); and 2) the five-year average. These forecasted values will be used in conjunction with sections X.B.2.b, X.B.2.c, X.B.2.d and X.B.2.e to determine when management actions or controls must be implemented. The DNR will calculate forecast values for the next year using the variables in table 2:

Table 2. Information Used for 2010 Forecast of Allowable Depletions.

Year	Item	Information Source
T - 3		Draft; current Accounting Procedures (v. 2005)
T - 2		Draft; current Accounting Procedures (v. 2005)
T - 1		Draft; current Accounting Procedures (v. 2005)
Provisional Data for T = 0 (Current Year or Immediate Past Irrigation Season)	Pumping	Power records estimate
	Surface Water Use	Estimated from preliminary data and previous years values
	Stream flow	Available provisional records end of year estimated
	Evaporation	T - 1 records
Forecast Year T + 1 (Coming Irrigation Season)	Ground water Consumptive Use and Imported Water Supply Credit	Average values for T = 0 and T - 1
	Surface Water Consumptive Use	Colorado: Average of T - 1 and T - 2 use Kansas: + (.1858 x HCL content) + 9,575 Nebraska: - (4x10 <sup>-7</sup> ) x (NE lake volume) <sup>2</sup> + (0.52) x (NE lake volume) - 42,000
	Stream flow	+ (5-year average of state line flows) x 0.41 + 0.23 x HCL content - 27,450

In accordance with *Neb. Rev. Stat. § 46-703(6)*, DNR, NRDs, and surface water project sponsors shall meet prior to the final forecast of allowable stream flow depletions and determination of Compact Call Years. At this meeting the involved parties will discuss the forecasted streamflow and surface water consumptive use. From these discussions, surface water project sponsors may present a plan to

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DNR to achieve a consumptive use that is less than forecasted consumptive use. Such a plan could avoid a potential Compact Call Year. This plan must be completed and provided to the Department no later than December 1 of the current year (T=0)

The following equations will be utilized to determine the one year balance for the forecast year.

$$\text{CWS} = + \text{SwCBCU}_{\text{NE}} + \text{SwCBCU}_{\text{KS}} + \text{SwCBCU}_{\text{CO}} \\ + \text{GwCBCU}_{\text{NE}} + \text{GwCBCU}_{\text{KS}} + \text{GwCBCU}_{\text{CO}} \\ + \text{Stateline Stream flow}$$

$$\text{Nebraska Allocation} = \text{CWS} * 0.5$$

$$\text{CBCU}_{\text{NE}} = \text{SwCBCU}_{\text{NE}} + \text{GwCBCU}_{\text{NE}}$$

$$\text{IWS} = \text{Imported Water Supply Credit}$$

$$\text{Hardy One Year Balance} = \text{Nebraska Allocation} + \text{IWS} - \text{CBCU}_{\text{NE}}$$

$$\text{Guide Rock One Year Balance} = \text{Hardy One Year Balance} * 0.89 - 9040$$

Where:

T-3 = Three years ago from the current year

T-2 = Two years ago from the current year

T-1 = One year ago from the current year

T=0 = The current year

T+1 = The upcoming year that is being forecasted

CWS = Computed Water Supply

GW CBCU<sub>NE, KS, CO</sub> = Ground Water Computed Beneficial Consumptive Use for each respective state

SW CBCU<sub>NE, KS, CO</sub> = Surface Water Computed Beneficial Consumptive Use for each respective state

Nebraska Allocation = CWS x 0.5: The amount of water the State of Nebraska is allowed to use over one year

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Balance = The sum of Nebraska's Allocation, plus the Nebraska Imported Water Supply, less Nebraska's Computed Beneficial Consumptive Use

The one year balance for normal year accounting (Hardy One Year Balance) and water short year accounting (Guide Rock One Year Balance) will be utilized to project the two-year and three-year average balances above Guide Rock and the five-year average balance above Hardy.

**b. Compact Call Year Evaluation**

This section of the monitoring plan specifies the process that will be completed by the DNR to determine the Compact Call Years, as detailed in Attachment 1, Republican River Water Supply Evaluation and Required Actions Flowchart. This evaluation takes into account reservoir content and recent balances above Guide Rock and Hardy and the annual forecast as described above in Section X.B.2.a. This process will be completed and provided to the MRNRD by DNR prior to January 1 of each year.

**Checklist A. Water short year Test**

- 1) Is the forecast projection for the coming year's irrigation supply less than 119 kAF?
  - a. Yes. Proceed to Checklist B.
  - b. No. Proceed to Checklist C.

**Checklist B. Water short year**

- 1) Is the current year's balance ( $T = 0$ ) above Guide Rock sufficient to offset the dry year forecast for next year's balance above Guide Rock minus 10 kAF<sup>1</sup>?
  - a. Yes. Proceed to Checklist D.
  - b. No. COMPACT CALL YEAR: The DNR will determine each NRD's share of any potential overuse and propose adjustments in accordance to Section X.B.2.c. of this IMP.

Note: If it is beneficial to utilize the alternative water short year provisions from the FSS (the previous two years have a greater balance than last year alone), and An alternative water short year plan has been approved by the RRCA, then the two-year balance (for  $T = 0$ , the current year, and the prior year,  $T - 1$ ) will be substituted for the current year's balance in Checklist B.

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<sup>1</sup> In the event it is the second consecutive Compact Call Year, this value will be reduced to 5kAF. For any remaining consecutive Compact Call Years, it will be reduced to zero.

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### Checklist C. Early Warning System for Water short year Compliance

- 1) When Harlan County Lake declines from one year to the next, the December end-of-month (EOM) content is generally about 84% of what it was last year. A December EOM of 246 kAF provides a high level of confidence that the coming year (T+1) will not be water short. Based on the current year's (T=0) Harlan County Lake December EOM content, compute a dry-year projection for next year (T+1) based on this relationship. Is the value greater than 246 kAF?
  - a. Yes. Proceed to Checklist D.
  - b. No. Advance to question 2.
- 2) Is the dry year forecast for next year's (T+1) balance above Guide Rock greater than zero?
  - a. Yes. Proceed to Checklist D.
  - b. No. Advance to question 3.
- 3) Is the current year's balance (T = 0) above Guide Rock sufficient to offset the dry year forecast for next year's balance (T + 1) above Guide Rock minus 10 kAF<sup>2</sup>?
  - a. Yes. Proceed to Checklist D.
  - b. No. COMPACT CALL YEAR: The DNR will determine each NRD's share of any potential overuse and propose adjustments in accordance to Section X.B.2.c. of this IMP.

### Checklist D. Normal Year Administration

- 1) Will the forecast for next year (T + 1) result in a 5-year average at Hardy that is greater than 10 kAF?
  - a. Yes. Analyze long term trends and additional adjustments in accordance to Section X.B.2.e.
  - b. No. Advance to question 2.
- 2) Will both the forecast for next year result in a 5 year average at Hardy (T - 3, T - 2, T - 1, T = 0, and T + 1) that is greater than zero and the average balance at Hardy of the most recent four years (T - 2, T - 1, T = 0, and T + 1) be greater than zero?
  - a. Yes. Analyze long term trends and additional adjustments in accordance to Section X.B.2.e.
  - b. No. COMPACT CALL YEAR: The DNR will determine each NRD's share of any potential overuse and propose adjustments in accordance to Section X.B.2.c. of this IMP.

---

<sup>2</sup> In the event it is the second consecutive Compact Call Year, this value will be reduced to 5kAF. For any remaining consecutive Compact Call Years, it will be reduced to zero.

Effective  
November 1, 2010

Middle Republican NRD

**c. Calculation of Allowable Ground water Depletions for the MRNRD and Determining the necessity of Additional Controls**

This section of the monitoring plan specifies the calculations which will be completed by the DNR to determine the allowable ground water depletions for the MRNRD in any Compact Call Year. These procedures will be utilized to indicate when additional controls must be implemented by the MRNRD and DNR to ensure compliance with this IMP in the event that the DNR's forecast, provided prior to January 1 of each year, indicates a Compact Call Year. These procedures will incorporate information provided by the MRNRD (contracts for water leasing, augmentation, etc.) to the DNR by January 31 of each year following a forecast that indicates a Compact Call Year. The procedures for determining the allowable ground water depletion for the MRNRD are as follows.

The Allowable ground water depletion for the MRNRD =  
(Nebraska Allocation + IWS – SWCBCU<sub>NE</sub> – Other NRD CBCU) \* 0.30

Where:

Nebraska Allocation = Nebraska available water supply under the Compact

IWS = Imported Water Supply credit

SWCBCU<sub>NE</sub> = The surface water consumptive use by Nebraska, includes net evaporative losses

Other NRD CBCU = The GWCBCU<sub>NE</sub> calculated for the South Platte NRD, Twin Platte NRD, Tri-Basin NRD, Central Platte NRD, and Little Blue NRD

The DNR will utilize information provided by the MRNRD by January 31, to evaluate the following.

**Step 1. MRNRD Estimated Ground water Depletions**

Ground water depletions for the MRNRD will be based on the previous 2-year average (as described in table 2 above), unless such plan provided by the MRNRD indicates that additional restrictions on groundwater pumping will be imposed. If the additional restrictions would cause the pumping to be less than the previous two year average then the lower estimate will be used. In cases where that year's allocation will be less the MRNRD will provide the DNR a map indicating the geographic area subject to the allocation for that year and the maximum allocation available. The DNR will utilize the information provided by the MRNRD and represent such information in the RRCA GWM.

Effective  
November 1, 2010

Middle Republican NRD

Step 2. Potential yield from MRNRD surface water leases/agreements, augmentation, etc.

The DNR will determine the potential yield from any surface water lease/agreement, augmentation, etc. entered into or provided by the MRNRD. In the event that augmentation is utilized, procedures for determining the project yield must have been approved by the RRCA. This potential yield will be incorporated as NRD management actions in section X.B.2.d.

If a Compact Call Year is reached as a result of checklist B1 or C3 the final step to determine if additional ground water and surface water controls (refer to Section VII.B.1. and VIII.F of this IMP) must be implemented is as follows.

Allowable ground water depletions for MRNRD (as determined above) - Forecasted MRNRD's portion of GWCBCU<sub>NE</sub> (Step 1) + Potential yield from MRNRD surface water leases/agreements, augmentation, etc. (Step 2) + Current Year's Balance (T = 0) - 3333<sup>3</sup>.

If the resulting balance is greater than or equal to negative one hundred (-100) ac-ft, no additional ground water and surface water controls will be implemented.

If the resulting balance is less than negative one hundred (-100) ac-ft, the additional ground water and surface water controls (refer to Section VII.B.1. and VIII.F of this IMP) must be implemented. This potential yield will be incorporated as NRD management actions in section X.B.2.d.

Note: If it is beneficial to utilize the alternative water short year provisions from the FSS (the previous two years have a greater balance than last year alone), and an alternative water short year plan has been approved by the RRCA, then the two-year balance (for T = 0, the current year, and the prior year, T - 1) will be substituted for the current year's balance in Checklist B.

If a Compact Call Year is reached as a result of checklist D2 the final step to determine if additional ground water and surface water controls (refer to Section VII.B.1. and VIII.F of this IMP) must be implemented is as follows.

Allowable ground water depletions for MRNRD (as determined above) - Forecasted MRNRD's portion of GWCBCU<sub>NE</sub> (Step 1) + Potential yield from MRNRD surface water leases/agreements, augmentation, etc. (Step 2) + Previous Years Balances (T = -3, T = -2, T = -1, T = 0 or if applicable + T = -2, T = -1, T = 0)

<sup>3</sup> In the event it is the second consecutive Compact Call Year, this value will be reduced to 1667. For any remaining consecutive Compact Call Years, it will be reduced to zero.

Effective  
November 1, 2010

Middle Republican NRD

If the resulting balance is greater than or equal to negative one hundred (-100) ac-ft, no additional ground water and surface water controls will be implemented.

If the resulting balance is negative, the additional ground water and surface water controls (refer to Section VII.B.1. and VIII.F of this IMP) must be implemented. This potential yield will be incorporated as NRD management actions in section X.B.2.d.

**d. Calculation of Compact Call Stream flow Volume**

This section of the monitoring plan specifies the calculation which will be completed by the DNR to determine the stream flow volume necessary to ensure Compact compliance in any Compact Call Year. If DNR's forecast, provided prior to January 1 of each year, indicates a Compact Call Year, then these calculations will be made incorporating information provided by the MRNRD (contracts for water leasing, augmentation, etc.) to the DNR by January 31 of each year following a forecast that indicates a Compact Call Year. The result of these calculations will be utilized to indicate when additional controls must be implemented by the MRNRD and DNR to ensure compliance with this IMP. When such Compact Call Year is indicated, the DNR will implement additional surface water controls (Section VIII.F of this IMP). Criteria that will be used to determine when administration for the "Compact Call" is no longer necessary will be based on ensuring sufficient stream flow volumes have been achieved at the compliance point. Determination of sufficient stream flow volumes to ensure Compact compliance will be determined through the following procedures.

Compact Call Stream flow Volume = Forecasted Stream flow + NRD Management Actions + Surface Water Curtailment Benefit

Where:

Forecasted Stream flow = Stream flow for T+1; (5-year average of state line flows) x 0.41 + 0.23 x HCL content - 27,450

NRD Management Actions = Actions taken by the MRNRD and/or other basin NRDs to enhance stream flow. These actions may include surface water or ground water leases, augmentation, or curtailment.

Surface Water Curtailment Benefit = Actions taken by DNR to ensure compact compliance in the event that Basin NRD Management Actions are not sufficient to overcome the projected negative balance.

Effective  
November 1, 2010

Middle Republican NRD

**e. Additional adjustments related to long-term trends**

The DNR and MRNRD in conjunction with the other basin NRDs will annually meet to consult to determine if additional reductions from the 98-02 pumping volumes may be warranted. Through this consultation, the DNR and MRNRD will review expected long term (5-20 years) increases in depletions to stream flow and discuss potential mitigation measures that may be necessary.

**f. Harlan County Lake Operations**

In the event that operations of Harlan County Lake are not in accordance with Appendix K of the Final Settlement Stipulation, the DNR will work in consultation with the NRDs to modify Sections VII, VIII, and X of this IMP until normal operations resume.

**XI. Information Considered**

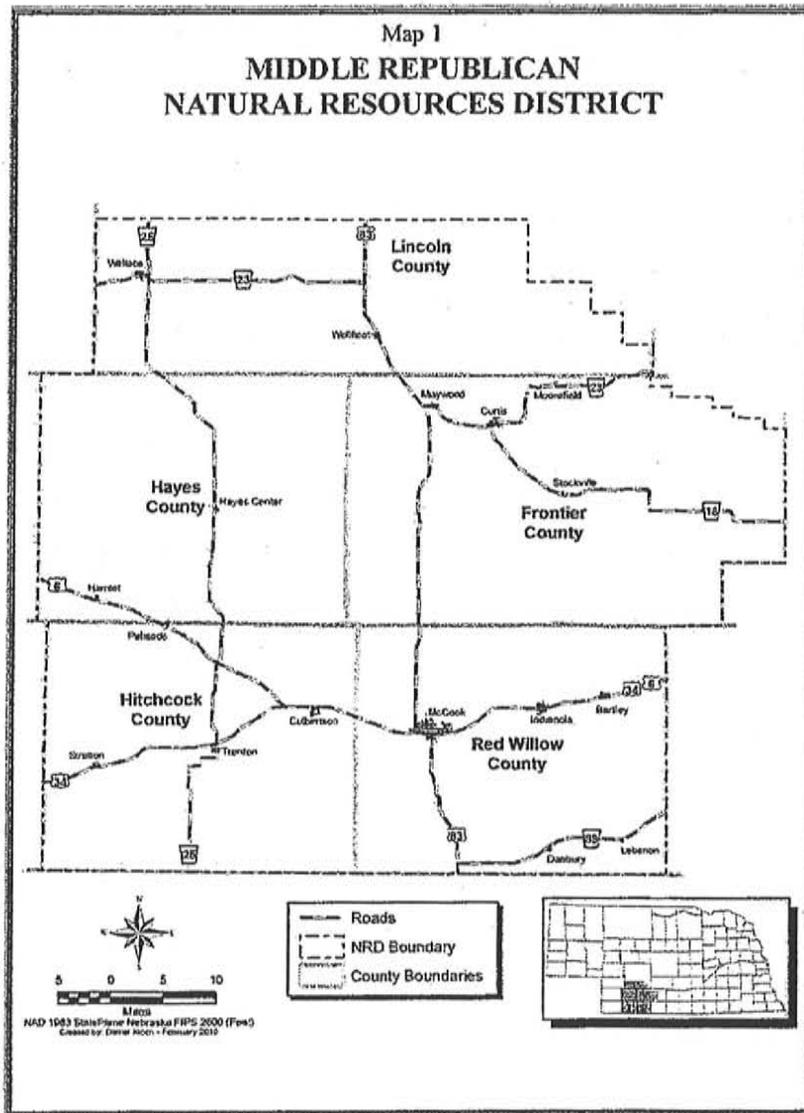
Information used in the preparation and to be used in the implementation of this IMP can be found in:

- Simulation runs of the Republican River Compact Administration Ground Water Model,
- Data tables of the Final Settlement Stipulation for the Republican River Compact,
- Chapters 2 and 3 of the 1994 Middle Republican NRD Ground Water Management Plan,
- Arbitrator's Final Decision, Karl Dreher, June 30, 2009, and
- Additional data on file with the MRNRD and the DNR.

Effective  
November 1, 2010

Middle Republican NRD

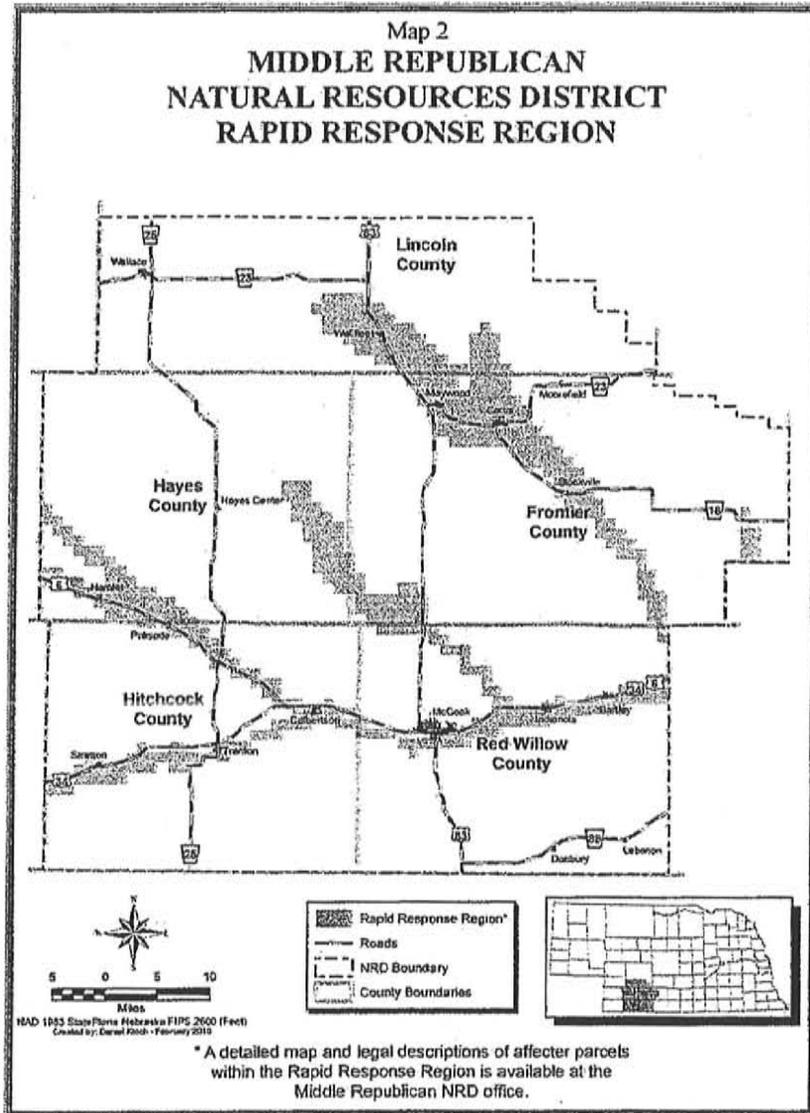
MAP 1. Middle Republican Natural Resource District



Effective  
November 1, 2010

Middle Republican NRD

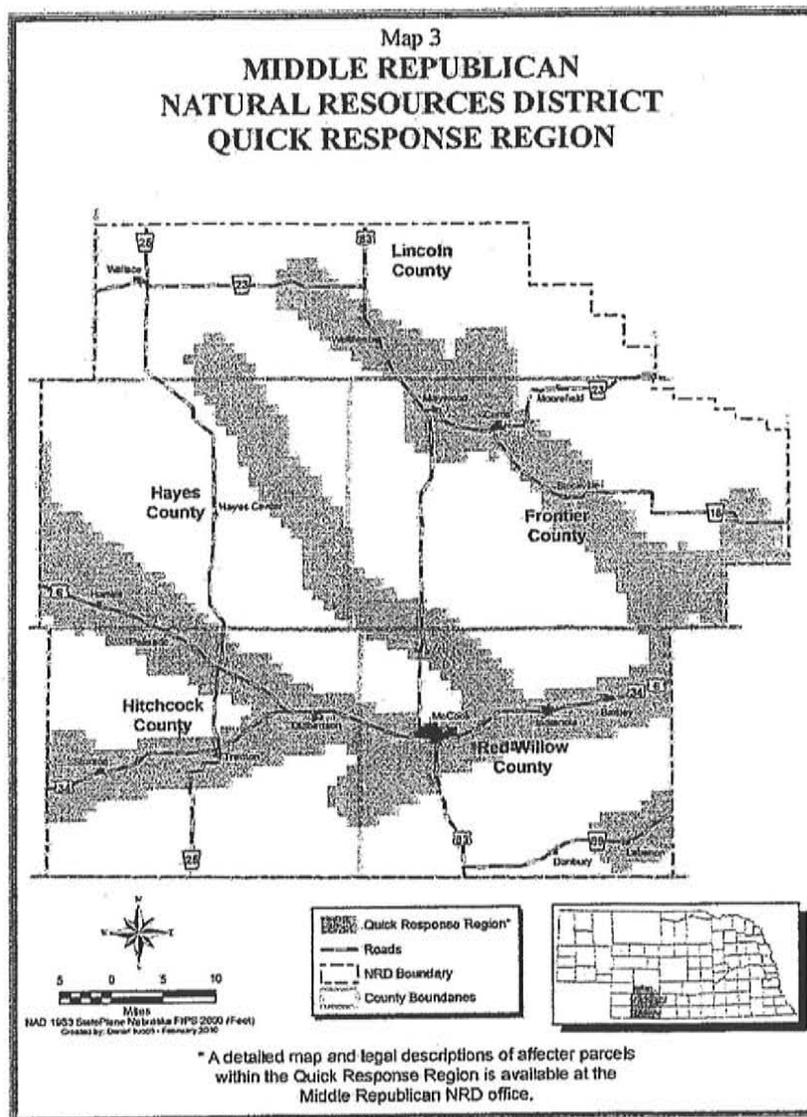
MAP 2. Middle Republican Natural Resource District Rapid Response Region



Effective  
November 1, 2010

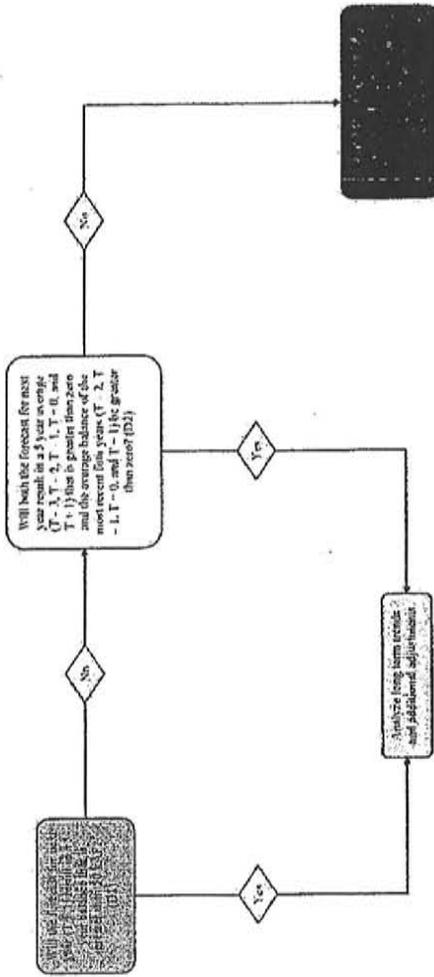
### Middle Republican NRD

MAP 3. Middle Republican Natural Resource District Quick Response Region





Republican River Water Supply Evaluation and Required Actions  
Normal Year Administration—Checklist D



August 1, 2010

1114

**STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES**

In the Matter of the September 20, 2010,	)	Case No. 008-10CC
Orders of the Department Adopting	)	
Associated Surface Controls	)	<b>Petitioners' Response to</b>
	)	<b>DNR's Motion to Dismiss</b>
Water Division 1-B	)	<b>Petitioners' Amended Petition</b>

COMES NOW Petitioners, Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District, and in addition those statements contained within its prior response to the DNR's Motion to Dismiss Petitioners' Petition, responds to the Department of Natural Resources' (DNR) Motion to Dismiss Petitioners Amended Petition as follows.

**The Petitioners Have Standing to Challenge DNR's Order Adopting the Surface Water Controls.**

The surface water controls contained with the integrated management plans ("IMPs") clearly state that when certain conditions are met, the DNR will issue closing notices on all natural flow and storage permits in the basin to ensure compliance with the Republican River Compact. The IMPs also provide that the DNR will "forecast" whether there is sufficient surface water to meet Nebraska's obligations under the Republican River Compact. If it is estimated that there is insufficient water to meet all the demands for the water, the DNR will issue closing notices on all natural flow and storage permits.

As stated in the amended petition, the Petitioners generate revenue based upon the water they are able to deliver to members of their respective irrigation districts. If the DNR issues closing notices, thereby reducing the amount of surface water that can be delivered to district members, the Petitioners' revenue will be affected. Petitioners are currently unable to make their full payments to the Bureau of Reclamation for the use and maintenance of the Bureau's Reservoir facilities. Continued reductions in the amount of water available for delivery due to closing notices will continue to reduce the Petitioners' revenue and prevent them from making sufficient payments to the Bureau.

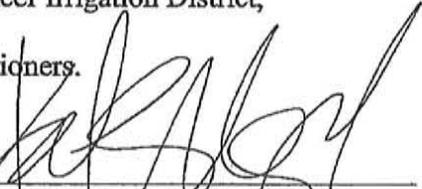
Dated this 7th day of September, 2011.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District,

Petitioners.

By:



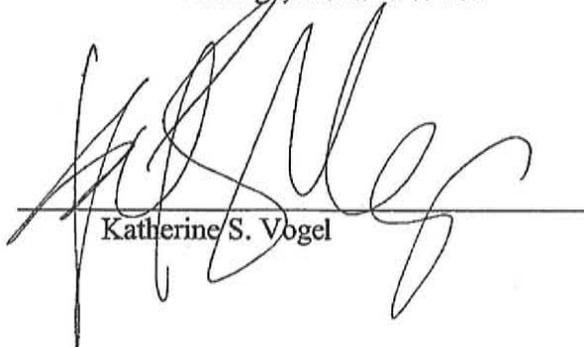
Jeanelle R. Lust - #20556  
Katherine S. Vogel #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502  
(402) 475-7011

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **Petitioners' Response to DNR's Motion to Dismiss** to be delivered via U.S. Mail, First Class, postage prepaid, on this 7th day of September 2011, upon the following:

Thomas O'Connor  
Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, Nebraska 68509-4678

John Chaffin  
Office of the Field Solicitor  
P.O. Box 31394  
Billings, Montana 59101



Katherine S. Vogel



CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **Motion to Consolidate** to be served by U.S. Mail, sufficient postage prepaid, on this 28<sup>th</sup> day of October, 2011, upon the following:

Department of Natural Resources  
Thomas M. O'Connor  
301 Centennial Mall South  
4<sup>th</sup> Floor State Office Building  
Lincoln, Nebraska 68509-4676

John Chaffin  
Office of the Field Solicitor  
P.O. Box 31394  
Billings, Montana 59101

Middle Republican NRD  
Attn: Dan Smith  
220 Center  
P.O. Box 81  
Curtis, NE 69025

Upper Republican NRD  
Attn: Jasper Fanning  
511 East 5th St.  
P.O. Box 1140  
Imperial, NE 69033



Katherine S. Vogel

STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010, ) Case No. 008-10CC  
Orders of the Department Adopting )  
Associated Surface Water Controls ) Motion to Dismiss  
) Petitioners Amended Petition  
  
Water Division 1-B. )

The Department of Natural Resources (DNR) pursuant to 454 Neb. Admin. Code Chapter 7 005.04 requests that this matter be dismissed because Petitioner's *Motion to Amend Petition*, dated August 9, 2011 does not allege facts sufficient to confer standing before the Department.

Petitioners must show in their petition how the challenged action has harmed Petitioners specific interests. *Central Nebraska Public Power & Irrigation District v. North Platte Natural Resources District*, 280 Neb. 533. In *Central*, the Court explained the basic requirements for standing:

"Specifically, a litigant first must clearly demonstrate that it has suffered an "injury in fact." That injury must be concrete in both a qualitative and temporal sense. The complainant must allege an injury to itself that is distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical. Further, the litigant must show that the injury can be fairly traced to the challenged action and is likely to be redressed by a favorable decision." See also *In Frenchman-Cambridge Irrigation District v. Department of Natural Resources*, 281 Neb. 992 (Neb).

Here, Petitioners have alleged that a reduction in surface water flow has resulted in a loss of revenue. However, petitioners have failed to show how the alleged stream flow reduction is attributable to the IMP Surface Water Controls. Nor have they shown how a favorable decision by DNR could redress the alleged harm.

Since Petitioners have not shown how they have suffered an actual injury traceable to the challenged action, which could be redressed by a favorable ruling, their Petition and Request for Hearing should be dismissed.

Respectfully submitted on August 26, 2011.

State of Nebraska  
Department of  
Natural Resources  
Filed in the Department of  
Natural Resources at 1:22  
O'clock P M. this 30th  
day of AUGUST 20 11  
S. Hauer

RECEIVED AUG 29 2011

KS002668

NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES, Respondent

By Their Attorney,

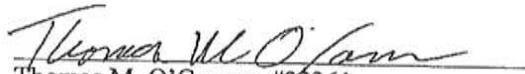
  
Thomas M. O'Connor, # 22361  
Nebraska Department of Natural Resources  
4<sup>th</sup> Floor State Office Building  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4676  
Telephone: 402.471-3933  
Facsimile: 402.471-2900  
[tom.oconnor@nebraska.gov](mailto:tom.oconnor@nebraska.gov)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was hand delivered to the Department of Natural Resources, 4th Floor State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, and sent via U.S. Mail, First Class, postage prepaid, on August 26, 2011, to the following:

Jeanelle R. Lust  
Katherine S. Vogel  
Knudsen, Berkheimer, Richardson, & Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502

John Chaffin  
Office of the Field Solicitor  
P.O. Box 31394  
Billings, Montana 59101

  
Thomas M. O'Connor, #22361

**STATE OF NEBRASKA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES**

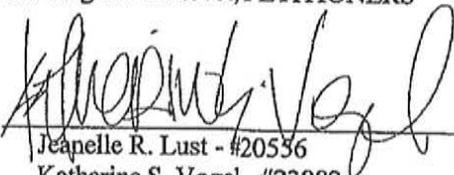
Frenchman Cambridge Irrigation District,	)	Case No. 008-10CC
Bostwick Irrigation District,	)	
Frenchman Valley Irrigation District,	)	
H&RW Irrigation District,	)	MOTION TO AMEND PETITION
Pioneer Irrigation District,	)	
	)	
Petitioners.	)	

COMES NOW Petitioners, Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District, by and through counsel, and move the Department of Natural Resources for leave to amend their Petition. The Department should not be prejudiced as these proceedings are still in the pleading phase. A copy of the Amended Petition is attached hereto as Exhibit "1" and incorporated herein by this reference.

WHEREFORE Petitioners request that the Court enter an Order allowing them to amend their Petition, and for such further relief as the Court deems necessary.

DATED this 9th day of August, 2011.

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District, PETITIONERS

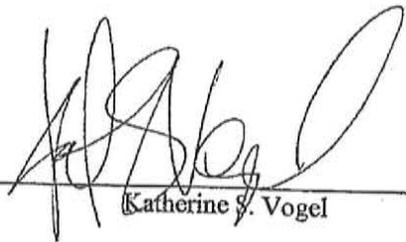
By:   
Jeanelle R. Lust - #20536  
Katherine S. Vogel - #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502  
(402) 475-7011

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **Motion to Amend Petition** to be served by U.S. Mail, sufficient postage prepaid, on this 9th day of August, 2011, upon the following:

Department of Natural Resources  
Thomas M. O'Connor  
301 Centennial Mall South  
4<sup>th</sup> Floor State Office Building  
Lincoln, Nebraska 68509-4676

John Chaffin  
Office of the Field Solicitor  
P.O. Box 31394  
Billings, Montana 59101



Katherine S. Vogel



5. Frenchman Valley Irrigation District is an irrigation district organized on February 26, 1912, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.
6. Frenchman Valley Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation.
7. H&RW Irrigation District is an irrigation district organized on November 1, 1955, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.
8. H&RW Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation.
9. Pioneer Irrigation District is an irrigation district organized and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Haigler, Nebraska.
10. Pioneer Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska.
11. The Department of Natural Resources (DNR) is the official state agency in connection with water resources regulation and development, with general authority over all matters pertaining to water rights.

- ) )
12. On or about September 20, 2010, the Nebraska Department of Natural Resources issued orders adopting the Upper Republican Natural Resources District Integrated Management Plan ("Upper Republican IMP") and Associated Surface Water Controls, and the Middle Republican Natural Resources District Integrated Management Plan ("Middle Republican IMP") and Associated Surface Water Controls.
  13. The Upper Republican IMP and the Middle Republican IMP contain identical surface water controls that will be administered by the DNR.
  14. The surface water controls provide that Nebraska will recognize a priority date of February 26, 1948, for Kansas Bostwick Irrigation District for the regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam.
  15. The Republican River Compact divides the "virgin water supply" between Nebraska, Kansas and Colorado and is based on each state consuming their share and only their share of the Basin's water supply.
  16. The surface water controls create a "Compact Call." In "Compact Call" years, the DNR will regulate and administer surface water in the basin as necessary to ensure Nebraska's compliance with the Republican River Compact. The "Compact Call" will result in DNR issuing closing notices on all natural flow and storage permits in the basin until such time as DNR . . . determines that yearly administration is no longer needed to ensure Compact compliance."
  17. The surface water controls require that the DNR "forecast" whether there will be sufficient surface water to meet Nebraska's obligations under the Republican River Compact. If it is estimated that there is insufficient water to meet all the demands for the water, the DNR will issue closing notices on all natural flow and storage permits.

- ) )
18. The DNR's authority to regulate surface water appropriation rights is based upon the doctrine of prior appropriations under which the surface water appropriation rights are regulated according to priority and the type of use. If water is insufficient for all uses, junior appropriation rights are shut down for the benefit of senior appropriation rights. However, just compensation is due for such shut downs. The DNR's surface water controls which relate to forecasting and the "Compact Call" are inconsistent with and contrary to Nebraska law, the doctrine of prior appropriations and the DNR's procedure for regulating and monitoring surface water appropriation rights. See, specifically, Neb. Rev. Stat. §§ 46-231, 46-233.307, and Neb. Const. art. XV, § 6.
  19. The surface water controls and integrated management plans do not reach or meet long term sustainability goals as required in Neb. Rev. Stat. § 46-715(2).
  20. A "Compact Call" is not authorized by Nebraska law. Neb. Rev. Stat. §§ 46-715 and 46-716.
  21. A "Compact Call" is not authorized in the Republican River Compact or the 2002 Final Settlement Stipulation.
  22. The total shut down of surface water direct irrigation uses in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.
  23. The total shut down of storage appropriations in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.
  24. The Petitioners hold appropriation rights and deliver water held under those rights to members of their irrigation districts. The Petitioners charge and collect fees to members for delivering water thereby generating revenue based upon the amount of water each district can deliver. Due to a reduction in the amount of water available for delivery, the

) )

Petitioners have reduced the amount of water delivered to members and have therefore incurred a loss in revenue.

25. The Petitioners make operation and maintenance payments to the Bureau of Reclamation for the use and maintenance of the Bureau's Reservoir facilities. The Petitioners are currently unable to make their full payments to the Bureau because there is insufficient water to be delivered to users which in turns has reduced the Petitioners' revenue.

26. In its pleadings before the United States Supreme Court, the State of Nebraska has stated that "[a]ny regulatory action taken by Nebraska 'potentially has a significant impact on the [Bureau of Reclamation irrigation facilities]' because such action may dictate the extent to which water for irrigation is available from [them]." *Kansas v. Nebraska*, No. 126 Original, *State of Nebraska's Objection in Part to United States' Statement of Participation*, p. 4.

27. The current surface water levels in the Republican River Basin are insufficient to sustain existing surface water appropriations over the long term and the proposed IMPs will continue to result in a depletion of surface water supplies within the Basin causing continued reductions in revenues for the Petitioners and a continued inability to meet both payment obligations to the Bureau of Reclamation and contractual obligations to maintain Reclamation's canal systems, bridges and drainage ditches.

WHEREFORE the Petitioners respectfully request a hearing for determination on the statutory authority of the DNR to administer the surface water controls adopted in its September 20, 2010 Orders.

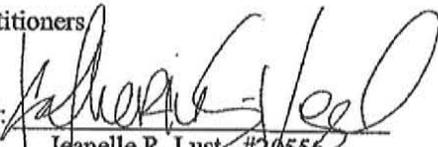
Dated this 9th day of August, 2011.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District,

Petitioners

By:

  
Jeanelle R. Lust - #20556  
Katherine S. Vogel - #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502  
(402) 475-7011

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **Amended Petition and Request for Hearing** to be served by U.S. Mail, sufficient postage prepaid, on this 9th day of August, 2011, upon the following:

Department of Natural Resources  
Thomas M. O'Connor  
301 Centennial Mall South  
4<sup>th</sup> Floor State Office Building  
Lincoln, Nebraska 68509-4676

John Chaffin  
Office of the Field Solicitor  
P.O. Box 31394  
Billings, Montana 59101

  
Katherine S. Vogel

STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010 ) Case No. 008-10CC  
Orders of the Department Adopting )  
Associated Surface Controls ) DNR Objection to Reclamation's  
Water Division 1-B ) Petition for Intervention

The Department of Natural Resources (DNR) pursuant to 454 *Neb. Admin. Code* Chapter 7-005.04 objects to the United States Department of the Interior, Bureau of Reclamation (Reclamation) Petition for Intervention dated March 15, 2011.

DNR's position that the underlying Petition and Request for Hearing as filed by Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District (Petitioners) should be dismissed has not changed.

In addition, DNR objects to Reclamation's Petition for Intervention because Reclamation has failed to allege facts sufficient to show a direct legal interest in the subject matter of these proceedings.

Respectfully submitted on March 30, 2011.

NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES, Respondent

By Their Attorney,



Thomas M. O'Connor, # 22261  
Nebraska Department of Natural Resources  
4<sup>th</sup> Floor State Office Building  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4676  
Telephone:..... 402.471-3933  
Facsimile:..... 402.471-2900  
tom.oconnor@nebraska.gov

RECEIVED MAR 31 2011

KS002679

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was hand delivered to the Department of Natural Resources, 4th Floor State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, and sent via U.S. Mail, First Class, postage prepaid, on March 30, 2011, to the following:

Jeanelle R. Lust  
Katherine S. Vogel  
Knudsen, Berkheimer, Richardson, & Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502

David J. A. Bargaen  
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1201 Lincoln Mall, Suite 102  
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\_\_\_\_\_  
Thomas M. O'Connor, #22361

STATE OF NEBRASKA

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010 ) Case 008-10CC  
Orders of the Department Adopting )  
Associated Surface Water Controls ) **PETITION FOR**  
 ) **INTERVENTION**

The United States, Department of the Interior, Bureau of Reclamation (Reclamation), by and through its attorneys, and for its Petition for Intervention pursuant to 454 *Neb. Admin. Code*, Chapter, 7, § 004, states as follows:

1. On October 18, 2010, petitioners Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and the Pioneer Irrigation District (collectively, "Petitioners"), filed a Petition and Request for Hearing regarding the integrated management plan for the Upper and Middle Republican River Natural Resource Districts.
2. On November 8, 2010, the Department of Natural Resources (Department) issued a Notice of Petition, in which the Department noted that any interested person wishing to become a party to the proceeding may file a Request to Intervene in accordance with 454 *Neb. Admin. Code*, Chapter 7, § 004.
3. Pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004, Reclamation shows that its legal rights, duties, privileges, immunities, and /or other legal interests may be substantially affected by the proceeding initiated by Petitioners, and that Reclamation has an interest in the matter in this proceeding, and in particular in the success of the

Petitioners in challenging the Integrated Management Plans (IMP) adopted by the Department by Order dated September 20, 2010.

4. The United States is authorized to construct, operate and maintain irrigation facilities in the Republican River Basin pursuant to the 1944 Flood Control Act, 58 Stat. 891. Pursuant to the Flood Control Act, Reclamation obtained the irrigation storage water rights for four reservoirs, constructed four dams and reservoirs and has operated those same facilities. The United States Army Corps of Engineers constructed Harlan County Lake and has operated the same, although Reclamation holds the irrigation storage water right for the facility.

5. Nebraska law requires that the United States hold the storage water right for its Republican River Basin reservoirs. Neb. Rev. Stat. § 46-241 (2010)

6. Reclamation holds the storage water right for Harry Strunk Lake on Medicine Creek, a tributary to the Republican River. This is Nebraska state water right # 3900, with a priority date of May 1946.

7. Reclamation holds the storage water right for Swanson Lake on the Republican River. This is Nebraska state water right # 4884, with a priority date of July 1951.

8. Reclamation holds the storage water right for Hugh Butler Lake on Red Willow Creek, a tributary to the Republican River. This is Nebraska state water right # 4885, with a priority date of July 1951. Also, Reclamation holds a supplemental storage right for Hugh Butler Lake. This is Nebraska state water right # A9858, with a priority date of August 1960.

9. Reclamation holds the storage water right for Harlan County Lake on the Republican River. This is Nebraska state water right # 4190, with a priority date of January 1948.
10. Reclamation holds the storage water right for Enders Reservoir on the Frenchman River, a tributary to the Republican River. This is Nebraska state water right # 3899, with a priority date of May 1946.
11. Reclamation law requires it to contract with an authorized organization to represent individual landowners on its projects. 25 U.S.C. §§ 423e, 511.
12. Nebraska law authorizes irrigation districts to enter into contracts with Reclamation for the use of facilities constructed by the United States for irrigation and other beneficial purposes. Neb. Rev Stat. § 46-126 (2010)
13. Reclamation initially entered into a repayment contract with the Frenchman Cambridge Irrigation District in 1949 and renewed that contract in 2000.
14. Reclamation initially entered into a contract with the Frenchman Valley Irrigation District in 1956 and renewed the water service contract in 2000.
15. Reclamation initially entered into a repayment contract with the Nebraska Bostwick Irrigation District in 1949 and renewed that contract in 2000.
16. Reclamation initially entered into a water service contract with the H&RW Irrigation District in 1956 and renewed that contract in 1985.
17. Reclamation adopts the arguments and statement presented to the Department in the Petitioner's Petition and Request of Hearing (paragraphs 13 – 23), and incorporates the same into this Motion for Intervention.

18. The Order of September 20, 2010 directly affects Reclamation. Without the ability to store and then release surface water, Reclamation may be unable to meet its contractual commitments for water deliveries. Without the water deliveries, the irrigation district water users will not produce the crops that produce the revenues to repay Reclamation. Failure to repay Reclamation is a direct injury to the United States.

Recreation, and Fish and Wildlife are authorized uses at Reclamation reservoirs. With the encouragement of the Nebraska Game and Parks Commission, Reclamation has constructed facilities for recreation, and fish and wildlife use at its Republican River Basin reservoirs. A decline in water supply harms fish, wildlife, and recreation in federal reservoirs, thus reducing the Bureau's ability to deliver the full range of benefits envisioned and authorized by Congress.

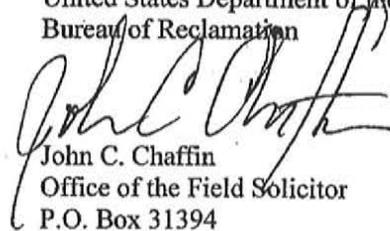
Republican River Basin Project irrigation districts pay OM&R costs based on a proportional share of benefits and costs. In 2000, the irrigation districts sought and obtained a reduction in OM&R payments because of a lack of water supply. As a result, Reclamation had to reallocate reimbursable costs (irrigation) to non-reimbursable costs (fish and wildlife, recreation, etc.). This resulted in direct injury to Reclamation due to a further need to expend appropriated monies instead of receiving payments.

WHEREFORE Reclamation respectfully requests the granting of its Motion to Intervene and a hearing for determination on the statutory authority of the DNR to administer the surface water controls adopted in its September 20, 2010 Orders.

Dated this 15<sup>th</sup> day of March 2011.

Respectfully Submitted By,

United States Department of the Interior  
Bureau of Reclamation



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406-247-7583

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via U.S. Mail, First Class, postage prepaid, on March 15, 2011 to the following:

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STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010, ) Case No. 008-10CC  
Orders of the Department Adopting )  
Associated Surface Water Controls )  
Water Division 1-B. ) DNR's Reply to  
Petitioners Response to  
Motion to Dismiss

The Department of Natural Resources (DNR) hereby responds in reply to Petitioners brief dated January 5, 2011, which was filed in response to DNR's Motion to Dismiss.

**Petitioners Have not Provided Facts in Their Petition Sufficient to Show Standing**

Irrigation districts hold water rights not for themselves but for the benefit of their members (*Nebr. Rev. Stat. § 46-2,121*). See also *Central Nebraska Public Power & Irrigation District v. North Platte Natural Resources District*, 280 Neb. 533 ("While an irrigation district may hold a surface water appropriation in it's own name, it holds that appropriation for the benefit of the owners of land to which the appropriation is attached.").

To have standing a party must have a legal or equitable right, title or interest in the subject of the controversy. "Generally, a litigant must assert the litigant's own rights and interests, and cannot rest a claim on the legal rights or interests of third parties." *id.* Facts sufficient to support standing must be included in the petition "The shortcoming in Central's petition is its failure to specifically allege how it has suffered an injury in fact." *id.* (see also 454 *Neb. Admin. Code* Chapter 7.005.04A)

Petitioners must show in their original petition how a decision by DNR will harm Petitioners specific interests. *Central Nebraska Public Power & Irrigation District v. North Platte Natural Resources District*, 280 Neb. 533 ("...Central is an agent for the purposes of diverting, storing, transporting, and delivering water, and the injuries it has alleged are to the beneficiaries of those purposes, not Central's own interests....[i]t is well established...that Central cannot challenge the [Natural Resources District's] use of water based upon the interest of its constituents...Specifically, Central has not alleged how its particular water use interests, to the extent it has any, have been injured [by the Natural Resources District].")

In conclusion, Petitioners have not provided sufficient facts in their petition to show how a decision by DNR will harm Petitioners specific interests. Without such a showing, the petition should be dismissed.

**Petitioners Challenge is Not Ripe for Review**

Petitioners are challenging a policy decision arrived at by DNR and the NRDs after a legislative mandated planning process. Just because Petitioners are unhappy with the outcome, this does not translate into an actionable claim.

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A determination with regard to ripeness depends upon the circumstances of a given case. *City of Omaha v. City of Elkhorn*, 276 Neb. 70 (2008) (“[t]he difference between an abstract question and a [case ripe for determination] is one of degree...”). Courts do not decide moot, hypothetical or abstract questions. *Pennfield Oil Company v. Winstrom*, 276 Neb. 123 (2008) (“The fundamental principle of ripeness is that courts should avoid entangling themselves, through premature adjudication, in abstract disagreements based on contingent future events that may not occur at all or may not occur as anticipated.”).

Although Petitioners contend all surface water controls contained in the Integrated Management Plans (IMPs) are at issue, their petition and response raise only two issues: whether the IMPs meet ‘long-term sustainability goals’ and whether DNR has the authority to administer a Compact Call. Neither of these issues is ripe for review.

Petitioner’s first issue of whether the IMPs meet ‘long-term sustainability goals’ is not ripe because there is no way to tell at this time if long term goals have been met. *Neb. Rev. Stat.* § 46-715(2) calls for the IMPs to have “Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term”. The only way to tell if the IMPs meet the goals and objectives of § 46-715 is to complete the on-going monitoring and studies as described in the IMPs.

Petitioner’s second issue of whether DNR has the authority to administer a Compact Call is not ripe because a Compact Call is a future event contingent upon circumstances that may never occur. In fact, one of the primary objectives of the IMPs is to maintain compliance with the Compact, effectively eliminating the need to ever administer for a Compact Call. (*Upper Republican Natural Resources District, Integrated Management Plan*, IV.A.1 (Nov. 1, 2010).

Even if DNR determines a Compact Call Year is necessary, the IMPs still provide an avenue for Petitioners to avoid administration. For example, the IMPs contain the following language concerning Compact Call Years:

“In accordance with *Neb. Rev. Stat.* § 46-703(6), DNR, NRDs, and surface water project sponsors shall meet prior to the final forecast of allowable stream flow depletions and determination of Compact Call Years. At this meeting the involved parties will discuss the forecasted streamflow and surface water consumptive use. From these discussions, surface water project sponsors may present a plan to DNR to achieve a consumptive use that is less than forecasted consumptive use. Such a plan could allow surface water project sponsors to avoid a potential Compact Call Year. This plan must be completed and provided to the Department no later than December 1 of the current year (T=0).” (Id. at IX.B.2a.).

Questions about ‘long-term sustainability’ and whether DNR has the authority to administer a Compact Call are not ripe for consideration. As for long term sustainability, the Petitioners have effectively asked for a legal determination of a speculative question. With regard to administration of a Compact Call, this is a contingent future event that may never occur. DNR

should first be given the opportunity to see if the planning process results in achieving the stated goals and objectives of the IMPs.

**DNRs Orders Do Not Require a Contested Case Hearing at this Time**

Petitioners are not now and will not be in the future 'substantially affected' by the Orders adopting the IMPs because additional orders will have to be issued prior to administration of a Compact Call. Should the IMP process fail to avoid a Compact Call Year, it can be assumed DNR would have to issue closing notices to administer a Compact Call. It is difficult to see how the orders adopting the IMPs could 'substantially affect' the Petitioners when additional orders (closing notices) would be necessary before administering a Compact Call.

Petitioner's due process requirements, if any, could be achieved by petitioning DNR at the time closing notices were issued. Alternately, should Petitioners have standing and the issues involved are found to be timely, DNR agrees that Petitioners claims could be treated as a declaratory action limited to the authority of DNR to adopt the IMPs and/or a Compact Call.

**Scope of Review**

The *Nebraska Groundwater Management and Protection Act* and specifically *Neb. Rev. Stat. § 46-715(4)* authorize IMP controls that are sufficient to ensure Nebraska remains in compliance with the Republican River Compact. The procedures outlining monitoring studies and the steps necessary to determine a Compact Call Year are included in the IMPs for this very purpose. Therefore, should Petitioners have standing and the issues involved are found to be timely, DNR's Order adopting the IMPs should nevertheless be accorded substantial deference.

Respectfully submitted on January 21, 2011.

NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES, Respondent

By Their Attorney,



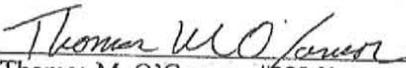
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was hand delivered to the Department of Natural Resources, 4th Floor State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, and sent via U.S. Mail, First Class, postage prepaid, on January 21, 2011, to the following:

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Thomas M. O'Connor, #22361

STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010, )  
Orders of the Department Adopting ) Case No. 008-10CC  
Associated Surface Water Controls )  
Water Division 1-B. ) Motion in Support of MRNRD  
and URNRD Request for  
Prior Determination of Intervention Petition

The Department of Natural Resources (DNR) hereby responds in support of the Middle Republican Natural Resources District (MRNRD) and the Upper Republican Natural Resources District (URNRD) Motion/Request for Prior Determination of Intervention Petition, dated December 20, 2010.

The MRNRD Integrated Management Plan (IMP) was jointly developed and adopted by DNR and the MRNRD; the URNRD IMP was jointly developed and adopted by DNR and the URNRD. Both NRDs are continuing to work with DNR to achieve their respective IMP goals and objectives.

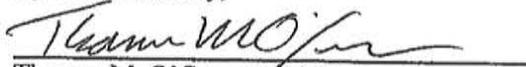
The IMPs contain regulatory controls and non-regulatory tools that are designed to work together to achieve the jointly developed goals and objectives. For example, the IMPs contain plans for implementation of both surface water and groundwater controls. A successful challenge to one type of control may have an impact on the effectiveness of the other. Jurisdictional issues should be decided with the full participation of DNR and the NRDs, so that the legal status of the IMP controls is clear to both.

DNR reserves and maintains arguments set forth in our Motion to Dismiss dated December 17, 2010, but nevertheless supports the MRNRD and URNRD in their Motion/Request for Prior Determination of Intervention.

Respectfully submitted on January 4, 2011.

NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES, Respondent

By Their Attorney,



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STATE OF NEBRASKA  
BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010,	)	Case No. 008-10CC
Orders of the Department Adopting	)	
Associated Surface Controls	)	Motion to Dismiss
Water Division 1-B	)	

The Department of Natural Resources (DNR) pursuant to 454 *Neb. Admin. Code* Chapter 7-005.04 responds to the Petition and Request for Hearing by Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District (Petitioners) dated October 18, 2010, as follows.

**I. The Petitioners Do Not Have Standing to Challenge DNR's Order Implementing the Surface Water Controls.**

Petitioners have not alleged facts sufficient to confer standing. In order to have standing before DNR, Petitioners must clearly demonstrate that they will suffer an actual or imminent injury, the injury can be traced to planned surface water controls, and that a decision by DNR would address the alleged harm.

“Specifically, a litigant first must clearly demonstrate that it has suffered an “injury in fact.” That injury must be concrete in both a qualitative and temporal sense. The complainant must allege an injury to itself that is distinct and palpable, as opposed to merely abstract, and the alleged harm must be actual or imminent, not conjectural or hypothetical. Further, the litigant must show that the injury can be fairly traced to the challenged action and is likely to be redressed by a favorable decision.” *Central Nebraska Public Power & Irrigation District v. N. Platte Nat. Resources Dist.*, 280 Neb. 533, 542, 788 N.W. 2d 252 (2010).

The petition fails to show how any of the Petitioners would suffer an ‘injury in fact.’ Petitioners have not included any facts in their petition alleging how the Upper Republican and Middle Republican Integrated Management Plans (IMPs) and Associated Surface Water Controls will cause a concrete injury to any of the Petitioners as separate entities. “The shortcoming in Central Nebraska Public Power & Irrigation District (Central’s) petition is its failure to specifically allege how it has suffered an injury in fact.... Specifically, Central has not alleged how its particular water use interests, to the extent it has any, have been injured...” *Id.* Nor have Petitioners demonstrated or even discussed how a decision by the DNR would alleviate any alleged injury.

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Without standing, DNR is entitled to dismissal of the petition. DNR respectfully requests that the Hearing Officer dismiss the Petitioners claims, or alternately require Petitioners to amend their petition to meet Central's heightened requirement for standing.

The orderly resolution of the Petitioners claims dictates that the issue of standing be resolved at the earliest stages of the proceedings rather than during a later appeal.

## **II. The Petitioners' Challenge is Not Ripe**

This action is not ripe because the events complained of in the petition (i.e. the Compact Call and the shut down of surface irrigation) have not occurred. "Ripeness is a justiciability doctrine that courts consider in determining whether they may properly decide a controversy. The fundamental principle of ripeness is that courts should avoid entangling themselves, through premature adjudication, in abstract disagreements based on contingent future events that may not occur at all or may not occur as anticipated." *Pennfield Oil Co. v. Winstrom*, 276 Neb. 123, 140 (2008). In this action, the events leading up to the Compact Call may never occur, and certainly may not occur as the Petitioners anticipate.

As described further in Section III below, the IMPs merely create a policy for the prospective management of interrelated waters by DNR and the NRDs. Components of the IMPs may never be necessary. For instance, the IMPs contain several regulatory controls as well as non-regulatory tools, all of which are designed to accomplish the same purpose. However, it may be that only one control or non-regulatory tool is ultimately necessary. Conversely, a combination of all the controls and tools may be necessary. Until certain facts occur which allow DNR and the NRD to decide how to implement the components of a particular IMP, it is not known what events will transpire or what responses will be necessary. At this point, it is unknown whether the Compact Call will ever be implemented.

This is important because "... a case is ripe when no further factual development is necessary to clarify a concrete legal dispute susceptible to specific judicial relief, as distinguished from an advisory opinion regarding contingent future events." *Id.* It is unclear at this time whether the Compact Call will occur and what the facts surrounding any potential future Compact Call might be. DNR respectfully requests that the actions be dismissed because the petition is not ripe for adjudication.

## **III. Scope of Review of DNR's Order Adopting the IMPs**

The scope of review of DNR's Order Adopting the IMPs must be accorded substantial deference. The adoption of the IMPs is a legislative function that determines a policy for future management decisions by DNR and an NRD. An IMP does not adjudicate the rights of individual water users and does not impact individual water use interests. Simply because a water user did not fare well through this legislative process does not give the same water user a basis to rewrite the IMPs in court.

The Supreme Court has already recognized that integrated management planning is more like rulemaking, and therefore a legislative function. *Spear T Ranch v. Knaub*, 269 Neb. 177 (2005). Although the specific statute mentioned was repealed as a result of LB962, the Court's discussion in *Spear T Ranch, Inc.* related to joint action plans (JAP) remains relevant because JAPs were the precursors to IMPs:

"But regardless whether § 46-656.28 gives the NRD discretion or requires the implementation of a management area, the statute does not, as the appellees suggest, provide a surface water user with an administrative adjudication. Instead, it provides a method for the surface water user to commence administrative rulemaking. If, following a request by the surface water user, the NRD chooses to create a management plan, the goal is not to adjudicate a specific dispute with trial proceedings, but to develop controls to address the area's water problems by employing the traditional tools of rulemaking, i.e., studies and public meetings. The same is true if the NRD begins the process of creating a joint action plan, except that if the NRD chooses this route, the Department is also involved."

"Moreover, regardless of which process is chosen, § 46-656.28 does not authorize the NRD or the Department to remedy any past harm done to a complaining party. The steps that the NRD and the Department can take are only prospective: This is consistent with rulemaking, not adjudication, and further demonstrates that § 46-656.28 does not abrogate the common law." *Id.* at 199-200.

The IMP process is more like a legislative or rulemaking process, and the scope of review in any subsequent challenge to an IMP is limited. *See Chase 3000, Inc. v. Neb. PSC*, 273 Neb. 133, 142 (2007) ("Rulemaking by an administrative agency is properly characterized as a legislative process as contrasted with an administrative, judicial, or quasi judicial process . . . where the order was administrative or legislative in character, the only issues to be determined by the reviewing court were whether the [agency] acted within the scope of its authority and whether the order complained of is reasonable and not arbitrarily made.").

The IMP process is similar to the process of developing comprehensive plans for zoning purposes. The Supreme Court has stated that "...a [comprehensive zoning plan] is a guideline and is not binding but is merely a policy statement that may be implemented through zoning and that it is the actual zoning which has the force of law." *Smith v. City of Papillion*, 270 Neb. 607, 619 (2005) (citing *Omaha Fish & Wildlife v. Community Refuse*, 213 Neb. 234 (1983); *Simpson v. City of North Platte*, 206 Neb. 240 (1980); *Holmgren v. City of Lincoln*, 199 Neb. 178 (1977); *Stones v. Plattsmouth Airport Authority*, 193 Neb. 552 (1975)).

) )

A comprehensive zoning plan sets forth prospective plans which may or may not actually come to realization. See *Copple v. City of Lincoln*, 202 Neb. 152, 158 (1979) (explaining that “the comprehensive plan, as adopted by the City of Lincoln, itself recognizes it is only to serve as a general guide in the development of Lincoln and Lancaster County. While the comprehensive plan specifically refers to the location of [one defendant’s] property as a site for a regional multiuse shopping center, it does not necessarily follow that [the defendant’s] property will, in fact, be developed as the regional shopping center.”). The comprehensive plan in *Copple* is similar to the IMPs in this action, where potential ground or surface water controls may never be used if other non-regulatory tools accomplish the goals of the IMP. The IMP may include plans and controls for dry year compliance, but such controls may never be executed if the DNR and NRD decide implementation is unnecessary.

DNR respectfully requests that the DNR order adopting the IMP be accorded substantial deference and be upheld so long as DNR acted within its authority and the order is reasonable and non-arbitrary.

**IV. The Petitioners are Limited to Requesting a Declaratory Action**

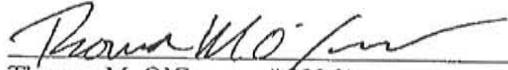
Based on the scope of review discussed in Section III, the only relief the Petitioners can obtain is a declaratory judgment to determine DNR’s authority. The Supreme Court recently recognized that “[t]he function of a declaratory judgment is to determine justiciable controversies which either are not yet ripe for adjudication by conventional forms of remedy or, for other reasons, are not conveniently amenable to the usual remedies.” *Cent. City Educ. Ass’n v. Merrick County Sch. Dist. No. 61-0004*, 280 Neb. 27, 33 (2010) (citation omitted).

The procedures to request a declaratory order before DNR are contained in 454 *Neb. Admin. Code* Chapter 5, § 003.04-05. DNR respectfully requests the Hearing Officer dismiss the petition because the Petitioners did not follow these procedures and properly request a declaratory judgment. Alternately, if the Petitioners are found to have standing and this case is not otherwise dismissed, their petition could be treated as one for a declaratory order. Such an action does not require discovery nor an extensive hearing, as the action would be limited to the legal authority of DNR to adopt the IMPs through its orders. A one-day hearing for legal arguments and pre- and post-trial briefing would be sufficient to address these issues.

Respectfully submitted on December 17, 2010.

NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES, Respondent

By Their Attorney,



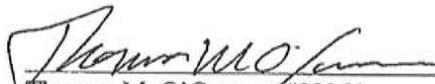
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Thomas M. O'Connor, #22361

STATE OF NEBRASKA

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010	)	Case 008-10CC
Orders of the Department Adopting	)	
Associated Surface Water Controls	)	<b>MOTION/REQUEST FOR PRIOR</b>
	)	<b>DETERMINATION OF</b>
	)	<b>INTERVENTION PETITION</b>
	)	

The Upper Republican Natural Resources District ("URNRD"), by and through its attorneys Rembolt Ludtke LLP, respectfully requests that its Petition for Intervention, filed in this case with the Department on November 24, 2010, be considered and determined prior to the Department considering the Motion to Dismiss filed on December 17, 2010 by Respondent the Department of Natural Resources ("DNR"). Counsel for DNR has indicated he has no objection to the Department determining the URNRD's Petition for Intervention prior to considering DNR's Motion to Dismiss. In further support of its Motion, the URNRD states as follows:

1. On November 24, 2010, the URNRD filed its Petition in Intervention, pursuant to 454 *Neb. Admin. Code*, Chapter 7, §004, and in response to the Department's November 8, 2010 Notice of Petition, in which the Department noted that any interested person wishing to become a party to this proceeding may file a Request to Intervene with the Department.
2. The URNRD's Petition in Intervention is pending before the Department.
3. On December 17, 2010, Respondent DNR filed a Motion to Dismiss in this matter.
4. The URNRD respectfully requests the Department consider and determine its Petition for Intervention prior to considering and determining DNR's Motion to Dismiss, for the following reasons:

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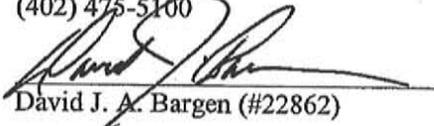
- ) )
- a. Determining the URNRD's Petition in Intervention prior to determining DNR's Motion to Dismiss would be consistent with the order in which each was filed with the Department.
  - b. Should the Department act on DNR's Motion to Dismiss first, and dismiss the action prior to considering the URNRD's Petition for Intervention, the URNRD may lose the opportunity to have meaningful participation at this stage of the case, as envisioned by 454 *Neb. Admin. Code*, Chapter 7, §004, and at any future stages of the case, in a case that the URNRD maintains directly implicates its legal rights, duties, privileges, immunities, and/or other legal interests, for all the reasons asserted in the URNRD's Petition for Intervention. As noted in the URNRD's Petition for Intervention, the URNRD and DNR acted jointly in creating the revised Integrated Management Plan ("IMP") that Petitioners challenge, and the revised IMP represents the final decisions made by the URNRD and DNR. The URNRD may be substantially affected by this proceeding, and the URNRD has a real interest in the outcome of this proceeding. The URNRD has an interest in the success of DNR in resisting the claims of Petitioners, and seeks to join DNR in resisting Petitioners' claims.

WHEREFORE, the URNRD respectfully requests that its request to intervene in this proceeding pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004 be considered and determined by the Department prior to the Department considering the Motion to Dismiss filed by DNR.

DATED: December 20, 2010.

UPPER REPUBLICAN NATURAL  
RESOURCES DISTRICT, Petitioner for  
Intervention.

By: REMBOLT LUDTKE LLP  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508  
(402) 475-5100

By:   
David J. A. Bargaen (#22862)

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused a true and correct copy of the foregoing to be sent by ordinary United States mail, first class postage prepaid, on this 20th day of December, 2010, addressed as shown below, to the following:

Jeanelle R. Lust  
Katherine S. Vogel  
Knudsen, Berkheimer, Richardson & Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, NE 68502

Thomas O'Connor  
Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4678

  
David J. A. Bargaen

State of Nebraska  
Department of  
Natural Resources  
Filed in the Department of  
Natural Resources at 4:28  
O'clock P. M. this 29<sup>th</sup>  
day of November, 2010  
\$10.00  
Clerk

STATE OF NEBRASKA

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010  
Orders of the Department Adopting  
Associated Surface Water Controls

Case 008-10CC

PETITION FOR INTERVENTION

The Middle Republican Natural Resources District ("MRNRD"), by and through its attorneys Rembolt Ludtke LLP, and for its Petition for Intervention pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004, states as follows:

1. On or about October 18, 2010, petitioners Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District (collectively, "Petitioners"), filed a Petition and Request for Hearing (the "Petition") regarding the integrated management plan of the MRNRD (the "IMP"), which the Department of Natural Resources (the "Department") adopted along with surface water controls contained in the IMP by order dated September 20, 2010. The Department has determined that a hearing on the Petition will be held at a time and place to be arranged.
2. On or about November 8, 2010, the Department issued a Notice of Petition, in which the Department noted that any interested person wishing to become a party to the proceeding may file a Request to Intervene with the Department in accordance with 454 *Neb. Admin. Code*, Chapter 7, § 004.
3. Pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004, the MRNRD shows that its legal rights, duties, privileges, immunities, and/or other legal interests may be substantially affected by the proceeding initiated by Petitioners, and that the MRNRD has an interest in the

**COPY**

RECEIVED NOV 30 2010

) )  
matter in this proceeding, and in particular in the success of the Department in resisting the claims of Petitioners, as follows:

- a. Pursuant to the Nebraska Ground Water Management and Protection Act (the "Act"), the MRNRD and the Department jointly adopted the IMP, which first became effective in 2005.
- b. In 2008, the MRNRD and the Department jointly reviewed and modified the IMP based on relevant hydrologic conditions in the Republican River Basin.
- c. In 2009, the MRNRD and the Department jointly reviewed and determined that the IMP needed to be updated in light of issues raised during arbitration between Nebraska, Kansas, and Colorado as part of litigation under the Republican River Compact.
- d. On May 11, 2010, the MRNRD and the Department reached agreement on factors regarding revisions to the IMP as required by the Act. Following required joint notices and joint hearings on the revised IMP, the MRNRD and the Department jointly determined to implement the proposed IMP revisions, with modifications, and to adopt associated surface and ground water controls.
- e. On August 2, 2010, the MRNRD adopted the proposed IMP and affirmed continued use of the ground water controls necessary for meeting the compliance standard identified in the IMP.
- f. On September 20, 2010, the Department adopted the IMP along with surface water controls contained in the IMP.

- ) )
- g. The Act requires that the MRNRD and the Department jointly develop, review, revise, adopt, and administer the IMP, and the MRNRD and the Department have so jointly acted in adopting the revised IMP.
  - h. Petitioners' claims are directed at fundamental controls adopted in the IMP. The outcome of this proceeding will unavoidably have a bearing on how successful the IMP is in reaching the goals and objectives jointly adopted by the Department and the MRNRD for the IMP, and will thus bear on the way both the Department and the MRNRD administer the IMP. Thus, the MRNRD's legal rights, duties, privileges, immunities, and/or other legal interests may be substantially affected by this proceeding, and the MRNRD has a real interest in the outcome of this proceeding. The MRNRD has an interest in the success of the Department in resisting the claims of Petitioners, and seeks to join the Department in resisting Petitioners' claims. The MRNRD and the Department acted jointly in creating the revised IMP, and the revised IMP represents the final decisions made by the MRNRD and the Department.
4. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention of the MRNRD. The proceeding has only recently been initiated by Petitioners, and they have thus far filed only the Petition. The Department has not yet responded to the Petition. No hearings have yet been set in the proceeding and discovery has not commenced. The MRNRD's request to intervene comes nearly at the beginning of the proceeding, and does not impair the interests of justice or the prompt conduct of

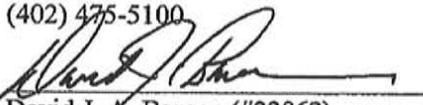
the proceedings. The interests of justice are served by allowing the MRNRD to intervene given the nature of Petitioners' claims.

WHEREFORE, the MRNRD asks that its request to intervene in this proceeding pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004 be granted, aligned with the Department as a Respondent.

DATED: November 24, 2010.

MIDDLE REPUBLICAN NATURAL  
RESOURCES DISTRICT, Petitioner for  
Intervention.

By: REMBOLT LUDTKE LLP  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508  
(402) 475-5100

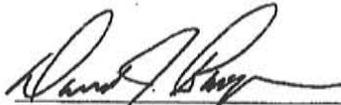
By:   
David J. A. Barga (#22862)

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused a true and correct copy of the foregoing to be sent by ordinary United States mail, first class postage prepaid, on this 24th day of November, 2010, addressed as shown below, to the following:

Jeanelle R. Lust  
Katherine S. Vogel  
Knudsen, Berkheimer, Richardson & Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, NE 68502

Thomas O'Connor  
Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4678

  
David J. A. Barga

State of Nebraska  
Department of Natural Resources  
Filed in the Department of Natural Resources at 4:39  
O'clock P. M. this 24<sup>th</sup>  
day of November, 20 10  
#10.00  
Check # 13405

STATE OF NEBRASKA

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010  
Orders of the Department Adopting  
Associated Surface Water Controls

)  
)  
)  
)

Case 008-10CC

PETITION FOR INTERVENTION

The Upper Republican Natural Resources District ("URNRD"), by and through its attorneys Rembolt Ludtke LLP, and for its Petition for Intervention pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004, states as follows:

1. On or about October 18, 2010, petitioners Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District (collectively, "Petitioners"), filed a Petition and Request for Hearing (the "Petition") regarding the integrated management plan of the URNRD (the "IMP"), which the Department of Natural Resources (the "Department") adopted along with surface water controls contained in the IMP by order dated September 20, 2010. The Department has determined that a hearing on the Petition will be held at a time and place to be arranged.

2. On or about November 8, 2010, the Department issued a Notice of Petition, in which the Department noted that any interested person wishing to become a party to the proceeding may file a Request to Intervene with the Department in accordance with 454 *Neb. Admin. Code*, Chapter 7, § 004.

3. Pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004, the URNRD shows that its legal rights, duties, privileges, immunities, and/or other legal interests may be substantially affected by the proceeding initiated by Petitioners, and that the URNRD has an interest in the

**COPY**

RECEIVED NOV 30 2010

matter in this proceeding, and in particular in the success of the Department in resisting the claims of Petitioners, as follows:

- a. Pursuant to the Nebraska Ground Water Management and Protection Act (the "Act"), the URNRD and the Department jointly adopted the IMP, which first became effective in 2005.
- b. In 2008, the URNRD and the Department jointly reviewed and modified the IMP based on relevant hydrologic conditions in the Republican River Basin.
- c. In 2009, the URNRD and the Department jointly reviewed and determined that the IMP needed to be updated in light of issues raised during arbitration between Nebraska, Kansas, and Colorado as part of litigation under the Republican River Compact.
- d. On May 4, 2010, the URNRD and the Department reached agreement on factors regarding revisions to the IMP as required by the Act. Following required joint notices and joint hearings on the revised IMP, the URNRD and the Department jointly determined to implement the proposed IMP revisions, with modifications, and to adopt associated surface and ground water controls.
- e. On August 3, 2010, the URNRD adopted the proposed IMP and affirmed continued use of the ground water controls necessary for meeting the compliance standard identified in the IMP.
- f. On September 20, 2010, the Department adopted the IMP along with surface water controls contained in the IMP.

- g. The Act requires that the URNRD and the Department jointly develop, review, revise, adopt, and administer the IMP, and the URNRD and the Department have so jointly acted in adopting the revised IMP.
- h. Petitioners' claims are directed at fundamental controls adopted in the IMP. The outcome of this proceeding will unavoidably have a bearing on how successful the IMP is in reaching the goals and objectives jointly adopted by the Department and the URNRD for the IMP, and will thus bear on the way both the Department and the URNRD administer the IMP. Thus, the URNRD's legal rights, duties, privileges, immunities, and/or other legal interests may be substantially affected by this proceeding, and the URNRD has a real interest in the outcome of this proceeding. The URNRD has an interest in the success of the Department in resisting the claims of Petitioners, and seeks to join the Department in resisting Petitioners' claims. The URNRD and the Department acted jointly in creating the revised IMP, and the revised IMP represents the final decisions made by the URNRD and the Department.
4. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention of the URNRD. The proceeding has only recently been initiated by Petitioners, and they have thus far filed only the Petition. The Department has not yet responded to the Petition. No hearings have yet been set in the proceeding and discovery has not commenced. The URNRD's request to intervene comes nearly at the beginning of the proceeding, and does not impair the interests of justice or the prompt conduct of the

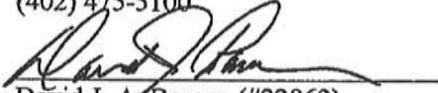
proceedings. The interests of justice are served by allowing the URNRD to intervene given the nature of Petitioners' claims.

WHEREFORE, the URNRD asks that its request to intervene in this proceeding pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004 be granted, aligned with the Department as a Respondent.

DATED: November 24, 2010.

UPPER REPUBLICAN NATURAL  
RESOURCES DISTRICT, Petitioner for  
Intervention.

By: REMBOLT LUDTKE LLP  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508  
(402) 475-5100

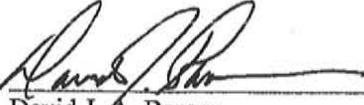
By:   
David J. A. Barga (#22862)

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused a true and correct copy of the foregoing to be sent by ordinary United States mail, first class postage prepaid, on this 24th day of November, 2010, addressed as shown below, to the following:

Jeanette R. Lust  
Katherine S. Vogel  
Knudsen, Berkheimer, Richardson & Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, NE 68502

Thomas O'Connor  
Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4678

  
David J. A. Barga

STATE OF NEBRASKA

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010  
Orders of the Department Adopting  
Associated Surface Water Controls

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)  
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Case 008-10CC

NOTICE OF PETITION

Pursuant to 454 NAC 7 005.06, the Department gives notice of a petition for hearing filed with the Department concerning its authority to administer the associated surface water controls identified in its September 20, 2010 orders adopting integrated management plans with the Upper Republican Natural Resources District and the Middle Republican Natural Resources District. The petition was filed by Frenchman-Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District. The petition asks for a determination of the Department's statutory authority to administer the adopted surface water controls identified in the orders. A hearing on the matter under the above caption will be held, pursuant to *Neb. Rev. Stat. § 46-750, § 46-206*, and Department of Natural Resources *Rules of Practice and Procedure, 454 Neb. Admin. Code*, at a time and place to be arranged.

The Director has appointed Ron Theis to be hearing officer for the hearing. The hearing officer may be reached at the Department's main office, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4678, or phone (402) 471-2363.

The Director has appointed Thomas O'Connor to represent the Department. He may be reached at the Department's main office, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4678, or phone (402) 471-2363.

The parties will pay their proportional costs of the hearing transcripts (454 *Neb. Admin. Code*, Chapter 7, § 008.05).

Any interested person wishing to become a party to the proceeding may file a Request to Intervene in the Department of Natural Resources, 301 Centennial Mall South, P.O. Box 94676, Lincoln, NE 68509-4678, in accordance with 454 *Neb. Admin. Code*, Chapter 7, § 004.

Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default (454 *Neb. Admin. Code*, Chapter 7, § 007.05).

A party may appear on his or her behalf in the contested case proceeding or may be represented by an attorney or other representative as permitted by law. All subsequent pleadings shall be served by upon all the attorneys of record and upon unrepresented parties by the party filing such pleading, and proof of such service shall be filed with the agency (454 *Neb. Admin. Code*, Chapter 7, § 005.07).

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STATE OF NEBRASKA

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the September 20, 2010 ) Case 008-10CC  
Orders of the Department Adopting )  
Associated Surface Water Controls ) **PETITION FOR INTERVENTION**  
)

The Upper Republican Natural Resources District ("URNRD"), by and through its attorneys Rembolt Ludtke LLP, and for its Petition for Intervention pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004, states as follows:

1. On or about October 18, 2010, petitioners Frenchman Cambridge Irrigation District, Bostwick Irrigation District, Frenchman Valley Irrigation District, H&RW Irrigation District, and Pioneer Irrigation District (collectively, "Petitioners"), filed a Petition and Request for Hearing (the "Petition") regarding the integrated management plan of the URNRD (the "IMP"), which the Department of Natural Resources (the "Department") adopted along with surface water controls contained in the IMP by order dated September 20, 2010. The Department has determined that a hearing on the Petition will be held at a time and place to be arranged.

2. On or about November 8, 2010, the Department issued a Notice of Petition, in which the Department noted that any interested person wishing to become a party to the proceeding may file a Request to Intervene with the Department in accordance with 454 *Neb. Admin. Code*, Chapter 7, § 004.

3. Pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004, the URNRD shows that its legal rights, duties, privileges, immunities, and/or other legal interests may be substantially affected by the proceeding initiated by Petitioners, and that the URNRD has an interest in the

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matter in this proceeding, and in particular in the success of the Department in resisting the claims of Petitioners, as follows:

- a. Pursuant to the Nebraska Ground Water Management and Protection Act (the "Act"), the URNRD and the Department jointly adopted the IMP, which first became effective in 2005.
- b. In 2008, the URNRD and the Department jointly reviewed and modified the IMP based on relevant hydrologic conditions in the Republican River Basin.
- c. In 2009, the URNRD and the Department jointly reviewed and determined that the IMP needed to be updated in light of issues raised during arbitration between Nebraska, Kansas, and Colorado as part of litigation under the Republican River Compact.
- d. On May 4, 2010, the URNRD and the Department reached agreement on factors regarding revisions to the IMP as required by the Act. Following required joint notices and joint hearings on the revised IMP, the URNRD and the Department jointly determined to implement the proposed IMP revisions, with modifications, and to adopt associated surface and ground water controls.
- e. On August 3, 2010, the URNRD adopted the proposed IMP and affirmed continued use of the ground water controls necessary for meeting the compliance standard identified in the IMP.
- f. On September 20, 2010, the Department adopted the IMP along with surface water controls contained in the IMP.

- ) )
- g. The Act requires that the URNRD and the Department jointly develop, review, revise, adopt, and administer the IMP, and the URNRD and the Department have so jointly acted in adopting the revised IMP.
  - h. Petitioners' claims are directed at fundamental controls adopted in the IMP. The outcome of this proceeding will unavoidably have a bearing on how successful the IMP is in reaching the goals and objectives jointly adopted by the Department and the URNRD for the IMP, and will thus bear on the way both the Department and the URNRD administer the IMP. Thus, the URNRD's legal rights, duties, privileges, immunities, and/or other legal interests may be substantially affected by this proceeding, and the URNRD has a real interest in the outcome of this proceeding. The URNRD has an interest in the success of the Department in resisting the claims of Petitioners, and seeks to join the Department in resisting Petitioners' claims. The URNRD and the Department acted jointly in creating the revised IMP, and the revised IMP represents the final decisions made by the URNRD and the Department.
4. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention of the URNRD. The proceeding has only recently been initiated by Petitioners, and they have thus far filed only the Petition. The Department has not yet responded to the Petition. No hearings have yet been set in the proceeding and discovery has not commenced. The URNRD's request to intervene comes nearly at the beginning of the proceeding, and does not impair the interests of justice or the prompt conduct of the

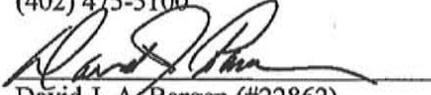
proceedings. The interests of justice are served by allowing the URNRD to intervene given the nature of Petitioners' claims.

WHEREFORE, the URNRD asks that its request to intervene in this proceeding pursuant to 454 *Neb. Admin. Code*, Chapter 7, § 004 be granted, aligned with the Department as a Respondent.

DATED: November 24, 2010.

UPPER REPUBLICAN NATURAL  
RESOURCES DISTRICT, Petitioner for  
Intervention.

By: REMBOLT LUDTKE LLP  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508  
(402) 475-5100

By:   
David J. A. Bargaen (#22862)

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused a true and correct copy of the foregoing to be sent by ordinary United States mail, first class postage prepaid, on this 24th day of November, 2010, addressed as shown below, to the following:

Jeanelle R. Lust  
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Knudsen, Berkheimer, Richardson & Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, NE 68502

Thomas O'Connor  
Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4678

  
David J. A. Bargaen



- ) )
5. Frenchman Valley Irrigation District is an irrigation district organized on February 26, 1912, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.
  6. Frenchman Valley Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation.
  7. H&RW Irrigation District is an irrigation district organized on November 1, 1955, and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Culbertson, Nebraska.
  8. H&RW Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska, and receives supplemental stored water from the federal reservoirs owned by the Bureau of Reclamation.
  9. Pioneer Irrigation District is an irrigation district organized and existing pursuant to Nebraska's irrigation district laws, Neb. Rev. Stat. §§ 46-101 to 46-128, with its principal place of business in Haigler, Nebraska.
  10. Pioneer Irrigation District is the operator of irrigation works and is the owner of water rights for surface water natural flow within the Republican River Basin in Nebraska.
  11. The Department of Natural Resources (DNR) is the official state agency in connection with water resources regulation and development, with general authority over all matters pertaining to water rights.

12. On or about September 20, 2010, the Nebraska Department of Natural Resources issued orders adopting the Upper Republican Natural Resources District Integrated Management Plan (“Upper Republican IMP”) and Associated Surface Water Controls, and the Middle Republican Natural Resources District Integrated Management Plan (“Middle Republican IMP”) and Associated Surface Water Controls.
13. The Upper Republican IMP and the Middle Republican IMP contain identical surface water controls that will be administered by the DNR.
14. The surface water controls provide that Nebraska will recognize a priority date of February 26, 1948, for Kansas Bostwick Irrigation District for the regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam.
15. The Republican River Compact divides the “virgin water supply” between Nebraska, Kansas and Colorado and is based on each state consuming their share and only their share of the Basin’s water supply.
16. The surface water controls create a “Compact Call.” In “Compact Call” years, the DNR will regulate and administer surface water in the basin as necessary to ensure Nebraska’s compliance with the Republican River Compact. The “Compact Call” will result in DNR issuing closing notices on all natural flow and storage permits in the basin until such time as DNR . . . determines that yearly administration is no longer needed to ensure Compact compliance.”
17. The surface water controls require that the DNR “forecast” whether there will be sufficient surface water to meet Nebraska’s obligations under the Republican River Compact. If it is estimated that there is insufficient water to meet all the demands for the water, the DNR will issue closing notices on all natural flow and storage permits.

18. The DNR's authority to regulate surface water appropriation rights is based upon the doctrine of prior appropriations under which the surface water appropriation rights are regulated according to priority and the type of use. If water is insufficient for all uses, junior appropriation rights are shut down for the benefit of senior appropriation rights. However, just compensation is due for such shut downs. The DNR's surface water controls which relate to forecasting and the "Compact Call" are inconsistent with and contrary to Nebraska law, the doctrine of prior appropriations and the DNR's procedure for regulating and monitoring surface water appropriation rights. See, specifically, Neb. Rev. Stat. §§ 46-231, 46-233.307, and Neb. Const. art. XV, § 6.

19. The surface water controls and integrated management plans do not reach or meet long term sustainability goals as required in Neb. Rev. Stat. § 46-715(2).

20. A "Compact Call" is not authorized by Nebraska law. Neb. Rev. Stat. §§ 46-715 and 46-716.

21. A "Compact Call" is not authorized in the Republican River Compact or the 2002 Final Settlement Stipulation.

22. The total shut down of surface water direct irrigation uses in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.

23. The total shut down of storage appropriations in the integrated management plans is not authorized by Neb. Rev. Stat. § 46-716.

WHEREFORE the Petitioners respectfully request a hearing for determination on the statutory authority of the DNR to administer the surface water controls adopted in its September 20, 2010 Orders.

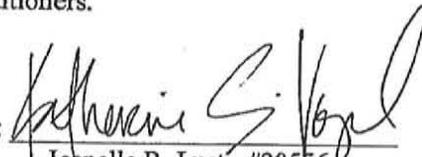
Dated this 18th day of October, 2010.

Respectfully Submitted By,

Frenchman Cambridge Irrigation District,  
Bostwick Irrigation District,  
Frenchman Valley Irrigation District,  
H&RW Irrigation District,  
Pioneer Irrigation District,

Petitioners.

By:



Jeanelle R. Lust - #20556  
Katherine S. Vogel - #23982  
KNUDSEN, BERKHEIMER,  
RICHARDSON & ENDACOTT, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, Nebraska 68502  
(402) 475-7011

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused a true and correct copy of the foregoing **Petition and Request for Hearing** to be served by hand delivery on this 18th day of October 2010, upon the following:

Department of Natural Resources  
301 Centennial Mall South  
4<sup>th</sup> Floor State Office Building  
Lincoln, Nebraska 68509-4676

  
Katherine S. Vogel