

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matters of Petitions V-14, V-15, )  
 and V-16 for Leave to Consider; and )  
 Applications A-17901, A-17902 and ) ORDER  
 A-17903 for Permits to Appropriate )  
 Water in the Platte River Basin. )  
 Water Division 1-A. )

These matters came on for consideration before the Director of the Department of Natural Resources pursuant to Neb. Rev. Stat. §§ 46-233, 46-235 and 46-714(3)(n) (Reissue 2004) and Department rules 457 N.A.C. 23. The Director FINDS:

- On August 7, 2000, the Central Platte Natural Resources District (CPNRD) filed applications A-17901, A-17902 and A-17903 to divert flood waters only from the Wood River, Upper Warm Slough, and Lower Warm Slough, respectively, through a flood control project, and return the flows to the Platte River. The location of the diversion points identified in the three applications are listed below along with the requested maximum amounts of diversion listed in cubic feet per second (cfs):

APPLICATION NUMBER	DIVERSION LOCATIONS	REQUESTED DIVERSIONS
A-17901	32-11N-09W Hall County	4,200 cfs
A-17902	03-10N-10W Hall County	760 cfs
A-17903	24-13N-07W Merrick County	1,480 cfs

- On July 14, 2004, the Department issued an order declaring a formal moratorium on the filing of applications for surface water appropriations in the Platte River Basin above the mouth of the Loup River.
- On September 30, 2004, the Department issued an order designating the area within CPNRD's jurisdiction fully appropriated. In accordance with Neb. Rev. Stat. § 46-714(5) (Reissue 2004) the order continued a stay on new surface water uses and a stay on increasing the number of irrigated acres by existing surface water appropriations. All stays remain in effect until terminated by law or an integrated management plan has been adopted by the Department and the CPNRD.

4. On December 1, 2006, CPNRD filed petitions V-14, V-15 and V-16 requesting variances from the Department for leave to consider applications A-17901, A-17902 and A-17903 based on the following reasons: (1) the project was completed March 30, 2004; (2) the project is for a non-consumptive use by only diverting flood flows to the Platte River approximately 15 miles upstream from their historical entry; and (3) a public safety issue was addressed by providing flood protection to approximately 1,755 structures in the city of Grand Island, approximately 5,385 acres of irrigated cropland in the project area, and 10 county road crossings and approaches.
5. The Nebraska Game and Parks Commission was consulted on applications A-17901, A-17902 and A-17903 as required by Neb. Rev. Stat. § 37-807 (Reissue 2004) and determined the project proposed by the applications would not impact threatened or endangered species or their habitat.
6. Variances for filing applications to divert surface water in areas that are subject to stays are covered under Neb. Rev. Stat. § 46-714(3)(n) (Reissue 2004) and § 61-206 (Cum. Supp. 2004). Department rule 457 N.A.C. 23 establishes guidelines under which variances can be approved.

It is CONCLUDED:

1. It is determined from Finding 5 that approval of A-17901, A-17902 and A-17903 will not adversely impact threatened or endangered species or their habitat.
2. Variance petitions may be approved if they meet one or more of the conditions listed in Department rule 457 N.A.C. 23. In its petitions V-14, V-15 and V-16, CPNRD requests leave to consider its applications to appropriate flood water based on Department rules 23.001.01, 23.001.04 and 23.001.05. Rule 23.001.01 allows for applications if the proposed project is for a non-consumptive use, rule 23.001.04 allows for applications if the project existed prior to any informal or formal moratorium or stay, and rule 23.001.05 allows for applications if there is a public safety issue that must be addressed and the proposed project addresses such issue.

As to rule 23.001.01, CPNRD plans only to divert flood flows into floodways and reroute them to the Platte River 15 miles upstream of where a portion of the flow would have been returned. No storage of the flood flows is proposed. Thus, no consumptive use is contemplated and the conditions of rule 23.001.01 have been met.

Regarding rule 23.001.05, CPNRD's petitions assert that flooding has occurred several times in this area, and the project outlined in its applications would provide protection to 1,755 structures in Grand Island, as well as protect cropland, and roads and bridges from flood flows. Based on this information, the conditions of rule 23.001.05 have also been met.

As to rule 23.001.04, an informal moratorium has been in existence since 1993 in the Platte River basin to the mouth of the Loup River. The 2004 completion of this project thus does not meet the requirement of rule 23.001.04. However, the Petitioner has met one or more of the conditions outlined in Department rule 457 N.A.C. 23.001, and its variance petitions V-14, V-15 and V-16 should be approved.

3. Applications A-17901, A-17902 and A-17903 to divert only flood flows meet the requirements for approval under the provisions of Neb. Rev. Stat. § 46-235 (Revised 2004) and should all be approved.

It is therefore ORDERED:

1. CPNRD's requests for variances V-14, V-15 and V-16 for leave to consider applications A-17901, A-17902 and A-17903 meet the conditions of Department rule 457 N.A.C. 23 and are APPROVED.
2. Application A-17901 is hereby APPROVED subject to the following limitations, conditions and notice:
  - a. The source of water is flood flows from Wood River.
  - b. The water shall be used for flood control purposes.
  - c. The priority date is August 7, 2000.
  - d. A map must be filed in the office of the Department by August 22, 2007, prepared according to Department rule 457 N.A.C. 10.
  - e. The work of construction has been completed.
  - f. The maximum amount of flood water to be diverted shall be limited to 4,200 cfs.
  - g. The installation of a measuring device may be required.
  - h. Use of water under A-17901 may be denied in order of priority when water supplies do not meet the demands of downstream appropriators.

3. Application A-17902 is hereby APPROVED subject to the following limitations, conditions and notice:
  - a. The source of water is flood flows from the Upper Warm Slough.
  - b. The water shall be used for flood control purposes.
  - c. The priority date is August 7, 2000.
  - d. A map must be filed in the office of the Department by August 22, 2007, prepared according to Department rule 457 N.A.C. 10.
  - e. The work of construction has been completed.
  - f. The maximum amount of flood water to be diverted shall be limited to 760 cfs.
  - g. The installation of a measuring device may be required.
  - h. Use of water under A-17902 may be denied in order of priority when water supplies do not meet the demands of downstream appropriators.
  
4. Application A-17903 is hereby APPROVED subject to the following limitations, conditions and notice:
  - a. The source of water is flood flows from the Lower Warm Slough.
  - b. The water shall be used for flood control purposes.
  - c. The priority date is August 7, 2000.
  - d. A map must be filed in the office of the Department by August 22, 2007, prepared according to Department rule 457 N.A.C. 10.
  - e. The work of construction has been completed.
  - f. The maximum amount of flood water to be diverted shall be limited to 1,480 cfs.
  - g. The installation of a measuring device may be required.
  - h. Use of water under A-17903 may be denied in order of priority when water supplies do not meet the demands of downstream appropriators.

5. Failure to comply with the provisions of the approvals of A-17901, A-17902 and A-17903 may cause cancellation of part or all of these appropriations. If unable to meet the conditions of these approvals due to unavoidable and natural causes, petitions for extensions of time may be filed with the Department. Petitions must be filed prior to the expiration date stated in the Approvals and must be accompanied by a \$10 filing fee.

DEPARTMENT OF NATURAL RESOURCES

February 22, 2007



Ann Bleed, Director

A copy of application numbers A-17901, A-17902, A-17903; Department rule 457 N.A.C. 10; Project Map forms; Project Map Sample; and a copy of this Order were mailed on February 22, 2007, to Milt Moravek, Assistant Manager, Central Platte Natural Resources District, 215 North Kaufman Avenue, Grand Island, Nebraska 68803. A copy of application numbers A-17901, A-17902, A-17903; and a copy of this Order were provided to the Department's field offices in Bridgeport and Ord, Nebraska.