STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19246

WATER DIVISION 1-A

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in the Platte River Basin upstream of the confluence with the Loup River near Columbus, Nebraska. The moratorium included all tributary streams above the Loup River confluence including the North and South Platte Rivers and tributaries.

2. On January 1, 2007, work officially commenced on the Platte River Recovery and Implementation Program (PRRIP or Program). PRRIP's goals include reducing shortages to U.S. Fish and Wildlife Service target flows and providing additional land habitat for endangered species in the Lexington to Chapman reach of the Platte River. In order to meet these goals, each signatory to PRRIP has adopted depletions plans to address the mitigation of the adverse impacts of water-related activities on streamflows in the Platte River. In addition to a focus on new depletions, Nebraska's New Depletion Plan (NNDP) provides that the State of Nebraska will mitigate existing surface water and groundwater uses in order to return to a July 1, 1997, level of water-use development. Portions of the shortages to target flows are intended to be offset through water conservation and water supply projects identified by the PRRIP Governance Committee in the Water Action Plan, which provides guidance in implementing the water component of the Program. A goal of the first thirteen-year increment of the Program is to attempt to retime and improve flows in the central Platte River so as to reduce shortages to target flows by an average of 130,000 to 150,000 acre-feet (AF) per year, as measured at Grand Island.

3. On August 13, 2009, integrated management plans (IMPs) were adopted by order of the Department, pursuant to *Neb. Rev. Stat.* § 46-718(2) for the following natural resources districts (NRDs): the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. As part of the surface water controls adopted by the Department pursuant to *Neb. Rev. Stat.* § 46-716(1)(b), the moratorium on issuing new surface water appropriations was continued.

4. On September 11, 2009, a Basin-Wide Integrated Management Plan (BWIMP) for the overappropriated area of the Platte River Basin was adopted by order of the Department. The BWIMP was also adopted by the following NRDs: the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. These NRDs are collectively referred to in the BWIMP as the "Platte River Basin NRDs."

5. On February 25, 2013, Rex Boggs, President, on behalf of Paxton-Hershey Water Company, filed petition VAR-3562 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area. The draft application attached to the petition is for a temporary permit to appropriate water from the North Platte River for the purpose of groundwater recharge via the Paxton-Hershey Canal.

6. On May 1, 2014, the Department granted leave to file an application for a permit to appropriate water by approving petition VAR-3562.

7. On May 12, 2014, Rex Boggs, President, on behalf of Paxton-Hershey Water Company, filed in the Department application A-19246 for a temporary permit to appropriate water for the purpose of groundwater recharge through the Paxton-Hershey Canal system. The application proposes to divert water from the North Platte River at the headgate of the applicant's Paxton-Hershey Canal located in Section 18, Township 14 North, Range 33 West of the 6th P.M. in Lincoln County.

8. Temporary permits may not be granted for a term of more than one year.

CONCLUSIONS:

1. Construction of the Paxton-Hershey Canal has been completed.

2. The temporary diversion of excess flows sought in the application is part of a project that will be conducted in cooperation with integrated management and PRRIP partners and is in conformity with integrated management plan goals and potential conjunctive management projects. Information and data obtained from the proposed temporary project will be valuable for planning and design of permanent conjunctive management projects currently being considered in the Platte River Basin. Such data may be incorporated in the design of future projects intended to help the State of Nebraska meet its obligations under PRRIP. In addition, recharge from this project may assist NRDs in meeting their offset responsibilities under the BWIMP and individual NRD IMPs.

3. Only excess flows will be diverted under this project, and, therefore, the project will be utilizing unappropriated water.

4. The diversion of water for the purpose of groundwater recharge is beneficial.

5. This project is being implemented pursuant to PRRIP and will only divert water when U.S. Fish and Wildlife Service target flows are exceeded as described in the NNDP. As a result, this project does not constitute a new depletion under PRRIP and does not require an offset. No water diversion infrastructure is being modified. Use of water under this project will assist the State of Nebraska in its efforts to achieve PRRIP goals. Approval of this application complies with the NNDP and has a purely hydrologic impact. In addition, in having consulted informally with the Nebraska Game and Parks Commission during the development of the NNDP and Program goals, the Department considers that the requirements of *Neb. Rev. Stat.* § 37-807(3) have been met.

6. For these reasons, the application is in the public interest and should be approved.

ORDER

IT IS HEREBY ORDERED that application A-19246 is APPROVED subject to the following limitations and conditions:

1. The source of water is the North Platte River.

2. The water shall be used for the purpose groundwater recharge via the existing Paxton-Hershey Canal.

3. The priority date is May 12, 2014.

4. When the specified conditions of this appropriation are met, water may be diverted, at a maximum rate of 60 cubic feet per second, into the headgate of the Paxton-Hershey Canal located in Section 18, Township 14 North, Range 33 West of the 6th P.M. in Lincoln County.

5. The water under appropriation A-19246 may be diverted prior to the beginning of the 2014 irrigation season, after the end of the 2014 irrigation season and prior to the beginning of the 2015 irrigation season if applicable, if all conditions of this Order are met. Appropriator must coordinate with Department personnel to determine the end and the beginning of the irrigation season for the Paxton-Hershey Canal system for the purpose of administering this permit.

6. This appropriation is subject to all regular water administration. No diversion shall occur if the Department determines that, at the time of intended diversion, there is no unappropriated water available in the North Platte River or if the appropriation is out of priority. Total diversion into the Paxton-Hershey Canal during use of this permit will be limited to the permitted amount of A-19246.

7. If a relinquishment is not submitted first, then A-19246 will EXPIRE one year from the date of this Order and appropriation A-19246 will be CANCELLED without further action by the Department as of that date.

8. No diversion of water under this permit may occur if the U.S. Fish and Wildlife Service-specified target flows are not being met, averaged on a daily basis, at the time of the intended diversion, which are specified on **Table A** on page 5. Appropriator must coordinate with the Department's field office in charge of water administration to confirm that this condition is met.

9. The Department reserves the right to make adjustments to the amounts listed on Table A.

10. Within six months after the final date of diversion under this temporary permit, the appropriator shall file a map that depicts where water was routed. The appropriator shall also provide to the Department an in-depth quantitative analysis of the recharge achieved by utilizing the Paxton-Hershey Canal as proposed in application A-19246, including all data provided to the Program or to NRDs for the purpose of determining amount of recharge to the aquifer and/or accretions to streamflows.

11. The water diverted under appropriation A-19246 through the Paxton-Hershey Canal will flow through the canal system and will be used for groundwater recharge via the applicant's Paxton-Hershey Canal during the non-irrigation season.

12. The water diverted under A-19246 through the Paxton-Hershey Canal system may not be used for direct irrigation by Paxton-Hershey Water Company's customers. The water diverted under A-19246 may only flow through the headgate, canal and lateral system. Any water diverted for the purpose authorized under this permit that does not seep into the groundwater aquifer shall be returned to the river at established spills and drains.

13. The appropriator must comply with all relevant statutes.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Approval may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

DEPARTMENT OF NATURAL RESOURCES

May 29, 2014

Brian P. Dunnigan

Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* §§ 84-901 et. seq. RRS and the Department's *Rules of Practice and Procedure Title 454 Neb. Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (Nebraska State Office Building, 4th Floor, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of $10.

A copy of this approval was posted on the Department's website and provided to the Department's field offices in Bridgeport and North Platte, Nebraska. A copy of this approval was mailed on May 29, 2014, to the following:

Paxton-Hershey Water Company
22431 West Platte Valley Road
Hershey, Nebraska 69143-5333

Ann Dimmitt
Twin Platte Natural Resources District
P.O. Box 1347
North Platte, Nebraska 69103-1347

**Table A - Desired Minimum Discharge of the Platte River in cfs**

**Measured at the Grand Island Stream Gage Relevant to Appropriation A-19246**

| Period | PRRIP Target Flows Grand Island | | |
|---|---|---|---|
| | **Wet*** | **Normal*** | **Dry*** |
| January 1 - January 31 | 1,000 | 1,000 | 600 |
| February 1 - February 14 | 1,800 | 1,800 | 1,200 |
| February 15 - February 28 | 3,350 | 3,350 | 2,250 |
| March 1 - March 15 | 3,350 | 3,350 | 2,250 |
| March 16 - March 22 | 1,800 | 1,800 | 1,200 |
| March 23 - March 31 | 2,400 | 2,400 | 1,700 |
| April 1 - April 14 | 2,400 | 2,400 | 1,700 |
| April 15 - May 3 | 2,400 | 2,400 | 1,700 |
| May 4 - May 10 | 2,400 | 2,400 | 1,700 |
| May 11- May 19 | 1,200 | 1,200 | 800 |
| May 20 - May 31 | 3,700 | 3,400 | 800 |
| June 1 - June 20 | 3,700 | 3,400 | **1,000**** |
| June 21 - June 23 | 1,200 | 1,200 | **1,000**** |
| June 24 - July 31 | 1,200 | 1,200 | **1,000**** |
| August 1 - August 22 | 1,200 | 1,200 | 800 |
| August 23 - August 31 | 1,200 | 1,200 | 800 |
| September 1 - September 15 | 1,200 | 1,200 | 800 |
| September 16 - September 30 | 1,000 | 1,000 | 600 |
| October 1 - October 11 | 2,400 | 1,800 | **1,350**** |
| October 12 - November 10 | 2,400 | 1,800 | **1,500**** |
| November 11 - November 15 | 2,400 | 1,800 | 1,300 |
| November 16 - December 31 | 1,000 | 1,000 | 600 |

* The current Hydrologic Condition, (Wet Normal or Dry) determined by PRRIP can be found at: *http://platteriverprogram.org/PubsAndData/Pages/CurrentHydrologicCondition.aspx*

**Represents the minimum discharge required by instream flow appropriation, which is greater than PRRIP Target Flows, and senior to A-19246