

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:

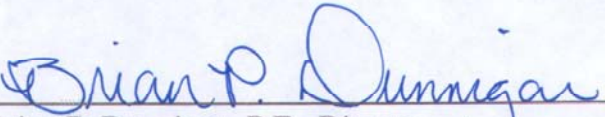
- F. During Compact Call Years, as determined from the procedures and analysis set forth in Section X of the MRNRD Integrated Management Plan, DNR will regulate and administer surface water in the basin as necessary to ensure Compact compliance. During Compact Call Years, DNR will issue a "Compact Call" 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, 4th 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.