

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Platte River )  
Basin, the North Platte River )  
Basin, the South Platte River )  
Basin, the Republican River ) ORDER DECLARING FORMAL MORATORIUMS  
Basin, the White River Basin, )  
and the Hat Creek River Basin. )

This matter came on for consideration before the Director of the Department of Natural Resources in part because of the provisions of Section 53, subsection (4) of LB962 (2004 Nebraska Legislature) and in part because of the need to formalize actions previously taken by the Department relative to the issuance of additional appropriations in several river basins in the state. The Director FINDS:

1. On February 27, 1979, by a memorandum to staff, the Director of the Department of Water Resources (now the Department of Natural Resources) ordered staff to deny all applications for natural flow for consumptive purposes in the Lodgepole Creek basin. The memorandum states the action was taken because the Director did not believe the public interest was served by continued issuance of permits for natural flow and that the moratorium would avoid the additional State costs from the added administration and cancellation of permits in the future. Documents in the Department's records indicate that storage and storage use appropriations could still be considered and approved. Such action was to take effect immediately and remain in effect until further notice. Lodgepole Creek is a tributary to the South Platte River.
2. On December 13, 1979, the same Director of the Department of Water Resources issued another memorandum to staff directing them to deny all applications for the direct use of natural flow from Pumpkinseed Creek and tributaries for irrigation purposes. The memorandum states that applications for storage and applications to use stored water for irrigation purposes could be processed. The reason given for this action was public interest and that it would avoid additional state costs from added administration and cancellation work in future years. Pumpkinseed Creek is a tributary to the North Platte River.
3. On November 30, 1990, the Department declared a formal moratorium on the Niobrara River from the Nebraska-Wyoming state line downstream to the headgate of the Mirage Flats Canal. The moratorium included all applications to use natural flow for irrigation, storage, and other beneficial uses. The Order states that the Department shall not approve any applications for permits for new water appropriations on this stream reach while the moratorium remains in effect, and any interested person may petition the Department to reconsider the moratorium designation.

4. Through actions taken since approximately 1993, the Department of Natural Resources has effectively maintained other informal moratoriums through its discussions with possible applicants and through its orders regarding applications filed. The actions taken and the Department's policy have been as follows:
  - a. North Platte River and tributaries above Lake McConaughy. The Department has denied applications on the basis of a preliminary determination that there is insufficient unappropriated water. Applicants were given an opportunity to request a hearing to prove that unappropriated water was available. The basis for this preliminary determination was that in most years Lake McConaughy has not filled. This determination resulted in additional restrictions in the Pumpkinseed Creek area.
  - b. South Platte River and tributaries, North Platte River and tributaries below Lake McConaughy and Platte River and tributaries above Cozad Canal. The Department has denied applications that would reduce natural flow during the irrigation season on the basis of a preliminary determination that there is insufficient unappropriated water during the irrigation season. Applicants were given an opportunity to request a hearing to prove that unappropriated water was available. The basis for the preliminary determination was the fact that in most years the Department has closed appropriations that were junior to a 1927 water right for Thirty Mile Canal, and in many years for a 1894 water right for Cozad Canal.
  - c. Platte River and tributaries above the mouth of the Loup River. The Department has denied applications that would reduce the natural flow for the instream water appropriations that have a 1993 water right on the preliminary determination that there is insufficient unappropriated water for these water rights that have 1990 or 1993 priority dates. Applicants were given an opportunity to request a hearing to prove that unappropriated water was available.
  - d. White River Basin and Hat Creek Basins. Again, the Department has denied applications that would reduce the natural flow of the stream. The Department's preliminary determination was based on the total lack of flow existing in most locations of these basins and the number of old water rights that do not receive the full allotment allowed under their appropriations. Applicants were given opportunity to request a hearing to prove that unappropriated water was available.
5. No applications for permanent water rights in the Republican River Basin have been filed or granted since 1994. In discussions with possible applicants since then, Department staff discussed the need for showing the availability of unappropriated water. On May 19, 2003, the United States Supreme Court approved a final settlement


stipulation with Kansas and Colorado regarding the Republican River Compact. While that settlement does not specifically require that the Republican River Basin be made subject to a formal moratorium on the issuance of such rights, such a moratorium is consistent with that settlement and with Nebraska's required compliance with that Compact.

It is therefore CONCLUDED that it is in the public interest to declare an official moratorium on the issuance of new surface water appropriations for all of those areas described above for which the Department previously has not formally declared such a moratorium, that is the areas described in paragraphs Nos. 1, 2, 4 and 5 above. The Nebraska Constitution, Article XV, Section 6 states, "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest." By declaring the official moratorium the public is well served by notice of such intentions and requirements. Further, the public would not be well served by the continuance of granting permits where sufficient water is not available. This action would result in "paper water rights" that would cause additional costs to the taxpayer because of the costs of processing such applications, the costs of administering such applications, and the costs of canceling such appropriations in the future. However, there may be certain situations where the public interest would be served by allowing new water rights, and because of the type of project and/or its operation, if an applicant can show that unappropriated water is available. A process for allowing such action should be authorized.

It is therefore ORDERED that:

1. A moratorium on all new surface water appropriations is hereby declared for the following basins or subbasins in Nebraska:
  - a. The Republican River Basin, including all subbasins
  - b. The North Platte River Basin including all subbasins
  - c. The South Platte River Basin including all subbasins
  - d. The Platte River Basin above the mouth of the Loup River including all subbasins
  - e. The White River Basin including all subbasins
  - f. The Hat Creek Basin including all subbasins
2. Interested persons may petition the Department to reconsider the moratorium designation as it relates to a specific project. The petition for reconsideration must clearly state the basis for such request. For sufficient cause shown, the Director may re-examine the action imposed by this Order at any time.

DEPARTMENT OF NATURAL RESOURCES

  
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Roger K. Patterson, Director

July 14, 2004

CERTIFICATE OF SERVICE

A copy of the foregoing ORDER DELARING FORMAL MORATORIUMS was mailed on July 14, 2004 to the following:

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| Lower Republican Natural Resources District<br>P.O. 618<br>Alma, Nebraska 68920-0618                               | Beerline Canal Company<br>R.R. 2, Box 15<br>Broadwater, Nebraska 69125                                 |
| Middle Republican Natural Resources District<br>P.O. Box 81<br>Curtis, Nebraska 69025-0081                         | Birdwood Irrigation District<br>25362 W. North River Road<br>Hershey, Nebraska 69143                   |
| Upper Republican Natural Resources District<br>P.O. Box 1140<br>Imperial, Nebraska 69033-1140                      | Blue Creek Irrigation District<br>5277 Road 197<br>Lewellen, Nebraska 69147                            |
| Tri-Basin Natural Resources District<br>1308-2 <sup>nd</sup> Street<br>Holdrege, Nebraska 68949-2803               | Bostwick Irrigation District<br>P.O. Box 446<br>Red Cloud, Nebraska 68970-0446                         |
| Central Platte Natural Resources District<br>215 North Kaufman Avenue<br>Grand Island, Nebraska 68803-4915         | Bridgeport Irrigation District<br>P.O. Box 1028<br>Bridgeport, Nebraska 69336-1028                     |
| Twin Platte Natural Resources District<br>P.O. Box 1347<br>North Platte, Nebraska 69103-1347                       | Browns Creek Irrigation District<br>P.O. Box 40<br>Broadwater, Nebraska 69125-0040                     |
| South Platte Natural Resources District<br>P.O. Box 294<br>Sidney, Nebraska 69162-0294                             | Castle Rock Irrigation District<br>P.O. Box 6<br>McGrew, Nebraska 69353-0006                           |
| North Platte Natural Resources District<br>P.O. Box 36<br>Gering, Nebraska 69341                                   | Central Irrigation District<br>P.O. Box 497<br>Scottsbluff, Nebraska 69363                             |
| Upper Niobrara White Natural Resources District<br>430 East 2 <sup>nd</sup> Street<br>Chadron, Nebraska 69337-2433 | Central Nebraska Public Power and Irrigation District<br>P.O. Box 740<br>Holdrege, Nebraska 68949-0740 |
| Alliance Irrigation District<br>P.O. Box 412<br>Bridgeport, Nebraska 69336-0412                                    | Chimney Rock Irrigation District<br>P.O. Box 398<br>Bayard, Nebraska 69334-0398                        |
|  | Cody-Dillon Ditch Company<br>6396 North Splinter Road<br>North Platte, Nebraska 69101                  |
|  | Court House Rock Company<br>HC 85 Box 156<br>Bridgeport, Nebraska 69336-9530                           |

Cozad Ditch Company, Inc.  
P.O. Box 286  
Cozad, Nebraska 69130-0286

Empire Canal Company  
C/o Tim Riggs  
P.O. Box 69336  
Bridgeport, Nebraska 69336

Enterprise Irrigation District  
P.O. Box 1558  
Scottsbluff, Nebraska 69361-1558

Farmers Irrigation District  
1505 Second Avenue  
Scottsbluff, Nebraska 69361

Frenchman-Cambridge Irrigation  
District  
P.O. Box 116  
Cambridge, Nebraska 69022-0116

Frenchman Valley Irrigation  
District  
P.O. Box 297  
Culbertson, Nebraska 69024

Gering Irrigation District  
981 Rundell Road  
Gering, Nebraska 69341

Gering-Ft. Laramie Irrigation  
District  
P.O. Box 69341-0541  
Gering, Nebraska 69341

H & RW Irrigation District  
P.O. Box 297  
Culbertson, Nebraska 69024

Hooper Irrigation District  
19576 Road 50  
Lewellen, Nebraska 69147

Keith-Lincoln County Irrigation  
District  
P.O. Box 308  
Sutherland, Nebraska 69165-0308

Lisco Irrigation District  
15170 Hwy 26  
Lisco, Nebraska 69148-8827

Midland-Overland Canal Company  
18920 Hwy 26  
Oshkosh, Nebraska 69154

Minatare Mutual Canal and  
Irrigation Company  
P.O. Box 367  
Minatare, Nebraska 69356

Mitchell Irrigation District  
120322 County Road F  
Mitchell, Nebraska 69357

Nebraska Public Power District  
P.O. Box 499  
Columbus, Nebraska 68602-0499

Nine Mile Irrigation District  
P.O. Box 597  
Bayard, Nebraska 69334-0597

Northport Irrigation District  
RR 1 Box 164  
Bridgeport, Nebraska 69336-0535

Paisley Irrigation District  
5277 Road 197  
Lewellen, Nebraska 69147

Pathfinder Irrigation District  
P.O. Box 338  
Mitchell, Nebraska 69357

Paxton-Hershey Water Company  
25751 West Suburban Road  
Hershey, Nebraska 69143

Pioneer Irrigation District  
RR 1 Box 44  
Haigler, Nebraska 69030

Platte Valley Irrigation  
District  
P.O. Box 104  
Hershey, Nebraska 69143

Riverside Irrigation Company  
RR 3 Box 33  
Culbertson, Nebraska 69024-9318

Short Line Irrigation District  
P.O. Box 575  
Bayard, Nebraska 69334-0575

Six Mile Ditch Company  
P.O. Box 243  
Gothenburg, Nebraska 69138

South Side Irrigation Company  
P.O. Box 174  
Cozad, Nebraska 69130-0174

Steamboat Irrigation District  
180038 County Road 29  
Gering, Nebraska 69341

Suburban Irrigation District  
P.O. Box 885  
North Platte, Nebraska 69103

Thirty Mile Canal Company  
75885 Road 414  
Cozad, Nebraska 69130

Twin Loups Irrigation Company  
P.O. Box 98  
Scotia, Nebraska 68875-0098

Twin Loups Reclamation District  
P.O. Box 98  
Scotia, Nebraska 68875-0098

Union Irrigation District  
5277 Road 197  
Lewellen, Nebraska 69147

Western Irrigation District  
1351 Road West 40  
Brule, Nebraska 69127

White River Irrigation District  
P.O. Box 446  
Crawford, Nebraska 69339

Whitney Irrigation District  
P.O. Box 185  
Whitney, Nebraska 69367

Winters Creek Canal Company  
230710 Highland Road  
Scottsbluff, Nebraska 69361