

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18778

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 certain new water-related activities on streamflows in the Platte River. In addition to focus on new depletion, Nebraska's New Depletion Plan 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 November 29, 2010, the Central Nebraska Public Power and Irrigation District (CNPPID), filed petition VAR-2007 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area or Stay Area. The petition requested leave to file an application for a temporary permit to appropriate water for the purpose of testing winter operations of the Phelps Canal and for pilot recharge projects intended to assist in meeting PRRIP goals.
6. On April 6, 2011, the Department granted leave to file an application for a permit to appropriate water by approving petition VAR-2007.
7. On April 19, 2011, Don Kraus, P.E., General Manager of CNPPID filed in the Department application A-18778 for a temporary permit to appropriate water for the purpose of testing winter operations of canals, studying groundwater recharge in Phelps Canal and testing pilot recharge ponds in Phelps County.
8. Temporary permits may not be granted for a term of more than one year.

FINDINGS OF FACT:

1. Construction of the Tri-County and Phelps Canals has been completed.
2. Petitioner has demonstrated there may be unappropriated water in the Platte River during the non-irrigation season.
3. The temporary diversion project proposed on application A-18778 is in cooperation with PRRIP partners and is in conformity with the intent of PRRIP Water Action Plan projects. Information and data obtained by the proposed temporary project may be used to demonstrate the feasibility of using CNPPID facilities to meet the goals and objectives of long term integrated management and Water Action Plan projects, including assisting local natural resources districts in meeting water-use mitigation goals. Such data may be incorporated in the design of future projects.
4. In pursuit of the goals of this project, testing operational procedures, obtaining design and groundwater recharge data, and ancillary recharge of the groundwater aquifer are beneficial uses of water.
5. Diversions would occur* under the proposed project during the non-irrigation season; therefore, no adverse impacts on existing water users are expected.
6. 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 such, this project does not constitute a new depletion that requires an offset.

ORDER

IT IS HEREBY ORDERED that application A-18778 is APPROVED subject to the following limitations and conditions:

1. The source of water is the Platte River.
2. The water shall be used for the purpose of testing winter operations of canals, studying groundwater recharge in Phelps Canal and testing pilot recharge ponds.
3. The priority date is April 19, 2011.
4. When the specified conditions of this appropriation are met, water may be diverted, at a maximum rate of 350 cubic feet per second, into the headgate of the Tri-County Canal located in Section 8, Township 13 North, Range 29 West of the 6th P.M. in Lincoln County.
5. The water under appropriation A-18778 may be diverted after the end of the 2011 irrigation season and prior to the beginning of the 2012 irrigation season, if all conditions of this Order are met. Appropriator must coordinate with Department personnel to determine the end and beginning of the irrigation season for the Tri-County Canal system for the purpose of administering this permit.
6. If a relinquishment is not submitted first, then appropriation A-18778 will EXPIRE one year from the date of this Order, and appropriation A-18778 will be CANCELLED without further action by the Department as of that date.
7. No diversion of water under this permit may occur if the U.S. Fish and Wildlife Service-specified target flows are not being met at the time of the intended diversion. Appropriator must continuously coordinate with the Department's field office in charge of water administration to confirm that this condition is met.
8. No diversion shall occur if the Department determines that, at the time of intended diversion, there is no unappropriated water available in the Platte River or if the appropriation is out of priority.
9. The water diverted under appropriation A-18778 through the Tri-County Canal will flow through the canal system and will be used for the pilot recharge projects and testing operations of CNPPID's Phelps Canal during the non-irrigation season.
10. Within six months after the final date of diversion under the temporary permit, the appropriator shall file a map that depicts where the water was routed, will provide in-depth quantitative analysis of the canal testing and pilot recharge projects, and detailed drawings of recharge pits and diversion works that are constructed as part of this pilot project.

11. The appropriator must comply with all relevant statutes. The statutory requirements include, but are not limited to, the following:
- A. Notify the Department of any change in ownership or address.
 - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation (this may include farm managers, tenants, or relatives that actually apply the water to the approved use).
 - C. Getting approval from the Department prior to taking any action that changes the location of the point of diversion, the location of the place of use, the type of use, or the type of appropriation.

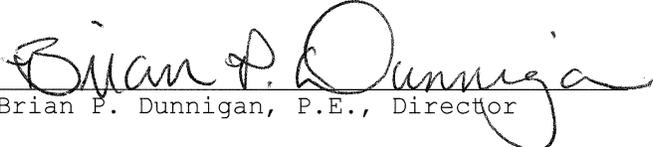
ADDITIONAL INFORMATION

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.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations.

DEPARTMENT OF NATURAL RESOURCES

June 17, 2011


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* 454 *Neb. Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (4th Floor, Nebraska State Office Building, 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 office in Bridgeport, Nebraska. A copy of this approval was mailed on June 17, 2011, to the following:

Don Kraus, P.E., General Manager
Central Nebraska Public Power and
Irrigation District
P.O. Box 740
Holdrege, Nebraska 68949-0740