STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18959

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 July 13, 2012, The Central Nebraska Public Power and Irrigation District (CNPPID), filed petition VAR-2370 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 groundwater recharge via the Phelps Canal.

6. On August 7, 2012, the Department granted leave to file an application for a permit to appropriate water by approving petition VAR-2370.

7. On August 14, 2012, Don Kraus, P.E., General Manager of CNPPID filed in the Department application A-18959 for a temporary permit to appropriate water for the purpose of groundwater recharge via the Phelps Canal.

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

CONCLUSIONS:

1. Construction of the Tri-County and Phelps Canals has been completed.

2. Applicant has demonstrated there may be unappropriated water in the Platte River during the non-irrigation season.

3. The temporary diversion project proposed by application A-18959 is supported by PRRIP and the U.S. Fish and Wildlife Service.

4. Diversions would occur under the proposed project during the non-irrigation season; therefore, no adverse impacts to existing water users are expected.

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 such, this project does not constitute a new depletion that requires an offset.

ORDER

IT IS HEREBY ORDERED that application A-18959 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 groundwater recharge via the existing Phelps Canal.

3. The priority date is August 14, 2012.

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-18959 may be diverted after the end of the 2012 irrigation season, prior to the beginning of the 2013 irrigation season, and after the 2013 irrigation season if applicable, 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 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 Platte River or if the appropriation is out of priority.

7. In addition to regular water administration, 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 prior to diversion of water under this appropriation.

8. The Department reserves the right to make adjustments to the amounts listed on Attachment A.

9. The water diverted under appropriation A-18959 through the Tri-County Canal will flow through the canal system and will be used for groundwater recharge via CNPPID's Phelps Canal during the non-irrigation season.

10. The water diverted under A-18959 through the Tri-County Canal and Phelps Canal system may not be used for direct irrigation by CNPPID's customers. The water diverted under A-18959 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.

11. If a relinquishment is not submitted first, then appropriation A-18959 will EXPIRE one year from the date of this Order, and appropriation A-18959 will be CANCELLED without further action by the Department as of that date.

12. Within six months after the final date of diversion under this temporary permit, the appropriator shall file a map that depicts where the water was routed, will provide in-depth quantitative analysis to the Department of the recharge achieved by utilizing the Phelps Canal, including all data provided to the Program pursuant to the "Water Service Agreement-Recharge from Excess Flows Between The Central Nebraska Public Power and Irrigation District and Platte River Implementation Program", and detailed drawings of diversion works that are exclusively used for the purpose of this application.

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

November 29, 2012

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 Approval 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 November 29, 2012, to the following:

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

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

Measured at the Grand Island Stream Gage Relevant to Appropriation A-18959

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-18959