STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18987

WATER DIVISION 1-A

BACKGROUND

1. 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.

2. 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.

3. 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."

4. On August 27, 2012, the Central Nebraska Public Power and Irrigation District (Petitioner), filed petition VAR-2397 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area or Stay Area. The petition requests leave to file an application for a temporary permit to appropriate storage water for the purpose of groundwater recharge via the Phelps Canal.

5. On November 13, 2012, the Department granted CNPPID leave to file an application for a permit to appropriate water within a moratorium area by petition VAR-2397.

6. On November 19, 2012, Don Kraus, P.E., General Manager of CNPPID filed in the Department application A-18987 for a temporary permit to appropriate water from storage for the purpose of groundwater recharge via the Phelps Canal.

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

CONCLUSIONS:

1. Construction of Kingsley Reservoir, the Tri-County Diversion Dam and Canal, and the Phelps Canal has been completed.

2. Applicant intends to release water stored under appropriation A-2374 and divert the same into existing facilities during the non-irrigation season.

3. The temporary diversion project proposed by application A-18987 is supported by PRRIP and the U.S. Fish and Wildlife Service.

ORDER

IT IS HEREBY ORDERED that application A-18987 is APPROVED subject to the following limitations and conditions:

1. The source of water is Kingsley Reservoir, storage appropriation A-2374.

2. The water shall be used for the purpose groundwater recharge via the existing Phelps Canal in support of PRRIP goals.

3. The priority date is November 19, 2012.

4. A maximum volume of 6,000 acre-feet of water may be released from Kingsley Reservoir (storage appropriation A-2374) pursuant to this appropriation, the same amount less transit losses 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. Water available under storage use appropriation A-18987 is accrued from the Environmental Account of storage appropriation A-2374. The amount of water available is governed by the accounting procedures referenced in appropriation files for A-17695.

6. The water diverted under appropriation A-18987 shall be used for groundwater recharge via CNPPID's Phelps Canal during the non-irrigation season.

7. The water under appropriation A-18987 may be diverted after the end of the 2012 irrigation season and prior to the beginning of the 2013 irrigation season, and after the end of the 2013 irrigation season

and up the date this permit expires, 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.

8. The water diverted under A-18987 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-18987 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. If at the time irrigation season commences water released under this appropriation has not yet recharged groundwater, and remains in the Phelps Canal, that volume of water shall be re-accounted as storage releases for irrigation and accredited back to the Environmental Account.

DEADLINES

1. If a relinquishment is not submitted first, then appropriation A-18987 will EXPIRE one year from the date of this Order, and appropriation A-18987 will be CANCELLED without further action by the Department as of that date.

2. Within six months after the final date of diversion under this temporary permit, the appropriator shall file in the Department a map that depicts where the water was routed, accompanied by a description of the specific amounts of water released under this appropriation, time of releases, amounts and locations of diversions, less losses in transit, for the purpose of recharge and distinguish it from diversions for power production and any other recharge appropriations, including all data provided to any other entities for this project.

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.*

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