

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER ADOPTING UPPER NIOBRARA-WHITE NATURAL RESOURCES DISTRICT
INTEGRATED MANAGEMENT PLAN AND ASSOCIATED SURFACE WATER
CONTROLS

Background

1. On November 3, 2004, the Department issued an order of final determination that the hydrologically connected groundwater and surface water within the following portions of the Upper Niobrara-White Natural Resources District (District) were fully appropriated: the Hat Creek Basin, White River Basin, Box Butte Creek Subbasin, Snake Creek Subbasin, and the portion of the Niobrara River Basin above the Mirage Flats Diversion Dam.
2. On January 25, 2008, the Department issued an order of final determination that the hydrologically connected groundwater and surface water within the Lower Niobrara River Basin below the Mirage Flats Diversion Dam was fully appropriated. This determination included lands within the District that had not previously been determined to be fully appropriated in 2004.
3. The Department and the District consulted and collaborated on the development of the integrated management plan (IMP), in accordance with *Neb. Rev. Stat.* § 46-715.
4. On May 14, 2009, the Department issued an Order adopting the jointly developed IMP.
5. The Department and District agreed to modify the IMP in 2011.
6. The Department and District reached agreement on May 4, 2011.
7. The Department and the District consulted and collaborated on the development of the IMP, in accordance with *Neb. Rev. Stat.* § 46-715.
8. On June 2, 2011, pursuant to notices duly published in accordance with *Neb. Rev. Stat.* § 46-743, the District and the Department jointly held a public hearing on potential modifications to the existing IMP.
9. On June 29, 2011, the Department issued a Revised Order that modified the region subject to integrated management planning within the Niobrara River Basin.
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 August 1, 2011, the Commission determined that the adoption of the proposed IMP would have no adverse effect on threatened and endangered species or their habitat.
11. After considering the comments made at the June 2, 2011, public hearing, the Department and District jointly determined to adopt and implement the proposed IMP,

surface water controls, groundwater controls, and incentive programs; with modifications to the area subject to the IMP, pursuant to the Revised Order issued June 29, 2011.

Controls Adopted

The following surface water controls included in the IMP are hereby adopted and shall be effective:

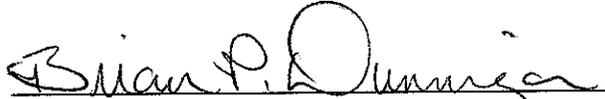
1. The Department will continue its moratoriums and stays on the issuance of new surface water permits for the Hat Creek Basin, White River Basin, Box Butte Subbasin, Snake Creek Subbasin, the portion of the Niobrara River above the Mirage Flats Diversion Dam, and the portion of the Platte River Basin in Sioux and Box Butte Counties. The Department may grant a variance following the Department's rules and procedures.
2. The Department has investigated the appropriations in the portion of the Niobrara River between the Cherry County/Sheridan County border and the Mirage Flats Irrigation District and in the White River Basin and the Hat Creek Basin to determine up-to-date records of the number and location of acres irrigated with surface water appropriations and to cancel appropriations that were not being used. The Department will use these updated records to monitor surface water use and to recognize when unauthorized use is occurring. The Department will also be proactive in initiating subsequent investigations whenever information available to the Department indicates that water rights are not being used and for which no known sufficient cause for such non-use exists.
3. All proposed transfers of surface water rights shall be subject to the criteria for such transfers found in *Neb. Rev. Stat.* §§ 46-290 to 46-294.04 and related Department rules or the criteria found in *Neb. Rev. Stat.* §§ 46-2,120 to 46-2,130 and related Department rules.
4. The Department will continue to administer surface water rights according to state law and monitor use of surface water to make sure that unauthorized use is not occurring.
5. At this time, the Department shall not require that surface water appropriators apply or utilize additional conservation measures or that they be subject to other new restrictions on surface water use. The Department reserves the right to request, in the future, that the IMP be modified to require any such additional measures. In the event that such a request is made, the Department shall "allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty (180) days, unless extended by the Department, to identify the conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions" [*Neb. Rev. Stat.* § 46-716(2)].
6. Transfers of individual surface water appropriations off of land that is also served by groundwater will not be permitted if such transfers will result in an increase in consumptive use and/or irrigated acres, unless the groundwater certified irrigated acres are decertified with the District, an offset is provided for the new acres to be irrigated, or the groundwater use is also transferred to the same land to which the surface water appropriation is being transferred.

Order

It is hereby ORDERED that the integrated management plan for the Upper Niobrara-White Natural Resources District and the surface water controls outlined in the IMP are hereby adopted by the Department and will become effective on September 9, 2011.

DEPARTMENT OF NATURAL RESOURCES

August 8, 2011


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 contested case 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 *Neb. Admin. Code* Chapter 007). The request must be received by the Department at its Lincoln Office (301 Centennial Mall South, 4th Floor, State Office Building, P.O. Box 94676, Lincoln, NE 68509-4676) within 15 days of the date of the Order and be accompanied by a filing fee of \$10.

On August 8, 2011, a copy of the Order was posted on the Department's website and mailed to the Department's field offices and to Lyndon Vogt, General Manager, Upper Niobrara-White Natural Resources District, 430 East 2nd St, Chadron, NE 69337.