

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER ADOPTING THE UPPER REPUBLICAN NATURAL RESOURCES DISTRICT
INTEGRATED MANAGEMENT PLAN AND ASSOCIATED SURFACE WATER
CONTROLS

BACKGROUND

1. The Department of Natural Resources (Department) and the Upper Republican Natural Resources District (URNRD) jointly adopted an integrated management plan (IMP) in 2005, in accordance with the Ground Water Management and Protection Act, particularly *Neb. Rev. Stat.* §§ 46-715, 46-717, 46-718, and 46-720.
2. In 2008, the Department and the URNRD jointly revised and subsequently adopted the first revision to the IMP.
3. In 2010, the Department and the URNRD reached agreement on a second set of revisions, and jointly adopted the IMP to be effective on November 1, 2010.
4. In the fall of 2015, the Department and the URNRD reached agreement to modify the IMP for a third time. The proposed modifications allow for full implementation of the United States Supreme Court ruling that modified the procedures used to account for water under the Republican River Compact (Compact) as well as implementation of various elements contained within recent agreements reached with the states of Kansas and Colorado through the Republican River Compact Administration.
5. On October 5, 2015, the Department and the URNRD held a stakeholder meeting to receive comments on the proposed modifications to the IMP.
6. The comments received at the stakeholder meetings focused on the following three core concepts: 1) baseline pumping standards should not be modified; 2) augmentation deliveries for Compact compliance are negatively impacting surface water supplies; and 3) agreements amongst upstream and downstream natural resources districts need to be analyzed and necessary mitigation should be provided. A workplan outlining a process to further evaluate key technical and policy issues contained within the IMPs was provided to those stakeholders in opposition to the IMP modifications, establishing a commitment by the Department to engage with those stakeholder in further work on evaluating these and other management activities in the basin.
7. After considering stakeholder input, making modifications to the IMP, and reaching agreement on the modified IMP, the Department and the URNRD published a joint notice of hearing pursuant to *Neb. Rev. Stat.* § 46-743.
8. On November 17, 2015, a public hearing was held on the proposed revisions to the IMP.

9. After considering the comments made at the public hearing and written comments received, the Department and the URNRD jointly agreed to implement the IMP. This includes joint agreement on the goals and objectives of the IMP, the geographic area subject to the controls, the surface water controls adopted and implemented by the Department, the groundwater controls adopted and implemented by the District through the District's Ground Water Management Area Rules and Regulations, and incentive programs.
10. On December 1, 2015, the URNRD adopted the proposed IMP and affirmed continued use of the groundwater controls necessary for meeting the compliance standards identified in the IMP.
11. On December 11, 2015, the Department sent the URNRD a letter agreeing to adopt the proposed IMP and surface water controls.
12. 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 December 9, 2015, the Commission determined that the adoption of the proposed IMP would have no adverse effect on threatened or endangered species or their habitat.

SURFACE WATER CONTROLS ADOPTED

- A. The following surface water controls will **remain effective** within the URNRD Integrated Management Plan:
 1. To provide for regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam, Nebraska will recognize a priority date of February 26, 1948, for Kansas Bostwick Irrigation District, the same priority date as the priority date held by the Nebraska Bostwick Irrigation District's Courtland Canal water right.
 2. When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre-feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in Harlan County Lake Operation Consensus Plan attached as Appendix K to the Settlement Agreement, Nebraska will close junior, and require compliance with senior, natural flow diversions of surface water between Harlan County Lake and Guide Rock.
 3. Nebraska will protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
 4. Nebraska, in concert with Kansas and in collaboration with the United States, and in the manner described in Appendix L to the Settlement Agreement, will take actions to minimize the bypass flows at Superior-Courtland Diversion Dam.
- B. Metering of all surface water diversions at the point of diversion from the stream will continue to be required. For surface water canals that are not part of a Bureau of Reclamation

project, farm turnouts are required to install and maintain a DNR approved measuring device by the start of the 2005, irrigation season. All measuring devices shall meet the DNR standards for installation, accuracy and maintenance. All appropriators will be monitored to ensure that neither the rate of diversion nor the annual amount diverted exceeds that allowed by the applicable permit or by statute.

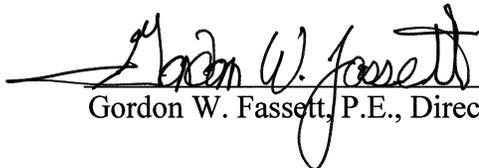
- C. The DNR's moratorium on the issuance of new surface water permits was made formal by Order of the Director dated July 14, 2004. Exceptions may be granted by the DNR to the extent permitted by *Neb. Rev. Stat. § 46-714(3)* (Reissue 2004) or to allow issuance of permits for existing reservoirs that currently do not now have such permits. Such reservoirs are limited to those identified through the Settlement Agreement required inventory of reservoirs with over 15 acre-feet capacity.
- D. All proposed transfers of surface water rights shall be subject to the criteria for such transfers as found in *Neb. Rev. Stat. §§ 46-290 to 46-294.04* (Reissue 2004) and related DNR rules or the criteria found in *Neb. Rev. Stat. §§ 46-2,120 to 46-2,130* (Reissue 2004) and related DNR rules.
- E. The following surface water controls were **modified** within the IMP:
1. Utilize DNR records to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The DNR will also be proactive in initiating subsequent adjudications whenever information available to the DNR indicates the need for adjudication as outlined by state statutes.
 2. During Compact Call Years, as determined from the procedures and analysis set forth in Section VIII below, DNR may regulate and administer surface water in the basin as necessary to ensure Compact compliance. During Compact Call Years, DNR will issue a "Compact Call" on the Republican River at Hardy or Guide Rock to carry out necessary administration for the Compact in a manner consistent with the doctrine of prior appropriation. A "Compact Call" may result in DNR issuing closing notices on natural flow and storage permits in the basin until such time as DNR, in consultation with the URNRD and other basin NRDs, determines that yearly administration is no longer needed to ensure Compact compliance, pursuant to Section VIII.
- F. Additionally, the **new** surface water control in the joint IMP is as follows:
1. During Compact Call Years, as determined from the procedures and analysis set forth in Section VIII below, DNR will regulate and administer surface water in the basin as necessary to ensure that augmentation deliveries for the purpose of Compact compliance are administered to the location of Compact compliance. DNR will issue closing notices on the necessary natural flow and storage permits in the basin until such time as DNR, in consultation with the URNRD and other basin NRDs, determines that administration is no longer needed to ensure augmentation deliveries have been completed.

ORDER

It is therefore ORDERED the Integrated Management Plan Jointly Developed by the Department of Natural Resources and the Upper Republican Natural Resources District, and the surface water controls included in the plan are hereby ADOPTED and will become effective on **January 15, 2016**; thus superseding the November 1, 2010, Upper Republican Natural Resources District Integrated Management Plan.

DEPARTMENT OF NATURAL RESOURCES

December 11, 2015


Gordon W. Fassett, 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 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 order and be accompanied by a filing fee of \$10.

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Cambridge, Nebraska. A copy of this Order was mailed on December 11, 2015, to the following:

Jasper Fanning, Manager
Upper Republican Natural Resources District
P.O. Box 1140
Imperial, Nebraska 69033-1140