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INTEGRATED MANAGEMENT PLAN
Jointly Developed by the
DEPARTMENT OF NATURAL RESOURCES
and the
UPPER REPUBLICAN NATURAL RESOURCES DISTRICT

AUTHORITY

This integrated management plan was prepared by the Board of Directors of the Upper Republican Natural Resources District (URNRD) and the Nebraska Department of Natural Resources (NDNR) in accordance with Sections 46-715, 46-716, 46-717, and 46-720 R.S. Supp., 2004.

BACKGROUND

On April 11, 2003, effective May 8, 2003, URNRD, pursuant to applicable statutory rulemaking procedures and Section 46-656.25, R.R.S. 1998, adopted the *State of Nebraska Upper Republican Natural Resources District Amendments to Rules and Regulations for Ground Water Control – Order No. 26* and the *Upper Republican Natural Resources District Technical Manual of Policies and Procedures TM-26* (the “URNRD Rules” or “the Rules”). In the regular meeting, on July 6, 2004, URNRD voted to extend Order #26 until September 1, 2005. Rule 9A of the Rules provides for a basic allocation of groundwater to certified irrigated acres within the District of 72.5 acre inches for the 5 year period between January 1, 2003 and December 31, 2007, an annualized allocation of 14.5 acre inches. Since their adoption, the Rules have prohibited additional allocations for groundwater use and additional well permits, except under limited circumstances. Rule 14, Order No. 26. In addition, among other things, the Rules continued and recodified the District’s practice of allowing groundwater users to carry forward the unused portion of their allocation, together with any remaining unused portions of allocations from previous years, into succeeding allocation periods and permitted the District to approve pooling contracts, both in accordance with the URNRD Rules.

In 1943 the States of Colorado, Kansas and Nebraska entered into the Republican River Compact (the “Compact”) with the approval of Congress. The Compact provides for the equitable apportionment of the “virgin water supply” of the Republican River Basin. Kansas filed an original action in the United States Supreme Court against the states of Nebraska and Colorado in 1998 seeking, among other things, to include hydrologically connected groundwater in the calculation of Nebraska’s entitlement to the virgin water supply. On January 28, 2000, Special Master McKusick issued his First Report recommending to the United States Supreme Court that hydrologically connected ground water be

included with surface water in the Compact administration for the Republican River Basin. Ultimately, the three states entered into a comprehensive Settlement Agreement ("Settlement Agreement"), approved by the Court on May 19, 2003, providing for the inclusion of groundwater in the calculations of each state's entitlement and the reporting of such usage on the basis of a five year rolling average, unless shortened to two or three years due to hydrologic conditions, as specified in the Settlement Agreement..

Both prior and subsequent to the approval of the Settlement Agreement, NDNR conducted and participated in several meetings with URNRD, many of them public meetings. During the course of those meetings NDNR explained that, in order for the State of Nebraska to achieve and maintain compliance with the terms of the Settlement Agreement, it would be necessary to immediately curtail any expansion of surface waters and to reduce all groundwater pumpage by five percent (5%) across the entire Republican River basin. Groundwater within the Republican River basin is regulated by four Natural Resource Districts: URNRD, the Middle Republican Natural Resources District (the "Middle"), the Lower Republican Natural Resources District (the "Lower") and the Tri-Basin Natural Resources District ("Tri-Basin") (collectively hereinafter the "Districts"). Similar discussions were held between NDNR and each of the Districts regarding the need to accurately measure actual groundwater and surface water usage throughout the basin, for Tri-Basin to continue a positive inflow to the Republican River basin from the North Platte groundwater mound and for each of the Districts, other than Tri-Basin, to reduce its groundwater use by 5%.

From the time it became apparent that the Settlement Agreement would require the inclusion of hydrologically connected groundwater in the allocation of virgin flows of the Republican River, the State of Nebraska attempted to calculate the actual groundwater usage within the basin. While the URNRD's groundwater use had been established through the metering and reporting requirements it had in place for years prior to the Settlement Agreement, the groundwater usage in the other Districts had not been metered or reported. Consequently, accurate records of their groundwater usage were not readily available. During the course of the litigation, Nebraska had developed, calculations of the groundwater usage for each of the Districts. Based upon its calculations, NDNR represented that, while the URNRD has historically used approximately 43 % of the total Nebraska Republican River Basin groundwater use, the District had only been responsible for 32% of the historic depletions to the Nebraska Republican River Basin virgin flow. NDNR further represented that according to its calculations, the Districts' groundwater usage had been 531,763 acre-feet in the Upper, 309,479 acre-feet in the Middle, 242,289 acre-feet in the Lower, and 424,247 acre-feet in Tri-Basin for the 1998 through 2002 irrigation seasons (the "1998-2002 period"). In discussions with the Districts, NDNR represented [1] that a 5% reduction in groundwater usage from those numbers by the Upper, Middle and Lower Districts, combined with the continuation of the positive mound credit by Tri-Basin

would be necessary for Nebraska to achieve and maintain compliance with the Settlement Agreement, [2] that any reductions sought by NDNR would be based upon those baseline figures, and [3] that, with commitments by the Districts to those measures, Nebraska would be able "to maintain most, if not all, of its existing uses in normal years."

As early as 1978, with Order #1, URNRD has required the metering, data collection and reporting of groundwater use and has imposed allocations groundwater users within the District. Even prior to the discussions between URNRD and NDNR regarding the proposed Settlement Agreement, NDNR had recommended that the parties should enter into a joint management plan pursuant to then section 46-656.28 of the Nebraska statutes. URNRD undertook to do so, with the understanding that the other Districts would act similarly. On September 2, 2003, URNRD adopted Order No. 27, entitled *Decision to Proceed with Development of Joint Action Plan Pursuant to Section 46-656.28*, after notice and public hearing under Nebraska law. Subsequently, the United States Supreme Court entered an order approving the Settlement Agreement and the Nebraska legislature enacted LB 962, repealing and replacing R.R.S. section 46-656.28. As a result, URNRD's draft joint management plan must be replaced with a revised Integrated Management Plan ("IMP") under the newly enacted process codified now as sections 46-713 to 46-719, R.S.Supp., 2004. NDNR has indicated that meters and recording will be required for all Districts and the compliance with the targeted 5% reduction will be based upon the actual recorded metered usage. However, in development of the IMP's, NDNR will permit each District to develop its own means to accomplish that reduction, so long as it appears to NDNR that the plan would likely be effective. The purpose of such deference is to enable the Districts to maintain local control over groundwater management within their districts, while providing assurances to NDNR that each District's 5% reduction in groundwater usage will be achieved. The purpose in requiring actual measurements is to enable NDNR and the Districts to measure whether each of the District's plans have been effective in achieving the targeted reduction in usage.

URNRD and NDNR wish to adopt and implement an IMP for the District. NDNR has recommended that the IMP for the District require a reduction from the current 14.5 acre inch allocation described above to a 13.5 acre inch allocation. Based upon its calculations, NDNR has represented that such a reduction will likely achieve the estimated 5% reduction in actual groundwater usage. URNRD desires to assist Nebraska in meeting its obligations under the Settlement Agreement by adopting revised rules to implement DNRD's suggested reductions ("URNRD Revised Rules"), so long as each of the Districts are treated equivalently and the reductions actually achieved by each District are proportional to the 1998-2002 historic groundwater usage figures described above. A copy of the current draft of the URNRD Revised Rules, to be

considered for adoption concurrently with this IMP by URNRD, is attached and its provisions incorporated in this IMP.

GOALS AND OBJECTIVES

Pursuant to Section 46-715, R.S. Supp., 2004, the goals and objectives of an integrated management plan must have as a purpose "sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin ... can be achieved and maintained for both the near term and the long term". The following goals and objectives are adopted by the URNRD and the NDNR to achieve that purpose:

Goals:

1. To assist the State of Nebraska, in cooperation with the other basin NRDs, in maintaining compliance with the Republican River Compact as adopted in 1948 and as implemented in accordance with the Settlement Agreement approved by the United States Supreme Court on May 19, 2003; and
2. To ensure that ground water and surface water users within the URNRD assume their share, but only their share of the responsibility to keep Nebraska in compliance with the Republican River Compact. Neither the URNRD nor DNR will require the IMP to be amended for the purpose of changing the responsibility of water users within the URNRD based on the failure of other basin NRDs to adopt, implement or enforce IMPs adequate to meet their proportionate share of the responsibility to keep Nebraska in compliance with the Republican River Compact.
3. To provide that URNRD's share of that responsibility be distributed in an equitable manner and to minimize, to the extent possible, adverse economic, social and environmental consequences of the assumption of such responsibility.

Objectives:

1. With limited exceptions, prevent the initiation of new or expanded uses of water that increase Nebraska's computed beneficial consumptive use of water within the URNRD;
2. Ensure that administration of surface water appropriations in the Basin is in accordance with the Compact and in full compliance with Nebraska law.

3. Reduce existing groundwater use within the URNRD by five (5) percent from the baseline of use that was established by utilizing 1998 to 2002 groundwater pumping estimates and the associated streamflow depletions as computed through use of the RRCA Ground Water Model.
4. After taking into account any reduction in consumptive use achieved through basinwide incentive programs, make such additional reductions in ground water use in water short years as are necessary to achieve a reduction in beneficial consumptive use in the URNRD in an amount proportionate to the total reduction in consumptive use required by the Settlement Agreement in Nebraska above Guide Rock in such years;
5. Cause the required reductions in water use to be achieved through a combination of regulatory and incentive programs designed to reduce consumptive use, relying on incentive programs available to as many URNRD water users as possible; and
6. For the URNRD and NDNR to investigate and explore methods to manage the impact of vegetative growth on streamflow.

MAP - see map 1.

The area subject to this integrated management plan is the geographic area within the boundaries of the Upper Republican Natural Resources District.

GROUND WATER REGULATION

The authority for the ground water component of this integrated management plan is Section 46-715 and Section 46-739, R.S.Supp., 2004. The ground water controls to be adopted and implemented by URNRD are those found in the URNRD Revised Rules. URNRD will adopt and NDNR will approve the ground water control measures contained in the URNRD Revised Rules on the basis of the following understandings and agreement between URNRD and NDNR:

1. The reductions provided in the URNRD Revised Rules for groundwater pumping from the current annualized 14.5 acre-inches to 13.5 acre-inches are based upon NDNR's calculation that such reductions will provide the overall 5% reduction in groundwater usage in the URNRD from the 1998-2002 pumpage numbers. NDNR has made similar calculations to predict that the IMPs adopted by the other Republican River NRDs and approved by NDNR will also achieve 5% reductions in groundwater usage within those districts.

2. The determination of compliance with the requested positive mound credit for Tri-Basin and the current 5% requested reduction or any other requested

reduction in groundwater usage for each of the other Districts will be calculated based upon the proportion of the Districts' usage to the 1998-2002 figures referenced above; i.e., 531,763 acre-feet in the Upper, 309,479 acre-feet in the Middle, 242,289 acre-feet in the Lower, and 424,247 acre-feet in Tri-Basin, for the period of compliance measurement.

3. Nebraska will not request or demand that URNRD further reduce its usage unless and until it is demonstrated, based upon actual metered usage data, that all Districts have met the NDNR's requested 5% reductions in groundwater usage in amounts proportionate to the 1998-2002 figures described in paragraph 2, above, and that, even with such reductions, Nebraska's compliance with the Settlement Agreement has not been achieved. Any additional reductions will be required for all Districts in proportion to the 1998-2002 figures described in paragraph 2.

4. The District may accomplish the requested 5% reduction by any legal means available to it. Thus, if the District can demonstrate that its 5% reduction will be accomplished by means other than the reduction in the annualized pumpage allocation or by a lesser pumpage reduction coupled with other means, a revised IMP implementing those adjustments may be adopted.

5. With the benefit of experience, it may be determined that either less or more than the 5% reduction in groundwater usage is required for Nebraska to meet its obligations under the Settlement Agreement. In the event it is determined that the 5% reduction must increase to achieve Nebraska's compliance, URNRD will propose amendments to the IMP and the URNRD Rules to adjust its proportionate share of Nebraska's increased obligation. In the event it is determined that a lesser reduction is required, NDNR will consent to a URNRD proposal to amend the IMP and its Rules accordingly.

6. **PLACEHOLDER - Under Nebraska law, URNRD is charged with the authority and responsibility to regulate and manage the groundwater resources within the District. Sections 2-3201, et seq., 46-701, et seq. R.S. Supp. 2004. In the event of a Water-Short Year Administration, as described in the Settlement Agreement....**

7. **PLACEHOLDER - Accounting of credits for retired acres.**

8. URNRD and NDNR will make all documents, reports, records, computer runs or other calculations or material necessary to determine compliance with this Agreement available to each other, unless such materials are rendered confidential by Nebraska Statutes or Court Rules, regardless of whether such documents are available under the Nebraska public records act or otherwise. Specifically, and without limitation, URNRD agrees to continue to meter, record and provide to NDNR its groundwater usage records; NDNR agrees to provide

URNRD all reports and records of the other Districts necessary to determine their compliance with reductions in accordance with the formula described above, as well as all documentation and reports utilized by NDNR to determine Republican River Basin's virgin water supplies and Nebraska's compliance with the Settlement Agreement.

SURFACE WATER CONTROLS - Department of Natural Resources

The authority for the surface water component of this integrated management plan is Section 46-715 and Section 46-716 R.S. Supp., 2004. The surface water controls that will be continued and/or begun by the NDNR are as follows:

1. NDNR will do the following additional surface water administration as required by the Settlement Agreement:
 - 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.
 - 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.
 - Nebraska will protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
 - 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 Diversions Dam.
2. 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 also will be required to be metered by the start of the 2005 irrigation season. All meters shall have a totalizer and shall meet Department standards for installation, accuracy and maintenance. All appropriators will be monitored closely to ensure that neither the rate of diversion nor the annual amount diverted exceeds that allowed by the applicable permit or by statute.

3. The Department's moratorium on the issuance of new surface water permits was made formal by order of the Director dated July 15, 2004 and will be continued. Exceptions may be granted to the extent permitted by Section 46-714(3) or to allow issuance of permits for existing reservoirs that currently do not now have such permits. Such reservoirs may be identified through the Settlement required inventory of over 15 acre-feet reservoirs or otherwise.
4. All proposed transfers of surface water rights shall be subject to the revised criteria for such transfers as found in Sections 46-290 to 46-294.04 or the criteria found in Sections 46-2,120 to 46-2,130.
5. The Department completed the adjudication process for the individual appropriators in the Republican River Basin in 2004. The results of that adjudication provide up-to-date records of the number and location of acres irrigated with surface water by such appropriators. Those records will be used by the Department to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The Department also will be proactive in initiating subsequent adjudications whenever information available to the Department indicates that there are water rights that are not being used and for which no known sufficient cause for such non-use exists.
6. At this time, due to the already limited availability of surface water supplies, the Department will 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. However, the Department reserves the right to request, in the future, that this integrated management plan be modified to require any such additional measures. In the event such a request is made, the Department will "allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty 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." (46-716(2))

INCENTIVE PROGRAMS

The URNRD and NDNR intend to establish and implement financial or other incentive programs to reduce consumptive use of water within the URNRD. As a condition for participation in an incentive program, water users or landowners may be required to enter into and perform such agreements or covenants

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concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established.

Such incentive programs may include any program authorized by state law and/or Federal programs such as the Conservation Reserve Enhancement Program (CREP) and Environmental Quality Incentives Program (EQIP) operated by the U.S. Department of Agriculture.

INFORMATION CONSIDERED

Information used in the preparation and to be used in the implementation of this integrated management plan can be found in the simulation runs of the Republican River Compact Administration Ground Water Model, the data tables of the Final Settlement Stipulation for the Republican River Compact, URNRD's Rules and additional data on file with the District or NDNR.

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