

Twin Platte Natural Resources District

ORDER DESIGNATING INTEGRATED MANAGEMENT SUBAREA AND ADOPTION OF CONTROLS IN THE INTEGRATED MANAGEMENT PLAN

Adopted August 13, 2009
Effective September 15, 2009

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BY ORDER OF THE TWIN PLATTE NATURAL RESOURCES DISTRICT

DESIGNATION AN INTEGRATED MANAGEMENT SUBAREA AND ADOPTION OF CONTROLS IN THE INTEGRATED MANAGEMENT PLAN

In the matter designating an integrated management subarea and adoption of the controls identified in the Integrated Management Plan (IMP):

This matter came on for consideration by the Board of Directors of the Twin Platte Natural Resources District (“TPNRD” or “District”) in conjunction with a public hearing that was opened on July 2, 2009, at the Holiday Inn Express, 300 Holiday Frontage Road, North Platte, Nebraska, and which hearing was closed on that same day. All persons present were given an opportunity to testify. Persons wishing to provide written testimony were given until 5:00 p.m. on July 2, 2009 to do so.

Notices of the July 2, 2009 public hearing were published in a newspaper published or of general circulation in the affected area at least once each week for three (3) consecutive weeks, the last publication of which was not less than seven (7) days prior to the July 2, 2009 hearing. The newspapers in which the Notices appeared, and the publication schedule are as follows:

North Platte Telegraph
June 9, 2009
June 16, 2009
June 23, 2009

At the time that the foregoing Notices were published, copies of the proposed IMP and proposed controls were also made available from the TPNRD office in North Platte, Nebraska; from the Nebraska Department of Natural Resources (“NDNR” or “Department”) office in Lincoln, Nebraska; from the TPNRD’s website; and from the Department’s website.

BACKGROUND AND HISTORY

In December of 2003, the TPNRD requested the Department to conduct studies and to hold a hearing on the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water within the District. On February 12, 2004, the TPNRD adopted Rules and Regulations for the “Temporary Suspension of Drilling New Wells” within a specifically-defined portion of the District. That “Temporary Suspension,” which took effect on July 1, 2004, applied to those lands within the then-defined stream depletion factor line representing a cumulative depletion to stream baseflow of 28% of a hypothetical pumping volume in a 40-year period (the “28/40 area”).

On July 16, 2004, when the LB 962 amendments to the Nebraska Ground Water Management and Protection Act (the “Act”) took effect, and pursuant to Neb. Rev. Stat. § 46-720, the Department issued a notice of preliminary determination that the TPNRD was fully appropriated. That determination continued the stay on the drilling of new groundwater wells in that part of the TPNRD previously subject to the “Temporary Suspension,” and provided for an additional stay on new irrigated acres.

On September 15, 2004, the director of the Department designated the Platte River Basin above the Kearney Canal diversion as “overappropriated,” and identified the area in which the surface water and ground water are considered to be “hydrologically connected” for purposes of the overappropriated designation. That area coincided with the 28/40 area. As a result of that designation, additional land area within the TPNRD became subject to stays on new wells and stays on increases in irrigated acres.

On September 30, 2004, the director of the Department designated the entire TPNRD as “fully appropriated.” As required by Neb. Rev. Stat. § 46-720 (3) (b), stays on new wells and stays on increases in irrigated acres were limited to that area within the District that had been designated as overappropriated.

On March 29, 2005, the TPNRD formed the TPNRD Stakeholders Group to assist in developing an integrated management plan. The TPNRD, the Department and members of the Stakeholders Group thereafter proceeded to jointly develop the IMP and the proposed controls.

In January 2006, the Board of the TPNRD designated the entire District as a Ground Water Management Area, which designation became effective on February 24, 2006. Pursuant to that designation, a stay was imposed on the issuance of high capacity water well construction permits throughout the TPNRD. On May 17, 2007, the board of the TPNRD adopted a district-wide stay on the use of an existing water well to increase the number of acres historically irrigated, which stay became effective on June 18, 2007.

In 2009, the Department and the TPNRD (working with the Stakeholders Group) reached agreement regarding the following: (a) the proposed goals and objectives of the IMP; (b) the proposed geographic area to be subject to the controls; and (c) the surface water and ground water controls, as well as incentive programs, proposed for adoption and implementation. Pursuant to Neb.Rev.Stat. § 46-718, the TPNRD and the DNR scheduled and held a Public Hearing on July 2, 2009, the purpose of which was to take testimony on the proposed IMP and the proposed controls. Notice of such hearing was published as provided in Neb.Rev.Stat. § 46-743.

DESIGNATION OF INTEGRATED MANAGEMENT SUBAREA AND ADOPTION OF CONTROLS

Authority – The Board of the District considered all written and oral testimony submitted and, in open session at the July 9, 2009 Meeting, approved a motion signifying that it had reached agreement with the NDNR to implement the IMP proposed for the TPNRD without modifications, and to adopt and implement the surface water and ground water controls and incentive programs that are proposed in the IMP. The authority for the TPNRD’s actions is found in the Act, Neb.Rev.Stat. §§ 46-701 to 46-753 (Reissue 2004).

Purpose - The purpose of this Order is to designate an integrated management subarea for the TPNRD, to identify the geographic and stratigraphic boundaries of the integrated management subarea, and to adopt the controls identified in the IMP as authorized for adoption by the TPNRD pursuant to Neb.Rev.Stat. § 46-739.

Geographic and Stratigraphic Area Boundaries of the Integrated Management Subarea. The entire District is established as an integrated management subarea, and the entire geographic area of the TPNRD is subject to the IMP, including the area within the boundaries of the TPNRD determined to be fully appropriated and the area designated as overappropriated. The stratigraphic boundaries subject to the IMP include all sediments from ground level downward through all aquifer units.

General Description of Controls in the IMP

Controls for Fully Appropriated Portion of TPNRD

The proposed ground water controls for the fully appropriated portion of the TPNRD are set forth in Chapter 5 of the IMP and consist of the following:

1. a moratorium on the issuance of new water well construction permits, and on new or expanded ground water consumptive uses;
2. certification of irrigation uses;
3. provisions for ground water transfers;
4. municipal use, accounting and offsets (i.e., an accounting system to monitor and document required offsets due to municipal growth, and designation of responsibility (municipality or the TPNRD) for providing such offset); and
5. non-municipal industrial and commercial use, accounting and offsets (i.e., an accounting system to monitor and document required offsets due to non-municipal industrial or commercial growth, and designation of responsibility (commercial/industrial user or the TPNRD) for such offset).

The proposed surface water controls for the fully appropriated portion of the TPNRD are also set forth in Chapter 5 of the IMP and consist of the following:

1. continuing the moratorium on new surface water appropriations;
2. transfers of appropriations would be subject to statutory criteria and Department rules;
3. continuation of surface water administration and monitoring of use of surface water;
4. no additional requirements of surface water appropriators to use additional conservation measures; and
5. no other reasonable restrictions on surface water use.

Controls for Overappropriated Area of TPNRD

In order to determine whether ground water regulatory actions are needed in the overappropriated area, stream depletion amounts will be compared with stream accretions resulting from actions taken by the TPNRD. As long as the annual net sum of the accretions resulting from TPNRD's actions and the annual depletions referenced in Table 2 of the IMP are less than or equal to zero, regulatory actions will not be required. If regulatory actions are required, the ground water controls that may be implemented for the overappropriated portion of the TPNRD are set forth in Chapter 6 of the IMP, and would consist of limiting the amount of consumptive use on certified irrigated acres. The methods for implementing a limit on the amount of consumptive use include, but are not necessarily limited to, the following:

1. alternative crop mixes;
2. reduction of certified irrigated acres; and/or
3. allocations (i.e., a uniform allotment of the withdrawal of ground water to be applied to certified irrigated acres during a specified period of time).

The proposed surface water controls for the overappropriated area are the same as those described for the fully appropriated portion of the IMP.

DECISION, ACTION AND ORDER

BY VIRTUE OF THE AUTHORITY VESTED IN THE TWIN PLATTE NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS by the Nebraska Revised Statutes, Sections 46-701 to 46753, after considering the testimony received during the July 2, 2009 hearing, and being otherwise fully advised in the premises, the Board FINDS AND ORDERS as follows:

1. The Integrated Management Plan is hereby adopted and shall be implemented.
2. The entire District is established as an integrated management subarea, and the entire geographic area of the TPNRD is subject to the IMP, including the area within the boundaries of the TPNRD determined to be fully appropriated and the area designated as overappropriated. The stratigraphic boundaries subject to the IMP include all sediments from ground level downward through all aquifer units.
3. The controls set forth in the Integrated Management Plan are hereby adopted and shall be implemented in accordance with Neb.Rev.Stat. § 46-739 and applicable law.
4. The Integrated Management Plan is incorporated into this Order by reference as though fully set forth herein.
5. This Order and the IMP, including the ground water related controls contained therein, shall become effective on September 15, 2009.

Location Where a Copy of the Full Text of the Integrated Management Plan May be Obtained:

A copy of the IMP is available for inspection at the office of the TPNRD located at 111 South Dewey Street in North Platte, Nebraska (during normal weekday working hours). Such IMP is also available on the District Website at www.tpnrd.org.

This Order was adopted and issued on August 13, 2009.

The Effective date of the Order shall be September 15, 2009.

Jim Rubenthaler,
Chairperson, Twin Platte Natural Resources District