



Nebraska Resources

Newsletter

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Inside this Issue:

Issue 21 October 2006

- Requirements for Small Reservoir Storage/cover and page 2
- Governor signs Platte River Agreement/cover and page 5
- Lower Loup NRD requests Temporary Stay/page 3
- Interrelated Water Management Plan Program Fund/page 3
- Employee/Manager of the Year Awards/page 4

Agency Numbers to Remember

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Requirements for Small Storage Reservoirs

By Pam Andersen

More and more landowners are constructing small ponds and reservoirs on their property for uses such as providing a place for their children and grandchildren to fish or to increase the esthetic value of their property. Many of these ponds are illegal and could result in a landowner being fined or required to remove the dam and restore the land. Since every dam means that less water is available downstream, it is important to follow the law and think about the **total effect your pond has on the surrounding area.**

Under Nebraska law (Section 46-241 of the Nebraska statutes), creating a pond by constructing a dam on a stream channel, even when it is an intermittent stream, **requires a surface water appropriation permit to store water** from the Department of Natural Resources. There is an exception to the permit requirement if the **pond cannot hold more than fifteen acre-feet of water** (referred to as the impounding capacity) when measured below the crest of the lowest open outlet or overflow. However, even if the pond

One acre-foot of water = 325,829 gallons
15 acre-feet of water = 4,887,432 gallons

Continued on p.2

Governor Heineman Signs the Platte River Agreement

By Jim Cook

Governor Dave Heineman signed the **Platte River Recovery Implementation Program Agreement** on October 30, 2006, after announcing his decision to do so at a news conference on October 27. During that news conference, he gave the following reasons for his decision:

This program offers our state the greatest amount of certainty when it comes to protecting individual producers and entities from one-on-one negotiations with the U.S. Fish and Wildlife Service. It also ensures that agriculture will have a seat at the table in discussing the future of conservation efforts along the Platte River.

The Platte River Recovery Implementation Program (Program) is a basin wide effort that has **two primary purposes**. The **first** is to provide benefits to four species that are listed

Continued on p.5



Requirements for Small Storage Reservoirs Continued from p.1

has an impounding capacity of less than fifteen acre feet, if the landowner intends to release or withdraw water from the pond for any reason other than for watering range livestock an appropriation permit is required. Failure to get a storage permit is a class II criminal misdemeanor and a violation can result in fines of up to \$1000 per day, six months imprisonment or both. See Sections 46-255 and 28-106 of the Nebraska statutes.

Every person who owns a pond or storage reservoir, whether they have a storage permit or not, is required to pass through their dam a portion of the water flowing into the pond when needed downstream for furnishing water for livestock, for direct irrigation or for any reservoir having a senior right. If there is a water shortage, the Department will issue an order telling the landowner how much water to pass. The law requires all dams, no matter what size, to be constructed with an outlet to allow for the release of water when necessary. Dam owners may apply to the Department for a waiver from the outlet works requirement. A waiver will be issued only if the owner of the dam can demonstrate a good cause or reason why he or she cannot comply with the outlet requirement. In these cases, other means including pumps and/or siphons may be used so they have an alternate way to comply with orders to meet the release requirement. Recently, a county district court ruled that an upstream landowner had to install outlet works in his dam even though it had already been constructed because the downstream landowner needed water for his livestock watering pond. The case has been appealed to the Court of Appeals and should be decided within the next year.



If a landowner wants to use the water stored in his or her pond, regardless of the pond size, the landowner must first get a storage use permit from the Department. A storage use permit is not required if the water is used in the pond for things like raising fish or recreation. If the water is taken out of the pond for any reason except to water range livestock, a storage use permit is required by Section 46-242 of the Nebraska statutes.

If a landowner builds a pond away from the channel of a stream and the pond is filled by rain and/or surface water that doesn't flow in a channel, then a surface



water appropriation permit is not required. If the pond is filled with water pumped from a ground water well, a well permit from the local natural resources district may be required. If the pond is to be filled with water from a stream or channel, no matter how large the pond is, the landowner will need to get a surface water appropriation to divert the water from the stream in order to be in compliance with Sections 46-233 and 46-241 of the Nebraska statutes.

In certain situations, the owner of the dam will also need

Hazard Potential Classification of Dams

High hazard potential means a hazard potential classification such that failure or misoperation of the dam resulting in loss of human life is probable.

Significant hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.

Low hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life and in low economic loss.

Minimal hazard potential means a hazard potential classification such that failure or misoperation of the dam would likely result in no economic loss beyond the cost of the structure itself and losses principally limited to the owner's property.

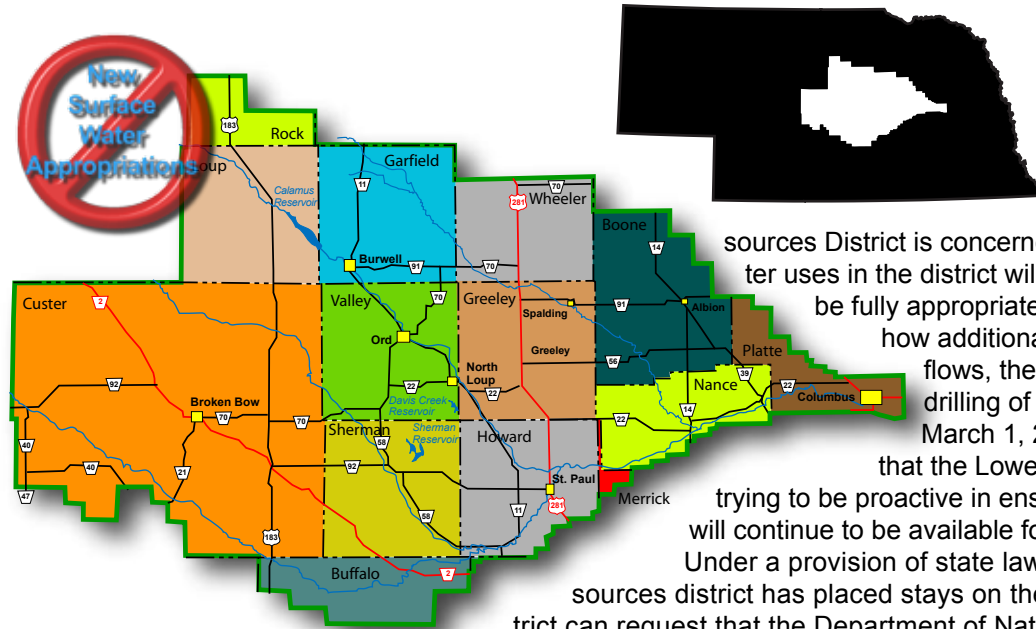
to get approval for the dam from the Department. The Safety of Dams and Reservoirs Act requires land owners to get the construction plans for certain dams approved prior to construction. The following dams require review and approval by the Department: any dam 25 feet or more in height, any dam with 50 acre-feet or more maximum storage capacity and any dam in a high hazard location

regardless of size. Dams that are less than six feet tall or that have less than fifteen acre-feet of storage capacity do not need approval. Canal control structures and highway and railroad embankments are exempt from the Act unless they are intended to be dams. Section 46-1740 of the Act provides a way for landowners to get approval after-the-fact for dams that were constructed before September 4, 2005. The landowner is required to submit certain information and a dam inspection may be necessary.

Violations of the Safety of Dams and Reservoirs Act are a class V misdemeanor. A conviction can result in a \$100 a day fine. Civil penalties of up to \$500 a day are also possible. See Sections 46-1666 and 46-1668 of the Nebraska statutes.

If you have questions contact the Department at 402-471-2363.

Lower Loup Natural Resources District Requests Temporary Stay

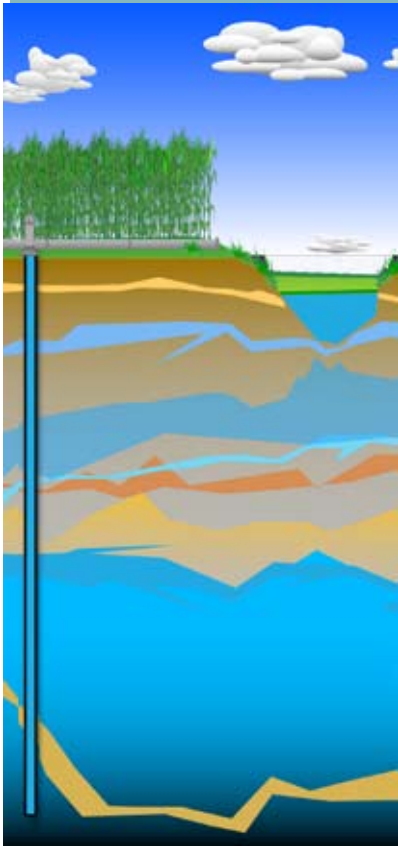


At the request of local officials, the Nebraska Department of Natural Resources **issued a temporary stay on the issuance of new surface water appropriations in the Lower Loup Natural Resources District.** The stay is effective from September 15, 2006, to January 1, 2008.

The Lower Loup Natural Resources District is concerned that additional development of water uses in the district will in the near future cause the district to be fully appropriated. To provide time for other studies on how additional uses in the district may affect stream flows, the district placed a temporary stay on the drilling of new wells throughout the district on March 1, 2006. This action clearly demonstrates that the Lower Loup Natural Resources District is trying to be proactive in ensuring that water supplies in the district will continue to be available for use by future generations.

Under a provision of state law passed last year, if a natural resources district has placed stays on the construction of new wells, the district can request that the Department of Natural Resources place a stay on the issuance of new surface water appropriations. The Department has agreed with the content of the request and determined that it was in the public interest to place stays on the issuance of new surface water permits.

Interrelated Water Management Plan Program Fund



The **Interrelated Water Management Plan Program Fund** was established in FY2007 with the passage of LB 1226. The purpose is to help fund the duties of Natural Resources Districts (NRDs) arising under the Nebraska Ground Water Management and Protection Act. The Fund is intended to help offset costs incurred by NRDs with a **required local revenue match of 20 percent of the total project costs.** The Fund functions as a grant program administered by the Natural Resources Commission and the Department of Natural Resources. The Commission was responsible for approving the guidelines for appropriate use of the funds, criteria used to evaluate applications, and the distribution of funds to successful applicants. The Department duties include administration of the Fund and evaluating and ranking requests submitted to the Commission based on their established guidelines. Some of the criteria used are evaluations based on priority of intended use, technical soundness of requests, number of cooperating enti-

ties, and the degree to which the NRDs are exercising their maximum levy authority. **The Legislature appropriated \$2.5 million to fund the program for FY2007 with an additional \$2.5 million for FY2008.**

The Commission adopted their guidelines for allocating the funds and evaluating incoming applicants in July. The requests for funding were due by August 28, 2006. The Department has developed a process and procedures for tracking committed funds and payments by projects and assuring the recipients' quarterly reporting requirements are met. Although the Commission has not set hard caps on the funds to be distributed for FY06-07, it will strive to distribute 60% of the funds to NRDs that have no areas designated as fully appropriated or overappropriated and that therefore cannot take advantage of the special 3-year levy authorized by the Legislature. **Total applications for the FY2007 funds numbered 14 with a total requested dollar amount of \$2,424,436.** Additional information on the fund and the final applications received this year can be found at:

http://www.dnr.ne.gov/rdfund/IMP_ProgramFunds.html



State of **Nebraska** Employee and Supervisor/Manager of the Year Awards

Since 1985, state government, on behalf of the Governor's Office, has sponsored a recognition program honoring both exceptional employees and career service employees. Governor Heineman proclaimed the month of October 2006, as State of Nebraska Employee Recognition Month and a ceremony honoring the Employees/Managers of the Year was held in the State Capital Rotunda on Monday, October 23, 2006. In addition to that ceremony several Length of Service ceremonies were also held across Nebraska during the month of October honoring employees for length of service to the State of Nebraska.

The **2006 Manager of the Year** for the Department of Natural Resources is **Jeff Shafer**, a skilled professional hydraulic engineer and experienced programmer within geographic information system environment who worked in the Planning and Assistance Division. Jeff started with the Department in 1999 after coming from the South Dakota Department of Environment and Natural Resources. Jeff spent much of his time the past year working on the Annual Evaluation of Availability of Hydrologically Connected Water Supplies Report. Other responsibilities included representing the Department on the Blue River and Republican River Compact Engineering Committees. Asked what he enjoys about his job, Jeff replied "I like working on water policy, making technical information understandable and hopefully making a difference."

Jeff and his wife Becky have three children, they enjoy camping, fishing and spending as much time together as possible. One of his favorite pastimes is spending time and playing with his children.

Jeff accepted a new job this fall with the Nebraska Public Power District in York.



The **2006 Employee of the Year** for the Department of Natural Resources is **Bill Jones** with Floodplain Management and Dam Safety Division. Bill has been an employee with the Department for 32 years working first

in photogrammetry mapping before joining the Floodplain Management staff. Much of Bill's time this past year was spent helping train local community floodplain management officials and administrators in the interpretation of floodplain ordinances and the National Floodplain Insurance Program (NFIP). In addition to daily telephone communications with the public to answer floodplain and NFIP questions, Bill has participated in over a dozen floodplain awareness training sessions and numerous one on one meetings with community officials.

Bill and his wife Ruth enjoy spending time with their two children and three grandchildren. Bill enjoys traveling around

Nebraska, meeting people and thinks that the Nebraska Sandhills are a very unique and wonderful place that should be appreciated.

The Department staff would like to congratulate and thank both Jeff and Bill on their recognition and outstanding service to Nebraska and its citizens.



Length of Service Awards

Rob Gower	10 years
Gayle Follmer	15 years
Josh Lear	15 years
Kevin Schwartman	15 years
Kent Zimmerman	15 years
Mary Lonowski	20 years
Jim Ostdiek	20 years
Kris Reed	20 years
Don Adelman	30 years
Steve Gaul	30 years
Steve Soberski	30 years
Tom Mitchell	35 years
Mike Donovan	40 years
Russ Rinne	40 years

Governor signs the Platte River Agreement Continued from p. 1

as either threatened or endangered under the federal Endangered Species Act (ESA). The **second** is to provide water users in the Platte River Basin upstream of Columbus with coverage under both Sections 7 and 9 of the ESA. In other words, to the extent that water use in the Platte Basin is deemed by the Fish and Wildlife Service to adversely affect habitat for those and other species, the Program, rather than existing water users, will be responsible for overcoming those adverse effects. The first 13 year increment of the Program is designed to accomplish that by improving river flows and land habitat in and along the river between Lexington and Chapman. Considerable resources will also be devoted to testing alternative theories about the importance of the Platte River to the target species.



As proposed, the first Program increment will be implemented using Federal funds (\$157M) and funds from Colorado (\$24M) and Wyoming (\$6M). Nebraska is not required to contribute cash to the Program; water and land contributed by the Central Nebraska Public Power and Irrigation District and the Nebraska Public Power District will make up Nebraska's share. In addition, each state must implement its own New Depletion Plan to overcome any adverse effects on river flows that are caused by new water uses begun since July 1, 1997. That presents a significant challenge for Nebraska because a lot of new ground water irrigation was developed after that date. How to best meet that challenge will be determined as the

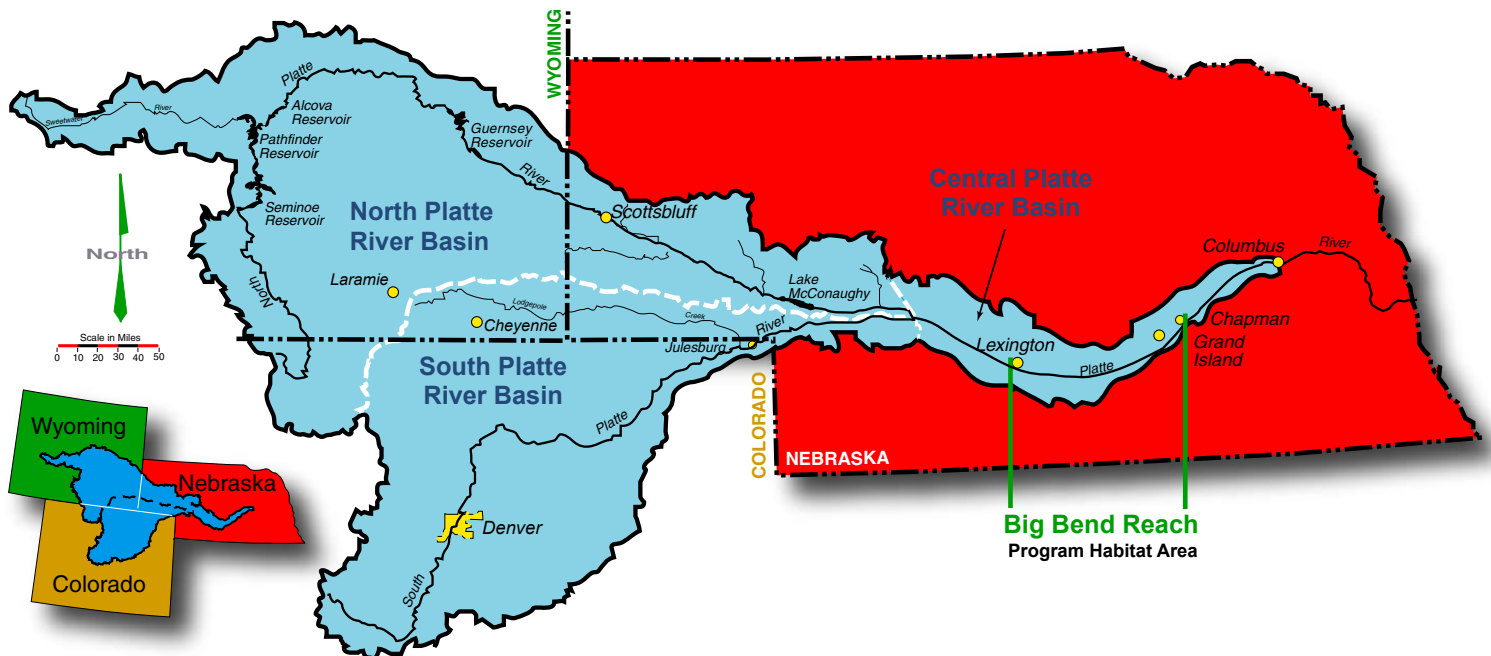
Department and at least five of the Natural Resources Districts in the basin develop and implement integrated management plans.

There are uncertainties and concerns associated with implementation of the Program. Governor Heineman described a number of those in a letter to the Governors of Colorado and Wyoming and the U.S. Secretary of Interior. As a result of those concerns, the Program agreement gives each of those governors and the Secretary the unilateral authority to terminate the Program at any time. Governor Heineman acknowledged that authority when he stated as follows:

We must do our best to demonstrate that we are committed to mutual respect and to succeeding in this endeavor. It is especially important that the U.S. Fish and Wildlife Service work in a collaborative way with water users and the state of Nebraska. As Governor, my first responsibility is to protect the best interests of Nebraskans, and I will not hesitate to act if the concerns I've expressed are not addressed.

The Program is scheduled to begin January 1, 2007. Before it can be fully implemented, Congress will need to authorize federal agency participation and will need to appropriate the federal share of the Program costs.

Future articles in this newsletter will provide more information. In the meantime, information can be obtained at www.platteriver.org or by calling the Department of Natural Resources at 402-471-2363.



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Department of Natural Resources

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The *Nebraska Resources* is a quarterly publication of the Nebraska Department of Natural Resources and is edited by Terry L. Cartwright, Public Information. Your comments and or suggestions are welcomed.

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Nebraska Department of Natural Resources....

....dedicated to the sustainable use and proper management of the State's natural resources.