Guidance Document

Opportunities for Participation in the Permitting Process

(Instructions for Responding to the Notice of Application)

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

The Department of Water, Energy, and Environment (Department) procedures provide that people may participate in contested cases regarding water right permit applications before the Department in one of two ways. In general, under **Option 1**, a person may submit a written comment supporting, opposing or in a neutral capacity regarding the application. Such timely comments will be a part of the permit application file and will be considered when a decision is made. Under **Option 2,** people may participate fully in the application process, although in doing so, the person will be required to pay a portion of the costs associated with any hearing. Thus typically contested permit applications are scheduled for hearing, which is open to the public to observe. **Option 1** people would not be allowed to ask questions or make comments during the hearing. Additionally, at a hearing, **Option 2** people, but not **Option 1** people, may offer evidence regarding the application including testimony from witnesses and submission of documentary evidence.

In summary, under **Option 1,** people may offer written comments during the time allowed for comments and may attend and observe hearings. Under **Option 2,** people may participate in the hearing, including offering evidence, asking questions and making arguments favoring or opposing the application.

Notice has been given by the Department of Water, Energy, and Environment that an application for a permit for a surface water right has been filed with the Department. As a result, the public has two options to respond to the notice of an application having been filed. A person may either submit a comment (Option 1) or if a person has a sufficient interest, a person may submit a formal objection and request a hearing (Option 2).

Option 1: Any person, without qualification, may provide the Department written comments on the application.

No fee is required, but your written comments must include:

1. The application number to which you are commenting on
2. An indication that your comment is offered under Option 1
3. Your name, address, and contact information
4. Your written comments, which may include facts and/or information showing whether the proposed appropriation would be detrimental to the public welfare and whether denial is demanded by the public interest (See *Neb. Rev. Stat.* §§ 46-234 and 46-235)

Option 2: Only a person with a legal right or interest that may be affected by granting the application should utilize

Option 2, which requires an objection and request for a hearing. Option 2 should not be used unless you intend to support your position at a formal hearing. Each person choosing Option 2 must submit their objection and hearing request in accordance to N.A.C. Title 454. No fee is required.
The following must be submitted for each objection:

1. The application number to which you are objecting
2. An indication that your objection is offered under Option 2
3. Your name, address, and contact information
4. A description of your legal right or interest that may be affected by granting the application
5. A written statement, including whatever facts you currently have, of how your legal right or interest may be affected by granting the application

Your complete response under Option 1 or Option 2 must be received by the date specified in the public notice at the following address:

Department of Water, Energy, and Environment
Surface Water Permitting
245 Fallbrook Blvd., Suite 100
Lincoln, Nebraska 68521-6729