

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING PERMIT TO TRANSFER GROUND WATER TO AN ADJOINING STATE AND TO
TRANSFER GROUND WATER FOR INDUSTRIAL USE

The Director of the Department of Natural Resources (Department) approves Application TA-52, submitted by Bruce Nienhueser (Applicant), for a permit to withdraw and transport ground water to Logan and Sedgwick Counties, Colorado, for construction of roads and wind turbines.

The Director approves Application I-23, submitted by Bruce Nienhueser jointly with Application TA-52, for a permit to withdraw and transport ground water for use in construction of roads and wind turbines in Logan and Sedgwick Counties, Colorado, and for exploratory drilling for oil and natural gas and road construction in Cheyenne and Deuel Counties, Nebraska. The considerations for approval described in *Neb. Rev. Stat.* §§ 46-683(1) are specifically met as follows:

1. No surface water users are located in the area of the proposed withdrawal of ground water. The nearest stream to the Applicant's well is an ephemeral stream, Cottonwood Creek. Thus, adverse effects on existing surface water users are unlikely to occur as a result of the proposed transfer. The nearest registered ground water well to the Applicant's well is an irrigation well located greater than one mile west of the Applicant's well and is outside the radius of influence of the Applicant's well. The aquifer in which the Applicant's well is screened is overlain by a clay layer that may partially isolate any shallower, unregistered domestic wells that may exist in the area from the effects of pumping the Applicant's well. The proposed industrial use will be balanced by a reduction in irrigation use, thus not increasing depletion of the local aquifer. Adverse effects on surrounding ground water users are, therefore, not expected.
2. The portion of the South Platte Natural Resources District (NRD) in which the Applicant's well is located was determined to be fully appropriated in 2004, but the South Platte NRD had a ground water management area in place before that determination. In accordance with South Platte NRD rules and transfer approval requirements, the South Platte NRD will deduct any amount of ground water transferred for industrial use from the Applicant's irrigation allocation. As part of this arrangement, the South Platte NRD will collect meter records from the well to monitor the amount of water transferred for industrial purposes and the amount of water used for irrigation.
3. No surface water resources with reliable supply are located in either the proposed withdrawal area or in the respective areas of use. The Applicant's well is the closest well to the construction sites in Colorado, but the contractors responsible for the construction of the wind farm have sought to buy water from local users on both sides of the state line. In areas where wells are available for such uses, drilling and construction contractors and local users intend to partner in order to provide water for these respective activities in both

states. Because the exploratory drilling projects, in particular, extend over multiple counties, no single water source or location will be used to supply the drilling. Obtaining water from multiple sources across the whole project area will ultimately have the advantage of spreading any impacts to local aquifers across a very wide area, rather than concentrating withdrawals in a single location.

4. The economic impact of the proposed use is anticipated to be approximately equivalent to use of the water for irrigation. Construction, drilling, and oil-exploration contractors working in the area will likely bring a certain amount of economic activity to local businesses in the areas of exploration and construction, in the form of fuel, food, and lodging expenditures, for example. Many of the construction workers from the wind farm project will lodge in Sidney, Nebraska, during the project because of the greater availability of hotel and rental space in Sidney. Thus, revenue to the Applicant's community can be expected from the project, in addition to the revenue generated in Colorado. Economic benefits arising from the further development of any oil and natural gas resources in the Panhandle region, however, will depend on the scope and longevity of development, as well as market factors. At this time, the Department has no information to project such development benefits.
5. Existing uses of ground water in the area of the Applicant's well are for domestic, livestock, and irrigation purposes. Increased demand for water for existing domestic uses is unlikely, because the rural domestic population of the state is declining both in general and in this specific area. Several factors limit increasing demand for irrigation, including South Platte NRD regulations. Although demand could increase in the future, any such increased demand would have to be balanced by the South Platte NRD so as not to result in increased impacts to water supplies, in accordance with the South Platte NRD's integrated management plan. Thus, any benefits accrued from existing water uses in the area should not be adversely affected by the proposed transfer.
6. No waivers of liability were received in the Department, and no objections were filed regarding the proposed transfer.
7. The Applicant's well is located to the west of the portion of the South Platte NRD covered by the Platte River Recovery Implementation Program. Consequently, Nebraska's compliance with any interstate agreements will not be affected by the proposed transfer.

The terms and conditions of permits TA-52 and I-23 are as follows:

1. Permits TA-52 and I-23 authorize the Applicant to withdraw and transfer ground water from one existing water well for industrial use. Withdrawal and transfer of ground water under permits TA-52 and I-23 shall not exceed 110 gallons per minute maximum.
2. The maximum daily withdrawal shall not exceed 158,400 gallons.
3. The total amount of ground water that may be transferred in a one-year period to all combined points of use in Nebraska and Colorado shall not exceed 65 acre-feet (approximately 21,180,315 gallons).

4. Ground water may be withdrawn and transferred from one existing water well identified as G-094357B, located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, Township 12 North, Range 49 West of the 6th P.M. in Cheyenne County, Nebraska.
5. The water shall be used for exploratory drilling for oil and natural gas and road construction in Cheyenne and Deuel Counties, Nebraska, and for construction of roads and wind turbines in Logan and Sedgwick Counties, Colorado, as described in Applications TA-52 and I-23.
6. In order to mitigate new depletions that may occur as a result of transferring ground water for industrial uses from well G-094357B, the Applicant shall deduct the amount of ground water transferred for industrial purposes from the irrigation allocation assigned to well G-094357B by the South Platte NRD.
7. Approval of this permit is based on the information included and representation made in Applications TA-52 and I-23 by Bruce Nienhueser. That information and those representations are considered terms of this approval, to which the Applicant must adhere.
8. The Applicant shall maintain the existing flow meters on the well, such that all ground water withdrawn from the well and transferred to Colorado and to in-state points of use by any means will be measured. By January 31 of each year, the Applicant shall file a completed "Industrial Ground Water Transfer Report" and a "Ground Water Transfer to Adjoining State Report" in the office of the Department, on forms provided by the Department. The Applicant shall report separately the quantities of ground water transferred to Colorado and the quantities transferred for in-state industrial use, respectively.
9. Bruce Nienhueser must comply with all state and federal laws and the regulations of the Department and the South Platte NRD, including, but not limited to, the following:
 - A. Any replacement water well must be registered as required by *Neb. Rev. Stat.* § 46-602(1).
 - B. Bruce Nienhueser shall notify the Department of the need for any abandonment or replacement of the permitted well and any changes in the place of use or nature of use, as provided in *Neb. Rev. Stat.* § 46-683.01.
10. Bruce Nienhueser shall provide access to the property described herein at reasonable times for purposes of inspection by officials of the South Platte NRD or of the Department.
11. When deemed necessary, and in accordance with *Neb. Rev. Stat.* §§ 46-683(1) and 46-715, the Department and the South Platte NRD may review these permits in conjunction with the management activities in the joint Department/South Platte NRD integrated management plan to ensure that surface water and ground water users have not been negatively impacted and to ensure compliance with the overappropriated Basin-Wide Integrated Management Plan.

12. These permits shall be valid for three years after the Order date and as long thereafter as the water for which the permits are granted is placed to beneficial use. If Bruce Nienhueser has not used water for beneficial purposes and in accordance with the terms of these permits for more than three years, the permits may be revoked or modified by the Director pursuant to *Neb. Rev. Stat. § 46-684(1)*.

THIS PERMIT MAY BE REVOKED OR MODIFIED BY THE DEPARTMENT FOR FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT.

DEPARTMENT OF NATURAL RESOURCES

May 28, 2014


Brian P. Dunnigan, 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 Neb. 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 Approval and be accompanied by a filing fee of \$10.

A copy of this Order granting Permits TA-52 and I-23 was mailed on May 28, 2014, to the Department's field office in Bridgeport, Nebraska, and to the following:

Bruce Nienhueser
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