

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18560

WATER DIVISION 2-D

BACKGROUND

1. Storage appropriation A-9842, with a priority date of July 19, 1960, authorizes the City of Chadron to store water for domestic and municipal purposes. The stored water has historically been utilized by the residents of the City of Chadron since 1962.
2. Through actions taken since approximately 1993, the Department of Natural Resources (Department) has effectively maintained informal moratoriums through its discussions with possible applicants and through its orders regarding applications filed. In the White River Basin, the actions taken and the Department's policy has been to deny applications that would eliminate the remaining natural flow of the stream. The Department's preliminary determination was based on the lack of flow existing in most locations of the basin and the number of water rights that do not receive the full rate of diversion allowed under their appropriations. Applicants were given the opportunity to request a hearing to prove that unappropriated water was available.
3. On July 14, 2004, the Department issued an Order declaring a formal moratorium on the issuance of any new surface water appropriations for the White River Basin including all subbasins because it is not believed to be in the public interest to continue granting permits in an area where unappropriated water may not be available for such permits.
4. On November 3, 2004, the Department issued an Order of final determination in which the White River Basin was determined to be fully appropriated. This action continued the stay on the issuance of any new surface water appropriations within the White River Basin.
5. On September 8, 2005, Alfred C. Vacanti, City Manager for the City of Chadron, filed petition VAR-1870 (V-7) requesting leave to file an application to appropriate water from an area subject to a stay on the issuance of new surface water appropriations.
6. Petitions for leave to consider an application for a permit to appropriate water in areas that are subject to stays and moratoriums are covered under *Neb. Rev. Stat.*, §§ 46-714(3)(n) and 61-206. The Department's *Rules of Surface Water 457 Neb. Admin. Code ch.23* establishes guidelines under which a variance can be approved.
7. A variance petition may be approved if it meets one or more of the criteria listed in *457 Neb. Admin. Code ch.23*. In its petition, the

City of Chadron requested leave to file an application to appropriate water based on the Department's 457 Neb. Admin. Code ch.23, § 23.001.04. The Department's 457 Neb. Admin. Code ch. 23, § 001.04 authorizes applications if the project existed prior to the date of issuance of any informal moratorium, formal moratorium or stay. Storage of surface water in Chadron Reservoir No. 2 is authorized under appropriation A-9842, which was approved on August 22, 1961. The stored water has historically been utilized by the residents of the City of Chadron since 1962.

8. On August 26, 2007, petition VAR-1870 (V-7) was granted by the Department.
9. On December 14, 2007, Milo J. Rust, on behalf of the City of Chadron, filed application A-18560 in the Department for a Permit to Appropriate Stored Water pursuant to Neb. Rev. Stat., § 46-242.
10. Construction of the reservoir authorized by appropriation A-9842 has been completed. In addition, the pipeline to the municipal distribution center is also completed.

ORDER

IT IS HEREBY ORDERED that application A-18560 is APPROVED subject to the following limitations and conditions:

1. The source of water is Chadron Reservoir No. 2, constructed under storage appropriation A-9842.
2. The water shall be used for the purpose of public water supply.
3. The priority date is December 14, 2007.
4. Only the land within the corporate boundary of the City of Chadron may be served under appropriation A-18560.
5. Map number 17353 depicts the current corporate boundary of the City of Chadron. Beginning five years after the signing date of this application approval, and every five years following, the City of Chadron shall review the corporate boundary and provide to the Department an updated map showing the corporate boundary last filed in the Department and any changes since the last filing.
6. This appropriation will be limited to the amount of water beneficially used on an annual basis within the City of Chadron. The amount shall not exceed 143 acre-feet per annum.
7. The appropriator, City of Chadron, must comply with all relevant statutes. The statutes include, but are not limited to, the following:
 - A. Notify the Department of any change in ownership or address.
 - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation.

- C. Obtaining approval from the Department prior to taking any action that changes the location of the point of diversion, the location of the place of use, the type of use, or the type of appropriation.

DEADLINES

1. Although water stored in Chadron Reservoir No. 2 has historically been used since 1962, the appropriation is not considered perfected until water has been beneficially used for the purpose stated in this approval. Consequently, September 1, 2012, is the date by which water appropriated under A-18560 must have been used.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Approval may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

Nebraska law provides that failure to use a portion or all of a perfected appropriation for more than five consecutive years may result in cancellation of the appropriation.

DEPARTMENT OF NATURAL RESOURCES

June 30, 2010


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* 454 *Neb. Admin. Code* ch.7. The request must be received by the Department at its Lincoln office (301 Centennial Mall South, 4th Floor State Office Building, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of \$10.

A copy of this approval was posted on the Department's website and provided to the Department's field offices in Bridgeport and Crawford, Nebraska. A copy of this approval was mailed on June 30, 2010, to the following:

Milo J. Rust
City of Chadron
PO Box 390
Chadron, Nebraska 69337