STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18808

WATER DIVISION 1-A

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in the Platte River Basin upstream of the confluence with the Loup River near Columbus, Nebraska. The moratorium included all tributary streams above the Loup River confluence including the North and South Platte Rivers and tributaries.

2. On September 15, 2004, the Department designated the Platte River Basin upstream of the Kearney Canal diversion, including areas determined by the Department to be hydrologically connected to the basin, as overappropriated, pursuant to *Neb. Rev. Stat.* § 46-713(4)(a). As part of the overappropriated designation, the Department continued the moratorium on issuing new surface water appropriations in the overappropriated area of the Platte River Basin. In order to manage the overappropriated reaches of the Platte River Basin, the Department and the natural resources districts (NRDs) affected by the overappropriated designation initiated a basin-wide planning process, as required by *Neb. Rev. Stat.* § 46-715(5)(a).

3. In two separate orders, the first on September 30, 2004, and the second on April 21, 2006, the Platte River Basin upstream of the confluence with the Loup River and downstream of the overappropriated area, including all areas determined by the Department to be hydrologically connected to the basin, was finally determined to be fully appropriated. As part of this determination, the Department continued the moratorium on issuing new surface water appropriations.

4. On August 13, 2009, an integrated management plan (IMP) was adopted by Order of the Department, pursuant to *Neb. Rev. Stat.* § 46-718(2) for the Twin Platte NRD. As part of the surface water controls adopted by the Department pursuant to *Neb. Rev. Stat.* § 46-716(1)(b), the moratorium on issuing new surface water appropriations was continued.

5. On August 25, 2011, Harvey A. Michlitsch, on behalf of Upper Plains Contracting, Inc., filed in the Department petition VAR-2156 for leave to file an application for a permit to appropriate water. The proposed application is for a temporary permit to appropriate less than 10 acre-feet of water for the purpose of public road construction.

6. On August 25, 2011, the Department granted petition VAR-2156 for leave to file an application for a permit to appropriate water.

7. On September 9, 2011, Harvey A. Michlitsch, on behalf of Upper Plains Contracting, Inc., filed in the Department application A-18808 for a temporary permit to appropriate water.

ORDER

IT IS HEREBY ORDERED that application A-18808 is APPROVED subject to the following limitations and conditions:

1. The source of water is the South Platte River, via the headgate of the Korty Canal (South Platte River Supply Canal).

2. The water shall be used for the purpose of dust control for road construction.

3. The priority date is September 9, 2011.

4. The point of diversion is located in the SW¼SW¼ of Section 9, Township 13 North, Range 36 West of the 6th P.M. in Keith County.

5. The rate that water may be diverted under appropriation A-18808 shall not exceed 0.89 cubic foot per second (400 gallons per minute). Total annual volume of water diverted may not exceed 3.07 acre-feet (1,000,000 gallons).

6. This appropriation EXPIRES one year from the date of this Order and appropriation A-18805 will by CANCELLED without further action by the Department as of that date.

7. The appropriator 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, address or contact information.

   B. Notify the Department of the name and address of the person responsible for the use of the water appropriation.

   C. Obtain approval from the Department prior to taking any action that changes the location of the point of diversion or the location of the place of use.

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.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations.

DEPARTMENT OF NATURAL RESOURCES

September 16, 2011

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* 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 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 office in Bridgeport, Nebraska. A copy of this approval was mailed on September 19, 2011, to the following:

Upper Plains Contracting, Inc.
Harvey Michlitsch
5325 Hwy 12 East
Aberdeen, South Dakota 57401