STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

GRANT PETITION VAR-1619 FOR LEAVE TO CONSIDER AN APPLICATION FOR

A PERMIT TO APPROPRIATE SURFACE WATER

WATER DIVISION 2-A

Background

1. On December 16, 2008, the Department of Natural Resources (Department) issued a Notice of Preliminary Determination that the Lower Platte River Basin is Fully Appropriated. This action required an immediate stay on the issuance of any new surface water appropriations on that portion of the Lower Platte River and its tributaries.

2. On January 20, 2009, TransCanada Keystone Pipeline LP filed petition VAR-1619 for Leave to Consider an Application for a Permit to Appropriate Water. The proposed application is for a temporary permit to appropriate 4.6 acre-feet of water from Shell Creek in Section 20, Township 18 North, Range 2 East of the 6th P.M. in Colfax County. The petition states that water will be used for dust control during pipeline construction.

3. 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 Nebr. Rev. Stat. § 46-714(3)(n) and § 61-206. Department rule 457 N.A.C. 23 establishes guidelines under which variances can be granted.

Order

IT IS HEREBY ORDERED:

1. Petition VAR-1619 meets the conditions of Department Rule 457 N.A.C. 23.001.06 and is GRANTED.

2. This decision shall not bind the Director to approve any application to which it relates, or in any way be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of such an application. Allowance of a leave to file an application does not negate the necessity to meet the specific approval requirements for an appropriation.

DEPARTMENT OF NATURAL RESOURCES

February 17 , 2009

/s/
Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Norfolk, Nebraska. A copy of this Order was mailed on February _____, 2009, to the following:

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