

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO CONSIDER AN APPLICATION FOR
A NEW SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A
MORATORIUM, BY PETITION VAR-2270

WATER DIVISION 1-A

BACKGROUND

1. On July 28, 1993, the City of Gothenburg filed in the Department of Natural Resources (Department) application A-17302 for a permit to impound 300 acre-feet of water from the Platte River, via Nebraska Public Power District's Gothenburg Canal, in the existing Lake Helen located in the NW $\frac{1}{4}$ of Section 19, Township 12 North, Range 25 West of the 6th P.M. in Dawson County.
2. Through actions taken beginning in approximately 1993, the Department has effectively maintained informal moratoriums on the issuance of new surface water appropriations through its discussions with possible applicants and through its orders regarding applications filed in the North Platte River and its tributaries, the South Platte River and its tributaries, and the Platte River and its tributaries above the mouth of the Loup River.
3. 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.
4. On August 13, 2009, integrated management plans (IMPs) were adopted by order of the Department, pursuant to *Neb. Rev. Stat. § 46-718(2)* for the following Natural Resources Districts (NRDs): the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin 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 September 11, 2009, a Basin-Wide Integrated Management Plan (BWIMP) for the overappropriated area of the Platte River Basin was adopted by order of the Department. The BWIMP was also adopted by the following NRDs: the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. These NRDs are collectively referred to in the BWIMP as the "Platte River Basin NRDs."

6. On February 1, 2012, Joyce E. Hudson, on behalf of the City of Gothenburg, (Petitioner), filed in the Department petition VAR-2270 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area (variance petition). The petition requests consideration of application A-17302.
7. *Nebraska Revised Statutes* § 46-714(3)(n) allows for new surface water appropriations if the Department grants leave to file an application and subsequently approves a permit for such use.
8. When filing such a petition, a project proponent must offer a clearly stated basis for such request and must offer sufficient good cause. *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code Chapter 23* lists six circumstances that may be put forward as justification for granting a petition to apply for a new water use, in conjunction with an examination of good cause.
9. Petitioner provided information that indicates the reservoir was constructed in 1891 to regulate flows to the Gothenburg Power Station, which is no longer in operation.
10. Records on file in the Department indicate that recreational and aesthetic uses of Lake Helen have existed for many decades.

CONCLUSIONS

1. The existence of aesthetic and recreational uses predates any informal or formal moratorium.
2. The expected benefits from the continued use of Lake Helen include the enjoyment of the recreational facility by residents of Gothenburg and the surrounding area that has a long history.
3. For these reasons, Petitioner should be granted leave to proceed with the consideration of application A-17302 for a permit to impound water.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-2270 meets the requirements of *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code Chapter 23, §§ 001.04*, has shown sufficient good cause, 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.

DEPARTMENT OF NATURAL RESOURCES

May 11, 2012


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 May 11, 2012, to the following:

Bruce Clymer, City Administrator
City of Gothenburg
409 9th Street
Gothenburg, Nebraska 69138

Brian Barels
Nebraska Public Power District
P.O. Box 499
Columbus, Nebraska 68601

Chris Miller, P.E.
Miller and Associates Consulting Engineers
1111 Central Avenue
Kearney, Nebraska 68847